

First Regular Session
Sixty-seventh General Assembly
STATE OF COLORADO

REENGROSSED

*This Version Includes All Amendments
Adopted in the House of Introduction*

LLS NO. 09-1096.01 Michael Dohr

SENATE BILL 09-296

SENATE SPONSORSHIP

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Senate Committees

Transportation

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Judiciary

Appropriations

A BILL FOR AN ACT

101 **CONCERNING THE ENFORCEMENT OF OFFENSES INVOLVING FAILURE**
102 **OF CERTAIN PERSONS IN A VEHICLE TO USE AN APPROPRIATE**
103 **RESTRAINING DEVICE.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments that may be subsequently adopted.)

Makes it a primary offense, punishable as a class B traffic infraction, for a driver to operate a vehicle if the driver, certain children, and all front-seat passengers are not wearing a fastened restraining device. Requires a law enforcement officer, prior to stopping a driver in a vehicle for a restraining device violation, to clearly observe the restraining device violation and be able to articulate that the restraining

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.

Capital letters indicate new material to be added to existing statute.

Dashes through the words indicate deletions from existing statute.

SENATE
3rd Reading Unanimous
May 1, 2009

SENATE
Amended 2nd Reading
April 29, 2009

device was unfastened.

Modifies the age and height requirements for certain children that are otherwise required to be fastened in a child restraint system. Prohibits conviction for a safety belt violation if the person charged produces in court a bona fide written statement by a physician certifying that physical disability makes restraint by a safety belt system inappropriate.

Specifies that it is the intent of the general assembly that the statutory prohibition against profiling be strictly observed by each law enforcement officer who stops or contemplates the stop of a motor vehicle driver for an alleged restraining device violation.

Increases the fines and surcharges for restraining device violations.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1. Legislative declaration.** (1) The general assembly
3 finds that making the failure to wear a fastened restraining device a
4 primary offense will increase usage of restraining devices in vehicles and
5 thereby:

6 (a) Save between thirty and seventy lives per year;
7 (b) Reduce the seriousness of injuries sustained in vehicle
8 accidents while not wearing a fastened restraining device;

9 (c) Reduce state medicaid costs by approximately seventy-two
10 million five hundred thousand dollars over the next ten years; and

11 (d) Secure for the state of Colorado approximately fourteen
12 million dollars in federal highway funds that are granted to states that
13 adopt primary offense safety belt legislation.

14 (2) The general assembly, therefore, determines and declares that
15 it is necessary and in the best interests of the citizens of Colorado to enact
16 legislation that makes the failure to wear a fastened restraining device by
17 the driver and certain passengers in a vehicle a primary offense.

18 **SECTION 2.** 42-4-236 (1), Colorado Revised Statutes, is
19 amended BY THE ADDITION OF A NEW PARAGRAPH to read:

1 **42-4-236. Child restraint systems required - definitions -**
2 **exemptions.** (1) As used in this section, unless the context otherwise
3 requires:

4 (a.8) "PRIVately OWNED NONCOMMERCIAL PASSENGER VEHICLE"
5 MEANS A PASSENGER CAR OR A PICKUP TRUCK OR A VAN, MINIVAN, OR
6 SPORT UTILITY VEHICLE WITH A GROSS VEHICLE WEIGHT RATING OF LESS
7 THAN TEN THOUSAND POUNDS.

8 **SECTION 3.** 42-4-236 (2) (a), (3) (b), and (9), Colorado Revised
9 Statutes, are amended to read:

10 **42-4-236. Child restraint systems required - definitions -**
11 **exemptions.** (2) (a) Unless exempted pursuant to subsection (3) of this
12 section, every child, who is under four years of age, and weighs under
13 forty pounds, being transported in this state in a privately owned
14 noncommercial passenger vehicle or in a vehicle operated by a child care
15 center, shall be provided with one of the following child restraint systems
16 suitable for the child's size and shall be properly fastened into such child
17 restraint system which is in a seating position which is equipped with a
18 safety belt or other means to secure the system according to the
19 manufacturer's instructions:

20 (I) (A) If the child is less than one year of age and weighs less
21 than twenty pounds, the child shall be properly restrained in a rear-facing
22 child restraint system.

23 (B) IF THE CHILD WEIGHS LESS THAN TWENTY POUNDS, THE CHILD
24 SHALL BE PROPERLY RESTRAINED IN A REAR-FACING CHILD RESTRAINT
25 SYSTEM.

26 (II) (A) If the child is one year of age or older, but less than four
27 years of age, and weighs less than forty pounds, but at least twenty

1 pounds, the child shall be properly restrained in a forward-facing child
2 restraint system UNLESS THE CHILD IS SUBJECT TO THE PROVISIONS OF
3 SUBPARAGRAPH (I) OF THIS PARAGRAPH (a).

4 (B) IF THE CHILD WEIGHS LESS THAN FORTY POUNDS, BUT AT LEAST
5 TWENTY POUNDS, THE CHILD SHALL BE PROPERLY RESTRAINED IN A
6 FORWARD-FACING CHILD RESTRAINT SYSTEM UNLESS THE CHILD IS
7 SUBJECT TO THE PROVISIONS OF SUBPARAGRAPH (I) OF THIS PARAGRAPH
8 (a).

9 (III) IF THE CHILD IS UNDER FOUR YEARS OF AGE AND WEIGHS
10 FORTY POUNDS OR MORE, THE CHILD SHALL BE PROPERLY RESTRAINED IN
11 A CHILD BOOSTER SEAT.

12 (3) Except as provided in section 42-2-105.5 (4), the requirements
13 of subsection (2) of this section shall not apply to a child who:

14 (b) Is being transported in a motor vehicle as a result of a
15 LIFE-THREATENING medical emergency;

16 (9) (a) No driver in a motor vehicle shall be cited for a violation
17 of subparagraph (I) of paragraph (b) of subsection (2) of this section
18 unless such driver was stopped by a THE law enforcement officer for an
19 alleged violation of articles 1 to 4 of this title other than a violation of this
20 section or section 42-4-237 CLEARLY OBSERVES THE VIOLATION AND IS
21 ABLE TO ARTICULATE THAT THE RESTRAINING DEVICE WAS UNFASTENED.

22 (b) IT IS THE INTENT OF THE GENERAL ASSEMBLY IN CREATING A
23 PRIMARY OFFENSE IN THIS SUBSECTION (9) THAT THE PROHIBITION
24 AGAINST PROFILING, AS DESCRIBED IN SECTION 24-31-309, C.R.S., BE
25 STRICTLY OBSERVED BY EACH LAW ENFORCEMENT OFFICER WHO STOPS OR
26 CONTEMPLATES THE STOP OF A DRIVER OF A MOTOR VEHICLE FOR AN
27 ALLEGED RESTRAINING DEVICE VIOLATION.

1 **SECTION 4.** 42-4-237 (1) (a), (3) (d), (3) (g), and (5), Colorado
2 Revised Statutes, are amended, and the said 42-4-237 is further amended
3 BY THE ADDITION OF A NEW SUBSECTION, to read:

4 **42-4-237. Safety belt systems - mandatory use - exemptions -**
5 **penalty.** (1) As used in this section:

6 (a) "Motor vehicle" means a ~~self-propelled vehicle intended~~
7 primarily for use and operation on the public highways, including
8 passenger cars, station wagons, vans, taxicabs, ambulances, motor homes,
9 and pickups PASSENGER CAR OR A PICKUP TRUCK OR A VAN, MINIVAN, OR
10 SPORT UTILITY VEHICLE WITH A GROSS VEHICLE WEIGHT RATING OF LESS
11 THAN TEN THOUSAND POUNDS. The term does not include motorcycles,
12 motorscooters, motorbicycles, motorized bicycles, passenger buses,
13 school buses, and farm tractors and implements of husbandry designed
14 primarily or exclusively for use in agricultural operations.

15 (3) Except as provided in section 42-2-105.5, the requirement of
16 subsection (2) of this section shall not apply to:

17 (d) A person with a ~~physically or psychologically disabling~~
18 MEDICAL condition whose ~~physical or psychological disability~~ CONDITION
19 prevents appropriate restraint by a safety belt system if ~~such~~ THE person
20 possesses a written statement by a physician certifying the condition, as
21 well as stating the reason why such restraint is inappropriate;

22 (g) A person operating a motor vehicle which does not meet the
23 definition of "commercial vehicle" as that term is defined in section
24 42-4-235 (1) (a) for commercial or residential delivery or pickup service
25 MAKING FREQUENT STOPS IN THE COURSE OF BUSINESS. ~~except that such~~
26 ~~person shall be required to wear a fastened safety belt during the time~~
27 ~~period prior to the first delivery or pickup of the day and during the time~~

1 period following the last delivery or pickup of the day.

2 (5) (a) No driver in a motor vehicle shall be cited for a violation
3 of subsection (2) of this section unless ~~such driver was stopped by a THE~~
4 ~~law enforcement officer for an alleged violation of articles 1 to 4 of this~~
5 ~~title other than a violation of this section~~ ~~CLEARLY OBSERVES THE~~
6 VIOLATION AND IS ABLE TO ARTICULATE THAT THE RESTRAINING DEVICE
7 WAS UNFASTENED.

8 (b) IT IS THE INTENT OF THE GENERAL ASSEMBLY IN CREATING A
9 PRIMARY OFFENSE IN THIS SUBSECTION (5) THAT THE PROHIBITION
10 AGAINST PROFILING, AS DESCRIBED IN SECTION 24-31-309, C.R.S., BE
11 STRICTLY OBSERVED BY EACH LAW ENFORCEMENT OFFICER WHO STOPS OR
12 CONTEMPLATES THE STOP OF A DRIVER OF A MOTOR VEHICLE FOR AN
13 ALLEGED RESTRAINING DEVICE VIOLATION.

14 (5.7) (a) A PERSON CHARGED WITH VIOLATING SUBSECTION (2) OF
15 THIS SECTION, EITHER AS A DRIVER OR A FRONT SEAT PASSENGER, SHALL
16 NOT BE CONVICTED IF THE PERSON, PURSUANT TO PARAGRAPH (d) OF
17 SUBSECTION (3) OF THIS SECTION, PRODUCES IN COURT A BONA FIDE
18 WRITTEN STATEMENT BY A PHYSICIAN THAT CERTIFIES A PHYSICAL
19 DISABILITY ON THE PART OF THE PERSON ALLEGED NOT TO HAVE WORN A
20 FASTENED SAFETY BELT AND STATES THE REASON WHY RESTRAINT BY A
21 SAFETY BELT SYSTEM IS INAPPROPRIATE.

22 (b) THE PROVISIONS OF PARAGRAPH (a) OF THIS SUBSECTION (5.7)
23 SHALL APPLY TO:

24 (I) A DRIVER WHO IS CHARGED FOR NOT WEARING A FASTENED
25 SAFETY BELT;

26 (II) A DRIVER WHO IS CHARGED FOR A FRONT SEAT PASSENGER NOT
27 WEARING A FASTENED SAFETY BELT; AND

1 (III) A FRONT SEAT PASSENGER WHO IS CHARGED FOR NOT
2 WEARING A FASTENED SAFETY BELT.

3 **SECTION 5.** 42-4-1701 (4) (a) (I) (D), Colorado Revised
4 Statutes, is amended to read:

42-4-1701. Traffic offenses and infractions classified - penalties - penalty and surcharge schedule. (4) (a) (I) Except as provided in paragraph (c) of subsection (5) of this section, every person who is convicted of, who admits liability for, or against whom a judgment is entered for a violation of any provision of this title to which the provisions of paragraph (a) or (b) of subsection (5) of this section apply shall be fined or penalized, and have a surcharge levied thereon pursuant to sections 24-4.1-119 (1) (f) and 24-4.2-104 (1) (b) (I), C.R.S., in accordance with the penalty and surcharge schedule set forth in sub-subparagraphs (A) to (P) of this subparagraph (I); or, if no penalty or surcharge is specified in the schedule, the penalty for class A and class B traffic infractions shall be fifteen dollars, and the surcharge shall be four dollars. These penalties and surcharges shall apply whether the defendant acknowledges the defendant's guilt or liability in accordance with the procedure set forth by paragraph (a) of subsection (5) of this section or is found guilty by a court of competent jurisdiction or has judgment entered against the defendant by a county court magistrate. Penalties and surcharges for violating specific sections shall be as follows:

23	Section Violated	Penalty	Surcharge
24	(D) Equipment violations:		
25	42-4-201	\$ 35.00	\$ 10.00
26	42-4-202	35.00	10.00
27	42-4-204	15.00	6.00

1	42-4-205	15.00	6.00
2	42-4-206	15.00	6.00
3	42-4-207	15.00	6.00
4	42-4-208	15.00	6.00
5	42-4-209	15.00	6.00
6	42-4-210	15.00	6.00
7	42-4-211	15.00	6.00
8	42-4-212	15.00	6.00
9	42-4-213	15.00	6.00
10	42-4-214	15.00	6.00
11	42-4-215	15.00	6.00
12	42-4-216	15.00	6.00
13	42-4-217	15.00	6.00
14	42-4-218	15.00	6.00
15	42-4-219	15.00	6.00
16	42-4-220	15.00	6.00
17	42-4-221	15.00	6.00
18	42-4-222 (1)	15.00	6.00
19	42-4-223	15.00	6.00
20	42-4-224	15.00	6.00
21	42-4-225 (1)	15.00	6.00
22	42-4-226	15.00	6.00
23	42-4-227 (1)	50.00	16.00
24	42-4-227 (2)	15.00	6.00
25	42-4-228 (1), (2), (3), (5), or (6)	15.00	6.00
27	42-4-229	15.00	6.00

1	42-4-230	15.00	6.00
2	42-4-231	15.00	6.00
3	42-4-232	15.00	6.00
4	42-4-233	75.00	24.00
5	42-4-234	15.00	6.00
6	42-4-235	50.00	16.00
7	42-4-236	65.00 75.00	16.00
8	42-4-237	65.00 75.00	6.00
9	42-4-1411	15.00	6.00
10	42-4-1412	15.00	6.00
11	42-4-1901	35.00	10.00

12 **SECTION 6. Effective date - applicability.** This act shall take
 13 effect June 1, 2009, and shall apply to infractions committed on or after
 14 said date.

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