

HOUSE OF REPRESENTATIVES FINAL BILL ANALYSIS

BILL #:	CS/CS/HB 13	FINAL HOUSE FLOOR ACTION:	
SPONSOR(S):	Economic Affairs Committee; Transportation & Highway Safety Subcommittee; Holder; Pilon and others	110 Y's	6 N's
COMPANION BILLS:	(CS/CS/CS/SB 52)	GOVERNOR'S ACTION:	Pending

SUMMARY ANALYSIS

CS/CS/HB 13 passed the House on May 1, 2013, as CS/CS/CS/SB 52 as amended. The Senate concurred in the House amendment to the Senate Bill and subsequently passed the bill as amended on May 2, 2013.

The bill provides for secondary enforcement of a ban on texting-while-driving. A driver must be first pulled over for a violation of another traffic law before that driver may be cited for violating the texting-while-driving ban.

Exceptions to the ban are provided. For example, a driver may still text while the vehicle is stationary, when reporting an emergency or criminal or suspicious activity to law enforcement, when using a device or system for navigation purposes, and when receiving safety-related information – among other exceptions.

A first violation of the texting-while-driving ban is a noncriminal, nonmoving traffic violation and carries a \$30 fine, plus court costs, which vary by county. A driver faces graduated penalties for a second or subsequent violation committed within five years, or when his or her violation results in a crash or is committed within a school safety zone.

A driver's cell phone records, or oral or written testimony from those receiving text messages, may be admissible to prove whether a violation of the ban occurred only in the event of a crash resulting in death or personal injury.

The bill may generate additional revenues for local and state governments as a result of the penalties.

Subject to the Governor's veto powers, the effective date of this bill is October 1, 2013.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Current Situation

National Traffic Fatality Statistics

The National Highway Traffic Safety Administration (NHTSA) has reported that traffic fatalities fell in 2011 to their lowest level since 1949.¹ According to NHTSA figures, there were 32,367 traffic fatalities in 2011, down from 32,999 in 2010 – a nearly two percent reduction.² This historic drop in both the total number and rate of traffic fatalities continued a decades-long downward trend. Over the years, many factors have contributed to the reduction in traffic fatalities, including the following: the U.S. economic downturn – where fewer cars were on the road; technological advances that have made cars safer; greater and more consistent use of seat belts; and increased enforcement of laws aimed at curbing drunk and distracted driving.³

However, despite the improvements, distracted driving related crashes claim thousands of lives each year and leave many more injured.

Of the total number of traffic fatalities in 2011, at least 3,331 occurred as a direct result of distracted driving, up from 3,267 in 2010.⁴ According to NHTSA, the increase in distracted driving related fatalities “can be attributed in part to increased awareness and reporting.”⁵ While distracted driving related fatalities rose in 2011, distracted driving related injuries fell nearly seven percent – from 416,000 in 2010 to 387,000 in 2011.⁶

Total Fatalities	
2010	2011
32,999	32,367
1.91 percent decrease	

Distracted Driving Fatalities	
2010	2011*
3,267	3,331
1.95 percent increase	
*NHTSA attributes the increase (in part) to increased awareness and reporting.	

Distracted Driving Injuries	
2010	2011
416,000	387,000
6.97 percent decrease	

For the first-half of calendar year 2012, NHTSA has estimated that there have been 16,290 traffic fatalities across the nation.⁷ This early estimate represents a nearly nine percent increase over the

¹ See the National Highway Traffic Safety Administration’s (NHTSA) December 10, 2012 press release titled “Highway Deaths Fell to Lowest Level in More Than Six Decades, Down 26 Percent Since 2005.” The press release may be viewed on NHTSA’s website at <http://www.nhtsa.gov/About+NHTSA/Press+Releases/2012/New+NHTSA+Analysis+Shows+2011+Traffic+Fatalities+Declined+by+Nearly+Two+Percent> (Last viewed on 5/6/13). A copy of the press release is also on file with the Florida House of Representatives, Transportation & Highway Safety Subcommittee.

² Id.

³ Id.

⁴ Id.

⁵ Id. In 2011, NHTSA revised its method for collecting data on distracted driving related fatalities and injuries with the goal of more accurately pinpointing crashes that were actually caused by driver distraction and not some other factor. A press release from the American Association of State Highway and Transportation Officials (AASHTO) describes the revision. The AASHTO press release may be viewed on the AASHTO website at <http://www.aashtojournal.org/Pages/120911deaths.aspx> (Last viewed on 5/6/13). A copy of the press release is also on file with the Florida House of Representatives, Transportation & Highway Safety Subcommittee.

⁶ Id.

⁷ See NHTSA’s Crash Statistics (Form 811680), “Early Estimate of Motor Vehicle Traffic Fatalities for the First Half of 2012 (January – June). This fact sheet may be viewed at <http://www-nrd.nhtsa.dot.gov/Cats/listpublications.aspx?Id=F&ShowBy=DocType> (Last viewed on 5/6/13).

estimated 14,950 fatalities during the same period in 2011.⁸ However, Americans drove nearly 15.6 billion more miles, an increase of about 1.1 percent.⁹ Factors contributing to the increase are unknown, but NHTSA noted that traffic fatalities have been at historic lows over the past 60 years.¹⁰

Total Traffic Fatalities	
2011 (1 st half)	2012 (1 st half)
14,950	16,290
8.96 percent increase	

Florida Traffic Fatality Statistics

Because there is no specific state prohibition on distracted driving, the Florida Department of Highway Safety and Motor Vehicles (DHSMV) is unable to determine how many fatalities are a direct result of distracted driving as this information may or may not show up on a crash report. According to DHSMV, there were 227,998 total crashes in Florida in 2011, down from 235,461 in 2010.¹¹ Mirroring trends nationally, traffic fatalities in Florida have been trending downward – despite a small tick upward during the first half of 2012. In 2011, Florida's 2,400 traffic fatalities represented a 1.8 percent decrease from the previous year¹² and a 32 percent reduction since 2005.¹³

Florida Traffic Fatality Statistics		
	2010	2011
Total Crashes	235,461	227,998
Total Fatalities*	2,444	2,400
*1.8 percent decrease		

Distracted Driving Defined

According to Distraction.Gov, the official U.S. government website for distracted driving, 'distracted driving' is defined as "any activity that could divert a person's attention away from the primary task of driving," including, but not limited to, the following:

- texting;
- using a cell phone or smartphone;
- eating or drinking;
- talking to passengers;
- grooming;
- reading, including maps;
- using a navigation system;
- watching a video; or
- adjusting a radio, CD player, or MP3 player.¹⁴

⁸ Id.

⁹ Id.

¹⁰ Id.

¹¹ See DHSMV's 2011 Florida Traffic Crash Statistics. These statistics may be viewed on the DHSMV website at <http://www.flhsmv.gov/html/safety.html> (Last viewed on 5/6/13). A copy of the report is also on file with the Florida House of Representatives' Transportation & Highway Safety Subcommittee.

¹² Id.

¹³ Id.

¹⁴ See NHTSA's specific list of distractions online at <http://www.distraction.gov/content/get-the-facts/facts-and-statistics.html> (Last viewed on 5/6/13).

Dangers of Distracted Driving

As NHTSA has reported, “text messaging creates a crash risk 23 times worse than driving while not distracted.”¹⁵ This is largely because “sending or receiving a text takes a driver’s eyes from the road for an average of 4.6 seconds, the equivalent – at 55 mph – of driving the length of an entire football field.”¹⁶ These, and similar statistics, are cited by proponents of prohibitions on texting-while-driving and other laws that curb distracted driving.

Opponents, however, argue that texting-while-driving is no different than adjusting the radio or a GPS, eating or drinking, putting on makeup, or any other distraction. This leads opponents of texting-only bans to ask whether those activities should be banned as well. The rebuttal is that researchers have identified texting-while-driving as among the most dangerous of distractions because it involves “manual, visual, and cognitive distraction simultaneously.”¹⁷

Measurable Impact: Are Texting Bans Effective? Do Texting Bans Reduce Crashes?

Most research shows that texting-while-driving is dangerous and increases a driver’s crash risk. However, banning the practice may not only be ineffective, it may actually increase the crash risk if drivers respond by taking their eyes further from the road out of fear of being caught. According to Adrian Lund, president of the Highway Loss Data Institute (HLDI):

Drivers might have responded to the laws prohibiting texting by moving their phones down and out of sight when they texted, in recognition that what they were doing was illegal. This could exacerbate the risk of texting and drive crash rates up instead of down. It’s a perverse result of laws intended to reduce crash risk.¹⁸

The statement above is in response to a study conducted by HLDI, an affiliate of the Insurance Institute for Highway Safety.¹⁹ HLDI member groups include Allstate Insurance Group, Geico Group, Progressive Corporation, State Farm and many other insurers. In all, HLDI member groups account for more than 80 percent of the private passenger vehicle insurance market.²⁰ After comparing collision insurance claims in four states during the months immediately before and after texting bans took effect, HLDI researchers found that collision claims increased in all four states, with three states showing statistically significant increases.²¹ Neighboring control states “where texting laws weren’t substantially changed during the time span of the study” were used to account for “possible changes in collision claim rates unrelated to the bans – changes in the number of miles driven due to the economy, seasonal changes in driving patterns, etc.”²² The four states included in the study, with their respective control states in parenthesis, were the following:

- California (Arizona, Nevada, Oregon) – texting ban took effect January 1, 2009.
- Louisiana (Arkansas, Mississippi, Texas) – texting ban took effect July 1, 2008.

¹⁵ Id. While this information may be accessed via the NHTSA website, the study itself was authored by Rebecca L. Olson, Richard J. Hanowski, Jeffrey S. Hickman, and Joseph Bocanegra, of the Virginia Tech Transportation Institute.

¹⁶ Id. While this information may be accessed via the NHTSA website, the study itself was authored by Rebecca L. Olson, Richard J. Hanowski, Jeffrey S. Hickman, and Joseph Bocanegra, of the Virginia Tech Transportation Institute.

¹⁷ Id.

¹⁸ See “Texting Bans Don’t Reduce Crashes; Effects Are Slight Crash Increases,” Highway Loss Data Institute (HLDI), September 28, 2010. The press release and study may be viewed on the HLDI website at <http://www.iihs.org/news/rss/pr092810.html> (Last viewed on 5/6/13).

¹⁹ See information on HLDI on its website at http://www.iihs.org/about_hldi.html (Last viewed on 5/6/13).

²⁰ Id.

²¹ See the full HLDI Bulletin “Texting Laws and Collision Claim Frequencies.” Volume 27, No. 11. September 2010. The Bulletin may be viewed on the HLDI website at <http://www.iihs.org/news/rss/pr092810.html> (Last viewed on 5/6/13). A copy of the Bulletin is also on file with the Florida House of Representatives, Transportation & Highway Safety Subcommittee.

²² Id.

- Minnesota (Iowa and Wisconsin) – texting ban took effect August 1, 2008.
- Washington (Idaho and Oregon) – texting ban took effect January 1, 2008.

Overall, collision claims increased in all four states, although in Washington the increase was not statistically significant. The percentage increases were the following: California (7.6 percent); Louisiana (6.7 percent); Minnesota (8.9 percent); and Washington (0.8 percent).²³

Despite the increases in collision claims, the HLDI researchers concede that “collision claims are not a perfect indicator of all crashes for which distraction is a factor”²⁴ and maintain that texting-while-driving presents a serious crash risk.

United States Secretary of Transportation Ray LaHood opined that the HLDI study was flawed, misleading, and did not address possible enforcement issues.²⁵ In related statements, Allstate, AAA, and the National Safety Council maintained that legislation must be combined with enforcement and education to be most effective.²⁶

Federal Regulations for Commercial Drivers

The Federal Motor Carrier Safety Administration (FMCSA) and the Pipeline and Hazardous Materials Safety Administration have issued a final rule prohibiting the use of a hand-held mobile telephone while operating a commercial motor vehicle²⁷ – a prohibition that includes texting while-driving.²⁸ The rule covers commercial motor vehicle drivers that operate in interstate commerce, and to intrastate commercial motor vehicle drivers when transporting hazardous materials.²⁹ Hands-free devices may be used. According to the FMCSA, “hands-free use of a mobile telephone is allowed using either a wired or wireless earpiece, or the speakerphone function of the mobile telephone.”³⁰ According to the final rule, the use of a hand-held mobile telephone means the following:

- using at least one hand to hold a mobile phone to make a call;
- dialing a mobile phone by pressing more than a single button; or
- reaching for a mobile phone in a manner that requires a driver to maneuver so that he or she is no longer in a seated driving position, restrained by a seat belt.³¹

“Texting” means “manually entering text into, or reading text from, an electronic device.”³² This definition includes, but is not limited to, the following:

²³ Id.

²⁴ Id.

²⁵ See Secretary LaHood’s comments on the United States Department of Transportation’s website at <http://fastlane.dot.gov/2010/09/make-no-mistake-dot-and-its-safety-partners-will-continue-fighting-against-distracted-driving.html> (Last viewed on 5/6/13).

²⁶ Id.

²⁷ 49 C.F.R. s. 383.5, defines “commercial motor vehicle” as “a motor vehicle or combination of motor vehicles used in commerce to transport passengers or property if the motor vehicle: (1) has a gross combination weight rating or gross combination weight of 11,794 kilograms or more (26,001 pounds or more), whichever is greater, inclusive of a towed unit(s) with a gross vehicle weight rating or gross vehicle weight of more than 4,536 kilograms (10,000 pounds), whichever is greater; or (2) has a gross vehicle weight rating or gross vehicle weight of 11,794 or more kilograms (26,001 pounds or more), whichever is greater; or (3) is designed to transport 16 or more passengers, including the driver; or (4) is of any size and is used in the transportation of hazardous materials as defined in this section.

²⁸ The final rule’s text may be viewed on the FMCSA’s website at http://www.fmcsa.dot.gov/rules-regulations/administration/rulemakings/final/Mobile_phone_NFRM.aspx (Last viewed on 5/6/13).

²⁹ 49 C.F.R. s. 383.5, defines “hazardous materials” as “any material that has been designated as hazardous under 49 U.S.C. 5103 and is required to be placarded under subpart F of 49 CFR part 172 or any quantity of a material listed as a select agent or toxin in 42 CFR part 73.”

³⁰ See Frequently Asked Questions on the rule on the FMCSA’s website at <http://www.fmcsa.dot.gov/about/other/faq/cellphone-ban-faqs.aspx> (Last viewed on 5/6/13).

³¹ Id.

- short message services;
- e-mailing;
- instant messaging;
- a command or request to access a Web page;
- pressing more than a single button to initiate or terminate a call using a mobile telephone; or
- engaging in any other form of electronic text retrieval or entry for present or future communication.³³

“Driving” means “operating a commercial motor vehicle on a highway, including while temporarily stationary because of traffic, a traffic control device, or other momentary delays.” However, “driving does not include operating a commercial motor vehicle when the driver has moved the vehicle to the side of, or off, a highway and has halted in a location where the vehicle can safely remain stationary.”³⁴

Drivers that violate the final rule face civil penalties of \$500 - \$2,750, depending on the number of previous violations. Repeat offenders may be subject to permanent disqualification from operating a commercial motor vehicle.

The final rule affects employers as well. Under the rule, commercial truck and bus companies that require or allow their drivers to violate the rule will face a maximum penalty of \$11,000.

There are exceptions. Most notably, the rule does not affect federal,³⁵ state, or local government employees. Also, commercial drivers may still text if they pull the vehicle over to the side of the road where it does not impede traffic; under the rule, this would not be considered driving. Lastly, exceptions are provided for emergency communications to law enforcement.

The final rule became effective on January 3, 2012, and states have until January 2015 to comply.³⁶

Florida Law

The state has expressly preempted all regulation of the use of electronic communications devices in a motor vehicle.³⁷ Currently, there are no prohibitions specifically aimed at texting-while-driving. However, existing laws apply more generally to careless or reckless drivers whose driving behavior may encompass many of the same activities that characterize distracted driving.

Careless driving is the failure to drive in a careful and prudent manner and have regard to all attendant circumstances so as not to endanger another’s life, limb, or property.³⁸ Reckless driving is driving with willful or wanton disregard for the safety of persons or property.³⁹ Penalties for careless or reckless driving vary. Careless driving is a moving violation and a first violation carries a \$60 fine. A first violation

³² Id.

³³ Id.

³⁴ See 49 C.F.R. s. 392.82(b), at <http://www.fmcsa.dot.gov/rules-regulations/administration/fmcsr/fmcsrruletext.aspx?reg=392.82> (Last viewed on 5/6/13).

³⁵ By Executive Order, Federal Employees are prohibited from texting-while-driving while (1) driving government-owned vehicles, or (2) when driving privately-owned vehicles while on official government business, or (3) when using electronic equipment supplied by the government while driving. The text of the Executive Order may be found online at http://www.whitehouse.gov/the_press_office/Executive-Order-Federal-Leadership-on-Reducing-Text-Messaging-while-Driving/ (Last viewed on 5/6/13).

³⁶ During the 2013 regular legislative session, the Florida Legislature passed CS/CS/HB 7125, which among other things, adopted the final rule prohibiting (1) the use of a hand-held mobile telephone while driving a commercial motor vehicle; and (2) texting-while-driving a commercial motor vehicle into state law. To adopt the final rule into state law, CS/CS/HB 7125 amends ss. 316.302 and 316.3025, F.S.

³⁷ Section 316.0075, F.S.

³⁸ Section 316.1925, F.S.

³⁹ Section 316.192, F.S.

for reckless driving is punishable by up to 90 days in jail, a fine between \$25 and \$500, or both.⁴⁰ A second or subsequent violation for reckless driving is punishable by up to six months in jail, a fine between \$50 and \$1,000, or both.⁴¹ Court costs, which vary by county, would be added to any fine amounts imposed.

Florida law provides a point system used to evaluate the qualifications of any person to operate a motor vehicle after accumulating multiple violations of motor vehicle laws.⁴² Moving violations typically result in assessment of three points, unless the infraction or offense is among those considered more serious. For example, reckless driving, passing a stopped school bus, and speeding in excess of 15 mph over the posted speed limit all require assessment of four points. Leaving the scene of a crash, and speeding resulting in a crash require assessment of six points.

DHSMV may suspend a driver's license for 30 days if the driver accumulates 12 or more points within a 12-month period,⁴³ up to three months if the driver accumulates 18 points in an 18-month period,⁴⁴ and up to one year if the driver accumulates 24 points within a 36-month period.⁴⁵

Laws in Other States

Thirty-nine states and the District of Columbia have passed legislation banning texting-while-driving for all drivers.⁴⁶ Five states have partial bans that vary; for example, some ban texting-while-driving for learner's permit and intermediate driver license holders, while others ban texting-while-driving for school and transit bus drivers. Arizona, Montana, South Dakota, South Carolina, Florida, and Hawaii do not ban texting-while-driving at the state level, although in Hawaii texting bans may be enacted by a local government ordinance.

Effect of Changes

Prohibition on Texting-While-Driving

The bill prohibits using a 'wireless communications device'⁴⁷ while operating a motor vehicle to:

- manually type or enter multiple letters, numbers, symbols, or other characters into the device; or
- send or read data for the purpose of nonvoice interpersonal communication, which in addition to texting, includes e-mailing and instant messaging.

The bill does not prohibit talking on a cell phone while driving, and does not require use of a hands-free device. Drivers may also text while the motor vehicle is stationary.

Exceptions

The bill makes exceptions for:

- law enforcement, fire service, or emergency medical services personnel, or any operator of an authorized emergency vehicle,⁴⁸ performing official duties;

⁴⁰ Section 316.192(2)(a), F.S.

⁴¹ Section 316.192(2)(b), F.S.

⁴² Section 322.27(3), F.S.,

⁴³ Section 322.27(3)(a), F.S.

⁴⁴ Section 322.27(3)(b), F.S.

⁴⁵ Section 322.27(3)(c), F.S.

⁴⁶ "Cell Phone Use and Texting While Driving Laws." This chart may be viewed on the NCSL website at <http://www.ncsl.org/issues-research/transport/cellular-phone-use-and-texting-while-driving-laws.aspx> (Last viewed on 5/6/13).

⁴⁷ The bill defines 'wireless communications device' as "any handheld device 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."

- reporting an emergency or criminal or suspicious activity to law enforcement;
- 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;
- 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 or initiate a feature or function);
- an operator of an autonomous vehicle being operated in autonomous mode.

Penalties

Enforcement is only allowed as a secondary action. A driver must be first pulled over for a violation of another traffic law before that driver may be cited for violating the texting-while-driving ban. In any proceeding to determine whether a violation of the ban has been committed, a driver's billing records for a wireless communications device or the testimony of or written statements from appropriate authorities receiving such messages may be admissible as evidence only in the event of a crash resulting in death or personal injury.

The ban is enforceable as a secondary offense. A first violation is a nonmoving violation and carries a \$30 fine, plus court costs, which vary by county. A second or subsequent violation committed within five years is a moving violation and three points will be added to the driver's driver license. In this context, the driver will also face a \$60 fine, plus court costs. The amount of court costs added to the base fine vary by county, but generally range from about \$78 to \$100.

In addition to these penalties, any violation of the ban that causes a crash will result in six points added to the offender's driver license record. Any violation of the ban committed in conjunction with any moving violation for which points are assessed, when committed within a school safety zone, will result in an additional two points added to the offender's driver license record.

Fiscal Impact

This bill may generate additional revenues for local and state governments as a result of the penalties.

Effective Date

Subject to the Governor's veto powers, the effective date of this bill is October 1, 2013.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

⁴⁸ As defined in s. 322.01, F.S. Section 322.01, F.S., defines 'authorized emergency vehicle' as a vehicle that is equipped with extraordinary audible and visual warning devices, that is authorized by s. 316.2397, F.S., 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.

The bill may generate an indeterminate amount of revenue depending on the number of violations.

2. Expenditures:

The bill will require modification to DHSMV's technology systems. Modification costs will be minimal and absorbed within DHSMV's existing resources.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill may generate an indeterminate amount of revenue depending on the number of violations.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

An individual that violates the ban will be subject to a fine, and in certain instances, will have points assessed against his or her driver license.

D. FISCAL COMMENTS:

None.