

SB19-012: USE OF MOBILE ELECTRONIC DEVICES WHILE DRIVING
Concerning the use of electronic devices while driving

Details

Bill Sponsors:	House – <i>Melton</i> (D) Senate – <i>Court</i> (D)
Committees:	Senate Transportation & Energy Committee Senate Appropriations
Bill History:	1/4/2019-Introduced 1/24/2019- Hearing in Senate Transportation & Energy Committee, No Action 2/14/2019- Hearing in Senate Transportation & Energy Committee, Action Only
Next Action:	Hearing in Senate Appropriations Committee
Fiscal Note:	<u>1/14/2019 Version</u>

Bill Summary

Colorado has a long-standing ban¹ on the use of wireless telephones while driving for teenagers and young adults. This bill proposes to expand that ban to encompass all drivers regardless of age and all electronic devices. As currently amended, the bill includes fines and points on a driver's license as punishment for using a mobile electronic device. This bill would also create an exemption for electronic devices that have a hands-free device engaged.

Issue Summary

Distracted Driving

Distracted driving is particularly dangerous because of the relationship between reaction time and multitasking. Multitasking can incorporate activities that both do and do not take a driver's eyes off of the road. For activities that take a driver's eyes off of the road, like texting or answering the phone, those seconds can add up to hundreds of feet of distraction. Other activities that do not affect where a driver is looking can still be distracting, adding up to a quarter of a second to reaction times while driving. All forms of multitasking affect reaction time, but anything that takes a driver's eyes off the road is far more dangerous.² This includes the concentration that it takes to talk on a hands-free mobile phone accessory. One study found that the reaction time for drivers utilizing either a hands-free or handheld phone for a conversation was more than 40 percent longer than people not using a phone.³ In a 2012 white paper, the National Safety Council asserted that multiple studies had shown that hands-free devices do not eliminate cognitive distraction.⁴

¹ HB09-1094: Wireless Telephone Prohibitions for Drivers. When passed, the *Board did not take a position on this bill*. However, the Board did vote to support the concept of restricting phone use for drivers.

² White, Katherine M., Shari P. Walsh, Melissa K. Hyde, and Barry C. Watson. (2010). "Mobile Phone Use While Driving: an Investigation of the beliefs influence drivers' hands-free and hand-held mobile phone use." *Transportation Research Part F: Traffic Psychology and Behavior* 13: 9-20. Retrieved from <http://eprints.qut.edu.au/29290/2/29290.pdf>.

³ Queensland University of Technology. (Dec. 13, 2016). *Hands-free just as distracting as handheld mobile phone use behind the wheel*. Retrieved from <https://www.qut.edu.au/news?news-id=112640>

⁴ National Safety Council (Apr. 2012). *Understanding the Distracted Brain: Why Driving While Using Hands-Free Cell Phones is Risky Behavior*. Retrieved from <https://www.nsc.org/Portals/0/Documents/DistractedDrivingDocuments/Cognitive-Distracton-White-Paper.pdf>

Distracted driving has caused a significant uptick in traffic accidents and fatalities in the modern-age of technology. Use of an electronic device while driving increases risk by nearly 20 times and disproportionately affects young adults (ages 16-24).⁵ In 2016, distracted driving could be attributed to 3,640 deaths nationwide.³

Distracted Driving in Colorado

In that same year, Colorado saw 67 deaths related to distracted driving.⁶ Even with these alarming statistics, the Colorado Department of Transportation reported in 2018 that 89 percent of surveyed drivers admitted to using an electronic device while driving. Up to 16 percent of accidents resulting in a fatality or injury could be attributed to distracted driving.⁵

In 2009, Colorado passed HB09-1094 which banned people under the age of 18, school bus drivers, and public utilities drivers from using cell phones while driving. Since then, crashes related to cell phone use has actually increased over time.⁷ Tracking data over time for young drivers is not available, but reports show that teen distracted driving deaths have steadily increased over the past few years.⁸ Crashes related to distracted driving seem to be unaffected by the 2009 law, particularly as more time has passed.

How Other States Have Addressed This Issue

Because of distracted driving trends nationwide, nearly every state, territory, and the District of Columbia (D.C.) have laws currently addressing this problem to some extent. These bans vary in content from banning all handheld electronic devices, only cell phones, or just texting. These bans can also vary in motorists affected from all motorists to just young motorists to specifically school bus drivers. This bill would move Colorado into a smaller category with 16 other states and D.C. that ban the use of all electronic devices while driving for all motorists, including California, Connecticut, Delaware, Georgia, Hawaii, Illinois, Maryland, North Carolina, New Hampshire, New Jersey, New York, Oregon, Puerto Rico, Rhode Island, Utah, Vermont, Washington, and West Virginia. Lastly, some states do not ban electronic devices for all drivers at the state-level but instead have passed a local option to ban such use, including, Massachusetts, Michigan, New Mexico, Ohio, and Pennsylvania. It is important to note that all of the 24 above listed states have some level of ban on cell phone use for younger drivers.⁹

Enforcement

Distracted driving laws have two different forms of enforcement: primary and secondary. Primary enforcement allows law enforcement to pull over and ticket drivers for violation of some level of ban.¹⁰ Secondary enforcement does not allow law enforcement to pull over and ticket for that violation only; instead, a penalty can only be enforced when drivers are stopped for another reason, such as a more standard traffic violation. Secondary enforcement often has little effect on distracted driving rates while primary enforcement may be successful when it is “augmented by health education” campaigns.¹¹ For example, Colorado Department of Transportation introduced the “Getting Turned On” campaign in 2017 to

⁵ Insurance Institute for Highway Safety. (2017). Published by the *National Conference of State Legislatures*. Retrieved from <http://www.ncsl.org/research/transportation/cellular-phone-use-and-texting-while-driving-laws.aspx>.

⁶ Colorado Department of Transportation. (2018). “89 Percent Admit to Driving Distracted in CDOT Study.” Retrieved from <https://www.codot.gov/news/2018/april/89-percent-admit-to-driving-distracted-in-cdot-study>.

⁷ Colorado Department of Transportation. (2016). “2005-2016 Colorado Crashes by Human Contributing Factor.” Retrieved from <http://www.codot.gov/library/traffic/safety-crash-data/crash-data/crashes-by-human-contributing-factor-2005-2014/view>.

⁸ Colorado Department of Transportation. (2018). “Teen Traffic Fatalities Up 22 Percent Last Year.” Retrieved from <https://www.codot.gov/news/2018/august/teen-traffic-fatalities-up-22-percent-last-year>.

⁹ Insurance Institute for Highway Safety. (2017). Published by the *National Conference of State Legislatures*. Retrieved from <http://www.ncsl.org/research/transportation/cellular-phone-use-and-texting-while-driving-laws.aspx>.

¹⁰ All aforementioned states with bans similar to SB19-012 have Primary Enforcement.

¹¹ Gostin, Lawrence O. and Peter D. Jacobson. (2010). “Reducing Distracted Driving: Regulation and Education to Avert Traffic Injuries and Fatalities.” *Journal of the American Medical Association* 303: 1419-1420. Published by *Georgetown University Law Center*. Retrieved from <https://scholarship.law.georgetown.edu/cgi/viewcontent.cgi?article=1379&context=facpub>.

encourage the use of apps that lock drivers' phones when on the road.¹² Research shows that laws and fines are not enough to curb distracted driving alone; however, laws combined with programs that discourage distracted driving can make drivers more aware of the dangers of distracted driving and make police officers more comfortable with acting on primary enforcement laws.¹³

This Legislation

The bill defines an emergency as a situation in which a person has a reason to fear for the person's life or safety or believes that criminal act may have occurred that requires the use of a mobile electronic device while driving or a person reports a fire, accident with injuries, a serious road hazard, a medical or hazardous materials emergency, or a reckless river. "First responder" in this bill includes peace officers, firefighters, or any other professional that responds to a public safety emergency. A "hands-free accessory" is defined as an accessory that enables a person to use a mobile device without using their hands, although a hand can be used to activate, deactivate, or initiate a function of the device. The bill defines "mobile electronic devices" to include the following:

- Cellular telephones
- Broadband personal communication devices
- Two-way messaging devices
- Text-messaging devices
- Pagers
- Any device that can receive or transmit text or character-based images or connect to the internet
- Personal digital assistants (PDAs)
- Laptop computers
- Tablets
- Stand-alone computers
- Portable computing devices
- Mobile devices with touchscreen displays designed to be worn on the body
- Electronic games
- Devices capable of playing or capturing videos, images, or sounds
- Any device readily removable from a motor vehicle used to write, send, or read data

The bill defines "operating a motor vehicle" as driving a vehicle on a public highway but that does not include the vehicle being on while it is at rest on the road's shoulder or lawfully parked. The "use" of a mobile device includes talking on, listening to, or engaging with the device for texting, game play, taking photos/videos, or other forms of entry or transmission.

A person under the age of 18 cannot operate a vehicle while using a mobile device and a person over the age cannot use a mobile device unless the use is through a hands-free accessory. The bill does leave an exemption in for use of electronics to contact a public safety entity or in an emergency.

A person that violates these requirements commits a class A traffic infraction. The bill's penalty structure reflects the following: on first offense, the court can assess a fine up to \$50 and 2 points on the driver's license; on second offense, a fine of \$150 and 4 points on the license; on third and subsequent offenses, \$300 and 4 points on the license. If the driver was using a device to send or receive text messages, the court shall issue a class 2 misdemeanor traffic offense and a fine of \$300 and 4 points on the license. All charges will contain a 6 dollar surcharge assessed to the defendant.

¹² Colorado Department of Transportation. (2017). "Distracted Driving." Retrieved from <https://www.codot.gov/safety/distracteddriving>.

¹³ Nevin, Paul E., Laura Blunar, Annie Phare Kirk, Amy Freedheim, Robert Kaufman, Laura Hitchcock, Jennifer D. Maeser, and Beth E. Ebel. (2017). "I wasn't texting; I was just reading an email...': a qualitative study of distracted driving enforcement in Washington State." *Injury Prevention* 2017 23: 165-170. Published by *BMJ Publishing Group*. Retrieved from <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5927816/>.

The bill does not allow a person to be punished for the use of a mobile electronic device unless a “law enforcement office saw the operator use” such a device. Moreover, the bill prohibits the seizure or forfeiture of a device if pulled over, unless otherwise provided by law.

The bill does not prohibit the operation of an amateur radio station by an individual authorized by the Federal Communications Commission, the use of a device by a first responder acting within the scope of their duties, or the use of a device while the vehicle is at rest on the shoulder of the road or parked lawfully. The bill is effective July 1, 2019 and applies to offenses committed on or after that day.

Reasons to Support

There is a common movement nationwide to stem the increasing use of electronic devices while driving. Sixteen other states and D.C. have similar laws that address this issue broadly. There is also reason to believe this bill would be successful because of what is known about the relationship between primary enforcement laws and public awareness campaigns. The Colorado Department of Transportation has ramped up recent efforts in both public awareness as of 2018 by enacting the following: recognizing March as National Distracted Driving Awareness Month; introducing the “Drop the Distraction” campaign; and endorsing an Apple iOS app called “Do Not Disturb while Driving.” With this public awareness already in place, this bill would meet the conditions for reducing distracted driving.¹⁴

Supporters

- AAA Colorado
- Bicycle Colorado
- Colorado Chapter, American College of Emergency Physicians
- Colorado Competitive Council
- Colorado Cross-Disability Coalition
- Colorado Fraternal Order of Police
- Colorado Motor Carriers Association
- Colorado Public Health Association
- County Sheriffs of Colorado
- Emergency Medical Services Association of Colorado
- Farmers Insurance
- Liberty Mutual
- LiveWell Colorado
- National Association of Mutual Insurance Companies
- Powersports Dealers Association of Colorado
- Property Casualty Insurers Association of America
- Rocky Mountain Insurance Information Association
- State Farm

Reasons to Oppose

The primary concerns for SB19-012 come from the perceived broadness of the bill and the extremity of its penalties. Representatives of the Colorado Criminal Defense Bar and the American Civil Liberties Union warned of the “excessive and unnecessary” fines and penalties. Since it was amended in committee, the fine structure was changed to reflect this issue and a person can only be fined up to \$300 for the third and subsequent violations. The amended language explicitly includes penalties, such as a Class 2 Misdemeanor Traffic Offenses, that do not garner extreme consequences such as jail time. Research shows that penalties emphasizing fines are often disproportionately harmful to the “working poor” and enforcement could be discriminatory against minorities.¹⁵ Studies on the disproportional effects of race on traffic stop frequency

¹⁴ All campaigns are available for information online at <https://www.codot.gov/safety/distracteddriving>.

¹⁵ Goodland, Marianne. (2019). “Bill restricting Colorado cellphone use while driving is on hold.” *Colorado Politics*. Updated January 25, 2019. Retrieved from https://www.coloradopolitics.com/news/premium/bill-restricting-colorado-cellphone-use-while-driving-is-on-hold/article_1cae53be-202c-11e9-a51a-a33ce344eb4f.html. Quotes come from Committee hearings on January 24, 2019.

have had mixed results,¹⁶ though the result of the stop and subsequent penalties often have significant racial disparities.¹⁷

Other concerns of this bill come from its enforceability. As amended, enforcement was explicated so that a person can only be pulled over if the officer observed the driver on an electronic device. Police officers often report struggling to justify pulling someone over for the potential use of an electronic device and, if the case is contested, use of a device can be hard to prove.¹⁸ Further, the bill does not allow a driver to be punished even if the use caused an accident and the driver confirmed the use.

Opponents

- Colorado Bar Association
- American Civil Liberties Union
- American Civil Liberties Union of Colorado
- Colorado Criminal Justice Reform Coalition
- Colorado Criminal Defense Bar

Other Considerations

After being amended in Committee, the bill now reflects a punishment structure that emphasizes fines and license points rather than larger punishments such as jail time. It would appear that this change was in response to testimony reflecting a concern over unequal effects of severe punishments. That being said, the bill does include the Class 2 Misdemeanor Traffic Offense as a punishment for texting while driving. Such an offense on its own will reflect only the fines under the current bill but can compound with previous or future offenses to garner larger penalties.

The definition of the use of a mobile electronic device may need to be clarified as it currently includes listening to the device for texting, game play, taking photos/videos, or other forms of entry or transmission. It is not known if that definition includes listening to GPS directions from an application like Google Maps or Waze, even if the person is not entering an address or interacting with the application while operating a vehicle.

About this Analysis

This analysis was prepared by Health District of Northern Larimer County staff to assist the Health District Board of Directors in determining whether to take an official stand on various health-related issues. The Health District is a special district of the northern two-thirds of Larimer County, Colorado, supported by local property tax dollars and governed by a publicly elected five-member board. The Health District provides medical, mental health, dental, preventive and health planning services to the communities it serves. This analysis is accurate to staff knowledge as of date printed. For more information about this summary or the Health District, please contact Alyson Williams, Policy Coordinator, at (970) 224-5209, or e-mail at awilliams@healthdistrict.org.

¹⁶ Mclean, Kyle and Jeff Rojek. (2016). "Traffic Stops, Race, and Measurement." In *The Handbook of Measurement Issues in Criminology and Criminal Justice*. John Wiley and Sons: West Sussex, UK. Retrieved from https://books.google.com/books?hl=en&lr=&id=Ri8IDAAAQBAJ&oi=fnd&pg=PA452&dq=racial+profiling+and+traffic+stops&ots=eycOK7-mOv&sig=TC0jS_5LKi5bRVzclFtMVRmyEIY#v=onepage&q=racial%20profiling%20and%20traffic%20stops&f=false. Mclean and Rojek note that while many studies find mixed or inconclusive evidence of the effect of racial prejudice on traffic stops, the problem is not necessarily absent. More likely, however, is inefficient measurement techniques that fail to accurately capture trends in street-level policing.

¹⁷ Worden, Robert E., Sarah J. McLean, and Andrew P. Wheeler. (2012). "Testing for Racial Profiling with the Veil-of-Darkness Method." *Police Quarterly* Reprint: 1-20. Retrieved from <http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.1017.8370&rep=rep1&type=pdf>. For emphasis, Mclean and Rojek's commentary has particular salience in this study. While the theory and anecdotal evidence seems to indicate a level of racial bias at some point within the policing process, current methodology fails to capture evidence of racial bias in traffic stop frequency.

¹⁸ Nevin, Paul E. et al. (2017): 165-170.