

1                   A bill to be entitled  
2           An act relating to wireless communications while  
3           driving; amending s. 316.305, F.S.; revising  
4           legislative intent; requiring a law enforcement  
5           officer to inform a motor vehicle operator of certain  
6           rights; prohibiting certain actions by such officer;  
7           requiring such officer to record the race and  
8           ethnicity of a violator when issuing a citation;  
9           requiring law enforcement agencies to report such  
10          information to the Department of Highway Safety and  
11          Motor Vehicles; requiring the department to annually  
12          report certain data to the Governor and Legislature;  
13          removing the requirement that enforcement be  
14          accomplished as a secondary action; creating s.  
15          316.306, F.S.; defining the term "wireless  
16          communications device"; providing legislative intent;  
17          prohibiting a person from operating a motor vehicle  
18          while using a wireless communications device in a  
19          handheld manner in a designated school crossing,  
20          school zone, or work zone; providing applicability;  
21          providing construction; authorizing a law enforcement  
22          officer during a specified period to stop motor  
23          vehicles to issue warnings to persons who are driving  
24          while using a wireless communications device in a  
25          handheld manner in a designated school crossing,

26 | school zone, or work zone; providing for repeal of  
27 | that authorization; authorizing a law enforcement  
28 | officer, on and after a specified date, to stop motor  
29 | vehicles and issue citations to persons who are  
30 | driving while using a wireless communications device  
31 | in a handheld manner in a designated school crossing,  
32 | school zone, or work zone; providing exceptions to  
33 | such prohibition; requiring a law enforcement officer  
34 | who stops a motor vehicle for a violation of driving  
35 | while using a wireless communications device in a  
36 | handheld manner in a designated school crossing,  
37 | school zone, or work zone to inform the motor vehicle  
38 | operator of his or her right to decline a search of  
39 | his or her wireless communications device; prohibiting  
40 | the law enforcement officer from taking specified  
41 | actions; requiring certain consent to search a motor  
42 | vehicle operator's wireless communications device;  
43 | providing that a user's billing records for a wireless  
44 | communications device or the testimony of or written  
45 | statements from certain authorities are admissible as  
46 | evidence in crashes resulting in death or serious  
47 | bodily injury for certain purposes; requiring that law  
48 | enforcement officers indicate specified information in  
49 | the uniform traffic citation; providing penalties for  
50 | driving while using a wireless communications device

51 in a handheld manner in a designated school crossing,  
52 school zone, or work zone; authorizing first-time  
53 offenders to participate in a wireless communications  
54 device driving safety program, in lieu of the  
55 imposition of penalties; authorizing a clerk of the  
56 court to dismiss a case and assess court costs under  
57 certain circumstances; requiring the deposit of fines  
58 into the Emergency Medical Services Trust Fund of the  
59 Department of Health; requiring law enforcement  
60 officers to record the race and ethnicity of violators  
61 when issuing a citation for a violation of this  
62 section; requiring all law enforcement agencies to  
63 maintain such information and report it to the  
64 Department of Highway Safety and Motor Vehicles in a  
65 form and manner determined by the department;  
66 beginning on a specified date, requiring the  
67 department to annually report the data to the Governor  
68 and Legislature; providing requirements for the  
69 report; authorizing the department, in consultation  
70 with the Department of Transportation, to implement a  
71 statewide campaign to raise awareness of and encourage  
72 compliance with the prohibitions on operating a motor  
73 vehicle while using a wireless communications device;  
74 authorizing the department to use certain messaging to  
75 implement the campaign; authorizing the department to

76 contract with certain entities for certain purposes;  
77 providing effective dates.

78  
79 Be It Enacted by the Legislature of the State of Florida:

80  
81 Section 1. Paragraph (d) of subsection (2) and subsections  
82 (3) and (5) of section 316.305, Florida Statutes, are amended to  
83 read:

84 316.305 Wireless communications devices; prohibition.—

85 (2) It is the intent of the Legislature to:

86 (d) Authorize law enforcement officers to stop motor  
87 vehicles and issue citations ~~as a secondary offense~~ to persons  
88 who are texting while driving.

89 (3) (a) A person may not operate a motor vehicle while  
90 manually typing or entering multiple letters, numbers, symbols,  
91 or other characters into a wireless communications device or  
92 while sending or reading data on such a device for the purpose  
93 of nonvoice interpersonal communication, including, but not  
94 limited to, communication methods known as texting, e-mailing,  
95 and instant messaging. As used in this section, the term  
96 "wireless communications device" means any handheld device used  
97 or capable of being used in a handheld manner, that is designed  
98 or intended to receive or transmit text or character-based  
99 messages, access or store data, or connect to the Internet or  
100 any communications service as defined in s. 812.15 and that

101 allows text communications. For the purposes of this paragraph,  
102 a motor vehicle that is stationary is not being operated and is  
103 not subject to the prohibition in this paragraph.

104 (b) Paragraph (a) does not apply to a motor vehicle  
105 operator who is:

106 1. Performing official duties as an operator of an  
107 authorized emergency vehicle as defined in s. 322.01, a law  
108 enforcement or fire service professional, or an emergency  
109 medical services professional.

110 2. Reporting an emergency or criminal or suspicious  
111 activity to law enforcement authorities.

112 3. Receiving messages that are:

113 a. Related to the operation or navigation of the motor  
114 vehicle;

115 b. Safety-related information, including emergency,  
116 traffic, or weather alerts;

117 c. Data used primarily by the motor vehicle; or

118 d. Radio broadcasts.

119 4. Using a device or system for navigation purposes.

120 5. Conducting wireless interpersonal communication that  
121 does not require manual entry of multiple letters, numbers, or  
122 symbols, except to activate, deactivate, or initiate a feature  
123 or function.

124 6. Conducting wireless interpersonal communication that  
125 does not require reading text messages, except to activate,

126 deactivate, or initiate a feature or function.

127 7. Operating an autonomous vehicle, as defined in s.  
128 316.003, in autonomous mode.

129 (c) A law enforcement officer who stops a motor vehicle  
130 for a violation of paragraph (a) must inform the motor vehicle  
131 operator of his or her right to decline a search of his or her  
132 wireless communications device and may not:

133 1. Access the wireless communications device without a  
134 warrant.

135 2. Confiscate the wireless communications device while  
136 awaiting issuance of a warrant to access such device.

137 3. Obtain consent from the motor vehicle operator to  
138 search his or her wireless communications device through  
139 coercion or other improper method. Consent to search a motor  
140 vehicle operator's wireless communications device must be  
141 voluntary and unequivocal.

142 (d) ~~(e)~~ Only in the event of a crash resulting in death or  
143 personal injury, a user's billing records for a wireless  
144 communications device or the testimony of or written statements  
145 from appropriate authorities receiving such messages may be  
146 admissible as evidence in any proceeding to determine whether a  
147 violation of paragraph (a) has been committed.

148 (5) When a law enforcement officer issues a citation for a  
149 violation of this section, the law enforcement officer must  
150 record the race and ethnicity of the violator. All law

151 enforcement agencies must maintain such information and report  
152 the information to the department in a form and manner  
153 determined by the department. Beginning February 1, 2020, the  
154 department shall annually report the data collected under this  
155 subsection to the Governor, the President of the Senate, and the  
156 Speaker of the House of Representatives. The data collected must  
157 be reported at least by statewide totals for local law  
158 enforcement agencies, state law enforcement agencies, and state  
159 university law enforcement agencies. The statewide total for  
160 local law enforcement agencies shall combine the data for the  
161 county sheriffs and the municipal law enforcement agencies.  
162 ~~Enforcement of this section by state or local law enforcement~~  
163 ~~agencies must be accomplished only as a secondary action when an~~  
164 ~~operator of a motor vehicle has been detained for a suspected~~  
165 ~~violation of another provision of this chapter, chapter 320, or~~  
166 ~~chapter 322.~~

167 Section 2. Effective October 1, 2019, section 316.306,  
168 Florida Statutes, is created to read:

169 316.306 School and work zones; prohibition on the use of a  
170 wireless communications device in a handheld manner.-

171 (1) For purposes of this section, the term "wireless  
172 communications device" has the same meaning as provided in s.  
173 316.305(3)(a). The term includes, but is not limited to, a cell  
174 phone, a tablet, a laptop, a two-way messaging device, or an  
175 electronic game that is used or capable of being used in a

176 handheld manner. The term does not include a safety, security,  
177 or convenience feature built into a motor vehicle which does not  
178 require the use of a handheld device.

179 (2) It is the intent of the Legislature to:

180 (a) Improve roadway safety in school and work zones for  
181 all vehicle operators, vehicle passengers, bicyclists,  
182 pedestrians, and other road users.

183 (b) Prevent crashes related to the act of driving while  
184 using a wireless communications device in a handheld manner when  
185 operating a motor vehicle while the vehicle is in motion.

186 (c) Reduce injuries, deaths, property damage, health care  
187 costs, health insurance rates, and automobile insurance rates  
188 related to motor vehicle crashes.

189 (d) Authorize law enforcement officers to stop motor  
190 vehicles and issue citations to persons who are driving in  
191 school or work zones while using a wireless communications  
192 device in a handheld manner as provided in subsection (3).

193 (3) (a) 1. A person may not operate a motor vehicle while  
194 using a wireless communications device in a handheld manner in a  
195 designated school crossing, school zone, or work zone area as  
196 defined in s. 316.003(101). This subparagraph shall only be  
197 applicable to work zone areas if construction personnel are  
198 present or are operating equipment on the road or immediately  
199 adjacent to the work zone area. For the purposes of this  
200 paragraph, a motor vehicle that is stationary is not being



201 operated and is not subject to the prohibition in this  
202 paragraph.

203 2.a. During the period from October 1, 2019, through  
204 December 31, 2019, a law enforcement officer may stop motor  
205 vehicles to issue verbal or written warnings to persons who are  
206 in violation of subparagraph (a)1. for the purposes of informing  
207 and educating such persons of this section. This sub-  
208 subparagraph shall stand repealed on October 1, 2020.

209 b. Effective January 1, 2020, a law enforcement officer  
210 may stop motor vehicles and issue citations to persons who are  
211 driving while using a wireless communications device in a  
212 handheld manner in violation of subparagraph (a)1.

213 (b) Paragraph (a) does not apply to a motor vehicle  
214 operator who is:

215 1. Performing official duties as an operator of an  
216 authorized emergency vehicle as defined in s. 322.01, a law  
217 enforcement or fire service professional, or an emergency  
218 medical services professional.

219 2. Reporting an emergency or criminal or suspicious  
220 activity to law enforcement authorities.

221 3. Receiving messages that are:

222 a. Related to the operation or navigation of the motor  
223 vehicle;

224 b. Safety-related information, including emergency,  
225 traffic, or weather alerts;

226 c. Data used primarily by the motor vehicle; or

227 d. Radio broadcasts.

228 4. Using a device or system in a hands-free manner for  
229 navigation purposes.

230 5. Using a wireless communications device hands-free or  
231 hands-free in voice-operated mode, including, but not limited  
232 to, a factory-installed or after-market Bluetooth device.

233 6. Operating an autonomous vehicle, as defined in s.  
234 316.003, in autonomous mode.

235 (c) A law enforcement officer who stops a motor vehicle  
236 for a violation of paragraph (a) must inform the motor vehicle  
237 operator of his or her right to decline a search of his or her  
238 wireless communications device and may not:

239 1. Access the wireless communications device without a  
240 warrant.

241 2. Confiscate the wireless communications device while  
242 awaiting issuance of a warrant to access such device.

243 3. Obtain consent from the motor vehicle operator to  
244 search his or her wireless communications device through  
245 coercion or other improper method. Consent to search a motor  
246 vehicle operator's wireless communications device must be  
247 voluntary and unequivocal.

248 (d) Only in the event of a crash resulting in death or  
249 serious bodily injury, as defined in s. 316.027, may a user's  
250 billing records for a wireless communications device, or the

251 testimony of or written statements from appropriate authorities  
252 receiving such messages, be admissible as evidence in any  
253 proceeding to determine whether a violation of subparagraph  
254 (a)1. has been committed.

255 (e) Law enforcement officers must indicate the type of  
256 wireless communications device in the comment section of the  
257 uniform traffic citation.

258 (4) (a) Any person who violates this section commits a  
259 noncriminal traffic infraction, punishable as a moving  
260 violation, as provided in chapter 318, and shall have 3 points  
261 assessed against his or her driver license as set forth in s.  
262 322.27(3) (d)7. For a first offense under this section, in lieu  
263 of the penalty specified in s. 318.18 and the assessment of  
264 points, a person who violates this section may elect to  
265 participate in a wireless communications device driving safety  
266 program approved by the Department of Highway Safety and Motor  
267 Vehicles. Upon completion of such program, the penalty specified  
268 in s. 318.18 and associated costs may be waived by the clerk of  
269 the court and the assessment of points must be waived.

270 (b) The clerk of the court may dismiss a case and assess  
271 court costs in accordance with s. 318.18(11) (a) for a nonmoving  
272 traffic infraction for a person who is cited for a first time  
273 violation of this section if the person shows the clerk proof of  
274 purchase of equipment that enables his or her personal wireless  
275 communications device to be used in a hands-free manner.

276        (5) Notwithstanding s. 318.21, all proceeds collected  
277 pursuant to s. 318.18 for violations of this section must be  
278 remitted to the Department of Revenue for deposit into the  
279 Emergency Medical Services Trust Fund of the Department of  
280 Health.

281        (6) When a law enforcement officer issues a citation for a  
282 violation of this section, the law enforcement officer must  
283 record the race and ethnicity of the violator. All law  
284 enforcement agencies must maintain such information and must  
285 report such information to the department in a form and manner  
286 determined by the department. Beginning February 1, 2020, the  
287 department shall annually report the data collected under this  
288 subsection to the Governor, the President of the Senate, and the  
289 Speaker of the House of Representatives. The data collected must  
290 be reported at least by statewide totals for local law  
291 enforcement agencies, state law enforcement agencies, and state  
292 university law enforcement agencies. The statewide total for  
293 local law enforcement agencies must combine the data for the  
294 county sheriffs and the municipal law enforcement agencies.

295        Section 3. (1) The Department of Highway Safety and Motor  
296 Vehicles, in consultation with the Department of Transportation,  
297 may implement a statewide campaign to raise awareness of and  
298 encourage compliance with ss. 316.305 and 316.306, Florida  
299 Statutes. The Department of Highway Safety and Motor Vehicles  
300 may use television messaging, radio broadcasts, print media,

301 digital strategies, social media, and any other form of  
302 messaging deemed necessary and appropriate by the department to  
303 implement the campaign.

304 (2) The Department of Highway Safety and Motor Vehicles  
305 may contract with counties, local law enforcement agencies,  
306 safety councils, and public schools to assist with planning and  
307 conducting the statewide campaign.

308 Section 4. Except as otherwise expressly provided in this  
309 act, this act shall take effect July 1, 2019.