

SB20-065: LIMIT MOBILE ELECTRONIC DEVICES WHILE DRIVING

Concerning a limitation on the use of mobile electronic devices while driving

Details

Bill Sponsors:	House – Roberts (D), Melton (D) Senate – Court (D) ¹
Committee:	Senate Transportation & Energy
Bill History:	Introduced 1/8/2020
Next Action:	Hearing in Senate Transportation & Energy Committee
Fiscal Note:	Not Yet Published

Bill Summary

Colorado has a long-standing ban² 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 mobile electronic devices. The bill includes fines and points on a driver's license as penalties for the use of a mobile electronic device. This bill would also create an exemption for the use of a hands-free device accessory as well as exemptions for use in certain situations, including emergencies.

Issue Summary

Distracted Driving

Distracted driving has caused a significant uptick in traffic accidents and fatalities in the modern-age of technology. In 2017, distracted driving could be attributed to 3,166 deaths nationwide.³ However, the total number of fatalities is likely much higher; there is an assumed undercount due to the challenges of identifying and citing distracted drivers. In 2018, distraction-affected crashes that resulted in injury numbered 276,000 while those crashes that resulted only in property damage totaled 659,000.⁴

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. 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 hand-held phone for a conversation was more than 40 percent longer than people not using a phone.⁵ In a 2012 white paper, the National Safety Council asserted that multiple studies had shown that hands-free devices do not eliminate cognitive

¹ Senator Lois Court resigned her seat at the beginning of session due to medical issues. Although she is still listed as a sponsor, it is unknown if another senator will take sponsorship of this bill.

² 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.

³ National Highway Traffic Safety Administration [NHTSA] (n.d.) *Distracted Driving*. Retrieved from <https://www.nhtsa.gov/risky-driving/distracted-driving>

⁴ National Safety Council (n.d.) *Distracted driving*. Retrieved from <https://injuryfacts.nsc.org/motor-vehicle/motor-vehicle-safety-issues/distracted-driving/>

⁵ 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>

distraction.⁶ All forms of multitasking affect reaction time, but anything that takes a driver's eyes off the road is far more dangerous.⁷ The percentage of drivers using hand-held cellphone significantly decreased from 3.8 percent in 2015 to 3.3 percent in 2016.⁸

Distracted Driving in Colorado

In 2018, Colorado saw 53 deaths and 6,269 injuries related to 15,673 crashes involving distracted driving.⁹ Even with these alarming statistics, the Colorado Department of Transportation (CDOT) reported in 2017 that 89 percent of surveyed drivers admitted to driving distracted in the past 7 days.¹⁰ The same survey showed that 53 percent had talked on a hand-held cellphone and 54 percent talked on a hands-free phone.

The Health District's 2016 Community Health Survey found that 16 percent of respondents in Larimer County reported emailing or updating social media while driving.¹¹ Further, 1 in 5 respondents reported that they text while driving. Of the 41 percent of respondents that reported using hands-free technology, 27 percent still texted while driving.

In 2009, Colorado passed HB09-1094 which banned individuals under the age of 18, school bus drivers, and public utilities drivers from using cellphones while driving. 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.¹² Additionally, the bill prohibited texting while driving for all Colorado drivers. However, CDOT's study demonstrates that drivers are still texting behind the wheel, with 40 percent of respondents admitting that they had read a message while driving and 25 percent had sent a message.⁷

How Other States Have Addressed This Issue

Nearly every state, territory, and the District of Columbia (D.C.) have laws currently addressing the use of mobile devices while driving to some extent. These bans vary in content from banning all hand-held cellphone use, all cellphone use by a specific population, and/or text messaging. These bans can also vary in motorists affected from all motorists to just young motorists to specifically school bus drivers. As of May 2019, 20 states, 3 territories and D.C. prohibit the use of hand-held devices while driving for all motorists.¹³ 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 38 states and D.C. ban all cellphone use for novice or teen drivers.

⁶ 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-Distracted-White-Paper.pdf>

⁷ 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>.

⁸ U.S. Department of Transportation (June 2017). *Driver Electronic Device Use in 2016*. Retrieved from <https://crashstats.nhtsa.dot.gov/Api/Public/ViewPublication/812426>

⁹ Colorado Department of Transportation [CDOT] (April 1, 2019). *43 Crashes per Day Involved Distracted Drivers in Colorado*. Retrieved from <https://www.codot.gov/news/2019/april/43-crashes-per-day-involve-distracted-drivers-in-colorado>

¹⁰ CDOT. (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>.

¹¹ Health District of Northern Larimer County (2018). *Driving Habits in Our Community*. Retrieved from <https://www.healthdistrict.org/sites/default/files/2016-survey-driving-factheet-20180313.pdf>

¹² 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>.

¹³ National Conference of State Legislatures [NCSL] (May 29, 2019). *Cellular Phone Use and Texting While Driving Laws*. Retrieved from <https://www.ncsl.org/research/transportation/cellular-phone-use-and-texting-while-driving-laws.aspx>

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. 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 speeding. Secondary enforcement often has little effect on distracted driving rates while primary enforcement may be successful when it is “augmented by health education” campaigns.¹⁴ For example, CDOT introduced the “Getting Turned On” campaign in 2019 to encourage the use of mobile apps that lock drivers’ phones when on the road.¹⁵ 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.¹⁶ An evaluation in Connecticut and Massachusetts by the National Highway Traffic Safety Administration (NHTSA) found that texting laws are enforceable and identified viable strategies for law enforcement officers to use.¹⁷ Further, the evaluation suggested that having a strong set of distracted driving laws helps with enforcement of texting laws.

This Legislation

The bill defines an emergency as a situation in which a person has a reason to fear for their life or safety or believes that criminal act may have occurred that requires the use of a mobile electronic device while driving. The definition of “emergency” also includes a person that reports a fire, accident with injuries, a serious road hazard, a medical or hazardous materials emergency, or a reckless driver. “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 a “mobile electronic device” as a hand-held or portable device that provides voice communication between two or more people, amusement, or wireless data. “Use” is the holding, talking, or listening to the device as well as interacting with the device for texting, playing games, taking photos or videos, or other forms of entry/transmission.

Under this bill, a person under the age of 18 cannot operate a vehicle while using a mobile device and a person over the age of 18 cannot use a mobile device unless the use is through a hands-free accessory. The bill includes an exemption for the use of a mobile device to contact a public safety entity, during an emergency, as a first responder acting within the scope of their duties, to interact with a medical device, while at rest on the shoulder, or while parked. It is not in violation for a person to operate an amateur radio station with a license from the Federal Communications Commission (FCC).

A person who violates these requirements commits a class A traffic infraction. The bill’s penalty structure is as follows: 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 \$100 and 2 points on the license; on third and subsequent offenses, \$200 and 4 points on the license. If the driver was using a device to send or receive text messages, they have committed

¹⁴ 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>.

¹⁵ Colorado Department of Transportation. (2017). “Distracted Driving.” Retrieved from <https://www.codot.gov/safety/distracteddriving>.

¹⁶ Nevin, Paul E., et al. (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/>.

¹⁷ Retting, R., Sprattler, K., Rothenberg, H., & Sexton, T. (2017, March). Evaluating the enforceability of texting laws: Strategies tested in Connecticut and Massachusetts (Report No. DOT HS 812 367). Washington, DC: National Highway Traffic Safety Administration. Retrieved from https://www.nhtsa.gov/sites/nhtsa.dot.gov/files/documents/812367-textenforce_ctandma.pdf

a class 2 misdemeanor traffic offense and a fine of \$300 and 4 points on the license. The law enforcement officer cannot cite the person unless the officer saw the person holding the device and cannot cite for the enhanced penalty for texting unless the officer saw the individual texting on the device. Nothing in the bill should be construed to authorize the seizure and forfeiture of a mobile device. Additionally, the officer cannot cite a commercial vehicle driver for a violation of the state law if they have been cited for a violation of the federal regulation¹⁸ governing the use of mobile electronic devices in this class of driver. All charges that result in conviction or the admission of liability, will include a 6 dollar surcharge assessed to the defendant.

If passed, the bill takes effect on July 1, 2020.

Reasons to Support

By expanding the ban on using hand-held cellphones from just young drivers to the entire driving population of the state, there is greater opportunity to improve the public's safety on roadways. The bill, particularly if it is supplemented with a robust public education campaign, has the potential to dissuade people from driving while distracted due to the increased penalties, which could decrease the number of accidents, injuries, and fatalities each year in Colorado. Distracted driving creates large costs in lives, health care costs, and in property damage. The monetary amount of damage done to property due to crashes involving mobile can be exorbitant for individuals and insurance companies.¹⁹

There is a common movement nationwide to stem the increasing use of electronic devices while driving. There is reason to believe this bill could be successful because of what is known about the relationship between primary enforcement laws and public awareness campaigns. CDOT has continued public awareness efforts, recognizing April as National Distracted Driving Awareness Month and introducing the "Get Turned On" campaign in 2019.²⁰ With this public awareness already in place, this bill would meet the conditions demonstrated in research for reducing distracted driving with a combination of primary enforcement and public awareness.

Supporters

- American Builders and Contractors
- American Property Casualty Insurance Association
- Bicycle Colorado
- Colorado Catholic Conference
- Colorado Competitive Council
- Colorado Cross-Disability Coalition
- Colorado Municipal League
- State Farm Insurance Companies

Reasons to Oppose

The bill may interfere with individuals' perceived personal liberty while operating a vehicle they own or lease. Opponents sometimes assert that penalties emphasizing fines are often disproportionately harmful to individuals of low-socioeconomic status and enforcement could be discriminatory against minorities.²¹ Other concerns of this bill come from its enforceability. 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.¹² Further, some point to the fact that there currently is no significant evidence

¹⁸ 49 CFR § 392.82

¹⁹ A former North Carolina state senator claimed that in 2018 \$26 billion worth of property damage occurred in North Carolina due to distracted driving. Retrieved from <https://www.newsobserver.com/news/politics-government/article226867829.html>

²⁰ Public awareness campaign information at <https://www.codot.gov/safety/distracteddriving>.

²¹ 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.

demonstrating that existing laws limiting the use of hand-held devices have significantly reduced accident rates.

Opponents

- No formal opposition has been made public at this time.

Other Considerations

The definition of the “use” of a mobile electronic device may need to be clarified as it currently includes “listening to the device.” It is not clear 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. For example, Georgia state law²² clarifies this issue by using the following language:

“(2) Write, send, or read any text based communication, including but not limited to a text message, instant message, e-mail, or Internet data on a wireless telecommunications device or stand-alone electronic device; provided, however, that such prohibition shall not apply to: [...]

(B) The use of such device for navigation of such vehicle or for global positioning system purposes;

(3) Watch a video or movie on a wireless telecommunications device or stand-alone electronic device other than watching data related to the navigation of such vehicle;”

Additionally it is not clear whether the single touch of a device to activate or terminate a call that will be transmitted through a hands-free accessory would be considered “use.”

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 analysis or the Health District, please contact Alyson Williams, Policy Coordinator, at (970) 224-5209, or e-mail at awilliams@healthdistrict.org.

²² O.C.G.A. § 40-6-241