

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 1469 Hands-free Driving  
**SPONSOR(S):** Tant  
**TIED BILLS:** IDEN./SIM. BILLS: SB 1664

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Transportation & Modals Subcommittee	16 Y, 0 N	Walker	Hinshelwood
2) Infrastructure & Tourism Appropriations Subcommittee			
3) Infrastructure Strategies Committee			

### SUMMARY ANALYSIS

The Florida Ban on Texting While Driving Law 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 term “wireless communications device” is defined as 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 and that allows text communications.

In addition to the ban on texting while driving, under Florida law, law enforcement officers are authorized to stop motor vehicles and issue citations to persons who are driving in a designated school crossing, school zone, or work zone area while using a wireless communications device in a handheld manner. Wireless communications device has the same meaning aforementioned and includes, but is not limited to, a cell phone, a tablet, a laptop, two-way messaging device, or an electronic game that is used or capable of being used in a handheld manner.

The prohibitions mentioned do not apply to a motor vehicle that is stationary and is not being operated.

The bill:

- Renames the Florida Ban on Texting While Driving Law to the Anthony Branca and Anita Neal Act and expands the prohibition to include using, while driving, a wireless communications device in a handheld manner except to activate, deactivate, initiate, or terminate a feature or function of the device, including a hands-free accessory.
- Defines the terms handheld manner, hands-free accessory, and wireless communications device.
- Repeals certain provisions that are no longer necessary relating to the ban of a wireless communications device in school and work zones.
- Provides that in school and work zones, a law enforcement officer must indicate in the comment of the uniform traffic citation the type of wireless communication device that was used to commit the violation and must, in accordance with current requirements in law, provide this information to the Department of Highway Safety and Motor Vehicles for their annual report to the Governor, the President of the Senate, and the Speaker of the House of Representatives.

The bill may have an indeterminate fiscal impact on state and local governments and the private sector.

The bill has an effective date of July 1, 2024.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### **Current Situation**

##### Florida Ban on Texting While Driving Law

##### *Legislative Intent*

The legislative intent of the “Florida Ban on Texting While Driving Law” 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; and
- Authorize law enforcement officers to stop motor vehicles and issue citations to persons who are texting while driving.<sup>1</sup>

##### *Prohibition*

The Florida Ban on Texting While Driving Law 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.<sup>2</sup> The term “wireless communications device” is defined as 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 and that allows text communications.<sup>3</sup>

This prohibition does not apply to a motor vehicle that is stationary and is not being operated.<sup>4</sup> Additionally 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; and
- Operating an autonomous vehicle with the automated driving system engaged.<sup>5</sup>

##### *Enforcement and Penalties*

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<sup>1</sup> S. 316.305(2), F.S.

<sup>2</sup> S. 316.305(3)(a), F.S.

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> S. 316.305(3)(b), F.S.

A law enforcement officer who stops a motor vehicle for a violation of the Florida Ban on Texting While Driving Law must inform the motor vehicle operator of his or her right to decline a search of his or her wireless communications device and may not:

- Access the wireless communications device without a warrant;
- Confiscate the wireless communications device while awaiting issuance of a warrant to access such device; and
- Obtain 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.<sup>6</sup>

A first violation of the ban on texting while driving is punishable as a nonmoving violation and carries a \$30 fine plus court costs,<sup>7</sup> which could result in a total fine up to \$108.<sup>8</sup> A second or subsequent violation of the ban committed within five years after the date of a prior conviction is a moving violation and carries a \$60 fine plus court costs,<sup>9</sup> which could result in a total fine up to \$158.<sup>10</sup>

### *Data Collection and Reporting Requirement*

When a law enforcement officer issues a citation for a violation of the Florida Ban on Texting While Driving Law, the law enforcement officer must record the race and ethnicity of the violator. All law enforcement agencies must maintain such information and report the information to the Department of Highway Safety and Motor Vehicles (DHSMV) by April 1 annually in a form and manner determined by the DHSMV. The DHSMV must annually report the data collected to the Governor, the President of the Senate, and the 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.<sup>11</sup>

### Ban on the Use of Wireless Communications Device in a Handheld Manner in School and Work Zones

#### *Prohibition and Enforcement*

In addition to the ban on texting while driving, law enforcement officers are authorized to stop motor vehicles and issue citations to persons who are driving in a designated school crossing, school zone, or work zone area<sup>1213</sup> while using a wireless communications device in a handheld manner.<sup>14</sup> Wireless Communications device has the same meaning aforementioned for the Florida Ban on Texting While Driving Law and includes, but is not limited to, a cell phone, a tablet, a laptop, two-way messaging device, or an electronic game that is used or capable of being used in a handheld manner.<sup>15</sup>

The ban on the use of wireless communications device in a handheld manner in school and work zones has almost identical exceptions and enforcement procedures as the Florida Ban on Texting While Driving Law.<sup>16</sup> However, the ban on the use of a wireless communications device in a handheld manner

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<sup>6</sup> S. 316.305(3)(c), F.S.

<sup>7</sup> S. 316.305(4)(a), F.S. See also ch. 318, F.S.

<sup>8</sup> Florida Court Clerks and Comptrollers, *2023 Distribution Schedule of Court-Related Filing Fees, Service Charges, Costs and Fines, Including a Fee Schedule for Recording*, p. 39, [https://cdn.ymaws.com/www.flclerks.com/resource/resmgr/publicationsanddocuments/2023\\_Distribution\\_Schedule\\_e.pdf](https://cdn.ymaws.com/www.flclerks.com/resource/resmgr/publicationsanddocuments/2023_Distribution_Schedule_e.pdf) (last visited Jan. 29, 2024).

<sup>9</sup> S. 316.305(4)(b), F.S. See also Ch. 318, F.S.

<sup>10</sup> Florida Court Clerks and Comptrollers, *supra* note 8, at p. 42.

<sup>11</sup> S. 316.305(5), F.S.

<sup>12</sup> S. 316.003(111), F.S., defines work zone as the area and its approaches on any state-maintained highway, county-maintained highway, or municipal street where construction, repair, maintenance, or other street-related or highway-related work is being performed or where one or more lanes are closed to traffic.

<sup>13</sup> Section 316.306(3)(a), F.S., provides that the prohibition on work zone areas is only applicable if the construction personnel are present or are operating equipment on the road or immediately adjacent to the work zone area.

<sup>14</sup> Ss. 316.306(2) and 316.306(3)(a), F.S.

<sup>15</sup> S. 316.306(1), F.S.

<sup>16</sup> S. 316.306(3), F.S.

in school and work zones expressly allows the use of a wireless communications device if it is operated in a hands-free or hands-free in voice-operated mode, including, but not limited to, a factory-installed or after-market Bluetooth device while driving.<sup>17</sup>

### *Penalties*

A first violation of the ban on the use of wireless communications device in a handheld manner in school and work zones is punishable as a noncriminal traffic infraction, punishable as a moving violation,<sup>18</sup> and a violator will have 3 points assessed against his or her driver license.<sup>19</sup> For a first offense, in lieu of the \$60 fine, additional court costs, and the assessment of points, a person may elect to participate in a wireless communications device driving safety program approved by the DHSMV. Upon completion of such program, the penalty and associated costs may be waived by the clerk of the court and the assessment of points must be waived.<sup>20</sup> Additionally, the clerk of the court may dismiss a case and assess court costs for a nonmoving traffic infraction for a person who is cited for a first-time violation of this section if the person shows the clerk proof of purchase of equipment that enables his or her personal wireless communications device to be used in a hands-free manner.<sup>21</sup>

All the proceeds collected from such penalties must be remitted to the Department of Revenue for deposit into the Emergency Medical Services Trust Fund of the Department of Health.<sup>22</sup>

### *Data Collection and Reporting Requirement*

When a law enforcement officer issues a citation for a violation of the ban on the use of wireless communications device in a handheld manner in school and work zones, the law enforcement officer must record the race and ethnicity of the violator. All law enforcement agencies must maintain such information and must report such information to the DHSMV in a form and manner determined by the DHSMV. DHSMV must annually report the data collected to the Governor, the President of the Senate, and the 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.<sup>23</sup>

## **Effect of the Bill**

### Expanding the Florida Ban on Texting While Driving Law

The bill renames the Florida Ban on Texting While Driving Law to the Anthony Branca and Anita Neal Act and expands the prohibition to include using, while driving, a wireless communications device in a handheld manner except to activate, deactivate, initiate, or terminate a feature or function of the device, including a hands-free accessory. The bill provides that sustained use of a wireless communications device by a person operating a vehicle must be conducted through a hands-free accessory until such use is terminated.

The bill defines the following terms in order to expand the prohibition:

- **Handheld manner:** Holding a wireless communications device in one or both hands or physically supporting the device with any other part of the body.
- **Hands-free accessory:** An attachment to or built-in feature of a wireless communications device which allows the operator of a motor vehicle to engage in interpersonal communication or otherwise use such device other than in a handheld manner.
- **Wireless communications device:** A handheld device used or capable of being used in a handheld manner to transmit or receive a voice message; initiate, receive, or maintain a

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<sup>17</sup> *Id.*

<sup>18</sup> Chapter 318, F.S., provides that such violation carries a \$60 fine plus court costs.

<sup>19</sup> S. 316.306(4)(a), F.S.

<sup>20</sup> *Id.*

<sup>21</sup> S. 316.306(4)(b), F.S.

<sup>22</sup> S. 316.306(5), F.S.

<sup>23</sup> S. 316.306(6), F.S.

telephone call; or otherwise engage in interpersonal voice communication; receive or transmit text-based or character-based messages or otherwise engage in interpersonal nonvoice communication; record or display videos or images; enter, access, or store data; or connect to the Internet or any communications service. The term includes, but is not limited to, a cellular telephone, smartphone, tablet computer, laptop computer, two-way messaging device, electronic gaming device, or device capable of displaying videos or images. The term does not include a citizens band radio, citizens band radio hybrid, commercial two-way radio communication device or its functional equivalent, subscription-based emergency communications device, prescribed medical device, amateur or ham radio device, or in-vehicle security, navigation, communications, or remote diagnostics system.

#### Use of Wireless Communications Device in a Handheld Manner in School and Work Zones

As aforementioned, the bill amends the prohibition found in the Florida Ban on Texting While Driving law to ban the use of a wireless communications device in a handheld manner while driving. As such ban would no longer be unique to school and work zones, the bill repeals certain provisions that are no longer necessary.

However, the bill maintains the provisions of law that outline the penalties, data collection, and report requirements for a person who violates the use of a wireless communications device in a handheld manner while driving in a designated school crossing, in a school zone, or in a work zone area, if construction personnel are present or are operating equipment on the road or immediately adjacent to the work area.

Additionally, the bill provides that when a law enforcement issues a citation in a school or work zone to a person who violated the use of a wireless communication device while driving, then the law enforcement officer must indicate in the comment of the uniform traffic citation the type of wireless communication device that was used to commit the violation and must, in accordance with current requirements in law, provide this to DHSMV for their annual report to the Governor, President of the Senate and Speaker of the House of Representatives.

The bill has an effective date of July 1, 2024.

#### B. SECTION DIRECTORY:

**Section 1** Amends s. 316.305, F.S., wireless communications devices; prohibition.

**Section 2** Amends s. 316.306, F.S., school and work zones; prohibition on the use of a wireless communications device in a handheld manner.

**Section 3** Provides an effective date of July 1, 2024.

### 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.

##### 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 DHSMV's existing safety campaign budget.

#### 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.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill neither authorizes nor requires executive branch rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

N/A