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COMMITTEE REPORT

February 9, 2012

**H. 4451**

Introduced by Rep. Bowen

S. Printed 2/9/12--H.

Read the first time January 10, 2012.

**THE COMMITTEE ON EDUCATION AND PUBLIC WORKS**

To whom was referred a Bill (H. 4451) to amend the Code of Laws of South Carolina, 1976, by adding Sections 56‑5‑3890, 56‑5‑3895, and 56‑5‑3897 so as to provide that it is unlawful for a person, 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) ‘Electronic communication device’ means an electronic device, including, but not limited to a wireless telephone, personal digital assistant, a text messaging device, or a portable or mobile computer while being used for the purpose of composing, reading, or sending an electronic message, but does not include a global positioning system or navigation system or a device that is physically or electronically integrated into the motor vehicle.

(2) ‘Electronic message’ means a self‑contained piece of digital communication that is designed or intended to be transmitted between physical devices. ‘Electronic message’ includes, but is not limited to electronic mail, a text message, an instant message, or a command or request to access an Internet site.

(B) A person may not use an electronic communication device to compose, send, or read an electronic message while operating a motor vehicle on a roadway.

(C) This section does not apply to a person operating a vehicle while:

(1) off the traveled portion of a roadway;

(2) using an electronic communication device in hands‑free, voice‑activated, or voice‑operated mode;

(3) activating or deactivating an electronic communication device or an internal feature or function of the device not associated with electronic messaging;

(4) summoning medical or other emergency assistance;

(5) an operator of a commercial motor vehicle reading a message displayed on a permanently installed communications device designed for a commercial motor vehicle with a screen that does not exceed ten inches tall by ten inches wide inside; or

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

(D) A person who violates this section where no great bodily injury or death resulted from the violation, is guilty of misdemeanor distracted driving and, upon conviction, must be fined not more than one hundred dollars, pay a twenty‑five dollar Trauma Care Fund surcharge in accordance with Section 56‑5‑3897, and have two points assessed against his driving record in accordance with Section 56‑1‑720. The fine is subject to all applicable court costs, assessments, and surcharges.

(E) This section preempts local ordinances, regulations, and resolutions adopted by municipalities, counties, and other local government entities regarding persons using hand‑held and hands‑free wireless electronic communication devices while operating motor vehicles on the public streets and highways of this State.

(F) 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. Article 31, Chapter 5, Title 56 of the 1976 Code is amended by adding:

“Section 56‑5‑3895. (A) A person who, while operating a motor vehicle using an electronic communication device as prohibited by Section 56‑5‑3890 and when operating a motor vehicle commits an act prohibited by law or neglects a duty imposed by law in the operation of the motor vehicle, and causes great bodily injury or death to another person is guilty of the misdemeanor offense of improper use of an electronic communication device while operating a vehicle and, upon conviction, must be punished by a fine of not more than five hundred dollars or imprisonment for not more than three years, or both, when great bodily injury or death results.

(B) As used in this section, ‘great bodily injury’ means bodily injury which creates a substantial risk of death or which causes serious, permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ.

The Department of Motor Vehicles must suspend the driver’s license of a person who is convicted or who receives sentence upon a plea of guilty or nolo contendere pursuant to this section for one year for a conviction of Section 56‑5‑3895 when ‘great bodily injury’ occurs, and two years when a death occurs. For suspension purposes of this section, convictions arising out of a single incident shall run concurrently.

(C) An additional one hundred dollar surcharge for each fine imposed pursuant to this section must be placed into the Trauma Care Fund pursuant to Section 56‑5‑3897.”

SECTION 3. Article 31, Chapter 5, Title 56 of the 1976 Code is amended by adding:

“Section 56‑5‑3897. Monies received by the Trauma Care Fund pursuant to 56‑5‑3890, 56‑5‑3895 and 56‑5‑3897 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).”

SECTION 4. 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

Distracted driving 2.”

SECTION 5. This act takes effect upon 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:

Minimal (Some additional costs expected but can be absorbed)

ESTIMATED FISCAL IMPACT ON FEDERAL & OTHER FUND EXPENDITURES:

A Cost to Federal and/or Other Funds (See Below)

**EXPLANATION OF IMPACT:**

Department of Motor Vehicles

The department indicates that this bill will have a non-recurring impact of approximately $15,433 in costs associated with database development, programming and implementation requirements.

Department of Health & Environmental Control

The department reports that there is no cost to the agency or to the general fund resulting from enactment of this bill. Any fines collected as a result of violations will accrue to the State Trauma Fund, which is administered by DHEC.

Other Agencies

The Department of Corrections and the Judicial Department indicate this bill will have a minimal impact on the general fund, which both agencies can absorb at their current level of funding.

**SPECIAL NOTES:**

The Board of Economic Advisors is the appropriate entity to address any revenue impact associated with this or any other bill.

*Approved By:*

Brenda Hart

Office of State Budget

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTIONS 56‑5‑3890, 56‑5‑3895, AND 56‑5‑3897 SO AS TO PROVIDE THAT IT IS UNLAWFUL FOR A PERSON TO USE AN ELECTRONIC COMMUNICATION DEVICE WHILE DRIVING A MOTOR VEHICLE UNDER CERTAIN CIRCUMSTANCES, TO PROVIDE A PENALTY, AND TO PROVIDE FOR THE DISTRIBUTION OF MONIES COLLECTED FROM FINES ASSOCIATED WITH VIOLATIONS OF THESE PROVISIONS; 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 POINTS MUST BE ASSESSED AGAINST THE DRIVING RECORD OF A PERSON CONVICTED OF IMPROPER USE OF AN ELECTRONIC COMMUNICATION DEVICE WHILE DRIVING A MOTOR VEHICLE.

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) ‘Electronic communication device’ means an electronic device, including, but not limited to a wireless telephone, personal digital assistant, a text messaging device, or a portable or mobile computer while being used for the purpose of composing, reading, or sending an electronic message, but does not include a global positioning system or navigation system or a device that is physically or electronically integrated into the motor vehicle.

(2) ‘Electronic message’ means a self‑contained piece of digital communication that is designed or intended to be transmitted between physical devices. ‘Electronic message’ includes, but is not limited to electronic mail, a text message, an instant message, or a command or request to access an Internet site.

(B) A person may not drive a motor vehicle on a roadway while using an electronic communication device to compose, send, or read an electronic message.

(C) This section does not apply to a:

(1) driver lawfully parked or stopped;

(2) driver using an electronic communication device in hands‑free or voice‑activated mode;

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

(4) driver summoning medical or other emergency assistance;

(5) a driver of a commercial motor vehicle reading a message displayed on a permanently installed communications device designed for a commercial motor vehicle with a screen that does not exceed ten inches tall by ten inches wide inside; or

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

(D) A person who violates this section where no great bodily injury or death resulted from the violation, is guilty of a misdemeanor and, upon conviction, must be fined not more than one hundred dollars, pay a twenty‑five dollar Trauma Care Fund surcharge in accordance with Section 56‑5‑3897, and have two points assessed against his driving record in accordance with Section 56‑1‑720. The fine is subject to all applicable court costs, assessments, and surcharges.

(E) This section preempts local ordinances, regulations, and resolutions adopted by municipalities, counties, and other local government entities regarding persons using hand‑held and hands‑free wireless electronic communication devices while operating motor vehicles on the public streets and highways of this State.

(F) 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.

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

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

“Section 56‑5‑3895. (A) A person who, while driving a motor vehicle using an electronic communication device as prohibited by Section 56‑5‑3890 and when driving a motor vehicle does any act forbidden by law or neglects any duty imposed by law in the driving of the motor vehicle, which act or neglect proximately causes great bodily injury or death to a person other than himself, is guilty of the offense of felony improper use of electronic communication device while driving and, upon conviction, must be punished:

(1) by a mandatory fine of not less than two thousand five hundred dollars nor more than five thousand dollars and mandatory imprisonment for not less than thirty days nor more than five years when great bodily injury results; or

(2) by a mandatory fine of not less than five thousand dollars nor more than ten thousand dollars and mandatory imprisonment for not less than one year nor more than ten years when death results.

A part of the mandatory sentences required to be imposed by this section must not be suspended, and probation may not be granted for any portion.

(B) As used in this section, ‘great bodily injury’ means bodily injury which creates a substantial risk of death or which causes serious, permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ.

The Department of Motor Vehicles must suspend the driver’s license of a person who is convicted or who receives sentence upon a plea of guilty or nolo contendere pursuant to this section to include a period of incarceration plus one year for a conviction of Section 56‑5‑3895 when ‘great bodily injury’ occurs, and two years when a death occurs. This period of incarceration shall not include any portion of a suspended sentence such as probation, parole, supervised furlough, or community supervision. For suspension purposes of this section, convictions arising out of a single incident shall run concurrently.

(C) One hundred dollars of each fine imposed pursuant to this section must be placed into the Trauma Care Fund pursuant to Section 56‑5‑3897.”

SECTION 3. Article 31, Chapter 5, Title 56 of the 1976 Code is amended by adding:

“Section 56‑5‑3897. Monies received by the Trauma Care Fund pursuant to 56‑5‑3890, 56‑5‑3895 and 56‑5‑3897 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).”

SECTION 4. 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

Improper use of an electronic communication device while

driving a motor vehicle 2.”

SECTION 5. This act takes effect upon approval by the Governor.

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