

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 33 Texting while Driving

SPONSOR(S): Government Accountability Committee, Judiciary Committee, Toledo, Slosberg and others

TIED BILLS: IDEN./SIM. **BILLS:** CS/SB 90

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Transportation & Infrastructure Subcommittee	14 Y, 0 N	Johnson	Vickers
2) Judiciary Committee	17 Y, 1 N, As CS	MacNamara	Poche
3) Government Accountability Committee	20 Y, 0 N, As CS	Johnson	Williamson

SUMMARY ANALYSIS

The Florida Ban on Texting While Driving Law prohibits a person from texting, emailing, and instant messaging while driving for the purpose of nonvoice interpersonal communication. Enforcement is as a secondary action only. This means a law enforcement officer must detain a driver for another traffic offense in order to cite the driver for texting while driving. There are certain exceptions to the prohibition. For example, the prohibition does not apply to a motor vehicle operator using a navigation device or system. In addition, the ban does not apply to a stationary motor vehicle. A first violation of the ban is a nonmoving violation and carries a \$30 base fine plus court costs and fees. A second or subsequent violation committed within five years is a moving violation with three points added to the driver license record and carries a \$60 base fine plus court costs and fees.

The bill changes current enforcement of the ban from a secondary offense to a primary offense, which will allow a law enforcement officer to stop a vehicle solely for texting while driving. The bill does not change the existing penalties nor does it create new penalties. It also maintains the current exceptions to the texting ban and maintains that the texting ban does not apply to a stationary motor vehicle.

The bill requires a law enforcement officer who detains a motor vehicle operator for texting while driving to inform the operator that he or she has a right to decline a search of his or her wireless communications device. Additionally, the bill prohibits a law enforcement officer from accessing the wireless communications device without a warrant, confiscating the device while waiting for the issuance of a warrant, or using coercion or other improper method to convince the operator to provide access to such device without a warrant. The bill requires consent to be unequivocal and voluntary.

The bill also requires a law enforcement officer to record the race and ethnicity of a person issued a citation for texting while driving. The Department of Highway Safety and Motor Vehicles (DHSMV) must annually report this information to the Governor, President of the Senate, and Speaker of the House of Representatives beginning February 1, 2019.

To the extent there is an increase in the number of traffic citations issued because of the change to primary enforcement of the texting while driving ban, state and local governments may realize a positive fiscal impact from these additional revenues. However, the fiscal impact of this change cannot be quantified and is indeterminate. DHSMV may incur expenses associated with public awareness and education efforts about the change in enforcement of the ban on texting while driving; however, it is likely these costs will be absorbed within the department's existing safety campaign budget. In addition, DHSMV may incur expenses associated with the new reporting requirements.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h0033e.GAC

DATE: 2/2/2018

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Texting While Driving

Studies show that texting, which simultaneously involves manual, visual, and cognitive distraction, is among the worst of all driver distractions. According to the National Highway Traffic Safety Administration, sending or reading a text message takes a person's eyes off the road for five seconds, which at 55 mph is the equivalent of driving the length of a football field with one's eyes closed.¹ A 2009 study by the Virginia Tech Transportation Institute of text messaging by long-haul truck drivers determined that text messaging while driving creates a crash risk 23 times greater than not texting while driving.²

As of July 2017, 47 states ban texting while driving for all drivers and of those states, 43 allow for primary enforcement of the texting prohibition. Two of the three states without all driver texting bans prohibit texting while driving by novice drivers.³

Florida's Ban on Texting While Driving

Enacted in 2013,⁴ s. 316.305, F.S., is the "Florida Ban on Texting While Driving Law." The intent of the statute is to:

- Improve roadway safety for all vehicle operators, vehicle passengers, bicyclists, pedestrians, and other road users.
- Prevent crashes related to the act of text messaging while driving a motor vehicle.
- Reduce injuries, deaths, property damage, health care costs, health insurance rates, and automobile insurance rates related to motor vehicle crashes.
- Authorize law enforcement officers to stop motor vehicles and issue citations as a **secondary** offense to persons who are texting while driving.⁵

A person may not operate a motor vehicle while manually typing or entering multiple letters, numbers, symbols, or other characters into a wireless communications device or while sending or reading data on a wireless communications device for the purpose of nonvoice interpersonal communication. Nonvoice interpersonal communication includes, but is not limited to, texting, e-mailing, and instant messaging. For purposes of the ban on texting while driving, the term "wireless communications device" means any handheld device used or capable of being used in a handheld manner, that is designed or intended to receive or transmit text or character-based messages, access or store data, or connect to the Internet or any communications service and that allows text communications.⁶

¹ National Highway Traffic Safety Administration, available at <https://www.nhtsa.gov/risky-driving/distracted-driving> (last visited January 22, 2018).

² Richtel, Matt, "In Study, Texting Lifts Crash Risk by Large Margin," *New York Times*, July 27, 2009, available at <http://www.nytimes.com/2009/07/28/technology/28texting.html> (last visited January 22, 2018).

³ Governors Highway Safety Association, available at <http://www.ghsa.org/state-laws/issues/distracted%20driving> (last visited January 22, 2018).

⁴ Chapter 2013-58, L.O.F.

⁵ Section 316.305(2), F.S.

⁶ Section 316.305(3)(a), F.S.

A stationary motor vehicle is not subject to the statutory ban on texting while driving.⁷ In addition, the ban does not apply to a motor vehicle operator who is:

- A first responder operating an emergency vehicle⁸ while performing his or her official duties.
- Reporting an emergency, criminal activity, or suspicious activity to law enforcement authorities.
- Receiving messages that are related to the operation or navigation of the motor vehicle, safety-related, data used primarily by the motor vehicle, or radio broadcasts.
- Using a navigation device or system.
- Conducting wireless interpersonal communication that does not require manual entry of information or require reading text messages, except to activate, deactivate, or initiate a feature or function.
- Operating an autonomous vehicle⁹ in autonomous mode.¹⁰

Only in the event of a crash resulting in death or personal injury may a user's billing records for a wireless communications device or the testimony of or written statements from appropriate authorities receiving such messages be admissible as evidence in any proceeding to determine whether the offense of texting while driving has been committed.¹¹

A first violation of the ban on texting while driving is a nonmoving violation and carries a \$30 fine plus court costs,¹² which could result in a total fine up to \$108.¹³ A second or subsequent violation of the ban committed within five years after the date of a prior conviction is a moving violation with three points added to the driver license record and carries a \$60 fine plus court costs,¹⁴ which could result in a total fine up to \$158.¹⁵ In addition to these penalties, any violation of the ban that causes a crash results in six points added to the offender's driver license record.¹⁶ Any violation of the ban committed in conjunction with any moving violation for which points are assessed, when committed within a school safety zone, results in an additional two points added to the offender's driver license record.¹⁷

As previously noted, enforcement of the ban on texting while driving by state or local law enforcement agencies is as a secondary action only. A motor vehicle operator must be detained for a suspected violation of another traffic violation in order to be cited for texting while driving.¹⁸

⁷ *Id.*

⁸ Section 322.01(4), F.S., defines "authorized emergency vehicle" as a vehicle that is equipped with extraordinary audible and visual warning devices, that is authorized to display red or blue lights, and that is on call to respond to emergencies. The term includes, but is not limited to, ambulances, law enforcement vehicles, fire trucks, and other rescue vehicles. It does not include wreckers, utility trucks, or other vehicles that are used only incidentally for emergency purposes.

⁹ Section 316.003(2), F.S., defines "autonomous vehicle" as any vehicle equipped with autonomous technology.

¹⁰ Section 316.305(3)(b), F.S.

¹¹ Section 316.305(3)(c), F.S.

¹² Section 316.305(4)(a), F.S.; *see also* Ch. 318, F.S.

¹³ Florida Court Clerks and Comptrollers 2017 Distribution Schedule of Court-Related Filing Fees, Service Charges, Costs and Fines, p. 19, available at:

http://c.ymcdn.com/sites/www.flclerks.com/resource/resmgr/public_documents_/2017_Distribution_Schedule_7.pdf (last visited January 22, 2018).

¹⁴ Section 316.305(4)(b), F.S.; *see also* Ch. 318, F.S., and s. 322.27, F.S.

¹⁵ Florida Court Clerks and Comptrollers 2017 Distribution Schedule of Court-Related Filing Fees, Service Charges, Costs and Fines, p. 22.

¹⁶ Section 322.27(3)(d), F.S.

¹⁷ *Id.*

¹⁸ Section 316.305(5), F.S.

According to the Department of Highway Safety and Motor Vehicles (DHSMV), the following number of Uniform Traffic Citations have been issued for texting while driving:

Calendar Year	First Offense	School Zone, First Offense	Subsequent Offense	School Zone, Subsequent Offense
2014	1,596	20	18	11
2015	1,363	14	25	12
2016	1,388	16	11	18

Law Enforcement Access to Cell Phones

Court Decisions

In 2013, the Florida Supreme Court found that while it is proper to separate a suspect from his or her cell phone incident to an arrest, a warrant is required before the information, data, and contents of the cell phone can be accessed by law enforcement.¹⁹ In 2014, the United States Supreme Court unanimously held that, in general, law enforcement is not permitted to search a person's cell phone incident to an arrest without a warrant and that the search of a cell phone implicates privacy concerns far beyond those implicated by searching other objects.²⁰

Florida Law

Section 316.646, F.S., authorizes digital proof of automobile insurance. The statute provides that the act of presenting to a law enforcement officer an electronic device displaying proof of insurance in an electronic format does not constitute consent for the officer to access any other information on the device other than the displayed proof of insurance.

Effect of Proposed Changes

The bill amends the Florida Ban on Texting While Driving Law to change the current enforcement of the ban on texting while driving from secondary to primary. This change will allow a law enforcement officer to detain a motor vehicle operator solely for texting while driving.

The bill requires a law enforcement officer who detains a motor vehicle operator for a violation of the ban on texting while driving to inform the motor vehicle operator of his or her right to decline a search of his or her wireless communications device. The bill prohibits a law enforcement officer from:

- Accessing the wireless communications device without a warrant.
- Confiscating the wireless communications device while awaiting issuance of a warrant to access such device.
- Obtaining consent from the motor vehicle operator to search his or her wireless communications device through coercion or other improper method. Consent to search a motor vehicle operator's wireless communications device must be voluntary and unequivocal.

The bill provides that when a law enforcement officer issues a citation for texting while driving, the officer must record the race and ethnicity of the violator. All law enforcement agencies must maintain the information and report it to DHSMV in a DHSMV-specified form and manner. Beginning February 1, 2019, DHSMV must annually report the data collected to the Governor, President of the Senate, and Speaker of the House of Representatives. The data collected must be reported at least by statewide totals for local law enforcement agencies, state law enforcement agencies, and state university law enforcement agencies. The statewide total for local law enforcement agencies must combine the data for the county sheriffs and the municipal law enforcement agencies.

¹⁹ *Smallwood v. State of Florida*, 113 So. 3d 724 (Fla. 2013).

²⁰ *Riley v. California*, 134 S.Ct. 2473 (2014).

The bill maintains the current penalties for a violation of the Florida Ban on Texting While Driving Law. In addition, the bill maintains the current exceptions to the texting ban. For example, the ban will continue to allow the use of a navigation device or system. Finally, the bill maintains that the texting ban does not apply to a stationary motor vehicle.

B. SECTION DIRECTORY:

Section 1 amends s. 316.305, F.S., relating to the prohibition of using wireless communications devices while driving.

Section 2 provides an effective date of July 1, 2018.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

To the extent there is an increase in the number of traffic citations issued due to making the ban on texting while driving a primary offense, the state may realize additional revenues. However, the fiscal impact cannot be quantified and is indeterminate.

2. Expenditures:

DHSMV may incur expenses related to public awareness and education efforts about the change in enforcement of the ban on texting while driving; however, it is likely these costs will be absorbed within the department's existing safety campaign budget.

DHSMV may incur expenses related to the new reporting requirements. While the fiscal impact is unknown at this time, it is expected to be minimal.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

To the extent that there is an increase in the number of traffic citations issued due to making the ban on texting while driving a primary offense, local governments may realize additional revenues. However, the fiscal impact cannot be quantified and is indeterminate.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The change in enforcement of the texting ban from secondary to primary may result in more motorists being assessed traffic fines.

D. FISCAL COMMENTS:

The state may be eligible to receive additional federal highway safety grant funds because of changing enforcement of the ban from secondary to primary.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 25, 2018, the Judiciary Committee adopted one amendment and reported the bill favorably as a committee substitute. The amendment:

- Prohibited a law enforcement officer from obtaining consent to search a driver's wireless device through coercion or other improper method.
- Required a driver's consent to search his or her wireless communication device to be voluntary and unequivocal.

On February 1, 2018, the Government Accountability Committee adopted one amendment and reported the bill favorably as a committee substitute. The amendment required law enforcement officers to record the race and ethnicity of those violating the ban on texting while driving, required local law enforcement agencies to maintain the information, and required DHSMV to annually report such information to the Governor, Speaker of the House of Representatives, and President of the Senate beginning February 1, 2019.

This analysis is drafted to the committee substitute as approved by the Government Accountability Committee.