

**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 Innovation, Industry, and Technology

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BILL: CS/CS/SB 76

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

SUBJECT: Use of Wireless Communications Devices While Driving

DATE: March 6, 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>JU</u>	_____
4.	_____	_____	<u>RC</u>	_____

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

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/CS/SB 76 amends s. 316.305, F.S., to rename the “Florida Ban on Texting While Driving Law” to the “Florida Driving While Distracted Law,” and to authorize enforcement of the ban on driving while distracted as a primary offense punishable as a moving violation instead of the current nonmoving violation. Driving while distracted is defined to include a number of physical activities, including the handheld use of wireless communication devices while driving.

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 the citations may be issued. In addition, the bill allows for the dismissal of first-time offenses under certain conditions, and if eligible, allows for the election to attend a distracted driving safety program to avoid penalties, costs, and points associated with a citation.

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 requires that information on the race and ethnicity of persons violating the driving while distracted prohibition be recorded, maintained, and reported, as specified.

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

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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.

According to the Department of Highway Safety and Motor Vehicles (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.<sup>4</sup> 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,<sup>5</sup> and drivers convicted of unlawful use of a wireless communications device within a school safety zone is 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 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.<sup>7</sup>

### **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 percent 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.<sup>8</sup>

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

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<sup>4</sup> Department of Highway Safety and Motor Vehicles Annual Uniform Traffic Citation Report, available at <https://services.flhsmv.gov/specialtyplates/uniformtrafficcitationreport> (last visited February 26, 2019).

<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 (April 2018), available at [https://www.ghsa.org/sites/default/files/2018-06/DistractedDrivingLawChart\\_Jun18.pdf](https://www.ghsa.org/sites/default/files/2018-06/DistractedDrivingLawChart_Jun18.pdf) (last visited February 26, 2019).

<sup>8</sup> 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 26, 2019).

investigation in order to report on whether driver distraction was involved, and they may not have information to indicate distraction.<sup>9</sup>

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.<sup>10</sup>

### **Distracted Driving**

The National Highway Traffic Safety Administration defines distracted driving as any activity that diverts attention from the primary task of driving.<sup>11</sup> Besides using electronic devices, distractions can also include adjusting a radio, eating and drinking, reading, grooming, and interacting with passengers. In 2016, distracted driving claimed 3,450 lives nationwide.<sup>12</sup>

According to the Insurance Institute for Highway Safety research, it is not clear that banning hand-held cellphone use and texting reduces crashes. Even though research has documented that bans on hand-held cellphone use reduces overall cellphone use, crashes have increased in recent years, but overall cellphone use has not. The institute points out that drivers seem to be distracted by things other than cellphones, so prohibiting cellphone use alone does not appear to eliminate distracted driving. The institute concluded that broader countermeasures that keep drivers from becoming distracted or that mitigate the consequences of distracted driving, such as crash avoidance technology, may be more effective than cellphone bans.<sup>13</sup>

Both the District of Columbia<sup>14</sup> and Ohio<sup>15</sup> have distracted driver laws that encompass more than just the use of personal electronic devices.

### **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>16</sup>

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<sup>9</sup> 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 26, 2019).

<sup>10</sup> 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](https://www.ghsa.org/sites/default/files/2018-06/DistractedDrivingLawChart_Jun18.pdf) (last visited February 26, 2019).

<sup>11</sup> 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> (last visited February 26, 2019).

<sup>12</sup> U.S. Department of Transportation - National Highway Traffic Safety Administration, Traffic Safety Facts, *Distracted Driving 2016* (April 2018), available at <https://crashstats.nhtsa.dot.gov/Api/Public/ViewPublication/812517> (last visited February 20, 2019).

<sup>13</sup> 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).

<sup>14</sup> Sections 50-1731.02 and 50.1731.03, Code of the District of Columbia

<sup>15</sup> Section 4511.051, Ohio Revised Code

<sup>16</sup> 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](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 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 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 HSMV has the authority to approve and regulate courses for driver improvement schools, including courses that use technology as a delivery method.<sup>17</sup> In determining whether to approve a course, the HSMV 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.<sup>18</sup>

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 remit the \$2.50 assessment to the HSMV for deposit into the Highway Safety Operating Trust

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<sup>17</sup> Section 318.1451(1), F.S.

<sup>18</sup> Section 318.1451(2)(a), F.S.

Fund in order to receive unique course completion certificate numbers for course participants.<sup>19</sup> 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 renames the “Florida Ban on Texting While Driving Law” to the “Florida Driving While Distracted Law,” and authorizes enforcement of the ban on driving while distracted 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 a verbal or written warning to those who are driving while distracted, and after December 31, 2019, officers may issue a uniform traffic citation for an infraction. The penalty classification for a violation is increased from a nonmoving violation to a moving violation.

“Driving while distracted” means inattentive operation of a motor vehicle while the vehicle is in motion. Inattentive or distracted driving conduct includes:

- Reading;
- Writing;
- Grooming;
- Applying beauty products;
- Interacting with pets and unsecured cargo;
- Using personal wireless communications devices; or
- Engaging in any other activity, conduct, task or actions which causes distractions.

“Wireless communications device” means any handheld device that can receive or transmit text or character-based messages, record or view images, access or store data, connect to the Internet or a communications service, or allows text communications. The term includes, but is not limited to, a:

- Cell phone;
- Tablet;
- Laptop;
- Two-way messaging device; or
- Electronic game.

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 current prohibition on texting while driving 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.”

In issuing a citation for driving while distracted, a law enforcement officer must indicate in the comments section of the citation what type of distracted-driving conduct is the basis for the citation.

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<sup>19</sup> Section 318.1451(4), F.S.

A person issued a citation for a first offense may elect to participate in a distracted driving safety program approved by the HSMV and have any penalties, associated costs, and points waived. Additionally, if a first-time citation involves the use of a personal wireless communications device, the person receiving the citation may show the clerk of the court proof of purchase of equipment that enables hands-free use of their personal wireless communications device, upon which the clerk may assess court costs and dismiss the case.

All penalties collected for a violation of the ban on driving while distracted must be remitted to the Department of Revenue for deposit into the Emergency Medical Services Trust Fund of the DOH. Currently, only seven and two-tenths percent of the penalties is deposited in this fund.

Each law enforcement officer who issues a ticket for a violation of the driving while distracted prohibition must record the race and ethnicity of the violator. All law enforcement agencies are required to maintain and report this information to the Department of Highway Safety and Motor Vehicles in a form and manner determined by the department. Beginning February 1, 2020, the department is required to annually report the collected data to the Governor, the President of the Senate, and the Speaker of the House of Representatives. The collected data 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 creates an unnumbered section of law which allows the HSMV, in consultation with the Department of Transportation, to implement a statewide safety and public awareness campaign to prevent drivers from driving while distracted. The HSMV 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.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Operators of motor vehicles who drive while distracted 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 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.