

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 Rules

BILL: CS/CS/CS/CS/SB 76

INTRODUCER: Rules Committee; Judiciary Committee; Innovation, Industry, Technology Committee; Infrastructure and Security Committee; and Senator Simpson and others

SUBJECT: Driving While Using a Wireless Communications Device

DATE: April 17, 2019

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Proctor</u>	<u>Miller</u>	<u>IS</u>	<u>Fav/CS</u>
2.	<u>Wiehle</u>	<u>Imhof</u>	<u>IT</u>	<u>Fav/CS</u>
3.	<u>Stallard</u>	<u>Cibula</u>	<u>JU</u>	<u>Fav/CS</u>
4.	<u>Proctor</u>	<u>Phelps</u>	<u>RC</u>	<u>Fav/CS</u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/CS/CS/SB 76 amends s. 316.305, F.S., to rename the “Florida Ban on Texting While Driving Law” to the “Florida Hands-Free Driving Law,” and to authorize enforcement of a ban on the use of a handheld wireless communications device while operating a motor vehicle as a primary offense punishable as a moving violation instead of the current nonmoving violation.

The bill allows for a statewide public education and awareness campaign, and provides for enforcement only by a warning from October 1, 2019, through December 31, 2019, after which a person may be issued a citation. A person who violates this law commits a noncriminal traffic infraction, punishable as a moving violation, and will have three points assessed against his or her license. However, a person cited for his or her first offense may avoid punishment and the assessment of points by completing a wireless communications device driving safety program.

The bill allows the clerk of the court to dismiss a case and assess court costs for a nonmoving traffic infraction for a person who is cited for a first time violation of the ban on the use of a handheld wireless communications device while operating a motor vehicle if the person shows the clerk proof of purchase of equipment that enables their personal wireless communications device to be used in a hands-free manner.

The bill 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 (DOH), which will have an indeterminate fiscal impact on 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 July 1, 2019.

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 device¹ 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 ch. 316, F.S., the “Florida Uniform Traffic Control Law,” ch. 320, F.S., relating to motor vehicle licenses, or ch. 322, F.S., relating to driver licenses.

More specifically, the statute bans operation of a moving 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.² The ban does not apply to a motor vehicle operator who is:

- Performing official duties as an operator of an authorized emergency vehicle,³ 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.⁴

¹ 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.

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

³ 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.

⁴ Section 316.305(3)(b), F.S.

Any person who violates the ban commits a noncriminal traffic infraction.⁵ A first violation is punishable as a nonmoving violation,⁶ and a second or subsequent violation within five years after the date of a prior conviction is punishable as a moving violation.⁷

According to the Department of Highway Safety and Motor Vehicles (HSMV), there were a total of 1,671 citations from both state and local law enforcement agencies for violation of s. 316.305, F.S., in calendar year 2018.⁸ Of those, 1,632 were for a first violation of the statute, and 39 were for a second or subsequent violation of the statute.⁹

Drivers convicted of unlawful use of a wireless communications device that results in a crash will have six points assessed against their driver license,¹⁰ and drivers convicted of unlawful use of a wireless communications device within a school safety zone is assessed an additional two points.¹¹

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.

Distracted Driving Laws in Other States

Bans on Texting While Driving

As of April 2018, 47 states, the District of Columbia, Puerto Rico, Guam, and the U.S. Virgin Islands banned text messaging for all drivers.¹² In 43 states, the District of Columbia, Guam, Puerto Rico, and the U.S. Virgin Islands texting laws are primary enforcement, and 4 states have secondary enforcement of texting for drivers.¹³

Bans on the Use of Hand Held Devices While Driving

As of April 2018, using a hand-held device while driving violations are enforced as primary offenses in 16 states, the District of Columbia, Puerto Rico, Guam, and the U.S. Virgin Islands.¹⁴

⁵ Section 316.305(4)(a), F.S.

⁶ *Id.*

⁷ Section 316.305(4)(b), F.S.

⁸ Florida Department of Highway Safety and Motor Vehicles, *Annual Uniform Traffic Citation Report*, available at <https://services.flhsmv.gov/specialtyplates/uniformtrafficcitationreport>.

⁹ *Id.*

¹⁰ Section 322.27(3)(d)3., F.S.

¹¹ Section 322.27(3)(d)11., F.S.

¹² Governors Highway Safety Association, *Distracted Driving Laws by State* (April 2018), available at https://www.ghsa.org/sites/default/files/2018-06/DistractedDrivingLawChart_Jun18.pdf.

¹³ *Id.*

¹⁴ Governors Highway Safety Association, *Distracted Driving Laws by State* (April 2018), available at https://www.ghsa.org/sites/default/files/2018-06/DistractedDrivingLawChart_Jun18.pdf.

Bans on Distracted Driving

Both the District of Columbia¹⁵ and Ohio¹⁶ have distracted driver laws that encompass more than just the use of personal electronic devices.

Distracted Driving

The National Highway Traffic Safety Administration defines distracted driving as any activity that diverts attention from the primary task of driving.¹⁷ Besides using electronic devices, distractions can also include adjusting a radio, eating and drinking, reading, grooming, and interacting with passengers.¹⁸

The Insurance Institute for Highway Safety asserts that cell phone use increases the risk of a crash, but that the crash risk associated with other distractions “isn’t well established.”¹⁹

Distraction-Affected Motor Vehicle Crashes

In 2015, there were 885,000 distraction-affected motor vehicle crashes, of which 3,242 were fatal.²⁰ In the same year, 69,000 crashes were affected by cell phone use, and 453 of these crashes were fatal.²¹

However, the number of fatal distraction-affected crashes might be higher. If a driver fatality occurs in the crash, law enforcement agencies must rely on the crash investigation in order to report on whether driver distraction was involved, and they may not have information to indicate distraction.²²

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.²³

¹⁵ Sections 50-1731.02 and 50.1731.03, Code of the District of Columbia.

¹⁶ Section 4511.051, Ohio Revised Code.

¹⁷ U.S. Department of Transportation - National Highway Traffic Safety Administration, *Distracted Driving 2016* (April 2018), available at <https://www.nhtsa.gov/risky-driving/distracted-driving>.

¹⁸ *Id.*

¹⁹ Insurance Institute for Highway Safety, Highway Loss Data Institute, available at <https://www.iihs.org/iihs/topics/t/distracted-driving/topicoverview> (last visited February 26, 2019).

²⁰ U.S. Department of Transportation, National Highway Traffic Safety Administration, *Traffic Safety Facts, Research Note, Distracted Driving 2016* (April 2018), available at <https://crashstats.nhtsa.dot.gov/Api/Public/ViewPublication/812517>.

²¹ *Id.*

²² U.S. Department of Transportation, National Highway Traffic Safety Administration, *An Examination of Driver Distraction as Recorded in NHTSA Databases* (September 2009), available at <https://crashstats.nhtsa.dot.gov/Api/Public/ViewPublication/811216>.

²³ After the addition of court costs and service charges, 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 2018), available at https://cdn.ymaws.com/www.flclerks.com/resource/resmgr/public_documents/_2018_distribution_schedule_1.pdf (last visited February 26, 2019).

Section 318.21, F.S., requires that all civil penalties for traffic infractions that are received by a county court must be paid out 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 Trust 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.
 - 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.

Driver Improvement Schools

The Florida Department of Highway Safety and Motor Vehicles (DHSMV) has the authority to approve and regulate courses for driver improvement schools, including courses that use technology as a delivery method.²⁴ In determining whether to approve a course, the DHSMV considers course content designed to promote safety, driver awareness, crash avoidance techniques, and other factors or criteria to improve driver performance from a safety viewpoint, including promoting motorcyclist, bicyclist, and pedestrian safety and risk factors resulting from driver attitude and irresponsible driver behaviors, such as speeding, running red lights and stop signs, and using electronic devices while driving.²⁵

In addition to regular course costs, an assessment of \$2.50 is collected for the driver improvement course from each person who elects to attend a course. The course provider must

²⁴ Section 318.1451(1), F.S.

²⁵ Section 318.1451(2)(a), F.S.

remit the \$2.50 assessment to the DHSMV for deposit into the Highway Safety Operating Trust Fund in order to receive unique course completion certificate numbers for course participants.²⁶ The assessment fee is used to administer the program and to fund the general operations of the HSMV.

III. Effect of Proposed Changes:

The bill amends the “Florida Ban on Texting While Driving Law” to rename it the “Florida Hands-Free Driving Law,” and to authorize enforcement of a ban on the use of a handheld wireless communications device while operating a motor vehicle as a primary offense. The bill provides for phased-in enforcement. From October 1, 2019 to December 31, 2019, law enforcement officers are authorized to provide only a verbal or written warning to a person who is using a handheld wireless communications device while operating a motor vehicle. After December 31, 2019, an officer may issue a uniform traffic citation for an infraction. A person who violates this law commits a noncriminal traffic infraction, punishable as a moving violation, and will have three points assessed against his or her license.

The bill defines “wireless communications device” to mean any handheld device that is designed or intended to allow two-way voice communication, to receive or transmit text-based or character-based messages, to record or view images, to access or store data, or to connect to the Internet or to any communications service, or that allows text communications. The term includes, but is not limited to:

- Cell phones;
- Tablets;
- Laptops;
- Two-way messaging devices; or
- Electronic games.

However, the term “wireless communications device” does not include a safety, security, or convenience feature built into a motor vehicle that does not require the use of a handheld device.

The law currently provides that only in the event of a crash involving a death or personal injury may specified forms of evidence be used to establish whether a violation of the prohibition has occurred. The bill changes the term “personal injury” to “serious bodily injury.”

A person issued a citation for a first offense may elect to participate in a wireless communications device driving safety program approved by the DHSMV and have any penalties, associated costs, and points waived.

In addition, the bill allows the clerk of the court to dismiss a case and assess court costs for a nonmoving traffic infraction for a person who is cited for a first time violation of the ban on the use of a handheld wireless communications device while operating a motor vehicle if the person shows the clerk proof of purchase of equipment that enables their personal wireless communications device to be used in a hands-free manner.

²⁶ Section 318.1451(4), F.S.

All penalties collected for a violation of the ban on texting while driving must be remitted to the Department of Revenue for deposit into the Emergency Medical Services Trust Fund of the Department of Health. Currently, only 7.2 percent of the penalties is deposited in this fund.

The bill requires that when a citation for driving while using a handheld wireless communications device is issued, a law enforcement officer must indicate the type of wireless communications device in the comment section of the uniform traffic citation, and must record the race and ethnicity of the violator. All law enforcement agencies must maintain such information and must report such information to the DHSMV in a form and manner determined by the DHSMV. Beginning February 1, 2020, the DHSMV must annually report the data collected to the Governor, the President of the Senate, and the Speaker of the House of Representatives. The data collected must be reported at least by statewide totals for local law enforcement agencies, state law enforcement agencies, and state university law enforcement agencies. The statewide total for local law enforcement agencies must combine the data for the county sheriffs and the municipal law enforcement agencies.

The bill authorizes the DHSMV, in consultation with the Department of Transportation, to implement a statewide safety and public awareness campaign to prevent drivers from driving while using a handheld wireless communications device. The DHSMV is authorized to contract with county, and local law enforcement agencies, safety councils, and public schools to assist with planning and conducting the statewide campaign.

The bill takes effect July 1, 2019.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

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

None.

B. Private Sector Impact:

Operators of motor vehicles who drive while using a handheld wireless communications device may be issued a citation and have resulting penalties. In addition, with the first violation being changed from a nonmoving to a moving traffic violation, the base fine amount doubles from \$30 to \$60, along with 3 points being assessed against their driver license.

C. Government Sector Impact:

The Emergency Medical Services Trust Fund of the DOH will receive 100 percent of the driving while distracted civil penalty amount instead of the current 7.2 percent associated with the texting while driving civil penalty, which will have an indeterminate positive fiscal impact. The other current recipients will no longer receive any of the texting while driving 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.

This bill creates an unnumbered section 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/CS/CS/CS by Rules on April 17, 2019:

The committee substitute:

- Expands the types of distracted driving regulated by the bill to using a handheld wireless communications device while driving. The underlying bill would have only regulated “texting”;
- Defines “wireless communications device”;
- Requires that when a citation for driving while using a handheld wireless communications device is issued, a law enforcement officer must indicate the type of wireless communications device in the comment section of the uniform traffic citation;
- Requires a law enforcement officer to record the race and ethnicity of each person cited for driving while using a handheld wireless communications device; and
- Allows the clerk of the court to dismiss a case and assess court costs for a nonmoving traffic infraction for a person who is cited for a first time violation of the ban on the use of a handheld wireless communications device while operating a motor vehicle under certain circumstances.

CS/CS/CS by Judiciary on March 25, 2019:

The committee substitute limits the types of distracted driving regulated by the bill to texting while driving. The underlying bill would have regulated “reading, writing, performing personal grooming, applying a beauty aid or similar products, interacting with pets or unsecured cargo, using a personal wireless communications device, or engaging in any other activity, conduct task or action that causes distraction.” The bill also eliminates the requirement that law enforcement officers record the race and ethnicity of each person cited for driving while distracted.

CS/CS by Innovation, Industry, and Technology on March 6, 2019:

The committee substitute for committee substitute:

- Revises a definition and a statement of intent to clarify that the driving while distracted provisions apply when the vehicle is in motion; and
- Requires that information on the race and ethnicity of persons violating the driving while distracted prohibition be recorded, maintained, and reported, as specified.

CS by Infrastructure and Security on February 19, 2019:

The CS changes the “relating to” clause of the bill to “an act relating to driving while distracted,” and adds numerous provisions to the bill. The CS:

- Expands the bill to include multiple forms of driving distracted;
- Renames a section of statute Driving while Distracted prohibition;
- Renames a statute section citation title to “Florida Driving While Distracted Law”;
- Defines the term “driving while distracted”;
- Defines the term “wireless communications device”;

- Allows law enforcement to issue citations to distracted drivers as a primary offense after December 1, 2019;
- Changes the first offense from a nonmoving violation, to a moving violation and provides an option to avoid points and penalties through participation in a distracted driving safety program;
- Allows that an operators first citation due to use of personal wireless communications device may be dismissed if they show proof of having purchased equipment that allows their personal wireless communications device to be used in a hands-free manner;
- Allows a user's billing records for wireless communications device to be admissible as evidence in the event a crash results in "death or serious bodily injury", current law allows admissibility when a crash results in "death or personal injury";
- Allows for use of wireless communications device in hands-free or voice operated mode;
- Provides for a warning period from October 1, 2019 to December 31, 2019;
- Provides that the HSMV may implement a safety and public awareness campaign; and
- Directs all fines collected to be deposited in the Emergency Medical Services Trust Fund of the DOH.

B. Amendments:

None.