~~Indicates Matter Stricken~~

Indicates New Matter

COMMITTEE REPORT

February 26, 2014

**S. 416**

Introduced by Senators Alexander and Cromer

S. Printed 2/26/14--S. [SEC 2/27/14 3:10 PM]

Read the first time February 21, 2013.

**THE COMMITTEE ON JUDICIARY**

To whom was referred a Bill (S. 416) 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, 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 telephone, a personal digital assistant, a text messaging device, or a computer, which allows a person to wirelessly communicate with another person without holding the device in 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, including, but not limited to, a telephone, a personal digital assistant, a text messaging device, or a computer, which allows a person to wirelessly communicate with another person.

(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;

(3) summoning emergency assistance;

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

(5) a public safety official while in the performance of the person’s official duties; or

(6) 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 seventy-five dollars. In addition, the person shall pay a twenty-five dollar Trauma Care Fund surcharge. The seventy-five dollar fine is subject to all applicable court costs, assessments, and surcharges, except as provided in item (2). The twenty-five dollar 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 surcharge in the South Carolina State Trauma Care Fund. The 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 surcharge is not subject to the provisions of Section 44‑61‑520(G);

(b) for a second offense within ten years of a prior offense, must be fined one hundred seventy-five dollars. In addition, the person shall pay a twenty-five dollar Trauma Care Fund surcharge. The one hundred seventy-five dollar fine is subject to all applicable court costs, assessments, and surcharges. The twenty-five dollar 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 surcharge in the South Carolina State Trauma Care Fund. The 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 surcharge is not subject to the provisions of Section 44‑61‑520(G); and

(c) for a third or subsequent offense within ten years of a prior offense, must be fined two hundred seventy-five dollars. In addition, the person shall pay a twenty-five dollar Trauma Care Fund surcharge and have two points assessed against the person’s motor vehicle operating record. The two hundred seventy-five dollar fine is subject to all applicable court costs, assessments, and surcharges. The twenty-five dollar 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 surcharge in the South Carolina State Trauma Care Fund. The 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 surcharge is not subject to the provisions of Section 44‑61‑520(G).

(2)(a) For a first offense, in lieu of the penalty, 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 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 penalty 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. The Department of Motor Vehicles shall indicate the violation on the person’s motor vehicle operating record. An insurance company shall not increase a person’s insurance premium based solely on a violation of this section, if the person completes a program in lieu of a penalty.

(f) If the judge determines that the person has failed to successfully complete the program, the judge shall impose the penalty, 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 the violation on the person’s motor vehicle operating record.

(g) A person is not permitted to complete a program in lieu of a penalty if the person has been convicted of a prior violation of this section. Only those violations that occurred within a period of ten years, including and immediately preceding the date of the last violation, constitute prior violations within the meaning of this subsection.

(3) 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 shall 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. A law enforcement officer may issue a citation to a person who admits 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;

(2) search, 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; or

(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.

(F) The Department of Public Safety shall maintain statistical information regarding citations issued pursuant to this section.

(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.”

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,

third or subsequent offense….............................................….2.”

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

Renumber sections to conform.

Amend title to conform.

Majority favorable. Minority unfavorable.

A. SHANE MASSEY LEE BRIGHT

For Majority. For Minority.

**STATEMENT OF ESTIMATED FISCAL IMPACT**

ESTIMATED FISCAL IMPACT ON GENERAL FUND EXPENDITURES:

$0 (No additional expenditures or savings are expected)

ESTIMATED FISCAL IMPACT ON FEDERAL & OTHER FUND EXPENDITURES:

$0 (No additional expenditures or savings are expected)

**EXPLANATION OF IMPACT:**

The State Law Enforcement Division, Department of Public Safety and the Department of Motor Vehicles indicate that this bill will have no fiscal impact on the General Fund of the State, nor on federal and/or other funds.

**LOCAL GOVERNMENT IMPACT:**

Pursuant to Section 2-7-76 of the Code of Laws of South Carolina, 1976, the State Budget Division has surveyed members of the FIST Network. The responses will be forwarded upon receipt.

*Approved By:*

Brenda Hart

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 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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