

COMMENTS:

- 1) *Purpose.* According to the author, “Last year I authored a bill to update our distracted driving laws so that statute is reflective of the various activities smartphones can do. Until last year, California law was silent on whether or not a driver could hold a smartphone to scroll through a music playlist, take a selfie or play video games – even though these activities are equally, if not more, distracting than texting (which, along with holding a phone to make a call, was the only activity explicitly prohibited). AB 1222 seeks to correct a potential unintended consequence regarding two-way communication devices commonly used by trained professionals for brief, verbal communications with their dispatch offices or with other trained professionals. These devices do not possess the myriad distractions of cellular phones. These devices are essential tools operated by trained professionals in accordance with company safety policies. For example, dispatch and coordination is essential during emergencies or in hazardous or remote locations. The types of conversations facilitated by these two-way communication devices are brief and utilitarian in nature.”
- 2) *Smarter phones.* Ten years ago in 2007, SB 28 (Simitian, Chapter 270 of 2007) made it illegal to read, write, or receive a text message while driving, expanding on existing prohibitions on wireless telephone use passed the year before. That same year, the iPhone was introduced and released to the public. Since then, simple cellular phones have become GPS-equipped and broadband-enabled computers with large touch screens that fit in a pocket. The “phone” part of smartphone has become almost an afterthought, second to the slew of interactive apps and more advanced messaging available. According to the National Highway Traffic Safety Administration’s (NHTSA’s) National Occupant Protection Use Survey (NOPUS), while the percentage of drivers holding phones to their ears has declined overall since 2006, the percentage of drivers seen visibly manipulating handheld devices, including texting, mapping, emailing, etc., has been trending up. This is especially notable for drivers aged 16-24, increasing from 0.4% in 2006 to 4.9% in 2015. According to the Centers for Disease Control (CDC), drivers under 20 have the highest proportion of distraction-related fatal crashes.
- 3) *Legal history.* In 2014, the California Court of Appeals for the 5th District reviewed a case in which a driver was pulled over and cited for using a cell phone behind the wheel. In court, the driver argued that he was only using his phone to check a map application. The court concluded that the intent of the Legislature in enacting existing prohibitions at the time was only to prohibit the use of a wireless telephone for carrying on a conversation, not for any other

purpose. This decision made it difficult for law-enforcement agencies to enforce the prohibition.

- 4) *Updating the code.* Last year, AB 1785 (Quirk, Chapter 660 of 2016) was passed with the intent of addressing the use of the ever more intelligent and distracting features of smartphones while driving, updating the telephone and texting-centric statute. To incorporate the new technology, the statute was broadened to not only include a “handheld wireless telephone” but also an “electronic wireless communication device” including mobile, broadband devices. The statute requires drivers to mount their devices to the center console, dashboard, or windshield and only permitted minimal interaction, including a single tap or swipe to initiate or deactivate a feature, such as mapping.
- 5) *Installing a patch.* AB 1785 defined an “electronic wireless communication device” to include, but not be 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 messaging device. While the intent was to prohibit the use of smartphones while driving beyond phone calls and texting, it inadvertently created uncertainties for other radio-related devices, including specialized mobile radio devices and two-way messaging devices, often used by drivers for utilities companies. Writing in support, many utilities groups state that radio devices are essential to their employees’ jobs and emphasized that their use typically involves brief, verbal communications. They write that the radios are often used in emergency situations, communicating on dispatch to coordinate and to relay the status of the situation. This bill clarifies the intention of the language by removing “specialized mobile radio device” and “two-way messaging device” from the listed examples of an “electronic wireless communication device.” While this bill no longer explicitly lists the two devices, it does retain the phrase “including, but not limited to,” which provides some flexibility.
- 6) *Wired radios not considered wireless.* The California Highway Patrol (CHP) released an enforcement letter, to be added to their Traffic Enforcement Policy Manual, clarifying their stance regarding certain radios. CHP stated that they do not consider radios with wired hand microphones, such as business band or citizen band (CB) radios, to be a wireless communication device or a specialized mobile radio device. Therefore, current statute does not apply to wired radios from an enforcement standpoint. Writing in opposition, three California amateur radio operators state their concerns with several provisions implemented as part of AB 1785, including the exemption for emergency services professionals and device definitions used. They recommend

broadening the exemption to emergency services “personnel” instead of professionals and suggest using the term “personal wireless communications device” in the exemption, which is the term used in the federal Moving Ahead for Progress in the 21st Century Act (MAP-21). The author notes these concerns but states that it is not the intent of this bill to modify the existing exemption for emergency services professionals and that the language in this bill was tailored to be specific, with trained professionals in mind.

RELATED LEGISLATION:

AB 1785 (Quirk, Chapter 660, Statutes of 2016)—replaced prohibitions on texting while driving with broader provisions limiting the use of mobile phones and electronic wireless communications devices while driving.

AB 1646 (Frazier, 2014)— would have imposed a violation point for convictions related to the use of a cellular phone while driving, and required the driver’s license examination to assess knowledge of the dangers of using handheld devices while driving. *AB 1646 was vetoed by the Governor.*

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 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) — made 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

Assembly Votes:

Floor: 77-0
Appr: 16-0
Trans: 14-0

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: No

**POSITIONS: (Communicated to the committee before noon on Wednesday,
July 5, 2017.)**

SUPPORT:

California Bus Association
California Delivery Association
California Municipal Utilities Association
California Special Districts Association
California Trucking Association
City of Sacramento
Coalition of California Utility Employees
Motorola Solutions
Northern California Power Agency
Pacific Power
PG&E
SMUD
Southern California Edison

OPPOSITION:

BARA/California Amateur Radio Operators

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