~~Indicates Matter Stricken~~

Indicates New Matter

COMMITTEE REPORT

February 18, 2010

**H. 4282**

Introduced by Reps. D.C. Smith, Owens, Littlejohn, Harrison, Gilliard and Daning

S. Printed 2/18/10--H.

Read the first time January 12, 2010.

**THE COMMITTEE ON EDUCATION AND PUBLIC WORKS**

To whom was referred a Bill (H. 4282) 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, 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) As contained in this section:

(1) ‘text messaging device’ means an electronic wireless communications device used to manually type, send or read a written communication, including without limitation a text message or an electronic message, or electronic mail, but does not include a device that is physically or electronically integrated into the vehicle’s architecture; and

(2) ‘mobile telephone’ means a device used by subscribers and other users of wireless telephone service to access or respond to such service; and

(3) ‘hands‑free mode’ means the use of a mobile telephone or text messaging device by way of an internal feature or function, or an attachment or addition, whether or not permanently part of such telephone or device, by which a user engages in a conversation or communication without the use of either hand; provided, however, this definition shall not preclude the use of either hand to activate, deactivate, or initiate a function of such telephone or device.

(B) A person may not use a text messaging device to read, or to manually write or send, a written communication, including without limitation text message, or electronic mail while operating a motor vehicle in motion or in the travel portion of the roadway.

(C) A person may not use a mobile telephone while operating a motor vehicle that is in motion or in the travel portion of the roadway.

(D) This section does not apply to:

(1) an authorized emergency vehicle;

(2) a moving motor vehicle using a mobile telephone or a text messaging device in hands‑free mode; or

(3) a moving motor vehicle using a mobile telephone or a text messaging device to:

(a) report illegal activity;

(b) summon medical or other emergency help; or

(c) prevent injury to a person or property.

(E) A person who violates this section is guilty of a misdemeanor and, upon conviction, must be fined not more than one hundred dollars and have two points assessed against his driving record.

(F) Notwithstanding any other provision of law, all penalties imposed pursuant to this section shall be divided between 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 and the Office of Highway Safety in the Department of Public Safety to fund highway safety education programs highlighting the dangers of distracted driving.

(G) This Section occupies the entire field and preempts any ordinance, resolution, or similar matter adopted by a municipality, county, or other local governmental entity regarding the use of a text messaging device or a mobile telephone, or both, by an operator of a motor vehicle.”

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

“Section 56‑5‑3895. (A) For purposes of this section, the following terms shall mean:

(1) ‘text messaging device’ means text messaging device as defined in Section 56‑5‑3890(A)(1);

(2) ‘mobile telephone’ means mobile telephone as defined in Section 56‑5‑3890(A)(2);

(3) ‘emergency situation’ means circumstances such as medical concerns, unsafe road conditions, matters of public safety, or mechanical problems that create a risk of harm for the operator or passengers of a school bus or intended passengers of a school bus;

(4) ‘school bus’ means every motor vehicle owned by a public or governmental agency and operated for the transportation of children to or from school or privately owned and operated for compensation for the transportation of children to or from school, the motor vehicle is defined in Section 56‑5‑195 a ‘school bus’ under 49 U.S.C. Section 30125, as defined on April 5, 2000, meeting federal school bus safety standards, as contained in 49 U.S.C. Section 30101, et seq., or any successor statutes, and all applicable federal regulations; and

(5) ‘Great bodily injury’ means bodily injury which creates a substantial risk of death or which causes serious, permanent disfigurement, or protracted loss of or impairment of the function of a bodily member or organ.

(B) Except as otherwise provided in this section, a person may not use a text messaging device to manually write or send a text message; or a mobile telephone, radio or other communication device whether hands‑free or otherwise; while operating a school bus in motion or in the travel portion of a roadway or while monitoring the loading and unloading of students.

(C) The provisions of subsection (B) of this section shall not apply to the use of a mobile telephone, radio or other communication device whether hands‑free or otherwise, or a text messaging device, for the sole purpose of communicating in an emergency situation. However, this exception applies only if the school bus is not in motion.

(D) A person who violates subsection (A):

(1) for a first offense where no great bodily injury or death resulted from the violation, is guilty of a misdemeanor and, upon conviction, must be fined two hundred and fifty dollars, and loss of the school bus driver’s school bus driving certification issued by the South Carolina Department of Education for a period of one year. The violator shall have two points assessed against his driving record in accordance with Section 56‑1‑720.

(2) for a second or subsequent offense or any offense where great bodily injury or death results from the violation, is guilty of a felony and, upon conviction, must be fined five hundred dollars , and imprisoned for not more than three years. The school bus driver’s school bus driving certification issued by the South Carolina Department of Education is revoked and the person is therefore permanently ineligible to apply for certification. The violator shall have triple the points assessed against his driving record as are otherwise assessed pursuant to Section 56‑1‑720, for using a text messaging device or an otherwise prohibited communications device while driving.

(E) To assist in enforcing this and the state seatbelt laws, all state or district owned school buses, and school buses contracted by school districts for student transportation service, shall have a sticker attached to the interior of the school bus in a location that is clearly readable by the school bus passengers that confirms that the school bus driver is required to wear a seat belt and that use of a mobile telephone, radio or other communication device is prohibited while driving. The sticker should also include the appropriate law citation for each of these requirements and ask the passengers to report violations to a toll free phone number at the South Carolina Department of Education. Upon receipt of a violation report the South Carolina Department of Education shall record the complaint and forward the information to the appropriate school district that employs the school bus driver to initiate an investigation. The South Carolina Department of Education shall design and publish these stickers free of charge to school districts.”

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

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 text messaging device or an otherwise prohibited communications device while driving 2.”

SECTION 4. This act takes effect ninety days after approval by the Governor. /

Renumber sections to conform.

Amend title to conform.

PHILLIP D. OWENS for Committee.

**STATEMENT OF ESTIMATED FISCAL IMPACT**

ESTIMATED FISCAL IMPACT ON GENERAL FUND EXPENDITURES:

See Below

ESTIMATED FISCAL IMPACT ON FEDERAL & OTHER FUND EXPENDITURES:

See Below

**EXPLANATION OF IMPACT:**

Department of Motor Vehicles (DMV)

The department indicates there will be a non-recurring impact of $10,000 for cost associated with changes in the current Driver’s Handbook and future printings as well as changes to the DMV website.

Department of Public Safety

The department indicates that there will be no impact to the General Fund of the State or federal and/or other funds as it merely adds another miscellaneous traffic rule.

*Approved By:*

Harry Bell

Office of State Budget

**STATEMENT OF ESTIMATED FISCAL IMPACT**

**REVENUE IMPACT** 1/

This bill, as amended, is expected to raise respective earmarked funds within DHEC, applicable to the S.C. State Trauma Care Fund (STCF), and to the Office of Highway Safety within DPS by an equal amount of $563,244 in FY 2010-11. It is expected to raise court fine revenues within the state general fund by $153,916, and also generate a total of $1,490,977 for allocation to various state agencies and/or programs in FY 2010-11. Conversely, it would reduce revenue allocations from fines/assessments to local jurisdictions by a net amount of $990,443 in FY 2010-11.

**Explanation:** The bill, as amended, sets new fines and penalties for violation of driving applicable motor vehicles and school buses while using a text messaging device or mobile telephone, as defined, and further provides for distribution of fine proceeds for violations by motor vehicle drivers. A fine of no more than $100 must apply for motor vehicle drivers under new Section 56-5-3890, and fine proceeds shall be equally divided between the South Carolina State Trauma Care Fund (STCF) within the Department of Health and Environmental Control (DHEC) and the Office of Highway Safety in the Department of Public Safety (DPS) for certain uses. A tier of fines is set for school bus drivers under new Section 56-5-3895, ranging from a mandatory fine of $250 for first offense, misdemeanor conviction with no great bodily injury or death; to a mandatory fine of $500 for a second or subsequent conviction, or any offense resulting in great bodily injury or death, is guilty of a felony. The bill would take effect ninety days after approval by the Governor.

Based on historical data for various traffic case dispositions with convictions provided by the S.C. Highway Patrol and fine/assessment/surcharge disbursements provided by court administration, we expect the net yield for collections would apply to no more than eight months in the initial year, and only apply to those misdemeanor cases disposed in magistrate and municipal courts.

In summary, we estimate the amended bill would raise state revenues by a grand total of $2,771,381 in FY 2010-11, pursuant to temporary and permanent statutes, of which $1,490,977 would be distributed to various state agencies and programs, and another $153,916 would go to court fines within the state’s general fund. Fine proceeds under Section 56-5-3890 are expected to raise earmarked funds of DHEC and DPS by a total of $1,126,488, to be apportioned at $563,244 to each agency, and correspondingly reduce fine allocations to local jurisdictions in an offsetting amount of $1,126,488. New Sections 56-5-3890 and 56-5-3895 would otherwise generate a total of $136,045 in new revenue for local jurisdictions. Thus, the overall net impact to local jurisdictions would be -$990,443 in FY 2010-11.

*Approved By:*

William C. Gillespie

Board of Economic Advisors

1/ This statement meets the requirement of Section 2-7-71 for a state revenue impact by the BEA, or Section 2-7-76 for a local revenue impact or Section 6-1-85(B) for an estimate of the shift in local property tax incidence by the Office of Economic Research.

**A** **BILL**

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) As contained in this section:

(1) ‘text messaging device’ means a hand‑held device used to send a text message or an electronic message via a short message service, wireless telephone service, or electronic communication network; and

(2) ‘mobile telephone’ means a device used by subscribers and other users of wireless telephone service to access or respond to such service.

(B) A person may not use a text messaging device to write or send a text message while operating a motor vehicle in motion or in the travel portion of the roadway.

(C) A person may not use a hand‑held mobile telephone while operating a motor vehicle that is in motion or in the travel portion of the roadway.

(D) This section does not apply to:

(1) an authorized emergency vehicle, or a tow truck responding to a disabled vehicle;

(2) a moving motor vehicle using a wireless communication device in hands‑free mode; and

(3) a moving motor vehicle using a hand‑held wireless communications device to:

(a) report illegal activity;

(b) summon medical or other emergency help; or

(c) prevent injury to a person or property.

(E) A person who violates this section is guilty of a misdemeanor and, upon conviction, must be fined not more than one hundred dollars.”

SECTION 2. This act takes effect ninety days after approval by the Governor.

‑‑‑‑XX‑‑‑‑