

**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

A BILL FOR AN ACT

101 **CONCERNING WIRELESS TELEPHONE PROHIBITIONS FOR DRIVERS.**

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.

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 WIRELESS
11 TELEPHONE while the car 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.

27 (c) "Mobile communication device" means a cellular telephone or

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

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

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

15 (f) "USE" MEANS HOLDING A WIRELESS TELEPHONE TO, OR IN THE
16 IMMEDIATE PROXIMITY OF, THE USER'S EAR OR ENGAGING THE WIRELESS
17 TELEPHONE FOR TEXT MESSAGING OR OTHER FORMS OF MANUAL DATA
18 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;

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

7 (c) ~~During an emergency~~ MOTOR VEHICLE CARRIERS SUBJECT TO
8 REGULATION BY THE PUBLIC UTILITIES COMMISSION PURSUANT TO ARTICLE
9 10 OF TITLE 40, C.R.S.

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

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

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

17 (b) DURING AN EMERGENCY.

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

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

26 ~~(4)~~ (6) An operator of a motor vehicle shall not be cited for a
27 violation of subsection (2) OR (3) of this section unless ~~such operator was~~


1 ~~stopped by a law enforcement officer for an alleged violation of articles~~
2 ~~1 to 4 of this title other than a violation of this section~~ SAW THE PERSON
3 USE, AS DEFINED IN PARAGRAPH (e) OF SUBSECTION (1) OF THIS SECTION,
4 A WIRELESS TELEPHONE.

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

8 (8) THE PROVISIONS OF SUBSECTION (3) OF THIS SECTION SHALL
9 NOT APPLY TO THE FOLLOWING PERSONS WHILE THOSE PERSONS ARE
10 ENGAGED IN ACTIVITIES THAT ARE WITHIN THE COURSE AND SCOPE OF
11 THEIR EMPLOYMENT:

12 (a) A POLICE OFFICER OR PEACE OFFICER;

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

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

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

19 (e) A MEMBER OF AN AMBULANCE SERVICE AS DEFINED IN SECTION
20 25-3.5-103 (3), C.R.S.; OR

21 (f) A MEMBER OF A RESCUE UNIT AS DEFINED IN SECTION
22 25-3.5-103 (11), C.R.S.

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

27 (10) THE PROVISIONS OF SUBSECTION (3) OF THIS SECTION SHALL

1 NOT APPLY TO A COMMERCIAL DRIVER OPERATING A WIRELESS TELEPHONE
2 FOR A USE OTHER THAN TEXT MESSAGING OR OTHER FORMS OF MANUAL
3 DATA ENTRY OR TRANSMISSION WHILE DRIVING A VEHICLE WITH A GROSS
4 WEIGHT VEHICLE RATING OF 10,001 OR MORE POUNDS THAT IS
5 TRANSPORTATION FREIGHT AND NOT TRANSPORTING PERSONS.

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

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

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

1 surcharges for violating specific sections shall be as follows:

2	Section Violated	Penalty	Surcharge
3	(P) Offenses by persons controlling vehicles:		
4	42-4-239 (5) (a)	\$ 50.00	\$6.00
5	42-4-239 (5) (b)	\$100.00	\$6.00
6	42-4-1704	\$ 15.00	\$6.00

7 **SECTION 3. Effective date - applicability.** This act shall take
8 effect December 1, 2009, and shall apply to offenses committed on or
9 after said date.

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