

**First Regular Session  
Seventy-second General Assembly  
STATE OF COLORADO**

**ENGROSSED**

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

LLS NO. 19-0041.01 Yelana Love x2295

**SENATE BILL 19-012**

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**SENATE SPONSORSHIP**

**Court,**

**HOUSE SPONSORSHIP**

**Melton,**

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**Senate Committees**

Transportation & Energy  
Appropriations

**House Committees**

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**A BILL FOR AN ACT**

101    **CONCERNING THE USE OF MOBILE ELECTRONIC DEVICES WHILE**  
102            **DRIVING, AND, IN CONNECTION THEREWITH, MAKING AN**  
103            **APPROPRIATION.**

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**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 the use of wireless telephones while driving for individuals who are younger than 18 years of age. The bill:

- !       Extends the prohibition to drivers of all ages;
- !       Extends the existing prohibition of the use of wireless telephones to include all mobile electronic devices;

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  
Amended 2nd Reading  
March 14, 2019

- ! Establishes the penalties as \$300 and 4 points for a first violation, \$500 and 6 points for a second violation, and \$750 and 8 points for a third or subsequent violation;
- ! Creates an exception to the prohibition of the use of mobile electronic devices for drivers who use a mobile electronic device while a hands-free accessory is engaged; and
- ! Repeals a sentence enhancement for a violation that causes bodily injury or death.

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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**  
10 **PERSON OR ANOTHER PERSON, REQUIRING THE USE OF A MOBILE**  
11 **ELECTRONIC DEVICE WHILE THE CAR IS MOVING; OR**

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

16 **(b) "FIRST RESPONDER" MEANS:**

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

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

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

21 **(IV) ANY OTHER PERSON WHO RESPONDS IN A PROFESSIONAL**

1 CAPACITY TO A PUBLIC SAFETY EMERGENCY.

2 (c) "HANDS-FREE ACCESSORY" MEANS AN ACCESSORY THAT  
3 ENABLES A PERSON TO USE A MOBILE ELECTRONIC DEVICE WITHOUT USING  
4 EITHER HAND, ALTHOUGH THE USE OF EITHER HAND MAY BE NECESSARY  
5 TO ACTIVATE, DEACTIVATE, OR INITIATE A FUNCTION OF THE MOBILE  
6 ELECTRONIC DEVICE.

7 (d) (I) "MOBILE ELECTRONIC DEVICE" MEANS A HANDHELD OR  
8 PORTABLE ELECTRONIC DEVICE CAPABLE OF PROVIDING AMUSEMENT,  
9 WIRELESS DATA, OR VOICE COMMUNICATION BETWEEN TWO OR MORE  
10 PERSONS, INCLUDING:

11 (A) A CELLULAR TELEPHONE;

12 (B) A BROADBAND PERSONAL COMMUNICATION DEVICE;

13 (C) A TWO-WAY MESSAGING DEVICE;

14 (D) A TEXT-MESSAGING DEVICE;

15 (E) A PAGER;

16 (F) AN ELECTRONIC DEVICE THAT CAN RECEIVE OR TRANSMIT TEXT  
17 OR CHARACTER-BASED IMAGES, ACCESS OR STORE DATA, OR CONNECT TO  
18 THE INTERNET;

19 (G) A PERSONAL DIGITAL ASSISTANT;

20 (H) A LAPTOP COMPUTER;

21 (I) A COMPUTER TABLET;

22 (J) A STAND-ALONE COMPUTER;

23 (K) A PORTABLE COMPUTING DEVICE;

24 (L) A MOBILE DEVICE WITH A TOUCHSCREEN DISPLAY THAT IS  
25 DESIGNED TO BE WORN ON THE BODY;

26 (M) AN ELECTRONIC GAME;

27 (N) EQUIPMENT THAT IS CAPABLE OF PLAYING A VIDEO, TAKING

1 PHOTOGRAPHS, CAPTURING IMAGES, OR RECORDING OR TRANSMITTING  
2 VIDEO; AND

3 (O) ANY SIMILAR DEVICE THAT IS READILY REMOVABLE FROM A  
4 MOTOR VEHICLE AND IS USED TO WRITE, SEND, OR READ TEXT OR DATA OR  
5 CAPTURE IMAGES OR VIDEO THROUGH MANUAL INPUT.

6 (II) "MOBILE ELECTRONIC DEVICE" DOES NOT INCLUDE AN  
7 APPROVED IGNITION INTERLOCK DEVICE, AS DEFINED IN SECTION  
8 42-2-132.5.

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

13 (f) "USE" MEANS TALKING ON OR LISTENING TO A MOBILE  
14 ELECTRONIC DEVICE OR ENGAGING THE MOBILE ELECTRONIC DEVICE FOR  
15 TEXT MESSAGING, GAME PLAY, TAKING PHOTOS OR VIDEOS, OR OTHER  
16 FORMS OF MANUAL DATA ENTRY OR TRANSMISSION.

17 (2) EXCEPT AS SPECIFIED IN SUBSECTIONS (3) AND (7) OF THIS  
18 SECTION:

19 (a) A PERSON UNDER THE AGE OF EIGHTEEN SHALL NOT OPERATE A  
20 MOTOR VEHICLE WHILE USING A MOBILE ELECTRONIC DEVICE;

21 (b) A PERSON EIGHTEEN YEARS OF AGE OR OLDER SHALL NOT  
22 OPERATE A MOTOR VEHICLE WHILE USING A MOBILE ELECTRONIC DEVICE  
23 UNLESS THE USE IS THROUGH A HANDS-FREE ACCESSORY.

24 (3) IT IS NOT A VIOLATION OF THIS SECTION TO USE A MOBILE  
25 ELECTRONIC DEVICE WHILE DRIVING IF THE USE IS:

26 (a) TO CONTACT A PUBLIC SAFETY ENTITY; OR

27 (b) DURING AN EMERGENCY.

1           (4) (a) EXCEPT AS PROVIDED IN SUBSECTION (4)(b) OF THIS  
2           SECTION, A PERSON WHO VIOLATES SUBSECTION (2) OF THIS SECTION  
3           COMMITS A CLASS A TRAFFIC INFRACTION. UPON CONVICTION:

4           (I) NOTWITHSTANDING SECTION 42-4-1701 (4)(a)(I)(P), THE  
5           COURT MAY ASSESS A FINE UP TO FIFTY DOLLARS FOR A FIRST OFFENSE;

6           (II) THE COURT SHALL ASSESS A FINE OF ONE HUNDRED FIFTY  
7           DOLLARS FOR A SECOND OFFENSE; AND

8           (III) THE COURT SHALL ASSESS A FINE OF THREE HUNDRED  
9           DOLLARS FOR A THIRD OR SUBSEQUENT OFFENSE.

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

14           (5) A LAW ENFORCEMENT OFFICER SHALL NOT CITE AN OPERATOR  
15           OF A MOTOR VEHICLE FOR A VIOLATION OF THIS SECTION UNLESS THE LAW  
16           ENFORCEMENT OFFICER SAW THE OPERATOR HOLD A MOBILE ELECTRONIC  
17           DEVICE. A LAW ENFORCEMENT OFFICER SHALL NOT CITE AN OPERATOR FOR  
18           THE ENHANCED PENALTY FOR USING A MOBILE ELECTRONIC DEVICE TO  
19           ENGAGE IN TEXT MESSAGING UNLESS THE LAW ENFORCEMENT OFFICER  
20           SAW THE OPERATOR ENGAGING IN TEXT MESSAGING ON A MOBILE  
21           ELECTRONIC DEVICE.

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

25           (7) THIS SECTION DOES NOT PROHIBIT:

26           (a) OPERATION OF AN AMATEUR RADIO STATION BY A PERSON WHO  
27           HOLDS A VALID AMATEUR RADIO OPERATOR LICENSE ISSUED BY THE

1 FEDERAL COMMUNICATIONS COMMISSION;

2 (b) THE USE OF A MOBILE ELECTRONIC DEVICE BY A FIRST  
3 RESPONDER WHEN ACTING WITHIN THE SCOPE OF THE FIRST RESPONDER'S  
4 DUTIES;

5 (c) THE USE OF A MOBILE ELECTRONIC DEVICE BY A PROFESSIONAL  
6 ACTING WITHIN THE SCOPE OF THE PROFESSIONAL'S EMPLOYMENT IF THE  
7 USE IF REQUIRED BY THE PROFESSIONAL'S EMPLOYER AND NECESSARY FOR  
8 THE PERFORMANCE OF THE PROFESSIONAL'S DUTIES;

9 (d) THE USE OF A MOBILE ELECTRONIC DEVICE TO INTERACT WITH  
10 A MEDICAL DEVICE; OR

11 (e) THE USE OF A MOBILE ELECTRONIC DEVICE IN A MOTOR  
12 VEHICLE THAT IS AT REST IN A SHOULDER LANE OR LAWFULLY PARKED.

13 (8) A LAW ENFORCEMENT OFFICER SHALL NOT CITE A COMMERCIAL  
14 DRIVER FOR A VIOLATION OF THIS SECTION IF THE COMMERCIAL DRIVER IS  
15 CITED FOR A VIOLATION OF 49 CFR 392.82.

16 (9) THE GENERAL ASSEMBLY FINDS AND DECLARES THAT USE OF  
17 MOBILE ELECTRONIC DEVICES IN MOTOR VEHICLES IS A MATTER OF  
18 STATEWIDE CONCERN.

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

21 **42-2-127. Authority to suspend license - to deny license - type**  
22 **of conviction - points. (5) Point system schedule:**

<u>Type of conviction</u>	<u>Points</u>
<u>(jj) A FIRST violation of section 42-4-239 (2).</u>	<u>± 2</u>
<u>(jj.5) A SECOND violation of section 42-4-239 (3) (2).</u>	<u>4 2</u>
<u>(jj.7) A THIRD OR SUBSEQUENT VIOLATION OF SECTION</u>	
<u>42-4-239 (2)</u>	<u>4</u>

1            (jj.9) A VIOLATION OF SECTION 42-4-239 (2) INVOLVING TEXT  
2 MESSAGING . . . . . 4

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

5            **42-4-1701. Traffic offenses and infractions classified -**  
6 **penalties - penalty and surcharge schedule - repeal.** (4) (a) (I) Except  
7 as provided in subsection (5)(c) of this section, every person who is  
8 convicted of, who admits liability for, or against whom a judgment is  
9 entered for a violation of this title 42 to which subsection (5)(a) or (5)(b)  
10 of this section applies shall be fined or penalized and have a surcharge  
11 levied in accordance with sections 24-4.1-119 (1)(f) and 24-4.2-104  
12 (1)(b)(I), in accordance with the penalty and surcharge schedule set forth  
13 in subsections (4)(a)(I)(A) to (4)(a)(I)(P) of this section; or, if no penalty  
14 or surcharge is specified in the schedule, the penalty for class A and class  
15 B traffic infractions is fifteen dollars and the surcharge is four dollars.  
16 These penalties and surcharges apply whether the defendant  
17 acknowledges the defendant's guilt or liability in accordance with the  
18 procedure set forth by subsection (5)(a) of this section, is found guilty by  
19 a court of competent jurisdiction, or has judgment entered against the  
20 defendant by a county court magistrate. Penalties and surcharges for  
21 violating specific sections are as follows:

<u>Section Violated</u>	<u>Penalty</u>	<u>Surcharge</u>
<b><u>(P) Offenses by persons controlling vehicles:</u></b>		
<u>42-4-239 (5)(a) (4)(a)(I)</u>	<u>\$ 50.00</u>	<u>\$ 6.00</u>
<u>42-4-239 (5)(b) (4)(a)(II)</u>	<u>100.00</u>	<u>6.00</u>
<u>42-4-239 (5.5) (4)(a)(III)</u>	<u><del>300.00</del> 200.00</u>	<u>6.00</u>
<u>42-4-239 (4)(b)</u>	<u>300.00</u>	<u>6.00</u>

1      42-4-1704                                      15.00                                      6.00

2                      **SECTION 4. Appropriation.** For the 2018-19 state fiscal year,  
3      \$7,425 is appropriated to the department of revenue for use by the  
4      division of motor vehicles. This appropriation is from the Colorado state  
5      titling and registration account in the highway users tax fund created in  
6      section 42-1-211 (2)(a)(I), C.R.S. To implement this act, the division may  
7      use this appropriation for DRIVES maintenance and support.

8                      **SECTION 5. Effective date - applicability.** This act takes effect  
9      July 1, 2019, and applies to offenses committed on or after said date.

10                     **SECTION 6. Safety clause.** The general assembly hereby finds,  
11      determines, and declares that this act is necessary for the immediate  
12      preservation of the public peace, health, and safety.