A BILL FOR AN ACT

CONCERNING WIRELESS TELEPHONE PROHIBITIONS FOR DRIVERS.

Bill Summary

(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments that may be subsequently adopted.)

Prohibits operators of a motor vehicle who are under 18 years of age, operators of a school bus, and motor vehicle carriers regulated by the public utilities commission from using a wireless telephone while a motor vehicle they are operating is in motion. Otherwise, permits operators of a motor vehicle who are 18 years of age or older to use a wireless telephone equipped with a hands-free accessory. Deems the use of a wireless telephone by an operator as a class A traffic infraction.
Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. 42-4-239, Colorado Revised Statutes, is amended to read:

42-4-239. Misuse of a wireless telephone - definitions - penalty - preemption. (1) 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 such person's life or safety or believes that a criminal act may be perpetrated against such person or another person, requiring the use of a mobile communication 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) "Mobile communication device" means a cellular telephone or other device that enables a person in a motor vehicle to transmit and receive audio signals to and from a person or audio recording device located outside the motor vehicle. "HANDS-FREE ACCESSORY" MEANS A BUILT-IN DASHBOARD SPEAKER, SPEAKER PHONE, HEADSET, OR EAR PIECE USED WITH A WIRELESS TELEPHONE.

(c) "IMMEDIATE PROXIMITY" MEANS A DISTANCE THAT PERMITS THE OPERATOR OF A WIRELESS TELEPHONE TO HEAR TELECOMMUNICATIONS TRANSMITTED DIRECTLY OVER THE WIRELESS TELEPHONE TO THE LISTENER'S EAR, BUT SHALL NOT REQUIRE PHYSICAL CONTACT WITH THE OPERATOR'S EAR.

(d) "OPERATING A MOTOR VEHICLE" MEANS DRIVING A MOTOR
VEHICLE ON A PUBLIC HIGHWAY BUT DOES NOT MEAN MAINTAINING THE
INSTRUMENTS OF CONTROL WHILE THE MOTOR VEHICLE IS AT REST IN A
SHOULDER LANE OR LAWFULLY PARKED.

(e) "USE" MEANS HOLDING A WIRELESS TELEPHONE TO, OR IN THE
IMMEDIATE PROXIMITY OF, THE USER’S EAR OR ENGAGING THE WIRELESS
TELEPHONE FOR TEXT MESSAGING OR OTHER FORMS OF MANUAL DATA
ENTRY OR TRANSMISSION.

(f) "WIRELESS TELEPHONE" MEANS A TELEPHONE THAT OPERATES
WITHOUT A PHYSICAL, WIRED CONNECTION TO THE PROVIDER’S
EQUIPMENT. THE TERM INCLUDES, WITHOUT LIMITATION, CELLULAR AND
MOBILE TELEPHONES.

(2) NOTWITHSTANDING THE PROVISIONS OF SUBSECTION (3) OF
THIS SECTION, A PERSON who holds a temporary instruction permit or a
minor’s instruction permit pursuant to section 42-2-106 described in
paragraphs (a) to (c) of this subsection (2) shall NOT use a mobile
communication device WIRELESS TELEPHONE while operating a motor
vehicle WHILE THE VEHICLE IS IN MOTION. This section shall not apply to:
a person who is using the mobile communication device:
(a) To contact a public safety entity a person under eighteen
YEARS OF AGE;
(b) While the vehicle is lawfully parked; or an operator of a
school bus; and
(c) During an emergency motor vehicle carriers subject to
regulation by the public utilities commission pursuant to article
10 of title 40, C.R.S.

(3) A PERSON EIGHTEEN YEARS OF AGE OR OLDER SHALL NOT USE
A WIRELESS TELEPHONE WHILE OPERATING A MOTOR VEHICLE WHILE THE
VEHICLE IS IN MOTION, UNLESS THE PERSON IS COMMUNICATING BY MEANS OF A HANDS-FREE ACCESSORY.

(4) Subsections (2) and (3) of this section shall not apply to a person who is using the wireless telephone:

(a) To contact a public safety entity; or

(b) During an emergency.

(5) (a) Any person who operates a motor vehicle in violation of subsection (2) or (3) of this section commits a class A traffic infraction as defined in section 42-4-1701 (3), and the court shall assess a fine of fifty dollars.

(b) A second or subsequent violation of subsection (2) or (3) of this section shall be a class A traffic infraction as defined in section 42-4-1701 (3), and the court shall assess a fine of one hundred dollars.

(6) An operator of a motor vehicle shall not be cited for a violation of subsection (2) or (3) of this section unless such operator was stopped by a law enforcement officer for an alleged violation of articles 1 to 4 of this title other than a violation of this section, saw the person use, as defined in paragraph (e) of subsection (1) of this section, a wireless telephone.

(7) The provisions of this section shall not be construed to authorize the seizure and forfeiture of a wireless telephone, unless otherwise provided by law.

(8) The provisions of subsection (3) of this section shall not apply to the following persons while those persons are engaged in activities that are within the course and scope of their employment:
(a) A POLICE OFFICER OR PEACE OFFICER;
(b) A MEMBER OF A FIRE DEPARTMENT, DISTRICT, OR COMPANY; OR
(c) THE OPERATOR OF AN AUTHORIZED EMERGENCY VEHICLE.

(9) THE GENERAL ASSEMBLY FINDS AND DECLARES THAT USE OF WIRELESS TELEPHONES IN MOTOR VEHICLES IS A MATTER OF STATEWIDE CONCERN AND, ACCORDINGLY, THE PROVISIONS OF THIS SECTION PREEMPT ANY PROVISIONS OF ANY LOCAL GOVERNMENT TO THE CONTRARY.

SECTION 2. 42-4-1701 (4) (a) (I) (P), Colorado Revised Statutes, is amended to read:

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

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<th>Section Violated</th>
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<tr>
<td>2</td>
<td>(P) Offenses by persons controlling vehicles:</td>
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<td>3</td>
<td>42-4-239 (5) (a)</td>
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<td>42-4-239 (5) (b)</td>
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<td>42-4-1704</td>
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SECTION 3. Effective date - applicability. This act shall take effect December 1, 2009, and shall apply to offenses committed on or after said date.

SECTION 4. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.