

SENATE COMMITTEE OF REFERENCE REPORT

Chair of Committee

Date

February 14, 2019

Committee on Transportation & Energy.

After consideration on the merits, the Committee recommends the following:

SB19-012 be amended as follows, and as so amended, be referred to the Committee on Appropriations with favorable recommendation:

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.

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

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

10 (A) A CELLULAR TELEPHONE;
11 (B) A BROADBAND PERSONAL COMMUNICATION DEVICE;
12 (C) A TWO-WAY MESSAGING DEVICE;
13 (D) A TEXT-MESSAGING DEVICE;
14 (E) A PAGER;
15 (F) AN ELECTRONIC DEVICE THAT CAN RECEIVE OR TRANSMIT TEXT
16 OR CHARACTER-BASED IMAGES, ACCESS OR STORE DATA, OR CONNECT TO
17 THE INTERNET;
18 (G) A PERSONAL DIGITAL ASSISTANT;
19 (H) A LAPTOP COMPUTER;
20 (I) A COMPUTER TABLET;
21 (J) A STAND-ALONE COMPUTER;
22 (K) A PORTABLE COMPUTING DEVICE;
23 (L) A MOBILE DEVICE WITH A TOUCHSCREEN DISPLAY THAT IS
24 DESIGNED TO BE WORN ON THE BODY;
25 (M) AN ELECTRONIC GAME;
26 (N) EQUIPMENT THAT IS CAPABLE OF PLAYING A VIDEO, TAKING
27 PHOTOGRAPHS, CAPTURING IMAGES, OR RECORDING OR TRANSMITTING
28 VIDEO; AND
29 (O) ANY SIMILAR DEVICE THAT IS READILY REMOVABLE FROM A
30 MOTOR VEHICLE AND IS USED TO WRITE, SEND, OR READ TEXT OR DATA OR
31 CAPTURE IMAGES OR VIDEO THROUGH MANUAL INPUT.

32 (II) "MOBILE ELECTRONIC DEVICE" DOES NOT INCLUDE AN
33 APPROVED IGNITION INTERLOCK DEVICE, AS DEFINED IN SECTION
34 42-2-132.5.

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

39 (f) "USE" MEANS TALKING ON OR LISTENING TO A MOBILE
40 ELECTRONIC DEVICE OR ENGAGING THE MOBILE ELECTRONIC DEVICE FOR
41 TEXT MESSAGING, GAME PLAY, TAKING PHOTOS OR VIDEOS, OR OTHER

1 FORMS OF MANUAL DATA ENTRY OR TRANSMISSION.
2 (2) EXCEPT AS SPECIFIED IN SUBSECTIONS (3) AND (7) OF THIS
3 SECTION:
4 (a) A PERSON UNDER THE AGE OF EIGHTEEN SHALL NOT OPERATE A
5 MOTOR VEHICLE WHILE USING A MOBILE ELECTRONIC DEVICE;
6 (b) A PERSON EIGHTEEN YEARS OF AGE OR OLDER SHALL NOT
7 OPERATE A MOTOR VEHICLE WHILE USING A MOBILE ELECTRONIC DEVICE
8 UNLESS THE USE IS THROUGH A HANDS-FREE ACCESSORY.
9 (3) IT IS NOT A VIOLATION OF THIS SECTION TO USE A MOBILE
10 ELECTRONIC DEVICE WHILE DRIVING IF THE USE IS:
11 (a) TO CONTACT A PUBLIC SAFETY ENTITY; OR
12 (b) DURING AN EMERGENCY.
13 (4) (a) EXCEPT AS PROVIDED IN SUBSECTION (4)(b) OF THIS
14 SECTION, A PERSON WHO VIOLATES SUBSECTION (2) OF THIS SECTION
15 COMMITS A CLASS A TRAFFIC INFRACTION. UPON CONVICTION:
16 (I) NOTWITHSTANDING SECTION 42-4-1701 (4)(a)(I)(P), THE
17 COURT MAY ASSESS A FINE UP TO FIFTY DOLLARS FOR A FIRST OFFENSE;
18 (II) THE COURT SHALL ASSESS A FINE OF ONE HUNDRED FIFTY
19 DOLLARS FOR A SECOND OFFENSE; AND
20 (III) THE COURT SHALL ASSESS A FINE OF THREE HUNDRED
21 DOLLARS FOR A THIRD OR SUBSEQUENT OFFENSE.
22 (b) A PERSON WHO VIOLATES SUBSECTION (2) OF THIS SECTION TO
23 ENGAGE IN TEXT MESSAGING COMMITS A CLASS 2 MISDEMEANOR TRAFFIC
24 OFFENSE AND, UPON CONVICTION, THE COURT SHALL ASSESS A FINE OF
25 THREE HUNDRED DOLLARS.
26 (5) A LAW ENFORCEMENT OFFICER SHALL NOT CITE AN OPERATOR
27 OF A MOTOR VEHICLE FOR A VIOLATION OF THIS SECTION UNLESS THE LAW
28 ENFORCEMENT OFFICER SAW THE OPERATOR HOLD A MOBILE ELECTRONIC
29 DEVICE. A LAW ENFORCEMENT OFFICER SHALL NOT CITE AN OPERATOR FOR
30 THE ENHANCED PENALTY FOR USING A MOBILE ELECTRONIC DEVICE TO
31 ENGAGE IN TEXT MESSAGING UNLESS THE LAW ENFORCEMENT OFFICER
32 SAW THE OPERATOR ENGAGING IN TEXT MESSAGING ON A MOBILE
33 ELECTRONIC DEVICE.
34 (6) THIS SECTION DOES NOT AUTHORIZE THE SEIZURE AND
35 FORFEITURE OF A MOBILE ELECTRONIC DEVICE, UNLESS OTHERWISE
36 PROVIDED BY LAW.
37 (7) THIS SECTION DOES NOT PROHIBIT:
38 (a) OPERATION OF AN AMATEUR RADIO STATION BY A PERSON WHO
39 HOLDS A VALID AMATEUR RADIO OPERATOR LICENSE ISSUED BY THE
40 FEDERAL COMMUNICATIONS COMMISSION;
41 (b) THE USE OF A MOBILE ELECTRONIC DEVICE BY A FIRST

1 RESPONDER WHEN ACTING WITHIN THE SCOPE OF THE FIRST RESPONDER'S
2 DUTIES; OR

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

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

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

10 **42-2-127. Authority to suspend license - to deny license - type**
11 **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

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

21 **42-4-1701. Traffic offenses and infractions classified -**
22 **penalties - penalty and surcharge schedule - repeal.** (4) (a) (I) Except
23 as provided in subsection (5)(c) of this section, every person who is
24 convicted of, who admits liability for, or against whom a judgment is
25 entered for a violation of this title 42 to which subsection (5)(a) or (5)(b)
26 of this section applies shall be fined or penalized and have a surcharge
27 levied in accordance with sections 24-4.1-119 (1)(f) and 24-4.2-104
28 (1)(b)(I), in accordance with the penalty and surcharge schedule set forth
29 in subsections (4)(a)(I)(A) to (4)(a)(I)(P) of this section; or, if no penalty
30 or surcharge is specified in the schedule, the penalty for class A and class
31 B traffic infractions is fifteen dollars and the surcharge is four dollars.
32 These penalties and surcharges apply whether the defendant
33 acknowledges the defendant's guilt or liability in accordance with the
34 procedure set forth by subsection (5)(a) of this section, is found guilty by
35 a court of competent jurisdiction, or has judgment entered against the
36 defendant by a county court magistrate. Penalties and surcharges for
37 violating specific sections are as follows:

Section Violated	Penalty	Surcharge
38 (P) Offenses by persons controlling vehicles:		
39 42-4-239 (5)(a) (4)(a)(I)	\$ 50.00	\$ 6.00
40 42-4-239 (5)(b) (4)(a)(II)	100.00 150.00	6.00

1	42-4-239 (5.5) (4)(a)(III)	300.00	6.00
2	42-4-239 (4)(b)	300.00	6.00
3	42-4-1704	15.00	6.00

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

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

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