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Indicates New Matter

COMMITTEE REPORT

April 3, 2018

**H. 4480**

Introduced by Reps. Taylor, Allison, Jefferson, Cogswell, McCravy, Henderson‑Myers, Clary, Tallon, Spires, Toole, Knight and Henegan

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Read the first time January 9, 2018.

**THE COMMITTEE ON EDUCATION AND PUBLIC WORKS**

To whom was referred a Bill (H. 4480) to amend Section 56‑5‑3890, Code of Laws of South Carolina, 1976, relating to the unlawful use of a wireless communications, 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:

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

SECTION 1. This act may be referred to and cited as the “Driving Under the Influence of an Electronic Device or DUI‑E Law”.

SECTION 2. Section 56‑5‑3890 of the 1976 Code is amended to read:

“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.~~ ‘Hands‑free device’ means a device with speakerphone capability, a telephone attachment, or another function or other piece of equipment, regardless of whether permanently installed in or on a wireless communication device or in a motor vehicle, that allows use of the wireless communication device without use of either of the driver’s hands, except to activate or deactivate a function of the wireless communication device or hands‑free device. The term includes voice‑operated technology and push‑to‑talk function.

(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~~ cell phone, tablet, personal digital assistant, laptop, 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:

(1) hold a wireless communication device in either hand while driving a motor vehicle on the public streets and highways of this State; or

(2) 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~~ while driving a motor vehicle on the public streets and highways of this State to:

(a) type or send a text‑based communication, or both with his hand or finger; or

(b) visually read a text‑based communication.

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

(1) stopped on the side of a road or lawfully parked ~~or stopped~~;

(2) using a hands‑free ~~wireless electronic communication~~ device as defined in this section;

(3) summoning emergency assistance;

(4) transmitting or receiving ~~data~~ information as part of a digital dispatch system for relaying information in the course of the driver’s occupational duties;

(5) ~~a public safety official while in the performance of the person’s official duties; or~~ driving an authorized emergency or law enforcement vehicle while acting in an official capacity; 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~~ using equipment or services installed or provided by the original manufacturer of the vehicle; provided, however, that this subitem does not authorize the driver’s use of a hand‑held device.

(D)~~(1)~~ A person who is adjudicated to be in violation of the provisions of this section is guilty of Driving While Using an Electronic Device. A person violating this section must be fined not more than ~~twenty‑five~~ one hundred dollars, no part of which may be suspended. ~~No court costs, assessments, or surcharges may be assessed against a person who violates a provision of this section. A person must not be fined more than fifty dollars for any one incident of one or more violations of the provisions of this section.~~ For a second or subsequent violation of the provisions of this section, a person must be fined three hundred dollars. A custodial arrest for a violation of this section must not be made, except upon a warrant issued for failure to appear in court when summoned or for failure to pay an imposed fine. ~~A violation of this section does not constitute a criminal offense. Notwithstanding Section 56‑1‑640, a violation of this section must not be:~~

~~(a)~~ ~~included in the offender’s motor vehicle records maintained by the Department of Motor Vehicles or in the criminal records maintained by SLED; or~~

~~(b)~~ ~~reported to the offender’s motor vehicle insurer.~~

~~(2)~~ ~~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, search, view, or require the forfeiture of a wireless electronic communication device because of a violation of this section;

~~(3)~~(2) 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)~~(3) 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 governmental entities regarding persons using wireless electronic communication devices while ~~operating~~ driving motor vehicles on the public streets and highways of this State.

(H) Only those violations which 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 section.”

SECTION 2. The repeal or amendment by this act of any law, whether temporary or permanent or civil or criminal, does not affect pending actions, rights, duties, or liabilities founded thereon, or alter, discharge, release or extinguish any penalty, forfeiture, or liability incurred under the repealed or amended law, unless the repealed or amended provision shall so expressly provide. After the effective date of this act, all laws repealed or amended by this act must be taken and treated as remaining in full force and effect for the purpose of sustaining any pending or vested right, civil action, special proceeding, criminal prosecution, or appeal existing as of the effective date of this act, and for the enforcement of rights, duties, penalties, forfeitures, and liabilities as they stood under the repealed or amended laws.

SECTION 3. At every interstate highway ingress into the State, the South Carolina Department of Transportation shall erect a visible notification sign advising motorist entering the State of the existence of this act.

SECTION 4. A law enforcement officer shall issue only warning tickets for a Driving While Using an Electronic Device violation during the first sixty days after the effective date of this act.

SECTION 5. This act takes effect one hundred twenty days after approval by the Governor. \

Renumber sections to conform.

Amend title to conform.

MERITA A. ALLISON for Committee.

**A** **BILL**

TO AMEND SECTION 56‑5‑3890, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE UNLAWFUL USE OF A WIRELESS COMMUNICATIONS DEVICE WHILE OPERATING A MOTOR VEHICLE, SO AS TO REVISE THE DEFINITION OF CERTAIN TERMS, TO REVISE THE CIRCUMSTANCES WHEN IT IS UNLAWFUL TO USE A WIRELESS DEVICE, TO REVISE THE PENALTIES, TO CREATE THE OFFENSE OF DRIVING UNDER THE INFLUENCE OF AN ELECTRONIC DEVICE, TO DELETE THE PROVISION THAT PROHIBITS A LAW ENFORCEMENT OFFICER FROM STOPPING A PERSON FOR A VIOLATION OF THIS SECTION UNDER CERTAIN CIRCUMSTANCES, AND TO PROVIDE THAT THE DEPARTMENT OF MOTOR VEHICLES SHALL MAINTAIN STATISTICAL INFORMATION REGARDING CITATIONS ISSUED PURSUANT TO THIS SECTION; AND TO AMEND SECTION 56‑1‑720, AS AMENDED, RELATING TO THE POINT SYSTEM ESTABLISHED FOR THE EVALUATION OF THE DRIVING RECORD OF PERSONS OPERATING MOTOR VEHICLES, SO AS TO PROVIDE THAT DRIVING UNDER THE INFLUENCE OF AN ELECTRONIC DEVICE SECOND OR SUBSEQUENT OFFENSE IS A TWO-POINT VIOLATION.

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

SECTION 1. Section 56‑5‑3890 of the 1976 Code is amended to read:

“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.~~ ‘Hands‑free device’ means speakerphone capability, a telephone attachment, or another function or other piece of equipment, regardless of whether permanently installed in or on a wireless communication device or in a motor vehicle, that allows use of the wireless communication device without use of either of the operator’s hands, except to activate or deactivate a function of the wireless communication device or hands‑free device. The term includes voice‑operated technology and push‑to‑talk function.

(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~~ cell phone, tablet, personal digital assistant, laptop, 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:

(1) hold a wireless communication device in either hand while operating a motor vehicle on the public streets and highways of this State; or

(2) 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~~ while operating a motor vehicle on the public streets and highways of this State to:

(a) type or send a text‑based communication, or both with your hand or finger; or

(b) visually read a text‑based communication.

(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 as defined in this section;

(3) summoning emergency assistance;

(4) transmitting or receiving ~~data~~ information as part of a digital dispatch system for relaying information in the course of the operator’s occupational duties between the operator and a:

(a) dispatcher; or

(b) digital network or software application;

(5) ~~a public safety official while in the performance of the person’s official duties; or~~ an operator of an authorized emergency or law enforcement vehicle while acting in an official capacity;

(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~~ an operator who is licensed by the Federal Communications Commission while operating a radio frequency device; or

(7) an operator of a commercial motor vehicle that is otherwise regulated by federal law.

(D)~~(1)~~ A person who is adjudicated to be in violation of the provisions of this section is guilty of Driving Under the Influence of an Electronic Device (DUI‑E) and must be fined not more than ~~twenty‑five~~ one hundred dollars, no part of which may be suspended. ~~No court costs, assessments, or surcharges may be assessed against a person who violates a provision of this section. A person must not be fined more than fifty dollars for any one incident of one or more violations of the provisions of this section.~~ For a second or subsequent violation of the provisions of this section, a person must be fined three hundred dollars and must have two points assessed against his motor vehicle operating record. A custodial arrest for a violation of this section must not be made, except upon a warrant issued for failure to appear in court when summoned or for failure to pay an imposed fine. ~~A violation of this section does not constitute a criminal offense. Notwithstanding Section 56‑1‑640, a violation of this section must not be:~~

~~(a)~~ ~~included in the offender’s motor vehicle records maintained by the Department of Motor Vehicles or in the criminal records maintained by SLED; or~~

~~(b)~~ ~~reported to the offender’s motor vehicle insurer.~~

~~(2)~~ ~~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, search, view, or require the forfeiture of a wireless electronic communication device because of a violation of this section;

~~(3)~~(2) 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)~~(3) 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 and the Department of Motor Vehicles 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 governmental 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, as amended last amended by Act 81 of 2017, is further 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 Under the Influence of an Electronic Device ‑

DUI‑E (second or subsequent offense) 2

Driving in improper lane 2

Improper backing 2

Endangerment of a highway worker, no injury 2

Endangerment of a highway worker, injury results 4”

SECTION 3. The repeal or amendment by this act of any law, whether temporary or permanent or civil or criminal, does not affect pending actions, rights, duties, or liabilities founded thereon, or alter, discharge, release or extinguish any penalty, forfeiture, or liability incurred under the repealed or amended law, unless the repealed or amended provision shall so expressly provide. After the effective date of this act, all laws repealed or amended by this act must be taken and treated as remaining in full force and effect for the purpose of sustaining any pending or vested right, civil action, special proceeding, criminal prosecution, or appeal existing as of the effective date of this act, and for the enforcement of rights, duties, penalties, forfeitures, and liabilities as they stood under the repealed or amended laws.

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

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