~~Indicates Matter Stricken~~

Indicates New Matter

COMMITTEE REPORT

May 19, 2010

**H. 4282**

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

S. Printed 5/19/10--S.

Read the first time March 16, 2010.

**THE COMMITTEE ON JUDICIARY**

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, 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 mobile telephone, a personal digital assistant, a text messaging device, or a computer, that allows a person to wirelessly communicate with another person without the use of 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 that allows a person to wirelessly communicate with another person, including, but not limited to, a mobile telephone, a personal digital assistant, a text messaging device, or a computer.

(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 or a voice-activated feature or function of the device;

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

(4) reading, selecting, or entering a telephone number or contact in a wireless electronic communication device for the purpose of making or receiving a telephone call;

(5) summoning medical or other emergency assistance;

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

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

(8) 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) A person who violates this section is guilty of a misdemeanor and, upon conviction, must be fined twenty dollars, pay a twenty-five dollar Trauma Care Fund surcharge, and have one point assessed against the person’s motor vehicle operating record, pursuant to Section 56-1-720, no part of which may be waived, reduced, or suspended. The fine is subject to all other applicable court costs, assessments, and surcharges. 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 to be used by the Department of Health and Environmental Control as established and provided for in Section 44-61-540. The Trauma Care Fund surcharge is not subject to the provisions of Section 44-61-520(G). If the person does not subsequently violate this section for a one-year period from the date of conviction, the one point assessed against the person’s motor vehicle operating record must be removed.

(E) 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 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;

(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.

(F) 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 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 at the time of the incident, the penalty is a fine, surcharge, and points assessment pursuant to subsection (D). If the trier of fact determines that the State has failed to prove beyond a reasonable doubt that the person was 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, no penalty shall 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.

(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.

(H) 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. 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 wireless electronic communication

device to compose, send, or read a text-based

communication while operating a motor vehicle ……………1.”

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:

See Below

ESTIMATED FISCAL IMPACT ON FEDERAL & OTHER FUND EXPENDITURES:

See Below

**EXPLANATION OF IMPACT:**

Department of Public Safety and Department of Education

The departments indicate that this bill, as amended, would have no impact on the General Fund of the State or on federal and/or other funds.

Department of Motor Vehicles (SCDMV)

The department indicates enactment of this bill will have a non-recurring impact of approximately $30,000. This cost is associated with the updating of the current Driver’s Manual with either printed inserts or decals indicating changes in the law and additional programming changes will have to be made to incorporate a provision so that the individuals’ insurance company will not be notified about the violation and will also need to update the SCDMV web-site to reflect the new information.

*Approved By:*

Harry Bell

Office of State Budget

**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 ‘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 (B) 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.

(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.”

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

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.

(F) 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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