

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 Committee on Communications, Energy, and Public Utilities

BILL: SB 1078

INTRODUCER: Senator Soto

SUBJECT: Use of Wireless Communications Devices While Operating a Motor Vehicle

DATE: March 27, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wiehle	Caldwell	CU	Favorable
2.			TR	
3.			CJ	
4.			AP	

I. Summary:

SB 1078 makes it a second degree felony for a person to cause the death of a human being or a viable fetus as provided in s. 782.071, F.S., while operating a motor vehicle and using a wireless communications device in violation of the statutory ban on texting while driving. The offense is reclassified to a first degree felony under specified circumstances.

II. Present Situation:

Ban on Texting While Driving

Section 316.305, F.S., is the “Florida Ban on Texting While Driving Law,” which makes it unlawful for a person to operate a motor vehicle while manually typing or entering multiple letters, numbers, symbols, or other characters into a wireless communications device¹ or while sending or reading data on such a device for the purpose of nonvoice interpersonal communication, including, but not limited to, communication methods known as texting, e-mailing, and instant messaging. For the purposes of this statute, a motor vehicle that is stationary is not being operated and is not subject to this prohibition. Additionally, enforcement by state or local law enforcement agencies must be accomplished only as a secondary action when an

¹ 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 as defined in s. 812.15, F.S., and that allows text communications. Section 812.15(1)(d), F.S., defines the term “communications service” to mean 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.

operator of a motor vehicle has been detained for a suspected violation of another statute involving state uniform traffic control, motor vehicle licenses, or drivers' licenses.

The prohibition does not apply to a motor vehicle operator who is:

- Performing official duties as an operator of an authorized emergency vehicle, a law enforcement or fire service professional, or an emergency medical services professional.
- Reporting an emergency or criminal or suspicious activity to law enforcement authorities.
- Receiving messages that are:
 - Related to the operation or navigation of the 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.
- Conducting wireless interpersonal communication that does not require manual entry of multiple letters, numbers, or symbols, except to activate, deactivate, or initiate a feature or function.
- Conducting wireless interpersonal communication that does not require reading text messages, except to activate, deactivate, or initiate a feature or function.
- Operating an autonomous vehicle,² in autonomous mode.

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 a violation has been committed.

Vehicular Homicide

Section 782.071, F.S., creates the crime of vehicular homicide, which is the killing of a human being or of a viable fetus by any injury to the mother when the killing is caused by the operation of a motor vehicle by another in a reckless manner likely to cause the death of, or great bodily harm to, another. Vehicular homicide is a second degree felony, reclassified to a first degree felony if:

- at the time of the accident, the person knew, or should have known, that the accident occurred; and
- the person failed to give information and render aid as required by s. 316.062, F.S.

This paragraph does not require that the person knew that the accident resulted in injury or death.

For purposes of this section, a fetus is viable when it becomes capable of meaningful life outside the womb through standard medical measures.

² Section 316.003(90), F.S., defines the term "autonomous vehicle" to mean any vehicle equipped with autonomous technology. The term "autonomous technology" means technology installed on a motor vehicle that has the capability to drive the vehicle on which the technology is installed without the active control or monitoring by a human operator. The term excludes a motor vehicle enabled with active safety systems or driver assistance systems, including, without limitation, a system to provide electronic blind spot assistance, crash avoidance, emergency braking, parking assistance, adaptive cruise control, lane keep assistance, lane departure warning, or traffic jam and queuing assistant, unless any such system alone or in combination with other systems enables the vehicle on which the technology is installed to drive without the active control or monitoring by a human operator.

A right of action for civil damages exists under s. 768.19, F.S., under all circumstances, for all deaths described in this section.

In addition to any other punishment, the court may order the person to serve 120 community service hours in a trauma center or hospital that regularly receives victims of vehicle accidents, under the supervision of a registered nurse, an emergency room physician, or an emergency medical technician pursuant to a voluntary community service program operated by the trauma center or hospital.

Obligation to Provide Information and Render Aid

Section 316.062, F.S. requires that the driver of any vehicle involved in a crash resulting in injury to or death of any person or damage to any vehicle or other property which is driven or attended by any person to provide specified information to others involved in the crash and to a police officer. The driver also must render reasonable assistance to any person injured in the crash, including the carrying, or the making of arrangements for the carrying, of such person to a physician, surgeon, or hospital for medical or surgical treatment if it is apparent that treatment is necessary, or if such carrying is requested by the injured person. If none of these persons are in condition to receive the information and a police officer is not present, the driver may report the crash to the nearest office of a duly authorized police authority and submit the specified information. This statutory duty to give information to a police officer shall not be construed as extending to information which would violate the privilege of such person against self-incrimination.

III. Effect of Proposed Changes:

The bill creates s. 316.3035, F.S., making it a second degree felony for a person to cause the death of a human being or a viable fetus as provided in s. 782.071, F.S., while operating a motor vehicle and using a wireless communications device³ in violation of s. 316.305, F.S. The offense is reclassified to a first degree felony if:

- at the time of the accident, the person knew, or should have known, that the accident occurred; and
- the person failed to give information and render aid as required by s. 316.062, F.S.

These are the same penalties as in the current vehicular homicide statute.

The bill takes effect July 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

³ The bill defines the term “wireless communications device” to have the same meaning as provided in section 316.305, F.S., which is discussed above.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

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

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill will create an uncertain amount of additional costs for incarceration of people convicted of this new crime who could not have been convicted of vehicular homicide or other existing law.

VI. Technical Deficiencies:

The bill creates a new statute to make it a second degree felony for a person to cause the death of a human being or a viable fetus *as provided in section 782.071, F.S.*, while operating a motor vehicle and using a wireless communications device in violation of s. 316.305, F.S. The italicized cross-reference is ambiguous; it is uncertain how much of the cross-referenced statute is to be incorporated into the new statute. It could be intended to incorporate:

- the definition of the term “viable fetus”;
- the element of the killing of a viable fetus “by any injury to the mother”; or
- the entirety of the vehicular homicide statute, including the element of reckless driving.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 316.3035 of the Florida Statutes.

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

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

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
