**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 56‑5‑3890 SO AS TO PROVIDE THAT A PERSON MAY NOT OPERATE A MOTOR VEHICLE ON A PUBLIC ROAD, STREET, OR HIGHWAY IN THIS STATE WHILE USING A WIRELESS TELECOMMUNICATION DEVICE TO WRITE, SEND, OR READ A TEXT‑BASED COMMUNICATION, TO DEFINE TERMS, TO PROVIDE FOR PENALTIES, AND TO PROVIDE FOR REPORTING.

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) ‘Wireless telecommunication device’ means a handheld cellular telephone, a text messaging device, a personal digital assistant, a stand alone computer, or any other similar wireless device that is readily removable from a vehicle and is used to write, send, or read text or data through manual input. The term ‘wireless telecommunication device’ does not include a device which is voice‑operated and which allows the user to send or receive a text‑based communication without the use of either hand except to activate or deactivate a feature or function.

(2) ‘Write, send, or read a text‑based communication’ means using a wireless telecommunication device to manually communicate with any person using text‑based communication, including, but not limited to, communications referred to as a text message, instant message, or electronic mail. The term does not include reading, selecting, or entering a telephone number or name in a cell or wireless telephone or communication device for the purpose of making a telephone call.

(B) A person may not operate a motor vehicle on a public road, street, or highway in this State while using a wireless telecommunication device to write, send, or read a text‑based communication.

(C) This section does not apply to:

(1) an individual using a wireless communication device to obtain emergency services including, but not limited to, an emergency call to a law enforcement agency, health care provider, fire department, or other emergency services agency or entity;

(2) an individual using a wireless communication device while the motor vehicle is parked on the shoulder of the highway, road, or street; and

(3) an individual using a wireless communication device as a global positioning or navigation system to receive driving directions which has been preprogrammed with the desired coordinates. The programming of coordinates while operating a vehicle remains a violation of this section.

(D)(1) A person who is adjudicated to be in violation of the provisions of this section 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 person must not be fined more than fifty dollars for any one incident of one or more violations of the provisions 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:

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

(b) reported to the offender's motor vehicle insurer.

(2) A law enforcement officer must not issue a citation to a driver or a passenger 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 driver is cited for violating another motor vehicle law.

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

(4) 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 section.

(5) A law enforcement officer must not stop a driver for a violation of this section except when the officer has probable cause that a violation has occurred based on his clear and unobstructed view of a driver who is using a wireless telecommunication device to write, send, or read a text‑based communication.

(6) 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 telecommunication device to write, send, or read a text‑based communication, the penalty is a civil fine pursuant to this subsection. If the trier of fact determines that the State has failed to prove beyond a reasonable doubt that the person was not using a wireless telecommunication device to write, send, or read a text‑based communication, no penalty shall be assessed.

(7) 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.

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

(E) Each state and local law enforcement agency in this State must maintain statistical information on traffic stops made pursuant to this section on minority groups. The statistical information must be reported to the to the Department of Public Safety monthly.”

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

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