

**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

Transportation & Energy
Appropriations

Senate Committees

State, Veterans & Military Affairs
Finance
Appropriations

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
3rd Reading Unamended
April 8, 2009

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

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

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

19 (2) ~~No~~ NOTWITHSTANDING THE PROVISIONS OF SUBSECTION (3) OF
20 THIS SECTION, A person ~~who holds a temporary instruction permit or a~~
21 ~~minor's instruction permit pursuant to section 42-2-106~~ DESCRIBED IN
22 PARAGRAPHS (a) AND (b) OF THIS SUBSECTION (2) shall NOT use a ~~mobile~~
23 ~~communication device~~ WIRELESS TELEPHONE while operating a motor
24 vehicle WHILE THE VEHICLE IS IN MOTION. This section shall ~~not~~ apply to:
25 a person ~~who is using the mobile communication device:~~

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

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

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

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

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

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

11 (b) DURING AN EMERGENCY.

12 ~~(3)~~ (5) (a) ~~Any~~ A person who operates a motor vehicle in violation
13 of subsection (2) OR (3) of this section commits a class A traffic infraction
14 as defined in section 42-4-1701 (3), AND THE COURT OR THE DEPARTMENT
15 OF REVENUE SHALL ASSESS A FINE OF FIFTY DOLLARS.

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

20 ~~(4)~~ (6) An operator of a motor vehicle shall not be cited for a
21 violation of subsection (2) OR (3) of this section unless ~~such operator was~~
22 ~~stopped by a law enforcement officer for an alleged violation of articles~~
23 ~~1 to 4 of this title other than a violation of this section~~ SAW THE PERSON
24 USE, AS DEFINED IN PARAGRAPH (e) OF SUBSECTION (1) OF THIS SECTION,
25 A WIRELESS TELEPHONE.

26 (7) THE PROVISIONS OF THIS SECTION SHALL NOT BE CONSTRUED
27 TO AUTHORIZE THE SEIZURE AND FORFEITURE OF A WIRELESS TELEPHONE,

1 UNLESS OTHERWISE PROVIDED BY LAW.

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

7 (a) A POLICE OFFICER OR PEACE OFFICER;

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

9
10 (c) THE OPERATOR OF AN AUTHORIZED EMERGENCY VEHICLE AS
11 DEFINED IN SECTION 42-1-102 (6);

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

14 (e) A MEMBER OF AN AMBULANCE SERVICE AS DEFINED IN SECTION
15 25-3.5-103 (3), C.R.S.;

16 (f) A MEMBER OF A RESCUE UNIT AS DEFINED IN SECTION
17 25-3.5-103 (11), C.R.S.; OR

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

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

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

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

3 **42-4-1701. Traffic offenses and infractions classified -**
4 **penalties - penalty and surcharge schedule.** (4) (a) (I) Except as
5 provided in paragraph (c) of subsection (5) of this section, every person
6 who is convicted of, who admits liability for, or against whom a judgment
7 is entered for a violation of any provision of this title to which the
8 provisions of paragraph (a) or (b) of subsection (5) of this section apply
9 shall be fined or penalized, and have a surcharge levied thereon pursuant
10 to sections 24-4.1-119 (1) (f) and 24-4.2-104 (1) (b) (I), C.R.S., in
11 accordance with the penalty and surcharge schedule set forth in
12 sub-subparagraphs (A) to (P) of this subparagraph (I); or, if no penalty or
13 surcharge is specified in the schedule, the penalty for class A and class B
14 traffic infractions shall be fifteen dollars, and the surcharge shall be four
15 dollars. These penalties and surcharges shall apply whether the defendant
16 acknowledges the defendant's guilt or liability in accordance with the
17 procedure set forth by paragraph (a) of subsection (5) of this section or is
18 found guilty by a court of competent jurisdiction or has judgment entered
19 against the defendant by a county court magistrate. Penalties and
20 surcharges for violating specific sections shall be as follows:

21	Section Violated	Penalty	Surcharge
22	(P) Offenses by persons controlling vehicles:		
23	42-4-239 (5) (a)	\$ 50.00	\$6.00
24	42-4-239 (5) (b)	\$100.00	\$6.00
25	42-4-1704	\$ 15.00	\$6.00

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

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

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

21 **SECTION 4. Appropriation.** (1) In addition to any other
22 appropriation, there is hereby appropriated, out of any moneys in the
23 general fund not otherwise appropriated, to the department of corrections,
24 for allocation to the management division, executive director's office
25 subprogram for the fiscal year beginning July 1, 2009 , the sum of
26 forty-two thousand dollars (\$42,000) , or so much thereof as may be
27 necessary for handsfree headsets.

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

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

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

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