

**REPORT OF THE  
CHIEF LEGISLATIVE ANALYST**

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DATE: August 14, 2018

TO: Honorable Members of the Rules, Elections, and Intergovernmental Relations Committee

FROM: Sharon M. Tso *Sharon M. Tso* Council File No: 18-0002-S42  
Chief Legislative Analyst Assignment No: 18-04-0367

SUBJECT: Distracted driving violations.

CLA RECOMMENDATION: Adopt attached Resolution to include in the City's 2017-2018 State Legislative Program SUPPORT for AB 1698 (Daly), which would make driving while operating a wireless communications device punishable by a violation point against a driver's record.

SUMMARY

On April 11, 2018, the Resolution (Krekorian-Englander) was introduced in support of SB 1030 (Newman) that would make driving while operating a wireless communications device punishable by a violation point. The Resolution states that existing California law prohibits a person from driving a motor vehicle while using a wireless telephone unless it is a hand-free device and is used in that manner while driving. Existing law, however, provides an exemption for electronic device violations from being counted as points against a driver's record. It is critical that driving while operating a wireless communications device be treated as seriously as drunk driving.

SB 1030 (Newman), failed to pass out of the Assembly Transportation Committee. On June 13, 2018, AB 1698 (Daly) was amended to incorporate the language originally included in SB 1030. This Office recommends that the Council approve the attached revised Resolution that would support AB 1698 (Daly), which is consistent with the original Resolution (Krekorian – Englander).

In 2006, the City supported SB 1613 (Simitian) that prohibits drivers from using a wireless phone while operating a vehicle, unless the phone was specifically designed and configured to allow hands-free operation and was used in that manner. SB 1613 was approved by the Governor on September 15, 2006 and became effective on July 1, 2008.

The attached Resolution recommends support for AB 1698 (Daly), in that this measure is consistent with other safe driving policies supported by the City Council.

BACKGROUND

Under the Negligent Operator Treatment System program, the Department of Motor Vehicles (DMV) assigns "points" to an individual's driving record for certain traffic violations. Violation points vary with the magnitude of the offense and remain on the driver's record for at least 36 months. Traffic violations for which a violation point may be assessed include running a red light, driving on a sidewalk, tailgating, exceeding the speed limit, drinking while driving, unsafe passing, and carrying an overweight load, among others. Although texting while driving has proven to be

one of the most dangerous activities, the Negligent Operator Treatment System program exempts the use of a phone while driving from violation points.

Existing law prohibits driving a vehicle while holding and operating a handheld wireless telephone or an electronic wireless communications device, unless the device is designed to allow voice operated, hand-free operation and is used in that manner. An infraction punishable by a fine of \$20 for a first offense and \$50 for subsequent offenses, will be issued if a driver is caught operating a handheld wireless telephone or an electronic wireless communications device while driving.

In 2017, the California Highway Patrol issued more than 47,000 citations for people holding a wireless device while driving, raising the question on whether an infraction is a sufficient punishment. The bill's author states that the existing penalty is insufficient to minimize this practice; the most effective deterrent for safety violations is giving drivers violation points that potentially carry long-term consequences impacting driving privileges.

#### BILL STATUS

02/27/17	Introduced
03/16/17	Referred to Insurance Committee
04/17/17	Re-referred to Insurance Committee
05/11/17	Ordered to the Senate
05/24/17	Referred to Insurance, Banking, and Financial Institutions Committee
09/16/17	Ordered to inactivate file
06/13/18	Read a second time and amended
06/14/18	Re-referred to Appropriations Committee
08/07/18	In Assembly, Senate amendments pending

  
Xochitl Ramirez  
Analyst

SMT:xr

Attachment: 1. Revised Resolution

2. AB 1698 (Daly)

## RESOLUTION

WHEREAS, any official position of the City of Los Angeles, with respect to legislation, rules, regulations or policies proposed to or pending before a local, state, or federal governmental body or agency must have first been adopted in the form of a Resolution by the City Council with the concurrence of the Mayor; and

WHEREAS, distracted driving, as well as any activity that diverts attention from driving, including talking or texting, eating and drinking, talking to people in your vehicle, fiddling with entertainment or navigation system, can have fatal consequences; and

WHEREAS, in 2015, 3,477 people were killed, and 391,000 were injured in motor vehicle crashes involving distracted drivers; and

WHEREAS, existing California law prohibits a person from driving a motor vehicle while using a wireless telephone unless it is a hands-free device and is used in that manner while driving; and

WHEREAS, existing law provides an exemption for electronic device violations from being counted as points against a driver's record for purposes of suspension or revocation of the privilege to drive; and

WHEREAS, AB 1698 (Daly) would, beginning July 1, 2020, remove that exemption, thereby making those violations subject to a violation point against the driver's record; and

WHEREAS, it is critical that distracted driving be treated as seriously as drunk driving or not using a seat belt;

NOW, THEREFORE, BE IT RESOLVED, with the concurrence of the Mayor, that by the adoption of this Resolution, the City of Los Angeles hereby includes into its 2017-2018 State Legislative Program SUPPORT for AB 1698 (Daly), which would make driving while operating a wireless communications device punishable by a violation point against a driver's record.

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THIRD READING

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Bill No: AB 1698  
Author: Daly (D)  
Amended: 6/21/18 in Senate  
Vote: 21

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PRIOR VOTES NOT RELEVANT

SENATE APPROPRIATIONS COMMITTEE: 7-0, 7/2/18  
AYES: Portantino, Bates, Beall, Bradford, Hill, Nielsen, Wiener

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**SUBJECT:** Driver records: points: distracted driving

**SOURCE:** Author

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**DIGEST:** This bill makes driving while operating a wireless communications device punishable by a violation point.

*Senate Floor Amendments* of 6/13/18 delete the current contents of the bill, change the author to Assemblymember Daly, and insert the contents of SB 1030 (Newman), which passed off the Senate Floor on a 36-0 vote on April 30, 2018.

**ANALYSIS:**

Existing law:

- 1) Prohibits driving a vehicle while holding and operating a handheld wireless telephone or an electronic wireless communications device, unless the device is designed to allow voice operated, hands-free operation and is used in that manner.
- 2) Allows a driver to activate or deactivate a feature on the device with a single swipe or tap of the driver's finger if the device is mounted, as specified.
- 3) Exempts manufacturer-installed systems that are embedded in the vehicle.

- 4) Exempts emergency services professionals operating an emergency vehicle.
- 5) Treats violations as an infraction punishable by a base fine of \$20 for a first offense and \$50 for subsequent offenses.

This bill, effective on January 1, 2020, provides that driving a vehicle while holding and operating a handheld wireless telephone or an electronic wireless communications device is punishable by a violation point.

### **Background**

Under the Negligent Operator Treatment System program, the Department of Motor Vehicles (DMV) assigns “points” to an individual’s driving record for certain traffic offenses to identify a driver as a negligent operator. DMV assigns points upon receipt of conviction notices from courts and collision reports from law enforcement indicating that the driver contributed, was at fault, or was responsible to any degree for the collision. Each occurrence remains on the driver’s record for at least 36 months, depending on the type of conviction. The driver may present credible evidence at an administrative hearing to refute such reports.

Violation points vary with the gravity of the offense; for example, a “fix-it” ticket does not count for any violation points, a speeding ticket counts for one violation point, and driving while under the influence of alcohol or drugs counts for two violation points. DMV issues warning letters to negligent operators for each offense. DMV may suspend an individual’s driver’s license for six months if he or she receives four points in one year, six points in two years, or eight points in three years. In severe cases, DMV may revoke the license. For hardship cases, DMV may issue a restricted license rather than suspending or revoking a license.

### **Comments**

- 1) *Purpose.* The author states that distracted driving, in particular texting while driving, is one of the most dangerous activities motorists can do. It makes little sense to charge a violation point for speeding or red light violations, yet treat distracted driving as a lesser risk infraction. This bill aims not only to curb this dangerous behavior but also to cut down on the number of deadly car crashes caused by distracted driving.
- 2) *Most other traffic safety violations carry a point.* Existing state law specifies traffic offenses for which a violation point may be assessed. These include running a red light, driving on a sidewalk, tailgating, exceeding the speed limit, drinking while driving, unsafe passing, and carrying an overweight load, among

others. Violations for which two points may be assessed include offenses such as evading a peace officer, driving on the wrong side of the road, and driving with a blood alcohol level exceeding the legal limit. Statute requires DMV to assess one point to any conviction “involving the safe operation of a motor vehicle upon the highway.” However, statute explicitly exempts use of a phone while driving from violation points.

- 3) *Potential insurance consequences.* Safety infractions can impact a driver’s automobile insurance. When an insurance company issues or renews a policy, it obtains the individual’s driving record from DMV. When a driver is cited for a single violation point offense, the judge may allow him or her to attend a traffic violator school. In that case, the conviction is “masked” on the driving record and insurance companies cannot see it. Otherwise, the insurance company can see any violation points and may adjust the driver’s premium accordingly or potentially even refuse coverage.
- 4) *Base fine vs. actual cost.* Existing law provides that operating a handheld wireless telephone or an electronic wireless communications device while driving is an infraction punishable by a base fine of \$20 for a first offense and \$50 for subsequent offenses. The state Judicial Council annually adopts a uniform traffic penalty schedule for all non-parking infractions outlined in the Vehicle Code that calculates additional surcharges, penalties, and assessments. According to the uniform traffic penalty schedule, a \$20 base fine is equivalent to a total of more than \$200 and a \$50 base fine is equivalent to a total of more than \$500. The author notes that in 2017, the California Highway Patrol issued more than 47,000 citations for persons holding a wireless device while driving, raising the question of whether an infraction is a sufficient deterrent.
- 5) *Do violation points work?* The negligent operator program includes four intervention levels: a warning letter (Level I); a notice of DMV’s intent to suspend the individual’s driver’s license if the driver is convicted of one more infraction (Level II); an administrative hearing regarding a possible license suspension (Level III); and additional suspension time or possible revocation (Level IV). DMV has conducted multiple evaluations of the program, all of which have deemed the program successful. The most recent report, in 2009, found the program “to be effective in reducing subsequent total crashes and citations of treated drivers.” A 2004 report found that “slightly fewer than 32% of the approximately 484,700 drivers who qualified for a NOTS intervention between June 1, 2000, and December 31, 2001, persisted in their negligent driving behaviors and became eligible for higher-level interventions” beyond Level 1.

- 6) *Prior attempts to assess a violation point have been unsuccessful.* The first bill to ban the use of a cell phone while driving, SB 1613 (Simitian, Chapter 290, Statutes of 2006), was amended late in the process to explicitly prohibit the assignment of a violation point for the offense. This prohibition was held intact in several subsequent related bills, with two exceptions that were both vetoed.
- a) SB 1310 (Simitian, 2012) would have assessed a violation point for a second offense related to using a cell phone while driving. Governor Brown's veto message stated that "Upping the fines may satisfy the punitive instincts of some, but I severely doubt that it will reduce further violations."
  - b) AB 1646 (Frazier, 2014) would have imposed a violation point for an offense related to the use of a cell phone while driving. Governor Brown's veto message stated that the bill was unnecessary and pointed to a pending DMV review and analysis of distracted driving data. A study published by DMV shortly afterward found that although cell phone-related injury crashes dropped off after 2008, when the first California law banning hands-on cell phone use while driving took effect, other variables such as the declining economy could have also been factors.
- 7) *Déjà vu.* This bill was gutted and amended on June 13th and is now virtually identical to SB 1030 (Newman), which passed off the Senate Floor on a 36-0 vote on April 30th with no opposition. SB 1030 died in the Assembly Transportation Committee.

### **Related/Prior Legislation**

AB 1222 (Quirk, Chapter 297, Statutes of 2017) removed "specialized mobile radio device" and "two way messaging device" as examples of an "electronic communications device" that is prohibited from being used while driving.

AB 1785 (Quirk, Chapter 660, Statutes of 2016) replaced the existing prohibition on texting while driving with a broader prohibition on operating a cell phone or electronic wireless communications device while driving, unless the device is mounted in a manner that does not hinder the driver's view of the road and can be operated using a single tap or swipe.

SB 194 (Galgiani, Chapter 754, Statutes of 2013) prohibited individuals under 18 years of age from operating an electronic wireless communications device while driving, even if it is equipped with a hands-free device.

AB 313 (Frazier, 2013) would have repealed the provisions of AB 1536 (see below). The bill failed in the Assembly Appropriations Committee.

AB 1536 (Miller, Chapter 92, Statutes of 2012) allowed drivers to dictate, send, or listen to text-based communications, as long as they do so using technology specifically designed and configured to allow voice-operated and hands-free operation.

SB 33 (Simitian, Chapter 214, Statutes of 2007) prohibited an individual under 18 years of age from using a wireless telephone or other electronic device equipped with a hands-free device while driving a motor vehicle.

SB 28 (Simitian, Chapter 270, Statutes of 2007) prohibited an individual from writing, sending, or reading text-based communications while operating a motor vehicle, even if the device is equipped with a hands-free device.

**FISCAL EFFECT:** Appropriation: No Fiscal Com.: Yes Local: No

According to the Senate Appropriations Committee, moderate one-time DMV programming costs, likely under \$75,000, related to the imposition of a violation point for convictions of specified distracted driving violations. (Motor Vehicle Account)

**SUPPORT:** (Verified 7/2/18)

AAA Northern California  
American Insurance Association  
Auto Club of Southern California  
National Association of Mutual Insurance Companies  
Pacific Association of Domestic Insurance Companies  
Personal Insurance Federation of California  
Property Casualty Insurers Association of America

**OPPOSITION:** (Verified 7/2/18)

None received

**ARGUMENTS IN SUPPORT:** The Auto Club of Southern California and AAA Northern California state that this bill recognizes that the existing penalty for distracted driving is insufficient to deter this practice. The most effective deterrent for safety violations is giving demerit points that potentially carry longer-term consequences impacting driving privileges. Points are means by which DMV

takes action against the driving privilege and multiple studies have confirmed that the DMV's negligent operator system is effective in making drivers better.

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7/3/18 15:32:08

\*\*\*\* **END** \*\*\*\*