

AMENDED IN SENATE APRIL 14, 2011

AMENDED IN SENATE APRIL 7, 2011

AMENDED IN SENATE MARCH 23, 2011

SENATE BILL

No. 28

Introduced by Senator Simitian
(Coauthor: Senator Alquist)

December 6, 2010

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 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 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.

The bill would authorize the county treasurer to also withhold a sufficient amount from each fine collected for violations involving riding a bicycle while using a wireless telephone or electronic wireless communications device to reimburse the courts in the county for their actual, reasonable, and necessary costs associated with processing violations under the law involving those prohibitions.

(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.

1 (D) A test of the applicant's understanding of the distractions
2 and dangers of handheld cell phone use and text messaging while
3 operating a motor vehicle.

4 (E) An actual demonstration of the applicant's ability to exercise
5 ordinary and reasonable control in operating a motor vehicle by
6 driving it under the supervision of an examining officer. The
7 applicant shall submit to an examination appropriate to the type
8 of motor vehicle or combination of vehicles he or she desires a
9 license to drive, except that the department may waive the driving
10 test part of the examination for any applicant who submits a license
11 issued by another state, territory, or possession of the United States,
12 the District of Columbia, or the Commonwealth of Puerto Rico if
13 the department verifies through any acknowledged national driver
14 record data source that there are no stops, holds, or other
15 impediments to its issuance. The examining officer may request
16 to see evidence of financial responsibility for the vehicle prior to
17 supervising the demonstration of the applicant's ability to operate
18 the vehicle. The examining officer may refuse to examine an
19 applicant who is unable to provide proof of financial responsibility
20 for the vehicle, unless proof of financial responsibility is not
21 required by this code.

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

27 (2) The examination for a class A or class B driver's license
28 under subdivision (b) shall also include a report of a medical
29 examination of the applicant given not more than two years prior
30 to the date of the application by a health care professional. As used
31 in this paragraph, "health care professional" means a person who
32 is licensed, certified, or registered in accordance with applicable
33 state laws and regulations to practice medicine and perform
34 physical examinations in the United States. Health care
35 professionals are doctors of medicine, doctors of osteopathy,
36 physician assistants, and registered advanced practice nurses, or
37 doctors of chiropractic who are clinically competent to perform
38 the medical examination presently required of motor carrier drivers
39 by the federal Department of Transportation. The report shall be
40 on a form approved by the department, the federal Department of

1 Transportation, or the Federal Aviation Administration. In
2 establishing the requirements, consideration may be given to the
3 standards presently required of motor carrier drivers by the Federal
4 Highway Administration.

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

8 (b) In accordance with the following classifications, an applicant
9 for a driver's license shall be required to submit to an examination
10 appropriate to the type of motor vehicle or combination of vehicles
11 the applicant desires a license to drive:

12 (1) Class A includes the following:

13 (A) A combination of vehicles, if a vehicle being towed has a
14 gross vehicle weight rating of more than 10,000 pounds.

15 (B) A vehicle towing more than one vehicle.

16 (C) A trailer bus.

17 (D) The operation of all vehicles under class B and class C.

18 (2) Class B includes the following:

19 (A) Except as provided in subparagraph (H) of paragraph (3),
20 a single vehicle with a gross vehicle weight rating of more than
21 26,000 pounds.

22 (B) A single vehicle with three or more axles, except any
23 three-axle vehicle weighing less than 6,000 pounds.

24 (C) A bus except a trailer bus.

25 (D) A farm labor vehicle.

26 (E) A single vehicle with three or more axles or a gross vehicle
27 weight rating of more than 26,000 pounds towing another vehicle
28 with a gross vehicle weight rating of 10,000 pounds or less.

29 (F) A house car over 40 feet in length, excluding safety devices
30 and safety bumpers.

31 (G) The operation of all vehicles covered under class C.

32 (3) Class C includes the following:

33 (A) A two-axle vehicle with a gross vehicle weight rating of
34 26,000 pounds or less, including when the vehicle is towing a
35 trailer or semitrailer with a gross vehicle weight rating of 10,000
36 pounds or less.

37 (B) Notwithstanding subparagraph (A), a two-axle vehicle
38 weighing 4,000 pounds or more unladen when towing a trailer
39 coach not exceeding 9,000 pounds gross.

40 (C) A house car of 40 feet in length or less.

1 (D) A three-axle vehicle weighing 6,000 pounds gross or less.

2 (E) A house car of 40 feet in length or less or a vehicle towing
3 another vehicle with a gross vehicle weight rating of 10,000 pounds
4 or less, including when a tow dolly is used. A person driving a
5 vehicle shall not tow another vehicle in violation of Section 21715.

6 (F) (i) A two-axle vehicle weighing 4,000 pounds or more
7 unladen when towing either a trailer coach or a fifth-wheel travel
8 trailer not exceeding 10,000 pounds gross vehicle weight rating,
9 when the towing of the trailer is not for compensation.

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

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

21 (G) A vehicle or combination of vehicles with a gross
22 combination weight rating or a gross vehicle weight rating, as
23 those terms are defined in subdivisions (j) and (k), respectively,
24 of Section 15210, of 26,000 pounds or less, if all of the following
25 conditions are met:

26 (i) Is operated by a farmer, an employee of a farmer, or an
27 instructor credentialed in agriculture as part of an instructional
28 program in agriculture at the high school, community college, or
29 university level.

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

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

33 (H) Firefighting equipment, provided that the equipment is
34 operated by a person who holds a firefighter endorsement pursuant
35 to Section 12804.11.

36 (I) A motorized scooter.

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

39 (4) Class M1. A two-wheel motorcycle or a motor-driven cycle.

40 Authority to operate a vehicle included in a class M1 license may

1 be granted by endorsement on a class A, B, or C license upon
2 completion of an appropriate examination.

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

4 (i) A motorized bicycle or moped, or a bicycle with an attached
5 motor, except a motorized bicycle described in subdivision (b) of
6 Section 406.

7 (ii) A motorized scooter.

8 (B) Authority to operate vehicles included in class M2 may be
9 granted by endorsement on a class A, B, or C license upon
10 completion of an appropriate examination, except that no
11 endorsement is required for a motorized scooter. Persons holding
12 a class M1 license or endorsement may operate vehicles included
13 in class M2 without further examination.

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

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

35 (e) The department may accept a certificate of driving skill that
36 is issued by an employer, authorized by the department to issue a
37 certificate under Section 15250, of the applicant, in lieu of a driving
38 test, on class A or B applications, if the applicant has first qualified
39 for a class C license and has met the other examination
40 requirements for the license for which he or she is applying. The

1 certificate may be submitted as evidence of the applicant's skill
2 in the operation of the types of equipment covered by the license
3 for which he or she is applying.

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

10 (g) The department may accept a certificate of satisfactory
11 completion of a novice motorcyclist training program approved
12 by the commissioner pursuant to Section 2932 in lieu of a driving
13 test on class M1 or M2 applications, if the applicant has met the
14 other examination requirements for the license for which he or she
15 is applying. The department shall review and approve the written
16 and driving test used by a program to determine whether the
17 program may issue a certificate of completion.

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

24 (i) A person under 21 years of age shall not be issued a class
25 M1 or M2 license or endorsement unless he or she provides
26 evidence satisfactory to the department of completion of a
27 motorcycle safety training program that is operated pursuant to
28 Article 2 (commencing with Section 2930) of Chapter 5 of Division
29 2.

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

37 SEC. 2. Section 12810.3 of the Vehicle Code is amended to
38 read:

39 12810.3. Notwithstanding subdivision (f) of Section 12810, a
40 violation point shall only be given for a second or subsequent

conviction of a violation of subdivision (a) of Section 23123, subdivision (a) of Section 23123.5, or subdivision (b) of Section 23124.

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

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

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

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

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

SEC. 4. Section 21213.5 is added to the Vehicle Code, to read:

21213.5. (a) A person shall not ride a bicycle while using an electronic wireless communications device to write, send, or read a text-based communication.

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

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

(d) A violation of subdivision (a) is an infraction punishable by a total fine of twenty dollars (\$20) for a first offense and fifty dollars (\$50) for each subsequent offense. The fines imposed for a first or subsequent offense shall be the total amount collected

1 and, notwithstanding any other law, other penalties, assessments,
2 surcharges, fees, or any other charge shall not be imposed.

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

5 SEC. 5. Section 21214 is added to the Vehicle Code, to read:

6 21214. A violation of Section 21213 or 21213.5 shall not result
7 in a violation point count.

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

9 23123. (a) A person shall not drive a motor vehicle while using
10 a wireless telephone unless that telephone is specifically designed
11 and configured to allow hands-free listening and talking, and is
12 used in that manner while driving.

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

16 (c) This section does not apply to a person using a wireless
17 telephone for emergency purposes, including, but not limited to,
18 an emergency call to a law enforcement agency, health care
19 provider, fire department, or other emergency services agency or
20 entity.

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

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

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

29 SEC. 7. Section 23123.5 of the Vehicle Code is amended to
30 read:

31 23123.5. (a) A person shall not drive a motor vehicle while
32 using an electronic wireless communications device to write, send,
33 or read a text-based communication, unless the electronic wireless
34 communications device is specifically designed and configured to
35 allow voice-operated and hands-free operation to write, send, or
36 read a text-based communication, and it is used in that manner
37 while driving.

38 (b) As used in this section, “write, send, or read a text-based
39 communication” means using an electronic wireless
40 communications device to manually communicate with any person

1 using a text-based communication, including, but not limited to,
2 communications referred to as a text message, instant message, or
3 electronic mail.

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

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

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

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

17 23124. (a) This section applies to a person under 18 years of
18 age.

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

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

26 (d) This section does not apply to a person using a wireless
27 telephone or a mobile service device for emergency purposes,
28 including, but not limited to, an emergency call to a law
29 enforcement agency, health care provider, fire department, or other
30 emergency services agency or entity.

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

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

37 23124.5. Notwithstanding Section 1463 of the Penal Code, the
38 county ~~treasurer shall~~ *treasurer*:

39 (a) *Shall* submit to the Controller ten dollars (\$10) from each
40 fine collected under Sections 23123, 23123.5, and 23124. The

1 Controller shall deposit that amount into the Distracted Driver
2 Education Fund, which is hereby created in the State Treasury for
3 an education program on the dangers of cell phone use and text
4 messaging while driving. The Legislature, upon appropriation in
5 the Budget Bill, shall allocate this money to the Office of Traffic
6 Safety in the Business, Transportation and Housing Agency for
7 this purpose.

8 *(b) May withhold a sufficient amount from each fine collected*
9 *under Sections 21213 and 21213.5 to reimburse the courts in the*
10 *county for their actual, reasonable, and necessary costs associated*
11 *with processing violations of Sections 21213 and 21213.5.*

12 SEC. 10. No reimbursement is required by this act pursuant to
13 Section 6 of Article XIII B of the California Constitution for certain
14 costs that may be incurred by a local agency or school district
15 because, in that regard, this act creates a new crime or infraction,
16 eliminates a crime or infraction, or changes the penalty for a crime
17 or infraction, within the meaning of Section 17556 of the
18 Government Code, or changes the definition of a crime within the
19 meaning of Section 6 of Article XIII B of the California
20 Constitution.

21 However, if the Commission on State Mandates determines that
22 this act contains other costs mandated by the state, reimbursement
23 to local agencies and school districts for those costs shall be made
24 pursuant to Part 7 (commencing with Section 17500) of Division
25 4 of Title 2 of the Government Code.