

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 Appropriations Subcommittee on Transportation, Tourism, and Economic Development

BILL: CS/SB 90

INTRODUCER: Communications, Energy, and Public Utilities Committee and Senator Perry and others

SUBJECT: Use of Wireless Communications Devices While Driving

DATE: January 22, 2018

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Wiehle</u>	<u>Caldwell</u>	<u>CU</u>	<u>Fav/CS</u>
2.	<u>Jones</u>	<u>Miller</u>	<u>TR</u>	<u>Favorable</u>
3.	<u>Wells/Hrdlicka</u>	<u>Hrdlicka</u>	<u>ATD</u>	<u>Pre-meeting</u>
4.	_____	_____	<u>AP</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 90 amends s. 316.305, F.S., to authorize a law enforcement officer to enforce the ban on texting while driving without first detaining the operator of the motor vehicle for suspected violation of another provision. The bill requires that all penalties collected for a violation of the ban be remitted to the Department of Revenue for deposit into the Emergency Medical Services Trust Fund of the Department of Health (DOH). Finally, the bill requires a law enforcement officer who has stopped a person for texting while driving to inform the person of the right to decline a search of his or her wireless communications device.

Due to the redistribution of the civil penalty revenues associated with texting while driving, the bill will decrease revenues otherwise distributed to the General Revenue Fund, a number of state trust funds, the clerks of court, and municipalities. The Emergency Medical Services Trust Fund of the DOH will have an increase in revenues for distribution.

The bill takes effect October 1, 2018.

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 bans a person from operating a motor vehicle while using a wireless communications device¹ in specified ways. Enforcement is permitted only as a secondary action when an operator of a motor vehicle has been detained for a suspected violation of another provision of ch. 316, F.S., the “Florida Uniform Traffic Control Law,” ch. 320, F.S., relating to motor vehicle licenses, or ch. 322, F.S., relating to driver licenses.

More specifically, the statute bans operation of a motor vehicle either 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 non-voice interpersonal communication.² The ban does not apply to a stationary motor vehicle or to a motor vehicle operator who is:

- Performing official duties as an operator of an authorized emergency vehicle,³ 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 in autonomous mode.

Any person who violates the ban commits a noncriminal traffic infraction. A first violation is punishable as a nonmoving violation, and a second or subsequent violation within 5 years after the date of a prior conviction is punishable as a moving violation.⁴

¹ The statute defines the term “wireless communications device” to mean 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.

² This includes but is not limited to texting, e-mailing, and instant messaging.

³ The term “authorized emergency vehicle” is defined in s. 322.01(4), F.S., to mean a vehicle that is equipped with extraordinary audible and visual warning devices, that is authorized 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; it does not include wreckers, utility trucks, or other vehicles that are used only incidentally for emergency purposes.

⁴ In 2016 there were 1,404 citations issued for a nonmoving violation and 29 citations issued for a moving violation of the ban. See DHSMV, *Annual Uniform Traffic Citation Report*, available at <https://services.flhsmv.gov/specialtyplates/uniformtrafficcitationreport> (last visited Jan.16, 2018).

Drivers convicted of unlawful use of a wireless communications device that results in a crash will have six points assessed against their driver license,⁵ and drivers convicted of unlawful use of a wireless communications device within a school safety zone are assessed an additional two points.⁶

A user's billing records for a wireless communications device or the testimony of or written statements from appropriate authorities receiving such messages are admissible as evidence in any proceeding to determine whether a violation of the ban has been committed only in the event of a crash resulting in death or personal injury.

Texting While Driving Bans in Other States

As of July 2017, texting while driving violations are enforced as a "primary" offense in 43 states, meaning that in those states a law enforcement officer does not first have to detain the operator of the motor vehicle for suspected violation of another motor vehicle-related law in order to enforce the texting while driving law.⁷

Traffic Infraction Civil Penalties

Section 318.18, F.S., provides for penalties for traffic infractions and establishes a penalty of \$30 for a nonmoving traffic violation and \$60 for a moving violation.⁸

Section 318.21, F.S., requires counties to distribute all traffic infraction civil penalties monthly to various trust funds or entities, including distributing 7.2 percent to the Department of Revenue for deposit in the Department of Health's Emergency Medical Services Trust Fund. Funds deposited into the Emergency Medical Services Trust Fund are dispensed for specific purposes set forth in s. 401.113, F.S., to improve and expand prehospital emergency medical services in the state. The other various trust funds or entities receiving a portion of the penalties include the:

- Child Welfare Training Trust Fund;
- Juvenile Justice Training Trust Fund;
- Municipalities;
- General Revenue Fund;
- Additional Court Cost Clearing Trust Fund;
- Brain and Spinal Cord Injury Program Trust Fund;
- Florida Endowment Foundation for Vocational Rehabilitation;
- Circuit Court Clerks; and
- Special Improvement Districts of the Seminole or Miccosukee Indian Tribes.

⁵ Section 322.27(3)(d)3., F.S.

⁶ Section 322.27(3)(d)11., F.S.

⁷ Governors Highway Safety Association, *Distracted Driving Laws by State* (July 2017), available at http://www.ghsa.org/sites/default/files/2017-07/DistractedDrivingLawChart_July17.pdf (last visited Jan. 19, 2018).

⁸ After court costs, the final amount paid could be up to \$108 for a nonmoving traffic violation and up to \$158 for a moving violation. See The Florida Court Clerks and Comptrollers, *Distribution Schedule* (July 2017), available at http://c.ymcdn.com/sites/www.flclerks.com/resource/resmgr/publicationsanddocuments/2017_Distribution_Schedule_7.pdf (last visited Jan. 19, 2018).

Searches of Wireless Communication Devices

The Fourth Amendment of the United States Constitution and Art. I, s. 12 of the State Constitution guarantee an individual's right to be free from unreasonable searches and seizures. A law enforcement officer may request an individual's consent to search the individual's wireless communications device, and the individual has the right to grant or deny consent. Courts have held that an officer has no duty to inform an individual that he or she has the right to refuse consent to the search and proof that an individual independently had such knowledge of his or her right to refuse is not necessary. However, a court can take into account, as a factor in determining whether consent was given freely and voluntarily, such information or knowledge.⁹

If an officer places an individual under arrest, the officer may assume possession of the wireless communications device but, in general, has no authority to search the device as a search incident to arrest and must obtain a search warrant based upon probable cause in order to search the device.¹⁰

III. Effect of Proposed Changes:

The bill authorizes enforcement of the texting while driving ban as a "primary" offense. Under the bill, a law enforcement officer may detain an operator of a motor vehicle for suspected violation of the texting while driving ban without having first detained the operator for suspected violation of another motor vehicle-related law.

The bill also requires that all penalties collected for a violation of the ban on texting while driving be remitted to the Department of Revenue for deposit into the Emergency Medical Services Trust Fund of the Department of Health.

Finally, the bill requires that a law enforcement officer who has stopped a person for texting while driving inform the person of the right to decline a search of his or her wireless communications device.

The bill takes effect October 1, 2018.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

⁹ *State v. Diaz*, 549 So.2d 759, 760-761 (3rd DCA, 1989).

¹⁰ *Smallwood v. State*, 113 So.3d 724, 740 (Fla. 2013).

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

None.

B. Private Sector Impact:

Operators of motor vehicles who are texting while driving will have an increased likelihood of being cited for a violation of the ban, and being required to pay civil penalties.

C. Government Sector Impact:

The Emergency Medical Services Trust Fund of the Department of Health will receive 100 percent of the civil penalties imposed relating to violations of texting while driving instead of only the current 7.2 percent. This will result in an indeterminate increase in revenues deposited into that trust fund. The other current recipients will no longer receive any of the revenues associated with the civil penalties, resulting in indeterminate decreases in revenues distributed to the following:

- Child Welfare Training Trust Fund;
- Juvenile Justice Training Trust Fund;
- Municipalities;
- General Revenue Fund;
- Additional Court Cost Clearing Trust Fund;
- Brain and Spinal Cord Injury Program Trust Fund;
- Florida Endowment Foundation for Vocational Rehabilitation;
- Circuit Court Clerks; and
- Special Improvement Districts of the Seminole or Miccosukee Indian Tribes.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 316.305 of the Florida Statutes.

IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Communications, Energy, and Public Utilities on October 24, 2017:

- Requires that a law enforcement officer who has stopped a person for texting while driving inform the person of the right to decline a search of his or her wireless communications device.

- B. **Amendments:**

None.

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