A BILL FOR AN ACT

CONCERNING A LIMITATION ON THE USE OF MOBILE ELECTRONIC DEVICES WHILE DRIVING, AND, IN CONNECTION THEREWITH, MAKING AN APPROPRIATION.

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.)

The bill limits the use of a mobile electronic device while driving to adult drivers who use the mobile electronic device through a hands-free accessory.

The bill establishes penalties of $50 and 2 points for a first violation, $100 and 2 points for a second violation, $200 and 4 points for
a third or subsequent violation, and $300 and 4 points if the violation involves text messaging.

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

SECTION 1. In Colorado Revised Statutes, repeal and reenact, with amendments, 42-4-239 as follows:

42-4-239. Use of a mobile electronic device - definitions - penalty - preemption - legislative declaration. (1) The General Assembly hereby finds and declares that:

(a) Operating a motor vehicle is statistically the most dangerous and potentially fatal thing that people do on a daily basis. Approximately two Coloradans die each day through incidents involving motor vehicles, according to the Colorado Department of Transportation, referred to in this section as "CDOT". A major factor that increases the danger is widespread and irresponsible cellular phone usage while driving.

(b) Since the invention of the smartphone, the device has become cheaper, more accessible, and more widely used. This increase in phone usage while driving has brought an increase in motor-vehicle-related deaths, as drivers who use phones have their manual, visual, and cognitive attention diverted away from their primary task of driving. Traffic fatalities in Colorado increased twenty-four percent between 2017 and 2018.

(c) It is clear that phone usage while driving is a significant problem. In a survey conducted by CDOT, fifty-three percent of respondents admitted to holding their phone while driving their cars in the week prior to the survey. An increase in the number of drivers using cell phones poses a substantial
HEALTH AND SAFETY RISK TO COLORADANS. REMOVING PHONES FROM
THE HANDS OF DRIVERS WILL REDUCE DISTRACTED DRIVING AND SAVE
LIVES.

(2) 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 THE PERSON'S LIFE OR SAFETY OR
BELIEVES THAT A CRIMINAL ACT MAY BE PERPETRATED AGAINST THE
PERSON OR ANOTHER PERSON, REQUIRING THE USE OF A MOBILE
ELECTRONIC DEVICE WHILE THE CAR IS MOVING; OR

(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) "FIRST RESPONDER" MEANS:

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

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

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

(IV) ANY OTHER PERSON WHO Responds IN A PROFESSIONAL
CAPACITY TO A PUBLIC SAFETY EMERGENCY.

(c) "HANDS-FREE ACCESSORY" MEANS AN ACCESSORY THAT
ENABLES A PERSON TO USE A MOBILE ELECTRONIC DEVICE WITHOUT USING
EITHER HAND, ALTHOUGH THE USE OF EITHER HAND MAY BE NECESSARY
TO ACTIVATE, DEACTIVATE, OR INITIATE A FUNCTION OF THE MOBILE
ELECTRONIC DEVICE.

(d) (I) "MOBILE ELECTRONIC DEVICE" MEANS A HANDHELD OR
PORTABLE ELECTRONIC DEVICE CAPABLE OF PROVIDING VOICE COMMUNICATION BETWEEN TWO OR MORE PERSONS, AMUSEMENT, OR WIRELESS DATA.

(II) "MOBILE ELECTRONIC DEVICE" DOES NOT INCLUDE:

(A) AN APPROVED IGNITION INTERLOCK DEVICE, AS DEFINED IN SECTION 42-2-132.5;

(B) A MEDICAL DEVICE; OR

(C) AN ORIGINAL EQUIPMENT SCREEN OR CONTROL USED TO OPERATE A MOBILE ELECTRONIC DEVICE REMOTELY.

(e) "USE" MEANS:

(I) PHYSICALLY HOLDING OR SUPPORTING A MOBILE ELECTRONIC DEVICE WITH ANY PART OF THE BODY; EXCEPT THAT A PERSON MAY USE AN EARPIECE OR HEADPHONE DEVICE TO CONDUCT A VOICE-BASED COMMUNICATION;

(II) WRITING, SENDING, OR READING ANY TEXT-BASED COMMUNICATION, INCLUDING A TEXT MESSAGE, INSTANT MESSAGE, E-MAIL, OR INTERNET DATA ON A MOBILE ELECTRONIC DEVICE, PROVIDED THAT THIS PROHIBITION DOES NOT APPLY TO:

(A) A VOICE-BASED COMMUNICATION THAT IS AUTOMATICALLY CONVERTED BY THE MOBILE ELECTRONIC DEVICE TO BE SENT AS A MESSAGE IN WRITTEN FORM; OR

(B) THE USE OF A MOBILE ELECTRONIC DEVICE FOR NAVIGATION OF A MOTOR VEHICLE OR FOR GLOBAL POSITIONING SYSTEM PURPOSES; OR

(III) WATCHING A VIDEO OR MOVIE ON A MOBILE ELECTRONIC DEVICE OTHER THAN WATCHING DATA RELATED TO THE NAVIGATION OF THE MOTOR VEHICLE.

(3) EXCEPT AS SPECIFIED IN SUBSECTION (4) OF THIS SECTION:
(a) A PERSON UNDER EIGHTEEN YEARS OF AGE SHALL NOT DRIVE
A MOTOR VEHICLE WHEN USING A MOBILE ELECTRONIC DEVICE;

(b) A PERSON EIGHTEEN YEARS OF AGE OR OLDER SHALL NOT
DRIVE A MOTOR VEHICLE WHEN USING A MOBILE ELECTRONIC DEVICE
UNLESS THE USE IS THROUGH A HANDS-FREE ACCESSORY.

(4) IT IS NOT A VIOLATION OF THIS SECTION:
(a) TO USE A MOBILE ELECTRONIC DEVICE:
(I) TO CONTACT A PUBLIC SAFETY ENTITY;
(II) DURING AN EMERGENCY;
(III) AS A FIRST RESPONDER WHEN ACTING WITHIN THE SCOPE OF
THE FIRST RESPONDER’S DUTIES;
(IV) WHEN THE MOBILE ELECTRONIC DEVICE IS A TWO-WAY RADIO
USED BY A PROFESSIONAL ACTING WITHIN THE SCOPE OF THE
PROFESSIONAL’S EMPLOYMENT IF THE USE OF THE TWO-WAY RADIO IS
REQUIRED BY THE PROFESSIONAL’S EMPLOYER AND NECESSARY FOR THE
PERFORMANCE OF THE PROFESSIONAL’S DUTIES;
(V) AS A MEMBER OF THE CIVIL AIR PATROL, CREATED IN SECTION
28-1-101;
(VI) TO INTERACT WITH A MEDICAL DEVICE; OR
(VII) IN A MOTOR VEHICLE THAT IS AT REST IN A SHOULDER LANE
OR LAWFULLY PARKED;

(b) TO OPERATE AN AMATEUR RADIO STATION AS A PERSON WHO
Holds A VALID AMATEUR RADIO OPERATOR LICENSE ISSUED BY THE
FEDERAL COMMUNICATIONS COMMISSION.

(5) (a) EXCEPT AS PROVIDED IN SUBSECTION (5)(b) OF THIS
SECTION, A PERSON WHO VIOLATES SUBSECTION (3) OF THIS SECTION
COMMITS A CLASS A TRAFFIC INFRACTION. UPON CONVICTION:
(I) NOTWITHSTANDING SECTION 42-4-1701 (4)(a)(I)(P), THE COURT MAY ASSESS A FINE OF UP TO FIFTY DOLLARS FOR A FIRST OFFENSE;

(II) THE COURT SHALL ASSESS A FINE OF ONE HUNDRED DOLLARS FOR A SECOND OFFENSE; AND

(III) THE COURT SHALL ASSESS A FINE OF TWO HUNDRED DOLLARS FOR A THIRD OR SUBSEQUENT OFFENSE.

(b) A PERSON WHO VIOLATES SUBSECTION (3) OF THIS SECTION TO ENGAGE IN TEXT MESSAGING COMMITS A CLASS 2 MISDEMEANOR TRAFFIC OFFENSE AND, UPON CONVICTION, THE COURT SHALL ASSESS A FINE OF THREE HUNDRED DOLLARS.

(6) A LAW ENFORCEMENT OFFICER SHALL NOT CITE A PERSON OPERATING A MOTOR VEHICLE FOR A VIOLATION OF THIS SECTION UNLESS THE LAW ENFORCEMENT OFFICER SAW THE PERSON HOLD A MOBILE ELECTRONIC DEVICE. A LAW ENFORCEMENT OFFICER SHALL NOT CITE A PERSON FOR THE ENHANCED PENALTY FOR USING A MOBILE ELECTRONIC DEVICE TO ENGAGE IN TEXT MESSAGING UNLESS THE LAW ENFORCEMENT OFFICER SAW THE PERSON ENGAGING IN TEXT MESSAGING ON A MOBILE ELECTRONIC DEVICE.

(7) THIS SECTION DOES NOT AUTHORIZE THE SEIZURE AND FORFEITURE OF A MOBILE ELECTRONIC DEVICE.

(8) THIS SECTION DOES NOT APPLY TO A PERSON OPERATING A COMMERCIAL VEHICLE WITH A COMMERCIAL DRIVER'S LICENSE.

SECTION 2. In Colorado Revised Statutes, 42-2-127, amend (5)(jj) and (5)(jj.5); and add (5)(jj.7) and (5)(jj.9) as follows:

42-2-127. Authority to suspend license - to deny license - type of conviction - points. (5) Point system schedule:

<table>
<thead>
<tr>
<th>Type of conviction</th>
<th>Points</th>
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(jj) A FIRST violation of section 42-4-239 (2) (3) ........... + 2

(jj.5) A SECOND violation of section 42-4-239 (3) ........... 4 2

(jj.7) A THIRD OR SUBSEQUENT VIOLATION OF SECTION

42-4-239 (3) .................................................. 4

(jj.9) A VIOLATION OF SECTION 42-4-239 (3) INVOLVING TEXT

MESSAGING .................................................. 4

SECTION 3. In Colorado Revised Statutes, 42-4-1701, amend

(4)(a)(I)(P) as follows:

42-4-1701. Traffic offenses and infractions classified -
penalties - penalty and surcharge schedule - repeal. (4) (a) (I) Except
as provided in subsection (5)(c) of this section, every person who is
convicted of, who admits liability for, or against whom a judgment is
entered for a violation of this title 42 to which subsection (5)(a) or (5)(b)
of this section applies shall be fined or penalized and have a surcharge
levied in accordance with sections 24-4.1-119 (1)(f) and 24-4.2-104
(1)(b)(I), in accordance with the penalty and surcharge schedule set forth
in subsections (4)(a)(I)(A) to (4)(a)(I)(P) of this section; or, if no penalty
or surcharge is specified in the schedule, the penalty for class A and class
B traffic infractions is fifteen dollars and the surcharge is four dollars.
These penalties and surcharges apply whether the defendant
acknowledges the defendant's guilt or liability in accordance with the
procedure set forth by subsection (5)(a) of this section, 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 are as follows:

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<tr>
<th>Section Violated</th>
<th>Penalty</th>
<th>Surcharge</th>
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<td>Offenses by persons controlling vehicles:</td>
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SECTION 4. Appropriation. For the 2020-21 state fiscal year, $9,000 is appropriated to the department of revenue for use by the division of motor vehicles. This appropriation is from the Colorado DRIVES vehicles services account in the highway users tax fund created in section 42-1-211 (2)(b)(I), C.R.S. To implement this act, the division may use this appropriation for DRIVES maintenance and support.

SECTION 5. Effective date - applicability. This act takes effect July 1, 2020, and applies to offenses committed on or after said date.

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