

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 Infrastructure and Security

BILL: SB 76

INTRODUCER: Senator Simpson and others

SUBJECT: Use of Wireless Communications Devices While Driving

DATE: February 12, 2019

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Proctor	Miller	IS	Pre-meeting
2.			IT	
3.			JU	
4.			RC	

I. Summary:

SB 76 amends s. 316.305, F.S., to rename the “Florida Ban on Texting While Driving Law” to the “Florida Ban on Wireless Communications Devices While Driving Law”, and authorizes enforcement of a ban on the use of a wireless communications device while driving as a primary offense. It also 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.

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, 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 chapter 316, F.S., the “Florida

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.

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.² 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,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.

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 five years after the date of a prior conviction is punishable as a moving violation.

According to the HSMV, there were a total of 1,627 citations from both state and local law enforcement agencies for violation of s. 316.305, F.S. in calendar year 2017.⁴ Of those, 1,627 were for a first violation of the statute, and 27 were for a second or subsequent violation of the statute.

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

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

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 Department of Highway Safety and Motor Vehicles Annual Uniform Traffic Citation Report, available at <https://services.flhsmv.gov/specialtyplates/uniformtrafficcitationreport> (last visited February 12, 2019).

⁵ Section 322.27(3)(d)3., F.S.

⁶ Section 322.27(3)(d)11., F.S.

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 April 2018, 47 States, the District of Columbia, Puerto Rico, Guam, and the U.S. Virgin Islands ban text messaging for all drivers. 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.⁷

Hand-Held Device Bans in Other States

In 2016, there were 444 fatal crashes (with 486 fatalities) in the United States reported to have involved cell phone use as a distraction (14% of all fatal distraction-affected crashes). For these distraction-affected crashes, the police crash report stated that the driver was talking on, listening to, or engaged in some other cell phone activity at the time of the crash.⁸

There are negative implications associated with distracted driving - especially in conjunction with a crash. Survey research shows that self-reporting of negative behavior is lower than actual occurrence of that negative behavior. There is little reason to believe that self-reporting of distracted driving to a law enforcement officer would differ. The inference may be drawn that the reported occurrence of driver distraction during crashes is lower than the actual occurrence. Additionally, if a driver fatality occurs in the crash, law enforcement 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.⁹

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.¹⁰

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.¹¹

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

⁷ 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 (last visited February 5, 2019).

⁸ U.S. Department of Transportation - National Highway Traffic Safety Administration, Distracted Driving 2016 (April 2018), available at <https://crashstats.nhtsa.dot.gov/Api/Public/ViewPublication/812517> (last visited February 7, 2019).

⁹ 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> (last visited February 7, 2019).

¹⁰ 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 (last visited February 5, 2019).

¹¹ 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 2018), available at https://cdn.ymaws.com/www.flclerks.com/resource/resmgr/public_documents_/2018_distribution_schedule_1.pdf (last visited February 5, 2019).

- 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.

III. Effect of Proposed Changes:

The bill renames the “Florida Ban on Texting While Driving Law” to the “Florida Ban on Wireless Communications Devices While Driving Law”, and authorizes enforcement of a ban on the use of a wireless communications device while driving as a primary offense.

The bill expands the activities covered by the ban to include listening or talking on wireless communications devices.

It also requires that all penalties collected for a violation of the ban on using a wireless communications device 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(2), F.S.

The bill takes effect October 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.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Operators of motor vehicles who are using a wireless communications device 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 use of a wireless communications device while driving civil penalty amount instead of the current 7.2 percent associated with the texting while driving civil penalty, and 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.

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.