

**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.)

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Prepared By: The Professional Staff of the Committee on Communications, Energy, and Public Utilities

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BILL: SB 246

INTRODUCER: Senator Sachs

SUBJECT: Texting While Driving

DATE: March 30, 2015

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wiehle	Caldwell	CU	<b>Favorable</b>
2.			TR	
3.			FP	

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**I. Summary:**

The bill makes a violation of the Texting While Driving Law a primary offense, allowing state or local law enforcement agencies to enforce the prohibition on texting while driving without the necessity of another violation related to motor vehicles. It also doubles the amount of the fine for a violation committed in a legally posted school zone or designated school crossing.

**II. Present Situation:**

**Florida Ban on Texting While Driving Law**

Section 316.305, F.S., is the “Florida Ban on Texting While Driving Law.” It prohibits a person from operating 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 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.

The prohibition does not apply when a motor vehicle is stationary or is not being operated or 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; or
- Operating an autonomous vehicle<sup>1</sup> in autonomous mode.

Enforcement of the prohibition by state or local law enforcement agencies must be accomplished only as a secondary action when an operator of a motor vehicle has been detained for a suspected violation of another provision of chapter 316, F.S., the “Florida Uniform Traffic Control Law”; chapter 320, F.S., relating to motor vehicle licenses; or chapter 322, F.S., relating to driver licenses.

Any person who violates the prohibition commits a noncriminal traffic infraction, punishable as a nonmoving violation. A second or subsequent violation within 5 years after the date of a prior conviction commits a noncriminal traffic infraction.

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 occurred.

As used in this section, 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<sup>2</sup> and that allows text communications.

Forty-four states and the District of Columbia currently have laws which ban texting while driving and list it as a primary offense<sup>3</sup>, meaning that a driver could be stopped by law enforcement officers solely on suspicion that the driver is texting while driving.

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<sup>1</sup> The term “autonomous vehicle” is defined by cross-reference to s. 316.003(90), F.S., which defines the term 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.

<sup>2</sup> The term “communications service” is defined by cross-reference to s. 812.15(1)(d), F.S., which defines the term 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.

<sup>3</sup>“Cellular Phone Use and Texting while Driving Laws,” updated June, 2014. Available online at, <http://www.ncsl.org/research/transportation/cellular-phone-use-and-texting-while-driving-laws.aspx>

As of January 12, 2015, Clerks of the Court had reported to the Department of Highway Safety and Motor Vehicles that a total of 2,061 citations related to texting while driving had been issued.

### **Designation of School Zones**

Section 316.1895, F.S., provides for the establishment and designation of school zones for purposes of establishing speed zones. It requires the Department of Transportation (DOT) to adopt a uniform system of traffic control devices and pedestrian control devices for use on the streets and highways in the state surrounding all schools, public and private. The DOT is also required to compile, publish, and transmit a manual containing all specifications and requirements with respect to the system of these devices to the governing body of each county and municipality in the state, and DOT and each county and municipality in the state must install and maintain such traffic and pedestrian control devices in conformity with such uniform system.

Permanent signs designating school zones and school zone speed limits must be uniform in size and color, and must have the times during which the restrictive speed limit is enforced clearly designated thereon. Flashing beacons activated by a time clock, or other automatic device, or manually activated may be used as an alternative to posting the times during which the restrictive school speed limit is enforced. Portable signs designating school zones and school zone speed limits also must be uniform in size and color and may be erected on the roadway only during those hours when pupils are arriving at and leaving regularly scheduled school sessions.

### **III. Effect of Proposed Changes:**

The bill makes a violation of the Texting While Driving Law a primary offense, allowing state or local law enforcement agencies to enforce the prohibition on texting while driving without the necessity of another violation related to motor vehicles.

It also doubles the amount of the fine for a violation committed in a legally posted school zone or designated school crossing.

The bill takes effect October 1, 2015.

### **IV. Constitutional Issues:**

#### **A. Municipality/County Mandates Restrictions:**

None.

#### **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:**

An individual violating the prohibition would be subject to civil penalties and points being assigned to his or her driver license and to increased fines, depending on 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 violations issued by law enforcement officials and the frequency with which violators commit subsequent violations, thereby incurring larger penalties.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

The statute provides exceptions to the prohibition, which may make it difficult for law enforcement officers to determine whether an individual is in violation of the prohibition. Additionally, the statute forbids the use of billing records except “in the event of a crash resulting in death or personal injury.” These factors may make it difficult to enforce and prosecute the prohibition, even with primary enforcement authority.

**VIII. Statutes Affected:**

This bill substantially amends section 316.305 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.