

08/27/10

I, KI6ZHD, recommend that you have the following two or possibly three things in the car just in case you get pulled over for violating California's hands-free law. Presenting this documentation should hopefully save you a LOT of time from having to go to court to contest the ticket, etc.

NOTE: These exclusions might be applicable to other states but you'll need to research that for the specific state.

If the officer is attempting to cite you for the Hands Free law, first ASK permission and then present him/her the following documentation out of the glove box give him the following

1. This entire document which includes a key DMV memo.  
Original source of the above memo is :  
[http://phil.philwells.net/Ham/DMV\\_Reply\\_HandsFreeLaw\\_HamRadio.png](http://phil.philwells.net/Ham/DMV_Reply_HandsFreeLaw_HamRadio.png)
2. A copy of your official FCC Amateur Radio license (a CSCE probably won't be good enough)
3. **Bonus:** the attached audio file from the CHP's Media Relations department for playback to the officer trying to ticket you. Put it on your cell phone; burn it to a CD, etc.

NOTE: Original source of much of this documentation is from the following URL with some minor additions from KI6ZHD:  
<http://phil.philwells.net/Ham/ham.html>

## **California's Handsfree Law & Ham Operators**

[snip]. . . Vehicular Code (<ftp://leginfo.public.ca.gov/pub/code/veh/23001-24000/23100-23135>) and it says:

23123. (a) A person shall not drive a motor vehicle 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 driving.

As far as I'm concerned, since a ham radio is not a wireless telephone, it's exempted. Also, the CA DMV web site HAD a Q&A comment confirming this (subsequently removed) and there's still (7/21/08) an orphaned PDF there [http://www.dmv.ca.gov/cellularphonelaws/dl208\\_03cell\\_phone.pdf](http://www.dmv.ca.gov/cellularphonelaws/dl208_03cell_phone.pdf) that says the same thing.

The above PDF is not referred to by any hyperlinks but it's present **(KI6ZHD: I can't find it as of 08/27/10)** and when I called the DMV, the agent agreed that the FAQ's on the web site don't address the 2-way radio issue and yet he read from an internal memo specifically excluding CB, etc. I asked for a copy of the internal memo and he said he couldn't. Then I pointed him to the PDF referenced below:

**DEPARTMENT OF MOTOR VEHICLES**

P.O. BOX 932345  
SACRAMENTO, CA 94232-3450



July 15, 2008

Philip C. Wells  
AF6AV  
10505 Pepperbrook Lane  
San Diego, CA 92131

Dear Mr. Wells:


This responds to your letter of June 18, 2008, requesting information regarding exceptions to the new cellular telephone laws effective July 1, 2008.

In your letter you ask whether a driver may legally use a walkie-talkie or Citizen Band Radio while operating a vehicle. You make reference to information that was available on our Website previously which is not readily available now.

This department did display information regarding use of a two-way radio device earlier in a previous set of Questions (Qs) and Answers (As). That information was revised as the California Highway Patrol (CHP) has oversight authority for those sections of the California Vehicle Code pertaining to safe vehicle operation. We are referring questions such as yours to that agency for a definitive response. You may contact the CHP via Internet at [www.chp.ca.gov](http://www.chp.ca.gov) or by telephone at 1-800-TELL-CHP (1-800-835-5247).

I appreciate the opportunity to provide you with this information. If you have any questions regarding this information, or have need for additional assistance, please contact me at (916) 657-6560.

Sincerely,

  
BRUCE BROWN  
Customer Communications Section

and he sounded like his jaw dropped and said “well that’s our internal memo”.

An unknown area ham got this letter from the DMV in response to a request to clear this up:

**Date:** Tue, 27 May 2008 07:48:20 -0700**From:** Fran Clader <[FClader@chp.ca.gov](mailto:FClader@chp.ca.gov)>

**Subject: Re: New Cell Phone Laws - July 1, 2008**

The new cell phone laws involve only wireless telephones. They do not concern radios such as your (Amateur Radios), unless they are also wireless telephones. Again, the law only applies to wireless telephones. Thanks for your inquiry. If you have any further questions, please give us a call. Or, you can call your local San Diego area CHP office. Fran Clader Commander Office of Media Relations California Highway Patrol

I also wrote to the DMV for written clarification. After a month, I got the following reply:

**[KI6ZHD comment: this “reply” mentioned above was the DMV internal memo shown above ]**

My comment about the “wireless telephone” point is also mentioned in Tozer's [http://www.tozerlaw.com/cell\\_phone\\_laws\\_driving\\_new\\_california.html](http://www.tozerlaw.com/cell_phone_laws_driving_new_california.html) : where I quote:

**May a person use a dedicated two-way radio while driving?**

Yes. You may use a dedicated two-way radios such as walkie-talkies and Citizen Band (CB) radios, which are not part of a wireless telephone. Like Clader, they say “...CB radios which are not part of a wireless telephone”.

I've never heard of such a thing before but maybe someone makes a CB/Cellphone unit. Regardless, Tozer, Clader, and the 23123 **(KI6ZHD comment: the attached audio clip)** all say that the law applies to “wireless telephones” [ “(a) A person shall not drive a motor vehicle while using a wireless telephone”] which is not what a ham radio or CB is. So, between 23123(a), the Clader letter, and the DMV PDF, I'm covered, as far as I'm concerned. I'll keep a copy of them in the car. If I get a ticket, I'll welcome the opportunity to defend myself AND make the DMV issue a statement specifically addressing ham radios.

For additional reading see the following ARRL articles:

<http://www.arrl.org/arrlletter/08/0314/>

<http://www.arrl.org/sections/?sect=SNJ>

[http://www.judiciary.state.nj.us/legis/2007c198\\_law.pdf](http://www.judiciary.state.nj.us/legis/2007c198_law.pdf)

<http://www.arrl.org/arrlletter/01/0706/>

<http://assembly.state.ny.us/leg/?bn=A09280&sh=t>

<http://www.arrl.org/arrlletter/07/0216/>

**Important Addendum, Aug 2008:**

I received this voice message from the Office of Media Relations at the CHP. This clinches it. If you still need more proof in order to use your mobile rig you might as well sell it.

KI6ZHD comment: This audio clip is in this .zip archive as chp-media-relations-VM.mp3 and chp-media-relations-VM.wav

Original source: <http://phil.philwells.net/Ham/1219341624032.wav>

[I don't know why the CHP won't add this simple point to their handsfree Q & A PD](#)