AMENDED

June 3, 2010

**H. 4506**

Introduced by Reps. Lucas, Harrison, J.E. Smith, Harrell, Battle and Rutherford

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Read the first time May 4, 2010.

**A** **JOINT RESOLUTION**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 56‑5‑3890 SO AS TO PROVIDE THAT IT IS UNLAWFUL FOR CERTAIN PERSONS WHO ARE OPERATING A MOTOR VEHICLE TO USE A TEXT MESSAGING DEVICE OR A HAND‑HELD MOBILE TELEPHONE, AND TO PROVIDE PENALTIES FOR VIOLATING THIS PROVISION.

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

SECTION 1. Article 31, Chapter 5, Title 56 of the 1976 Code is amended by adding:

“Section 56-5-3890. (A) For purposes of this section:

(1) ‘Hands-free wireless electronic communication device’ means an electronic device, including, but not limited to, a mobile telephone, a personal digital assistant, a text messaging device, or a computer, that allows a person to wirelessly communicate with another person without the use of either hand by utilizing an internal feature or function of the device, an attachment, or an additional device. A hands‑free wireless electronic communication device may require the use of either hand to activate or deactivate an internal feature or function of the device.

(2) ‘Text-based communication’ means a communication using text-based information, including, but not limited to, a text message, an SMS message, an instant message, or an electronic mail message.

(3) ‘Wireless electronic communication device’ means an electronic device that allows a person to wirelessly communicate with another person, including, but not limited to, a mobile telephone, a personal digital assistant, a text messaging device, or a computer.

(B) It is unlawful for a person to use a wireless electronic communication device to compose, send, or read a text-based communication while operating a motor vehicle on the public streets and highways of this State.

(C) This section does not apply to a person who is:

(1) lawfully parked or stopped;

(2) using a hands-free wireless electronic communication device or a voice-activated feature or function of the device;

(3) activating or deactivating a wireless electronic communication device or an internal feature or function of the device;

(4) reading, selecting, or entering a telephone number or contact in a wireless electronic communication device for the purpose of making or receiving a telephone call;

(5) summoning medical or other emergency assistance;

(6) transmitting or receiving data as part of a digital dispatch system;

(7) a law enforcement officer, firefighter, emergency medical technician, or other public safety official while in the performance of the person’s official duties; or

(8) using a global positioning system device or an internal global positioning system feature or function of a wireless electronic communication device for the purpose of navigation or obtaining related traffic and road condition information.

(D) A person who violates this section is guilty of a misdemeanor and, upon conviction, must be fined twenty dollars, pay a twenty-five dollar Trauma Care Fund surcharge, and have one point assessed against the person’s motor vehicle operating record, pursuant to Section 56-1-720, no part of which may be waived, reduced, or suspended. The fine is subject to all other applicable court costs, assessments, and surcharges. The Trauma Care Fund surcharge must be deposited with the city or county treasurer, as applicable, for remittance to the State Treasurer. The State Treasurer shall deposit the Trauma Care Fund surcharge in the South Carolina State Trauma Care Fund to be used by the Department of Health and Environmental Control as established and provided for in Section 44-61-540. The Trauma Care Fund surcharge is not subject to the provisions of Section 44-61-520(G). If the person does not subsequently violate this section for a one-year period from the date of conviction, the one point assessed against the person’s motor vehicle operating record must be removed.

(E) A law enforcement officer must not:

(1) stop a person for a violation of this section except when the officer has probable cause that a violation has occurred based on the officer’s clear and unobstructed view of a person who is using a wireless electronic communication device to compose, send, or read a text-based communication while operating a motor vehicle on the public streets and highways of this State;

(2) seize or require the forfeiture of a wireless electronic communication device because of a violation of this section;

(3) search or request to search a motor vehicle, driver, or passenger in a motor vehicle, solely because of a violation of this section;

(4) make a custodial arrest for a violation of this section, except upon a warrant issued for failure to appear in court when summoned or for failure to pay an imposed fine; or

(5) issue a citation to a person for a violation of this section when the stop is made in conjunction with a driver’s license check, safety check, or registration check conducted at a checkpoint established to stop all drivers on a certain road for a period of time, except when the person is cited for violating another motor vehicle law.

(F) A person charged with a violation of this section may admit or deny the violation, enter a plea of nolo contendere, or be tried before either a judge or a jury. If the trier of fact is convinced beyond a reasonable doubt that the person was using a wireless electronic communication device to compose, send, or read a text-based communication while operating a motor vehicle on the public streets and highways of this State at the time of the incident, the penalty is a fine, surcharge, and points assessment pursuant to subsection (D). If the trier of fact determines that the State has failed to prove beyond a reasonable doubt that the person was using a wireless electronic communication device to compose, send, or read a text-based communication while operating a motor vehicle on the public streets and highways of this State, no penalty shall be assessed. A person found to be in violation of this section may bring an appeal to the court of common pleas, pursuant to Section 18‑3‑10 or Section 14‑25‑95.

(G) This section preempts local ordinances, regulations, and resolutions adopted by municipalities, counties, and other local government entities regarding persons using wireless electronic communication devices while operating motor vehicles on the public streets and highways of this State.

(H) Nothing in this section is intended to conflict with enforcement of applicable restrictions or requirements imposed on commercial motor vehicle operators pursuant to the Federal Motor Carrier Safety Regulations.”

SECTION 2. Section 56-1-720 of the 1976 Code is amended to read:

“Section 56‑1‑720. There is established a point system for the evaluation of the operating record of persons to whom a license to operate motor vehicles has been granted and for the determination of the continuing qualifications of these persons for the privileges granted by the license to operate motor vehicles. The system shall have as its basic element a graduated scale of points assigning relative values to the various violations in accordance with the following schedule:

VIOLATION POINTS

Reckless driving ………… 6

Passing stopped school bus 6

Hit‑and‑run, property damages only 6

Driving too fast for conditions, or speeding:

(1) No more than 10 m.p.h. above the

posted limits…… 2

(2) More than 10 m.p.h. but less than 25

m.p.h. above the posted limits 4

(3) 25 m.p.h. or above the posted limits 6

Disobedience of any official traffic control

device ……………….. 4

Disobedience to officer directing traffic 4

Failing to yield right of way 4

Driving on wrong side of road 4

Passing unlawfully 4

Turning unlawfully 4

Driving through or within safety zone 4

Failing to give signal or giving improper

signal for stopping, turning, or suddenly

decreased speed 4

Shifting lanes without safety precaution 2

Improper dangerous parking 2

Following too closely 4

Failing to dim lights 2

Operating with improper lights 2

Operating with improper brakes 4

Operating a vehicle in unsafe condition 2

Driving in improper lane 2

Improper backing …. 2

Using a wireless electronic communication

device to compose, send, or read a text-based

communication while operating a motor vehicle ……… ……1.”

SECTION 3. This act takes effect upon approval by the Governor.

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