

Second Regular Session
Seventy-first General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 18-0088.01 Yelana Love x2295

SENATE BILL 18-049

SENATE SPONSORSHIP

Court,

HOUSE SPONSORSHIP

Melton,

Senate Committees

State, Veterans, & Military Affairs

House Committees

A BILL FOR AN ACT

101 CONCERNING THE USE OF MOBILE ELECTRONIC DEVICES WHILE
102 DRIVING.

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov>.)

Current law prohibits the use of wireless telephones while driving for individuals who are younger than 18 years of age. The bill:

- ! Extends the prohibition to drivers of all ages;
- ! Increases the penalty for minor drivers from \$50 per violation to \$300 per violation, to match the penalty that currently applies to adult drivers;

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters or bold & italic numbers indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

- ! Extends the existing prohibition of the use of wireless telephones to include all mobile electronic devices;
- ! Creates an exception to the prohibition of the use of mobile electronic devices for adult drivers who use a mobile electronic device through the use of a hands-free device; and
- ! Repeals a sentence enhancement for a violation that causes a bodily injury or death.

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

2 **SECTION 1.** In Colorado Revised Statutes, **amend** 42-4-239 as
3 follows:

4 **42-4-239. Use of a mobile electronic device - definitions -**
5 **penalty - preemption.** (1) As used in this section, unless the context
6 otherwise 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 ~~wireless telephone~~ MOBILE ELECTRONIC
11 DEVICE 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) "FIRST RESPONDER" MEANS:

17 (I) A PEACE OFFICER, AS DEFINED IN SECTION 16-2.5-101;

18 (II) A FIREFIGHTER, AS DEFINED IN SECTION 29-5-203;

19 (III) A VOLUNTEER FIREFIGHTER, AS DEFINED IN SECTION
20 31-30-1102; AND

21 (IV) ANY OTHER PERSON WHO RESPONDS IN A PROFESSIONAL

1 CAPACITY TO A PUBLIC SAFETY EMERGENCY.

2 (c) "HANDS-FREE DEVICE" MEANS A DEVICE THAT ENABLES A
3 PERSON TO USE A MOBILE ELECTRONIC DEVICE WITHOUT USING EITHER
4 HAND, REGARDLESS OF WHETHER THE USE OF EITHER HAND IS NECESSARY
5 TO ACTIVATE, DEACTIVATE, OR INITIATE A FUNCTION OF THE MOBILE
6 ELECTRONIC DEVICE.

7 (d) "MOBILE ELECTRONIC DEVICE" MEANS A HANDHELD OR
8 PORTABLE ELECTRONIC DEVICE CAPABLE OF PROVIDING AMUSEMENT,
9 WIRELESS DATA, OR VOICE COMMUNICATION BETWEEN TWO OR MORE
10 PERSONS, INCLUDING:

11 (I) A CELLULAR TELEPHONE;

12 (II) A BROADBAND PERSONAL COMMUNICATION DEVICE;

13 (III) A TWO-WAY MESSAGING DEVICE;

14 (IV) A TEXT-MESSAGING DEVICE;

15 (V) A PAGER;

16 (VI) AN ELECTRONIC DEVICE THAT CAN RECEIVE OR TRANSMIT
17 TEXT OR CHARACTER-BASED IMAGES, ACCESS OR STORE DATA, OR
18 CONNECT TO THE INTERNET;

19 (VII) A PERSONAL DIGITAL ASSISTANT;

20 (VIII) A LAPTOP COMPUTER;

21 (IX) A COMPUTER TABLET;

22 (X) A STAND-ALONE COMPUTER;

23 (XI) A PORTABLE COMPUTING DEVICE;

24 (XII) A MOBILE DEVICE WITH A TOUCHSCREEN DISPLAY THAT IS
25 DESIGNED TO BE WORN ON THE BODY;

26 (XIII) AN ELECTRONIC GAME;

27 (XIV) EQUIPMENT THAT IS CAPABLE OF PLAYING A VIDEO, TAKING

1 PHOTOGRAPHS, CAPTURING IMAGES, OR RECORDING OR TRANSMITTING
2 VIDEO; AND

3 (XV) ANY SIMILAR DEVICE THAT IS READILY REMOVABLE FROM A
4 MOTOR VEHICLE AND IS USED TO WRITE, SEND, OR READ TEXT OR DATA OR
5 CAPTURE IMAGES OR VIDEO THROUGH MANUAL INPUT.

6 ~~(b)~~ (e) "Operating a motor vehicle" means driving a motor vehicle
7 on a public highway, but "operating a motor vehicle" ~~shall~~ DOES not mean
8 maintaining the instruments of control while the motor vehicle is at rest
9 in a shoulder lane, ~~or~~ lawfully parked, OR OTHERWISE LAWFULLY AT REST.

10 ~~(c)~~ (f) "Use" means talking on or listening to a ~~wireless telephone~~
11 MOBILE ELECTRONIC DEVICE or engaging the ~~wireless telephone~~ MOBILE
12 ELECTRONIC DEVICE for text messaging, GAME PLAY, or other ~~similar~~
13 forms of manual data entry or transmission.

14 ~~(d) "Wireless telephone" means a telephone that operates without~~
15 ~~a physical, wireline connection to the provider's equipment. The term~~
16 ~~includes, without limitation, cellular and mobile telephones.~~

17 (2) A person under eighteen years of age shall not use a ~~wireless~~
18 ~~telephone~~ MOBILE ELECTRONIC DEVICE while operating a motor vehicle
19 ~~This subsection (2) does not apply to acts specified in subsection (3) of~~
20 ~~this section.~~ UNLESS USED:

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

22 (b) DURING AN EMERGENCY.

23 (3) A person EIGHTEEN YEARS OF AGE OR OLDER shall not use a
24 ~~wireless telephone for the purpose of engaging in text messaging or other~~
25 ~~similar forms of manual data entry or transmission~~ MOBILE ELECTRONIC
26 DEVICE while operating a motor vehicle UNLESS USED:

27 (a) TO CONTACT A PUBLIC SAFETY ENTITY;

1 (b) DURING AN EMERGENCY; OR

2 (c) THROUGH THE USE OF A HANDS-FREE DEVICE.

3 ~~(4) Subsection (2) or (3) of this section shall not apply to a person~~
4 ~~who is using the wireless telephone:~~

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

6 ~~(b) During an emergency.~~

7 (5)(a) (4) A person who operates a motor vehicle in violation of
8 subsection (2) of this section commits a class A traffic infraction as
9 defined in section 42-4-1701 (3), and the court or the department of
10 revenue shall assess a fine of ~~fifty~~ THREE HUNDRED dollars.

11 ~~(b) A second or subsequent violation of subsection (2) of this~~
12 ~~section is a class A traffic infraction as defined in section 42-4-1701 (3);~~
13 ~~and the court or the department of revenue shall assess a fine of one~~
14 ~~hundred dollars.~~

15 ~~(5.5)(a) (5) Except as provided in subsections (5.5)(b) and~~
16 ~~(5.5)(c) of this section, A person who operates a motor vehicle in~~
17 ~~violation of subsection (3) of this section commits a class 2 misdemeanor~~
18 ~~traffic offense, and the court or the department shall assess a fine of three~~
19 ~~hundred dollars.~~

20 ~~(b) If the person's actions are the proximate cause of bodily injury~~
21 ~~to another, the person commits a class 1 misdemeanor traffic offense and~~
22 ~~shall be punished as provided in section 42-4-1701 (3)(a)(H).~~

23 ~~(c) If the person's actions are the proximate cause of death to~~
24 ~~another, the person commits a class 1 misdemeanor traffic offense and~~
25 ~~shall be punished as provided in section 42-4-1701 (3)(a)(H).~~

26 (6) (a) An operator of a motor vehicle shall not be cited for a
27 violation of subsection (2) of this section unless the operator was under

1 ~~eighteen years of age and a law enforcement officer saw the operator use~~
2 ~~as defined in paragraph (c) of subsection (1) of this section, a wireless~~
3 ~~telephone~~ MOBILE ELECTRONIC DEVICE.

4 ~~(b) An operator of a motor vehicle shall not be cited for a~~
5 ~~violation of subsection (3) of this section unless a law enforcement~~
6 ~~officer saw the operator use a wireless telephone for the purpose of~~
7 ~~engaging in text messaging or other similar forms of manual data entry~~
8 ~~or transmission, in a manner that caused the operator to drive in a careless~~
9 ~~and imprudent manner, without due regard for the width, grade, curves,~~
10 ~~corners, traffic, and use of the streets and highways and all other attendant~~
11 ~~circumstances, as prohibited by section 42-4-1402.~~

12 ~~(7) The provisions of This section shall DOES not be construed to~~
13 ~~authorize the seizure and forfeiture of a wireless telephone~~ MOBILE
14 ELECTRONIC DEVICE, unless otherwise provided by law.

15 (8) This section does not restrict:

16 (a) Operation of an amateur radio station by a person who holds
17 a valid amateur radio operator license issued by the federal
18 communications commission; OR

19 (b) THE USE OF A MOBILE ELECTRONIC DEVICE BY A FIRST
20 RESPONDER USED WITHIN THE SCOPE OF THE FIRST RESPONDER'S DUTIES.

21 (9) The general assembly finds and declares that use of ~~wireless~~
22 ~~telephones~~ MOBILE ELECTRONIC DEVICES in motor vehicles is a matter of
23 statewide concern.

24 **SECTION 2.** In Colorado Revised Statutes, 42-4-1701, **amend**
25 (4)(a)(I)(P) as follows:

26 **42-4-1701. Traffic offenses and infractions classified -**
27 **penalties - penalty and surcharge schedule - repeal.** (4) (a) (I) Except

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

16	Section Violated	Penalty	Surcharge
17	(P) Offenses by persons controlling vehicles:		
18	42-4-239 (5)(a) (4)	\$ 50.00 \$ 300.00	\$ 6.00
19	42-4-239 (5)(b)	100.00	6.00
20	42-4-239 (5.5) (5)	300.00	6.00
21	42-4-1704	15.00	6.00

22 **SECTION 3. Effective date - applicability.** This act takes effect
 23 July 1, 2018, and applies to offenses committed on or after said date.

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