

SB19-012

“Use of Mobile Electronic Devices While Driving”

Economic Analysis

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Colorado law currently prohibits individuals who are younger than 18 years of age from using wireless telephones while driving. SB19-012 extends the prohibition to drivers of all ages and extends the existing prohibition of the use of wireless telephones to include all mobile electronic devices. This bill increases the penalties up to \$300 and four points for a first violation, \$500 and six points for a second violation, and \$750 and eight points for a third or subsequent violation.

While at the same time repealing a sentence enhancement for a violation that causes bodily injury or death and 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.

The Colorado government passed a law to discourage the use of mobile devices while driving in 2009 with HB09-1094. The law banned the use of cell phones for drivers under the age of 18 at all times. Texting, emailing and twittering while driving were banned for all drivers. In 2017 a new law was passed which used a more permissive definition of should be considered as distracted driving by law enforcement. SB17-027 increased the monetary fines for texting while driving but added language that made it a crime to text and drive only when it is done in a “careless or imprudent manner.”

Prior to SB17-027, the use of a phone while driving was a primary offense. Law enforcement officers only had to see a driver using a mobile device before they enforced a distracted driving citation. SB17-027 created a two-part test before law enforcement could issue a citation. First, the law enforcement officers must see the driver typing on the phone. Second, the officer must observe careless driving, which is defined in law as operating a car “without due regard for the width, grade, curves, corners, traffic and use of the streets and highways and all other attendant circumstances,” such as weather conditions. SB17-027 made it legal to manually

enter information on a mobile device and only illegal if the action of using the mobile device cause the driver to drive carelessly and imprudently.

In addition to changing penalties, SB19-012 reinstates mobile device use while driving as a primary offense. Although SB19-012 does not explicitly say that it is making the use of a mobile device while driving a primary offence, it is. It does so by removing the “careless or imprudent manner” clause, which made texting and driving a secondary offence due to the fact that there had to be a combination of the driver not being aware of their surrounds and using a mobile device at the same time. SB19-012 gives grounds to law enforcement officers solely needing to see a driver using a mobile device while driving in order to pull them over.

Although some drivers may feel that the enactment of SB19-012 will take away their rights/freedom as a driver, the government must consider all externalities created by the use of a mobile device while driving. An externality is defined as an activity of one entity that affects the welfare of another entity in a way that is outside the market mechanism. The externality of using a mobile device while driving consists of social inefficiencies which include injuries, deaths, accidents, and traffic delays. These externalities result from distracted driving through the use of a mobile device.

Government has a legitimate purpose in remediating negative externalities to an efficient level. Colorado State Legislature has a valid purpose in enacting this law to protect its population due to the severity of the negative externality in relation to the utility drivers receive from freely using their phones while driving.

Under the Coase Theorem, an efficient solution to an externality problem is achieved as long as someone is assigned property rights, independent of who is assigned those rights.

Currently the relaxed language regarding careless and imprudent use of mobile devices fails to assign property rights to either the surrounding drivers or law enforcement.

Colorado drivers are still driving distracted despite the laws put in place and risks associated. When drivers perform a cost benefit analysis of distracted driving, they fail to identify all costs that must be calculated. The primary costs that drivers identify are private costs, they discount societal costs of texting while driving. In an unregulated market, drivers have the right to use their mobile device in whichever way they see fit. Drivers have paid for their phone and car as well as contribute taxes which help pay for public roads. On the other hand, all drivers and pedestrians should feel as if they are protected from other drivers that are not paying attention to their surrounding which could leave said persons in a worse setting than previously through no fault of their own.

Distracted driving under Colorado law occurs when a driver is paying attention to something other than the task at hand – driving. There are actions such as talking to a passenger or changing the radio that distract the driver. However, texting while driving occurs at an alarming rate in Colorado and affects the driver in multiple ways. When one is texting and driving they have taken at least one hand off of the steering- wheel and their eyes are looking at their phone instead of their surroundings.

A study entitled, “Virginia Tech Transportation Institute Naturalistic Driving Study” found that a driver is twenty-three times more likely to get in a crash when texting while driving compared to having no distractions while driving. The “University of Utah Simulator Study” found that drivers on cell phones look but fail to see up to fifty percent of the information in the driving environment. Lastly, a study sponsored by the AAA Foundation for Highway Safety published a report in January 2018 that found that a driver’s visual or manual use of a cell phone

while driving resulted in approximately double the incidence of crashes compared with driving without any observable distraction-type behaviors.

In CDOT's 2017 annual mail survey of Colorado drivers, in the week prior: eighty-nine percent of participants reported driving distracted. Forty percent of drivers admitted to reading a message on their phones. Twenty-five percent sent a message while driving. Fifty-three percent talked on a handheld cellphone.

A study by Alva O. Ferdinand, et al. found that texting bans were linked to a decline in hospitalizations for traffic accidents. Specifically, the benefit was seen in states with "primary enforced" texting bans, meaning that law enforcement could pull over drivers just based on suspicion of using a mobile device while driving. Other states with secondary enforcement, such as Colorado with the current law, were not as effective.

SB19-012 enacts primary enforcement. As shown in the studies above, primary enforcement is more efficient at decreasing the negative externalities created by the use of a mobile device while driving. Government can assign property rights to remediate externalities in two ways, through command-and-control policies or market-based solutions. Current policy has been set using the command-and-control method with financial penalties and points on a license in order to discourage the actions that lead to the negative externalities of distracted driving. Through economic analysis, the government intervention has proven necessary and will continue to be needed in order to establish a more efficient society with regards to the use of mobile devices while driving.

CDOT's "Facts on Distracted Driving" webpage states, "cell phone use occurs more frequently and for longer durations than other, riskier behaviors." Thus, the number one source of driver inattention is cell phones. Due to the severity of externalities and rampant use of mobile

devices while driving in Colorado, the analysis shows that there is a legitimate purpose for government intervention.

SB19-012 will clear up the grey area of what constitutes distracted driving for adults by assigning what is essentially “property rights” to the law enforcers by excluding the clause “careless or imprudent manner”. This clause created the grey area in the first place. With the assigning of property rights to law enforcement, less of the negative externality resulting from texting and driving will occur.

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