

STORAGE NAME: h0009.sa.doc

DATE: November 19, 2001

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
STATE ADMINISTRATION
ANALYSIS**

BILL #: HB 9

RELATING TO: Motor Vehicles / Cellular Telephones

SPONSOR(S): Representative(s) Slosberg

TIED BILL(S):

ORIGINATING COMMITTEE(S)/COUNCIL(S)/COMMITTEE(S) OF REFERENCE:

- (1) STATE ADMINISTRATION
 - (2) COUNCIL FOR SMARTER GOVERNMENT
 - (3)
 - (4)
 - (5)
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I. SUMMARY:

Currently, Florida has no law that prohibits the use of a cellular telephone while operating a motor vehicle. Additionally, Florida law does not currently require law enforcement agencies to indicate on a crash report whether driver distraction was a contributing factor in traffic accidents. However, the Florida Highway Patrol is currently noting on the long form crash report whether the crash incident involved a distracted driver and the use of a cellular telephone device.

This bill creates restrictions on the use of cellular telephones while operating a vehicle. This bill only allows a person to operate a vehicle while using a cellular telephone, so long as such telephone is "equipped with a headset or hands-free device that only provides sound through one ear and allows surrounding sound to be heard with the other ear." It is unclear how a hands-free device, such as a speakerphone, could route sound "through one ear."

This bill does not provide exceptions to the restriction. Thus, an Emergency Response Technician (EMT) or a police officer could be in violation of this restriction if the EMT or police officer were using a cellular telephone in the furtherance of that EMT's or an officer's official duties. Also, no exception exists for a person in distress, reporting a traffic accident, or dialing "911."

A violation of this restriction is punishable as a nonmoving violation. A violator is subject to a fifty-dollar fine.

This bill authorizes the Department of Highway Safety and Motor Vehicles (DHSMV) to adopt rules that provide standards and specifications for headset equipment and hands-free equipment.

This bill has a fiscal impact on state government of \$14,175. The bill does not appear to have a fiscal impact on local government. See "Fiscal Analysis & Economic Impact Statement."

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|--|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

This bill creates more government by regulating the use of a cellular telephone while operating a vehicle. The bill provides that a violator may be required to pay a \$50 fine.

House Bill 9 does not increase opportunities for individual freedom. The bill limits individual freedom by placing restrictions on cellular telephone use while driving a vehicle.

This bill does not increase personal responsibility. The bill forces personal responsibility by imposing penalties for the use of a cellular telephone while operating a vehicle.

B. PRESENT SITUATION:

International Laws

Twenty countries restrict or prohibit cellular telephones and other wireless technology in motor vehicles. These countries are Australia, Brazil, Chile, Denmark, England, Germany, Greece, Israel, Italy, Japan, Poland, Portugal, the Philippines, Romania, Singapore, Slovenia, South Africa, Spain, Switzerland, and Turkey.¹

Federal Law

At present, the federal government has not limited the use of cellular telephones in automobiles.

State Laws

Since 1995, at least 45 states have proposed bills concerning the use of cellular telephones in automobiles. In 2000, at least 27 states considered legislation that targeted cellular telephones in motor vehicles. Pennsylvania passed SR 127 which directs the state's Joint State Government Commission to study the issue of distracted drivers, including cellular telephone use.²

Florida Law

Currently, Florida has no law that prohibits the use of a cellular telephone while operating a motor vehicle. Florida law does not currently require law enforcement agencies to indicate on a crash report whether driver distraction was a contributing factor in the traffic accident. However, the

¹ Sundeen, Matt, National Conference of State Legislatures Cell Phones and Highway Safety 2000 State Legislative Update, at 8.

² *Id.* at 2.

Florida Highway Patrol is currently noting on the long form crash report whether the crash incident involved a distracted driver and the use of a cellular telephone device.³

Local Laws

Miami-Dade

On September 25, 2001, Miami-Dade passed an ordinance pertaining to the use of cellular telephones in motor vehicles. The ordinance provided that use of a cellular telephone,⁴ without a hands-free device,⁵ is prohibited while driving.⁶ Section 30-421 of the Code of Miami-Dade County, Florida, provides exceptions to the restriction. Those exceptions are

- (i) Any law enforcement, public safety or police officers, emergency services officials, first aid, emergency medical technicians and personnel, or any fire safety officials in the performance of duties arising out of and in the course of their employment as such;
- (ii) A person who has reason to fear for his or her life or safety; or
- (iii) A person to report a fire, traffic accident where injuries are apparent, a serious road hazard, or to report a person who is driving in a reckless manner or who appears to be under the influence of alcohol or drugs.

Additionally, the ordinance provides a \$250 fine or successful completion of a driver improvement course for the first offense, and a \$500 fine for the second or subsequent offense.⁷

Town of Highland Beach

On August 7, 2001, the Town Commission of the Town of Highland Beach adopted resolution number 77. That resolution requested the Florida Legislature to adopt appropriate legislation regulating the use of mobile telephones statewide.

C. EFFECT OF PROPOSED CHANGES:

This bill creates section 316.3046, F.S., and provides restrictions on the use of cellular telephones while operating a vehicle. The bill only allows a person to operate a vehicle while using a cellular telephone,⁸ so long as such telephone is "equipped with a headset or hands-free device that only provides sound through one ear and allows surrounding sound to be heard with the other ear." This

³ Department of Highway Safety and Motor Vehicles Bill Analysis, November 15, 2001, at 2.

⁴ Section 30-421(2)(a) of the Code of Miami-Dade County, Florida, defines "cellular telephone" as "any device capable of sending or receiving telephone communications without an access line for service, including but not limited to analog, digital and wireless telephones."

⁵ Section 30-421(2)(c) of the Code of Miami-Dade County, Florida, defines "hands-free device" as "an internal device, attachment, add-on or addition to a cellular telephone or motor vehicle, whether or not permanently installed in the motor vehicle, that when used (i) allows the operator of a motor vehicle to maintain both hands (or prosthetic device or aid in the case of a physically disabled person) on the applicable steering device and (ii) allows for surrounding sound to be heard by one or both ears."

⁶ Section 30-421(3) of the Code of Miami-Dade County, Florida.

⁷ Section 30-421(6) of the Code of Miami-Dade County, Florida.

⁸ Section 817.4821(1)(e), F.S., defines "cellular telephone" as a "communication device containing a unique electronic serial number that is programmed into its computer chip by its manufacturer and whose operation is dependent on the transmission of that electronic serial number along with a mobile identification number, which is assigned by the cellular telephone carrier, in the form of radio signals through cell sites and mobile switching stations."

language raises concerns regarding the use of a hands-free device. It is unclear how a hands-free device, such as a speakerphone, could route sound "through one ear."⁹

This bill does not provide exceptions to the restriction. Thus, an Emergency Response Technician (EMT) or a police officer could be in violation of this restriction if the EMT or police officer were using a cellular telephone in the furtherance of that EMT's or an officer's official duties. Also, no exception exists for a person in distress, reporting a traffic accident, or dialing "911."

A violation of this restriction is punishable as a nonmoving violation. A violator is subject to a fifty-dollar fine.

This bill authorizes the Department of Highway Safety and Motor Vehicles (DHSMV) to adopt rules that provide standards and specifications for headset equipment and hands-free equipment. The DHSMV has responded by stating that

[c]urrently, DHSMV does not have anyone on staff who has the training or expertise to develop standards for handsets or hands-free telephone equipment. Florida should adopt any industry standards for this type of equipment.¹⁰

D. SECTION-BY-SECTION ANALYSIS:

See "Effects of Proposed Changes."

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:¹¹

Amount Year 1 FY 2002-03	Amount Year 2 FY 2003-04	Amount Year 3 FY 2004-05
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Non-Recurring or First Year
Start Up Effects:

General Revenue Fund:

Data Processing	\$ 14,175	\$ 0	\$ 0
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This bill would require approximately 105 hours of contracted programming modifications at \$135 per hour to modify the Driver License Software Systems. That system has to be modified to include the new section of statute being created, since the bill creates a fineable violation.¹²

⁹ Staff has contacted the sponsor regarding this concern. Staff has not heard back from the sponsor regarding this issue.

¹⁰ DHSMV Bill Analysis, November 15, 2001, at 2.

¹¹ *Id.* at 3.

¹² Telephone conversation with Stephen Fielder, Operations Analyst II with the DHSMV, November 26, 2001.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

Unknown. Enactment of this bill may generate additional civil fine revenue.¹³

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

All motorists who choose to use a cell phone while operating a motor vehicle must use approved hands-free equipment or risk a \$50 penalty.¹⁴

D. FISCAL COMMENTS:

This bill may generate additional civil fine revenues for the state and local governments as a result of citations being issued for cellular telephone violations. However, the amount of civil fine revenue that may be generated is unknown. In addition, the DHSMV could incur personnel and materials costs for development of specifications and lists of approved hands-free equipment that would be absorbed within existing resources. Finally, implementation of this bill would require contracted programming modifications to the Driver License Software Systems at an estimated cost of \$14,175.¹⁵

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that counties or municipalities have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

This bill authorizes the Department of Highway Safety and Motor Vehicles to adopt rules that provide standards and specifications for headset equipment and hands-free equipment.

¹³ *Id.*

¹⁴ *Id.* at 4.

¹⁵ *Id.* at 3.

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C. OTHER COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON STATE ADMINISTRATION:

Prepared by:

Staff Director:

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