~~Indicates Matter Stricken~~

Indicates New Matter

COMMITTEE REPORT

January 25, 2022

**S. 248**

Introduced by Senators Young, Hembree, Turner, McElveen and Bennett

S. Printed 1/25/22--S.

Read the first time January 12, 2021.

**THE COMMITTEE ON TRANSPORTATION**

To whom was referred a Bill (S. 248) to enact the “South Carolina Hands Free Act”; to amend Section 56‑5‑3890 of the 1976 code, relating to the unlawful use of a wireless telecommunications, 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. This act may be referred to and cited as the “South Carolina Hands Free and Distracted Driving Act”.

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.~~ ‘Mobile electronic device’ means a cellular telephone, portable computer, GPS receiver, electronic game, or any substantially similar stand-alone electronic device used to communicate, display, or record digital content. ‘Mobile electronic device’ does not include a citizens band radio, amateur radio, ham radio, commercial two way radio or its functional equivalent, subscription based emergency communication device, or prescribed medical 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.~~ While operating a motor vehicle on any public highway of this State, a person shall not:

(1) hold or support, with any part of the body, a mobile electronic device. This provision does not prohibit the use of an earpiece or device worn on a wrist to conduct voice based communication;

(2) read, compose, or transmit any text, including, but not limited to, a text message, email, application interaction, or website information on a mobile electronic device.

(3) watch motion, including, but not limited to, a video, movie, game, or video call on a mobile electronic device.

(C) This section does not apply to a ~~person~~ motor vehicle operator who is:

(1) lawfully parked or stopped;

(2) ~~using a hands free wireless electronic communication device~~ initiating a voice-based communication that is automatically converted by the device and sent as text, provided that the device is not held by the operator;

(3) ~~summoning emergency assistance~~ reporting an accident, emergency, or safety hazard to a public safety official

(4) transmitting or receiving data as part of a digital dispatch system while performing occupational duties;

(5) ~~a public safety official while in the performance of the person’s~~ a first responder while performing 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.~~ viewing information related to the navigation of the vehicle, provided that the device is not held by the operator;

(7) using a mobile electronic device in a voice-activated or hands-free mode to initiate or participate in a cellular call, provided that the device is not held by the operator; or

(8) using equipment or services installed by the original manufacturer of the vehicle.

(D)(1) A person who is adjudicated to be in violation of ~~the provisions of~~ this section is guilty of distracted driving and, upon conviction:

(a) for a first offense, must be fined not more than ~~twenty-five~~ one hundred fifty dollars, no part of which may be suspended; and

(b) for a second or subsequent offense, must be fined not more than three hundred dollars, no part of which may be suspended, and must have two points assessed against his motor vehicle operating record.

(2) Only those offenses which occurred within three years, including and immediately preceding the date of the last offense, shall constitute prior offenses within the meaning of this subsection. ~~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)~~(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.~~ The Department of Public Safety must receive twenty five percent of the fines imposed for violations of this section. Funds provided to the department pursuant to this section must be used to educate the public on the dangers of distracted driving and the provisions of this act.

(E) A law enforcement officer shall not:

(1) stop a person for a violation of this section except when the officer has ~~probable cause~~ reasonable suspicion 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~~ mobile electronic device because of a violation of this section;

(3) search or request to search a motor vehicle, ~~driver~~ operator, or passenger in a motor vehicle, solely because of a violation of this section; or

(4) make a custodial arrest ~~for~~ solely because of 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 Motor Vehicles shall maintain and provide citation information pursuant to this section to the Department of Public Safety. 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 governmental entities~~ political subdivisions regarding persons using ~~wireless~~ mobile electronic ~~communication~~ devices while operating motor vehicles on the public ~~streets and~~ highways of this State.”

SECTION 3. 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

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

Distracted driving (second or subsequent offense) 2

Operating a vehicle in unsafe condition 2

Driving in improper lane 2

Improper backing 2

Endangerment of a highway worker, no injury 2

Endangerment of a highway worker, injury results 4”

SECTION 4. At every interstate highway ingress, the Department of Transportation shall erect a sign advising motorists of this act.

SECTION 5. During the first sixty days after the effective date of this act, law enforcement officers shall only issue warnings for violations of Section 56-5-3890, as amended by this act.

SECTION 6. The repeal or amendment by this act of any law, whether temporary, permanent, 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 7. This act takes effect ninety days after approval by the Governor. /

Renumber sections to conform.

Amend title to conform.

LAWRENCE K. GROOMS for Committee.

**A** **BILL**

TO ENACT THE “SOUTH CAROLINA HANDS‑FREE ACT”; TO AMEND SECTION 56‑5‑3890 OF THE 1976 CODE, RELATING TO THE UNLAWFUL USE OF A WIRELESS TELECOMMUNICATIONS DEVICE WHILE OPERATING A MOTOR VEHICLE, TO REVISE THE CIRCUMSTANCES UNDER WHICH IT IS UNLAWFUL TO USE A WIRELESS TELECOMMUNICATIONS DEVICE, TO CREATE THE OFFENSE OF DISTRACTED DRIVING AND PROVIDE PENALTIES, AND TO MAKE TECHNICAL REVISIONS; TO AMEND SECTION 56‑1‑720 OF THE 1976 CODE, RELATING TO POINTS THAT MAY BE ASSESSED AGAINST A PERSON’S DRIVING RECORD FOR MOTOR VEHICLE DRIVING VIOLATIONS, TO PROVIDE THAT A SECOND OR SUBSEQUENT OFFENSE OF DISTRACTED DRIVING IS A TWO‑POINT VIOLATION; TO PROVIDE THAT THE DEPARTMENT OF TRANSPORTATION SHALL NOTIFY MOTORISTS OF THE HANDS-FREE REQUIREMENTS AT CERTAIN POINTS ALONG THE STATE’S INTERSTATE HIGHWAYS; AND TO DEFINE NECESSARY TERMS.

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

SECTION 1. This act must be known and may be cited as the “South Carolina Hands‑Free Act”.

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

“Section 56‑5‑3890. (A) For purposes of this section:

(1) ‘Commercial motor vehicle’ means a motor vehicle or combination of motor vehicles used in commerce to transport passengers or property if the motor vehicle:

(a) has a gross combination weight rating or gross combination weight of 11,794 kilograms, or 26,001 pounds, or more, whichever is greater, inclusive of a towed unit or units with a gross vehicle weight rating or gross vehicle weight of more than 4,536 kilograms, or 10,000 pounds, whichever is greater;

(b) has a gross vehicle weight rating or gross vehicle weight of 11,794 kilograms, or 26,001 pounds, or more, whichever is greater;

(c) is designed to transport sixteen or more passengers, including a driver; or

(d) is of any size and is used in the transportation of hazardous materials as that term is defined in 49 C.F.R. Section 390.5.

(2) ~~‘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, that stores audio or video data files to be retrieved on demand by a user.

~~(2)~~(3) ~~‘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)~~(4) ~~‘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, email, 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 a device to be sent as a message in a written form; or

(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) lawfully 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, actual or potential criminal or delinquent act, or road condition that causes an immediate and serious traffic or safety hazard, or who is 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 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 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 and amateur radio use by an amateur radio operator in an emergency situation; ~~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~~ licensed by the Federal Communications Commission while operating a radio frequency device;

(7) using equipment or services installed or provided by the original manufacturer of the vehicle. However, this item does not authorize an operator’s use of a hand‑held device; or

(8) operating a commercial motor vehicle that is otherwise regulated by federal law.

~~(D)(1)~~(E)(1) A person who is adjudicated to be in violation of the provisions of this section is guilty of distracted driving and must be fined ~~not more than twenty‑five~~ one hundred dollars, no part of which may be suspended. For a second or subsequent violation of the provisions of this section, a person must be fined three hundred dollars, no part of which may be suspended, and must have two points assessed against his motor vehicle operating record. ~~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.~~ The Department of Public Safety shall receive twenty‑five dollars of the one hundred-dollar fine for first-offense distracted driving and seventy‑five dollars of the three hundred-dollar fine for a second or subsequent distracted driving offense. The funds provided to the Department of Public Safety pursuant to this section must be used to conduct public awareness campaigns and activities to educate the public on the hands‑free requirements and the dangers of distracted driving.

~~(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~~ telecommunications devices and stand‑alone electronic devices while operating motor vehicles on the public highways of this State.”

B. During the first sixty days after the effective date of Section 56-5-3890 as amended by this act, law enforcement officers shall issue only warnings for violations of its provisions.

SECTION 3. 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

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

Distracted driving (second or subsequent offense) 2

Operating a vehicle in unsafe condition 2

Driving in improper lane 2

Improper backing 2

Endangerment of a highway worker, no injury 2

Endangerment of a highway worker, injury results 4”

SECTION 4. 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 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.

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