

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

REREVISED

*This Version Includes All Amendments
Adopted in the Second House*

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.*

SENATE
3rd Reading Unamended
May 5, 2009

SENATE
Amended 2nd Reading
May 4, 2009

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~~ 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
17 or 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
23 (c) "OPERATING A MOTOR VEHICLE" MEANS DRIVING A MOTOR
24 VEHICLE ON A PUBLIC HIGHWAY BUT DOES NOT MEAN MAINTAINING THE
25 INSTRUMENTS OF CONTROL WHILE THE MOTOR VEHICLE IS AT REST IN A
26 SHOULDER LANE OR LAWFULLY PARKED.

1 (d) "USE" MEANS TALKING ON OR LISTENING TO A WIRELESS
2 TELEPHONE OR ENGAGING THE WIRELESS TELEPHONE FOR TEXT
3 MESSAGING OR OTHER FORMS OF MANUAL DATA ENTRY OR TRANSMISSION.

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

8 (2) No A person who holds a temporary instruction permit or a
9 minor's instruction permit pursuant to section 42-2-106 EIGHTEEN YEARS
10 OF AGE OR YOUNGER shall NOT use a mobile communication device
11 WIRELESS TELEPHONE FOR THE PURPOSE OF ENGAGING IN TEXT MESSAGING
12 OR OTHER FORMS OF MANUAL DATA ENTRY OR TRANSMISSION while
13 operating a motor vehicle This section shall not apply to a person who is
14 using the mobile communication device: WHILE THE VEHICLE IS IN
15 MOTION.

16 (a) To contact a public safety entity;

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

18 (c) During an emergency.

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

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

22 (b) DURING AN EMERGENCY.

23 ~~(3)~~ (4) (a) ~~Any~~ A person who operates a motor vehicle in violation
24 of subsection (2) of this section commits a class A traffic infraction as
25 defined in section 42-4-1701 (3), AND THE COURT OR THE DEPARTMENT
26 OF REVENUE SHALL ASSESS A FINE OF FIFTY DOLLARS.

27 (b) A SECOND OR SUBSEQUENT VIOLATION OF SUBSECTION (2)

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

4 (5) A DRIVER IN A MOTOR VEHICLE SHALL NOT BE CITED FOR A
5 VIOLATION OF SUBSECTION (3) OF THIS SECTION UNLESS SUCH DRIVER WAS
6 STOPPED BY A LAW ENFORCEMENT OFFICER FOR AN ALLEGED VIOLATION
7 OF ARTICLES 1 TO 4 OF THIS TITLE OTHER THAN A VIOLATION OF THIS
8 SECTION.

9 ~~(4)~~ (6) An operator of a motor vehicle shall not be cited for a
10 violation of subsection (2) of this section unless ~~such operator was~~
11 ~~stopped by a law enforcement officer for an alleged violation of articles~~
12 ~~1 to 4 of this title other than a violation of this section~~ SAW THE PERSON
13 USE, AS DEFINED IN PARAGRAPH (d) OF SUBSECTION (1) OF THIS SECTION,
14 A WIRELESS TELEPHONE.

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

18
19 (8) THIS SECTION DOES NOT RESTRICT OPERATION OF AN AMATEUR
20 RADIO STATION BY A PERSON WHO HOLDS A VALID AMATEUR RADIO
21 OPERATOR LICENSE ISSUED BY THE FEDERAL COMMUNICATIONS
22 COMMISSION.

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

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

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

19	Section Violated	Penalty	Surcharge
20	(P) Offenses by persons controlling vehicles:		
21	42-4-239 <u>(4)</u> (a)	\$ 50.00	\$6.00
22	42-4-239 <u>(4)</u> (b)	\$100.00	\$6.00
23	42-4-1704	\$ 15.00	\$6.00

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

26 **42-1-217. Disposition of fines and surcharges.** (1) All judges,
27 clerks of a court of record, or other officers imposing or receiving fines,

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

8 (f) NOTWITHSTANDING ANY OTHER PROVISION OF LAW TO THE
9 CONTRARY, TEN PERCENT OF ANY FINE, PENALTY, OR FORFEITURE FOR A
10 VIOLATION OF SECTION 42-4-239 SHALL BE TRANSMITTED TO THE STATE
11 TREASURER, AND CREDITED TO THE GENERAL FUND. == THE REMAINING
12 NINETY PERCENT OF ANY FINE, PENALTY, OR FORFEITURE FOR A VIOLATION
13 OF SECTION 42-4-239 SHALL BE TRANSMITTED TO THE STATE TREASURER,
14 CREDITED TO THE HIGHWAY USERS TAX FUND, AND ALLOCATED AND
15 EXPENDED AS SPECIFIED IN SECTION 43-4-205 (5.5) (a), C.R.S.

16 == ==
17 **SECTION 4. Appropriation.** In addition to any other
18 appropriation, there is hereby appropriated, out of any moneys in the
19 general fund not otherwise appropriated, to the department of revenue, for
20 allocation to the division of motor vehicles, for the fiscal year beginning
21 July 1, 2009, the sum of thirty-eight thousand six hundred fifty-three
22 dollars (\$38,653) and 0.9 FTE, or so much thereof as may be necessary,
23 for the implementation of this act.

24 ==
25 **SECTION 5. Effective date - applicability.** This act shall take
26 effect December 1, 2009, and shall apply to offenses committed on or
27 after said date.

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