**A** **BILL**

TO AMEND CHAPTER 5, TITLE 56 OF THE 1976 CODE, BY ADDING ARTICLE 49, TO PROVIDE THAT IT IS UNLAWFUL FOR A DRIVER OVER THE AGE OF EIGHTEEN TO USE A WIRELESS TELEPHONE OR WIRELESS COMMUNICATIONS DEVICE WITHOUT A HANDS‑FREE DEVICE, TO PROVIDE THAT IT IS UNLAWFUL FOR A DRIVER AGE EIGHTEEN OR YOUNGER TO USE A WIRELESS TELEPHONE OR WIRELESS COMMUNICATIONS DEVICE, TO PROVIDE THAT A VIOLATION OF THIS SECTION MAY NOT BE THE SOLE OR PRIMARY BASIS FOR A LAW ENFORCEMENT OFFICER TO STOP A VEHICLE, TO PROVIDE FOR CERTAIN EXCEPTIONS, TO PROVIDE APPROPRIATE PENALTIES AND DEFINITIONS, AND TO PROVIDE FOR AN EDUCATION PROGRAM.

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

SECTION 1. Chapter 5, Title 56 of the 1976 Code is amended by adding:

“Article 49

Use of Cellular Phones and Wireless Messaging Devices

Section 56‑5‑7010. As used in this article:

(1) ‘Motor vehicle’ means a passenger car, truck, van, or recreational vehicle required to be equipped with safety belts by Federal Motor Vehicle Safety Standard No. 208 (49 CFR 571.208), manufactured after July, 1966.

(2) ‘Driver’ means a person who drives or is in actual physical control of a motor vehicle.

(3)(a) ‘Hands‑free wireless device’ means a wireless telephone or other wireless communication device that allows a user to engage in communication without the use of either hand with:

(i) an internal feature or function; or

(ii) an attachment or additional device.

(b) A hands‑free wireless telephone or device may be a permanent or temporary part of the wireless telephone or other wireless communication device.

(c) A hands‑free wireless telephone or device may require the use of either hand to activate, deactivate, or initiate a function of the wireless telephone or other wireless communication device.

Section 56‑5‑7020. It is unlawful for the driver of a motor vehicle over the age of eighteen to use a wireless telephone or wireless communications device unless the telephone or communication device is used with a hands‑free device. It is unlawful the driver of a motor vehicle age eighteen or younger to use a wireless telephone or wireless communications device.

Section 56‑5‑7030. A violation of this article may not be the sole or primary basis for a police officer to stop a vehicle.

Section 56‑5‑7040. The Department of Public Safety or any other law enforcement agency must not use a campaign or systematic checkpoints or roadblocks as a law enforcement tool where the principal purpose is to detect and issue a ticket to a violator of the provisions of this article on either a primary or secondary basis.

Section 56‑5‑7050. The provisions of this article do not apply to:

(1) a driver that is lawfully parked or stopped;

(2) law enforcement officers, firefighters, and other public safety officials while in the performance of their official duties;

(3) the use of global positioning systems;

(4) the use of wireless telephones and wireless communication devices used to transmit or receive data as part of a digital dispatch system;

Section 56‑5‑7060. (A) A person who is adjudicated to be in violation of the provisions of this article must be fined not more than twenty‑five 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 article. A custodial arrest for a violation of this article 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 article does not constitute a criminal offense. Notwithstanding Section 56‑1‑640, a violation of this article must not be:

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

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

(B) A law enforcement officer must not issue a citation to a driver for a violation of this article 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 driver is cited for violating another motor vehicle law.

(C) A violation of this article is not negligence per se or contributory negligence and is not admissible as evidence in a civil action.

(D) A vehicle, driver, or occupant in a vehicle must not be searched, nor may consent to search be requested by a law enforcement officer solely because of a violation of this article.

(E) A law enforcement officer must not stop a driver for a violation of this article except when the officer has probable cause that a violation has occurred based on his clear and unobstructed view of a driver or an occupant of the motor vehicle who is not wearing a safety belt or is not secured in a child restraint system as required by Article 47 of this chapter.

(F) A person charged with a violation of this article 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 telephone or wireless communications device without a hands‑free device, the penalty is a civil fine pursuant to this section. If the trier of fact determines that the State has failed to prove beyond a reasonable doubt that the person was using a wireless telephone or wireless communications device without a hands‑free device, no penalty shall be assessed.

(G) A person found to be in violation of this article may bring an appeal to the court of common pleas pursuant to Section 18‑3‑10 or Section 14‑25‑95.

(H) No points provided for in Section 56‑1‑720 or any other provision of law may be assessed for a violation of this article.

Section 56‑5‑7070. (A) The Department of Public Safety shall develop and implement education programs designed to create awareness of the state’s wireless telephone and wireless communications device laws and to decrease the use of wireless telephones and wireless communications devices while driving in rural and ethnically diverse areas throughout the State. The Department of Public Safety, when securing a consultant, contractor, and subcontractor services for developing and implementing programs related to use of wireless telephones and wireless communications devices while driving laws, shall select providers that have experience working with the communities the provider is procured to target. The Department of Public Safety shall confer with members of the targeted communities for input on the development of effective safety education programs and on the identification of providers that have the appropriate experience with the targeted communities.

(B) The Department of Transportation may develop additional programs to discourage use of wireless telephones and wireless communications devices while driving or may coordinate with the Department of Public Safety to fund and carry out the programs jointly. If there is coordination between the two departments, the Department of Public Safety has final authority on all issues including, but not limited to, program content and dissemination, allocation of funds, and procurement procedures.

(C) The Department of Public Safety may use available federal funds or private sector contributions to meet the requirements of subsection (A). The General Assembly may provide funds to supplement federal or private sector funds used by the Department of Public Safety or the Department of Transportation to develop and implement the programs described in subsection (A). The General Assembly shall provide the Department of Public Safety the funds necessary to meet the requirements of subsection (A), if federal or private sector funds are unavailable.”

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

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