RESOLUTION NO. 12-042

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF KEY WEST, FLORIDA, URGING ADOPTION OF LEGISLATION PROHIBITING TEXTING WHILE DRIVING; DIRECTING THE CITY ATTORNEY TO EXPLORE AVENUES FOR LOCAL ORDINANCE IRRESPECTIVE OF FLORIDA STATUTE 316.0075; PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, The National Safety Council estimates approximately 1.3 million crashes occur each year while drivers are utilizing phones or engaged in text messaging; and

WHEREAS, In December 2011, the National Transportation Safety Board (NTSB) called for the first-ever nationwide ban on driver use of portable electronic devices (PEDs) while operating a motor vehicle; and

WHEREAS, Despite overwhelming data indicating the significant contribution such PEDs have in accidents, the Florida Legislature refuses pass legislation to protect Floridians and its' visitors from such hazards as texting while driving; and

WHEREAS, given the narrow streets and numerous bicycles in the City of Key West, our island is especially vulnerable to distracted drivers; and

WHEREAS, despite the City's desire and willingness to enact legislation to prohibit all texting while driving, the Florida Legislature has taken the incredible step to prohibit local communities from adequately protecting their citizens;

WHEREAS, Florida Statute section 316.0075 expressly

prohibits the City of Key West from the "[r]egulation of operator or passenger use of commercial mobile radio services and other electronic communications devices in a motor vehicle ..."

WHEREAS, several bills have been introduced in the 2012 Florida Legislative Session to combat distracted driving. Such bills include Senate bill 416 and companion House Bill 299, which attempt to enact the "Florida Ban on Texting While Driving Law".

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF KEY WEST, FLORIDA, AS FOLLOWS:

Section 1: That the City of Key West urges the Florida Legislature to act responsibly in protecting its' citizens and visitors by passing SB 416 and HB 299, and similar measures to help reduce distracted driving.

Section 2: That the City Attorney is directed to evaluate all potential avenues to combat distracted driving irrespective of Florida Statute 316.0075, including review of Miami-Dade County's prohibition on hand held devices in school zones.

Section 3: That this Resolution shall go into effect immediately upon its passage and adoption and authentication by the signature of the presiding officer and the Clerk of the Commission.

Passed and adopted by the City Commission at a meeting held this 18 day of January, 2012.

Authenticated by the presiding officer and Clerk of the Commission on January 19, 2012.

Filed with the Clerk January 19, 2012.

MARK ROSSI, VICE MAYOR

ATTEST:

CHERYL SMITH, CITY CLERK

By Senator Detert

23-00355-12 2012416__

1 A bill to be entitled
2 An act relating to the use of wireless communications
3 devices while driving; creating s. 316.305, F.S.;
4 creating the "Florida Ban on Texting While Driving
5 Law"; providing legislative intent; prohibiting the
6 operation of a motor vehicle while using a wireless
7 communications device for certain purposes; providing
8 a definition; providing exceptions; specifying
9 information that is admissible as evidence of a
10 violation; providing penalties; providing for
11 enforcement as a secondary action; amending s. 322.27,
12 F.S.; providing for points to be assessed against a
13 driver's license for the unlawful use of a wireless
14 communications device resulting in a crash; providing
15 an effective date.
16
17 Be It Enacted by the Legislature of the State of Florida:
18
19 Section 1. Section 316.305, Florida Statutes, is created to
20 read:
21 316.305 Wireless communications devices; prohibition.—
22 (1) This section may be cited as the "Florida Ban on
23 Texting While Driving Law."
24 (2) It is the intent of the Legislature to:
25 (a) Improve roadway safety for all vehicle operators,
26 vehicle passengers, bicyclists, pedestrians, and other road
27 users.
28 (b) Prevent crashes related to the act of text messaging
29 while driving a motor vehicle.

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

30 (c) Reduce injuries, deaths, property damage, health care
31 costs, health insurance rates, and automobile insurance rates
32 related to motor vehicle crashes.
33 (d) Authorize law enforcement officers to stop motor
34 vehicles and issue citations as a secondary offense to persons
35 who are texting while driving.
36 (3)(a) A person may not operate a motor vehicle while
37 manually typing or entering multiple letters, numbers, symbols,
38 or other characters into a wireless communications device or
39 while sending or reading data in such a device for the purpose
40 of nonvoice interpersonal communication, including, but not
41 limited to, communication methods known as texting, e-mailing,
42 and instant messaging. As used in this section, the term
43 "wireless communications device" means any device that is
44 designed or intended to receive or transmit text or character-
45 based messages, access or store data, or connect to the Internet
46 or any communications service as defined in s. 812.15 and that
47 allows text communications. A motor vehicle that is legally
48 parked is not being operated and is not subject to the
49 prohibition in this paragraph.
50 (b) This subsection does not apply to a motor vehicle
51 operator who is:
52 1. Performing official duties as an operator of an
53 authorized emergency vehicle as defined in s. 322.01, a law
54 enforcement or fire service professional, or an emergency
55 medical services professional.
56 2. Reporting an emergency or criminal or suspicious
57 activity to law enforcement authorities.
58 3. Receiving messages that are:

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59 a. Related to the operation or navigation of the motor
60 vehicle;
61 b. Safety-related information, including emergency,
62 traffic, or weather alerts;
63 c. Data used primarily by the motor vehicle; or
64 d. Radio broadcasts.
65 4. Using a device or system for navigation purposes.
66 5. Conducting wireless interpersonal communication that
67 does not require manual entry of multiple letters, numbers, or
68 symbols or reading text messages, except to activate,
69 deactivate, or initiate a feature or function.
70 (c) A user's billing records for a wireless communications
71 device or the testimony of or written statements from
72 appropriate authorities receiving such messages may be
73 admissible as evidence in any proceeding to determine whether a
74 violation of this section has been committed.
75 (4)(a) Any person who violates subsection (3) commits a
76 noncriminal traffic infraction, punishable as a nonmoving
77 violation as provided in chapter 318.
78 (b) Any person who commits a second or subsequent violation
79 of subsection (3) within 5 years after the date of a prior
80 conviction for a violation of subsection (3) commits a
81 noncriminal traffic infraction, punishable as a moving violation
82 as provided in chapter 318.
83 (5) Enforcement of this section by state or local law
84 enforcement agencies must be accomplished only as a secondary
85 action when an operator of a motor vehicle has been detained for
86 a suspected violation of another provision of this chapter,
87 chapter 320, or chapter 322.

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88 Section 2. Paragraph (d) of subsection (3) of section
89 322.27, Florida Statutes, is amended to read:
90 322.27 Authority of department to suspend or revoke
91 license.—
92 (3) There is established a point system for evaluation of
93 convictions of violations of motor vehicle laws or ordinances,
94 and violations of applicable provisions of s. 403.413(6)(b) when
95 such violations involve the use of motor vehicles, for the
96 determination of the continuing qualification of any person to
97 operate a motor vehicle. The department is authorized to suspend
98 the license of any person upon showing of its records or other
99 good and sufficient evidence that the licensee has been
100 convicted of violation of motor vehicle laws or ordinances, or
101 applicable provisions of s. 403.413(6)(b), amounting to 12 or
102 more points as determined by the point system. The suspension
103 shall be for a period of not more than 1 year.
104 (d) The point system shall have as its basic element a
105 graduated scale of points assigning relative values to
106 convictions of the following violations:
107 1. Reckless driving, willful and wanton—4 points.
108 2. Leaving the scene of a crash resulting in property
109 damage of more than $50—6 points.
110 3. Unlawful speed, or unlawful use of a wireless
111 communications device, resulting in a crash—6 points.
112 4. Passing a stopped school bus—4 points.
113 5. Unlawful speed:
114 a. Not in excess of 15 miles per hour of lawful or posted
115 speed—3 points.
116 b. In excess of 15 miles per hour of lawful or posted

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117 speed—4 points.
118 6. A violation of a traffic control signal device as
119 provided in s. 316.074(1) or s. 316.075(1)(c)1.—4 points.
120 However, no points shall be imposed for a violation of s.
121 316.074(1) or s. 316.075(1)(c)1. when a driver has failed to
122 stop at a traffic signal and when enforced by a traffic
123 infraction enforcement officer. In addition, a violation of s.
124 316.074(1) or s. 316.075(1)(c)1. when a driver has failed to
125 stop at a traffic signal and when enforced by a traffic
126 infraction enforcement officer may not be used for purposes of
127 setting motor vehicle insurance rates.
128 7. All other moving violations (including parking on a
129 highway outside the limits of a municipality)—3 points. However,
130 no points shall be imposed for a violation of s. 316.0741 or s.
131 316.2065(12); and points shall be imposed for a violation of s.
132 316.1001 only when imposed by the court after a hearing pursuant
133 to s. 318.14(5).
134 8. Any moving violation covered in this paragraph ~~above~~,
135 excluding unlawful speed and unlawful use of a wireless
136 communications device, resulting in a crash—4 points.
137 9. Any conviction under s. 403.413(6)(b)—3 points.
138 10. Any conviction under s. 316.0775(2)—4 points.
139 Section 3. This act shall take effect October 1, 2012.

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Effective: April 25, 2002

West's Florida Statutes Annotated Currentness
Title XXIII. Motor Vehicles (Chapters 316-325)
Chapter 316. State Uniform Traffic Control (Refs & Annos)
→→ 316. 0075. Operator use of commercial mobile radio services and electronic communications devices

Regulation of operator or passenger use of commercial mobile radio services and other electronic communications devices in a motor vehicle is expressly preempted to the state.

CREDIT(S)

Added by Laws 2002, c. 2002-179, § 2, eff. April 25, 2002.

LIBRARY REFERENCES

Automobiles ⚷5(1).
Westlaw Topic No. 48A.
C.J.S. Motor Vehicles §§ 24 to 28, 42 to 44, 46, 49, 1307.

RESEARCH REFERENCES

Encyclopedias

FL Jur. 2d Telecommunications § 105, State Regulation.

West's F. S. A. § **316. 0075**, FL ST § **316. 0075**

Current through Chapter 236 (End) of the 2011 First Regular Session of the Twenty-Second Legislature

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