

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: SB 358

SPONSOR: Senator Sebesta

SUBJECT: Motor Vehicles

DATE: December 31, 2001

REVISED: 01/23/02

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Vickers	Meyer	TR	Favorable
2.	Cooper	Yeatman	CA	Fav/1 amendment
3.			AGG	
4.			AP	
5.				
6.				

I. Summary:

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 Senate and the House of Representatives for the years 2002 and 2003.

This bill creates section 316.0075, Florida Statutes. This bill also creates an unspecified section of Florida Law.

II. 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.” In a recent report the American Automobile Association (AAA) stated:

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: Outside person, object or event – 29.4%; Adjusting radio, cassette, CD – 11.4%; Other occupant in vehicle – 10.9%; Moving object in vehicle – 4.3 %; Other device/object brought into vehicle – 2.9%; Adjusting vehicle/climate controls – 2.8%; Eating or drinking – 1.7%; Using/dialing cell phone – 1.5%; Smoking related – 0.9%; Other distraction – 25.6%; Unknown distraction – 8.6%. 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.

Although the University of North Carolina study indicates that only 1.5 percent of accidents involving driver distractions involved the use of cellular phones, and that at any given moment only about 3 percent of drivers are talking on a hand-held cellular 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, Florida's Attorney General 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.¹

¹ Section 316.304, F.S., provides that no person shall operate a vehicle while wearing a headset, headphone, or other listening device, other than a hearing aid or instrument for the improvement of defective human hearing. However, an exception is provided for persons using a headset in conjunction with a cellular telephone that only provides sound through one ear and allows surrounding sounds to be heard with the other ear. Violation of this section is a noncriminal traffic infraction, punishable as a nonmoving violation as provided in chapter 318, F.S.

Since the Attorney General issued his opinion, several of 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: Miami-Dade County, Highland Beach, Westin, Pembroke Pines, and Pinebrook Village.

On September 25, 2001, Miami-Dade County enacted an ordinance banning the use of handheld cellular phones while driving except in the case of certain emergencies. The ordinance will take effect in October of next year. Within the first 30 days of the effective date of the ordinance, only verbal warnings may be given. After that, violations are punishable by a fine of \$250 or successful completion of a driver improvement course.

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.

III. Effect of Proposed Changes:

Section 1 creates an unspecified section of Florida Law to require 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.

Section 2 creates s. 316.0075, F.S., to expressly preempt to the state regulation of operator or passenger use of commercial mobile radio services (cellular phones) and other electronic communications devices in a motor vehicle. The bill therefore renders ineffective any local ordinances regulating the use of cellular phones, or other electronic communications devices in motor vehicles.

Section 3 provides that the act will take effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

The bill would prevent proposed local ordinances from taking effect, and would therefore prevent certain motorists from being subject to fines.

C. Government Sector Impact:

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 expenditures.

Several local governments are considering ordinances that would regulate the use of cellular 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.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

#1 by Comprehensive Planning, Local and Military Affairs

This amendment requires the Florida Department of Highway Safety and Motor Vehicles to report data on driver distractions to the Legislature for 2002 rather than 2002 and 2003.