**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 16-3-760 SO AS TO DEFINE NECESSARY TERMS, CREATE THE OFFENSE OF CYBER SEXUAL HARASSMENT, PROVIDE PENALTIES, AND DELINEATE EXCEPTIONS.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Article 7, Chapter 3, Title 16 of the 1976 Code is amended by adding:

“Section 16-3-760. (A) As used in this section, the term:

(1) ‘Private image’ means an image depicting sexually explicit nudity or sexual activity, as defined in Section 16‑15‑375, or sexual conduct, as defined in Section 16‑15‑305.

(2) ‘Image’ means a photograph, film, videotape, recording, live transmission, digital or computer‑generated visual depiction, or any other reproduction made by electronic, mechanical, or other means.

(3) ‘Disclose’ means exhibit, transfer, publicize, distribute, or reproduce.

(B) A person commits the offense of cyber sexual harassment if the:

(1) person wilfully or knowingly electronically discloses a private image;

(2) depicted person is identifiable from:

(a) the private image; or

(b) information within a reasonable degree of certainty offered in association with the private image by a third party in response to the disclosure, and any accompanying or subsequent information or material related to the private image; and

(3) person discloses the image without affirmative consent of the depicted person such that a reasonable person knew, or should have known, the depicted person expected the image to remain private. Evidence that the depicted person sent a sexually explicit image to another person does not, on its own, remove the reasonable expectation of privacy for that image; and

(4) the disclosure of the private image would cause a reasonable person to suffer emotional distress.

(C) A person who is eighteen years of age or older at the time of the offense who violates the provisions of this section for a:

(1) first offense, is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned for not more than thirty days, or both. Notwithstanding the provisions of Sections 22‑3‑540, 22‑3‑545, 22‑3‑550, and 14‑25‑65, a first offense pursuant to this item may be tried in magistrates or municipal court.

(2) second or subsequent offense, is guilty of a felony and, upon conviction, must be fined not more than two thousand five hundred dollars or imprisoned not more than five years, or both.

(D) A person who is under eighteen years of age at the time of the offense who violates the provisions of this section is guilty of a misdemeanor and, upon conviction or adjudication, must be fined not more than one thousand dollars or imprisoned not more than thirty days, or both. A person convicted or adjudicated delinquent pursuant to the provisions of this subsection is eligible to participate in a pretrial intervention program pursuant to the provisions of Article 1, Chapter 22, Title 17.

(E) The provisions of this section do not apply to:

(1) images involving exposure in a public or commercial setting;

(2) disclosures made in the public interest including, but not limited to, the reporting of unlawful conduct, lawful and common practices of law enforcement, legal proceedings, medical treatment, or scientific or educational activities; or

(3) a provider of an interactive computer service, as defined in 47 U.S.C. Section 230(f), or an information service or communications service, as defined in 47 U.S.C. Section 153.

(F) A violation of a provision of this section is not a lesser-included offense of a harassment or stalking offense pursuant to the provisions of Article 17 but is a separate offense and the penalties provided in this section are in addition to the penalties provided for any other offense.”

SECTION 2. This act takes effect upon approval by the Governor.

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