

Second Regular Session
Seventy-third General Assembly
STATE OF COLORADO

REENGROSSED

*This Version Includes All Amendments
Adopted in the House of Introduction*

LLS NO. 22-0969.01 Jery Payne x2157

SENATE BILL 22-175

SENATE SPONSORSHIP

Hansen and Fields, Coram, Holbert, Kolker, Priola

HOUSE SPONSORSHIP

Ortiz and Roberts,

Senate Committees

Transportation & Energy
Appropriations

House Committees

A BILL FOR AN ACT

101 **CONCERNING THE USE OF MOBILE ELECTRONIC DEVICES WHEN**
102 **DRIVING A MOTOR VEHICLE, AND, IN CONNECTION THEREWITH,**
103 **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>.)

Current law prohibits a person who is under 18 years of age from using a mobile electronic device when driving. The bill applies the prohibition to a person who is 18 years of age or older unless the person is using a hands-free accessory. The following uses are exempted:

- By a person reporting an emergency to state or local

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.

SENATE
3rd Reading Unamended
April 18, 2022

SENATE
Amended 2nd Reading
April 14, 2022

- authorities;
- By an employee or contractor of a utility services provider when responding to a utility emergency;
- By a person operating a commercial truck when using a mobile data terminal that transmits and receives data;
- By a first responder; or
- By a person in a motor vehicle that is lawfully parked.

The penalties for a violation are:

- For a first offense, \$150 and 2 license suspension points;
- For a second offense within 24 months, \$250 and 3 license suspension points; and
- For a third or subsequent offense within 24 months, \$500 and 4 license suspension points.

It is an affirmative defense to a violation if the defendant has not previously committed a violation, produces proof of purchase of a hands-free accessory, and affirms, under penalty of perjury, that the defendant has not previously claimed this affirmative defense.

Current law requires a peace officer who makes a traffic stop to record the demographic information of the violator, whether a citation has been issued, and the violation cited. The bill clarifies that the peace officer must record whether the bill has been violated.

A peace officer is prohibited from stopping a driver or issuing a citation for a violation of the bill unless the officer visually observes the operator using, holding, or physically supporting with any part of the person's body the mobile electronic device.

The executive director of the department of transportation, in consultation with the chief of the Colorado state patrol, will create a campaign raising public awareness of the requirements of the bill and of the dangers of using mobile electronic devices when driving.

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

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

4 **42-4-239. Use of a mobile electronic device - definitions -**
 5 **penalty - preemption - legislative declaration.** (1) AS USED IN THIS
 6 SECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES:

7 (a) "EMERGENCY" MEANS A SITUATION IN WHICH A PERSON:

8 (I) HAS REASON TO FEAR FOR THE PERSON'S LIFE OR SAFETY OR

1 BELIEVES THAT A CRIMINAL ACT MAY BE PERPETRATED AGAINST THE
2 PERSON OR ANOTHER PERSON, REQUIRING THE USE OF A MOBILE
3 ELECTRONIC DEVICE WHEN THE PERSON IS DRIVING A MOTOR VEHICLE; OR

4 (II) REPORTS A FIRE, A TRAFFIC ACCIDENT IN WHICH ONE OR MORE
5 INJURIES ARE APPARENT, A SERIOUS ROAD HAZARD, A MEDICAL OR
6 HAZARDOUS MATERIALS EMERGENCY, OR A PERSON WHO IS DRIVING IN A
7 RECKLESS, CARELESS, OR OTHERWISE UNSAFE MANNER.

8 (b) "FIRST RESPONDER" MEANS:

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

10 (II) A FIREFIGHTER, AS DEFINED IN SECTION 29-5-203 (10);

11 (III) A VOLUNTEER FIREFIGHTER, AS DEFINED IN SECTION
12 31-30-1102 (9)(a);

13 (IV) AN EMERGENCY MEDICAL SERVICE PROVIDER, AS DEFINED IN
14 SECTION 25-3.5-103 (8); OR

15 (V) ANY OTHER PERSON WHO RESPONDS IN A PROFESSIONAL
16 CAPACITY TO A PUBLIC SAFETY EMERGENCY.

17 (c) "HANDS-FREE ACCESSORY" MEANS AN ACCESSORY WITH A
18 FEATURE OR FUNCTION THAT ENABLES A PERSON TO USE A MOBILE
19 ELECTRONIC DEVICE WITHOUT USING EITHER HAND, EXCEPT TO ACTIVATE,
20 DEACTIVATE, OR INITIATE THE FEATURE OR FUNCTION WITH A SINGLE
21 TOUCH OR SINGLE SWIPE.

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

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

27 (A) A RADIO, CITIZENS BAND RADIO, OR CITIZENS BAND RADIO

1 HYBRID;

2 (B) A COMMERCIAL TWO-WAY RADIO COMMUNICATION DEVICE OR

3 ITS FUNCTIONAL EQUIVALENT;

4 (C) A SUBSCRIPTION-BASED EMERGENCY COMMUNICATION

5 DEVICE;

6 (D) A PRESCRIBED MEDICAL DEVICE;

7 (E) AN AMATEUR OR HAM RADIO DEVICE; OR

8 (F) AN IN-VEHICLE SECURITY, NAVIGATION, COMMUNICATIONS, OR

9 REMOTE DIAGNOSTICS SYSTEM.

10 (e) "USE" OR "USING" MEANS:

11 (I) PHYSICALLY HOLDING OR SUPPORTING A MOBILE ELECTRONIC

12 DEVICE WITH ANY PART OF THE BODY; EXCEPT THAT A PERSON MAY USE

13 AN EARPIECE OR HEADPHONE DEVICE TO CONDUCT A VOICE-BASED

14 COMMUNICATION;

15 (II) WATCHING A VIDEO OR MOVIE ON A MOBILE ELECTRONIC

16 DEVICE, OTHER THAN WATCHING DATA RELATED TO THE NAVIGATION OF

17 THE MOTOR VEHICLE; OR

18 (III) WRITING, SENDING, OR READING TEXT-BASED

19 COMMUNICATION, INCLUDING A TEXT MESSAGE, INSTANT MESSAGE,

20 E-MAIL, OR INTERNET DATA ON A MOBILE ELECTRONIC DEVICE; EXCEPT

21 THAT TEXT-BASED COMMUNICATION DOES NOT INCLUDE:

22 (A) A VOICE-BASED COMMUNICATION THAT IS AUTOMATICALLY

23 CONVERTED BY THE MOBILE ELECTRONIC DEVICE TO BE SENT AS A

24 MESSAGE IN WRITTEN FORM; OR

25 (B) COMMUNICATION CONCERNING THE NAVIGATION OF A MOTOR

26 VEHICLE.

27 (2) (a) EXCEPT AS SPECIFIED IN SUBSECTION (2)(b) OF THIS

1 SECTION, A PERSON UNDER EIGHTEEN YEARS OF AGE SHALL NOT DRIVE A
2 MOTOR VEHICLE WHEN USING A MOBILE ELECTRONIC DEVICE.

3 (b) IT IS NOT A VIOLATION OF THIS SUBSECTION (2) TO USE A
4 MOBILE ELECTRONIC DEVICE:

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

6 (II) DURING AN EMERGENCY.

7 (3) (a) EXCEPT AS PROVIDED IN SUBSECTION (3)(b) OF THIS
8 SECTION, A PERSON EIGHTEEN YEARS OF AGE OR OLDER SHALL NOT DRIVE
9 A MOTOR VEHICLE WHEN USING A MOBILE ELECTRONIC DEVICE UNLESS THE
10 USE IS THROUGH A HANDS-FREE ACCESSORY.

11 (b) IT IS NOT A VIOLATION OF THIS SUBSECTION (3) TO USE A
12 MOBILE ELECTRONIC DEVICE:

13 (I) WHEN REPORTING AN EMERGENCY TO STATE OR LOCAL
14 AUTHORITIES;

15 (II) WHEN AN EMPLOYEE OR CONTRACTOR OF A UTILITY SERVICES
16 PROVIDER IS ACTING WITHIN THE SCOPE OF THE EMPLOYEE'S OR
17 CONTRACTOR'S DUTIES WHEN RESPONDING TO A UTILITY EMERGENCY;

18 (III) WHEN OPERATING A COMMERCIAL TRUCK AND USING A
19 MOBILE DATA TERMINAL THAT TRANSMITS AND RECEIVES DATA;

20 (IV) DURING THE PERFORMANCE OF A FIRST RESPONDER'S OFFICIAL
21 DUTIES; OR

22 (V) WHEN IN A MOTOR VEHICLE THAT IS PARKED.

23 (4) (a) EXCEPT AS PROVIDED FOR IN SUBSECTION (4)(b) OF THIS
24 SECTION, A PERSON WHO VIOLATES THIS SECTION COMMITS A CLASS A
25 TRAFFIC INFRACTION. UPON CONVICTION, THE COURT SHALL ASSESS:

26 (I) A FINE OF SEVENTY-FIVE DOLLARS IF THE DEFENDANT HAS
27 NOT VIOLATED THIS SECTION WITHIN THE IMMEDIATELY PRECEDING

1 TWENTY-FOUR MONTHS, AS MEASURED FROM THE DATE OF ANY PREVIOUS
2 CONVICTION TO THE DATE OF THE CURRENT CONVICTION;

3 (II) A FINE OF ONE HUNDRED FIFTY DOLLARS FOR A SECOND
4 CONVICTION WITHIN THE IMMEDIATELY PRECEDING TWENTY-FOUR
5 MONTHS, AS MEASURED FROM THE DATE OF ANY PREVIOUS CONVICTION TO
6 THE DATE OF THE CURRENT CONVICTION; AND

7 (III) A FINE OF TWO HUNDRED FIFTY DOLLARS FOR A THIRD OR
8 SUBSEQUENT CONVICTION WITHIN THE IMMEDIATELY PRECEDING
9 TWENTY-FOUR MONTHS, AS MEASURED FROM THE DATE OF THE FIRST
10 PREVIOUS CONVICTION TO THE DATE OF THE CURRENT CONVICTION.

11 (b)(I) A PERSON CHARGED WITH VIOLATING SUBSECTION (3)(a) OF
12 THIS SECTION SHALL NOT BE CONVICTED IF THE PERSON:

13 (A) PRODUCES A HANDS-FREE ACCESSORY OR PROOF OF PURCHASE
14 OF A HANDS-FREE ACCESSORY; AND

15 (B) AFFIRMS UNDER PENALTY OF PERJURY THAT THE DEFENDANT
16 HAS NOT PREVIOUSLY HAD A CHARGE DISMISSED UNDER THIS SUBSECTION
17 (4)(b).

18 (II) THE COURT CLERK MAY DISMISS THE CHARGE IF THE CLERK
19 VERIFIES THAT THE PERSON HAS COMPLIED WITH BOTH SUBSECTIONS
20 (4)(b)(I)(A) AND (4)(b)(I)(B) OF THIS SECTION.

21 (c) THIS SECTION DOES NOT APPLY TO A PERSON WITH A
22 COMMERCIAL DRIVER'S LICENSE WHO IS OPERATING A COMMERCIAL
23 VEHICLE.

24 (5) (a) WHEN A PEACE OFFICER ISSUES A CITATION FOR A
25 VIOLATION OF THIS SECTION, THE PEACE OFFICER SHALL, WHEN
26 COMPLYING WITH SECTION 24-31-309 (3.5), RECORD THAT THE PERSON
27 WAS ISSUED A CITATION FOR A VIOLATION OF THIS SECTION.

1 (b) A PEACE OFFICER SHALL NOT STOP A DRIVER OR ISSUE THE
2 DRIVER A CITATION FOR A VIOLATION OF THIS SECTION UNLESS THE
3 OFFICER VISUALLY OBSERVES THE DRIVER USING THE MOBILE ELECTRONIC
4 DEVICE.

5 (6) THIS SECTION DOES NOT AUTHORIZE THE SEIZURE AND
6 FORFEITURE OF A WIRELESS TELEPHONE, UNLESS OTHERWISE PROVIDED BY
7 LAW. PRIOR TO REQUESTING CONSENT TO SEARCH A MOBILE ELECTRONIC
8 DEVICE AS PART OF AN INVESTIGATION OF A VIOLATION OF THIS SECTION,
9 A PEACE OFFICER SHALL COMPLY WITH THE REQUIREMENTS OF SECTION
10 16-3-310.

11 **SECTION 2.** In Colorado Revised Statutes, **add** 43-1-131 as
12 follows:

13 **43-1-131. Mobile electronic device education - repeal.** (1) BY
14 OCTOBER 1, 2022, THE EXECUTIVE DIRECTOR OR THE EXECUTIVE
15 DIRECTOR'S DESIGNEE SHALL, IN CONSULTATION WITH THE CHIEF OF THE
16 COLORADO STATE PATROL, CREATE A CAMPAIGN RAISING PUBLIC
17 AWARENESS OF THE REQUIREMENTS OF SECTION 42-4-239 AND OF THE
18 DANGERS OF USING MOBILE ELECTRONIC DEVICES WHEN DRIVING.

19 (2) THIS SECTION IS REPEALED, EFFECTIVE JULY 1, 2024.

20 **SECTION 3.** In Colorado Revised Statutes, 42-2-127, **amend**
21 (5)(jj) and (5)(jj.5); and **add** (5)(jj.7) as follows:

22 **42-2-127. Authority to suspend license - to deny license - type**
23 **of conviction - points.** (5) Point system schedule:

Type of conviction	Points
(jj) A violation of section 42-4-239 (2) IF THE PERSON HAS NOT 26 BEEN CONVICTED OF THE SAME VIOLATION WITHIN THE IMMEDIATELY 27 PRECEDING 24 MONTHS	+ 2

1	<u>TWENTY-FOUR MONTHS</u>	<u>\$ 50.00 75.00</u>	<u>\$ 6.00 10.00</u>
2	<u>42-4-239 (5)(b) SECOND OFFENSE</u>		
3	<u>WITHIN THE IMMEDIATELY PRECEDING</u>		
4	<u>TWENTY-FOUR MONTHS</u>	<u>100.00 150.00</u>	<u>6.00 10.00</u>
5	<u>42-4-239 (5.5) THIRD OFFENSE</u>		
6	<u>WITHIN THE IMMEDIATELY PRECEDING</u>		
7	<u>TWENTY-FOUR MONTHS</u>	<u>300.00 250.00</u>	<u>6.00 10.00</u>
8	<u>42-4-1704</u>	<u>15.00</u>	<u>6.00</u>

9 **SECTION 5. Appropriation.** (1) For the 2022-23 state fiscal
10 year, \$23,941 is appropriated to the department of revenue. This
11 appropriation is from the Colorado DRIVES Vehicle Services Account
12 in the Highway Users Tax Fund created in section 42-1-211 (2)(b)(I),
13 C.R.S. To implement this act, the department may use this appropriation
14 as follows:

- 15 (a) \$18,900 for DRIVES maintenance and support;
- 16 (b) \$3,168 for the purchase of information technology services;
- 17 and
- 18 (c) \$1,873 for use by the executive director's office for personal
19 services.

20 (2) For the 2022-23 state fiscal year, \$ 3,168 is appropriated to the
21 office of the governor for use by the office of information technology.
22 This appropriation is from reappropriated funds received from the
23 department of revenue under subsection (1)(b) of this section. To
24 implement this act, the office may use this appropriation to provide
25 information technology services for the department of revenue.

26 **SECTION 6. Act subject to petition - effective date -**
27 **applicability.** (1) This act takes effect at 12:01 a.m. on the day following

1 the expiration of the ninety-day period after final adjournment of the
2 general assembly; except that, if a referendum petition is filed pursuant
3 to section 1 (3) of article V of the state constitution against this act or an
4 item, section, or part of this act within such period, then the act, item,
5 section, or part will not take effect unless approved by the people at the
6 general election to be held in November 2022 and, in such case, will take
7 effect on the date of the official declaration of the vote thereon by the
8 governor.

9 (2) This act applies to offenses committed on or after January 1,
10 2023.