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Indicates New Matter

COMMITTEE REPORT

March 20, 2014

**H. 4386**

Introduced by Reps. Bowen, Gilliard, Felder, Southard and Kennedy

S. Printed 3/20/14--H.

Read the first time January 14, 2014.

**THE COMMITTEE ON EDUCATION AND PUBLIC WORKS**

To whom was referred a Bill (H. 4386) to amend the Code of Laws of South Carolina, 1976, by adding Sections 56‑5‑3890 and 56‑5‑3897 so as to provide that it is unlawful for a person, 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) ‘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, which 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.

(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, including, but not limited to, a telephone, a personal digital assistant, a text messaging device, or a computer, which allows a person to wirelessly communicate with another person.

(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;

(3) summoning emergency assistance;

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

(5) a public safety official while in the performance of the person’s official duties; or

(6) 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)(1) A person who violates this section is guilty of a misdemeanor, and, upon conviction:

(a) for a first offense, must be fined one hundred dollars or imprisoned for not more than thirty days, or both. In addition, the person must have two points assessed against the person’s motor vehicle operating record. The fine is subject to all applicable court costs, assessments, and surcharges, except as provided in item (2); and

(b) for a second or subsequent offense within ten years of a prior offense, must be fined five hundred dollars or imprisoned for not more than thirty days, or both. In addition, the person must have four points assessed against the person’s motor vehicle operating record. The fine is subject to all applicable court costs, assessments, and surcharges.

(2)(a) For a first offense, in lieu of the penalty provided in subsection (D)(1)(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 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 its 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 item. 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 penalty 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 item. 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 section without any points assessed against the person’s motor vehicle operating record. The Department of Motor Vehicles shall indicate a violation of this section on the person’s motor vehicle operating record without any points assessed. An insurance company shall not increase a person’s insurance premium based solely on a violation of this section, if the person completes a program in lieu of a penalty.

(f) If the judge determines that the person has failed to successfully complete the program, the judge shall impose the penalty, 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 section. The Department of Motor Vehicles shall indicate a violation of this section on the person’s motor vehicle operating record with two points assessed.

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

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

(E) A law enforcement officer shall 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; or

(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.

(F) The Department of Public Safety shall maintain statistical information regarding citations issued pursuant to this section.

(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.”

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

25 than m.p.h. above the

posted limits 2

(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,

first offense 2

Using a wireless electronic

communication device to

compose, send, or read a text‑based

communication while operating a

motor vehicle, second

or subsequent offense 4.”

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

Renumber sections to conform.

Amend title to conform.

PHILLIP D. OWENS for Committee.

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTIONS 56‑5‑3890 AND 56‑5‑3897 SO AS TO PROVIDE THAT IT IS UNLAWFUL FOR A PERSON TO USE A 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 THIS PROVISION; 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 TEXTING WHILE DRIVING; AND TO AMEND SECTION 56‑5‑2920, RELATING TO RECKLESS DRIVING, SO AS TO PROVIDE THAT RECKLESS DRIVING INCLUDES TEXTING WHILE DRIVING WHEN BODILY INJURY OCCURS.

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) ‘Communication device’ means an electronic device 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 a 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 motor 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 including, but not limited to Blue Tooth technology or other similar technology, that allows the user to review, prepare and transmit an electronic message without the use of either hand except to activate, deactivate, or initiate a feature or function;

(3) summoning medical or other emergency assistance; or

(4) using a citizens band radio, commercial two‑way radio communication device, in‑vehicle security, or amateur or ham radio device.

(D) A person who violates this section where no great bodily injury or death resulted from the violation, is guilty of misdemeanor texting while driving and, upon conviction, must be fined not more than one hundred dollars, pay a twenty‑five dollar Trauma Care Fund surcharge in accordance with Section 56‑5‑3897, and have two points assessed against his driving record in accordance with Section 56‑1‑720. The fine is subject to all applicable court costs, assessments, and surcharges.

(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.”

SECTION 2. 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 Section 56‑5‑3890 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 3. 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

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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

Texting while driving 2.”

SECTION 4. Section 56‑5‑2920 of the 1976 Code is amended to read:

“Section 56‑5‑2920. Any person who drives any vehicle in such a manner as to indicate either a wilful or wanton disregard for the safety of persons or property, which shall include texting while driving when bodily injury occurs, is guilty of reckless driving. The Department of Motor Vehicles, upon receiving satisfactory evidence of the conviction, of the entry of a plea of guilty or the forfeiture of bail of any person charged with a second and subsequent offense for the violation of this section shall forthwith suspend the driver’s license of any such person for a period of three months. Only those offenses which occurred within a period of five years including and immediately preceding the date of the last offense shall constitute prior offenses within the meaning of this section. Any person violating the provisions of this section shall, upon conviction, entry of a plea of guilty or forfeiture of bail, be punished by a fine of not less than twenty‑five dollars nor more than two hundred dollars or by imprisonment for not more than thirty days.”

SECTION 5. This act takes effect upon approval by the Governor.

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