

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

INTRODUCED

LLS NO. 09-0351.01 Nancy Dalien

HOUSE BILL 09-1094

HOUSE SPONSORSHIP

Levy, Fischer, Hullinghorst, Kefalas

SENATE SPONSORSHIP

Bacon,

House Committees
Transportation & Energy

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.

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

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

27 (d) "OPERATING A MOTOR VEHICLE" MEANS DRIVING A MOTOR

1 VEHICLE ON A PUBLIC HIGHWAY BUT DOES NOT MEAN MAINTAINING THE
2 INSTRUMENTS OF CONTROL WHILE THE MOTOR VEHICLE IS AT REST IN A
3 SHOULDER LANE OR LAWFULLY PARKED.

4 (e) "USE" MEANS HOLDING A WIRELESS TELEPHONE TO, OR IN THE
5 IMMEDIATE PROXIMITY OF, THE USER'S EAR OR ENGAGING THE WIRELESS
6 TELEPHONE FOR TEXT MESSAGING OR OTHER FORMS OF MANUAL DATA
7 ENTRY OR TRANSMISSION.

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

12 (2) ~~NO~~ NOTWITHSTANDING THE PROVISIONS OF SUBSECTION (3) OF
13 THIS SECTION, A person ~~who holds a temporary instruction permit or a~~
14 ~~minor's instruction permit pursuant to section 42-2-106~~ DESCRIBED IN
15 PARAGRAPHS (a) TO (c) OF THIS SUBSECTION (2) shall NOT use a ~~mobile~~
16 ~~communication device~~ WIRELESS TELEPHONE while operating a motor
17 vehicle WHILE THE VEHICLE IS IN MOTION. This section shall ~~not~~ apply to:
18 ~~a person who is using the mobile communication device:~~

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

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

23 (c) ~~During an emergency~~ MOTOR VEHICLE CARRIERS SUBJECT TO
24 REGULATION BY THE PUBLIC UTILITIES COMMISSION PURSUANT TO ARTICLE
25 10 OF TITLE 40, C.R.S.

26 (3) A PERSON EIGHTEEN YEARS OF AGE OR OLDER SHALL NOT USE
27 A WIRELESS TELEPHONE WHILE OPERATING A MOTOR VEHICLE WHILE THE

1 VEHICLE IS IN MOTION, UNLESS THE PERSON IS COMMUNICATING BY MEANS
2 OF A HANDS-FREE ACCESSORY.

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

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

6 (b) DURING AN EMERGENCY.

7 ~~(3)~~ (5) (a) ~~Any~~ A person who operates a motor vehicle in violation
8 of subsection (2) OR (3) of this section commits a class A traffic infraction
9 as defined in section 42-4-1701 (3), AND THE COURT SHALL ASSESS A FINE
10 OF FIFTY DOLLARS.

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

15 ~~(4)~~ (6) An operator of a motor vehicle shall not be cited for a
16 violation of subsection (2) OR (3) of this section unless ~~such operator was~~
17 ~~stopped by a law enforcement officer for an alleged violation of articles~~
18 ~~1 to 4 of this title other than a violation of this section~~ SAW THE PERSON
19 USE, AS DEFINED IN PARAGRAPH (e) OF SUBSECTION (1) OF THIS SECTION,
20 A WIRELESS TELEPHONE.

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

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

- 1 (a) A POLICE OFFICER OR PEACE OFFICER;
- 2 (b) A MEMBER OF A FIRE DEPARTMENT, DISTRICT, OR COMPANY; OR
- 3 (c) THE OPERATOR OF AN AUTHORIZED EMERGENCY VEHICLE.
- 4 (9) THE GENERAL ASSEMBLY FINDS AND DECLARES THAT USE OF
- 5 WIRELESS TELEPHONES IN MOTOR VEHICLES IS A MATTER OF STATEWIDE
- 6 CONCERN AND, ACCORDINGLY, THE PROVISIONS OF THIS SECTION PREEMPT
- 7 ANY PROVISIONS OF ANY LOCAL GOVERNMENT TO THE CONTRARY.

8 **SECTION 2.** 42-4-1701 (4) (a) (I) (P), Colorado Revised

9 Statutes, is amended to read:

10 **42-4-1701. Traffic offenses and infractions classified -**

11 **penalties - penalty and surcharge schedule.** (4) (a) (I) Except as

12 provided in paragraph (c) of subsection (5) of this section, every person

13 who is convicted of, who admits liability for, or against whom a judgment

14 is entered for a violation of any provision of this title to which the

15 provisions of paragraph (a) or (b) of subsection (5) of this section apply

16 shall be fined or penalized, and have a surcharge levied thereon pursuant

17 to sections 24-4.1-119 (1) (f) and 24-4.2-104 (1) (b) (I), C.R.S., in

18 accordance with the penalty and surcharge schedule set forth in

19 sub-subparagraphs (A) to (P) of this subparagraph (I); or, if no penalty or

20 surcharge is specified in the schedule, the penalty for class A and class B

21 traffic infractions shall be fifteen dollars, and the surcharge shall be four

22 dollars. These penalties and surcharges shall apply whether the defendant

23 acknowledges the defendant's guilt or liability in accordance with the

24 procedure set forth by paragraph (a) of subsection (5) of this section or is

25 found guilty by a court of competent jurisdiction or has judgment entered

26 against the defendant by a county court magistrate. Penalties and

27 surcharges for violating specific sections shall be as follows:

| | Section Violated | Penalty | Surcharge |
|---|--|----------------|------------------|
| 1 | | | |
| 2 | (P) Offenses by persons controlling vehicles: | | |
| 3 | 42-4-239 (5) (a) | \$ 50.00 | \$6.00 |
| 4 | 42-4-239 (5) (b) | \$100.00 | \$6.00 |
| 5 | 42-4-1704 | \$ 15.00 | \$6.00 |

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

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