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Indicates New Matter

COMMITTEE REPORT

April 25, 2012

**H. 4451**

Introduced by Reps. Bowen, Whipper, Bikas, Sottile, Herbkersman, D.C. Moss, Allison, Parker, Huggins, Bowers and Hearn

S. Printed 4/25/12--S.

Read the first time March 14, 2012.

**THE COMMITTEE ON JUDICIARY**

To whom was referred a Bill (H. 4451) to amend the Code of Laws of South Carolina, 1976, by adding Sections 56‑5‑3890, 56‑5‑3895, and 56‑5‑3897, etc., respectfully

**REPORT:**

That they have duly and carefully considered the same and recommend that the same do pass with amendment:

Amend the bill, as and if amended, by striking all after the enacting words and inserting:

/ 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) ‘Hand-held wireless electronic communication device’ means an electronic device, including, but not limited to, a telephone, a personal digital assistant, a text messaging device, or a computer, that allows a person to wirelessly communicate with another person while holding the device in either hand.

(2) ‘Hands‑free wireless electronic communication device’ means an electronic device, including, but not limited to, a telephone, a personal digital assistant, a text messaging device, or a computer, that allows a person to wirelessly communicate with another person without holding the device in 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.

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

(B)(1) It is unlawful for a person under the age of eighteen to use a hand-held wireless electronic communication device while operating a motor vehicle on the public streets and highways of this State.

(2) A person who violates this subsection is guilty of a misdemeanor, and, upon conviction:

(a) for a first offense, must be fined twenty dollars and pay a twenty‑five dollar Trauma Care Fund surcharge. The twenty dollar fine is subject to all applicable court costs, assessments, and surcharges, except as provided in subitem (B)(3)(e);

(b) for a second offense within five years of a prior offense, must be fined twenty‑five dollars, pay a twenty‑five dollar Trauma Care Fund surcharge, and have two points assessed against the person’s motor vehicle operating record, no part of which may be waived, reduced, or suspended. The twenty‑five dollar fine is subject to all applicable court costs, assessments, and surcharges; and

(c) for a third or subsequent offense within five years of a prior offense, must be fined seventy‑five dollars, pay a twenty‑five dollar Trauma Care Fund surcharge, and have four points assessed against the person’s motor vehicle operating record, no part of which may be waived, reduced, or suspended. The seventy‑five dollar fine is subject to all applicable court costs, assessments, and surcharges.

(3)(a) For a first offense, instead of the penalty provided in subitem (B)(2)(a), the person may successfully complete a driver’s education program within sixty days of the person’s conviction date, which specifically contains, in whole or in part, education regarding distracted or inattentive driving.

(b) The person shall select a program approved by the Department of Public Safety’s Office of Highway Safety. The Office of Highway Safety may approve more than one program, and such programs may be conducted by classroom, computer, or Internet. The Office of Highway Safety shall post information regarding the approved programs on the Office of Highway Safety’s website.

(c) The person shall indicate to the judge at the time of conviction that the person intends to successfully complete a program instead of the penalty. The judge shall instruct the person as to how the person is to comply with the requirements of this subitem. Notwithstanding Section 56-7-30, the court shall retain the records and audit copy of the traffic ticket for the violation until the judge has made a determination as to whether the person has successfully completed the program.

(d) The person shall return to the court within sixty days of the conviction date. At that time, the person shall present an original certificate from the program indicating that the person has successfully completed the program. Also, the person shall sign an affidavit provided by the court swearing or affirming that the person has successfully completed the program.

(e) If the judge determines that the person has successfully completed the program, the judge shall waive the fine, the Trauma Care Fund surcharge, and all applicable court costs, assessments, and surcharges, except ten dollars that shall be used exclusively by the court to offset the costs associated with administering the person’s compliance with this subsection. The court shall remit the records and audit copy of the traffic ticket to the Department of Motor Vehicles within ten days indicating a violation of this subsection. The Department of Motor Vehicles shall indicate a violation of this subsection on the person’s motor vehicle operating record.

(f) If the judge determines that the person has failed to successfully complete the program, the judge shall impose the fine, the Trauma Care Fund surcharge, and all other applicable court costs, assessments, and surcharges. The court shall remit the records and audit copy of the traffic ticket to the Department of Motor Vehicles within ten days indicating a violation of this subsection. The Department of Motor Vehicles shall indicate a violation of this subsection on the person’s motor vehicle operating record.

(g) A person is not permitted to complete a program instead of the penalty if the person has been convicted of a prior violation of this subsection. Only those violations that occurred within a period of five years, including and immediately preceding the date of the last violation, constitute prior violations within the meaning of this subsection.

(4) If a person who is convicted of a second or subsequent offense does not violate this subsection within one year from the date of conviction, the Department of Motor Vehicles shall remove the points assessed against the person’s motor vehicle operating record. However, the Department of Motor Vehicles shall not remove an indication of the violation of this subsection from the person’s motor vehicle operating record. For purposes of this subsection, if the Department of Motor Vehicles has not received a ticket or other notice from a court one year from the date of conviction indicating that the person has subsequently violated this subsection, the Department of Motor Vehicles shall remove the points assessed.

(5) 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. The Trauma Care Fund surcharge must not be used by the Department of Health and Environmental Control for the payment of the department’s administrative or operating expenses or for any purpose other than providing financial aid to participating trauma care providers and grants related to trauma care in this State. The Trauma Care Fund surcharge is not subject to the provisions of Section 44‑61‑520(G).

(C)(1) It is unlawful for a person to use a wireless electronic communication device while operating a motor vehicle in a school zone area when the school zone’s warning lights are activated.

(2) A person who violates this subsection is guilty of a misdemeanor, and, upon conviction, must be fined not more than five hundred dollars or imprisoned not more than 30 days, or both.

(3) The penalty imposed by this subsection applies only:

(a) if a sign is posted at the beginning of the school zone area that states ‘SCHOOL ZONE UP TO $500 FINE AND 30 DAYS IMPRISONMENT FOR USING A WIRELESS ELECTRONIC COMMUNCATION DEVICE’; and

(b) to the area between the posted sign and the ‘END SCHOOL ZONE’ sign.

(D)(1) It is unlawful for a person to use a wireless electronic communication device while operating a motor vehicle in a highway work zone area as described in Section 56-5-1535 when road maintenance or construction work is underway and workers are present.

(2) This subsection does not apply to:

(a) a highway work zone area when the work zone signs have been removed or covered with weather resistant material pursuant to Section 57-3-785(B); and

(b) a temporary work zone area as described in Section 56-5-1536.

(3) A person who violates this subsection is guilty of a misdemeanor, and, upon conviction, must be fined not more than five hundred dollars or imprisoned not more than 30 days, or both.

(4) The penalty imposed by this subsection applies only:

(a) if a sign is posted at the beginning of the highway work zone area that states ‘WORK ZONE UP TO $500 FINE AND 30 DAYS IMPRISONMENT FOR USING A WIRELESS ELECTRONIC COMMUNCATION DEVICE’; and

(b) to the area between the posted sign and the ‘END CONSTRUCTION’ sign. Signs may be posted at the discretion of the Department of Transportation in the highway work zone areas designed to comply with work zone traffic control standards contained in the Manual on Uniform Traffic Control Devices published by the Federal Highway Administration.

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

(1) lawfully parked or stopped;

(2) using a wireless electronic communication device in hands-free, voice-activated, or voice-operated mode, except a person using a wireless electronic communication device in a school zone area or highway work zone area;

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

(4) summoning or providing medical or other emergency assistance;

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

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

(7) 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.

(F) During the first one hundred and eighty days after this section’s effective date, law enforcement officers shall issue only warnings for violations of this section.

(G) 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 violating this section;

(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.

(H) 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 violated this section, the applicable penalty must be assessed. If the trier of fact determines that the State has failed to prove beyond a reasonable doubt that the person violated this section, no penalty must 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.

(I) 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.

(J) 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.

(K) A violation of this section is negligence per se.”

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

A person under 18 using a hand-held

wireless electronic communication device

while operating a motor vehicle, second offense 2

A person under 18 using a hand-held

wireless electronic communication device

while operating a motor vehicle, third or

subsequent offense 4.”

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

Renumber sections to conform.

Amend title to conform.

JOHN M. KNOTTS, JR. for Committee.

**STATEMENT OF ESTIMATED FISCAL IMPACT**

ESTIMATED FISCAL IMPACT ON GENERAL FUND EXPENDITURES:

Minimal (Some additional costs expected but can be absorbed)

ESTIMATED FISCAL IMPACT ON FEDERAL & OTHER FUND EXPENDITURES:

$0 (No additional expenditures or savings are expected)

**EXPLANATION OF IMPACT:**

Department of Health & Environmental Control (DHEC)

Section 3 of the bill declares that monies received by the Trauma Care Fund “pursuant to Sections 56-5-3890 and 56-5-3897” are to be deposited in the State Trauma Care Fund and must be used by the Department of Health & Environmental Control (DHEC) only for providing financial aid to participating trauma care providers and grants related to trauma care in the state. However, Sections 56-5-3890 and 56-5-3897 contain no language to authorize any fines related to texting while driving to be deposited in the Trauma Care Fund and the origin of the “Trauma Care Fund surcharge” (mentioned in Section 56-5-3897) is not identified. Consequently, this bill, as amended by the House, provides no revenue to the State Trauma Care Fund.

According to DHEC there would be no impact on the agency’s operating expenses since this bill, as written, has no impact on the agency or the Trauma Care Fund. Furthermore, the bill declares that any revenue received by the Trauma Care Fund under the new sections must be passed through to trauma care providers and must not be used for administrative or operating expenses.

The Judicial Department

The Department states that this bill will have a minimal impact on the General Fund of the State, which the agency can absorb at their current level of funding.

Other Agencies

The Department of Corrections and the Department of Motor Vehicles state that this bill will have no fiscal impact on the General Fund of the State, nor on federal and/or other funds.

**SPECIAL NOTES:**

The Board of Economic Advisors is the appropriate entity to address any revenue impact associated with this or any other bill.

Approved By:

Brenda Hart

Office of State Budget

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTIONS 56‑5‑3890, 56‑5‑3895, AND 56‑5‑3897 SO AS TO PROVIDE THAT IT IS UNLAWFUL FOR A PERSON TO USE AN ELECTRONIC COMMUNICATION DEVICE WHILE DRIVING A MOTOR VEHICLE UNDER CERTAIN CIRCUMSTANCES, TO PROVIDE A PENALTY, AND TO PROVIDE FOR THE DISTRIBUTION OF MONIES COLLECTED FROM FINES ASSOCIATED WITH VIOLATIONS OF THESE PROVISIONS; AND TO AMEND SECTION 56‑1‑720, RELATING TO THE ASSESSMENT OF POINTS AGAINST A PERSON’S DRIVING RECORD FOR CERTAIN MOTOR VEHICLE VIOLATIONS, SO AS TO PROVIDE THAT POINTS MUST BE ASSESSED AGAINST THE DRIVING RECORD OF A PERSON CONVICTED OF IMPROPER USE OF AN ELECTRONIC COMMUNICATION DEVICE WHILE DRIVING A MOTOR VEHICLE.

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) ‘Electronic communication device’ means an electronic device, including, but not limited to a wireless telephone, personal digital assistant, a text messaging device, or a portable or mobile computer while being used for the purpose of composing, reading, or sending an electronic message, but does not include a global positioning system or navigation system or a device that is physically or electronically integrated into the motor vehicle.

(2) ‘Electronic message’ means a self‑contained piece of digital communication that is designed or intended to be transmitted between physical devices. ‘Electronic message’ includes, but is not limited to electronic mail, a text message, an instant message, or a command or request to access an Internet site.

(B) A person may not use an electronic communication device to compose, send, or read an electronic message while operating a motor vehicle on a roadway.

(C) This section does not apply to a person operating a vehicle while:

(1) off the traveled portion of a roadway;

(2) using an electronic communication device in hands‑free, voice‑activated, or voice‑operated mode;

(3) activating or deactivating an electronic communication device or an internal feature or function of the device not associated with electronic messaging;

(4) summoning medical or other emergency assistance;

(5) an operator of a commercial motor vehicle reading a message displayed on a permanently installed communications device designed for a commercial motor vehicle with a screen that does not exceed ten inches tall by ten inches wide inside;

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

(7) the vehicle is stopped, parked, or not in motion.

(D) A person who violates this section is guilty of a misdemeanor and, upon conviction, must be fined not more than one hundred fifty dollars and the conviction may not be reported to the offender’s motor vehicle insurer nor may it be included in the offender’s motor vehicle records maintained by the department of motor vehicles or in the criminal records maintained by the state law enforcement division.

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

(F) 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.

(G) Notwithstanding another provision of law, information contained or stored in an electronic communications device is not subject to a search by a law enforcement officer incident to a lawful custodial arrest except pursuant to the provisions of Section 17‑13‑140 providing for the issuance, execution, and return of a search warrant or pursuant to the express written consent of the person subject to the lawful custodial arrest or other lawful owner of the device.

(H) A law enforcement officer may not issue a citation to a driver or a passenger 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 driver is cited for violating another motor vehicle law.

(I) A violation of this section is not negligence per se or contributory negligence, and is not admissible as evidence in a civil action.

(J) A vehicle, driver, or occupant in a vehicle may not be searched, nor may consent to search be requested by a law enforcement officer, solely because of a violation of this section.

(K) A law enforcement officer may not stop a driver for a violation of this section except when the officer has probable cause that a violation of this section has occurred based on his clear and unobstructed view of a driver or an occupant of the motor vehicle who is violating the provisions of this section.

(L) 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 violating the provisions of this section at the time of the incident, the penalty is as provided in this section. If the trier of fact determines that the State has failed to prove beyond a reasonable doubt that the person was violating the provisions of this section, no penalty may be assessed.

(M) A person found to be in violation of this article may bring an appeal to the court of common pleas pursuant to Section 18‑3‑10 or Section 14‑25‑95.”

SECTION 2. Article 31, Chapter 5, Title 56 of the 1976 Code is amended by adding:

“Section 56-5-3895.(n) Notwithstanding another provision of law, information contained or stored in an electronic communications device is not subject to a search by a law enforcement officer incident to a lawful custodial arrest except pursuant to the provisions of Section 17‑13‑140 providing for the issuance, execution, and return of a search warrant or pursuant to the express written consent of the person subject to the lawful custodial arrest or other lawful owner of the device.”

SECTION 3. Article 31, Chapter 5, Title 56 of the 1976 Code is amended by adding:

“Section 56‑5‑3897. Monies received by the Trauma Care Fund pursuant to 56‑5‑3890 and 56‑5‑3897 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. The Trauma Care Fund surcharge must not be used by the Department of Health and Environmental Control for the payment of the department’s administrative or operating expenses or for any purpose other than providing financial aid to participating trauma care providers and grants related to trauma care in this State. The Trauma Care Fund surcharge is not subject to the provisions of Section 44‑61‑520(G).”

SECTION 4. This act takes effect upon approval by the Governor.

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