

Date of Hearing: April 11, 2016

ASSEMBLY COMMITTEE ON TRANSPORTATION

Jim Frazier, Chair

AB 1785 (Quirk) – As Amended April 5, 2016

SUBJECT: Vehicles: use of wireless electronic devices

SUMMARY: Repeals and recasts the prohibition on the use of an electronic wireless communications device while driving. Specifically, **this bill:**

- 1) Repeals the prohibition on driving a motor vehicle while using an electronic wireless communications device to write, send, or read a text-based communication, unless the electronic wireless communications device is specifically designed and configured to allow voice-operated and hands-free operation and is used in that manner.
- 2) Instead, prohibits a person from driving a motor vehicle while using a wireless telephone or electronic wireless communications device unless the device is specifically designed for and used in a voice-operated and hands-free manner.
- 3) Provides that this prohibition does not apply to factory-installed electronic wireless communications devices located in a vehicle's dashboard, as specified.

EXISTING LAW:

- 1) Prohibits a person from driving a motor vehicle while using a wireless telephone unless that telephone is specifically designed and configured to allow hands-free listening and talking, and is used in that manner while driving, except in emergency circumstances.
- 2) Prohibits a person from driving a motor vehicle while using an electronic wireless communications device to write, send, or read a text-based communication, unless the electronic wireless communications device is specifically designed and configured to allow voice-operated and hands-free operation and is used in that manner.
- 3) Provides that a person shall not be deemed to be writing, reading, or sending a text-based communication if the person reads, selects, or enters a telephone number or name in an electronic wireless communications device for the purpose of making or receiving a telephone call or if a person otherwise activates or deactivates a feature or function on an electronic wireless communications device.
- 4) Prohibits a person under the age of 18 from driving while using a wireless telephone or an electronic wireless communications device, even if it is equipped with a hands-free device.
- 5) Establishes a base fine of \$20 for a first violation and \$50 for each subsequent violation of each above prohibition.
- 6) Provides that an "electronic wireless communications device" includes, but is not limited to, a broadband personal communication device, a specialized mobile radio device, a handheld device or laptop computer with mobile data access, a pager, or a two-way message device.

FISCAL EFFECT: Unknown

COMMENTS: Since 2006, California has prohibited driving a motor vehicle while using a wireless telephone unless the device is configured to allow for hands-free listening and talking. In 2008, this ban expanded to prohibit a person from writing, sending or reading text-based communications while driving [SB 28, (Simitian), Chapter 270, Statutes of 2007]. In 2013, the Legislature again expanded this ban to prohibit anyone younger than 18 years of age from operating a wireless communications device while driving, regardless of the device's hands-free capability [SB 194, (Galgiani), Chapter 754, Statutes of 2013].

Despite the steady expansion of legislative prohibitions on the use of wireless telephones and electronic wireless communications devices while driving, and the clear dangers of distracted driving, in 2014, the California Court of Appeals for the 5th District ruled that the existing ban only prohibits a driver from holding a wireless telephone while conversing on it. In making its ruling, the court found that the legislative intent in enacting those prohibitions was merely focused on prohibiting a wireless telephone only while carrying on a conversation, not while using it for any other purpose. For that reason, law enforcement agencies find it difficult, if not practicably impossible to enforce the prohibition, as the scope of a mobile device's functions and its contributions to distracted driving go far beyond simply making and receiving telephone calls.

The current statutory ban on using a wireless telephone and writing, sending, or reading a text-based communication with an electronic wireless communications device has been characterized as being too narrow and not contemplating the full scope of activities that can be carried out on a wireless telephone or electronic wireless communications device. Furthermore, the distinction between a wireless telephone and an electronic wireless communications device has grown increasingly blurred and non-substantive, as a mobile device that an everyday Californian might colloquially refer to as a "cell phone" indeed resembles more of a miniaturized, pocket-sized personal computer with telephone capabilities. While a wireless telephone of 2006 might have the ability to make and receive phone calls, send text messages, and perhaps offer limited internet access, a smartphone of 2016 has vastly greater capabilities, ranging from those legacy functions to global positioning, to video streaming, to photography. The existing statutory bans may have been sufficient to capture the full range of capabilities of wireless telephones at the time of enactment, but the language of the bans has been found to be limited by the courts and insufficient to capture the capabilities of today's devices.

The effect of cell phone use on a driver's attention is well-documented. However, the distracting effect of cell phones is not limited to taking a driver's eyes off the road to make a call or send a text message. Research from the University of Utah found that using a cell phone, even in a hands-free manner, delays a driver's reactions to the same degree as having a blood alcohol concentration at the legal limit of .08%. Carnegie Mellon University found that driving while using a cell phone reduces the amount of brain activity associated with driving by 37%. The distracting effect of these devices is significant and their prevalence in motor vehicles has grown over the past few decades.

According to CTIA – The Wireless Association, the number of cell phone subscriber connections in the United States increased from 55 million in 1997, a wireless penetration rate of 20%, to 326 million in 2012, representing a wireless penetration rate of 102%. This growth in the number of cell phone subscriber connections means many United States residents now have active wireless connections to more than one device. In the context of this increase, the National Highway Transportation Safety Administration reported that 3,328 people were killed and 421,000 injured in distraction-affected motor vehicle crashes in the U.S. in 2012. Of those killed, 415 (13%)

were involved in crashes in which at least one driver was using a cell phone at the time of the crash. Such crashes were also responsible for an estimated 28,000 injuries.

As the number of mobile devices and their range of capabilities has grown, so too has their impact on driver safety on California roads. The California Department of Motor Vehicles (DMV) reported over 426,000 handheld cell phone and texting convictions from jurisdictions statewide in 2013. In 2015, there were 12 fatal collisions involving handheld cellphone use as an inattention factor, over 500 injury collisions, and nearly 700 property damage collisions. That same year, California Highway Patrol alone issued over 13,000 citations for violating the ban on writing, sending, or reading text-based communications while driving, and 78,000 citations for using a wireless telephone while driving.

Despite this level of enforcement, a study conducted in the spring of 2015 by the Office of Traffic Safety and UC Berkeley observed 9.2% of motorists using cell phones, up from 6.6% in 2014. To help combat the dangers of distracted driving, the most recent Strategic Highway Safety Plan (SHSP), prepared by the California Department of Transportation, recommends strengthening laws on distracted driving.

In the context of the court's ruling and consistent with the SHSP recommendations, this bill would clarify that using a person is prohibited from using a wireless telephone or an electronic wireless communications device for any purpose while driving.

The author argues that the inconsistency of judicial interpretation makes the law difficult to uphold by law enforcement and difficult to follow to average citizens. The author intends this bill to reflect how technology has evolved with the goal of providing law enforcement clearer laws to enforce and improving safety on California's roadways. By including functions of wireless telephones and electronic wireless communications devices beyond just telephone calls, under the prohibition on their use while driving, the author intends to give law enforcement additional tools to promote driver safety.

Committee concerns: While this bill seeks to clarify the existing statutory prohibition by encompassing all distracting mobile device-related behavior, it is unclear if this bill will address one primary concern of the 5th District Court. The court found that the phrase "using a wireless telephone" in the original statute referred only to a driver holding a wireless telephone while conversing on it. While previous versions of this bill contained more specific definitions, provisions of this bill as drafted also contain the phrase "using a wireless telephone or an electronic wireless communications device," and as such, the ambiguity identified by the court may still be unresolved. While the author has clearly communicated his intent, he may wish to continue working to specify for what purposes a mobile device may not be used while driving.

Previous legislation: AB 1646 (Frazier) of 2014, would have imposed a violation point for convictions related to the use of a cellular phone or wireless communication device while driving, and required the driver's license examination to include a test of the applicant's understanding of the dangers related to the use of handheld devices while driving. AB 1646 was vetoed by the Governor. In his veto message the Governor directed DMV to add a question to the driver's license examination of using a communication device while driving and indicated a desire to wait to see additional data from DMV on distracted driving before enacting a law requiring a violation point penalty.

SB 194 (Galgiani), Chapter 754, Statutes of 2013, prohibited drivers under 18 years of age from operating an electronic wireless communication device, even if it is equipped with a hands-free device.

AB 313 (Frazier), of 2013, would have repealed the provisions of AB 1536 (Miller), Chapter 92, Statutes of 2012 entirely. AB 313 was returned to the Chief Clerk by the Assembly Appropriations Committee, pursuant to Joint Rule 56.

AB 1536 (Miller), Chapter 92, Statutes of 2012, allows drivers to dictate, send, or listen to text-based communications as long as they do so using technology specifically designed and configured to allow voice-operated and hands-free operation.

SB 1310 (Simitian) of 2012, would have increased the penalties related to using a wireless communications device while operating a vehicle, and would have added dangers of talking or texting while driving to the list of items that the DMV must include in an examination for a driver's license. SB 1310 was vetoed by the Governor on the grounds that current fines already serve as a powerful deterrent and that upping the fines would likely not further reduce violations.

SB 33 (Simitian), Chapter 214, Statutes of 2007, prohibited a person under the age of 18 years from using a wireless telephone or other electronic device equipped with a hands-free device while driving a motor vehicle.

SB 28 (Simitian), Chapter 270, Statutes of 2007, prohibited a person from writing, sending, or reading text-based communications while operating a motor vehicle, even if the device is equipped with a hands-free device.

SB 1613 (Simitian), Chapter 290, Statutes of 2006, makes it an infraction for any person to drive a motor vehicle while using a wireless phone, unless it is designed and configured to allow hands-free listening and talking and is used in that manner while driving.

REGISTERED SUPPORT / OPPOSITION:

Support

California Association of Highway Patrolmen
California Peace Officers' Association
California Police Chiefs Association
Impact Teen Drivers
Safe Kids Central California
Walk San Francisco
WALKSacramento

Opposition

Safer Streets LA

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