

**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 Transportation Committee

BILL: SB 266

INTRODUCER: Senator Wilson

SUBJECT: Cellular Telephones/Use in a Motor Vehicle

DATE: March 6, 2008

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Paradise	Meyer	TR	<b>Pre-meeting</b>
2.	_____	_____	CU	_____
3.	_____	_____	TA	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

**I. Summary:**

Senate Bill 266 (“the bill”) bans any person operating a motor vehicle from dialing or sending a telephone call or text message on a cellular telephone, or while listening to or speaking on a cellular telephone. However, use of a hands-free device is allowed, and persons may continue to use a headset with a cellular telephone as provided in current law. Exceptions are also provided for safety or law enforcement purposes if the use is approved by the Department of Highway Safety and Motor Vehicles (department). A violation is a noncriminal traffic infraction punished as a nonmoving violation, and can only be enforced as a secondary action by law enforcement.

This bill substantially creates a new, unnumbered section of the Florida Statutes.

**II. Present Situation:**

Regulation of the use of electronic communications devices is expressly preempted to the state. See s. 316.0075, F.S. Currently, the use of electronic communications devices such as cellular telephones while driving is allowed in Florida.

Section 817.4821, F.S., defines a cellular telephone as:

“(A) communication device containing a unique electronic serial number that is programmed into its computer chip by its manufacturer and whose operation is dependent on the transmission of that electronic serial number along with a mobile identification number, which is assigned by the cellular telephone carrier, in the form of radio signals through cell sites and mobile switching stations.”

Section 316.304, F.S., prohibits any person wearing a headset, headphone, or other listening device from operating a vehicle, aside from a hearing aid or other instrument to improve defective human hearing. However, this section does not apply to any:

- law enforcement officer equipped with any necessary communication device, or emergency vehicle operator with an ear protection device;
- applicant for a license to operate a motorcycle while taking the required examination;
- person operating a motorcycle, using a helmet headset worn so as to prevent the speakers from making direct contact with the ears, allowing the user to hear surrounding sounds; and
- person using a headset that only provides sound through one ear and allows surrounding sounds to be heard with the other ear, such as a headset in conjunction with a cellular telephone.

A violation is a noncriminal traffic infraction, punishable as a nonmoving violation as provided in ch. 318, F.S., with a \$30 fine (plus court costs).

### **III. Effect of Proposed Changes:**

The bill prohibits a person from operating a motor vehicle on a state highway while using a cellular telephone, specifically while:

- dialing or sending a telephone call or text message on a cellular telephone; or
- listening to or speaking on a cellular telephone.

However, a person may use a cellular telephone with a hands free device, and may continue to wear a headset as allowed in s. 316.304, F.S. Also, use of a cellular telephone for safety or law enforcement purposes is allowed, provided the use is approved by the department. The term “cellular telephone” has the same meaning as in s. 817.4821, F.S.

Violation of this prohibition can only be enforced as a secondary action by state or local law enforcement agencies, and is punished as a nonmoving violation as provided in ch. 318, F.S., with a fine of \$30 (plus court costs).

### **IV. Constitutional Issues:**

#### **A. Municipality/County Mandates Restrictions:**

None.

#### **B. Public Records/Open Meetings Issues:**

None.

#### **C. Trust Funds Restrictions:**

None.

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

None.

**B. Private Sector Impact:**

An individual violating the ban would be subject to a civil penalty of \$30 (plus court costs).

**C. Government Sector Impact:**

The bill may generate additional fine revenue for state and local governments in an indeterminate amount. Fiscal impact to the department is expected to be minimal.

**VI. Technical Deficiencies:**

The proposed bill does not prescribe a specified statutory section. The department suggests this new provision be placed in a newly created section 316.305 of the Florida Statutes.

**VII. Related Issues:**

The department recommends replacing the language requiring the department to “approve” specified instances where cellular telephone use is permitted with language detailing exceptions to the prohibition.

Specifically, the department suggests the following alternative:

On page 1, line 21 to 24 delete said lines and insert:

(2) The section does not prohibit the use of cellular telephones by:

(a) Law enforcement when carrying out their duties

(b) Emergency response personnel when carrying out their duties

(c) Any driver attempting to contact law enforcement or emergency response personnel.

**VIII. Additional Information:****A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

**B. Amendments:**

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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