

**HOUSE OF REPRESENTATIVES STAFF ANALYSIS
FINAL BILL ANALYSIS**

BILL #: CS/HB 107 Wireless Communications While Driving
SPONSOR(S): Transportation & Infrastructure Subcommittee; Toledo; Slosberg and others
TIED BILLS: **IDEN./SIM. BILLS:** CS/CS/CS/CS/SB 76

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Transportation & Infrastructure Subcommittee	13 Y, 0 N, As CS	Roth	Vickers
2) State Affairs Committee	20 Y, 0 N	Roth	Williamson

FINAL HOUSE FLOOR ACTION: 108
GOVERNOR'S ACTION: 7
Approved
Y's N's

SUMMARY ANALYSIS

CS/HB 107 passed the House on April 23, 2019. The bill was amended in the Senate on April 25, 2019, and returned to the House. The House concurred in the Senate amendment and subsequently passed the bill as amended on April 29, 2019.

The Florida Ban on Texting While Driving Law prohibits a person from texting, emailing, and instant messaging while driving for the purpose of nonvoice interpersonal communication. Enforcement is as a secondary action, which means a law enforcement officer must detain a driver for another traffic offense in order to cite the driver for texting while driving. There are certain exceptions to the prohibition. In addition, the ban does not apply to a stationary motor vehicle.

Effective July 1, 2019, the bill changes enforcement of the existing texting while driving ban from a secondary offense to a primary offense. The bill does not change existing penalties and exceptions to the texting ban.

Effective October 1, 2019, the bill prohibits the use of a handheld wireless communications device while driving in a designated school crossing, school zone, or work zone area. From October 1, 2019, to December 31, 2019, law enforcement officers may provide a verbal or written warning and beginning January 1, 2019, may issue a uniform traffic citation for a violation, which is punishable as a moving violation with three points assessed against the driver's license.

The bill prohibits a law enforcement officer from accessing a wireless communications device without a warrant, and requires a law enforcement officer to record and report certain information when a citation is issued. The Department of Highway Safety and Motor Vehicles, in consultation with the Department of Transportation, may implement a statewide awareness campaign on the texting while driving ban and the ban on the use of handheld devices.

To the extent there is an increase in the number of traffic citations issued because of the changes to enforcement of the ban on the use of wireless communications devices while driving, state and local governments may realize a positive fiscal impact; however, the fiscal impact cannot be quantified and is indeterminate.

The bill was approved by the Governor on May 17, 2019, ch. 2019-44, L.O.F., and will become effective on July 1, 2019, except as otherwise provided.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h0107z.TIS.DOCX

DATE: 5/20/2019

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Present Situation

Prohibitions on the Use of Wireless Communications Devices While Driving

Studies show that texting, which simultaneously involves manual, visual, and cognitive distraction, is among the worst of all driver distractions. According to the National Highway Traffic Safety Administration, sending or reading a text message takes a person's eyes off the road for an average of five seconds, which at 55 mph is the equivalent of driving the length of a football field with one's eyes closed.¹

As of April 2018, 47 states had banned texting while driving for all drivers and of those states, 43 allow for primary enforcement of the texting prohibition.² Only three states—Arizona, Missouri, and Montana—have not passed a texting ban for all drivers.³ Two of those states—Arizona and Montana—have no ban for drivers while Missouri passed a ban on texting for drivers 21 years or younger.⁴ Sixteen states, the District of Columbia, Puerto Rico, Guam, and the United States Virgin Islands enforce prohibitions on the use of a handheld wireless communications device while driving.⁵ Additionally, Arkansas, Tennessee, and Texas have handheld bans for drivers in school zones, work zones, or both.⁶

Florida's Ban on Texting While Driving

Enacted in 2013,⁷ s. 316.305, F.S., is the "Florida Ban on Texting While Driving Law." The intent of the statute is to:

- Improve roadway safety for all vehicle operators, vehicle passengers, bicyclists, pedestrians, and other road users.
- Prevent crashes related to the act of text messaging while driving a motor vehicle.
- Reduce injuries, deaths, property damage, health care costs, health insurance rates, and automobile insurance rates related to motor vehicle crashes.
- Authorize law enforcement officers to stop motor vehicles and issue citations as a secondary offense to persons who are texting while driving.⁸

A person may not operate 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 a wireless communications device for the purpose of nonvoice interpersonal communication. Nonvoice interpersonal communication includes, but is not limited to, texting, e-mailing, and instant messaging. For purposes of the ban on texting while driving, the term "wireless communications device" means any handheld device used or capable of being used in a handheld manner, that is

¹ National Highway Traffic Safety Administration, *Distracted Driving*, available at <https://www.nhtsa.gov/risky-driving/distracted-driving> (last viewed March 14, 2019).

² National Conference of State Legislatures, *Cellular Phone Use and Texting While Driving Laws*, April 30, 2018, available at <http://www.ncsl.org/research/transportation/cellular-phone-use-and-texting-while-driving-laws.aspx> (last visited February 25, 2019).

³ *Id.*

⁴ *Id.*

⁵ Governors Highway Safety Association, *Distracted Driving Laws by State* (April 2018), available at https://www.ghsa.org/sites/default/files/2018-06/DistractedDrivingLawChart_Jun18.pdf (last visited May 9, 2019).

⁶ National Conference of State Legislatures, *Cellular Phone Use and Texting While Driving Laws*, April 30, 2018, available at <http://www.ncsl.org/research/transportation/cellular-phone-use-and-texting-while-driving-laws.aspx> (last visited May 9, 2019).

⁷ Chapter 2013-58, L.O.F.

⁸ Section 316.305(2), F.S.

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 and that allows text communications.⁹

A stationary motor vehicle is not subject to the statutory ban on texting while driving.¹⁰ In addition, the ban does not apply to a motor vehicle operator who is:

- A first responder operating an emergency vehicle¹¹ while performing his or her official duties.
- Reporting an emergency, criminal activity, or suspicious activity to law enforcement authorities.
- Receiving messages that are related to the operation or navigation of the motor vehicle, safety-related, data used primarily by the motor vehicle, or radio broadcasts.
- Using a navigation device or system.
- Conducting wireless interpersonal communication that does not require manual entry of information or require reading text messages, except to activate, deactivate, or initiate a feature or function.
- Operating an autonomous vehicle¹² in autonomous mode.¹³

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 the offense of texting while driving has been committed.¹⁴

A first violation of the ban on texting while driving is a nonmoving violation and carries a \$30 fine plus court costs,¹⁵ which could result in a total fine up to \$108.¹⁶ A second or subsequent violation of the ban committed within five years after the date of a prior conviction is a moving violation with three points added to the driver license record and carries a \$60 fine plus court costs,¹⁷ which could result in a total fine up to \$158.¹⁸ In addition to these penalties, any violation of the ban that causes a crash results in six points added to the offender's driver license record.¹⁹ Any violation of the ban committed in conjunction with any moving violation for which points are assessed, when committed within a school safety zone, results in an additional two points added to the offender's driver license record.²⁰

As previously noted, enforcement of the ban on texting while driving by state or local law enforcement agencies is as a secondary action only. A motor vehicle operator must be detained for a suspected violation of another traffic violation in order to be cited for texting while driving.²¹

⁹ Section 316.305(3)(a), F.S.

¹⁰ *Id.*

¹¹ Section 322.01(4), F.S., defines "authorized emergency vehicle" as 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.

¹² Section 316.003(2), F.S., defines "autonomous vehicle" as any vehicle equipped with autonomous technology.

¹³ Section 316.305(3)(b), F.S.

¹⁴ Section 316.305(3)(c), F.S.

¹⁵ Section 316.305(4)(a), F.S.; *see also* Ch. 318, F.S.

¹⁶ Florida Court Clerks and Comptrollers, *2018 Distribution Schedule of Court-Related Filing Fees, Service Charges, Costs and Fines*, p. 19, available at: https://cdn.ymaws.com/www.flclerks.com/resource/resmgr/public_documents_/2018_distribution_schedule_1.pdf (last visited January 16, 2019).

¹⁷ Section 316.305(4)(b), F.S.; *see also* Ch. 318, F.S., and s. 322.27(3)(d)7., F.S.

¹⁸ Florida Court Clerks and Comptrollers, *supra* at 16, p. 21.

¹⁹ Section 322.27(3)(d)3., F.S.

²⁰ Section 322.27(3)(d)11., F.S.

²¹ Section 316.305(5), F.S.

According to the Department of Highway Safety and Motor Vehicles (DHSMV), the following number of uniform traffic citations were issued from 2014 to 2018 for texting while driving:²²

Year	Texting First Offense	Texting Subsequent Offense	School Zone First Offense	School Zone Subsequent Offense
2014	1,598	18	20	11
2015	1,367	25	14	12
2016	1,394	11	16	18
2017	1,615	7	14	20
2018	1,604	5	25	34
Total	7,578	66	89	95

Law Enforcement Access to Cell Phones

Court Decisions

In 2013, the Florida Supreme Court found that while it is proper to separate a suspect from his or her cell phone incident to an arrest, a warrant is required before the information, data, and contents of the cell phone can be accessed by law enforcement.²³ In 2014, the United States Supreme Court unanimously held that, in general, law enforcement is not permitted to search a person's cell phone incident to an arrest without a warrant and that the search of a cell phone implicates privacy concerns far beyond those implicated by searching other objects.²⁴

Florida Law

Section 316.646, F.S., authorizes digital proof of automobile insurance. The statute provides that the act of presenting to a law enforcement officer an electronic device displaying proof of insurance in an electronic format does not constitute consent for the officer to access any other information on the device other than the displayed proof of insurance.

Traffic Infraction Civil Penalties

Section 318.18, F.S., provides penalties for traffic infractions and establishes a penalty of \$30 for a nonmoving traffic violation and \$60 for a moving violation.²⁵ Section 318.21, F.S., provides for distribution of all civil penalties for traffic infractions that are received by a county court.

Driver Improvement Schools

DHSMV has the authority to approve and regulate courses for driver improvement schools, including courses that use technology as a delivery method.²⁶ In determining whether to approve a course, DHSMV considers course content designed to promote safety, driver awareness, crash avoidance techniques, and other factors or criteria to improve driver performance from a safety viewpoint.²⁷ In addition to regular course costs, an assessment of \$2.50 is collected for the driver improvement course from each person who elects to attend a course. The course provider must remit the \$2.50 assessment to DHSMV for deposit into the Highway Safety Operating Trust Fund in order to receive unique course

²² Email from Kevin Jacobs, Deputy Legislative Affairs Director, Department of Highway Safety and Motor Vehicles, RE: HB 107, (January 17, 2019).

²³ *Smallwood v. State of Florida*, 113 So. 3d 724 (Fla. 2013).

²⁴ *Riley v. California*, 134 U.S. 2473 (2014).

²⁵ After the addition of court costs and service charges, 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 2018), available at https://cdn.ymaws.com/www.flclerks.com/resource/resmgr/public_documents_/2018_distribution_schedule_1.pdf (last visited May 9, 2019).

²⁶ Section 318.1451(1), F.S.

²⁷ Section 318.1451(2)(a), F.S.

completion certificate numbers for course participants.²⁸ The assessment fee is used to administer the program and fund the general operations of DHSMV.

Effect of the Bill

Beginning July 1, 2019, the bill amends the Florida Ban on Texting While Driving Law to change the current enforcement of the ban on texting while driving from secondary to primary. This change will allow a law enforcement officer to detain a motor vehicle operator solely for texting while driving. The current penalties for a violation of the Florida Ban on Texting While Driving Law remain unchanged.

Beginning October 1, 2019, the bill prohibits the use of a handheld wireless communications device while driving in a designated school crossing, school zone, or work zone area. The prohibition only applies to a work zone area if construction personnel are present or are operating equipment on the road or immediately adjacent to the area. From October 1, 2019, to December 31, 2019, the bill authorizes law enforcement officers to issue verbal warnings for violations of the handheld prohibition and beginning January 1, 2020, authorizes law enforcement officers to issue citations for such violations. A violation of the handheld prohibition is punishable as a moving violation with three points assessed against the driver's license. Proceeds collected from violations of the handheld prohibition will be remitted to the Department of Revenue for deposit into the Emergency Medical Services Trust Fund.

The bill allows a person issued a citation for a first offense of the handheld prohibition to elect to participate in a wireless communications device driving safety program approved by DHSMV and have any penalties, associated costs, and points waived. Additionally, the bill authorizes the clerk of the court to dismiss a case and assess court costs for a nonmoving traffic infraction for a person who is cited for a first time violation of the handheld prohibition if the person shows the clerk proof of purchase of equipment that enables their personal wireless communications device to be used in a hands-free manner.

For both the texting while driving ban and the handheld prohibition, the bill requires a law enforcement officer to inform the motor vehicle operator of his or her right to decline a search of his or her wireless communications device. The bill prohibits a law enforcement officer from:

- Accessing the wireless communications device without a warrant.
- Confiscating the wireless communications device while awaiting issuance of a warrant to access such device.
- Obtaining consent from the motor vehicle operator to search his or her wireless communications device through coercion or other improper method. Consent to search a motor vehicle operator's wireless communications device must be voluntary and unequivocal.

The bill provides that when a law enforcement officer issues a citation for a violation of the texting ban or the handheld prohibition, the officer must record the race and ethnicity of the violator. For purposes of the handheld prohibition, the law enforcement officer also must indicate the type of handheld wireless communications device used. All law enforcement agencies must maintain the information and report it to DHSMV in a DHSMV-specified form and manner. Beginning February 1, 2020, DHSMV must annually report the data collected to the Governor, President of the Senate, and Speaker of the House of Representatives. The data collected must be reported at least by statewide totals for local law enforcement agencies, state law enforcement agencies, and state university law enforcement agencies. The statewide total for local law enforcement agencies must combine the data for the county sheriffs and the municipal law enforcement agencies.

The bill maintains the exceptions currently applicable to the texting while driving ban. Similarly, the bill provides that the texting ban and handheld prohibition do not apply to a stationary motor vehicle.

²⁸ Section 318.1451(4), F.S.

Finally, the bill authorizes DHSMV, in consultation with the Department of Transportation, to implement a statewide awareness campaign to raise awareness of and encourage compliance with the texting while driving ban and the handheld prohibition.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

To the extent there is an increase in the number of traffic citations issued due to changes in the law regarding the use of wireless communications devices while driving, the state may realize additional revenues. However, the fiscal impact cannot be quantified and is indeterminate.

The Emergency Medical Services Trust Fund of the Department of Health will receive 100 percent of the fines assessed for a violation of the handheld prohibition instead of the current 7.2 percent associated with the texting while driving civil penalty, which will have an indeterminate positive fiscal impact.

2. Expenditures:

DHSMV may incur expenses related to public awareness and education efforts regarding the changes in the laws regarding the use of wireless communications devices while driving; however, it is likely these costs will be absorbed within the department's existing safety campaign budget.

DHSMV may incur expenses related to the new reporting requirements. While the fiscal impact is unknown at this time, it is expected to be minimal.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

To the extent there is an increase in the number of traffic citations issued due to changes in the laws regarding the use of wireless communications devices while driving, local governments may realize additional revenues. However, the fiscal impact cannot be quantified and is indeterminate.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The changes in the laws regarding the use of wireless communications devices while driving may result in more motorists being assessed traffic fines.

D. FISCAL COMMENTS:

None.