

RESOLUTION 06-13-2014

DIGEST

Vehicle Code: Prohibiting Listening and Talking on Wireless Device While Driving

Amends Vehicle Code section 23123 to limit the statute to when a driver is “listening and talking on an electronic wireless communications device” not in hands-free mode.

RESOLUTIONS COMMITTEE RECOMMENDATION

DISAPPROVE

History:

No similar resolutions found.

Reasons:

This resolution amends Vehicle Code section 23123 to limit the statute to when a driver is “listening and talking on an electronic wireless communications device” not in hands-free mode. This resolution should be disapproved because the Court of Appeal decision in *People v. Spriggs* (2014) 224 Cal.App.4th 150 already clarified any ambiguity and this resolution is thus unnecessary and redundant.

This resolution attempts to strictly limit Vehicle Code section 23123 to when a driver is “listening and talking on an electronic wireless communications device” in non-hands-free mode. The stated reasons for the resolution are that peace officers are citing drivers for merely having an electronic device in their hands and because *Spriggs* made clear that merely holding an electronic device for the purpose of checking a map application was not a violation of section 23123. Thus, the resolution endeavors to codify that ruling. However, such effort is unnecessary because *Spriggs* already made very plain that:

[T]he statute is reasonably construed as only prohibiting engaging in a conversation on a wireless telephone while driving and holding the telephone in one's hand . . . It does not state that it must be used in a manner that allows for hands-free looking, hands-free operation or hands-free use, or for anything other than listening and talking. Had the Legislature intended to prohibit drivers from holding the telephone and using it for all purposes, it . . . would have used broader language, such as “hands-free operation” or “hands-free use” . . . not all uses of a wireless telephone involve listening and talking . . . we believe the inclusion of the phrase “hands-free listening and talking” does in fact limit the statute's prohibition to engaging in a conversation while holding a wireless telephone.

(*People v. Spriggs, supra*, 224 Cal.App.4th at p. 156.)

Spriggs is a published decision interpreting section 23123. Therefore, it is binding precedent; there are no contrary interpretations of the statute requiring legislative action at this time.

TEXT OF RESOLUTION

RESOLVED, that the Conference of California Bar Associations recommends that legislation be sponsored to amend Vehicle Code section 23123 to read as follows:

§ 23123

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

5 (b) A violation of this section is an infraction punishable by a base fine of twenty dollars
6 (\$20) for a first offense and fifty dollars (\$50) for each subsequent offense.

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

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

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

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

17 (g) For the purposes of this section, “electronic wireless communications device”
18 includes, but is not limited to, a broadband personal communication device, specialized mobile
19 radio device, handheld device or laptop computer with mobile data access, pager, and two-way
20 messaging device.

21 (h) This section shall become operative ~~on July 1, 2014~~ immediately upon enactment.

(Proposed new language underlined; language to be deleted stricken.)

PROPONENT: Bar Association of San Francisco

STATEMENT OF REASONS

The Problem: As made clear by the unanimous decision of the Court of Appeals (5th Dist.), in *People v. Steven R. Spriggs*, <http://www.courts.ca.gov/opinions/documents/F066927.PDF>, decided February 27, 2014, the conduct prohibited by Veh.C. §23123 is conversing on an electronic wireless communications device while holding it, and not merely “using” the device. The driver in *Spriggs*, “while stopped in heavy traffic pulled out his [smartphone] to check a map application for a way around the congestion.” As the *Spriggs* court held, it is not unlawful to pull out a smartphone to check a map application for a way around congestion in heavy traffic and the CHP officer who cited the driver in *Spriggs* for looking at the map application on his phone while holding it was wrong to do so because the driver was not “listening and talking” on the phone while driving. Yet, because the statutory language employs the ambiguous word “use,” the California Highway Patrol has instructed its officers to cite drivers who merely hold their smartphone while driving even though not conversing on it, notwithstanding that the smartphone is designed, configured and used for hands-free operation.

The Solution: By substituting the phrase “listening and talking on an electronic wireless communications device cellular” for the phrase “using a wireless telephone,” this Resolution will

clarify that the statute's prohibition is conversing while holding a smartphone or other cellular telephone or device used for talking. As intended by the Legislature, California has not banned all talking and listening on an electronic wireless communications device, nor every activity that involves holding or incidental touching of an electronic wireless communications device. For instance, talking on a device in hands-free mode is allowed (Veh.C. §23123). Further, while texting is banned (Veh.C. §23123.5(a)), touching a name to make a call on a smartphone configured for hands-free operation, is allowed (Veh.C. §23123.5(c)), as is checking a map to navigate around traffic (*Spriggs*).

LEGISLATIVE HISTORY

Not known.

IMPACT STATEMENT

The proposed resolution does not affect any other law, statute or rule.

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