

AMENDED IN SENATE APRIL 7, 2011

AMENDED IN SENATE MARCH 23, 2011

**SENATE BILL**

**No. 28**

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**Introduced by Senator Simitian**

December 6, 2010

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An act to amend Sections 12804.9, 12810.3, 23123, 23123.5, and 23124 of, and to add Sections 21213, 21213.5, 21214, and 23124.5 to, the Vehicle Code, relating to vehicles.

LEGISLATIVE COUNSEL'S DIGEST

SB 28, as amended, Simitian. Vehicles: electronic wireless communications devices: prohibitions.

(1) Existing law requires the Department of Motor Vehicles to examine applicants for specific driver's licenses and requires that the examination include, among other things, a test of the applicant's knowledge and understanding of the provisions of the Vehicle Code governing the operation of vehicles upon the highways.

This bill would require the department to include a test of the applicant's understanding of the distractions and dangers of handheld cell phone use and text messaging while operating a motor vehicle.

(2) Existing law establishes that specified convictions and violations under the Vehicle Code and traffic-related incidents count as points against a driver's record for purposes of the suspension or revocation of the privilege to drive.

Under existing law, it is 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 person under 18 years of age is prohibited from driving a

motor vehicle while using a wireless telephone, even if equipped with a hands-free device, or while using a mobile service device. A point is not given for a violation of these provisions.

This bill would assess a violation point on a 2nd or subsequent violation of these provisions.

(3) Under existing law, a person is prohibited from driving a motor vehicle while using an electronic wireless communications device to write, send, or read a text-based communication, except as specified.

This bill would require that this provision does not apply if the ~~person is using a voice-operated, hands-free device~~ *electronic wireless communications device is specifically designed and configured to allow voice-operated and hands-free operation to write, send, or read a text-based communication, and it is used in that manner while driving.*

The bill also would increase the base fines for a violation of any of the above-described prohibitions involving driving a motor vehicle while using a wireless telephone or electronic wireless communications device from \$20 to \$50 and the fine for a 2nd or subsequent offense from \$50 to \$100, would apply similar prohibitions to a person riding a bicycle, would impose a ~~total fine amount~~ of \$20 for a first offense and \$50 for each subsequent offense for a violation when the offense is committed while riding a bicycle, and would provide that a violation point is not given for a conviction of a violation while riding a bicycle. By expanding the scope of existing crimes, the bill would impose a state-mandated local program.

(4) Existing law prohibits a law enforcement officer from stopping a vehicle for the sole purpose of determining whether the driver is violating the prohibition of driving a motor vehicle while using a wireless telephone.

This bill would delete that prohibition.

(5) Existing law requires that the base fines collected from violations of the Vehicle Code for crimes other than parking offenses are subject to distribution to specified funds of a state or local agency as set forth by statute or to the proper funds of a city or county, as applicable.

This bill would require the county treasurer to submit \$10 from each fine collected under this provision for violating the above-described prohibitions involving driving a motor vehicle while using a wireless telephone or electronic wireless communications device to the Controller, for deposit into the Distracted Driver Education Fund, which would be created in the State Treasury for an education program on the dangers of cell phone use and text messaging while driving, thereby

imposing a state-mandated local program by imposing a new duty on local officials. The bill would require the Legislature, upon appropriation in the Budget Bill, to allocate this money to the Office of Traffic Safety in the Business, Transportation and Housing Agency for this purpose.

(6) 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 with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

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 12804.9 of the Vehicle Code is amended
- 2 to read:
- 3 12804.9. (a) (1) The examination shall include all of the
- 4 following:
- 5 (A) A test of the applicant’s knowledge and understanding of
- 6 the provisions of this code governing the operation of vehicles
- 7 upon the highways.
- 8 (B) A test of the applicant’s ability to read and understand
- 9 simple English used in highway traffic and directional signs.
- 10 (C) A test of the applicant’s understanding of traffic signs and
- 11 signals, including the bikeway signs, markers, and traffic control
- 12 devices established by the Department of Transportation.
- 13 (D) A test of the applicant’s understanding of the distractions
- 14 and dangers of handheld cell phone use and text messaging while
- 15 operating a motor vehicle.
- 16 (E) An actual demonstration of the applicant’s ability to exercise
- 17 ordinary and reasonable control in operating a motor vehicle by
- 18 driving it under the supervision of an examining officer. The
- 19 applicant shall submit to an examination appropriate to the type
- 20 of motor vehicle or combination of vehicles he or she desires a
- 21 license to drive, except that the department may waive the driving
- 22 test part of the examination for any applicant who submits a license

1 issued by another state, territory, or possession of the United States,  
2 the District of Columbia, or the Commonwealth of Puerto Rico if  
3 the department verifies through any acknowledged national driver  
4 record data source that there are no stops, holds, or other  
5 impediments to its issuance. The examining officer may request  
6 to see evidence of financial responsibility for the vehicle prior to  
7 supervising the demonstration of the applicant's ability to operate  
8 the vehicle. The examining officer may refuse to examine an  
9 applicant who is unable to provide proof of financial responsibility  
10 for the vehicle, unless proof of financial responsibility is not  
11 required by this code.

12 (F) A test of the hearing and eyesight of the applicant, and of  
13 other matters that may be necessary to determine the applicant's  
14 mental and physical fitness to operate a motor vehicle upon the  
15 highways, and whether any grounds exist for refusal of a license  
16 under this code.

17 (2) The examination for a class A or class B driver's license  
18 under subdivision (b) shall also include a report of a medical  
19 examination of the applicant given not more than two years prior  
20 to the date of the application by a health care professional. As used  
21 in this paragraph, "health care professional" means a person who  
22 is licensed, certified, or registered in accordance with applicable  
23 state laws and regulations to practice medicine and perform  
24 physical examinations in the United States. Health care  
25 professionals are doctors of medicine, doctors of osteopathy,  
26 physician assistants, and registered advanced practice nurses, or  
27 doctors of chiropractic who are clinically competent to perform  
28 the medical examination presently required of motor carrier drivers  
29 by the federal Department of Transportation. The report shall be  
30 on a form approved by the department, the federal Department of  
31 Transportation, or the Federal Aviation Administration. In  
32 establishing the requirements, consideration may be given to the  
33 standards presently required of motor carrier drivers by the Federal  
34 Highway Administration.

35 (3) A physical defect of the applicant that, in the opinion of the  
36 department, is compensated for to ensure safe driving ability shall  
37 not prevent the issuance of a license to the applicant.

38 (b) In accordance with the following classifications, an applicant  
39 for a driver's license shall be required to submit to an examination

- 1 appropriate to the type of motor vehicle or combination of vehicles  
2 the applicant desires a license to drive:
- 3 (1) Class A includes the following:
- 4 (A) A combination of vehicles, if a vehicle being towed has a  
5 gross vehicle weight rating of more than 10,000 pounds.  
6 (B) A vehicle towing more than one vehicle.  
7 (C) A trailer bus.  
8 (D) The operation of all vehicles under class B and class C.
- 9 (2) Class B includes the following:
- 10 (A) Except as provided in subparagraph (H) of paragraph (3),  
11 a single vehicle with a gross vehicle weight rating of more than  
12 26,000 pounds.  
13 (B) A single vehicle with three or more axles, except any  
14 three-axle vehicle weighing less than 6,000 pounds.  
15 (C) A bus except a trailer bus.  
16 (D) A farm labor vehicle.  
17 (E) A single vehicle with three or more axles or a gross vehicle  
18 weight rating of more than 26,000 pounds towing another vehicle  
19 with a gross vehicle weight rating of 10,000 pounds or less.  
20 (F) A house car over 40 feet in length, excluding safety devices  
21 and safety bumpers.  
22 (G) The operation of all vehicles covered under class C.
- 23 (3) Class C includes the following:
- 24 (A) A two-axle vehicle with a gross vehicle weight rating of  
25 26,000 pounds or less, including when the vehicle is towing a  
26 trailer or semitrailer with a gross vehicle weight rating of 10,000  
27 pounds or less.  
28 (B) Notwithstanding subparagraph (A), a two-axle vehicle  
29 weighing 4,000 pounds or more unladen when towing a trailer  
30 coach not exceeding 9,000 pounds gross.  
31 (C) A house car of 40 feet in length or less.  
32 (D) A three-axle vehicle weighing 6,000 pounds gross or less.  
33 (E) A house car of 40 feet in length or less or a vehicle towing  
34 another vehicle with a gross vehicle weight rating of 10,000 pounds  
35 or less, including when a tow dolly is used. A person driving a  
36 vehicle shall not tow another vehicle in violation of Section 21715.  
37 (F) (i) A two-axle vehicle weighing 4,000 pounds or more  
38 unladen when towing either a trailer coach or a fifth-wheel travel  
39 trailer not exceeding 10,000 pounds gross vehicle weight rating,  
40 when the towing of the trailer is not for compensation.

1 (ii) A two-axle vehicle weighing 4,000 pounds or more unladen  
2 when towing a fifth-wheel travel trailer exceeding 10,000 pounds,  
3 but not exceeding 15,000 pounds, gross vehicle weight rating,  
4 when the towing of the trailer is not for compensation, and if the  
5 person has passed a specialized written examination provided by  
6 the department relating to the knowledge of this code and other  
7 safety aspects governing the towing of recreational vehicles upon  
8 the highway.

9 (iii) The authority to operate combinations of vehicles under  
10 this subparagraph may be granted by endorsement on a class C  
11 license upon completion of that written examination.

12 (G) A vehicle or combination of vehicles with a gross  
13 combination weight rating or a gross vehicle weight rating, as  
14 those terms are defined in subdivisions (j) and (k), respectively,  
15 of Section 15210, of 26,000 pounds or less, if all of the following  
16 conditions are met:

17 (i) Is operated by a farmer, an employee of a farmer, or an  
18 instructor credentialed in agriculture as part of an instructional  
19 program in agriculture at the high school, community college, or  
20 university level.

21 (ii) Is used exclusively in the conduct of agricultural operations.

22 (iii) Is not used in the capacity of a for-hire carrier or for  
23 compensation.

24 (H) Firefighting equipment, provided that the equipment is  
25 operated by a person who holds a firefighter endorsement pursuant  
26 to Section 12804.11.

27 (I) A motorized scooter.

28 (J) Class C does not include a two-wheel motorcycle or a  
29 two-wheel motor-driven cycle.

30 (4) Class M1. A two-wheel motorcycle or a motor-driven cycle.  
31 Authority to operate a vehicle included in a class M1 license may  
32 be granted by endorsement on a class A, B, or C license upon  
33 completion of an appropriate examination.

34 (5) (A) Class M2 includes the following:

35 (i) A motorized bicycle or moped, or a bicycle with an attached  
36 motor, except a motorized bicycle described in subdivision (b) of  
37 Section 406.

38 (ii) A motorized scooter.

39 (B) Authority to operate vehicles included in class M2 may be  
40 granted by endorsement on a class A, B, or C license upon

1 completion of an appropriate examination, except that no  
2 endorsement is required for a motorized scooter. Persons holding  
3 a class M1 license or endorsement may operate vehicles included  
4 in class M2 without further examination.

5 (c) A driver's license or driver certificate is not valid for  
6 operating a commercial motor vehicle, as defined in subdivision  
7 (b) of Section 15210, any other motor vehicle defined in paragraph  
8 (1) or (2) of subdivision (b), or any other vehicle requiring a driver  
9 to hold any driver certificate or any driver's license endorsement  
10 under Section 15275, unless a medical certificate approved by the  
11 department, the federal Department of Transportation, or the  
12 Federal Aviation Administration, that has been issued within two  
13 years of the date of the operation of that vehicle, is within the  
14 licensee's immediate possession, and a copy of the medical  
15 examination report from which the certificate was issued is on file  
16 with the department. Otherwise, the license is valid only for  
17 operating class C vehicles that are not commercial vehicles, as  
18 defined in subdivision (b) of Section 15210, and for operating class  
19 M1 or M2 vehicles, if so endorsed, that are not commercial  
20 vehicles, as defined in subdivision (b) of Section 15210.

21 (d) A license or driver certificate issued prior to the enactment  
22 of Chapter 7 (commencing with Section 15200) is valid to operate  
23 the class or type of vehicles specified under the law in existence  
24 prior to that enactment until the license or certificate expires or is  
25 otherwise suspended, revoked, or canceled.

26 (e) The department may accept a certificate of driving skill that  
27 is issued by an employer, authorized by the department to issue a  
28 certificate under Section 15250, of the applicant, in lieu of a driving  
29 test, on class A or B applications, if the applicant has first qualified  
30 for a class C license and has met the other examination  
31 requirements for the license for which he or she is applying. The  
32 certificate may be submitted as evidence of the applicant's skill  
33 in the operation of the types of equipment covered by the license  
34 for which he or she is applying.

35 (f) The department may accept a certificate of competence in  
36 lieu of a driving test on class M1 or M2 applications, when the  
37 certificate is issued by a law enforcement agency for its officers  
38 who operate class M1 or M2 vehicles in their duties, if the applicant  
39 has met the other examination requirements for the license for  
40 which he or she is applying.

1 (g) The department may accept a certificate of satisfactory  
2 completion of a novice motorcyclist training program approved  
3 by the commissioner pursuant to Section 2932 in lieu of a driving  
4 test on class M1 or M2 applications, if the applicant has met the  
5 other examination requirements for the license for which he or she  
6 is applying. The department shall review and approve the written  
7 and driving test used by a program to determine whether the  
8 program may issue a certificate of completion.

9 (h) Notwithstanding subdivision (b), a person holding a valid  
10 California driver's license of any class may operate a short-term  
11 rental motorized bicycle without taking any special examination  
12 for the operation of a motorized bicycle, and without having a  
13 class M2 endorsement on that license. As used in this subdivision,  
14 "short-term" means 48 hours or less.

15 (i) A person under 21 years of age shall not be issued a class  
16 M1 or M2 license or endorsement unless he or she provides  
17 evidence satisfactory to the department of completion of a  
18 motorcycle safety training program that is operated pursuant to  
19 Article 2 (commencing with Section 2930) of Chapter 5 of Division  
20 2.

21 (j) A driver of a vanpool vehicle may operate with a class C  
22 license but shall possess evidence of a medical examination  
23 required for a class B license when operating vanpool vehicles. In  
24 order to be eligible to drive the vanpool vehicle, the driver shall  
25 keep in the vanpool vehicle a statement, signed under penalty of  
26 perjury, that he or she has not been convicted of reckless driving,  
27 drunk driving, or a hit-and-run offense in the last five years.

28 SEC. 2. Section 12810.3 of the Vehicle Code is amended to  
29 read:

30 12810.3. Notwithstanding subdivision (f) of Section 12810, a  
31 violation point shall only be given for a second or subsequent  
32 conviction of a violation of subdivision (a) of Section 23123,  
33 subdivision (a) of Section 23123.5, or subdivision (b) of Section  
34 23124.

35 SEC. 3. Section 21213 is added to the Vehicle Code, to read:

36 21213. (a) A person shall not ride a bicycle while using a  
37 wireless telephone unless that telephone is specifically designed  
38 and configured to allow hands-free listening and talking, and is  
39 used in that manner while riding the bicycle.



1 (b) A violation of subdivision (a) is an infraction punishable by  
2 a ~~base~~ *total* fine of twenty dollars (\$20) for a first offense and fifty  
3 dollars (\$50) for each subsequent offense. The fines imposed for  
4 a first or subsequent offense shall be the total amount collected  
5 and, notwithstanding any other law, other penalties, assessments,  
6 surcharges, fees, or any other charge shall not be imposed.

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

12 (d) This section does not apply to a person while riding a bicycle  
13 on private property.

14 SEC. 4. Section 21213.5 is added to the Vehicle Code, to read:  
15 21213.5. (a) A person shall not ride a bicycle while using an  
16 electronic wireless communications device to write, send, or read  
17 a text-based communication.

18 (b) As used in this section, “write, send, or read a text-based  
19 communication” means using an electronic wireless  
20 communications device to manually communicate with any person  
21 using a text-based communication, including, but not limited to,  
22 communications referred to as a text message, instant message, or  
23 electronic mail.

24 (c) For purposes of this section, a person shall not be deemed  
25 to be writing, reading, or sending a text-based communication if  
26 the person reads, selects, or enters a telephone number or name in  
27 an electronic wireless communications device for the purpose of  
28 making or receiving a telephone call.

29 (d) A violation of subdivision (a) is an infraction punishable by  
30 a ~~base~~ *total* fine of twenty dollars (\$20) for a first offense and fifty  
31 dollars (\$50) for each subsequent offense. The fines imposed for  
32 a first or subsequent offense shall be the total amount collected  
33 and, notwithstanding any other law, other penalties, assessments,  
34 surcharges, fees, or any other charge shall not be imposed.

35 (e) This section does not apply to a person while riding a bicycle  
36 on private property.

37 SEC. 5. Section 21214 is added to the Vehicle Code, to read:  
38 21214. A violation of Section 21213 or 21213.5 shall not result  
39 in a violation point count.

40 SEC. 6. Section 23123 of the Vehicle Code is amended to read:

1 23123. (a) A person shall not drive a motor vehicle while using  
2 a wireless telephone unless that telephone is specifically designed  
3 and configured to allow hands-free listening and talking, and is  
4 used in that manner while driving.

5 (b) A violation of subdivision (a) is an infraction punishable by  
6 a base fine of fifty dollars (\$50) for a first offense and one hundred  
7 dollars (\$100) for each subsequent offense.

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

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

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

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

21 SEC. 7. Section 23123.5 of the Vehicle Code is amended to  
22 read:

23 23123.5. (a) A person shall not drive a motor vehicle while  
24 using an electronic wireless communications device to write, send,  
25 or read a text-based communication, ~~unless the person is using a~~  
26 ~~voice-operated, —hands-free— device.~~ *electronic wireless*  
27 *communications device is specifically designed and configured to*  
28 *allow voice-operated and hands-free operation to write, send, or*  
29 *read a text-based communication, and it is used in that manner*  
30 *while driving.*

31 (b) As used in this section, “write, send, or read a text-based  
32 communication” means using an electronic wireless  
33 communications device to manually communicate with any person  
34 using a text-based communication, including, but not limited to,  
35 communications referred to as a text message, instant message, or  
36 electronic mail.

37 (c) For purposes of this section, a person shall not be deemed  
38 to be writing, reading, or sending a text-based communication if  
39 the person reads, selects, or enters a telephone number or name in

1 an electronic wireless communications device for the purpose of  
2 making or receiving a telephone call.

3 (d) A violation of subdivision (a) is an infraction punishable by  
4 a base fine of fifty dollars (\$50) for a first offense and one hundred  
5 dollars (\$100) for each subsequent offense.

6 (e) This section does not apply to an emergency services  
7 professional using an electronic wireless communications device  
8 while operating an authorized emergency vehicle, as defined in  
9 Section 165, in the course and scope of his or her duties.

10 SEC. 8. Section 23124 of the Vehicle Code is amended to read:

11 23124. (a) This section applies to a person under 18 years of  
12 age.

13 (b) Notwithstanding Section 23123, a person described in  
14 subdivision (a) shall not drive a motor vehicle while using a  
15 wireless telephone, even if equipped with a hands-free device, or  
16 while using a mobile service device.

17 (c) A violation of this section is an infraction punishable by a  
18 base fine of fifty dollars (\$50) for a first offense and one hundred  
19 dollars (\$100) for each subsequent offense.

20 (d) This section does not apply to a person using a wireless  
21 telephone or a mobile service device for emergency purposes,  
22 including, but not limited to, an emergency call to a law  
23 enforcement agency, health care provider, fire department, or other  
24 emergency services agency or entity.

25 (e) For purposes of this section, “mobile service device”  
26 includes, but is not limited to, a broadband personal communication  
27 device, specialized mobile radio device, handheld device or laptop  
28 computer with mobile data access, pager, and two-way messaging  
29 device.

30 SEC. 9. Section 23124.5 is added to the Vehicle Code, to read:

31 23124.5. Notwithstanding Section 1463 of the Penal Code, the  
32 county treasurer shall submit to the Controller ten dollars (\$10)  
33 from each fine collected under Sections 23123, 23123.5, and  
34 23124. The Controller shall deposit that amount into the Distracted  
35 Driver Education Fund, which is hereby created in the State  
36 Treasury for an education program on the dangers of cell phone  
37 use and text messaging while driving. The Legislature, upon  
38 appropriation in the Budget Bill, shall allocate this money to the  
39 Office of Traffic Safety in the Business, Transportation and  
40 Housing Agency for this purpose.

1 SEC. 10. No reimbursement is required by this act pursuant to  
2 Section 6 of Article XIII B of the California Constitution for certain  
3 costs that may be incurred by a local agency or school district  
4 because, in that regard, this act creates a new crime or infraction,  
5 eliminates a crime or infraction, or changes the penalty for a crime  
6 or infraction, within the meaning of Section 17556 of the  
7 Government Code, or changes the definition of a crime within the  
8 meaning of Section 6 of Article XIII B of the California  
9 Constitution.

10 However, if the Commission on State Mandates determines that  
11 this act contains other costs mandated by the state, reimbursement  
12 to local agencies and school districts for those costs shall be made  
13 pursuant to Part 7 (commencing with Section 17500) of Division  
14 4 of Title 2 of the Government Code.