

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Communications, Energy, and Public Utilities

BILL: SB 1022

INTRODUCER: Senator Gibson

SUBJECT: Wireless Communications Devices

DATE: April 6, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Clift/Wiehle	Caldwell	CU	Favorable
2.			TR	
3.			ATD	
4.			FP	

I. Summary:

SB 1022 expands the current ban on texting while driving to prohibit:

- dialing, or talking or listening on, a wireless communications device for the purpose of interpersonal communication; and
- using a wireless device to view or post an electronic message or initiate a command to the internet.

The bill eliminates exemptions to the prohibition for motor vehicle operators who are:

- 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, or
- conducting wireless interpersonal communication that does not require reading text messages, except to activate, deactivate, or initiate a feature or function.

The bill adds an exemption for conducting wireless interpersonal communication through the use of a hands-free electronic device. The term “hands-free electronic device” is defined.

The bill mandates that the Department of Highway Safety and Motor Vehicles and the Department of Transportation perform certain actions in order inform the public of the law.

The violation would remain enforceable only as a secondary offense.

The bill provides an effective date of July 1, 2015.

II. Present Situation:

Current Statute

Section 316.305, F.S., is the “Florida Ban on Texting While Driving Law.” It 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 prohibition does not apply when a motor vehicle is stationary or is not being operated or 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; or
- Operating an autonomous vehicle¹ in autonomous mode.

Enforcement of the prohibition by state or local law enforcement agencies must be accomplished only as a secondary action when an operator of a motor vehicle has been detained for a suspected violation of another provision of chapter 316, F.S., the “Florida Uniform Traffic Control Law”; chapter 320, F.S., relating to motor vehicle licenses; or chapter 322, F.S., relating to driver licenses.

A person who violates the prohibition commits a noncriminal traffic infraction, punishable as a nonmoving violation. A second or subsequent violation within 5 years after the date of a prior conviction commits a noncriminal traffic infraction.

¹ The term “autonomous vehicle” is defined by cross-reference to s. 316.003(90), F.S., which defines the term to mean any vehicle equipped with autonomous technology. The term “autonomous technology” means technology installed on a motor vehicle that has the capability to drive the vehicle on which the technology is installed without the active control or monitoring by a human operator. The term excludes a motor vehicle enabled with active safety systems or driver assistance systems, including, without limitation, a system to provide electronic blind spot assistance, crash avoidance, emergency braking, parking assistance, adaptive cruise control, lane keep assistance, lane departure warning, or traffic jam and queuing assistance, unless any such system alone or in combination with other systems enables the vehicle on which the technology is installed to drive without the active control or monitoring by a human operator.

A user's billing records for a wireless communications device or the testimony of or written statements from appropriate authorities receiving such messages may only be admissible as evidence in any proceeding in the event of a crash resulting in death or personal injury.

As used in this section, the term "wireless communications device" means 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 service² and that allows text communications.

Enforcement

As of January 12, 2015, Clerks of the Court had reported to the Department of Highway Safety and Motor Vehicles that a total of 2,061 citations related to texting while driving had been issued.

III. Effect of Proposed Changes:

SB 1022 expands the current ban on texting while driving to prohibit:

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- using a wireless device to view or post an electronic message or initiate a command to the internet.

The bill eliminates exemptions to the prohibition for motor vehicle operators who are:

- 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, or
- conducting wireless interpersonal communication that does not require reading text messages, except to activate, deactivate, or initiate a feature or function.

The bill adds an exemption for conducting wireless interpersonal communication through the use of a hands-free electronic device. The term "hands-free electronic device" is defined as a mobile electronic device that has an internal feature or function or that is equipped with an attachment or addition, whether or not permanently part of such mobile electronic device, by which a user engages in conversation without the use of either hand.

The bill amends the short title of S. 316.305, F.S., changing it from the "Florida Ban on Texting While Driving Law" to the "Florida Ban on Handheld Wireless Communications While Driving Law," and makes conforming changes throughout the statute.

² The term "communications service" is defined by cross-reference to s. 812.15(1)(d), F.S., which defines the term to mean any service lawfully provided for a charge or compensation by any cable system or by any radio, fiber optic, photooptical, electromagnetic, photoelectronic, 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.

The bill mandates that the Department of Highway Safety and Motor Vehicles provide an educational awareness campaign to inform the public about the Florida Ban on Handheld Wireless Communications while driving law. The bill also mandates that the Department of Transportation notify the public of the law via message boards and existing roadway signs.

The section would remain enforceable only as a secondary offense.

The bill provides an effective date of July 1, 2015.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

An individual violating the prohibition 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.

The Department of Highway and Motor Vehicles will incur indeterminate expenses as a result of the mandated educational awareness campaign.

The Department of Transportation may incur indeterminate expenses as a result of the mandated notification of the motoring public.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The statute provides exceptions to the prohibition which may make it difficult for law enforcement officers to determine whether an individual is in violation of the prohibition. Additionally, the statute forbids the use of billing records except “in the event of a crash resulting in death or personal injury.” These factors may make it difficult to enforce and prosecute the prohibition.

VIII. Statutes Affected:

This bill substantially amends section 316.305 of the Florida Statutes.

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

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

None.

B. Amendments:

None.