

**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 244

INTRODUCER: Senators Wilson, and others

SUBJECT: Heather’s Law/Cellular Telephone Use in Vehicles

DATE: March 16, 2010

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	McManus	Meyer	TR	<b>Favorable</b>
2.			CU	
3.			TA	
4.				
5.				
6.				

**I. Summary:**

This bill creates “Heather’s Law.” The bill prohibits any person from operating a motor vehicle while dialing or sending a telephone call or text message on a cellular telephone, or while listening to or speaking on a cellular telephone. The 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 provided for safety and law enforcement purposes if the use is approved by the Department of Highway Safety and Motor Vehicles (DHSMV). A violation is a noncriminal traffic infraction punishable as a nonmoving violation and can only be enforced as a secondary offense.

This bill creates an undesignated section of the Florida Statutes.

**II. Present Situation:**

There are currently no prohibitions related to texting while driving.

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. 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 of s. 316.304, F.S., is a noncriminal traffic infraction, punishable as a nonmoving violation as provided in ch. 318, F.S.

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

This bill creates “Heather’s Law.” Heather Hurd was 27 years old when she was killed when her car was struck by a semi-truck whose driver was texting.

This bill would prohibit the operation of a motor vehicle while dialing a cellular telephone call or while listening or speaking on a cellular telephone without a hands-free device. This bill also prohibits the operation of a motor vehicle while reading, manually writing, or sending a text message on a cellular telephone. The restrictions in this bill would not prohibit the use of a cellular telephone for safety or law enforcement purposes if the use is approved by the DHSMV.

A violation of this bill is a noncriminal traffic infraction, punishable as a nonmoving violation as provided in ch. 318, F.S. This bill may be enforced as a secondary action.

This bill would take effect July 1, 2010.

### **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:**

This bill affects persons using cellular telephones without a hands-free device or texting while operating a motor vehicle.

C. **Government Sector Impact:**

This bill may generate additional revenues for agencies receiving monies under s. 318.21, F.S.

**VI. Technical Deficiencies:**

This bill requires the DHSMV to establish approved safety and law enforcement exceptions to the law. To do so the DHSMV needs rulemaking authority.

The DHSMV recommends changing the effective date to October 1, 2010, to allow for programmatic updates to be implemented.

**VII. Related Issues:**

None.

**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.