

**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. 09-0351.01 Michael Dohr

HOUSE BILL 09-1094

HOUSE SPONSORSHIP

Levy, Fischer, Hullinghorst, Kefalas

SENATE SPONSORSHIP

Bacon,

House Committees

Transportation & Energy
Appropriations

Senate Committees

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.

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.*

HOUSE
Amended 2nd Reading
April 6, 2009

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

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

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

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

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

12 ~~(II) Reports a fire, a traffic accident in which one or more injuries~~
13 ~~are apparent, a serious road hazard, a medical or hazardous materials~~
14 ~~emergency, or a person who is driving in a reckless, careless, or otherwise~~
15 ~~unsafe manner."COMMERCIAL DRIVER" MEANS A PERSON HOLDING A~~
16 ~~VALID COMMERCIAL DRIVER'S LICENSE AS DEFINED BY SECTION 42-2-402~~
17 ~~(1).~~

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

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

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

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

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

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

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

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

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

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

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

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

7 (c) ~~During an emergency.~~

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

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

14 (a) TO CONTACT A PUBLIC SAFETY ENTITY; OR

15 (b) DURING AN EMERGENCY.

16 ~~(3)~~ (5) (a) ~~Any~~ A person who operates a motor vehicle in violation
17 of subsection (2) OR (3) of this section commits a class A traffic infraction
18 as defined in section 42-4-1701 (3), AND THE COURT OR THE DEPARTMENT
19 OF REVENUE SHALL ASSESS A FINE OF FIFTY DOLLARS.

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

24 ~~(4)~~ (6) An operator of a motor vehicle shall not be cited for a
25 violation of subsection (2) OR (3) of this section unless ~~such operator was~~
26 ~~stopped by~~ a law enforcement officer ~~for an alleged violation of articles~~
27 ~~1 to 4 of this title other than a violation of this section~~ SAW THE PERSON

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

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

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

11 (a) A POLICE OFFICER OR PEACE OFFICER;

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

13
14 (c) THE OPERATOR OF AN AUTHORIZED EMERGENCY VEHICLE AS
15 DEFINED IN SECTION 42-1-102 (6);

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

18 (e) A MEMBER OF AN AMBULANCE SERVICE AS DEFINED IN SECTION
19 25-3.5-103 (3), C.R.S.;

20 (f) A MEMBER OF A RESCUE UNIT AS DEFINED IN SECTION
21 25-3.5-103 (11), C.R.S.; OR

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

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

1 COMMISSION.

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

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

7 **42-4-1701. Traffic offenses and infractions classified -**
8 **penalties - penalty and surcharge schedule.** (4) (a) (I) Except as
9 provided in paragraph (c) of subsection (5) of this section, every person
10 who is convicted of, who admits liability for, or against whom a judgment
11 is entered for a violation of any provision of this title to which the
12 provisions of paragraph (a) or (b) of subsection (5) of this section apply
13 shall be fined or penalized, and have a surcharge levied thereon pursuant
14 to sections 24-4.1-119 (1) (f) and 24-4.2-104 (1) (b) (I), C.R.S., in
15 accordance with the penalty and surcharge schedule set forth in
16 sub-subparagraphs (A) to (P) of this subparagraph (I); or, if no penalty or
17 surcharge is specified in the schedule, the penalty for class A and class B
18 traffic infractions shall be fifteen dollars, and the surcharge shall be four
19 dollars. These penalties and surcharges shall apply whether the defendant
20 acknowledges the defendant's guilt or liability in accordance with the
21 procedure set forth by paragraph (a) of subsection (5) of this section or is
22 found guilty by a court of competent jurisdiction or has judgment entered
23 against the defendant by a county court magistrate. Penalties and
24 surcharges for violating specific sections shall be as follows:

25	Section Violated	Penalty	Surcharge
26	(P) Offenses by persons controlling vehicles:		
27	42-4-239 (5) (a)	\$ 50.00	\$6.00

1	42-4-239 (5) (b)	\$100.00	\$6.00
2	42-4-1704	\$ 15.00	\$6.00

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

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

14 (f) NOTWITHSTANDING ANY OTHER PROVISION OF LAW TO THE
15 CONTRARY, TEN PERCENT OF ANY FINE, PENALTY, OR FORFEITURE FOR A
16 VIOLATION OF SECTION 42-4-239 SHALL BE TRANSMITTED TO THE STATE
17 TREASURER, CREDITED TO THE GENERAL FUND, AND ALLOCATED AND
18 EXPENDED TO COVER THE DEPARTMENT OF REVENUE'S PERSONAL
19 SERVICES, OPERATING EXPENSES, AND CAPITAL OUTLAY COSTS
20 ASSOCIATED WITH SECTION 42-4-239. THE REMAINING NINETY PERCENT
21 OF ANY FINE, PENALTY, OR FORFEITURE FOR A VIOLATION OF SECTION
22 42-4-239 SHALL BE TRANSMITTED TO THE STATE TREASURER, CREDITED
23 TO THE HIGHWAY USERS TAX FUND, AND ALLOCATED AND EXPENDED AS
24 SPECIFIED IN SECTION 43-4-205 (5.5) (a), C.R.S.

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

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

5 (2) In addition to any other appropriation, there is hereby
6 appropriated, out of any moneys in the general fund not otherwise
7 appropriated, to the department of revenue, for allocation to the division,
8 of motor vehicles, for the fiscal year beginning July 1, 2009, the sum of
9 forty-seven thousand nine hundred seventy-seven dollars (\$47,977) and
10 1.2 FTE, or so much thereof as may be necessary, for the implementation
11 of this act.

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

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

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