

AMENDED IN SENATE MARCH 19, 2007

AMENDED IN SENATE FEBRUARY 14, 2007

**SENATE BILL**

**No. 33**

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**Introduced by Senator Simitian**  
(Principal coauthor: Assembly Member Garcia)

December 4, 2006

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An act to amend Sections 12810.3 and 23123 of, and to add Section 23122 to, the Vehicle Code, relating to vehicles.

LEGISLATIVE COUNSEL'S DIGEST

SB 33, as amended, Simitian. Vehicles: wireless telephones and mobile service devices.

(1) Under existing law, on and after July 1, 2008, it will be an infraction *for any person* to drive a motor vehicle while using a wireless telephone, unless that telephone is designed and configured to allow hands-free listening and talking operation, and is used in that manner while driving, except as otherwise provided. A violation point is not given for a violation.

This bill, on and after July 1, 2008, would prohibit a person ~~possessing a valid instruction permit, student license, or provisional license from driving a motor vehicle while using a wireless telephone. Secondly, the bill would prohibit such a person~~ *under the age of 18 years* from driving a motor vehicle while using a ~~handset~~ *wireless telephone* equipped with a hands-free device or while using a mobile service device, as defined. ~~The bill would provide that the prohibitions do~~ *prohibition would* not apply to such a person using a wireless telephone or a mobile service device for emergency purposes. By creating a new infraction, the bill would impose a state-mandated local program.

The bill would prohibit a law enforcement officer from stopping a vehicle for the sole purpose of determining whether the driver is violating the ~~2nd~~ *above* prohibition, *but would not prohibit a law enforcement officer from stopping a vehicle for the purpose of determining whether the driver is using a wireless telephone without a hands-free device.* The bill would prohibit a violation point from being given for a conviction of violating ~~any of the prohibitions~~ *the above prohibition.*

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 12810.3 of the Vehicle Code is amended  
2 to read:

3 12810.3. (a) Notwithstanding subdivision (f) of Section 12810,  
4 a violation point shall not be given for a conviction of a violation  
5 of subdivision (b) ~~or (e)~~ of Section 23122 or subdivision (a) of  
6 Section 23123.

7 (b) The section shall become operative on July 1, 2008.

8 SEC. 2. Section 23122 is added to the Vehicle Code, to read:

9 23122. (a) This section applies to a person ~~possessing a valid~~  
10 ~~instruction permit issued pursuant to Section 12509, a valid student~~  
11 ~~license issued pursuant to Section 12651 or 12660, or a valid~~  
12 ~~provisional license issued pursuant to Section 12814.6 under the~~  
13 *age of 18 years.*

14 ~~(b) A person described in subdivision (a) shall not drive a motor~~  
15 ~~vehicle while using a wireless telephone. This subdivision includes~~  
16 ~~using a mobile service device when that device is used as a wireless~~  
17 ~~telephone.~~

18 ~~(e) A~~

19 *(b) Notwithstanding Section 23123, a person described in*  
20 *subdivision (a) shall not drive a motor vehicle while using a*  
21 *handset wireless telephone equipped with a hands-free device or*  
22 *while using a mobile service device.*

1 ~~(d)~~

2 (c) A law enforcement officer shall not stop a vehicle for the  
3 sole purpose of determining whether the driver is violating  
4 subdivision ~~(e)~~ (b).

5 (d) *Subdivision (c) does not prohibit a law enforcement officer  
6 from stopping a vehicle for a violation of Section 23123.*

7 (e) This section does not apply to a person using a wireless  
8 telephone or a mobile service device for emergency purposes,  
9 including, but not limited to, an emergency call to a law  
10 enforcement agency, health care provider, fire department, or other  
11 emergency services agency or entity.

12 (f) For the purposes of this section, “mobile service device”  
13 includes, but is not limited to, a broadband personal communication  
14 device, specialized mobile radio device, handheld device or laptop  
15 computer with mobile data access, pager, and two-way messaging  
16 device.

17 (g) This section shall become operative on July 1, 2008.

18 ~~SEC. 3. Section 23123 of the Vehicle Code, as added by~~  
19 ~~Section 4 of Chapter 290 of the Statutes of 2006, is amended to~~  
20 ~~read:~~

21 ~~23123. (a) A person shall not drive a motor vehicle while using~~  
22 ~~a wireless telephone unless that telephone is specifically designed~~  
23 ~~and configured to allow hands-free listening and talking, and is~~  
24 ~~used in that manner while driving.~~

25 ~~(b) Notwithstanding subdivision (a) of Section 42001 or any~~  
26 ~~other provision of law, a violation of this section is an infraction~~  
27 ~~punishable by a base fine of twenty dollars (\$20) for a first offense~~  
28 ~~and fifty dollars (\$50) for each subsequent offense.~~

29 ~~(c) This section does not apply to a person using a wireless~~  
30 ~~telephone for emergency purposes, including, but not limited to,~~  
31 ~~an emergency call to a law enforcement agency, health care~~  
32 ~~provider, fire department, or other emergency services agency or~~  
33 ~~entity.~~

34 ~~(d) This section does not apply to an emergency services~~  
35 ~~professional using a wireless telephone while operating an~~  
36 ~~authorized emergency vehicle, as defined in Section 165, in the~~  
37 ~~course and scope of his or her duties.~~

38 ~~(e) This section does not apply to a person when using a digital~~  
39 ~~two-way radio that utilizes a wireless telephone that operates by~~  
40 ~~depressing a push-to-talk feature and does not require immediate~~

1 proximity to the car of the user, and the person is driving one of  
2 the following vehicles:

3 (1) (A) A motor truck, as defined in Section 410, or a truck  
4 tractor, as defined in Section 655, that requires either a commercial  
5 class A or class B driver's license to operate.

6 (B) The exemption under subparagraph (A) does not apply to  
7 a person driving a pickup truck, as defined in Section 471.

8 (2) An implement of husbandry that is listed or described in  
9 Chapter 1 (commencing with Section 36000) of Division 16.

10 (3) A farm vehicle that is exempt from registration and displays  
11 an identification plate as specified in Section 5014 and is listed in  
12 Section 36101.

13 (4) A commercial vehicle, as defined in Section 260, that is  
14 registered to a farmer and driven by the farmer or an employee of  
15 the farmer, and is used in conducting commercial agricultural  
16 operations, including, but not limited to, transporting agricultural  
17 products, farm machinery, or farm supplies to, or from, a farm.

18 (5) A tow truck, as defined in Section 615.

19 (f) This section does not apply to a person driving a schoolbus  
20 or transit vehicle that is subject to Section 23125.

21 (g) This section does not apply to a person while driving a motor  
22 vehicle on private property.

23 (h) This section does not apply to a person who is subject to  
24 Section 23122.

25 (i) This section shall become operative on July 1, 2008, and  
26 shall remain in effect only until July 1, 2011, and, as of July 1,  
27 2011, is repealed.

28 ~~SEC. 4.~~

29 *SEC. 3.* Section 23123 of the Vehicle Code, as added by Section  
30 5 of Chapter 290 of the Statutes of 2006, is amended to read:

31 23123. (a) A person shall not drive a motor vehicle while using  
32 a wireless telephone unless that telephone is specifically designed  
33 and configured to allow hands-free listening and talking, and is  
34 used in that manner while driving.

35 (b) Notwithstanding subdivision (a) of Section 42001 or any  
36 other provision of law, a violation of this section is an infraction  
37 punishable by a base fine of twenty dollars (\$20) for a first offense  
38 and fifty dollars (\$50) for each subsequent offense.

39 (c) This section does not apply to a person using a wireless  
40 telephone for emergency purposes, including, but not limited to,

1 an emergency call to a law enforcement agency, health care  
2 provider, fire department, or other emergency services agency or  
3 entity.

4 (d) This section does not apply to an emergency services  
5 professional using a wireless telephone while operating an  
6 authorized emergency vehicle, as defined in Section 165, in the  
7 course and scope of his or her duties.

8 (e) This section does not apply to a person driving a schoolbus  
9 or transit vehicle that is subject to Section 23125.

10 (f) This section does not apply to a person while driving a motor  
11 vehicle on private property.

12 ~~(g) This section does not apply to a person who is subject to~~  
13 ~~Section 23122.~~

14 ~~(h)~~

15 (g) This section shall become operative on July 1, 2011.

16 ~~SEC. 5.~~

17 *SEC. 4.* No reimbursement is required by this act pursuant to  
18 Section 6 of Article XIII B of the California Constitution because  
19 the only costs that may be incurred by a local agency or school  
20 district will be incurred because this act creates a new crime or  
21 infraction, eliminates a crime or infraction, or changes the penalty  
22 for a crime or infraction, within the meaning of Section 17556 of  
23 the Government Code, or changes the definition of a crime within  
24 the meaning of Section 6 of Article XIII B of the California  
25 Constitution.