

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Transportation and Economic Development Appropriations Committee

BILL: CS/SB 448

INTRODUCER: Transportation Committee and Senator Detert

SUBJECT: Electronic Wireless Communications Device/Driving

DATE: April 14, 2010 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	McManus	Meyer	TR	Fav/CS
2.	White	Caldwell	CU	Favorable
3.	Carey	Noble	TA	Favorable
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE..... Statement of Substantial Changes

B. AMENDMENTS..... Technical amendments were recommended

Amendments were recommended

Significant amendments were recommended

I. Summary:

This bill is the “Florida Ban on Texting While Driving Law”, modeled after a Sample Law recently promulgated by the United States Department of Transportation (USDOT). The bill prohibits the operation of a motor vehicle while manually typing or entering multiple letters, numbers, symbols, or other text in a wireless communication device, or sending or reading data in the device, for the purpose of non-voice interpersonal communication. The bill makes exceptions for emergency workers reporting emergencies or suspicious activities, and for receiving various types of navigation information, emergency traffic data, and radio broadcasts. The bill also makes an exception for interpersonal communications that can be conducted without the need to manually type messages.

The prohibition is enforceable as a secondary offense. A first violation is punishable as a nonmoving violation, with a fine of \$30 plus court costs which vary by county; the total fine plus court costs and fees ranges from \$78 to \$129. A second violation committed within 5 years of the first is a moving violation punishable by a \$60 fine plus court costs, resulting in a total fine and costs of \$128 to \$179.

In addition to these penalties, any violation of the ban which results in a crash will result in 6 points added to the offender’s driver’s license record.

This bill may generate additional revenues for local and state governments as a result of the penalties for using wireless communications devices for texting purposes while operating a motor vehicle.

The bill has an effective date of October 1, 2010.

This bill creates s. 316.305, F.S., and substantially amends s. 322.27, F.S.

II. Present Situation:

Laws in other states

Public concern over distracted driving has resulted in a number of jurisdictions making it illegal to use hand-held cellular telephones for talking and/or texting while driving. In November 2001, New York became the first state to implement a ban on hand-held cellular telephone use for drivers. The District of Columbia passed a ban in 2004. Connecticut's ban took effect in 2005. Nineteen states and the District of Columbia have passed a ban on text-while-driving for all drivers. The National Conference of State Legislators has the following chart detailing each state’s cellular telephone use laws.¹

States	Hand-held ban	All cell phone ban	Texting ban	Enforcement
Alabama	No	No	No	Not applicable
Alaska	No	No	All drivers	Primary
Arizona	No	School bus drivers	No	Primary
Arkansas	No	School bus drivers, drivers younger than 18	School bus drivers, all drivers	Primary for texting by all drivers and cell phone use by school bus drivers; secondary for cell phone use by young drivers
California	All drivers	School and transit bus drivers and drivers younger than 18	All drivers	Primary
Colorado	No	Drivers younger than 18	All drivers	Primary
Connecticut	All drivers	Learner's permit holders, drivers younger than 18, and school bus drivers	All drivers	Primary
Delaware	No	School bus drivers and learner's permit and intermediate license holders	Learner's permit and intermediate license holders	Primary
District of Columbia	All drivers	School bus drivers and learner's permit holders	All drivers	Primary
Florida	No	No	No	Not applicable
Georgia	No	School bus drivers	No	Primary
Hawaii	No	No	No	Not applicable

¹ “Cell Phone Use and Texting While Driving Laws,” updated November 12, 2009. Available online at, www.NCSL.org, Document No. 17057.

Idaho	No	No	No	Not applicable
Illinois	Drivers in construction and school speed zones	Learner's permit holders younger than 19, drivers younger than 19, and school bus drivers	All drivers	Primary
Indiana	No	Drivers under the age of 18.	Drivers under the age of 18.	Primary
Iowa	No	No	No	Not applicable
Kansas	No	Learner's permit and intermediate license holders	Learner's permit and intermediate license holders	Primary
Kentucky	No	School bus drivers	No	Primary
Louisiana	No	School bus drivers, learner's permit and intermediate license holders, drivers under age 18	All drivers	Secondary, primary for school bus drivers
Maine**	No	Learner's permit and intermediate license holders	Learner's permit and intermediate license holders	Primary
Maryland	No	Learner's permit and intermediate license holders	All drivers	Primary for texting
Massachusetts	Local option	School bus drivers	No	Primary
Michigan	Local option	No	No	Not applicable
Minnesota	No	School bus drivers, learner's permit holders, and provisional license holders during the first 12 months after licensing	All drivers	Primary
Mississippi	No	No	Learner's permit holders and intermediate license holders	Primary
Missouri	No	No	Drivers 21 years of age or younger	Primary
Montana	No	No	No	Not applicable
Nebraska	No	Learner's permit and intermediate license holders younger than 18	Learner's permit and intermediate license holders younger than 18	Not applicable
Nevada	No	No	No	Not applicable
New Hampshire	No	No	All drivers	Primary
New Jersey	All drivers	School bus drivers, and learner's permit and intermediate license holders	All drivers	Primary
New Mexico	Local option	No	No	Not applicable
New York	All drivers	No	All drivers	Secondary
North Carolina	No	Drivers younger than 18 and school bus drivers	All drivers	Primary
North Dakota	No	No	No	Not applicable
Ohio	Local option	No	No	Not applicable
Oklahoma	No	No	No	Not applicable

Oregon	All drivers	Drivers younger than 18	All drivers	Primary
Pennsylvania	Local option	No	No	Not applicable
Rhode Island	No	School bus drivers and drivers younger than 18	All drivers	Primary
South Carolina	No	No	No	Not applicable
South Dakota	No	No	No	Not applicable
Tennessee	No	School bus drivers, and learner's permit and intermediate license holders	All drivers	Primary
Texas	Drivers in school crossing zones	Bus drivers when a passenger 17 and younger is present; intermediate license holders for first 12 months	Bus drivers when a passenger 17 and younger is present; intermediate license holders for first 12 months, drivers in school crossing zones	Primary
Utah	See footnote*	No	All drivers	Primary for texting; secondary for talking on hand-held phone
Vermont	No	No	No	Not applicable
Virginia	No	Drivers younger than 18 and school bus drivers	All drivers	Secondary; primary for school bus drivers
Washington	All drivers	No	All drivers	Secondary
West Virginia	No	Drivers younger than 18 who hold either a learner's permit or an intermediate license	Drivers younger than 18 who hold either a learner's permit or an intermediate license	Primary
Wisconsin	No	No	No	Not applicable
Wyoming	No	No	No	Not applicable

While the content of state bans differs, studies have confirmed the effectiveness of bans at reducing phone use while driving.² Bans in Connecticut, New York, and The District of Columbia have reduced driver's cellular telephone usage between 41 and 70 percent.³ The researchers obtained those numbers by going out to street corners and exit ramps to observe how many people had cellular telephones up to their ears before the bans compared with after the bans. However, a new study by The Insurance Institute for Highway Safety provides discouraging information about collision claims in states with cellular telephone bans.⁴ According to the study, there seems to be no indication that these laws have decreased the accident rate.⁵

² McCartt, A.T. and Geary, L.L. 2004. *Longer term effects of New York State's law on drivers' handheld cell phone use*. Injury Prevention 10:11-15; McCartt, A.T. and Hellinga, L.A. 2007. *Longer term effects of Washington, DC, law on drivers' hand-held cell phone use*. Traffic Injury Prevention 8:199-204; McCartt, A.T.; Hellinga, L.A.; Strouse, L.M.; and Farmer, C.M. 2009. *Long-term effects of hand-held cellphone laws on driver hand-held cellphone use*. Traffic Injury Prevention, in press.

³ *Id.*

⁴ Highway Loss Data Institute, *Hand-Held Cellphone Laws and Collision Claim Frequencies*. Highway Loss Data Institute Bulletin, Vol. 26, No. 17, (Dec. 2009).

⁵ "Insurance collision loss experience does not indicate a decrease in crash risk when hand-held cellphone laws are enacted." *Id.* at 5.

Federal Sample Law:

USDOT has recently issued a “Sample Law” to prohibit texting while driving.⁶ Recognizing states have had some difficulty drafting language prohibiting dangerous behaviors, but allowing certain minimal uses of technology, USDOT requested the participation of several national groups to draft language satisfactory to all. Contributors to the Sample Law include: Advocates for Highway and Auto Safety, Alliance of Automobile Manufacturers, American Association of Motor Vehicle Administrators, American Association of State Highway and Transportation Officials, AAA, Centers for Disease Control and Prevention, CTIA- The Wireless Association, Governors Highway Safety Association, ITS America, International Association of Chiefs of Police, National Conference of State Legislatures, National Safety Council, The National Traffic Law Center of the National District Attorneys Association, and Safe Kids USA.

Florida Law

The state has expressly preempted all regulation of the use of electronic communications devices in a motor vehicle.⁷ There are currently no prohibitions related to texting or talking while driving. However, existing laws may apply more generally to distracted operators of motor vehicles. Operators of motor vehicles are in violation of existing statutes when driving carelessly or recklessly.

Careless driving is the failure to drive the same as other operators of motor vehicles, in a careful and prudent manner, having regard to all attendant circumstances, so as not to endanger the life, limb, or property of any person.⁸ Any person who violates the restriction against careless driving shall be cited for a moving violation.⁹

Reckless driving involves willful or wanton disregard for the safety of persons or property. Upon a first conviction, reckless driving is punishable by some combination of imprisonment,¹⁰ and at least a \$25 fine.¹¹ A second or subsequent conviction requires a fine of at least \$50,¹² but may also result in imprisonment for not more than 6 months. Additionally, reckless driving that causes damage to the property or person of another commits a misdemeanor of the first degree.¹³ Reckless driving that causes serious bodily injury¹⁴ to another commits a felony of the third degree.¹⁵

⁶ “SAMPLE LAW TO PROHIBIT TEXTING WHILE DRIVING,” USDOT Secretary Roy LaHood, February 2010. Secretary LaHood’s letter and the text of the Sample Law are available online at: http://www.nhtsa.gov/staticfiles/DOT/NHTSA/Rulemaking/Texting_Law_021910.pdf

⁷ s. 316.0075, F.S.

⁸ s. 316.1925, F.S.

⁹ Punishable as provided in ch. 318, F.S.

¹⁰ For a period of not more than 90 days. s. 316.192(2)(a), F.S.

¹¹ Not less than \$25 nor more than \$500. s. 316.192(2)(a), F.S.

¹² But no more than \$1,000. s. 316.192(2)(b), F.S.

¹³ Punishable as provided in ss. 775.082-.083, F.S.

¹⁴ The term “serious bodily injury” means an injury to another person, which consists of a physical condition that creates a substantial risk of death, serious personal disfigurement, or protracted loss or impairment of the function of any bodily member or organ. s. 316.192(3)(c)(2), F.S.

¹⁵ Punishable as provided in ss. 775.082-.084, F.S.

While prohibitions exist against vehicle operators wearing headsets, headphones, or other listening devices, there are exceptions.¹⁶ A driver is permitted to use a headset in conjunction with a cellular telephone that only provides sound through one ear and allows surrounding sounds to be heard with the other ear.¹⁷ The Department of Highway Safety and Motor Vehicles (DHSMV) is granted further rulemaking authority to detail the standards and specifications of radio equipment permitted by statute.¹⁸ DHSMV inspects and reviews all such devices submitted to it and publishes a list by name and type of approved equipment.

Section 322.27(3), F.S., provides a point system used to evaluate the qualification of any person to operate a motor vehicle after accumulating multiple violations of motor vehicle laws. Moving violations typically result in assessment of three points, unless the infraction or offense is among those considered more serious. For example, pursuant to s. 322.27(3)(d), F.S., reckless driving, passing a stopped school bus, and speeding in excess of 15 mph over the posted limit all require assessment of four points. Leaving the scene of a crash and speeding resulting in a crash require assessment of six points.

DHSMV may suspend a driver for 30 days if the driver accumulates 12 or more points within a 12-month period,¹⁹ up to three months if the driver accumulates 18 points in 18 months,²⁰ and up to one year if the driver accumulates 24 points within 36 months.²¹

III. Effect of Proposed Changes:

The bill draws heavily on the Sample Law developed by USDOT, particularly with regard to the express legislative intent and the prohibition itself. The penalties are modified somewhat to provide a graduated approach and to integrate with existing Florida Statutes.

Specific Intent

The bill prohibits any driver from operating a motor vehicle while using a wireless communication device. The bill's specific intention is to

- Improve roadway safety for motor vehicle operators, passengers, bicyclists, pedestrians and all other road users;
- Prevent crashes related to the act of text messaging;
- Reduce injuries, death, property damage, health care costs, health insurance, and automobile insurance rates related to motor vehicle crashes; and
- Authorize law enforcement officers to issue citations for text messaging as a secondary offense.

¹⁶ s. 316.304, F.S.

¹⁷ s. 316.304(2)(d), F.S.

¹⁸ s. 316.304(3), F.S.

¹⁹ Section 322.27(3)(a), F.S.

²⁰ Section 322.27(3)(b), F.S.

²¹ Section 322.27(3)(c), F.S.

Prohibition on Texting While Driving

To achieve these goals, the bill prohibits the operation of a motor vehicle “while manually typing or entering multiple letters, numbers, symbols, or other text in a wireless communication device, or sending or reading data in the device, for the purpose of non-voice interpersonal communication.”

The bill defines the term “wireless communication device” as any device designed or intended to receive or transmit written messages, access or store data, or connect electronically to the Internet or any other communications service²² and which allows text communications. The bill also specifies that for purposes of the prohibition on texting, a person is not operating a vehicle when legally parked. Violations are enforceable as secondary violations.

Exceptions

The bill makes exceptions for:

- Law enforcement, fire service, or emergency medical services personnel, or any operator of an authorized emergency vehicle as defined in s. 322.01, F.S.,²³ performing official duties;
- Reporting an emergency, or criminal or suspicious activity;
- Receiving messages related to:
 - The operation or navigation of a motor vehicle;
 - Safety-related information including emergency, traffic, or weather alerts;
 - Data used primarily by the motor vehicle; or
 - Radio broadcasts;
- Using a device or system for navigation purposes; or
- Conducting wireless interpersonal communication that does *not* require manual entry of multiple letters, numbers, or symbols, or reading text messages (except to activate or deactivate a feature or function).

²² “Communications service” itself is defined by reference to s. 812.15, F.S. In that statute, the term “communications service” means:

any service lawfully provided for a charge or compensation by any cable system or by any radio, fiber optic, photooptical, electromagnetic, photoelectronic, satellite, microwave, data transmission, Internet-based, or wireless distribution network, system, or facility, including, but not limited to, any electronic, data, video, audio, Internet access, microwave, and radio communications, transmissions, signals, and services, and any such communications, transmissions, signals, and services lawfully provided for a charge or compensation, directly or indirectly by or through any of those networks, systems, or facilities.

²³ Section 322.01(4), F.S., defines an “authorized emergency vehicle” as:

a vehicle that is equipped with extraordinary audible and visual warning devices, that is authorized by s. 316.2397 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. The term does not include wreckers, utility trucks, or other vehicles that are used only incidentally for emergency purposes.

Penalties

A penalty for a first violation of the prohibition is a non-moving violation, punishable as provided in ch. 318, F.S. Without a specified alternative amount, non-moving violations result in a \$30 fine, plus court costs which vary by jurisdiction. The total fine, plus court costs and fees, could range from \$78 to \$129.

If a person commits a second violation of the prohibition within 5 years of the first violation, the penalty is increased to a moving violation. Chapter 318, F.S., provides a \$60 fine plus court costs, resulting in a total fine and costs of \$128 to \$179, depending on jurisdiction.

With regard to the “repeat offense” portion of the penalty, it is worth noting s. 318.14(9), F.S., which permits a person to avoid a conviction for most traffic violations by attending a basic driver improvement course.²⁴ A violator may only make this election once in a 12-month period, and not more than 5 times in a 10 year period. In the event a person is stopped by a law enforcement officer, receives a traffic citation for a primary offense, and receives a citation for texting while driving as a secondary offense, it is conceivable the person could elect to use the driver improvement course to avoid a “conviction” for texting while driving (either on a first or subsequent violation of the texting ban). On the other hand, many primary offenses add points to a driver’s license so the driver would presumably elect to apply the driver improvement course to the primary citation and avoid the more immediate point penalty. A driver with frequent traffic offenses is not likely to encounter this scenario, as he or she has likely exhausted the available driver improvement course election available under s. 318.14(9), F.S.

The bill provides DHSMV will assign 6 points to the driver’s license of any driver whose use of a wireless communications device results in a crash (regardless of whether the offense is a first or subsequent offense). This is identical to the number of points that would apply to a driver’s license when the operator caused a crash as a result of unlawful speed.

The bill has an effective date of October 1, 2010.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

²⁴ The election is not available for speeding offenses, vehicle registration requirements, and driver’s license requirements, nor is the election available for holders of commercial driver’s licenses.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

An individual violating the prohibition would be subject to a civil penalty of \$78 to \$179, depending on the jurisdiction's court costs, and whether the violation is a first offense or a second or subsequent offense.

C. Government Sector Impact:

The bill may generate an indeterminate amount of revenue for both state and local law enforcement agencies, depending on the number of secondary violations issued by law enforcement officials, and the frequency with which violators commit subsequent violations, incurring large penalties.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Transportation on March 3, 2010:

Amendment 974140 deleted everything after the enacting clause. The language inserted is identical to HB 41 prohibiting texting while operating a motor vehicle.

B. Amendments:

None.