

1 A bill to be entitled
 2 An act relating to use of an electronic wireless
 3 telecommunications device while driving; amending s.
 4 316.304, F.S.; providing definitions; providing for
 5 enhanced penalties for moving and nonmoving violations
 6 committed by persons under 18 years of age while using an
 7 electronic wireless communications device; providing for
 8 application; providing exceptions; authorizing a traffic
 9 enforcement officer to issue a warning and provide
 10 educational material; amending s. 318.18, F.S.; specifying
 11 the enhanced penalty amount; amending s. 322.27, F.S.;
 12 providing for a point assessment against the driver's
 13 license; providing an effective date.

14
 15 Be It Enacted by the Legislature of the State of Florida:

16
 17 Section 1. Section 316.304, Florida Statutes, is amended
 18 to read:

19 316.304 Use of listening or telecommunications devices
 20 ~~Wearing of headsets.--~~

21 (1) (a) No person shall operate a vehicle while wearing a
 22 headset, headphone, or other listening device, other than a
 23 hearing aid or instrument for the improvement of defective human
 24 hearing.

25 (b) ~~(2)~~ This subsection ~~section~~ does not apply to:

26 1. ~~(a)~~ Any law enforcement officer equipped with any
 27 communications ~~communication~~ device necessary in performing his

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28 or her assigned duties or to any emergency vehicle operator
29 equipped with any ear protection device.

30 2.~~(b)~~ Any applicant for a license to operate a motorcycle
31 while taking the examination required by s. 322.12(5).

32 3.~~(e)~~ Any person operating a motorcycle who is using a
33 headset that is installed in a helmet and worn so as to prevent
34 the speakers from making direct contact with the user's ears so
35 that the user can hear surrounding sounds.

36 4.~~(d)~~ Any person using a headset in conjunction with a
37 cellular telephone that only provides sound through one ear and
38 allows surrounding sounds to be heard with the other ear.

39 5.~~(e)~~ Any person using a headset in conjunction with
40 communicating with the central base operation that only provides
41 sound through one ear and allows surrounding sounds to be heard
42 with the other ear.

43 (c)~~(3)~~ The Department of Highway Safety and Motor Vehicles
44 shall adopt ~~promulgate~~, by administrative rule, standards and
45 specifications for headset equipment the use of which is
46 permitted under this subsection ~~section~~. The department shall
47 inspect and review all such devices submitted to it and shall
48 publish a list by name and type of approved equipment.

49 (d)~~(4)~~ A violation of this subsection ~~section~~ is a
50 noncriminal traffic infraction, punishable as a nonmoving
51 violation as provided in chapter 318.

52 (2) (a) For purposes of this subsection:

53 1. "Commercial mobile radio service" has the same meaning
54 as in 47 C.F.R. s. 20.3.

55 2. "Wireless telecommunications device" means a portable
56 telephone or other device used to access the services of a
57 commercial mobile radio service for the purpose of sending or
58 receiving voice, text, or other data, including, but not limited
59 to, computer data, electronic mail, electronic messages, game
60 data, music, pictures, text, or video. The term "wireless
61 telecommunications device" includes, but is not limited to, a
62 cellular telephone, cellular telephone accessory device,
63 computer, game machine, personal digital assistant, and text
64 messaging device but does not include a pager or private mobile
65 radio service device.

66 (b) A person who has not attained 18 years of age who
67 violates any provision of this chapter while using an electronic
68 wireless telecommunications device shall, unless issued a
69 warning under paragraph (d), pay an enhanced penalty under s.
70 318.18(20) and, in the case of a moving violation, have one
71 additional point assessed against his or her driver's license
72 under s. 322.27. This paragraph does not apply if the device is
73 specifically designed and configured to allow hands-free
74 operation and is used in that manner.

75 (c) This subsection does not apply to a person using an
76 electronic wireless telecommunications device to:

- 77 1. Report illegal activity;
- 78 2. Summon medical or other emergency help; or
- 79 3. Prevent injury to a person or property.

80 (d) A traffic enforcement officer may issue a warning for
81 use of the electronic wireless telecommunications device in lieu
82 of the enhanced penalty and may also provide the person with

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83 educational material, if available, about using such devices
84 while driving and about distracted driving. Any such educational
85 material distributed by the officer must be approved by the
86 Department of Highway Safety and Motor Vehicles prior to
87 distribution.

88 Section 2. Subsection (20) is added to section 318.18,
89 Florida Statutes, as amended by chapter 2009-6, Laws of Florida,
90 to read:

91 318.18 Amount of penalties.--The penalties required for a
92 noncriminal disposition pursuant to s. 318.14 or a criminal
93 offense listed in s. 318.17 are as follows:

94 (20) In addition to any penalties imposed, an additional
95 \$50 must be paid for any noncriminal moving or nonmoving traffic
96 violation committed by a person who has not attained 18 years of
97 age while using an electronic wireless telecommunications device
98 as provided in s. 316.304.

99 Section 3. Paragraph (d) of subsection (3) of section
100 322.27, Florida Statutes, is amended to read:

101 322.27 Authority of department to suspend or revoke
102 license.--

103 (3) There is established a point system for evaluation of
104 convictions of violations of motor vehicle laws or ordinances,
105 and violations of applicable provisions of s. 403.413(6)(b) when
106 such violations involve the use of motor vehicles, for the
107 determination of the continuing qualification of any person to
108 operate a motor vehicle. The department is authorized to suspend
109 the license of any person upon showing of its records or other
110 good and sufficient evidence that the licensee has been

111 convicted of violation of motor vehicle laws or ordinances, or
 112 applicable provisions of s. 403.413(6)(b), amounting to 12 or
 113 more points as determined by the point system. The suspension
 114 shall be for a period of not more than 1 year.

115 (d) The point system shall have as its basic element a
 116 graduated scale of points assigning relative values to
 117 convictions of the following violations:

- 118 1. Reckless driving, willful and wanton--4 points.
- 119 2. Leaving the scene of a crash resulting in property
 120 damage of more than \$50--6 points.
- 121 3. Unlawful speed resulting in a crash--6 points.
- 122 4. Passing a stopped school bus--4 points.
- 123 5. Unlawful speed:
 - 124 a. Not in excess of 15 miles per hour of lawful or posted
 125 speed--3 points.
 - 126 b. In excess of 15 miles per hour of lawful or posted
 127 speed--4 points.
- 128 6. A violation of a traffic control signal device as
 129 provided in s. 316.074(1) or s. 316.075(1)(c)1.--4 points.
- 130 7. All other moving violations (including parking on a
 131 highway outside the limits of a municipality)--3 points.
 132 However, no points shall be imposed for a violation of s.
 133 316.0741 or s. 316.2065(12).
- 134 8. Any moving violation covered above, excluding unlawful
 135 speed, resulting in a crash--4 points.
- 136 9. Any conviction under s. 403.413(6)(b)--3 points.
- 137 10. Any conviction under s. 316.0775(2)--4 points.

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138 | 11. In addition to the points assessed under subparagraphs
139 | 1.-10., any violation committed by a person who has not attained
140 | 18 years of age while using an electronic wireless
141 | telecommunications device as provided in s. 316.304(2)--1 point.

142 | Section 4. This act shall take effect October 1, 2009.