

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 193 Use of an Electronic Wireless Communications Device While Driving

SPONSOR(S): Legg

TIED BILLS: **IDEN./SIM. BILLS:** SB 504

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Committee on Infrastructure</u>	<u>W/D</u>	<u></u>	<u></u>
2) <u>Economic Expansion & Infrastructure Council</u>	<u>12 Y, 2 N</u>	<u>Brown/Madsen</u>	<u>Tinker</u>
3) <u>Policy & Budget Council</u>	<u></u>	<u></u>	<u></u>
4) <u></u>	<u></u>	<u></u>	<u></u>
5) <u></u>	<u></u>	<u></u>	<u></u>

SUMMARY ANALYSIS

HB 193 prohibits any person under the age of 18 years from operating a motor vehicle while using an electronic communications device. This restriction does not apply when an electronic communication device is used to report illegal activity, summon medical or emergency help, or prevent injury to a person or property. Enforcement is allowed only as a secondary action, and violations are punished as a noncriminal traffic violation, punishable as a moving violation by a \$60 fine and one point against the driver's license.

The bill may generate an indeterminate amount of revenue for state and local law enforcement authorities, and has an effective date of October 1, 2008.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Safeguard Individual Liberty – The bill creates a prohibition on currently lawful activity – using a wireless communications device while operating a motor vehicle.

B. 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 nonmoving violation requires a \$30 fine (plus court costs which vary by county).

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

Proposed Changes

HB 193 prohibits a person under the age of 18 years from operating a motor vehicle while using an electronic wireless communications device such as a cellular telephone. The bill does not apply to persons using an electronic wireless communications device to:

- report illegal activity;

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.

- summon medical or emergency help; or
- prevent injury to a person or property.

The bill requires that the ban can only be enforced by law enforcement agencies as a secondary action. Violation of the prohibition is punishable as a moving violation, with a fine of \$60 (plus court costs) and assessment of one point against the offender's drivers license.

The bill amends the point system in s. 322.27(3), F.S., to include the new prohibition, and adds 1 point to the license of anyone under the age of 18 years who commits the offense.

C. SECTION DIRECTORY:

Section 1 Amends s. 316.304, F.S.; renaming the section; creating a new prohibition against certain wireless device operation in motor vehicles by persons under 18; providing exceptions to the prohibition; providing that the prohibition is a secondary offense; providing a penalty for violation of the prohibition.

Section 2 Amends s. 322.27, F.S.; creating a 1-point penalty for violations of the prohibition against certain persons using a wireless communications device in a motor vehicle.

Section 3 Provides an effective date of October 1, 2008.

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 under the age of 18 years violating the ban would be subject to a civil penalty of \$60 (plus court costs which vary by county).

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.

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:

The bill slightly restates the Department's authority to promulgate rules related to wireless communication equipment used in motor vehicles, but does not substantively affect the scope of the Department's authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

HB 193 prohibits persons under the age of 18 from using an "electronic wireless communications device," but the bill does not specifically define this term. The term is not defined in existing statutes, however, "communications device" is defined in s. 812.15, F.S., (relating to unauthorized reception of communications services), as

any type of electronic mechanism, transmission line or connections and appurtenances thereto, instrument, device, machine, equipment, or software that is capable of intercepting, transmitting, acquiring, decrypting, or receiving any communications service, or any part, accessory, or component thereof, including any computer circuit, splitter, connector, switches, transmission hardware, security module, smart card, software, computer chip, electronic mechanism, or other component, accessory, or part of any communications device which is capable of facilitating the interception, transmission, retransmission, acquisition, decryption, or reception of any communications service.

It may be advisable to create a definition for the phrase "electronic wireless communications device" in order to provide specificity to the bill's prohibition and penalty.

D. STATEMENT OF THE SPONSOR

No statement submitted.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES