

**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 270

INTRODUCER: Senator Soto

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

DATE: March 30, 2015

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

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

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**I. Summary:**

The bill makes it a felony to cause the death of a human being or an unborn child<sup>1</sup> while operating a motor vehicle and using a wireless communications device in violation of the Florida Ban on Texting While Driving Law. It generally is a felony of the third degree but is a felony of the second degree 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.

**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 to motor vehicle that is stationary is not being operated or to a motor vehicle operator who is:

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<sup>1</sup> The term “unborn child” is defined by cross-references to mean a member of the species Homo sapiens, at any stage of development, who is carried in the womb.

- 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>2</sup> as defined in, 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.

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>3</sup> and that allows text communications.

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<sup>2</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>3</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

Forty-four states and the District of Columbia currently have laws which ban texting while driving and list it as a primary offense<sup>4</sup>, meaning that a driver could be stopped by law enforcement officers solely on suspicion of texting while driving.

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.

### **Vehicular homicide**

Section 782.071, F.S., defines the term “vehicular homicide” as the killing of a human being, or the killing of an unborn child<sup>5</sup> by any injury to the mother, 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 felony of the second degree or a felony of the first degree 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.

The person is not required to know that the accident resulted in injury or death.

The driver of a vehicle involved in a crash resulting in injury to or death of a person or damage to a vehicle or other property which is driven or attended by a person must give their name, address, and the registration number of the vehicle they are driving, and upon request and if available, exhibit their license or permit to drive, to a person injured in such crash or to the driver or occupant of or person attending a vehicle or other property damaged in the crash. The driver must also give this information to a police officer at the scene of the crash or investigating the crash. The driver must render to a person injured in the crash reasonable assistance, 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.

### **Killing of unborn child by injury to mother<sup>6</sup>**

The unlawful killing of an unborn child by any injury to the mother which would be murder if it resulted in the death of such mother is deemed murder in the same degree as that which would have been committed against the mother.

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lawfully provided for a charge or compensation, directly or indirectly by or through any of those networks, systems, or facilities.

<sup>4</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>

<sup>5</sup> The statute defines the term “unborn child” by cross-reference to section 775.021(5)(e), F.S., which defines the term to mean a member of the species Homo sapiens, at any stage of development, who is carried in the womb.

<sup>6</sup> Section 782.09, F.S.

**III. Effect of Proposed Changes:**

The bill makes it a felony to cause the death of a human being or an unborn child<sup>7</sup> while operating a motor vehicle and using a wireless communications device in violation of the Florida Ban on Texting While Driving Law. It generally is a felony of the third degree but is a felony of the second degree 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.

The bill takes effect July 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.

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<sup>7</sup> The term “unborn child” is defined by cross-references to mean a member of the species *Homo sapiens*, at any stage of development, who is carried in the womb.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill creates section 316.3051 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.