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Indicates New Matter

AMENDED

March 24, 2011

**S. 225**

Introduced by Senator Knotts and Alexander

S. Printed 3/24/11--S.

Read the first time January 11, 2011.

**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 WIRELESS ELECTRONIC COMMUNICATION DEVICE TO COMPOSE, SEND, OR READ A TEXT‑BASED COMMUNICATION AND TO PROVIDE PENALTIES FOR VIOLATING THIS PROVISION; AND TO AMEND SECTION 56‑1‑720, RELATING TO THE ASSESSMENT OF POINTS AGAINST A PERSON’S DRIVING RECORD FOR CERTAIN MOTOR VEHICLE VIOLATIONS, SO AS TO PROVIDE THAT ONE POINT MUST BE ASSESSED AGAINST THE DRIVING RECORD OF A PERSON CONVICTED OF USING A WIRELESS ELECTRONIC COMMUNICATION DEVICE TO COMPOSE, SEND, OR READ A TEXT‑BASED COMMUNICATION WHILE OPERATING A MOTOR VEHICLE.

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) 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)(1) A person who violates this section is guilty of a misdemeanor and, upon conviction:

(a) for a first offense, must be fined twenty dollars and pay a twenty‑five dollar Trauma Care Fund surcharge. The twenty dollar fine is subject to all applicable court costs, assessments, and surcharges, except as provided in item (2);

(b) for a second offense within five years of a prior offense, must be fined twenty‑five dollars, pay a twenty‑five dollar Trauma Care Fund surcharge, and have two points assessed against the person’s motor vehicle operating record, no part of which may be waived, reduced, or suspended. The twenty‑five dollar fine is subject to all applicable court costs, assessments, and surcharges; and

(c) for a third offense or subsequent offense within five years of a prior offense, must be fined seventy‑five dollars, pay a twenty‑five dollar Trauma Care Fund surcharge, and have four points assessed against the person’s motor vehicle operating record, no part of which may be waived, reduced, or suspended. The seventy‑five dollar fine is subject to all applicable court costs, assessments, and surcharges.

(2)(a) For a first offense, instead of the penalty provided in subsection (D)(1)(a), the person may successfully complete a driver’s education program within sixty days of the person’s conviction date, which specifically contains, in whole or in part, education regarding distracted or inattentive driving.

(b) The person shall select a program approved by the Department of Public Safety’s Office of Highway Safety. The Office of Highway Safety may approve more than one program, and such programs may be conducted by classroom, computer, or Internet. The Office of Highway Safety shall post information regarding the approved programs on its website.

(c) The person shall indicate to the judge at the time of conviction that the person intends to successfully complete a program instead of the penalty. The judge shall instruct the person as to how the person is to comply with the requirements of this item. Notwithstanding Section 56-7-30, the court shall retain the records and audit copy of the traffic ticket for the violation until the judge has made a determination as to whether the person has successfully completed the program.

(d) The person shall return to the court within sixty days of the conviction date. At that time, the person shall present an original certificate from the program indicating that the person has successfully completed the program. Also, the person shall sign an affidavit provided by the court swearing or affirming that the person has successfully completed the program.

(e) If the judge determines that the person has successfully completed the program, the judge shall waive the fine, the Trauma Care Fund surcharge, and all applicable court costs, assessments, and surcharges, except ten dollars that shall be used exclusively by the court to offset the costs associated with administering the person’s compliance with this item. The court shall remit the records and audit copy of the traffic ticket to the Department of Motor Vehicles within ten days indicating a violation of this section without any points assessed against the person’s motor vehicle operating record. The Department of Motor Vehicles shall indicate a violation of this section on the person’s motor vehicle operating record without any points assessed.

(f) If the judge determines that the person has failed to successfully complete the program, the judge shall impose the fine, the Trauma Care Fund surcharge, and all other applicable court costs, assessments, and surcharges. The court shall remit the records and audit copy of the traffic ticket to the Department of Motor Vehicles within ten days indicating a violation of this section. The Department of Motor Vehicles shall indicate a violation of this section on the person’s motor vehicle operating record.

(g) A person is not permitted to complete a program instead of the penalty if the person has been convicted of a prior violation of this section. Only those violations that 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 subsection.

(3) If the person does not subsequently violate this section within one year from the date of conviction, the Department of Motor Vehicles shall remove the points assessed against the person’s motor vehicle operating record. However, the Department of Motor Vehicles shall not remove an indication of the violation of this section from the person’s motor vehicle operating record. For purposes of this section, if the Department of Motor Vehicles has not received a ticket or some other notice from a court one year from the date of conviction indicating that the person has subsequently violated this section, the Department of Motor Vehicles shall remove the points assessed.

(4) 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. The Trauma Care Fund surcharge must not be used by the Department of Health and Environmental Control for the payment of the department’s administrative or operating expenses or for any purpose other than providing financial aid to participating trauma care providers and grants related to trauma care in this State. The Trauma Care Fund surcharge is not subject to the provisions of Section 44‑61‑520(G).

(5) 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 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.

(I) A violation of this section is negligence per se.”

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,

second offense…………………………………………....2

Using a wireless electronic communication

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

communication while operating a motor vehicle,

third or subsequent offense ………………………………..4.”

SECTION 3. This act takes effect upon approval by the Governor.

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