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Indicates New Matter

AMENDED

March 10, 2010

**H. 4282**

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

S. Printed 3/10/10--H. [SEC 3/11/10 10:55 AM]

Read the first time January 12, 2010.

**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.

Amend Title To Conform

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 ‘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

(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) This section does not apply to:

(1) an authorized emergency vehicle, or two‑way mobile radio transmitters or receivers used by licensees of the Federal Communications Commission in the amateur Radio Service when assisting with public safety, emergency, and disaster communications;

(2) 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.

(D) A person who violates subsection (A) is guilty of a misdemeanor and, upon conviction, must be fined twenty-five dollars.

(E) Notwithstanding any other provision of law, all penalties imposed pursuant to this section must be divided as follows:

(1) twenty-five percent to the South Carolina State Trauma Care Fund, as established and provided for in Section 44‑61‑540, to be used by the Department of Health and Environmental Control;

(2) twenty-five percent to the Office of Highway Safety in the Department of Public Safety to fund highway safety education programs highlighting the dangers of distracted driving; and

(3) fifty percent to be distributed evenly among Level I trauma centers in the State.

The Department of Motor Vehicles may not report this violation to the person’s motor vehicle insurance carrier.

(F) 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.

(G) 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.

(H) A law enforcement agency may not obtain telephone, cellular telephone, e‑mail, text communication, or other electronic communications records, messages, or any data associated with a violation of this provision as evidence to obtain a conviction.

(I) A violation of this section may be introduced as evidence of comparative negligence in a civil action.

(J) Neither a law enforcement agency nor the court may confiscate a text messaging device, mobile telephone, or any other wireless telecommunications device that was used in violation of this section.”

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 a device used by subscribers and other users of wireless telephone service to access or respond to such service;

(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 lose his 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.

(2) for a second or subsequent offense or any offense where great bodily injury or death results from the violation, is guilty of a misdemeanor and, upon conviction, must be fined five hundred dollars. The school bus driver’s school bus driving certification issued by the South Carolina Department of Education must be revoked and the person is permanently ineligible to apply for certification. The violator shall have triple the points assessed against his driving record as are otherwise assessed.

(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.

(1) A violation of this section may be introduced as evidence of comparative negligence in a civil action.”

SECTION 3. A law enforcement officer may not stop a person for a violation of this act in the absence of another violation of the state’s motor vehicle laws during the first six months after this act becomes effective.

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

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