

Second Regular Session
Seventy-third General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 22-0969.01 Jery Payne x2157

SENATE BILL 22-175

SENATE SPONSORSHIP

Hansen and Fields, Coram

HOUSE SPONSORSHIP

(None),

Senate Committees
Transportation & Energy

House Committees

A BILL FOR AN ACT

101 CONCERNING THE USE OF MOBILE ELECTRONIC DEVICES WHEN
102 DRIVING A MOTOR VEHICLE.

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 authorities;

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.

- 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
 9 BELIEVES THAT A CRIMINAL ACT MAY BE PERPETRATED AGAINST THE

1 PERSON OR ANOTHER PERSON, REQUIRING THE USE OF A MOBILE
2 ELECTRONIC DEVICE WHEN THE PERSON IS DRIVING A MOTOR VEHICLE; OR

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

7 (b) "FIRST RESPONDER" MEANS:

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

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

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

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

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

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

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

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

26 (A) A RADIO, CITIZENS BAND RADIO, OR CITIZENS BAND RADIO
27 HYBRID;

1 (B) A COMMERCIAL TWO-WAY RADIO COMMUNICATION DEVICE OR
2 ITS FUNCTIONAL EQUIVALENT;

3 (C) A SUBSCRIPTION-BASED EMERGENCY COMMUNICATION
4 DEVICE;

5 (D) A PRESCRIBED MEDICAL DEVICE;

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

7 (F) AN IN-VEHICLE SECURITY, NAVIGATION, COMMUNICATIONS, OR
8 REMOTE DIAGNOSTICS SYSTEM.

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

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

14 (II) WATCHING A VIDEO OR MOVIE ON A MOBILE ELECTRONIC
15 DEVICE, OTHER THAN WATCHING DATA RELATED TO THE NAVIGATION OF
16 THE MOTOR VEHICLE; OR

17 (III) WRITING, SENDING, OR READING TEXT-BASED
18 COMMUNICATION, INCLUDING A TEXT MESSAGE, INSTANT MESSAGE,
19 E-MAIL, OR INTERNET DATA ON A MOBILE ELECTRONIC DEVICE; EXCEPT
20 THAT TEXT-BASED COMMUNICATION DOES NOT INCLUDE:

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

24 (B) COMMUNICATION CONCERNING THE NAVIGATION OF A MOTOR
25 VEHICLE.

26 (2) (a) EXCEPT AS SPECIFIED IN SUBSECTION (2)(b) OF THIS
27 SECTION, A PERSON UNDER EIGHTEEN YEARS OF AGE SHALL NOT DRIVE A

1 MOTOR VEHICLE WHEN USING A MOBILE ELECTRONIC DEVICE.

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

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

5 (II) DURING AN EMERGENCY.

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

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

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

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

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

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

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

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

26 (I) A FINE OF UP TO ONE HUNDRED FIFTY DOLLARS IF THE
27 DEFENDANT HAS NOT VIOLATED THIS SECTION WITHIN THE IMMEDIATELY

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

3 (II) A FINE OF UP TO TWO 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 UP TO FIVE HUNDRED 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) IT IS AN AFFIRMATIVE DEFENSE TO A VIOLATION OF SUBSECTION
12 (3)(a) OF THIS SECTION IF THE DEFENDANT:

13 (I) HAS NOT PREVIOUSLY VIOLATED SUBSECTION (3)(a) OF THIS
14 SECTION;

15 (II) PRODUCES IN COURT A HANDS-FREE ACCESSORY OR PROOF OF
16 PURCHASE OF A HANDS-FREE ACCESSORY; AND

17 (III) AFFIRMS, UNDER PENALTY OF PERJURY, THAT THE DEFENDANT
18 HAS NOT PREVIOUSLY CLAIMED THE AFFIRMATIVE DEFENSE AUTHORIZED
19 IN THIS SUBSECTION (4)(b).

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

24 (b) A PEACE OFFICER SHALL NOT STOP A DRIVER OR ISSUE THE
25 DRIVER A CITATION FOR A VIOLATION OF THIS SECTION UNLESS THE
26 OFFICER VISUALLY OBSERVES THE DRIVER USING, HOLDING, OR
27 PHYSICALLY SUPPORTING WITH ANY PART OF THE DRIVER'S BODY THE

1 MOBILE ELECTRONIC DEVICE.

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

4 43-1-131. Mobile electronic device education - repeal. (1) BY
5 JULY 1, 2022, THE EXECUTIVE DIRECTOR OR THE EXECUTIVE DIRECTOR'S
6 DESIGNEE SHALL, IN CONSULTATION WITH THE CHIEF OF THE COLORADO
7 STATE PATROL, CREATE A CAMPAIGN RAISING PUBLIC AWARENESS OF THE
8 REQUIREMENTS OF SECTION 42-4-239 AND OF THE DANGERS OF USING
9 MOBILE ELECTRONIC DEVICES WHEN DRIVING.

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

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

13 42-2-127. Authority to suspend license - to deny license - type
14 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 BEEN CONVICTED OF THE SAME VIOLATION WITHIN THE IMMEDIATELY PRECEDING 24 MONTHS	+ 2
(jj.5) A SECOND violation of section 42-4-239 WITHIN THE IMMEDIATELY PRECEDING 24 MONTHS	4 3
(jj.7) A THIRD OR SUBSEQUENT VIOLATION OF SECTION 42-4-239 WITHIN THE IMMEDIATELY PRECEDING 24 MONTHS	4

23 SECTION 4. Act subject to petition - effective date -
24 applicability. (1) This act takes effect at 12:01 a.m. on the day following
25 the expiration of the ninety-day period after final adjournment of the
26 general assembly; except that, if a referendum petition is filed pursuant
27 to section 1 (3) of article V of the state constitution against this act or an

1 item, section, or part of this act within such period, then the act, item,
2 section, or part will not take effect unless approved by the people at the
3 general election to be held in November 2022 and, in such case, will take
4 effect on the date of the official declaration of the vote thereon by the
5 governor.

6 (2) This act applies to offenses committed on or after January 1,
7 2023.