

**First Regular Session
Sixty-seventh General Assembly
STATE OF COLORADO**

ENGROSSED

*This Version Includes All Amendments Adopted
on Second Reading in the House of Introduction*

LLS NO. 09-1096.01 Michael Dohr

SENATE BILL 09-296

SENATE SPONSORSHIP

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A BILL FOR AN ACT

101 **CONCERNING THE ENFORCEMENT OF OFFENSES INVOLVING FAILURE**
102 **OF CERTAIN PERSONS IN A VEHICLE TO USE AN APPROPRIATE**
103 **RESTRAINING DEVICE.**

Bill Summary

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

Makes it a primary offense, punishable as a class B traffic infraction, for a driver to operate a vehicle if the driver, certain children, and all front-seat passengers are not wearing a fastened restraining device. Requires a law enforcement officer, prior to stopping a driver in a vehicle for a restraining device violation, to clearly observe the restraining device violation and be able to articulate that the restraining

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.

SENATE
Amended 2nd Reading
April 29, 2009

device was unfastened.

Modifies the age and height requirements for certain children that are otherwise required to be fastened in a child restraint system. Prohibits conviction for a safety belt violation if the person charged produces in court a bona fide written statement by a physician certifying that physical disability makes restraint by a safety belt system inappropriate.

Specifies that it is the intent of the general assembly that the statutory prohibition against profiling be strictly observed by each law enforcement officer who stops or contemplates the stop of a motor vehicle driver for an alleged restraining device violation.

Increases the fines and surcharges for restraining device violations.

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

2 **SECTION 1. Legislative declaration.** (1) The general assembly
3 finds that making the failure to wear a fastened restraining device a
4 primary offense will increase usage of restraining devices in vehicles and
5 thereby:

6 (a) Save between thirty and seventy lives per year;

7 (b) Reduce the seriousness of injuries sustained in vehicle
8 accidents while not wearing a fastened restraining device;

9 (c) Reduce state medicaid costs by approximately seventy-two
10 million five hundred thousand dollars over the next ten years; and

11 (d) Secure for the state of Colorado approximately fourteen
12 million dollars in federal highway funds that are granted to states that
13 adopt primary offense safety belt legislation.

14 (2) The general assembly, therefore, determines and declares that
15 it is necessary and in the best interests of the citizens of Colorado to enact
16 legislation that makes the failure to wear a fastened restraining device by
17 the driver and certain passengers in a vehicle a primary offense.

18 **SECTION 2.** 42-4-236 (1), Colorado Revised Statutes, is
19 amended BY THE ADDITION OF A NEW PARAGRAPH to read:

1 **42-4-236. Child restraint systems required - definitions -**
2 **exemptions.** (1) As used in this section, unless the context otherwise
3 requires:

4 (a.8) "PRIVATELY OWNED NONCOMMERCIAL PASSENGER VEHICLE"
5 MEANS A PASSENGER CAR OR A PICKUP TRUCK OR A VAN, MINIVAN, OR
6 SPORT UTILITY VEHICLE WITH A GROSS VEHICLE WEIGHT RATING OF LESS
7 THAN TEN THOUSAND POUNDS.

8 **SECTION 3.** 42-4-236 (2) (a), (3) (b), and (9), Colorado Revised
9 Statutes, are amended to read:

10 **42-4-236. Child restraint systems required - definitions -**
11 **exemptions.** (2) (a) Unless exempted pursuant to subsection (3) of this
12 section, every child, who is under four years of age and weighs under
13 forty pounds, being transported in this state in a privately owned
14 noncommercial passenger vehicle or in a vehicle operated by a child care
15 center, shall be provided with one of the following child restraint systems
16 suitable for the child's size and shall be properly fastened into such child
17 restraint system which is in a seating position which is equipped with a
18 safety belt or other means to secure the system according to the
19 manufacturer's instructions:

20 (I) If the child is less than one year of age ~~and~~ OR weighs less than
21 twenty pounds, the child shall be properly restrained in a rear-facing child
22 restraint system.

23 (II) If the child is one year of age or older, but less than four years
24 of age, ~~and~~ OR weighs less than forty pounds, but at least twenty pounds,
25 the child shall be properly restrained in a forward-facing child restraint
26 system.

27 (3) Except as provided in section 42-2-105.5 (4), the requirements

1 of subsection (2) of this section shall not apply to a child who:

2 (b) Is being transported in a motor vehicle as a result of a
3 LIFE-THREATENING medical emergency;

4 (9) (a) No driver in a motor vehicle shall be cited for a violation
5 of subparagraph (I) of paragraph (b) of subsection (2) of this section
6 unless ~~such~~ THE driver was stopped by a law enforcement officer ~~for an~~
7 ~~alleged violation of articles 1 to 4 of this title other than a violation of this~~
8 ~~section or section 42-4-237~~ WHO, PRIOR TO THE STOP, CLEARLY OBSERVED
9 THE VIOLATION AND IS ABLE TO ARTICULATE THAT THE RESTRAINING
10 DEVICE WAS UNFASTENED.

11 (b) IT IS THE INTENT OF THE GENERAL ASSEMBLY IN CREATING A
12 PRIMARY OFFENSE IN THIS SUBSECTION (9) THAT THE PROHIBITION
13 AGAINST PROFILING, AS DESCRIBED IN SECTION 24-31-309, C.R.S., BE
14 STRICTLY OBSERVED BY EACH LAW ENFORCEMENT OFFICER WHO STOPS OR
15 CONTEMPLATES THE STOP OF A DRIVER OF A MOTOR VEHICLE FOR AN
16 ALLEGED RESTRAINING DEVICE VIOLATION.

17 **SECTION 4.** 42-4-237 (1) (a), (3) (d), (3) (g), and (5), Colorado
18 Revised Statutes, are amended, and the said 42-4-237 is further amended
19 BY THE ADDITION OF A NEW SUBSECTION, to read:

20 **42-4-237. Safety belt systems - mandatory use - exemptions -**
21 **penalty.** (1) As used in this section:

22 (a) "Motor vehicle" means a ~~self-propelled vehicle intended~~
23 ~~primarily for use and operation on the public highways, including~~
24 ~~passenger cars, station wagons, vans, taxicabs, ambulances, motor homes,~~
25 ~~and pickups~~ PASSENGER CAR OR A PICKUP TRUCK OR A VAN, MINIVAN, OR
26 SPORT UTILITY VEHICLE WITH A GROSS VEHICLE WEIGHT RATING OF LESS
27 THAN TEN THOUSAND POUNDS. The term does not include motorcycles,

1 motorscooters, motorbicycles, motorized bicycles, passenger buses,
2 school buses, and farm tractors and implements of husbandry designed
3 primarily or exclusively for use in agricultural operations.

4 (3) Except as provided in section 42-2-105.5, the requirement of
5 subsection (2) of this section shall not apply to:

6 (d) A person with a ~~physically or psychologically disabling~~
7 MEDICAL condition whose ~~physical or psychological disability~~ CONDITION
8 prevents appropriate restraint by a safety belt system if ~~such~~ THE person
9 possesses a written statement by a physician certifying the condition, as
10 well as stating the reason why such restraint is inappropriate;

11 (g) A person operating a motor vehicle which does not meet the
12 definition of "commercial vehicle" as that term is defined in section
13 42-4-235 (1) (a) for commercial or residential delivery or pickup service.
14 ~~except that such person shall be required to wear a fastened safety belt~~
15 ~~during the time period prior to the first delivery or pickup of the day and~~
16 ~~during the time period following the last delivery or pickup of the day.~~

17 (5) (a) No driver in a motor vehicle shall be cited for a violation
18 of subsection (2) of this section unless ~~such~~ THE driver was stopped by a
19 law enforcement officer ~~for an alleged violation of articles 1 to 4 of this~~
20 ~~title other than a violation of this section~~ WHO, PRIOR TO THE STOP,
21 CLEARLY OBSERVED THE VIOLATION AND IS ABLE TO ARTICULATE THAT
22 THE RESTRAINING DEVICE WAS UNFASTENED.

23 (b) IT IS THE INTENT OF THE GENERAL ASSEMBLY IN CREATING A
24 PRIMARY OFFENSE IN THIS SUBSECTION (5) THAT THE PROHIBITION
25 AGAINST PROFILING, AS DESCRIBED IN SECTION 24-31-309, C.R.S., BE
26 STRICTLY OBSERVED BY EACH LAW ENFORCEMENT OFFICER WHO STOPS OR
27 CONTEMPLATES THE STOP OF A DRIVER OF A MOTOR VEHICLE FOR AN

1 ALLEGED RESTRAINING DEVICE VIOLATION.

2 (5.7) (a) A PERSON CHARGED WITH VIOLATING SUBSECTION (2) OF
3 THIS SECTION, EITHER AS A DRIVER OR A FRONT SEAT PASSENGER, SHALL
4 NOT BE CONVICTED IF THE PERSON, PURSUANT TO PARAGRAPH (d) OF
5 SUBSECTION (3) OF THIS SECTION, PRODUCES IN COURT A BONA FIDE
6 WRITTEN STATEMENT BY A PHYSICIAN THAT CERTIFIES A PHYSICAL
7 DISABILITY ON THE PART OF THE PERSON ALLEGED NOT TO HAVE WORN A
8 FASTENED SAFETY BELT AND STATES THE REASON WHY RESTRAINT BY A
9 SAFETY BELT SYSTEM IS INAPPROPRIATE.

10 (b) THE PROVISIONS OF PARAGRAPH (a) OF THIS SUBSECTION (5.7)
11 SHALL APPLY TO:

12 (I) A DRIVER WHO IS CHARGED FOR NOT WEARING A FASTENED
13 SAFETY BELT;

14 (II) A DRIVER WHO IS CHARGED FOR A FRONT SEAT PASSENGER NOT
15 WEARING A FASTENED SAFETY BELT; AND

16 (III) A FRONT SEAT PASSENGER WHO IS CHARGED FOR NOT
17 WEARING A FASTENED SAFETY BELT.

18 **SECTION 5.** 42-4-1701 (4) (a) (I) (D), Colorado Revised
19 Statutes, is amended to read:

20 **42-4-1701. Traffic offenses and infractions classified -**
21 **penalties - penalty and surcharge schedule.** (4) (a) (I) Except as
22 provided in paragraph (c) of subsection (5) of this section, every person
23 who is convicted of, who admits liability for, or against whom a judgment
24 is entered for a violation of any provision of this title to which the
25 provisions of paragraph (a) or (b) of subsection (5) of this section apply
26 shall be fined or penalized, and have a surcharge levied thereon pursuant
27 to sections 24-4.1-119 (1) (f) and 24-4.2-104 (1) (b) (I), C.R.S., in

1 accordance with the penalty and surcharge schedule set forth in
 2 sub-subparagraphs (A) to (P) of this subparagraph (I); or, if no penalty or
 3 surcharge is specified in the schedule, the penalty for class A and class B
 4 traffic infractions shall be fifteen dollars, and the surcharge shall be four
 5 dollars. These penalties and surcharges shall apply whether the defendant
 6 acknowledges the defendant's guilt or liability in accordance with the
 7 procedure set forth by paragraph (a) of subsection (5) of this section or is
 8 found guilty by a court of competent jurisdiction or has judgment entered
 9 against the defendant by a county court magistrate. Penalties and
 10 surcharges for violating specific sections shall be as follows:

| 11 | Section Violated | Penalty | Surcharge |
|----|----------------------------------|----------------|------------------|
| 12 | (D) Equipment violations: | | |
| 13 | 42-4-201 | \$ 35.00 | \$ 10.00 |
| 14 | 42-4-202 | 35.00 | 10.00 |
| 15 | 42-4-204 | 15.00 | 6.00 |
| 16 | 42-4-205 | 15.00 | 6.00 |
| 17 | 42-4-206 | 15.00 | 6.00 |
| 18 | 42-4-207 | 15.00 | 6.00 |
| 19 | 42-4-208 | 15.00 | 6.00 |
| 20 | 42-4-209 | 15.00 | 6.00 |
| 21 | 42-4-210 | 15.00 | 6.00 |
| 22 | 42-4-211 | 15.00 | 6.00 |
| 23 | 42-4-212 | 15.00 | 6.00 |
| 24 | 42-4-213 | 15.00 | 6.00 |
| 25 | 42-4-214 | 15.00 | 6.00 |
| 26 | 42-4-215 | 15.00 | 6.00 |
| 27 | 42-4-216 | 15.00 | 6.00 |

| | | | |
|----|-------------------------|------------------------|-------|
| 1 | 42-4-217 | 15.00 | 6.00 |
| 2 | 42-4-218 | 15.00 | 6.00 |
| 3 | 42-4-219 | 15.00 | 6.00 |
| 4 | 42-4-220 | 15.00 | 6.00 |
| 5 | 42-4-221 | 15.00 | 6.00 |
| 6 | 42-4-222 (1) | 15.00 | 6.00 |
| 7 | 42-4-223 | 15.00 | 6.00 |
| 8 | 42-4-224 | 15.00 | 6.00 |
| 9 | 42-4-225 (1) | 15.00 | 6.00 |
| 10 | 42-4-226 | 15.00 | 6.00 |
| 11 | 42-4-227 (1) | 50.00 | 16.00 |
| 12 | 42-4-227 (2) | 15.00 | 6.00 |
| 13 | 42-4-228 (1), (2), (3), | | |
| 14 | (5), or (6) | 15.00 | 6.00 |
| 15 | 42-4-229 | 15.00 | 6.00 |
| 16 | 42-4-230 | 15.00 | 6.00 |
| 17 | 42-4-231 | 15.00 | 6.00 |
| 18 | 42-4-232 | 15.00 | 6.00 |
| 19 | 42-4-233 | 75.00 | 24.00 |
| 20 | 42-4-234 | 15.00 | 6.00 |
| 21 | 42-4-235 | 50.00 | 16.00 |
| 22 | 42-4-236 | 65.00 75.00 | 16.00 |
| 23 | 42-4-237 | 65.00 75.00 | 6.00 |
| 24 | 42-4-1411 | 15.00 | 6.00 |
| 25 | 42-4-1412 | 15.00 | 6.00 |
| 26 | 42-4-1901 | 35.00 | 10.00 |

27 **SECTION 6. Effective date - applicability.** This act shall take

1 effect June 1, 2009, and shall apply to infractions committed on or after
2 said date.

3 **SECTION 7. Safety clause.** The general assembly hereby finds,
4 determines, and declares that this act is necessary for the immediate
5 preservation of the public peace, health, and safety.