

**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.)

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Prepared By: The Professional Staff of the Committee on Transportation

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BILL: CS/SB 90

INTRODUCER: Communications, Energy, and Public Utilities Committee and Senator Perry and others

SUBJECT: Use of Wireless Communications Devices While Driving

DATE: January 8, 2018      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wiehle	Caldwell	CU	<b>Fav/CS</b>
2.	Jones	Miller	TR	<b>Favorable</b>
3.			ATD	
4.			AP	

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 90 amends s. 316.305, F.S., to authorize enforcement of the ban on texting while driving as a primary offense. It requires that all penalties collected for a violation of the ban be remitted to the Department of Revenue for deposit into the Emergency Medical Services Trust Fund of the Department of Health. Finally, it requires that a law enforcement officer who has stopped a person for texting while driving inform the person of the right to decline a search of his or her wireless communications device.

Due to the redistribution of texting while driving penalty revenues, the bill will have an indeterminate fiscal impact to the General Revenue Fund, a number of state trust funds, the clerks of court, and municipalities. See Section V. Fiscal Impact Statement.

The bill takes effect October 1, 2018.

## II. Present Situation:

### Florida Ban on Texting While Driving Law

Section 316.305, F.S., is the “Florida Ban on Texting While Driving Law.” It bans a person from operating a motor vehicle while using a wireless communications device<sup>1</sup> in specified ways. Enforcement is permitted 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.

More specifically, the statute bans operation of a motor vehicle either 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 non-voice interpersonal communication.<sup>2</sup> The ban does not apply to a stationary motor vehicle or to a motor vehicle operator who is:

- Performing official duties as an operator of an authorized emergency vehicle,<sup>3</sup> 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.
- Operating an autonomous vehicle in autonomous mode.

Any person who violates the ban commits a noncriminal traffic infraction. A first violation is punishable as a nonmoving violation, and a second or subsequent violation within 5 years after the date of a prior conviction is punishable as a moving violation.<sup>4</sup>

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<sup>1</sup> The statute defines the term “wireless communications device” to mean 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 as defined in s. 812.15, F.S., and that allows text communications.

<sup>2</sup> This includes but is not limited to texting, e-mailing, and instant messaging.

<sup>3</sup> The term “authorized emergency vehicle” is defined in s. 322.01(4), F.S., to mean a vehicle that is equipped with extraordinary audible and visual warning devices, that is authorized 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; it does not include wreckers, utility trucks, or other vehicles that are used only incidentally for emergency purposes.

<sup>4</sup> In 2016 there were 1,404 citations issued for a nonmoving violation and 29 citations issued for a moving violation of the ban. See DHSMV website, *Annual Uniform Traffic Citation Report*,

<https://services.flhsmv.gov/specialtyplates/uniformtrafficcitationreport> (last visited Jan. 3, 2018).

Drivers convicted of unlawful use of a wireless communications device that results in a crash will have six points assessed against their driver license,<sup>5</sup> and drivers convicted of unlawful use of a wireless communications device within a school safety zone are assessed an additional two points.<sup>6</sup>

A user's billing records for a wireless communications device or the testimony of or written statements from appropriate authorities receiving such messages are admissible as evidence in any proceeding to determine whether a violation of the ban has been committed only in the event of a crash resulting in death or personal injury.

### **Texting While Driving Bans in Other States**

As of July 2017, texting while driving violations are enforced as a primary offense in 43 states.<sup>7</sup>

### **Traffic Infraction Civil Penalties**

Section 318.18, F.S., provides for penalties for traffic infractions and establishes a penalty of \$30 for a nonmoving traffic violation and \$60 for a moving violation.<sup>8</sup>

Section 318.21, F.S., requires that all traffic infraction civil penalties be paid monthly as follows:

- One dollar from every civil penalty shall be remitted to the Department of Revenue for deposit into the Child Welfare Training Trust Fund for child welfare training purposes.
- One dollar from every civil penalty shall be remitted to the Department of Revenue for deposit into the Juvenile Justice Training Trust Fund for juvenile justice purposes.
- Of the remainder:
  - Fifty-six and four-tenths percent: shall be divided if the violation occurred within a municipality, with 50.8 percent paid to that municipality and 5.6 percent deposited into the Fine and Forfeiture Trust Fund for use by the Clerks of the Circuit Court in performing court-related functions; shall be deposited into the fine and forfeiture fund for use by the Clerks of the Circuit Court in performing court-related functions if the violation occurred within the unincorporated area of a county; or shall be paid to a special improvement district of the Seminole Indian Tribe or Miccosukee Indian Tribe if the violation occurred there.
  - Twenty and six-tenths percent shall be remitted to the Department of Revenue for deposit into the General Revenue Fund of the state, except that the first \$300,000 shall be deposited into the Grants and Donations Trust Fund in the Justice Administrative Commission for administrative costs, training costs, and costs associated with the implementation and maintenance of Florida foster care citizen review panels in a constitutional charter county.

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<sup>5</sup> Section 322.27(3)(d)3., F.S.

<sup>6</sup> Section 322.27(3)(d)11., F.S.

<sup>7</sup> Governors Highway Safety Association, *Distracted Driving Laws by State* (July 2017), available at [http://www.ghsa.org/sites/default/files/2017-07/DistractedDrivingLawChart\\_July17.pdf](http://www.ghsa.org/sites/default/files/2017-07/DistractedDrivingLawChart_July17.pdf) (last visited Nov. 2, 2017).

<sup>8</sup> After court costs, the final amount paid could be up to \$108 for a nonmoving traffic violation and up to \$158 for a moving violation. See The Florida Court Clerks and Comptrollers, *Distribution Schedule* (July 2017), available at [http://c.ymcdn.com/sites/www.flclerks.com/resource/resmgr/publicationsanddocuments/2017\\_Distribution\\_Schedule\\_7.pdf](http://c.ymcdn.com/sites/www.flclerks.com/resource/resmgr/publicationsanddocuments/2017_Distribution_Schedule_7.pdf) (last visited Nov. 2, 2017).

- Seven and two-tenths percent shall be remitted to the Department of Revenue for deposit in the Emergency Medical Services Trust Fund.
- Five and one-tenth percent shall be remitted to the Department of Revenue for deposit in the Additional Court Cost Clearing Trust Fund for criminal justice purposes.
- Eight and two-tenths percent shall be remitted to the Department of Revenue for deposit in the Brain and Spinal Cord Injury Program Trust Fund.
- Two percent shall be remitted to the Department of Revenue and transmitted monthly to the Florida Endowment Foundation for Vocational Rehabilitation.
- Five-tenths percent shall be paid to the Clerk of the Circuit Court for administrative costs.

### **III. Effect of Proposed Changes:**

The bill authorizes enforcement of the texting ban as a primary offense.

It also requires that all penalties collected for a violation of the ban on texting while driving be remitted to the Department of Revenue for deposit into the Emergency Medical Services Trust Fund of the Department of Health. Currently, only seven and two-tenths percent of the penalties is deposited in this fund pursuant to s. 318.21, F.S.

Finally, it requires that a law enforcement officer who has stopped a person for texting while driving inform the person of the right to decline a search of his or her wireless communications device.

The bill takes effect October 1, 2018.

### **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:**

Operators of motor vehicles who are texting while driving will have an increased likelihood of being cited for a violation of the ban, with an increased likelihood of resulting penalties.

**C. Government Sector Impact:**

The Emergency Medical Services Trust Fund of the Department of Health will receive 100 percent of the texting while driving civil penalty amount instead of the current 7.2 percent, and will have an indeterminate positive fiscal impact. The other current recipients will no longer receive any of these penalty revenues, resulting in an indeterminate negative fiscal impact to the following:

- Child Welfare Training Trust Fund;
- Juvenile Justice Training Trust Fund;
- Municipalities;
- Circuit Court Clerks/Fine and Forfeiture Trust Fund;
- General Revenue Fund;
- Additional Court Cost Clearing Trust Fund;
- Brain and Spinal Cord Injury Program Trust Fund;
- Florida Endowment Foundation for Vocational Rehabilitation; and
- Circuit Court Clerks for administrative costs.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 316.305 of the Florida Statutes.

**IX. Additional Information:**

- A. **Committee Substitute – Statement of Substantial Changes:**  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS by Communications, Energy, and Public Utilities on October 24, 2017:**

- Requires that a law enforcement officer who has stopped a person for texting while driving inform the person of the right to decline a search of his or her wireless communications device.

B. Amendments:

None.

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

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