

SB012\_L.010

SENATE COMMITTEE OF REFERENCE AMENDMENT

Committee on Transportation & Energy.

SB19-012 be amended as follows:

1 Amend printed bill, strike everything below the enacting clause and  
2 substitute:

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

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

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

9 (I) HAS REASON TO FEAR FOR THE PERSON'S LIFE OR SAFETY OR  
10 BELIEVES THAT A CRIMINAL ACT MAY BE PERPETRATED AGAINST THE  
11 PERSON OR ANOTHER PERSON, REQUIRING THE USE OF A MOBILE  
12 ELECTRONIC DEVICE WHILE THE CAR IS MOVING; OR

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

17 (b) "FIRST RESPONDER" MEANS:

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

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

20 (III) A VOLUNTEER FIREFIGHTER, AS DEFINED IN SECTION  
21 31-30-1102; OR

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

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

29 (d) (I) "MOBILE ELECTRONIC DEVICE" MEANS A HANDHELD OR  
30 PORTABLE ELECTRONIC DEVICE CAPABLE OF PROVIDING AMUSEMENT,  
31 WIRELESS DATA, OR VOICE COMMUNICATION BETWEEN TWO OR MORE  
32 PERSONS, INCLUDING:

33 (A) A CELLULAR TELEPHONE;

34 (B) A BROADBAND PERSONAL COMMUNICATION DEVICE;

35 (C) A TWO-WAY MESSAGING DEVICE;

36 (D) A TEXT-MESSAGING DEVICE;

37 (E) A PAGER;

38 (F) AN ELECTRONIC DEVICE THAT CAN RECEIVE OR TRANSMIT TEXT  
39 OR CHARACTER-BASED IMAGES, ACCESS OR STORE DATA, OR CONNECT TO

1 THE INTERNET;  
2 (G) A PERSONAL DIGITAL ASSISTANT;  
3 (H) A LAPTOP COMPUTER;  
4 (I) A COMPUTER TABLET;  
5 (J) A STAND-ALONE COMPUTER;  
6 (K) A PORTABLE COMPUTING DEVICE;  
7 (L) A MOBILE DEVICE WITH A TOUCHSCREEN DISPLAY THAT IS  
8 DESIGNED TO BE WORN ON THE BODY;  
9 (M) AN ELECTRONIC GAME;  
10 (N) EQUIPMENT THAT IS CAPABLE OF PLAYING A VIDEO, TAKING  
11 PHOTOGRAPHS, CAPTURING IMAGES, OR RECORDING OR TRANSMITTING  
12 VIDEO; AND  
13 (O) ANY SIMILAR DEVICE THAT IS READILY REMOVABLE FROM A  
14 MOTOR VEHICLE AND IS USED TO WRITE, SEND, OR READ TEXT OR DATA OR  
15 CAPTURE IMAGES OR VIDEO THROUGH MANUAL INPUT.  
16 (II) "MOBILE ELECTRONIC DEVICE" DOES NOT INCLUDE AN  
17 APPROVED IGNITION INTERLOCK DEVICE, AS DEFINED IN SECTION  
18 42-2-132.5.  
19 (e) "OPERATING A MOTOR VEHICLE" MEANS DRIVING A MOTOR  
20 VEHICLE ON A PUBLIC HIGHWAY, BUT "OPERATING A MOTOR VEHICLE"  
21 DOES NOT MEAN MAINTAINING THE INSTRUMENTS OF CONTROL WHILE THE  
22 MOTOR VEHICLE IS AT REST IN A SHOULDER LANE OR LAWFULLY PARKED.  
23 (f) "USE" MEANS TALKING ON OR LISTENING TO A MOBILE  
24 ELECTRONIC DEVICE OR ENGAGING THE MOBILE ELECTRONIC DEVICE FOR  
25 TEXT MESSAGING, GAME PLAY, TAKING PHOTOS OR VIDEOS, OR OTHER  
26 FORMS OF MANUAL DATA ENTRY OR TRANSMISSION.  
27 (2) EXCEPT AS SPECIFIED IN SUBSECTIONS (3) AND (7) OF THIS  
28 SECTION:  
29 (a) A PERSON UNDER THE AGE OF EIGHTEEN SHALL NOT OPERATE A  
30 MOTOR VEHICLE WHILE USING A MOBILE ELECTRONIC DEVICE;  
31 (b) A PERSON EIGHTEEN YEARS OF AGE OR OLDER SHALL NOT  
32 OPERATE A MOTOR VEHICLE WHILE USING A MOBILE ELECTRONIC DEVICE  
33 UNLESS THE USE IS THROUGH A HANDS-FREE ACCESSORY.  
34 (3) IT IS NOT A VIOLATION OF THIS SECTION TO USE A MOBILE  
35 ELECTRONIC DEVICE WHILE DRIVING IF THE USE IS:  
36 (a) TO CONTACT A PUBLIC SAFETY ENTITY; OR  
37 (b) DURING AN EMERGENCY.  
38 (4) (a) EXCEPT AS PROVIDED IN SUBSECTION (4)(b) OF THIS  
39 SECTION, A PERSON WHO VIOLATES SUBSECTION (2) OF THIS SECTION  
40 COMMITS A CLASS A TRAFFIC INFRACTION. UPON CONVICTION:  
41 (I) NOTWITHSTANDING SECTION 42-4-1701 (4)(a)(I)(P), THE  
42 COURT MAY ASSESS A FINE UP TO FIFTY DOLLARS FOR A FIRST OFFENSE;  
43 (II) THE COURT SHALL ASSESS A FINE OF ONE HUNDRED FIFTY  
44 DOLLARS FOR A SECOND OFFENSE; AND  
45 (III) THE COURT SHALL ASSESS A FINE OF THREE HUNDRED

1 DOLLARS FOR A THIRD OR SUBSEQUENT OFFENSE.

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

6 (5) A LAW ENFORCEMENT OFFICER SHALL NOT CITE AN OPERATOR  
7 OF A MOTOR VEHICLE FOR A VIOLATION OF THIS SECTION UNLESS THE LAW  
8 ENFORCEMENT OFFICER SAW THE OPERATOR HOLD A MOBILE ELECTRONIC  
9 DEVICE. A LAW ENFORCEMENT OFFICER SHALL NOT CITE AN OPERATOR FOR  
10 THE ENHANCED PENALTY FOR USING A MOBILE ELECTRONIC DEVICE TO  
11 ENGAGE IN TEXT MESSAGING UNLESS THE LAW ENFORCEMENT OFFICER  
12 SAW THE OPERATOR ENGAGING IN TEXT MESSAGING ON A MOBILE  
13 ELECTRONIC DEVICE.

14 (6) THIS SECTION DOES NOT AUTHORIZE THE SEIZURE AND  
15 FORFEITURE OF A MOBILE ELECTRONIC DEVICE, UNLESS OTHERWISE  
16 PROVIDED BY LAW.

17 (7) THIS SECTION DOES NOT PROHIBIT:

18 (a) OPERATION OF AN AMATEUR RADIO STATION BY A PERSON WHO  
19 HOLDS A VALID AMATEUR RADIO OPERATOR LICENSE ISSUED BY THE  
20 FEDERAL COMMUNICATIONS COMMISSION;

21 (b) THE USE OF A MOBILE ELECTRONIC DEVICE BY A FIRST  
22 RESPONDER WHEN ACTING WITHIN THE SCOPE OF THE FIRST RESPONDER'S  
23 DUTIES; OR

24 (c) THE USE OF A MOBILE ELECTRONIC DEVICE IN A MOTOR  
25 VEHICLE THAT IS AT REST IN A SHOULDER LANE OR LAWFULLY PARKED.

26 (8) THE GENERAL ASSEMBLY FINDS AND DECLARES THAT USE OF  
27 MOBILE ELECTRONIC DEVICES IN MOTOR VEHICLES IS A MATTER OF  
28 STATEWIDE CONCERN.

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

31 **42-2-127. Authority to suspend license - to deny license - type**  
32 **of conviction - points.** (5) Point system schedule:

Type of conviction	Points
(jj) A FIRST violation of section 42-4-239 (2) . . . . .	† 2
(jj.5) A SECOND violation of section 42-4-239 (3) (2) . . . . .	4
(jj.7) A THIRD OR SUBSEQUENT VIOLATION OF SECTION 42-4-239 (2) . . . . .	4
(jj.9) A VIOLATION OF SECTION 42-4-239 (2) INVOLVING TEXT MESSAGING . . . . .	4

40 **SECTION 3.** In Colorado Revised Statutes, 42-4-1701, amend  
41 (4)(a)(I)(P) as follows:

42 **42-4-1701. Traffic offenses and infractions classified -**  
43 **penalties - penalty and surcharge schedule - repeal.** (4) (a) (I) Except  
44 as provided in subsection (5)(c) of this section, every person who is  
45 convicted of, who admits liability for, or against whom a judgment is

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

14 Section Violated	Penalty	Surcharge
15 (P) Offenses by persons controlling vehicles:		
16 42-4-239 <del>(5)(a)</del> (4)(a)(I)	\$ 50.00	\$ 6.00
17 42-4-239 <del>(5)(b)</del> (4)(a)(II)	<del>100.00</del> 150.00	6.00
18 42-4-239 <del>(5.5)</del> (4)(a)(III)	300.00	6.00
19 42-4-239 (4)(b)	300.00	6.00
20 42-4-1704	15.00	6.00

21 **SECTION 4. Effective date - applicability.** This act takes effect  
 22 July 1, 2019, and applies to offenses committed on or after said date.

23 **SECTION 5. Safety clause.** The general assembly hereby finds,  
 24 determines, and declares that this act is necessary for the immediate  
 25 preservation of the public peace, health, and safety."

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