

Vehicle Code 23123.5 Update – March 16, 2017

This ARRL-SWD Message provides an update on California's new hands-free driving law with a little background for reference.

The prior version of Vehicle Code Section 23123.5, while it contained no specific exemption for Amateur radio, effectively excluded Hams by virtue of the relatively narrow definitions of what that law covered. Assembly Bill 1785 was introduced in February 2016 by Hayward Assembly Member Bill Quirk, whose district lies in the Pacific Division. In its initial form, there was no adverse impact to Amateur Radio, as it applied only to reading, writing, and sending text-based communications. Over the ensuing six months, however, the language was amended five times, with the end result being much broader in scope and including a prohibition of “specialized mobile radio device[s]” that were not hands-free. This opened the door to widely varying interpretations of what might fall under the umbrella of “specialized mobile radio device[s]”.

We were first alerted to this bill by San Diego Section Manager Dave Kaltenborn, N8KBC, in September, by which time it had been passed by both houses in its final form and was less than a week from being signed into law by the governor. Vice Director Woll tried direct outreach to Quirk's office and to other potentially interested parties such as the California Trucking Association, but he received no responses. As this newsworthy change in the law began getting broadcast airtime, ARRL Division and Section officials started receiving many inquiries from concerned members. Woll contacted several of our local Volunteer Counsel attorneys, who did some research. In addition to getting the complete legislative history of the bill, we eventually obtained a statement from a staff member of the Assembly Transportation Committee that the intent was not to include Amateur Radio and the absence of some exclusionary language was an oversight. Meanwhile, private and public statements from members of both law enforcement and the judiciary were coming out with adverse interpretations for Amateur Radio, adding to the level of member consternation and validating our initial concerns.

State government officials will generally not engage in communication with voters outside their respective districts. An exception may be made, however, if the voter's own representative makes an ‘introduction’. Now-retired Volunteer Counsel Len Shaffer, WA6QHD (Palmdale case attorney), requested and received such an introduction and was then able to schedule a meeting in Sacramento for himself and Vice Director Woll with Quirk's legislative deputy. That meeting took place on Tuesday, March 14, 2017, and future action looks promising.

Woll and Shaffer came armed with specific documentation of inconsistent interpretations, including names, dates and contact information, and the deputy appreciated this level of detail. She advised us that her office had already been

approached by lobbyists for several non-Amateur interests which also saw the new law as a threat to mobile radio communications. Their proposed solutions, however, were industry-specific or employment-based, none of which would protect Amateur Radio. We discussed the kinds of public service work Hams do that would be adversely impacted without some form of exemption, and she agreed that broader exclusionary language would be more appropriate than individual carve-outs.

As to the mechanics, we suggested a letter from Quirk to the state government's Legislative Journal clarifying the legislative intent. That would provide more immediate defense for mobile radio users than would an amending bill, which is in the works (AB-1222) but would not take effect until 2018. She told us that such a letter is being developed and agreed to advise us when it is ready to go. We also suggested adding clarifying language to the Committee's omnibus bill. The deputy said they would consider doing so but that some procedural pitfalls could eliminate that route.

Finally, the California Highway Patrol is expected to disseminate guidance within a month or two. Through a Ham contact at the Los Angeles County Sheriff's office, Vice Director Woll had already received a preliminary version of that guidance. It states that using wired radio microphones would not be considered a violation but that using hand-held radios would be cause for a citation. If the final CHP guidance comes to a similar conclusion, it will be a less-than-perfect but, in our judgment, somewhat acceptable conclusion. The deputy also promised to advise us when that interpretation is issued in final form. Of course, CHP guidance will not filter down to all law enforcement agencies in the state, so citations by local police may still occur, and authoritative evidence of legislative intent will still be important for any Amateur who has to challenge a citation in court.

From the above, it appears that no grass-roots action is needed at this time. However, until and unless we receive authoritative guidance to the contrary, we advise against using handheld radios while driving unless they are equipped with external, corded microphones. As always, avoid any radio usage or other activity whenever you feel it detracts from your ability to control your vehicle fully or to maintain awareness of surrounding traffic.

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