

In addition to the fines, a violation of the unlawful use of a cellphone which results in a crash will result in 6 points added to the offender’s driver license record and the unlawful use of a cell phone while committing a moving violation within a school safety zone will result in an 2 points added to the offender’s driver license record in addition to the points for the moving violation.

This bill creates s. 316.305, F.S., and substantially amends s. 322.27, F.S.

I. Present Situation:

Laws in other states

Public concern over distracted driving has resulted in a number of jurisdictions making illegal the use of a hand-held cellular telephone for talking or texting while driving. In November 2001, New York became the first state to prohibit drivers from using a hand-held cellular telephone while driving. The District of Columbia passed a ban in 2004. Connecticut's ban took effect in 2005. Thirty-five states and the District of Columbia have passed a ban on texting-while-driving for all drivers. The National Conference of State Legislators has the following chart detailing each state’s laws for cellular telephone use.¹

States	Hand-held ban	All cell phone ban	Texting ban	Enforcement
Alabama	No	Drivers age 16 and 17 who have held an intermediate license for less than 6 months.	All drivers	Primary
Alaska	No	No	All drivers	Primary
Arizona	No	School bus drivers	No	Primary
Arkansas	No	School bus drivers, drivers younger than 18	All drivers	Primary for texting by all drivers and cell phone use by school bus drivers; secondary for cell phone use by young drivers
California	All drivers	School and transit bus drivers and drivers younger than 18	All drivers	Primary
Colorado	No	Drivers younger than 18	All drivers	Primary
Connecticut	All drivers	Learner's permit holders, drivers younger than 18, and school bus drivers	All drivers	Primary
Delaware	All drivers (effective 01/02/11)	Learner's permit and intermediate license holders and school bus drivers	All drivers (effective 01/02/11)	Primary
District of Columbia	All drivers	School bus drivers and learner's permit holders	All drivers	Primary
Florida	No	No	No	Not applicable
Georgia	Drivers younger than 18 (effective 07/01/10)	School bus drivers. Drivers younger than 18.	All drivers (effective 07/01/10)	Primary
Hawaii	No	No	No	Not applicable
Idaho	No	No	All drivers (effective 7/1/2012)	Not applicable

¹ “Cell Phone Use and Texting While Driving Laws,” updated November, 2012. Available online at, <http://www.ncsl.org/?tabid=17057>, Document No. 17057.

Illinois	Drivers in construction and school speed zones	Learner's permit holders younger than 19, drivers younger than 19, and school bus drivers	All drivers	Primary
Indiana	No	Drivers under the age of 18.	All drivers (effective 07/01/11).	Primary
Iowa	No	Learner's permit and intermediate license holders	All drivers	Secondary for texting
Kansas	No	Learner's permit and intermediate license holders	All drivers (effective 07/01/10).	Primary
Kentucky	No	Drivers younger than 18 (effective 07/13/10), school bus drivers	All drivers (effective 07/13/10)	Primary (effective 07/13/10)
Louisiana	No	School bus drivers, learner's permit and intermediate license holders, drivers under age 18	All drivers	Primary
Maine**	No	Learner's permit and intermediate license holders	All drivers (effective 09/13/11)	Primary
Maryland	All drivers (effective 10/01/10), School Bus Drivers.	Learner's permit and intermediate license holders under 18. School bus drivers	All drivers	Primary for texting
Massachusetts	Local option	School bus drivers, passenger bus drivers, drivers younger than 18	All drivers (effective 09/30/10)	Primary
Michigan	Local option	No	All drivers (effective 07/01/10)	Primary (effective 07/01/10)
Minnesota	No	School bus drivers, learner's permit holders, and provisional license holders during the first 12 months after licensing	All drivers	Primary
Mississippi	No	School bus drivers.	Learner's permit holders and intermediate license holders	Primary
Missouri	No	No	Drivers 21 years of age or younger	Primary
Montana	No	No	No	Not applicable
Nebraska	No	Learner's permit and intermediate license holders younger than 18	Learner's permit and intermediate license holders younger than 18 All drivers	Secondary
Nevada	All drivers (effective 01/01/12)	No	All drivers (effective 01/01/12)	Not applicable
New Hampshire	No	No	All drivers	Primary
New Jersey	All drivers	School bus drivers, and learner's permit and intermediate license holders	All drivers	Primary
New Mexico	Local option	Learners permit and intermediate license holders	No	Not applicable
New York	All drivers	No	All drivers	Primary

North Carolina	No	Drivers younger than 18 and school bus drivers	All drivers	Primary
North Dakota	Drivers younger than 18 (effective 01/01/12)	Drivers younger than 18 (effective 01/01/12)	All drivers (effective 08/01/11)	Primary (effective 08/01/11)
Ohio	Local option	Drivers younger than 18.	All drivers	Secondary
Oklahoma	Learner's permit and intermediate license holders, school bus drivers and public transit drivers (effective 11/01/10)	School Bus Drivers and Public Transit Drivers (effective 11/01/10)	Learner's permit and intermediate license holders, school bus drivers and public transit drivers (effective 11/01/10)	Primary
Oregon	All drivers	Drivers younger than 18	All drivers	Primary
Pennsylvania	Local option	No	All drivers	Primary
Rhode Island	No	School bus drivers and drivers younger than 18	All drivers	Primary
South Carolina	No	No	No	Not applicable
South Dakota	No	No	No	Not applicable
Tennessee	No	School bus drivers, and learner's permit and intermediate license holders	All drivers	Primary
Texas	Drivers in school crossing zones	Bus drivers. Drivers younger than 18. (09/01/11)	Bus drivers when a passenger 17 and younger is present; intermediate license holders for first 12 months, drivers in school crossing zones	Primary
Utah	See footnote*	No	All drivers	Primary for texting; secondary for talking on hand-held phone
Vermont	No	Drivers younger than 18 shall not use any portable electronic device while driving	All drivers	Primary
Virginia	No	Drivers younger than 18 and school bus drivers	All drivers	Secondary; primary for school bus drivers
Washington	All drivers	Learners permit and intermediate license holders	All drivers	Primary
West Virginia	All drivers (effective 7/1/2012)	Drivers younger than 18 who hold either a learner's permit or an intermediate license	All drivers (Effective 7/1/2012)	Primary
Wisconsin	No	Learner or Intermediate License holder (Eff. 11/1/12)	All drivers (effective 12/01/10)	Primary (effective 12/01/10)
Wyoming	No	No	All drivers	Primary

* Utah considers speaking on a cell phone, without a hands-free device, to be an offense only if a driver is also committing some other moving violation (other than speeding).

** Maine has a law that makes driving while distracted a traffic infraction. 29-A M.R.S.A. Sec. 2117.

*** Listed as a part of contributing factors

Federal Sample Law

In February 2010, the USDOT unveiled a “Sample Law” for states to use as a starting point for creating new laws to prohibit texting while driving.² Recognizing states have had some difficulty drafting language that prohibits dangerous behaviors, but allows certain minimal uses of the technology, the USDOT requested the participation of several national groups to draft language that was satisfactory to all. The sample law, prepared by the National Highway Traffic Safety Administration, and a cross-section of safety and industry organizations,³ authorized law enforcement officers to stop a vehicle and issue a citation to drivers who are texting while driving.⁴ The sample law is patterned on the Executive Order issued by President Obama on October 1, 2009, directing federal employees not to engage in text messaging while driving government-owned vehicles or other government-owned equipment. Federal employees were required to comply with the ban beginning on December 30, 2009.

Florida Law

The state has expressly preempted all regulation of the use of electronic communications devices in a motor vehicle.⁵ There are currently no prohibitions related to texting or talking on a communications device while driving. However, existing laws may apply more generally to distracted operators of motor vehicles. Operators of motor vehicles are in violation of existing statutes when driving carelessly or recklessly.

The term “careless driving” is defined as the failure to drive the same as other operators of motor vehicles, in a careful and prudent manner, having regard to all attendant circumstances, so as not to endanger the life, limb, or property of any person.⁶ A person who drives carelessly shall be cited for a moving violation.⁷

The term “reckless driving” is defined as the willful or wanton disregard for the safety of persons or property. Upon a first conviction, reckless driving is punishable by imprisonment,⁸ a fine of at least \$25,⁹ or both. A second or subsequent conviction requires a fine of at least \$50,¹⁰ but may also result in imprisonment for not more than 6 months or both. Additionally, reckless driving

² “New Sample Bill Will Aid States in Banning Texting While Driving,” United States Department of Transportation, DOT 31-10. USDOT Secretary Ray LaHood, February 22, 2010 available at: <http://www.nhtsa.gov/PR/DOT-31-10> (last visited on Apr. 4, 2013).

³ Contributors to the sample law include: Advocates for Highway and Auto Safety, Alliance of Automobile Manufacturers, American Association of Motor Vehicle Administrators, American Association of State Highway and Transportation Officials, AAA, Centers for Disease Control and Prevention, CTIA – The Wireless Association, Governors Highway Safety Association, ITS America, International Association of Chiefs of Police, National Conference of State Legislatures, National Safety Council, The National Traffic Law Center of the National District Attorneys Association, and Safe Kids USA. http://www.nhtsa.gov/staticfiles/rulemaking/pdf/Texting_Law_021910.pdf (last visited on Apr. 4, 2013).

⁴ *Id.*

⁵ Section 316.0075, F.S.

⁶ Section 316.1925(1), F.S.

⁷ Punishable as provided in ch. 318, F.S.

⁸ For a period of not more than 90 days. Section 316.192(2)(a), F.S.

⁹ Not less than \$25 nor more than \$500. Section 316.192(2)(a), F.S.

¹⁰ And no more than \$1,000. Section 316.192(2)(b), F.S.

that causes damage to the property or person of another is a misdemeanor of the first degree.¹¹ Reckless driving that causes serious bodily injury¹² to another is a felony of the third degree.¹³

While a prohibition exists against vehicle operators wearing headsets, headphones, or other listening devices, there are exceptions.¹⁴ A driver is permitted to use a headset in conjunction with a cellular telephone that provides sound through only one ear and allows surrounding sounds to be heard with the other ear.¹⁵ The Department of Highway Safety and Motor Vehicles (DHSMV) has rulemaking authority to detail the standards and specifications of radio equipment permitted by statute.¹⁶ The DHSMV inspects and reviews all such devices submitted to it and publishes a list by name and type of approved equipment.

Section 322.27(3), F.S., provides a point system used to evaluate the qualifications of a person to operate a motor vehicle after accumulating multiple violations of motor vehicle laws. Moving violations typically result in assessment of 3 points, unless the infraction or offense is among those considered more serious. For example, pursuant to s. 322.27(3)(d), F.S., reckless driving, passing a stopped school bus, and speeding in excess of 15 mph over the posted limit require an assessment of 4 points. Leaving the scene of a crash and speeding resulting in a crash require an assessment of 6 points.

The DHSMV may suspend a driver for 30 days if the driver accumulates 12 or more points within a 12-month period,¹⁷ up to 3 months if the driver accumulates 18 points in 18 months,¹⁸ and up to 1 year if the driver accumulates 24 points within 36 months.¹⁹

II. Effect of Proposed Changes:

Legislative Intent

The bill expresses legislative intent to:

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

¹¹ A first degree misdemeanor is punishable by jail time of up to 1 year and the imposition of fine of up to \$1,000.

¹² The term “serious bodily injury” means an injury to another person, which consists of a physical condition that creates a substantial risk of death, serious personal disfigurement, or protracted loss or impairment of the function of any bodily member or organ. Section 316.192(3)(c)(2), F.S.

¹³ A third degree felony is punishable by imprisonment of up to 5 years and the imposition of a fine of up to \$5,000.

¹⁴ Section 316.304, F.S.

¹⁵ Section 316.304(2)(d), F.S.

¹⁶ Section 316.304(3), F.S.

¹⁷ Section 322.27(3)(a), F.S.

¹⁸ Section 322.27(3)(b), F.S.

¹⁹ Section 322.27(3)(c), F.S.

Prohibition on Texting While Driving

The bill prohibits a person who is operating a motor vehicle “while manually typing or entering multiple letters, numbers, symbols, or other characters in a wireless communication device, or sending or reading data in the device, for the purpose of non-voice interpersonal communication.” The bill defines the term “wireless communication device” as any handheld device that is used in a handheld manner designed or intended to receive or transmit text or character-based messages, access or store data, or connect to the Internet or any other communications service²⁰ and which allows text communications.

The bill also specifies that for purposes of the prohibition on texting, a person is not considered to be operating a vehicle when the vehicle is stationary.²¹ Violations are enforceable as secondary violations, meaning that a violator must be first cited for some other traffic offense before he or she can be cited for the texting while driving offense.

Exceptions

The bill makes exceptions to its prohibition against ‘texting while driving’ for:

- Law enforcement, fire service, or emergency medical services personnel, or any operator of an authorized emergency vehicle as defined in s. 322.01, F.S.,²² performing official duties;
- Reporting an emergency or criminal or suspicious activity to law enforcement authorities;
- Receiving messages related to:
 - The operation or navigation of a 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, or reading text messages (except to activate or deactivate or initiate a feature or function); or
- Vehicles that are being operated autonomously.

²⁰ “Communications service” itself is defined by reference to s. 812.15, F.S. “Communications service” means: any service lawfully provided for a charge or compensation by any cable system or by any radio, fiber optic, photo optical, electromagnetic, photo electronics, satellite, microwave, data transmission, Internet-based, or wireless distribution network, system, or facility, including, but not limited to, any electronic, data, video, audio, Internet access, microwave, and radio communications, transmissions, signals, and services, and any such communications, transmissions, signals, and services lawfully provided for a charge or compensation, directly or indirectly by or through any of those networks, systems, or facilities. Section 812.15, F.S.

²¹ Sections 316.194 and 316.1945, F.S., prohibit stopping, standing or parking in certain areas. Therefore, the driver of a vehicle stopped, standing, or parked in one of the prohibited locations may be subject to penalty.

²² Section 322.01(4), F.S., defines an “authorized emergency vehicle” as: a vehicle that is equipped with extraordinary audible and visual warning devices, that is authorized by s. 316.2397[, F.S.,] 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. The term does not include wreckers, utility trucks, or other vehicles that are used only incidentally for emergency purposes.

A user's billing records for a wireless communications device or the testimony of or written statements from appropriate authorities receiving such messages may be admissible as evidence in any proceeding to determine whether a violation of the prohibition has been committed.

Penalties

A penalty for a first violation of the prohibition is a non-moving violation, punishable as provided in ch. 318, F.S. Non-moving violations result in a \$30 fine, plus court costs that vary by jurisdiction.

If a person commits a second violation of the prohibition within 5 years after the first violation, the penalty is increased to a moving violation resulting in 3 points being assigned to the person's driver license. Chapter 318, F.S., provides for a \$60 fine plus court costs.

The bill provides that the DHSMV will assign 6 points to the driver license of any driver whose use of a wireless communications device results in a crash, whether the offense is a first or subsequent offense. This point assessment is identical to the number of points that would apply to a driver license if the operator caused a crash as a result of unlawful speed. Finally, if a driver who commits a moving violation covered in s. 322.27(3)(d), F. S., while unlawfully using a wireless communications device in a school safety zone, DHSMV will assign 2 points to his or her license in addition to the points assigned for the moving violation.

The bill has an effective date of October 1, 2013.

Other Potential Implications:

Based upon the definition of "wireless communications device" that limits use to "in a handheld manner," a person may be able to text and drive using a mounted device or by placing the device on his or her lap.

III. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

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

None.

B. Private Sector Impact:

An individual violating the prohibition of using wireless communications devices for texting purposes while operating a motor vehicle would be subject to civil penalties and points being assigned to his or her driver license depending on whether the violation is a first offense or a second or subsequent offense.

C. Government Sector Impact:

The bill may generate an indeterminate amount of revenue for both state and local law enforcement agencies, depending on the number of violations issued by law enforcement officials and the frequency with which violators commit subsequent violations, thereby incurring larger penalties.

According to the DHSMV, programming modifications will be required to carry out the implementation of the bill, however, the necessary hours can be incorporated into the information systems administration's normal workload.²³

V. Technical Deficiencies:

None.

VI. Related Issues:

None.

VII. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS/CS by Communications, Energy, and Public Utilities Committee on March 6, 2013:

Clarifies that a driver who commits a moving violation while unlawfully using a wireless communications device in a school safety zone will have 2 points assigned to his or her license in addition to the points assigned for the moving violation.

CS by Transportation Committee on February 6, 2013:

Includes in the definition of the term “wireless communications device,” a handheld device used in a handheld manner.

²³ Department of Highway Safety and Motor Vehicles, *Agency Bill Analysis: SB 416* (Oct. 19, 2011, on file with the Senate Transportation Committee).

- Provides that texting communications are allowed when a vehicle is stationary.
- Allows persons operating autonomous vehicles to use wireless communications while vehicle is in operation.

B. Amendments:

None.

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