~~Indicates Matter Stricken~~

Indicates New Matter

COMMITTEE REPORT

February 12, 2019

**H. 3355**

Introduced by Reps. Taylor, Allison, Elliott, Tallon, Cogswell, McCravy, V.S. Moss, Young, McGinnis, Stringer, Felder, Calhoon, Hardee, Govan, Hixon, W. Newton and Chellis

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Read the first time January 8, 2019.

**THE COMMITTEE ON EDUCATION AND PUBLIC WORKS**

To whom was referred a Bill (H. 3355) to amend the Code of Laws of South Carolina, 1976, so as to enact the “Driving Under the Influence of an Electronic Device or DUI‑E Law”, 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 Section 56-5-3890~~(D)(1)~~(E), ~~(E)~~(F),~~(F)~~(G), and ~~(G)~~(H), as contained in SECTION 2 on pages 4 and 5, and inserting:

/ ~~(D)(1)~~(E) A person who is adjudicated to be in violation of the provisions of this section is guilty of driving while using an electronic device and must be fined ~~not more than twenty‑five~~ two hundred 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 section. A person must not be fined more than ~~fifty~~ two hundred dollars for any one incident of one or more violations of the provisions of this section. A custodial arrest for a violation of this section 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 section does not constitute a criminal offense. Notwithstanding Section 56‑1‑640, a violation of this section must not be:

~~(a)~~(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

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

~~(2)~~ ~~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)~~(F) 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~~;

(2) seize, search, view, 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)~~(G) The Department of Public Safety shall maintain statistical information regarding citations issued pursuant to this section.

~~(G)~~(H) This section preempts local ordinances, regulations, and resolutions adopted by municipalities, counties, and other local governmental entities regarding persons using ~~wireless electronic communication devices while operating motor vehicles on the public streets and highways of this State~~ a stand-alone electronic device or wireless telecommunications device while operating motor vehicles on the public highways of this State.

(I) Nothing in this section must be read to supersede a federal law prohibiting the use of wireless communication devices by operators of commercial motor vehicles. /

Amend the bill further by striking SECTIONS 3, 4, and 5 and inserting:

/ SECTION 3. At every interstate highway ingress into the State, the South Carolina Department of Transportation shall erect a visible notification sign advising motorists entering the State of the existence of this act.

SECTION 4. A law enforcement officer shall issue only warning tickets for a ‘Driving While Using an Electronic Device’ violation during the first sixty days after the effective date of this act.

SECTION 5. The repeal or amendment by this act of any law, whether temporary or permanent or civil or criminal, does not affect pending actions, rights, duties, or liabilities founded thereon, or alter, discharge, release or extinguish any penalty, forfeiture, or liability incurred under the repealed or amended law, unless the repealed or amended provision shall so expressly provide. After the effective date of this act, all laws repealed or amended by this act must be taken and treated as remaining in full force and effect for the purpose of sustaining any pending or vested right, civil action, special proceeding, criminal prosecution, or appeal existing as of the effective date of this act, and for the enforcement of rights, duties, penalties, forfeitures, and liabilities as they stood under the repealed or amended laws.

SECTION 6. This act takes effect ninety days after approval by the Governor. /

Renumber sections to conform.

Amend title to conform.

MERITA A. ALLISON for Committee.

**STATEMENT OF ESTIMATED FISCAL IMPACT**

**Explanation of Fiscal Impact**

**Amended by House Education and Public Works on January 31, 2019**

**State Expenditure**

This amended bill creates the “Driving Under the Influence of an Electronic Device or DUI-E Law.” The bill revises the circumstances when it is unlawful to use a wireless device and revises definitions related to the unlawful use of a wireless communications device while operating a motor vehicle. Definitions for both a stand-alone electronic device and utility services have been added, and the previous definition for a wireless electronic communication device has been changed to a wireless telecommunications device. The definition for a wireless telecommunication device, which has been expanded to include other types of electronic devices, now excludes certain types of radios, emergency communication devices, prescribed medical devices, and vehicular security, navigation, and remote diagnostic systems.

The bill makes it unlawful for a person to physically hold, compose text-based communication, or watch video footage on a wireless telecommunications device or stand-alone electronic device while operating a motor vehicle. The bill also prohibits a commercial vehicle operator from using more than a single button on a wireless telecommunications device to initiate or terminate a voice communication and from reaching for a wireless telecommunications device or stand-alone electronic device in a manner such that he would no longer be in a seated driving position or properly restrained by a safety belt.

A vehicle operator may use a wireless telecommunications device or a stand-alone electronic device when he is using an earpiece, headphone device, or device worn on the wrist to conduct voice-based communication; making a voice-based communication that is automatically converted by the device to be sent as a message in written form; watching data related to the navigation of the vehicle; stopped on the side of the road or lawfully parked; reporting information related to an accident or hazard or is otherwise summoning emergency assistance; or is using equipment or services installed or provided by the vehicle’s original manufacturer, provided the device is not hand-held. Other persons exempt from these provisions are those who are employed and are on duty as emergency responders, utility services providers, or digital system dispatchers.

The bill also creates the non-criminal offense of driving while using an electronic device, which carries a penalty of no more than $200 dollars, an amount which may not be suspended. The fine is capped at $200 for any one incident of one or more violations of the bill’s provisions. The DOT is responsible for erecting signs along South Carolina interstates to inform motorists of the existence of the act.

**Judicial Department.** This bill would amend § 56-5-3890, “Driving Under the Influence of an Electronic Device” (DUI-E) by redefining and replacing the term hands-free device with stand-alone device; redefining the term wireless communication device; and adding a definition of utility services. The bill would expand the prohibited uses of wireless communication devices, including a ban on physically holding one while driving; add a section related solely to commercial vehicle drivers; and more fully describe the exceptions to the prohibited uses. Further, it increases the circumstances under which an officer can stop a vehicle for a suspected violation. As magistrate and municipal courts will be responsible for hearing these cases, the bill will have no expenditure impact on the general fund for the Judicial Department.

The civil fines imposed by this proposed legislation would be handled in magistrate and municipal courts. In FY 2017-18, there were 2,025 civil fine cases filed under the current version of § 56-5-3890 in magistrate and municipal courts. However, as this legislation alters the circumstances under which a driver can be stopped, there is no data available upon which to estimate the number of hearings or trials that may be initiated as a result of this legislation.

**Commission on Prosecution Coordination.** The bill alters the circumstances under which a driver may be stopped for violations related to the unlawful use of a wireless communication device while driving. Although the number of tickets that may be written for the revised offense is unknown, the agency expects to absorb any additional costs within current resources.

**Commission on Indigent Defense.** The commission reports that should the bill have an expenditure impact on the General Fund, it will absorb any additional costs within current resources.

**Department of Public Safety.** The agency currently is mandated to maintain statistical information regarding any citation distributed. The department anticipates minimal additional expenditures to the general fund, which can be absorbed within existing appropriations.

**Department of Transportation.** The department indicates there are eight points where interstates cross state lines. The cost for each sign, including installation, is $330. Therefore, this bill will increase other funds expenses of the department by $2,640 in FY 2019-20.

**Local Expenditure**

This bill amends existing provisions related to a person’s operation of a motor vehicle while using an electronic communication device. The civil fines imposed by this proposed legislation would be handled in magistrate and municipal courts. In FY 2017-18, there were 2,025 civil fine cases filed under the current version of § 56-5-3890 in magistrate and municipal courts. There will be no local expenditure impact of this bill on magistrate and municipal courts as RFA estimates there will be no increase to court dockets.

**Local Revenue**

The bill may result in the generation of additional revenue due to the increase in fines for violations related to unlawful use of a wireless communication device while driving. Revenue from the citations is received by the county in which the offenses occur. Magistrate and municipal courts will be responsible for hearing these cases. However, the revenue impact to local government is undetermined because the bill creates a new offense and there is no data available to determine the number of violations.

Frank A. Rainwater, Executive Director

Revenue and Fiscal Affairs Office

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, SO AS TO ENACT THE “DRIVING UNDER THE INFLUENCE OF AN ELECTRONIC DEVICE OR DUI‑E LAW”, TO AMEND SECTION 56‑5‑3890, RELATING TO THE UNLAWFUL USE OF A WIRELESS COMMUNICATIONS DEVICE WHILE OPERATING A MOTOR VEHICLE, SO AS TO REVISE THE DEFINITION OF CERTAIN TERMS, REVISE THE CIRCUMSTANCES WHEN IT IS UNLAWFUL TO USE A WIRELESS DEVICE, TO CREATE THE OFFENSE OF DRIVING WHILE USING AN ELECTRONIC DEVICE, TO MAKE TECHNICAL REVISIONS, AND TO PROVIDE THAT AT CERTAIN POINTS ALONG THE STATE’S INTERSTATE HIGHWAYS, THE DEPARTMENT OF TRANSPORTATION SHALL NOTIFY MOTORISTS OF THE PROVISIONS OF THIS ACT.

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

SECTION 1. This act may be referred to and cited as the “Driving Under the Influence of an Electronic Device or DUI‑E Law”.

SECTION 2. Section 56‑5‑3890 of the 1976 Code is amended to read:

“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~~ ‘Stand‑alone electronic device’ means a device other than a wireless telecommunications device which stores audio or video data files to be retrieved on demand by a user.

(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~~ ‘Utility services’ means and includes electric, natural gas, water, wastewater, cable, telephone, or telecommunications services or the repair, location, relocation, improvement, or maintenance of utility poles, transmission structures, pipes, wires, fibers, cables, easements, rights of way, or associated infrastructure.

(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~~ ‘Wireless telecommunications device’ means a cellular telephone, a portable telephone, a text‑messaging device, a personal digital assistant, a stand‑alone computer, a global positioning system receiver, or a substantially similar portable wireless device that is used to initiate or receive communication, information, or data. This term shall not include a radio, citizens band radio, citizens band radio hybrid, commercial two‑way radio communication device or its functional equivalent, subscription‑based emergency communication device, prescribed medical device, amateur or ham radio device, or in‑vehicle security, navigation, or remote diagnostics system.

(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.~~ While operating a motor vehicle on any highway of this State, a person shall not:

(1) Physically hold a:

(a) wireless telecommunications device, provided that this exclusion shall not prohibit the use of an earpiece, headphone device, or device worn on a wrist to conduct a voice‑based communication; or

(b) stand‑alone electronic device;

(2) write, send, or read any text‑based communication, including, but not limited to, a text message, instant message, e‑mail, or Internet data on a wireless telecommunications device or stand‑alone electronic device. However, this prohibition shall not apply to a voice‑based communication which is automatically converted by the device to be sent as a message in a written form;

(3) watch a video or movie on a wireless telecommunications device or stand‑alone electronic device other than watching data related to the navigation of the vehicle.

(C) While operating a commercial motor vehicle on any highway of this state, a person shall not:

(1) use more than a single button on a wireless telecommunications device to initiate or terminate a voice communication; or

(2) reach for a wireless telecommunications device or stand‑alone electronic device in a manner that requires the driver to no longer be:

(a) in a seated driving position; or

(b) properly restrained by a safety belt.

(D) This section does not apply to ~~a person~~ an operator who is:

(1) stopped on the side of a road or lawfully parked ~~or stopped~~;

(2) ~~using a hands‑free wireless electronic communication device~~ reporting a traffic accident, medical emergency, fire, an actual or potential criminal or delinquent act, or a road condition which causes an immediate and serious traffic or safety hazard, or otherwise summoning emergency assistance;

(3) ~~summoning emergency assistance~~ a law enforcement officer, firefighter, emergency medical services personnel, ambulance driver, or other similarly employed public safety first responder during the performance of his or her official duties;

(4) t~~ransmitting or receiving data as part of a digital dispatch system~~ an employee or contractor of a utility services provider acting within the scope of his or her employment while responding to a utility emergency;

(5) ~~a public safety official while in the performance of the person’s official duties~~ transmitting or receiving information as part of a digital dispatch system for relaying information in the course of the operator’s occupational 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~~ using equipment or services installed or provided by the original manufacturer of the vehicle. However, this item does not authorize the driver’s use of a hand‑held device.

~~(D)(1)~~(E) A person who is adjudicated to be in violation of the provisions of this section is guilty of driving while using an electronic device and 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 section. A person must not be fined more than fifty dollars for any one incident of one or more violations of the provisions of this section. A custodial arrest for a violation of this section 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 section does not constitute a criminal offense. Notwithstanding Section 56‑1‑640, a violation of this section 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)~~ ~~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)~~(F) 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;~~

~~(2)~~ seize, search, view, or require the forfeiture of a wireless electronic communication device because of a violation of this section;

~~(3)~~(2) 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)~~(3) 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)~~(G) The Department of Public Safety shall maintain statistical information regarding citations issued pursuant to this section.

~~(G)~~(H) This section preempts local ordinances, regulations, and resolutions adopted by municipalities, counties, and other local governmental entities regarding persons using wireless ~~electronic communication devices while operating motor vehicles on the public streets and highways of this State~~ telecommunications devices and stand‑alone electronic devices while operating motor vehicles on the public highways of this State.”

SECTION 3. At every interstate highway ingress into the State, the South Carolina Department of Transportation shall erect a visible notification sign advising motorists entering the State of the existence of this act.

SECTION 4. The repeal or amendment by this act of any law, whether temporary or permanent or civil or criminal, does not affect pending actions, rights, duties, or liabilities founded thereon, or alter, discharge, release or extinguish any penalty, forfeiture, or liability incurred under the repealed or amended law, unless the repealed or amended provision shall so expressly provide. After the effective date of this act, all laws repealed or amended by this act must be taken and treated as remaining in full force and effect for the purpose of sustaining any pending or vested right, civil action, special proceeding, criminal prosecution, or appeal existing as of the effective date of this act, and for the enforcement of rights, duties, penalties, forfeitures, and liabilities as they stood under the repealed or amended laws.

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

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