

**NOTE: This bill has been prepared for the signature of the appropriate legislative officers and the Governor. To determine whether the Governor has signed the bill or taken other action on it, please consult the legislative status sheet, the legislative history, or the Session Laws.**

# An Act

HOUSE BILL 09-1094

BY REPRESENTATIVE(S) Levy, Fischer, Hulinghorst, Green, Labuda, Schafer S., Todd, Peniston, Bradford, King S., Merrifield;  
also SENATOR(S) Bacon, Boyd, Foster, Groff, Newell, Shaffer B., Williams.

CONCERNING WIRELESS TELEPHONE PROHIBITIONS FOR DRIVERS.

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

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

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

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

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

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*Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.*

(II) Reports a fire, a traffic accident in which one or more injuries are apparent, a serious road hazard, a medical or hazardous materials emergency, or a person who is driving in a reckless, careless, or otherwise unsafe manner.

(b) ~~"Mobile communication device" means a cellular telephone or other device that enables a person in a motor vehicle to transmit and receive audio signals to and from a person or audio recording device located outside the motor vehicle.~~ "OPERATING A MOTOR VEHICLE" MEANS DRIVING A MOTOR VEHICLE ON A PUBLIC HIGHWAY, BUT "OPERATING A MOTOR VEHICLE" SHALL NOT MEAN MAINTAINING THE INSTRUMENTS OF CONTROL WHILE THE MOTOR VEHICLE IS AT REST IN A SHOULDER LANE OR LAWFULLY PARKED.

(c) "Use" MEANS TALKING ON OR LISTENING TO A WIRELESS TELEPHONE OR ENGAGING THE WIRELESS TELEPHONE FOR TEXT MESSAGING OR OTHER SIMILAR FORMS OF MANUAL DATA ENTRY OR TRANSMISSION.

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

(2) ~~No A person who holds a temporary instruction permit or a minor's instruction permit pursuant to section 42-2-106~~ UNDER EIGHTEEN YEARS OF AGE shall NOT use a ~~mobile communication device~~ WIRELESS TELEPHONE while operating a motor vehicle. ~~This section shall not apply to a person who is using the mobile communication device:~~

~~(a) To contact a public safety entity;~~

~~(b) While the vehicle is lawfully parked; or~~

~~(c) During an emergency.~~

(3) A PERSON EIGHTEEN YEARS OF AGE OR OLDER SHALL NOT USE A WIRELESS TELEPHONE FOR THE PURPOSE OF ENGAGING IN TEXT MESSAGING OR OTHER SIMILAR FORMS OF MANUAL DATA ENTRY OR TRANSMISSION WHILE OPERATING A MOTOR VEHICLE.

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

(a) TO CONTACT A PUBLIC SAFETY ENTITY; OR

(b) DURING AN EMERGENCY.

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

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

~~(4)~~ (6) (a) An operator of a motor vehicle shall not be cited for a violation of subsection (2) of this section unless ~~such operator was stopped by~~ THE OPERATOR WAS UNDER EIGHTEEN YEARS OF AGE AND a law enforcement officer ~~for an alleged violation of articles 1 to 4 of this title other than a violation of this section~~ SAW THE OPERATOR USE, AS DEFINED IN PARAGRAPH (c) OF SUBSECTION (1) OF THIS SECTION, A WIRELESS TELEPHONE.

(b) AN OPERATOR OF A MOTOR VEHICLE SHALL NOT BE CITED FOR A VIOLATION OF SUBSECTION (3) OF THIS SECTION UNLESS THE OPERATOR WAS EIGHTEEN YEARS OF AGE OR OLDER AND A LAW ENFORCEMENT OFFICER SAW THE OPERATOR USE A WIRELESS TELEPHONE FOR THE PURPOSE OF ENGAGING IN TEXT MESSAGING OR OTHER SIMILAR FORMS OF MANUAL DATA ENTRY OR TRANSMISSION.

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

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

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

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

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

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

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

**SECTION 4. Safety clause.** The general assembly hereby finds,

determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

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Terrance D. Carroll  
SPEAKER OF THE HOUSE  
OF REPRESENTATIVES

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Brandon C. Shaffer  
PRESIDENT OF  
THE SENATE

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Marilyn Eddins  
CHIEF CLERK OF THE HOUSE  
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Karen Goldman  
SECRETARY OF  
THE SENATE

APPROVED \_\_\_\_\_

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Bill Ritter, Jr.  
GOVERNOR OF THE STATE OF COLORADO