

House Bill 09-1094 Pro/Con Analysis

Prepared for the Health District of Northern Larimer County Board of Directors

Bill Title:	Wireless Telephone Prohibitions for Drivers
Issue Summary:	Prohibits operators of a motor vehicle who are under 18 years of age, school bus drivers, and vehicle carriers regulated by the Public Utilities Commission from using a wireless telephone while the vehicle they are operating is in motion. For all other drivers, makes it a violation to use a <i>hand held</i> wireless telephone while driving, requiring the use of a <i>hands-free</i> telephone instead. Stipulates emergency situations where the use of a prohibited wireless telephone will not be considered a violation. Deems the use of a prohibited device a Class A traffic violation and allows for primary enforcement of the rule.
Bill History:	Referred to House Transportation and Energy Committee Hearing on February 3, 2009
Date of Analysis:	January 28, 2009
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BILL SUMMARY

Under current Colorado law, it is a violation for anyone with a temporary instruction permit or minor's instruction permit (learners' permit) to use a cell phone while driving. There are no other prohibitions against cell phone use while driving in Colorado. HB 1094 makes the following statutory changes:

- **The bill makes it a violation for any person under the age of 18 to use a cell phone while driving, even if they are a fully licensed driver.** Under current statutes, for example, a licensed 17 year-old driver may use a cell phone when driving; however, a 17 year-old with a learners' permit may not.
- **The bill makes it a violation for any school bus driver or driver of a vehicle regulated by the Public Utilities Commission (PUC) to use a cell phone while driving.** Vehicles that are regulated by the PUC include charter or scenic buses, off-road scenic charter vehicles, luxury limousines, children's activities buses which carry more than 8 children and their chaperones, and fire crew transports. Members of a fire department are exempt from this rule when they are engaged in work-related activities.
- **The bill makes it a violation for all other drivers to use a hand held cell phone while driving. The rule allows for the use of a hands-free cell phone device when operating a motor vehicle.** While the use of *any* cell phone would be prohibited for the drivers listed above, HB 1094 allows drivers over the age of 18, who are not driving specified vehicles, to use cell phones when operating their vehicles; as long as those cell phones are equipped with a hands-free accessory.
- **The bill allows for primary enforcement of the statute.** The current law allows for secondary enforcement only. A police officer can only cite a driver for a cell phone violation after having made the stop for a separate, enforceable, traffic infraction. With primary enforcement, an officer is allowed to stop and cite a driver who is in violation of the cell phone law, regardless of whether or not another traffic violation has occurred.

In addition to members of a fire department, HB 1094 exempts police officers and operators of any authorized emergency vehicle from the rule, if they are using their cell phones while engaged in work activities. The bill sets mandatory fines at \$50 for the first infraction and \$100 for each subsequent violation.

BACKGROUND

Growing attention is being focused on the possible increase in risk of a crash posed by the use of cell phones while operating a motor vehicle. Several high profile accidents in Colorado have increased media attention to this issue and the legislation under consideration here comes as the National Safety Council issues a call for all 50 states to ban the use of any kind of cell phone or messaging device while driving. The National Highway Traffic Safety Administration has documented increasing use of cell phones among drivers with about 6 to 10% of drivers using cell phones in a "typical daytime moment" in 2006.¹ Larger percentages of cell phone use while driving are seen in younger drivers (16-24 year olds) compared to older drivers.

¹ Glassbrenner, D and Jianquiang Ye, T., Driver Cell Phone Use in 2006 – Overall Results, NHTSA

The National Highway Traffic Safety Administration (NHTSA) completed a Review of the Current State-Of-Knowledge of Driver Distraction in April of 2008. The review notes some of the methodological difficulties of defining and measuring driver distraction as well as the benefits and drawbacks of the study designs presently used to examine and quantify the amount of risk posed by differing types of driver distractions. While driver distractions can include factors like driver fatigue or objects or events outside the vehicle, the most workable definition for the purposes of examining the cell phone use issue is that a driver distraction is an identifiable secondary task, object or event that distracts the driver from the primary task of driving the vehicle. The NHTSA review cites two meta-analyses of the published literature on the use of cell phones while driving. While acknowledging the problems of applying experimental data (that gained by studying volunteers in driving simulators or in vehicles on test tracks) to real-world situations, there are consistent findings from such studies that driving performance is compromised by phone conversations. According to the NHTSA review, the meta-analyses authors, while again acknowledging some of the limitations of extrapolating study data to real-world scenarios “concluded that phone use represents a significant driving hazard. Moreover, because phone use may involve a relatively extended period of exposure relative to other shorter-duration distractions such as eating, drinking, or radio-tuning, it likely represents a bigger problem than these other common in-vehicle tasks.”² NHTSA notes that “whether it is a hands-free or hand held cell phone, the cognitive distraction is significant enough to degrade a drivers’ performance.”³

Cell Phone Driving Laws In Other States

Though no states completely ban all types of cell phone use by all drivers, 29 states have enacted some form of cell phone restrictions for persons operating a motor vehicle. Five states and the District of Columbia have an explicit ban on hand held units while driving. Two states, Utah and New Hampshire, treat cell phone usage within context of applicable driver distraction laws.⁴

- **Novice Drivers:** 17 states and the District of Columbia ban all cell phone use by novice drivers.
- **School Bus Drivers:** In 17 states and the District of Columbia, school bus drivers are banned from using the cell phone while passengers are present.
- **Text Messaging:** Text messaging is banned for all drivers in 7 states; 9 states ban text messaging by novice drivers; 6 states have made it illegal for school bus drivers to text message while driving.
- **Preemption Laws:** Eight states have laws that prohibit local jurisdictions from enacting cell phone restrictions; six states allow for localities to ban cell phone use, at their discretion.

The Effect of Hands-Free Laws

In New York, where the first hand held ban was enacted in 2001, statistics showed an initial period of compliance after the law went into effect; but by 18 months later, cell phone usage had “increased to a level that was not significantly different from that observed before that law took effect.”⁵ It was concluded, however, that a lack of enforcement and publicity after the initial push was largely responsible for the increased cell phone usage. Most cell phone laws are relatively new and there is not a significant body of evidence available to track the long-term effects of restrictions on cell phone usage while driving.

What Does the Public Think?

Public opinion polls confirm a growing concern, on the part of drivers, about the safety hazards of driving while talking on the phone. In 2003, a Gallup poll found that 48% of drivers believed that making a cell phone call while driving was dangerous and 71% of drivers supported prohibitions of the use of hand held cell phones while driving. Additionally, the survey found that 67% of the respondents backed insurance penalties for being in a crash while using a cell phone and 57% supported a ban on all cell phones while driving. Two years later, a Farmers’ Insurance survey confirmed the Gallup findings. Their survey found that 87% of adults believed that using a cell phone impairs a person’s ability to drive and 83% believed that their concentration when driving was compromised by activities such as talking on the telephone.⁶

WHY IS THIS ISSUE IMPORTANT?

According to CTIA, the International Association for the Wireless Telecommunications Industry, over 82% of the U.S. population subscribes to some sort of cell phone plan, and many of those are drivers on America’s roadways. With cell phone usage and driving so integral to American life, it is important to assess the correlation between cell phone usage and increased traffic risk.

In Colorado, there have been numerous devastating traffic accidents in which cell phones are thought to have played a part. In Fort Collins, significant local attention has been focused on the issue of using cell phones while driving due to the traffic

² Ranney, T. (2008). Driver distraction: a review of the current state-of-knowledge. NHTSA. DOT HS 810 787. www.nhtsa.dot.gov

³ Ibid.

⁴ Governors’ Highway Safety Association. www.ghsa.org. Reviewed 1/21/09.

⁵ Ranney, T. (2008). Driver distraction: a review of the current state-of-knowledge. NHTSA. DOT HS 810 787: 19. www.nhtsa.dot.gov

⁶ Sundeen, M. (2005). Cell phones: highway safety 2005 legislative update. National Conference of State Legislators. July, 2007. www.ncls.org. Reviewed 1/20/09.

accident death of 9-year old Erica Forney on November 27, 2008. She was riding her bike and was struck by a vehicle driven by a woman who may have been distracted by talking on her cell phone. Traffic accidents rank in the top ten leading causes of death and disability in the Health District. They are responsible for an average of eleven deaths per year, but because the victims are often young, the burden averages 434 years of life lost annually. Adding the toll of traffic accident survivors living with disabilities adds another 84 disability-adjusted years of life lost. If cell phone use while driving is a significant contributor to traffic accidents, residents of the Health District would be well served by public policies that discourage such use.

REASONS TO SUPPORT BILL:

- Cell phone use while driving is a hazard and raises the risk of a motor vehicle crash. In 1997, the New England Journal of Medicine (NEJM) published a study in which the authors found that “using a cellular telephone was associated with a risk of having a motor vehicle collision that was about four times as high as that among the same drivers when they are not using their cellular telephone.” Such a risk factor, the authors noted, was similar to the hazard associated with driving while legally intoxicated.⁷ Researchers for the University of Utah (2006), using subjects performing in driving simulators, found a significant decrease in reaction time for drivers who were using cell phones while driving.⁸ “When drivers were conversing on a cell phone,” they noted, “they were involved in more rear-end collisions [and] their initial reaction time was slowed by 9%.” Their data suggested that “the impairment associated with cell phone drivers may be as great as those commonly observed with intoxicated drivers.” Virtually all the studies reviewed by NHTSA for the 2008 paper found significant degradation in driving performance when drivers used cell phones. Finally, a 2003 study from the Harvard Center for Risk Analysis (HCRA) estimated that eliminating the use of cell phones while driving could lead to a 6% decrease in the number of vehicle crashes⁹, equating to a decrease of 2,600 deaths and around 12,000 serious injuries, nationwide, each year. The HCRA study authors did caution that the calculation of estimates of the proportion of motor vehicle crashes attributable to cell phone usage is complicated and that some of the input data is uncertain.
- The need to ban all cell phone usage by young and novice drivers is solidly backed by evidence suggesting that these users are spending a larger percentage of time engaged in activities like text messaging while driving and, given their lack of driving experience, are at increased risk for a crash. According to the NHTSA review, young drivers are more likely to engage in “secondary uses of mobile phones” such as text messaging or downloading audio or video from the Internet. The NHTSA review stated, “To the extent that such auxiliary uses of cell phones are performed largely by drivers without fully-developed driving skills, we may expect to observe a synergistic acceleration in the resulting safety problem.”¹⁰ According to the Colorado Department of Transportation, “Teens have the highest fatality rate in motor vehicle crashes [of] any age group. There are many reasons [for this]. For instance, while teens are learning new skills needed for driving, many frequently engage in high-risk behaviors, such as speeding and/or driving after using alcohol or drugs. Studies also have shown that teens may be easily distracted while driving.”¹¹ One study reviewed by NHTSA found that “Driving while text messaging was ...associated with a 400 percent increase in the amount of time spent looking away from the road, relative to driving without text messaging.”¹² Proponents of the bill might argue that a ban on cell phone use would begin the process of changing social norms among young drivers and begin to educate new generations of drivers to the dangers of using cell phones while driving.
- Public opinion polls show a great concern about the potential hazard of cell phone use while driving. The opinion polls reflect the real-world experiences of people who are affected by cell-phone-using drivers, and those polls show strong concern about drivers who are distracted by their phones.
- Some might argue against the bill on the basis that it does not go far enough in terms of banning all cell phone use while driving. However, one might argue that the bill is important for two reasons: 1) it is a first step in making people aware of the dangers of using a cell phone while driving and beginning to change social norms and 2) it is critical to place these restrictions on younger drivers who we know are more dangerous drivers due to their limited experience and higher degree of distractibility.

⁷ Redelmeier, D. and Tibshirani, R. (1997). Association between cellular-telephone calls and motor vehicle collisions. *NEJM*. vol. 336, #7: 453-458.

⁸ Stayer, D., Drews, F., and Crouch, D. (2006). A comparison of the cell phone driver and the drunk driver. *Human Factors*. Vol. 48, #2: 381-389.

⁹ Cohen, J. and Graham, J. (2003). A revised economic analysis of restrictions on the use of cell phones while driving. *Risk Analysis*. Vol. 23, #1: 5-17; (15).

¹⁰ Ranney, T. (2008). Driver distraction: a review of the current state-of-knowledge. NHTSA. DOT HS 810 787. www.nhtsa.dot.gov

¹¹ Colorado Department of Transportation. www.dot.state.co.us/TrafficSafety/Documents/TeenFacts11905.pdf. Reviewed 1/22/09.

¹² Ranney, T. (2008). Driver distraction: a review of the current state-of-knowledge. NHTSA. DOT HS 810 787. www.nhtsa.dot.gov

REASONS TO OPPOSE BILL:

- Though well-intentioned, HB 1094 does not address the real issue at hand: distraction is caused by *talking* on a cell phone while driving, not simply *holding* one. In virtually all the studies that have examined this issue, one major consistency continues to be the researchers' conclusion that there is no difference in distraction levels between hands-free and hand held cell phones; and it is the distraction level that leads to driver impairment. The study from the University of Utah, in fact, states, "legislative initiatives that restrict hand held devices but permit hands-free devices are not likely to eliminate the problems associated with using cell phones while driving."¹³ Proponents of the bill might argue that HB 1094 is an appropriate first step towards more stringent legislation that will ban all cell phone use while driving but opponents might argue that, instead, the bill could encourage drivers to invest in technology (hands free devices) which will increase their resistance to future legislation.
- Cell phone use while driving is clearly hazardous but it is difficult to determine exactly what proportion of motor vehicle crashes are attributable to cell phone use. In addition, drivers and society gain a certain amount of value from the ability to use cell phones while driving. The HCRA study attempted to quantify both the value gained from cell phone use while driving and the costs incurred from crashes caused by cell phone use. The study estimated the cost-effectiveness in terms of dollars per quality adjusted life-year saved (QALY) from an intervention like banning cell phone use while driving and found that "there are actions that could be taken that would save lives lost in motor vehicle crashes at a lower economic cost than a ban on cell phones" such as daytime running lights on all cars or side door beams on light trucks.¹⁴ In short, the estimates of how hazardous cell phone use is are uncertain and there are other traffic safety measures that would be more cost-effective to implement.

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. Analyses are based on bills or issues at the time of their consideration by the Board and are accurate to the best of staff knowledge. It is suggested that people check to see that a bill has not changed during the course of a legislative session by visiting the Colorado General Assembly web page at www.state.co.us/gov_dir/stateleg.html. To see whether the Health District Board of Directors took a position on this or other policy issues, please visit www.healthdistrict.org/policy.

About the Health District

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.

For more information about this analysis or the Health District, please contact Carrie Cortiglio, Policy Coordinator, at (970) 224-5209, or e-mail at ccortiglio@healthdistrict.org

¹³Stayer, D., Drews, F., and Crouch, D. (2006). A comparison of the cell phone driver and the drunk driver. *Human Factors*. Vol. 48, #2: 388.

¹⁴ Cohen, J. and Graham, J. (2003). A revised economic analysis of restrictions on the use of cell phones while driving. *Risk Analysis*. Vol. 23, #1: 5-17; (15).