

Date of Hearing: March 11, 2019

ASSEMBLY COMMITTEE ON TRANSPORTATION  
Jim Frazier, Chair  
AB 47 (Daly) – As Amended January 23, 2019

**SUBJECT:** Driver records: points: distracted driving

**SUMMARY:** Removes the prohibition on the Department of Motor Vehicles (DMV) on assessing a point on a driver's license if they are convicted of a violation of operating a handheld wireless or communication device while driving and requires DMV to assess a point for a violation occurring after January 1, 2021.

**EXISTING LAW:**

- 1) Prohibits driving a vehicle while holding and operating a handheld wireless telephone or an electronic wireless communications device, unless the device is designed to allow voice operated, hands-free operation and is used in that manner.
- 2) Allows a driver to activate or deactivate a feature on the device with a single swipe or tap of the driver's finger if the device is mounted, as specified.
- 3) Exempts manufacturer-installed systems that are embedded in the vehicle.
- 4) Exempts emergency services professionals operating an emergency vehicle.
- 5) Treats violations as an infraction punishable by a base fine of \$20 (\$162 with other fees and assessments) for a first offense and \$50 for subsequent offenses.
- 6) Requires DMV to assess a negligent operator point on someone's license if convicted of a traffic violation involving the safe operation of a motor vehicle, unless otherwise specified.
- 7) Specifies that a person who receives four or more points in 12 months, six or more points in 24 months, or eight or more points in 36 months is a negligent operator of a motor vehicle, except for drivers with class A or B licenses.
- 8) Specifies that a person with a class A or B license whose driving record shows a violation point count of six or more points in 12 months, eight or more points in 24 months, or 10 or more points in 36 months is a negligent operator.
- 9) Provides that a person who is assessed a point while driving a motor vehicle that requires a class A or B license shall be valued at one and a half times the value otherwise required by law.
- 10) Provides DMV may refuse to issue or renew a driver's license to any person who is a negligent operator of a motor vehicle.
- 11) Prohibits DMV from assessing a point on someone's license for driving a vehicle while holding and operating a handheld wireless telephone or communication device.

**FISCAL EFFECT:** Unknown

**COMMENTS:** According to the California Office of Traffic Safety, a 2016 survey revealed that more than 56% of California drivers said they had been hit or nearly hit by a driver who was talking or texting on a cell phone. In addition, the survey indicated that 40% of drivers admitted to making a mistake while talking on a cell phone.

Driving while texting can be deadly. Looking away from the road for five seconds to text while traveling 55 miles per hour is enough time to cover the length of a football field blindfolded. While not limited to cell phone use, distracted driving has resulted in the death of 3,477 people and an additional 391,000 were injured in 2015 alone. Distracted driving accounts for 10 percent of fatal crashes. The largest proportion of drivers who were distracted at the time of a fatal crash were between the ages of 15 to 19.

According to the Author, “Driving while using a cell phone is a serious safety issue. In 2017, there were 243,760 distracted driving offenses in California related to cell phone use. During that same year, there were 932 collisions – 31 of which were fatal – where distracted driving due to cell phone use was determined as the factor. Currently, driving while using a cell phone results in a small fine (oftentimes less than a parking ticket), but it has not proven to change behavior. For example, a 2016 study found 7.6% of all drivers were seen to be using their phone while driving, compared to 5.4% in 2015. This change marks a 2.2% increase. This bill elevates a distracted driving citation to the same status as other dangerous driving violations, such as speeding or running a red light, helping discourage people from taking part in this dangerous behavior.”

AB 1785 (Quirk) Chapter 660, Statutes of 2016, updated California’s law on the use of cell phones while driving. Prior to 2016, California’s cell phone law prohibited texting while driving. However, with the rapid development of smart phones, it became increasingly difficult to prove a driver was texting and not using the phone for another purpose. In order to rectify this situation, AB 1785 made it an infraction to drive a motor vehicle while holding and operating a handheld wireless telephone or communications device unless the device was designed and configured to allow voice-operated and hands-free operation. The law requires a person to either mount the cell phone on a vehicle’s windshield or center console. The driver is allowed to activate or deactivate a feature or function with a single swipe or tap of the driver’s finger.

If the driver is under the age of 18, they are not allowed to drive while using a cell phone in any capacity, even hands free.

The change in law gave more flexibility for law enforcement to crack down on driving while using a cell phone. Between 2012 and 2016, the California Highway Patrol (CHP) issued more than 62,800 citations for driving while texting. In the last 2 years, after the change in the law, CHP issued 107,460 tickets.

Ticketing for driving while talking on a cell phone has significantly tapered off, potentially indicating a change in driver behavior or enforcement. From 2012 to 2014, CHP ticketed over 400,000 individuals for driving while talking on a cell phone. That number has significantly lowered, with the CHP issuing only 99,126 tickets in 2017 and 2018.

The penalty for using a cell phone has less discretion than most violations of the vehicle code. While courts are often given the ability to set a base fine up to \$100 for a first offense, driving

while holding a cell phone carries a base fine of \$20 for the first offense and \$50 for each subsequent offense. After fees and assessments, the total cost for a first-time ticket is \$162.

In addition to traffic fines, another method to encourage compliance to the rules of the road includes assessing negligent operator points on a driver's license. The point system is used by DMV to determine if a driver should be considered a negligent operator. DMV may suspend or revoke a person's driving privilege for being a negligent operator.

An individual is considered a negligent operator if they receive 4 or more points in 12 months, 6 in 24 months, or 8 in 36 months. In addition, a minor may receive a 30-day restriction on his or her license for 2 points in 12 months, or a suspension for 3 points in 12 months. Commercial drivers are allowed to receive 2 additional points, however a violation received while using a commercial vehicle carries 1.5 times the point count normally assessed. With the exception of DUIs, points remain on your record for a total of 36 months.

Many of the point assessments are specified in code. However most are captured in one provision of the Vehicle Code that allows DMV to assess a point if a driver is convicted of a traffic violation involving the safe operation of a motor vehicle.

DMV can assess points for a variety of driving violations, including illegal U-turns, interfering with a driver's control of a vehicle, failing to yield the right-of-way to a horseback rider, driving too slow, driving too fast, failing to signal while turning, crossing a double line, or driving more than 10 consecutive hours for compensation.

Points do not stack up per arrest, and whatever violation has the highest amount of points will be the number of points assessed. For example, if a driver were pulled over for both speeding and texting, the driver would only get 1 point if convicted of both violations, not one point for each violation.

Further, for individuals with a noncommercial class C license or a motorcycle license, a court may provide for an individual the option to attend traffic violator school and avoid having a point put on their license.

Finally, an insurance provider is only made aware of a traffic violation if a point is assessed. Points can have negative consequences for an individual's insurance rates. Insurance companies are required to offer a Good Driver Discount policy that provides rates at least 20% below the rate the insured would otherwise have been charged for the same coverage. If a person has more than one point on their record, an insurance company is no longer required to offer the 20% discount.

AAA, writing in support, argues "AB 47 recognizes that our existing penalty for distracted driving is insufficient to deter this very dangerous practice. The most effective deterrent against safety violations remains assigning negligent operator points that potentially carry longer-term consequences impacting driving privileges. Points are the means by which the Department of Motor Vehicles can take action against the driving privilege of seriously dangerous drivers and repeat offenders. Multiple studies have confirmed that the DMV's negligent operator treatment system is effective in making drivers better, roads safer and saving lives of road users, including bicyclists and pedestrians. Additionally, the absence of a point for wireless violations diminishes the violation and sends motorists the wrong message as to the severity of this violation."

The California Teamsters are opposing AB 47 unless it is amended. They argue “Under federal and state law enacted last decade, any Vehicle Code violation occurring in a commercial driver’s personal vehicle, during network hours, counts against the driver’s commercial license. This also means that employer’s commercial motor vehicle insurance rates are now impacted by what happens in its employees’ personal vehicles. This has resulted in our members, with perfect driving records on the job, getting fired for getting a ticket in their personal vehicles because of rising insurance rates. Adding a point to this type of violation may exacerbate the problem.

To respond to this, we have made a compromise on similar proposed legislation that a first violation would be a fine only as it is under existing law, and every subsequent violation would result in a point.”

In 2014, Governor Brown vetoed a nearly identical bill, AB 1646 (Frazier). His veto message stated, “I certainly support taking reasonable steps to curb cell phone use and texting while driving, but I don't believe this bill is necessary at this time to achieve that goal. I'm instructing the Department of Motor Vehicles to add a question about the dangers of using a communication device on the driver license exam. Additionally, the department is beginning a review and analysis of data on distracted driving in California. Let's wait to see the results before enacting a law requiring a violation point.”

The most recent study done by the Office of Traffic Safety has indicated that cell phone usage while driving is on the rise. Specifically, “Distracted driving due to electronic devices rose in in 2018. More specifically, a rate of 4.52% was found which was up from 3.58% in 2017 (7.6% in 2016, 5.4% in 2015, and 3.8% in 2014). Further analysis of the 2018 findings indicated that use was higher on local roads (4.92% on local roads versus 3.24% on secondary roads and 2.37% on highways). Further, pickup trucks had higher usage rates than did other vehicle types (5.39% for pickups and 4.32% for other vehicles).”

*Committee comments:* While distracted driving kills three times as many people per year as a red light violation, driving while improperly using a cell phone carries a significantly smaller penalty. Red light violations come with a nearly \$500 ticket and a point on your record. A ticket for using a cell phone while driving comes with a \$162 ticket and no points.

In fact, a violation for driving while using a cell phone carries the lowest base fine for any violation of the Vehicle Code. The only other infraction that carries a similar penalty is the failure for a passenger or driver of a bus to wear a seatbelt.

The Teamsters have proposed amending this bill to only provide a point for the second violation. If such an amendment were to be taken, this would be the only violation of the vehicle code where a point is assessed for the second violation. Because noncommercial drivers are given the opportunity to take traffic violator school to remove a point, in practicality this proposal would result in a violation point only being added on the third ticket in a year for most drivers.

With nearly 3,500 people dying every year because of distracted driving, it is unclear why existing law treats this infraction with the lowest penalty in the Vehicle Code.

## **Related Legislation**

AB 1222 (Quirk, Chapter 297, Statutes of 2017) removed “specialized mobile radio device” and “two way messaging device” as examples of an “electronic communications device” that is prohibited from being used while driving.

AB 1785 (Quirk, Chapter 660, Statutes of 2016) replaced the existing prohibition on texting while driving with a broader prohibition on operating a cell phone or electronic wireless communications device while driving, unless the device is mounted in a manner that does not hinder the driver’s view of the road and can be operated using a single tap or swipe.

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

AB 313 (Frazier, 2013) would have repealed the provisions of AB 1536 (see below). The bill failed in the Assembly Appropriations Committee.

AB 1536 (Miller, Chapter 92, Statutes of 2012) allowed 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 33 (Simitian, Chapter 214, Statutes of 2007) prohibited an individual under 18 years of age 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 an individual from writing, sending, or reading text-based communications while operating a motor vehicle, even if the device is equipped with a hands-free device.

AB 1698 (Daly, 2018) would have imposed a violation point for an offense related to the use of a cell phone while driving. This bill died in Assembly Transportation Committee.

SB 1030 (Newman, 2018) would have imposed a violation point for an offense related to the use of a cell phone while driving. This bill died in Assembly Transportation Committee.

AB 1646 (Frazier, 2014) would have imposed a violation point for an offense related to the use of a cell phone while driving. This bill was vetoed by the Governor.

SB 1310 (Simitian, 2012) would have assessed a violation point for a second offense related to using a cell phone while driving. This bill was vetoed by the Governor.

## **REGISTERED SUPPORT / OPPOSITION:**

### **Support**

Automobile Club of Southern California  
California Association of Highway Patrolmen  
California Police Chiefs Association

Impact Teen Drivers  
National Association of Mutual Insurance Companies  
Pacific Association of Domestic Insurance Companies  
Personal Insurance Federation of California  
Property Casualty Insurers Association of America  
Riverside Sheriffs' Association  
Santa Ana Police Officers Association  
Sentry Insurance

**Opposition**

The Amalgamated Transit Union  
California Teamsters

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