

STORAGE NAME: h0233.ric.doc

DATE: February 5, 2002

**HOUSE OF REPRESENTATIVES
AS REVISED BY
READY INFRASTRUCTURE COUNCIL
ANALYSIS**

BILL #: HB 233

RELATING TO: Motor Vehicle Accidents/Distractions

SPONSOR(S): Representative(s) Smith, Bense & others

TIED BILL(S): None

ORIGINATING COMMITTEE(S)/COUNCIL(S)/COMMITTEE(S) OF REFERENCE:

- (1) COMMITTEE ON TRANSPORTATION YEAS 13 NAYS 0
 - (2) READY INFRASTRUCTURE COUNCIL
 - (3)
 - (4)
 - (5)
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I. SUMMARY:

A number of local governments in Florida are considering ordinances that would regulate the use of cell phones in motor vehicles. Miami-Dade County has enacted an ordinance that will take effect in October 2002.

This bill expressly preempts to the state the regulation of the use of cellular phones and other electronic communications devices by drivers and passengers of a motor vehicle. In addition, the bill requires the Florida Department of Highway Safety and Motor Vehicles (DHSMV) to report data on driver distractions to the Legislature for the years 2002 and 2003.

The bill has no fiscal impact on state and local governments.

The bill takes effect upon becoming law.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|---|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

With the proliferation of cellular phones and the recent emergence of other in-vehicle technologies that allow drivers to fax, e-mail, obtain route guidance, view infrared images on a head-up display, operate multimedia entertainment systems or use the internet, a debate has emerged whether the use of cellular phones and other devices should be allowed while operating a motor vehicle. At the same time, another debate has emerged focusing on whether policies should be designed to narrowly address the proliferation of these technologies or whether they should be designed to address the broader problem of "distracted driving."

According to the American Automobile Association (AAA):

Distracted driving – including the use of cell phones – is a major contributor to automobile crashes. Between 4,000 and 8,000 crashes related to distracted driving, occur daily in the United States. In a year, they contribute to as many as one-half of the 6 million U.S. crashes reported annually.

Driver distractions come from a variety of sources, in addition to those caused by in-vehicle communication technologies. A recent University of North Carolina Highway Safety Research Center study commissioned by the AAA Foundation for Traffic Safety identifies the various types of driver distractions that are associated with crashes nationwide, and their frequency. These distractions are: outside person, object or event – 29.4 percent; adjusting radio, cassette, CD – 11.4 percent; other occupant in vehicle – 10.9 percent; moving object in vehicle – 4.3 percent; other device/object brought into vehicle – 2.9 percent; adjusting vehicle/climate controls – 2.8 percent; eating or drinking – 1.7 percent; using/dialing cell phone – 1.5 percent; smoking related – 0.9 percent; other distraction – 25.6 percent; and unknown distraction – 8.6 percent. The study analyzed 1995-1999 Crashworthiness Data System (CDS) data obtained from the National Highway Traffic Safety Administration's (NHTSA) National Center for Statistics and Analysis.

The study indicates that only 1.5 percent of accidents involving driver distractions involved the use of cell phones, and at any given moment, only about 3 percent of drivers are talking on a hand-held cell phone while operating a vehicle (according to NHTSA estimates). A movement calling for a ban on in-car use by drivers has started in some parts of the country. In June, for example, New York became the first state to pass a law prohibiting drivers from using handheld cellular phones. The statewide ban was designed to stop the development of a patchwork of local laws.

In Florida, six months of data for 2001 contained in DHSMV's Preliminary Crash Data and Driver Distraction Overview demonstrate that driver distraction was a contributing cause in less than one percent of crashes (603 out of 102,293). Among those less-than-one percent of crashes, about 140, or a little more than one tenth of one percent, involved the use of a cell phone. Despite the low correlation between cell phone use and vehicle crashes, interest has grown among local governments to address the problem of driver distraction by cell phone through the adoption of regulatory ordinances. This interest prompted one jurisdiction (Pinebrook Village) to seek an advisory opinion from Florida's Attorney General.

In July of 2001, Florida's Attorney General, Bob Butterworth, issued an advisory legal opinion (AGO 2001-49) stating that local governments may enact ordinances regulating the use of cell phones by motorists within county or municipal boundaries. That opinion stated:

I am of the view that since Chapter 316, Florida Statutes, does not regulate or otherwise address the operation of cellular telephones while driving, local governments may regulate the operation of such devices while driving without being in conflict with Chapter 316. In fact, a municipal ordinance requiring hands-free headsets for the operation of cellular telephones while driving a motor vehicle would appear to be consistent with the one reference to cellular telephones within the Florida Uniform Traffic Control Law, at section 316.304, Florida Statutes.

Since the date of the Attorney General's opinion, several of South Florida's local governments have sought to enact ordinances regulating the use of cellular phones by motorists. The following jurisdictions, among others, have considered measures regulating cell phones in motor vehicles:

- i. Miami-Dade County
- ii. Highland Beach
- iii. Westin
- iv. Pembroke Pines
- v. Pinebrook Village

On September 25, 2001, Miami-Dade County enacted an ordinance banning the use of handheld cell phones while driving except in the case of certain emergencies. The ordinance will take effect in October of 2002.

The emergence of the possibility that regulations may be enacted that differ from city to city and county to county has caused concerns for some who envision a scenario in which a driver lawfully using a cell phone in one jurisdiction might cross into another jurisdiction where the behavior is outlawed. Opponents of such local measures assert that they make it difficult for the citizen to know when his or her behavior is lawful, because of the frequency with which drivers cross local jurisdictional boundaries. This concern has lead to a movement in Broward County to try to develop a uniform ordinance acceptable to all of the county's municipalities.

C. EFFECT OF PROPOSED CHANGES:

The bill requires DHSMV to collect data on motor vehicle accidents involving distracted driving. Beginning January 1, 2002, the data collected and published quarterly in the Quarterly Crash Data and Driver Distraction Overview must be reported to the President of the Senate and the Speaker of the House of Representatives for the years 2002 and 2003. Data collected for 2002 must be submitted by January 30, 2003, and data collected for 2003 must be submitted by January 30, 2004.

In addition, the bill expressly preempts to the state regulation of operator or passenger use of commercial mobile radio services (cell phones) and other electronic communications devices in a

motor vehicle. Therefore, the bill renders ineffective any local ordinances regulating the use of cellular phones, or other electronic communications devices in motor vehicles.

The bill takes effect upon becoming law.

D. SECTION-BY-SECTION ANALYSIS:

Section 1. Requires DHSMV to report two years of data on motor vehicle accidents involving distracted driving to the President of the Senate and the Speaker of the House of Representatives.

Section 2. Preempts to the state regulation of operator or passenger use of commercial mobile radio services and other electronic communications devices in a motor vehicle.

Section 3. Provides that the bill takes effect upon becoming law.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not impact state revenues.

2. Expenditures:

The bill requires DHSMV to collect and report on motor vehicle crash report data involving distracted driving. Because DHSMV is currently collecting the data, it does not expect the bill to create the need for any additional expenditure.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

Several local governments are considering ordinances that would regulate the use of cell phones by drivers; however, only one has already enacted such an ordinance -- Miami-Dade County. Since the bill would preempt such regulation to the state, it may prevent local governments that already regulate such activity at the time the bill becomes law from collecting certain fines. Although one ordinance regulating the use of cell phones in motor vehicles has been passed, none are currently in effect; therefore, no revenue has yet been generated for local governments.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill would prevent recently proposed and enacted ordinances in South Florida from taking effect, and would therefore prevent certain motorists from being subject to fines.

D. FISCAL COMMENTS:

None.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require cities or counties to spend money or take any action that requires the expenditure of money.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

By preempting to the state regulation of certain activity, the bill may reduce the authority of local governments to raise revenue through the collection of fines. However, the bill appears to be exempt from Constitutional mandate provisions because: 1) preemption of certain regulatory activities to the state would act as a repeal of local non-criminal infractions; and 2) the fiscal impact of the preemption is likely to be insignificant. Moreover, the only ordinance to have been enacted has not yet taken effect, and therefore has not generated revenue for the local government.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce, in the aggregate, the percentage of state taxes shared by cities or counties.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

See IV above.

B. RULE-MAKING AUTHORITY:

The bill does not create or abolish the rulemaking authority of any state entity.

C. OTHER COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

READY INFRASTRUCTURE COUNCIL:

Prepared by:

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