



Legislative Council Staff
Nonpartisan Services for Colorado's Legislature

Final Fiscal Note

Drafting Number: LLS 22-0969 **Date:** July 18, 2022
Prime Sponsors: Sen. Hansen; Fields **Bill Status:** Deem Postponed Indefinitely
Rep. Ortiz; Roberts **Fiscal Analyst:** Aaron Carpenter | 303-866-4918
Aaron.Carpenter@state.co.us

Bill Topic: **MOBILE ELECTRONIC DEVICES & MOTOR VEHICLE DRIVING**

Summary of Fiscal Impact:

<input checked="" type="checkbox"/> State Revenue	<input checked="" type="checkbox"/> TABOR Refund
<input checked="" type="checkbox"/> State Expenditure	<input checked="" type="checkbox"/> Local Government
<input type="checkbox"/> State Transfer	<input type="checkbox"/> Statutory Public Entity

The bill would have created a traffic misdemeanor for using an electronic device while driving. The bill would have impacted state and local revenue and would have increased state expenditures starting in FY 2022-23.

Appropriation Summary: For FY 2022-23, the bill would have required and included an appropriation of \$23,941 to the Department of Revenue.

Fiscal Note Status: This fiscal note reflects the reengrossed bill. This bill was not enacted into law; therefore, the impacts identified in this analysis do not take effect.

Table 1
State Fiscal Impacts Under SB 22-175

		Budget Year FY 2022-23	Out Year FY 2023-24
Revenue		-	-
Expenditures	Cash Funds	\$23,941	-
Transfers		-	-
Other Budget Impacts		-	-

Summary of Legislation

Under current law, a person under the age of 18 is prohibited from using a mobile electronic device while driving (a class A traffic infraction, with a fine of \$50 for a first offense and \$100 for a second) and persons over the age of 18 cannot text and drive while operating a motor vehicle (which ranges from a class 2 misdemeanor to a class 1 misdemeanor traffic offense), unless the person is using the phone to contact a public safety entity or during an emergency.

The bill prohibits the use of a mobile electronic device for persons over the age of 18 unless the individual is using a hands-free accessory or:

- is using the device to report an emergency;
- is an employee or contractor of a utility service provider and is acting within the scope of their duties when responding to a utility emergency;
- is operating a commercial truck and using a mobile data terminal;
- is performing the duties of a first responder; or
- is parked.

Penalties. Violations of using a mobile electronic device are misdemeanor traffic offenses with fines from \$75 to \$250 and driver license points from 2 to 4 depending on if multiple offenses occur within 24 months. These penalty ranges apply to all violations, including those committed by persons under the age of 18. A person charged with a violation cannot be convicted if the person provides a hands-free accessory or proof of purchase of a hands free accessory and affirms that the defendant has not previously had a charge dismissed for using an electronic device. The bill does not authorize the seizure and forfeiture of a wireless phone.

Public awareness campaign. The bill requires the Colorado Department of Transportation (CDOT), in consultation with Colorado State Patrol (CSP), to create a public awareness campaign on the requirements of using a mobile electronic device when driving by October 1, 2022.

Comparable Crime Analysis

Legislative Council Staff is required to include certain information in the fiscal note for any bill that creates a new crime, changes the classification of an existing crime, or creates a new factual basis for an existing crime. The following sections outline data on crimes that are comparable to the offense in this bill and discuss assumptions on future rates of criminal convictions resulting from the bill.

Minor use of mobile electronic devices. This bill reclassifies the existing offense of a minor using an mobile electronic device while driving from a class A traffic infraction to a misdemeanor traffic offense. From FY 2018-19 to FY 2020-21, 46 minors have been sentenced for this offense by the state courts. Of the persons convicted, 29 were male and 17 were female. Demographically, 37 were White, 3 were Black/African American, 4 were Hispanic, 1 was Asian, and 1 was classified as "Other."

Adult use of mobile electronic devices. This bill reclassifies the existing offense of adult texting and driving from a class 2 misdemeanor to misdemeanor traffic offense and creates a new offense of using a mobile electronic device while driving, also a misdemeanor traffic offense. To form an estimate on the prevalence of this new crime, the fiscal note analyzed the existing offense of adult texting and

driving as a comparable crime. From FY 2018-19 to FY 2020-21, 74 adults have been convicted and sentenced for this offense by the state courts. Of the persons convicted, 42 were male and 32 were female. Demographically, 68 were White, 3 were Hispanic, and 3 were classified as "Other."

Background

According to a recent [CDOT Driving Behavior Survey](#), selecting entertainment on a device (22 percent) and talking on a hands-free cellphone (16 percent) were the second and third most common driving distractions after eating and drinking (33 percent).

State Revenue

Starting in FY 2022-23, the bill will minimally impact state revenue in the Highway Users Tax Fund (HUTF) and cash funds in the Judicial Department, as described below.

Highway Users Tax Fund. The bill impacts revenue to the HUTF in two ways. First, the bill changes traffic fines by raising the fine for a minor who uses an electronic device and lowering the fine amount for adults who text and drive. Overall, based on Comparable Crime data, the fiscal note estimates that the changes to fines will result in a neutral revenue impact.

Second, revenue will increase from additional traffic misdemeanors from adults using an electronic device that does not include texting and driving. As discussed in the Background section, the majority of drivers claim to comply with this law; therefore, it is assumed that any revenue from traffic fines related to this offense will be minimal. Revenue to the HUTF is distributed to CDOT (65 percent), counties (26 percent), and municipalities (9 percent). Revenue to the HUTF is subject to the state's TABOR limit.

Judicial surcharges and cash funds. The bill will minimally increase state revenue to various judicial cash funds from court fines and fees for the additional traffic offenses of adults using an electronic device that does not include texting and driving. Similar to the HUTF revenue, the fiscal note assumes that this increase will be minimal. Court fines and fees are subject to the state's TABOR limit.

State Expenditures

The bill will increase state cash fund expenditures by up to \$23,941 in FY 2022-23 only in the Department of Revenue (DOR), and will increase state workload in various departments, as described below.

Department of Revenue. In FY 2022-23 only, the bill will increase state expenditures by \$23,941 from the DRIVES Cash Fund to update the department's DRIVES system to reflect the changes to traffic offenses outlined in the bill. This includes \$18,900 for DRIVES programming costs, based on 84 hours of programming at a rate of \$225 per hour, as well as \$5,041 in other implementation costs, which include implementation support to the vendor from DOR staff and quality assurance support from the Office of Information Technology. In addition, workload in the DOR will increase to update policies and manuals, and websites, which can be accomplished within existing appropriations.

Judicial Department. This bill will increase workload and costs for the trial courts in the Judicial Department to process additional criminal case filings. Overall, it is assumed these impacts can be accomplished within existing appropriations. Should a change in funding be required for any agency or division with the Judicial Department, the fiscal note assumes it will be addressed through the annual budget process.

Department of Transportation and Colorado State Patrol. Starting in FY 2022-23, workload in CDOT and the CSP will increase to conduct a public awareness campaign on changes to permissible mobile device use under the bill. CDOT already conducts a public awareness campaign on distracted driving and the fiscal note assumes that the new requirement can be incorporated into the current public awareness campaign. No change in appropriation is required.

Local Government

Beginning in FY 2022-23, this bill will increase local government revenues and expenditures, as discussed below.

HUTF fine revenue. Similar to the state, the bill will minimally decrease local government HUTF revenue generated by traffic fines for transportation needs. Under current law, 26 percent of HUTF revenue goes to counties and 9 percent goes to municipalities.

District and city attorneys. District attorneys will see an increase in workloads to prosecute traffic misdemeanors. It is assumed that these violations will be in conjunction with other traffic offenses, therefore, the expected increase in workload is assumed to be minimal. Traffic offenses prosecuted in a municipal court will increase revenue and workload to that municipality.

Denver County Court. Similar to state-funded courts, the bill will increase revenue, expenditures and workload for the Denver County Court, which is managed and funded by the City and County of Denver.

Effective Date

The bill was deemed postponed indefinitely by the House Appropriations Committee on May 12, 2022.

State Appropriations

For FY 2022-23, the bill requires and includes a \$23,941 appropriation from the DRIVES Cash Fund to the Department of Revenue. Of that amount, \$3,168 is reappropriated to the Office of Information Technology.

State and Local Government Contacts

District Attorneys
Public Safety

Information Technology
Revenue

Judicial
Transportation