

## MEMORANDUM

**To:** Dan Henderson  
Bob Vallio  
**From:** Chris Imlay  
**Re:** California Mobile Cellular Statute Revision AB.1785  
**Date:** February 16, 2017

California has revised its State statutes addressing mobile wireless operation. This was done without any advance notice to ARRL Headquarters from radio amateurs in California. This new statute has raised serious concerns since its passage by the State legislature and enactment by the Governor of California for one principal reason: There was included in the prior mobile cellular statute in California a complete exemption for licensed Amateur Radio operators, which was not included in this new legislation. The new legislation completely replaces the earlier legislation. The new legislation reads as follows:

- (a) A person shall not drive a motor vehicle while holding and operating a handheld wireless telephone or an electronic wireless communications device unless the wireless telephone or electronic wireless communications device is specifically designed and configured to allow voice-operated and hands-free operation, and it is used in that manner while driving.
- (b) This section shall not apply to manufacturer-installed systems that are embedded in the vehicle.
- (c) A handheld wireless telephone or electronic wireless communications device may be operated in a manner requiring the use of the driver's hand while the driver is operating the vehicle only if both of the following conditions are satisfied:
  - (1) The handheld wireless telephone or electronic wireless communications device is mounted on a vehicle's windshield in the same manner a portable Global Positioning System (GPS) is mounted pursuant to paragraph (12) of subdivision (b) of Section 26708 or is mounted on or affixed to a vehicle's dashboard or center console in a manner that does not hinder the driver's view of the road.
  - (2) The driver's hand is used to activate or deactivate a feature or function of the handheld wireless telephone or wireless communications device with the motion of a single swipe or tap of the driver's finger.
- (d) A violation of this section is an infraction punishable by a base fine of twenty dollars (\$20) for a first offense and fifty dollars (\$50) for each subsequent offense.

Here is the definition of an electronic wireless communications device in the Bill:

- (f) For the purposes of this section, "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 messaging device.

While AB 1785 does eliminate the mobile exemption for Amateur Radio from the prior

statute, *there is no indication in this definition of any intention to preclude either two-way private land mobile voice communications or Amateur Radio communications.* The specific reference to SMRs and pagers is exclusionary rather than inclusive. They are CMRS facilities, as are broadband PCS devices and two-way messaging devices. It would be impossible to include Amateur portable transceivers in the category of “electronic wireless communications device” as defined in the Statute unless those were actually being used for mobile data access while the control operator was driving a motor vehicle. Of course, the principal use of Amateur portable transceivers is for two-way voice communications.

The legislative record on this Statute indicates that it was intended to apply to non-voice, non-text services now available on “smart phones” (such as streaming video), which the former law did not prohibit explicitly. However, due to some rather poor draftsmanship in the text of the legislation defining what constitutes an “electronic wireless communications device,” it is impossible to determine the universe of such devices that are included in the definition. This is because the definition above includes the words “but not limited to” in giving examples of electronic devices that cannot be operated while also operating a motor vehicle in California.

Furthermore, the foregoing analysis is very technical. ARRL is concerned that law enforcement officers might interpret the new statutory language in the Vehicle Code more broadly than we believe was intended. Law enforcement officers are not necessarily skilled enough in telecommunications technology to be able to make the fine distinctions that radio amateurs are capable of, and they should not be expected to do so, where the legislative intent is not clearly expressed.

While there is a risk that licensed Amateur Radio operators in California using portable transceivers in their cars while driving may be subject to sanctions from police officers, the intent of the legislation clearly is to address handheld phones and mobile data and not private land mobile, dispatch radios, or mobile radios for voice communications with handheld mics.

The definitions in state mobile cellular and mobile texting laws do make a difference. There are two ways to protect Amateur Radio in the drafting of those statutes: one is by sufficiently narrowly defining prohibited activity so as to exclude Amateur Radio. The other is to create specific exemptions where the definitions are confusing. This statute is an example of poor legislative draftsmanship. It creates a motor vehicle law with citations issued for certain activity that includes the words “but is not limited to” in the language defining the violation. However, what is included does not proscribe use of mobile Amateur Radio equipment for voice communications.

There are several ways to respond to this. Perhaps the most difficult is to obtain a legislative amendment that either restores the Amateur Radio exemption from the prior legislation. Obtaining curative legislation so soon after enactment of a state statute is not politically the most simple of tasks, and State legislatures are not in session for long periods each year. That fix could take some time. Another option is to attempt to obtain a favorable exclusionary interpretation of the new Statute from the California Attorney General's office, which we understand has already been attempted unsuccessfully by some California radio

Amateurs, though the effort could be renewed). Finally, if there is an instance of a radio amateur being cited for violating the statute, a successful defense of that citation could be used as a precedent for precluding subsequent instances of application of the Statute to licensed radio Amateurs.

ARRL monitors state legislation in two ways; one is via a legislative monitoring service that responds to key word searches and which did identify this legislation, which when originally introduced was not in the form ultimately enacted. The second is through ARRL's section level State Government Liaisons who monitor state and local legislation. However, these efforts are not foolproof; mobile cellular legislation is often introduced and passed on very short notice, and State legislative sessions are very short. Proposed legislation during those sessions change often. In this case, some retroactive advocacy is called for, but the legislation is not as disruptive of mobile Amateur Radio operation as the current level of concern would indicate. Nor are the sanctions particularly severe for first or even subsequent offenses. ARRL expects to pursue a fix for this through its advocacy efforts.