First Regular Session
Sixty-seventh General Assembly
STATE OF COLORADO

PREAMENDED

This Unofficial Version Includes Committee Amendments Not Yet Adopted on Second Reading

LLS NO. 09-0351.01 Michael Dohr

HOUSE BILL 09-1094

HOUSE SPONSORSHIP

Levy, Fischer, Hullinghorst, Kefalas

SENATE SPONSORSHIP

Bacon,

House Committees
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Appropriations

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A BILL FOR AN ACT

101 **CONCERNING WIRELESS TELEPHONE PROHIBITIONS FOR DRIVERS, AND**
102 **MAKING AN APPROPRIATION IN CONNECTION THEREWITH.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments that may be subsequently adopted.)

Prohibits operators of a motor vehicle who are under 18 years of age, operators of a school bus, and motor vehicle carriers regulated by the public utilities commission from using a wireless telephone while a motor vehicle they are operating is in motion. Otherwise, permits operators of a motor vehicle who are 18 years of age or older to use a wireless telephone equipped with a hands-free accessory. Deems the use of a wireless telephone by an operator as a class A traffic infraction.

HOUSE
3rd Reading Unamended
April 8, 2009

HOUSE
Amended 2nd Reading
April 6, 2009

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. 42-4-239, Colorado Revised Statutes, is amended to read:

42-4-239. Misuse of a wireless telephone - definitions - penalty - preemption. (1) As used in this section, unless the context otherwise requires:

(a) ~~"Emergency" means a situation in which a person:~~

~~(I) Has reason to fear for such person's life or safety or believes that a criminal act may be perpetrated against such person or another person, requiring the use of a mobile communication device while the car is moving; or~~

~~(II) Reports a fire, a traffic accident in which one or more injuries are apparent, a serious road hazard, a medical or hazardous materials emergency, or a person who is driving in a reckless, careless, or otherwise unsafe manner.~~"COMMERCIAL DRIVER" MEANS A PERSON HOLDING A VALID COMMERCIAL DRIVER'S LICENSE AS DEFINED BY SECTION 42-2-402 (1).

(b) "EMERGENCY" MEANS A SITUATION IN WHICH A PERSON:

(I) HAS REASON TO FEAR FOR SUCH PERSON'S LIFE OR SAFETY OR BELIEVES THAT A CRIMINAL ACT MAY BE PERPETRATED AGAINST SUCH PERSON OR ANOTHER PERSON, REQUIRING THE USE OF A WIRELESS TELEPHONE WHILE THE CAR IS MOVING; OR

(II) REPORTS A FIRE, A TRAFFIC ACCIDENT IN WHICH ONE OR MORE INJURIES ARE APPARENT, A SERIOUS ROAD HAZARD, A MEDICAL OR HAZARDOUS MATERIALS EMERGENCY, OR A PERSON WHO IS DRIVING IN A RECKLESS, CARELESS, OR OTHERWISE UNSAFE MANNER.

~~(b)~~ (c) ~~"Mobile communication device" means a cellular telephone or other device that enables a person in a motor vehicle to transmit and receive audio signals to and from a person or audio recording device located outside the motor vehicle.~~ "HANDS-FREE ACCESSORY" MEANS A BUILT-IN DASHBOARD SPEAKER, SPEAKER PHONE, HEADSET, OR EAR PIECE USED WITH A WIRELESS TELEPHONE.

(d) "IMMEDIATE PROXIMITY" MEANS A DISTANCE THAT PERMITS THE OPERATOR OF A WIRELESS TELEPHONE TO HEAR TELECOMMUNICATIONS TRANSMITTED DIRECTLY OVER THE WIRELESS TELEPHONE TO THE LISTENER'S EAR, BUT SHALL NOT REQUIRE PHYSICAL CONTACT WITH THE OPERATOR'S EAR.

(e) "OPERATING A MOTOR VEHICLE" MEANS DRIVING A MOTOR VEHICLE ON A PUBLIC HIGHWAY BUT DOES NOT MEAN MAINTAINING THE INSTRUMENTS OF CONTROL WHILE THE MOTOR VEHICLE IS AT REST IN A SHOULDER LANE OR LAWFULLY PARKED.

(f) "USE" MEANS TALKING ON OR LISTENING TO A WIRELESS TELEPHONE OR ENGAGING THE WIRELESS TELEPHONE FOR TEXT MESSAGING OR OTHER FORMS OF MANUAL DATA ENTRY OR TRANSMISSION.

(g) "WIRELESS TELEPHONE" MEANS A TELEPHONE THAT OPERATES WITHOUT A PHYSICAL, WIRELINE CONNECTION TO THE PROVIDER'S EQUIPMENT. THE TERM INCLUDES, WITHOUT LIMITATION, CELLULAR AND MOBILE TELEPHONES.

(2) ~~No~~ NOTWITHSTANDING THE PROVISIONS OF SUBSECTION (3) OF THIS SECTION, A person ~~who holds a temporary instruction permit or a minor's instruction permit pursuant to section 42-2-106~~ DESCRIBED IN PARAGRAPHS (a) AND (b) OF THIS SUBSECTION (2) shall NOT use a ~~mobile communication device~~ WIRELESS TELEPHONE while operating a motor

vehicle WHILE THE VEHICLE IS IN MOTION. This section shall ~~not~~ apply to: ~~a person who is using the mobile communication device:~~

(a) ~~To contact a public safety entity~~ A PERSON UNDER EIGHTEEN YEARS OF AGE; AND

(b) ~~While the vehicle is lawfully parked; or~~ AN OPERATOR OF A SCHOOL BUS.

(c) ~~During an emergency.~~

(3) A PERSON EIGHTEEN YEARS OF AGE OR OLDER SHALL NOT USE A WIRELESS TELEPHONE WHILE OPERATING A MOTOR VEHICLE WHILE THE VEHICLE IS IN MOTION, UNLESS THE PERSON IS COMMUNICATING BY MEANS OF A HANDS-FREE ACCESSORY.

(4) SUBSECTIONS (2) AND (3) OF THIS SECTION SHALL NOT APPLY TO A PERSON WHO IS USING THE WIRELESS TELEPHONE:

(a) TO CONTACT A PUBLIC SAFETY ENTITY; OR

(b) DURING AN EMERGENCY.

~~(3)~~ (5) (a) ~~Any~~ A person who operates a motor vehicle in violation of subsection (2) OR (3) of this section commits a class A traffic infraction as defined in section 42-4-1701 (3), AND THE COURT OR THE DEPARTMENT OF REVENUE SHALL ASSESS A FINE OF FIFTY DOLLARS.

(b) A SECOND OR SUBSEQUENT VIOLATION OF SUBSECTION (2) OR (3) OF THIS SECTION SHALL BE A CLASS A TRAFFIC INFRACTION AS DEFINED IN SECTION 42-4-1701 (3), AND THE COURT OR THE DEPARTMENT OF REVENUE SHALL ASSESS A FINE OF ONE HUNDRED DOLLARS.

~~(4)~~ (6) An operator of a motor vehicle shall not be cited for a violation of subsection (2) OR (3) of this section unless ~~such operator was stopped by~~ a law enforcement officer ~~for an alleged violation of articles 1 to 4 of this title other than a violation of this section~~ SAW THE PERSON

USE, AS DEFINED IN PARAGRAPH (e) OF SUBSECTION (1) OF THIS SECTION, A WIRELESS TELEPHONE.

(7) THE PROVISIONS OF THIS SECTION SHALL NOT BE CONSTRUED TO AUTHORIZE THE SEIZURE AND FORFEITURE OF A WIRELESS TELEPHONE, UNLESS OTHERWISE PROVIDED BY LAW.

(8) THE PROVISIONS OF SUBSECTION (3) OF THIS SECTION SHALL NOT APPLY TO THE FOLLOWING PERSONS FOR A USE OTHER THAN TEXT MESSAGING OR OTHER FORMS OF MANUAL DATA ENTRY OR TRANSMISSION WHILE THOSE PERSONS ARE ENGAGED IN ACTIVITIES THAT ARE WITHIN THE COURSE AND SCOPE OF THEIR EMPLOYMENT:

(a) A POLICE OFFICER OR PEACE OFFICER;

(b) A MEMBER OF A FIRE DEPARTMENT, DISTRICT, OR COMPANY;

(c) THE OPERATOR OF AN AUTHORIZED EMERGENCY VEHICLE AS DEFINED IN SECTION 42-1-102 (6);

(d) THE OPERATOR OF AN AUTHORIZED SERVICE VEHICLE AS DEFINED IN SECTION 42-1-102 (7);

(e) A MEMBER OF AN AMBULANCE SERVICE AS DEFINED IN SECTION 25-3.5-103 (3), C.R.S.;

(f) A MEMBER OF A RESCUE UNIT AS DEFINED IN SECTION 25-3.5-103 (11), C.R.S.; OR

(g) A COMMERCIAL DRIVER WHILE DRIVING A VEHICLE WITH A GROSS WEIGHT VEHICLE RATING OF 10,001 OR MORE POUNDS THAT IS TRANSPORTING FREIGHT AND NOT TRANSPORTING PERSONS.

(9) THIS SECTION DOES NOT RESTRICT OPERATION OF AN AMATEUR RADIO STATION BY A PERSON WHO HOLDS A VALID AMATEUR RADIO OPERATOR LICENSE ISSUED BY THE FEDERAL COMMUNICATIONS

COMMISSION.

(10) THE GENERAL ASSEMBLY FINDS AND DECLARES THAT USE OF WIRELESS TELEPHONES IN MOTOR VEHICLES IS A MATTER OF STATEWIDE CONCERN.

SECTION 2. 42-4-1701 (4) (a) (I) (P), Colorado Revised Statutes, is amended to read:

42-4-1701. Traffic offenses and infractions classified - penalties - penalty and surcharge schedule. (4) (a) (I) Except as provided in paragraph (c) of subsection (5) of this section, every person who is convicted of, who admits liability for, or against whom a judgment is entered for a violation of any provision of this title to which the provisions of paragraph (a) or (b) of subsection (5) of this section apply shall be fined or penalized, and have a surcharge levied thereon pursuant to sections 24-4.1-119 (1) (f) and 24-4.2-104 (1) (b) (I), C.R.S., in accordance with the penalty and surcharge schedule set forth in sub-subparagraphs (A) to (P) of this subparagraph (I); or, if no penalty or surcharge is specified in the schedule, the penalty for class A and class B traffic infractions shall be fifteen dollars, and the surcharge shall be four dollars. These penalties and surcharges shall apply whether the defendant acknowledges the defendant's guilt or liability in accordance with the procedure set forth by paragraph (a) of subsection (5) of this section or is found guilty by a court of competent jurisdiction or has judgment entered against the defendant by a county court magistrate. Penalties and surcharges for violating specific sections shall be as follows:

Section Violated	**Penalty**	**Surcharge**
(P) **Offenses by persons controlling vehicles:**		
42-4-239 (5) (a)	$ 50.00	$6.00

42-4-239 (5) (b)	$100.00	$6.00
42-4-1704	$ 15.00	$6.00

SECTION 3. 42-1-217 (1), Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW PARAGRAPH to read:

42-1-217. Disposition of fines and surcharges. (1) All judges, clerks of a court of record, or other officers imposing or receiving fines, penalties, or forfeitures, except those moneys received pursuant to sections 42-4-313 (3), 42-4-413, 42-4-1409, 42-4-1701 (5) (a), 42-8-105, and 42-8-106, collected pursuant to or as a result of a conviction of any persons for a violation of articles 1 to 4 (except part 3 of article 2) of this title, shall transmit, within ten days after the date of receipt of any such fine, penalty, or forfeiture, all such moneys so collected in the following manner:

(f) NOTWITHSTANDING ANY OTHER PROVISION OF LAW TO THE CONTRARY, TEN PERCENT OF ANY FINE, PENALTY, OR FORFEITURE FOR A VIOLATION OF SECTION 42-4-239 SHALL BE TRANSMITTED TO THE STATE TREASURER, CREDITED TO THE GENERAL FUND, AND ALLOCATED AND EXPENDED TO COVER THE DEPARTMENT OF REVENUE'S PERSONAL SERVICES, OPERATING EXPENSES, AND CAPITAL OUTLAY COSTS ASSOCIATED WITH SECTION 42-4-239. THE REMAINING NINETY PERCENT OF ANY FINE, PENALTY, OR FORFEITURE FOR A VIOLATION OF SECTION 42-4-239 SHALL BE TRANSMITTED TO THE STATE TREASURER, CREDITED TO THE HIGHWAY USERS TAX FUND, AND ALLOCATED AND EXPENDED AS SPECIFIED IN SECTION 43-4-205 (5.5) (a), C.R.S.

SECTION 4. Appropriation. (1) In addition to any other appropriation, there is hereby appropriated, out of any moneys in the general fund not otherwise appropriated, to the department of corrections,

for allocation to the management division, executive director's office subprogram for the fiscal year beginning July 1, 2009 , the sum of forty-two thousand dollars ($42,000) , or so much thereof as may be necessary for handsfree headsets.

(2) In addition to any other appropriation, there is hereby appropriated, out of any moneys in the general fund not otherwise appropriated, to the department of revenue, for allocation to the division, of motor vehicles, for the fiscal year beginning July 1, 2009, the sum of forty-seven thousand nine hundred seventy-seven dollars ($47,977) and 1.2 FTE, or so much thereof as may be necessary, for the implementation of this act.

(3) In addition to any other appropriation, there is hereby appropriated, out of any moneys in the state highway fund created in section 43-4-205 (5) (a), Colorado Revised Statutes, not otherwise appropriated, to the department of transportation, for allocation to the administration division, for the fiscal year beginning July 1, 2009, the sum of two thousand one hundred dollars ($2,100) cash funds, or so much thereof as may be necessary for handsfree headsets.

SECTION 5. Effective date - applicability. This act shall take effect December 1, 2009, and shall apply to offenses committed on or after said date.

SECTION 6. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.