**South Carolina General Assembly**

118th Session, 2009-2010

**H. 4189**

**STATUS INFORMATION**

General Bill

Sponsors: Reps. Bowen, Bales, Harrison, Wylie, Long and Gilliard

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Companion/Similar bill(s): 4259

Introduced in the House on January 12, 2010

Currently residing in the House Committee on **Education and Public Works**

Summary: Text messaging

**HISTORY OF LEGISLATIVE ACTIONS**

Date Body Action Description with journal page number

11/17/2009 House Prefiled

11/17/2009 House Referred to Committee on **Education and Public Works**

1/12/2010 House Introduced and read first time [HJ](file:///h:\HJ%20Archive\2010\01-12-10.docx)‑22

1/12/2010 House Referred to Committee on **Education and Public Works** [HJ](file:///h:\HJ%20Archive\2010\01-12-10.docx)‑23

1/20/2010 House Member(s) request name added as sponsor: Gilliard

**VERSIONS OF THIS BILL**

[11/17/2009](file:///p:\pprever\2009-10\4189_20091117.docx)

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 56‑5‑3890 SO AS TO PROVIDE THAT IT IS UNLAWFUL TO DRIVE A MOTOR VEHICLE WHILE TEXT MESSAGING, TEXTING, RECEIVING, OR READING TEXT MESSAGES OR PRINTED READING MATERIALS, AND TO PROVIDE A PENALTY.

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) It is unlawful for a person to drive a motor vehicle in motion while text messaging, texting, receiving, or reading text messages or printed reading materials. If an arresting officer has probable cause to believe the motorist has violated this section, he may seize and review the cellular telephone transmitting or receiving device upon which the text messaging occurred to ascertain whether the text messaging occurred at or about the time of the violation and may subpoena the telephones records. The arresting officer or the defendant may admit as evidence, without proving chain of custody, telephone number or texting information, or both that are relevant to a violation of this section.

(B) A person who violates subsection (A) and no bodily injury or death occurs as a result of the violation is guilty of a misdemeanor and, upon conviction, must be:

(1) imprisoned not more than sixty days, fined not more than two thousand five hundred dollars, have his driver’s license suspended for one year, and must complete successfully an eight hour defensive driving course for a first offense. This offense must be tried in either municipal or magistrate court;

(2) imprisoned not more than one hundred eighty days, fined not more than five thousand dollars, and have his driver’s license suspended for two years for a second offense; and

(3) imprisoned not more than three years, fined not more than ten thousand dollars, and have his driver’s license permanently revoked for a third or subsequent offense.

(C) A person who violates subsection (A) and bodily injury occurs as a result of this violation is guilty of a felony and, upon conviction, must be imprisoned not less than five years and not more than fifteen years.

(D) A person who violates subsection (A) and the death of a person occurs as a result of this violation is guilty of a felony and, upon conviction, must be imprisoned not less than ten years and not more than twenty‑five years.

(E) Within thirty days of the issuance of a notice of suspension for a first offense under Section (B), the person may:

(1) obtain a temporary license by filing a form with the Department of Motor Vehicles for this purpose. A one hundred dollar fee must be assessed for obtaining a temporary license. The fee must be placed by the Comptroller General into a special restricted account to be used by the Department of Motor Vehicles to defray its expenses. The temporary license allows the person to drive without any restrictive conditions pending the outcome of the administrative hearing provided for in subsection (I) or the final decision or disposition of the matter. If the suspension is upheld at the administrative hearing, the temporary license remains in effect until the Department of Motor Vehicles issues the hearing officer’s decision and sends notice to the person that he is eligible to receive a restricted license pursuant to subsection (K); and

(2) request an administrative hearing.

At the administrative hearing if:

(a) the suspension is upheld, the person’s driver’s license, permit, or nonresident operating privilege must be suspended or the person must be denied the issuance of a license or permit for the remainder of the suspension period provided;

(b) the suspension is overturned, the person must have his driver’s license, permit, or nonresident operating privilege reinstated.

(F) The period of suspension begins on the day the notice of suspension is issued, or at the expiration of any other suspensions, and continues until the person applies for a temporary license and requests an administrative hearing.

(G) If a person does not request an administrative hearing, he waives his right to the hearing, and his suspension must not be stayed but continues for the period provided for in subitem(B)(1).

(H) The notice of suspension must advise the person of his right to obtain a temporary driver’s license and to request an administrative hearing. The notice of suspension also must advise the person that, if he does not request an administrative hearing within thirty days of the issuance of the notice of suspension, he waives his right to the administrative hearing, and the suspension continues for the period provided for in subitem (B)(1).

(I) An administrative hearing must be held after the request for the hearing is received by the Office of Motor Vehicle Hearings. The filing fee to request a hearing is one hundred fifty dollars. The scope of the hearing is limited to whether the arresting officer has clear and convincing evidence of texting, or receiving text messages or the person was reading printed materials.

A written order must be issued to all parties either reversing or upholding the suspension of the person’s license, permit, or nonresident’s operating privilege, or denying the issuance of a license or permit. If the suspension is upheld, the person must receive credit for the number of days his license was suspended before he received a temporary license and requested the administrative hearing.

(J) An administrative hearing is a contested case proceeding under the Administrative Procedures Act, and a person has a right to appeal the decision of the hearing officer pursuant to that act to the Administrative Law Court in accordance with its appellate rules. The filing of an appeal stays the suspension until a final decision is issued on appeal.

(K)(1) If the suspension is upheld at the administrative hearing for a first offense, the person may apply for a restricted license if he is employed or enrolled in a college or university. The restricted license permits him to drive only to and from work and his place of education and in the course of his employment or education during the period of suspension. The department may issue the restricted license only upon showing by the individual that he is employed or enrolled in a college or university, that he lives further than one mile from his place of employment, or place of education, and that there is no adequate public transportation between his residence and his place of employment, or his place of education.

(2) If the department issues a restricted license, it must designate reasonable restrictions on the times during which and routes on which the individual may drive a motor vehicle. A change in the employment hours, place of employment, status as a student or residence must be reported immediately to the department by the licensee.

(3) The fee for a restricted license is one hundred dollars, but no additional fee may be charged because of changes in the place and hours of employment, education, or residence. This fee must be placed by the Comptroller General into a special restricted account to be used by the Department of Motor Vehicles to defray the expenses of the Department of Motor Vehicles.

(4) Driving a motor vehicle outside the time limits and route imposed by a restricted license by the person issued that license is a violation of Section 56‑1‑460.

(L) A person’s driver’s license, permit, or nonresident operating privilege must be restored when the person’s period of suspension has concluded.

(M) When a nonresident’s privilege to drive a motor vehicle in this State has been suspended under the provisions of this section, the department must give written notice of the action taken to the motor vehicle administrator of the state of the person’s residence and of any state in which he has a license or permit.

(N) A person whose driver’s license or permit is suspended pursuant to this section is required to file proof of financial responsibility. Once the period of suspension has expired, he must carry SR 22 Insurance for the next three years.”

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

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