

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 41 Use of Wireless Communications Devices While Driving
SPONSOR(S): Roads, Bridges & Ports Policy Committee, Holder
TIED BILLS: **IDEN./SIM. BILLS:** SB 448

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.:	Roads, Bridges & Ports Policy Committee	14 Y, 0 N, As CS	Brown	Miller
1)	_____	_____	_____	_____
2)	_____	_____	_____	_____
3)	_____	_____	_____	_____
4)	_____	_____	_____	_____
5)	_____	_____	_____	_____

SUMMARY ANALYSIS

CS/HB 41 is the Florida Ban on Texting While Driving Law, modeled after a Sample Law recently promulgated by the United State Department of Transportation. The bill prohibits the operation of a motor vehicle while manually typing or entering multiple letters, numbers, symbols, or other text in a wireless communication device, or sending or reading data in the device, for the purpose of non-voice interpersonal communication. The bill makes exceptions for emergency workers, reporting emergencies or suspicious activities, and for receiving various types of navigation information, emergency traffic data, and radio broadcasts. The bill also makes an exception for interpersonal communications that can be conducted without the need to manually type messages.

The prohibition is enforceable as a secondary offense. A first violation is punishable as a nonmoving violation, with a fine of \$30 plus court costs which vary by county; the total fine plus court costs and fees ranges from \$78 to \$129. A second violation committed within 5 years of the first is a moving violation punishable by a \$60 fine plus court costs, resulting in a total fine and costs of \$128 to \$179.

In addition to these penalties, any violation of the ban which results in a crash will result in 6 points added to the offender's driver's license record.

The bill has an effective date of October 1, 2010.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

The state has expressly preempted all regulation of the use of electronic communications devices in a motor vehicle.¹ It is a violation of current state law to operate a motor vehicle while wearing a headset, headphone, or other listening device other than a hearing aid;² such violations are noncriminal traffic infractions punishable as nonmoving violations. Section 318.18(2), F.S., provides that a non-moving violation requires a \$30 fine (plus court costs which vary by county; the total fine plus court costs and fees for a non-moving violation could range from \$78 to \$129).

Exceptions to the prohibition against headsets are made for law enforcement radio equipment,³ certain headsets built into motorcycle helmets,⁴ and cellular phone or other radio headsets used in only one ear.⁵ The Department of Highway Safety and Motor Vehicles is granted rulemaking authority to further detail the standards and specifications of radio equipment permitted by statute.⁶

Section 322.27(3), F.S., provides a point system used to evaluate the qualification of any person to operate a motor vehicle after accumulating multiple violations of motor vehicle laws. Moving violations typically result in assessment of three points, unless the infraction or offense is among those considered more serious. For example, pursuant to section 322.27(3)(d), F.S., reckless driving, passing a stopped school bus, and speeding in excess of 15 mph over the posted limit all require assessment of four points. Leaving the scene of a crash and speeding resulting in a crash require assessment of six points.

The Department may suspend a driver for 30 days if the driver accumulates 12 or more points within a 12-month period,⁷ up to three months if the driver accumulates 18 points in 18 months,⁸ and up to one year if the driver accumulates 24 points within 36 months.⁹

¹ Section 316.0075, F.S.

² Section 316.304(1), F.S.

³ Section 316.304(2)(a), F.S.

⁴ Section 316.304(2)(c), F.S.

⁵ Section 316.304(2)(d) – (e), F.S.

⁶ Section 316.304(3), F.S.

⁷ Section 322.27(3)(a), F.S.

⁸ Section 322.27(3)(b), F.S.

⁹ Section 322.27(3)(c), F.S.

The United States Department of Transportation (USDOT) has recently issued a “Sample Law” to prohibit texting while driving.¹⁰ Recognizing that states have had some difficulty drafting language that prohibits dangerous behaviors but allows certain minimal uses of technology, the USDOT requested the participation of several national groups to draft language satisfactory to all. Contributors to the Sample Law include: Advocates for Highway and Auto Safety, Alliance of Automobile Manufacturers, American Association of Motor Vehicle Administrators, American Association of State Highway and Transportation Officials, AAA, Centers for Disease Control and Prevention, CTIA- The Wireless Association, Governors Highway Safety Association, ITS America, International Association of Chiefs of Police, National Conference of State Legislatures, National Safety Council, The National Traffic Law Center of the National District Attorneys Association, and Safe Kids USA.

In its message accompanying the text of the Sample Law, the USDOT states that “[w]hile there are many sources of driver distraction...the act of composing, sending or reading text messages interrupts drivers’ cognitive attention, causes vision to be directed away from the road, and compromises manual control of the vehicle.” The letter concludes by noting that texting prohibition laws:

are relatively new and have not been thoroughly evaluated. However... safety advocates and state legislatures are compelled to move forward, basing texting legislation on the broad foundation of principles learned from seat belt laws, impaired driving statutes, and similar legislative initiatives.... This sample law reflects current circumstances and state of knowledge, but may be revised in the future to incorporate new research findings, address evolving technologies, or to harmonize with other legislation.

Nineteen states and the District of Columbia have passed a ban on text-while-driving for all drivers. The National Conference of State Legislators has the following chart detailing each state’s cell-phone use laws.¹¹

States	Hand-held ban	All cell phone ban	Texting ban	Enforcement
Alabama	No	No	No	Not applicable
Alaska	No	No	All drivers	Primary
Arizona	No	School bus drivers	No	Primary
Arkansas	No	School bus drivers, drivers younger than 18	School bus drivers, all drivers	Primary for texting by all drivers and cell phone use by school bus drivers; secondary for cell phone use by young drivers
California	All drivers	School and transit bus drivers and drivers younger than 18	All drivers	Primary
Colorado	No	Drivers younger than 18	All drivers	Primary
Connecticut	All drivers	Learner’s permit holders, drivers younger than 18, and school bus drivers	All drivers	Primary
Delaware	No	School bus drivers and learner’s permit and intermediate license holders	Learner’s permit and intermediate license holders	Primary
District of Columbia	All drivers	School bus drivers and learner’s permit holders	All drivers	Primary
Florida	No	No	No	Not applicable
Georgia	No	School bus drivers	No	Primary

¹⁰ “SAMPLE LAW TO PROHIBIT TEXTING WHILE DRIVING,” USDOT Secretary Roy LaHood, February 2010. Secretary LaHood’s letter and the text of the Sample Law are available online at:

http://www.nhtsa.gov/staticfiles/DOT/NHTSA/Rulemaking/Texting_Law_021910.pdf

¹¹ “Cell Phone Use and Texting While Driving Laws,” updated November 12, 2009. Available online at NCSL.org, Document No.

Hawaii	No	No	No	Not applicable
Idaho	No	No	No	Not applicable
Illinois	Drivers in construction and school speed zones	Learner's permit holders younger than 19, drivers younger than 19, and school bus drivers	All drivers	Primary
Indiana	No	Drivers under the age of 18.	Drivers under the age of 18.	Primary
Iowa	No	No	No	Not applicable
Kansas	No	Learner's permit and intermediate license holders	Learner's permit and intermediate license holders	Primary
Kentucky	No	School bus drivers	No	Primary
Louisiana	No	School bus drivers, learner's permit and intermediate license holders, drivers under age 18	All drivers	Secondary, primary for school bus drivers
Maine**	No	Learner's permit and intermediate license holders	Learner's permit and intermediate license holders	Primary
Maryland	No	Learner's permit and intermediate license holders	All drivers	Primary for texting
Massachusetts	Local option	School bus drivers	No	Primary
Michigan	Local option	No	No	Not applicable
Minnesota	No	School bus drivers, learner's permit holders, and provisional license holders during the first 12 months after licensing	All drivers	Primary
Mississippi	No	No	Learner's permit holders and intermediate license holders	Primary
Missouri	No	No	Drivers 21 years of age or younger	Primary
Montana	No	No	No	Not applicable
Nebraska	No	Learner's permit and intermediate license holders younger than 18	Learner's permit and intermediate license holders younger than 18	Not applicable
Nevada	No	No	No	Not applicable
New Hampshire	No	No	All drivers	Primary
New Jersey	All drivers	School bus drivers, and learner's permit and intermediate license holders	All drivers	Primary
New Mexico	Local option	No	No	Not applicable
New York	All drivers	No	All drivers	Secondary
North Carolina	No	Drivers younger than 18 and school bus drivers	All drivers	Primary
North Dakota	No	No	No	Not applicable
Ohio	Local option	No	No	Not applicable
Oklahoma	No	No	No	Not applicable
Oregon	All drivers	Drivers younger than 18	All drivers	Primary
Pennsylvania	Local option	No	No	Not applicable
Rhode Island	No	School bus drivers and drivers younger than 18	All drivers	Primary
South	No	No	No	Not applicable

Carolina				
South Dakota	No	No	No	Not applicable
Tennessee	No	School bus drivers, and learner's permit and intermediate license holders	All drivers	Primary
Texas	Drivers in school crossing zones	Bus drivers when a passenger 17 and younger is present; intermediate license holders for first 12 months	Bus drivers when a passenger 17 and younger is present; intermediate license holders for first 12 months, drivers in school crossing zones	Primary
Utah	See footnote*	No	All drivers	Primary for texting; secondary for talking on hand-held phone
Vermont	No	No	No	Not applicable
Virginia	No	Drivers younger than 18 and school bus drivers	All drivers	Secondary; primary for school bus drivers
Washington	All drivers	No	All drivers	Secondary
West Virginia	No	Drivers younger than 18 who hold either a learner's permit or an intermediate license	Drivers younger than 18 who hold either a learner's permit or an intermediate license	Primary
Wisconsin	No	No	No	Not applicable
Wyoming	No	No	No	Not applicable

Proposed Changes

CS/HB 41 draws heavily on the Sample Law promulgated by the USDOT, particularly with regard to the express legislative intent and the prohibition itself. The penalties are modified somewhat to provide a graduated approach and to better integrate with existing Florida Statutes.

Specific Intent

CS/HB 41 prohibits any driver from operating a motor vehicle while using a wireless communication device. The bill's specific intention is to

- Improve roadway safety for motor vehicle operators, passengers, bicyclists, pedestrians and all other road users;
- Prevent crashes related to the act of text messaging;
- Reduce injuries, death, property damage, health care costs, health insurance, and automobile insurance rates related to motor vehicle crashes; and
- Authorize law enforcement officers to issue citations for text messaging as a secondary offense.

Prohibition on Texting While Driving

To achieve these goals, the bill prohibits the operation of a motor vehicle "while manually typing or entering multiple letters, numbers, symbols, or other text in a wireless communication device, or sending or reading data in the device, for the purpose of non-voice interpersonal communication."

The bill defines "wireless communication device" as *any* device designed or intended to receive or transmit written messages, access or store data, or connect electronically to the Internet or any other communications service¹² and which allows text communications. The bill also specifies that for purposes of the prohibition on texting, a person is *not* operating a vehicle when legally parked.

¹² "Communications service" itself is defined by reference to s. 812.15, F.S. In that statute, "communications service" means: any service lawfully provided for a charge or compensation by any cable system or by any radio, fiber optic, photooptical, electromagnetic, photoelectronic, satellite, microwave, data transmission, Internet-based, or wireless distribution network, system, or facility, including, but not limited to, any electronic, data, video,

Exceptions

The bill makes exceptions for:

- Law enforcement, fire service, or emergency medical services personnel, or any operator of an authorized emergency vehicle as defined in s. 322.01, F.S.,¹³ performing official duties;
- Reporting an emergency, or criminal or suspicious activity;
- Receiving messages related to:
 - The operation or navigation of a 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; or
- Conducting wireless interpersonal communication that does *not* require manual entry of multiple letters, numbers, or symbols, or reading text messages (except to activate or deactivate a feature or function).

Penalties

A penalty for a first violation of the prohibition is a non-moving violation, punishable as provided in Ch. 318. Without a specified alternative amount, non-moving violations result in a \$30 fine, plus court costs which vary by jurisdiction. The total fine, plus court costs and fees, could range from \$78 to \$129.

If a person commits a second violation of the prohibition within 5 years of the first violation, the penalty is increased to a moving violation. Chapter 318 provides a \$60 fine plus court costs, resulting in a total fine and costs of \$128 to \$179, depending on jurisdiction.

With regard to the 'repeat offense' portion of the penalty, it is worth noting that s. 318.14(9), F.S., permits a person to avoid a conviction for most traffic violations by attending a basic driver improvement course.¹⁴ A violator may only make this election once in a 12-month period, and not more than 5 times in a 10 year period. In the event that a person is stopped by a law enforcement officer, receives a traffic citation for a primary offense, and receives a citation for texting while driving as a secondary offense, it is conceivable that the person could elect to use the driver improvement course to avoid a 'conviction' for texting while driving (either on a first or subsequent violation of the texting ban). On the other hand, many primary offenses add points to a driver's license so the driver would presumably elect to apply the driver improvement course to the primary citation and avoid the more immediate point penalty. A driver with frequent traffic offenses is not likely to encounter this scenario, as he or she has likely exhausted the available driver improvement course elections available under s. 318.14(9), F.S.

The bill provides that the Department of Highway Safety and Motor Vehicles will assign 6 points to the driver's license of any driver whose use of a wireless communications device results in a crash (regardless of whether the offense is a first or subsequent offense). This is identical to the number of points that would apply to a driver's license when the operator caused a crash as a result of unlawful speed.

audio, Internet access, microwave, and radio communications, transmissions, signals, and services, and any such communications, transmissions, signals, and services lawfully provided for a charge or compensation, directly or indirectly by or through any of those networks, systems, or facilities.

¹³ Section 322.01(4), F.S., defines an "authorized emergency vehicle" as:

a vehicle that is equipped with extraordinary audible and visual warning devices, that is authorized by s. 316.2397 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. The term does not include wreckers, utility trucks, or other vehicles that are used only incidentally for emergency purposes.

¹⁴ The election is not available for speeding offenses, vehicle registration requirements, and driver's license requirements, nor is the election available for holders of commercial driver's licenses.

B. SECTION DIRECTORY:

- Section 1 Creates s. 316.305, F.S.; prohibiting the use of wireless communications devices by motor vehicle operators; providing exceptions; providing penalties.
- Section 2 Amends s. 322.27, F.S.; providing for driver's license points for unlawful use of a wireless communications device resulting in a crash.
- Section 3 Provides an effective date of October 1, 2009.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

- 1. Revenues:
 See Fiscal Comments, below.
- 2. Expenditures:
 None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

- 1. Revenues:
 See Fiscal Comments, below.
- 2. Expenditures:
 None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

An individual violating the prohibition would be subject to a civil penalty of \$78 to \$179, depending on the jurisdiction's court costs, and whether the violation is a first offense or a second or subsequent offense.

D. FISCAL COMMENTS:

The bill may generate an indeterminate amount of revenue for both state and local law enforcement agencies, depending on the number of secondary violations issued by law enforcement officials, and the frequency with which violators commit subsequent violations, incurring large penalties.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

- 1. Applicability of Municipality/County Mandates Provision:
 Not applicable because the bill does not appear to: require counties or cities to spend funds or take action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.
- 2. Other:
 None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

On March 10, 2010, the Roads, Bridges, and Ports Policy Committee adopted an amendment adding “any operator of an authorized emergency vehicle as defined in s. 322.01, F.S.” to the ‘public safety’ exception in the bill. The bill as amended was reported favorably as a committee substitute.