

# CRS Report for Congress

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## **Mobile Telephones and Motor Vehicle Operation**

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# Mobile Telephones and Motor Vehicle Operation

## Summary

In the United States, as well as worldwide, there has been substantial growth in the use of mobile wireless telecommunication services (“mobile telephones”). The use of mobile telephones by the drivers of motor vehicles has been the subject of certain state and local restrictions. S. 179 (108<sup>th</sup> Cong., 1<sup>st</sup> Sess. (2003)) has been introduced in the 108<sup>th</sup> Congress to provide some federal oversight of mobile telephone use by drivers of motor vehicles, by requiring the individual states to enact legislation to restrict mobile telephone use by drivers of motor vehicles. Noncomplying states would be subject to the loss of federal highway funds.

At the present time, eighteen states and the District of Columbia have enacted legislation concerning the use of mobile telephones by drivers of motor vehicles. The existing state laws vary greatly and are summarized in the report. Some state laws expressly preempt local regulation of mobile telephones. As of the date of this report, fifty-three pieces of legislation have been introduced in 2004 in twenty-six states and the District of Columbia concerning the use of mobile telephones by drivers of motor vehicles. The current status of state legislation is summarized state-by-state in the report.

Over the years, Congress has repeatedly conditioned the use of federal highway funds to encourage states to enact desired transportation-related legislation. For example, Congress has used this legislative device in dealing with drunk driving. The pending federal legislation making federal highway funding contingent on state restriction on the use of mobile telephones by drivers of motor vehicles would appear to follow the driving while intoxicated legislative models.

This report examines the pending federal legislation, pending and enacted state legislation, and the possible effect that the federal legislation, if enacted, might have on the existing state and local regulations.

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# Mobile Telephones and Motor Vehicle Operation

## Background

In the United States, as well as worldwide, there has been substantial growth in the number of subscribers to mobile wireless telecommunication services.<sup>1</sup> It is reported that there are currently over 169,000,000 mobile telephone<sup>2</sup> subscribers in the United States.<sup>3</sup> The number of subscribers is increasing each year, and this growth is expected to continue.<sup>4</sup>

Concurrent with the increase in mobile wireless telecommunication services (“mobile telephones”) has been the use of mobile telephones and related accessories by drivers of motor vehicles.<sup>5</sup> Opinion is divided regarding the desirability of mobile

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<sup>1</sup> See CRS Report RS20664, *Third Generation (“3G”) Mobile Wireless Technologies and Services*; and CRS Report RS20993, *Wireless Technology and Spectrum Demand: Third Generation (3G) and Beyond*.

<sup>2</sup> For the purpose of this report, the term “mobile telephone” is used as a generic term for any type of cellular or wireless telephone.

<sup>3</sup> Figure reported by the Cellular Telecommunications & Internet Association (CTIA). See [<http://www.wow-com.com/>]. In 2002, the CTIA had reported that there were 137,000,000 subscribers. This indicates an average growth rate of over 20%, each year, in the past two years. The CTIA updates its usage figures regularly.

<sup>4</sup> *Id.*

<sup>5</sup> Technological advances in wireless telecommunications are combining with Internet technology to develop new generations of applications and services. Currently, the United States and other countries are moving toward a third generation of mobile telephony, known as 3G. The dominant feature of 3G technology is that the transmission speeds are significantly faster. See CRS Report RS20993 at 1. A related development is in the use of wireless fidelity technology, known as Wi-Fi. There are wireless networks which provide high-speed access to the Internet. 3G technology can be described as bringing Internet capability to wireless mobile telephones. Wi-Fi provides wireless Internet access for portable computers and handheld devices, such as Personal Digital Assistants. These technological advances have increased the communications technology available in motor vehicles. In addition to making and receiving calls (other features include call forwarding, paging features, Voicemail, and prioritizing of calls), modern mobile telephones can take, send, and receive pictures. Mobile telephones permit users to surf the World Wide Web, check stock quotes or sports scores, play video games, and perform a variety of other functions, in addition to conversation. Modern motor vehicles may include other technological devices such as televisions, navigation systems, fax machines, dvd players, computers, and other devices. It is expected that additional features will be available for

(continued...)

telephone use by drivers. Arguments have been made that mobile telephone use by a motor vehicle operator is a safety feature for summoning emergency personnel and/or roadside assistance. Others argue that the operator's mobile telephone use is a driver distraction that could lead to hazardous situations and to possible accidents.<sup>6</sup>

Certain state<sup>7</sup> and local jurisdictions<sup>8</sup> have enacted and implemented restrictions on the use of mobile telephones by the drivers of motor vehicles. Numerous foreign jurisdictions restrict and/or prohibit mobile telephone use and/or other wireless technology use in motor vehicles.<sup>9</sup>

Federal legislation has been introduced in the 108<sup>th</sup> Congress — “Mobile Telephone Driving Safety Act of 2003” — which would have the effect of placing some restrictions on the use of mobile telephones by drivers of motor vehicles under certain circumstances.<sup>10</sup> This report examines the pending federal legislation concerning mobile telephone use by the drivers of motor vehicles, pending and

<sup>5</sup> (...continued)

mobile telephones, as well as other entertainment/communication devices for use in motor vehicles. This report is limited to the use of mobile telephones by the drivers of motor vehicles.

<sup>6</sup> M. Sundeen, *Cell Phones and Highway Safety: 2003 State Legislative Update*, (2004) [Report from the National Conference of State Legislatures] at [<http://ncsl.org/print/transportation/cellphoneupdate12-03.pdf>]. (Cited to afterward as “Sundeen”).

<sup>7</sup> State legislative activity is discussed *infra*.

<sup>8</sup> The National Conference of State Legislatures (“NCSL”) reports that twenty-five municipalities or counties have passed restrictions on the use of mobile telephones while operating a motor vehicle. *See* Sundeen at 15-16. These jurisdictions, listed alphabetically by state, are: Miami-Dade County, FL; Pembroke Pines, FL; Westin, FL; Brookline, MA; Bloomfield, NJ; Carteret, NJ; Hazlet, NJ; Irvington, NJ; Marlboro, NJ; Nutley, NJ; Paramus, NJ; Santa Fe, NM; Nassau County, NY; Suffolk County, NY; Westchester County, NY; Brooklyn, OH; North Olmstead, OH; Walton Hills, OH; Conshocken, PA; Lower Chichester, PA; West Conshocken, PA; Lebanon, PA; Hilltown Township, PA; York, PA; and Sandy, UT. In 2001, the NCSL had reported thirteen jurisdictions that restricted mobile telephone use by drivers of motor vehicles, which represents nearly a 50% increase in two years. However, it should be noted that although these jurisdictions may have laws/ordinances which limit or restrict mobile telephone use by drivers of motor vehicles, such restrictions may not be strictly enforced, or may not be enforced at all.

<sup>9</sup> The NCSL reports (*see* Sundeen at 16) that certain restrictions have been placed on mobile telephone use by drivers of motor vehicles in forty-two countries: Australia; Austria; Belgium; Botswana; Brazil; Chile; Czech Republic; Denmark; Egypt; Finland; France; Germany; Greece; Hungary; India; Ireland; Israel; Italy; Japan; Jordan; Kenya; Malaysia; Netherlands; Norway; the Philippines; Poland; Portugal; Romania; Russia; Singapore; Slovak Republic; Slovenia; South Africa; South Korea; Spain; Sweden; Switzerland; Taiwan; Turkey; Turkmenistan; United Kingdom; and Zimbabwe. It is uncertain as to how stringently the restrictions are enforced. It should also be noted that use may be limited by drivers, as well as passengers in motor vehicles.

<sup>10</sup> S. 179, 108<sup>th</sup> Cong., 1<sup>st</sup> Sess. (2003).

enacted state legislation, and the possible effect that the federal legislation, if enacted, might have on the existing state and local laws.

### **Summary of Legislation in the 108<sup>th</sup> Congress**

In the 108<sup>th</sup> Congress, Senator Corzine reintroduced his bill from the 107<sup>th</sup> Congress<sup>11</sup> as the “Mobile Telephone Driving Safety Act of 2003,” S. 179,<sup>12</sup> on January 16, 2003. On that same day, the bill was referred to the Committee on Environment and Public Works, which was the last action on the bill.

Like its predecessor bill, S. 179 would direct the Secretary of Transportation to withhold federal highway funds from any state that permitted an individual to use a mobile telephone while operating a motor vehicle. The bill defines “motor vehicle” to mean a vehicle driven or drawn by mechanical power and manufactured primarily for use on public highways, but does not include a vehicle operated only on a rail.

The bill would withhold federal highway funds from the noncomplying states during their period of noncompliance. The Secretary would be required to withhold 5 percent of federal highway funds from noncomplying States for FY2005. In subsequent fiscal years, the Secretary is required 10 percent of federal highway funds from noncomplying states.

A state would meet the federal requirements if it has enacted and is enforcing a law that makes it unlawful to use a hand-held mobile telephone by an individual operating a motor vehicle. However, the state may permit an individual operating a motor vehicle to use a mobile telephone with a device that permits hand-free operation of the telephone if the state determines that such use does not pose a threat to public safety. Another exception is permitted in the case of an emergency or other exceptional circumstances, as determined by the state.

Federal highway funds withheld from a noncomplying state are to remain available until the end of the fourth fiscal year following the fiscal year for which the funds were authorized to be appropriated. If a noncomplying state complies with federal requirements within the withholding period, withheld funds will be apportioned to it and remain available for expenditure during the following three fiscal years. Any apportioned funds that are not obligated at the end of this period shall be allocated among the states that meet the federal requirements.

S. 179 does not address the issue of the use of mobile telephones by public safety personnel, such as police, firefighters, and emergency medical personnel. While the bill provides an exception for “emergency” situation, it is unclear whether regular use of mobile telephones by these public safety personnel would fall within this exception. Similarly, the bill does not provide a specific definition for the term “mobile telephone.” Such definition may be left to the states, but it is possible that such a definition might be interpreted to include other wireless technology. Also,

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<sup>11</sup> S. 927, 107<sup>th</sup> Cong., 1<sup>st</sup> Sess. (2001).

<sup>12</sup> 108<sup>th</sup> Cong., 1<sup>st</sup> Sess.

there is no specific definition for the concept of a “hands-free” device. Another issue may be that a headset type feature that covers both ears may prevent the driver from hearing the approach of emergency vehicles and other traffic-related sounds. Some states have laws which prohibit the use of two-earphone devices, whether in use for mobile telephones or for other audio uses. The bill does not address the issue of mobile telephone use by other passengers in the motor vehicle, other than the driver.

## Summary of Existing State Laws Concerning the Use of Mobile Telephones

At the present time, eighteen states and the District of Columbia have enacted legislation concerning the use of mobile telephones by drivers of motor vehicles. The scope and nature of these laws vary greatly. In 2001, New York became the first state to prohibit drivers from talking on hand-held mobile telephones while operating a motor vehicle.<sup>13</sup> California law requires that rental cars with mobile telephone equipment must include written operating instructions for the safe use of the mobile phone. Another recently enacted California law prohibits the operation of a school or a transit bus while using a mobile telephone. Florida and Illinois permit mobile telephone use, as long as the device does not impair sound to both ears of the driver. Arizona and Massachusetts prohibit school bus drivers from using cell phones while operating a school bus. Massachusetts law requires that all drivers have at least one hand on the steering wheel at all times while using a mobile telephone.

The various state laws concerning mobile telephone use by drivers of motor vehicles are summarized in the following table:<sup>14</sup>

**Table 1. State Laws Concerning the Use of Mobile Telephones**

State	Rule or Statute	Summary	Penalties
Arizona	Ariz.Admin, Code, Title 17 Chap. 6, Art. 1 R17-9-104 (2002).	A school bus driver may not wear an audio headset or earphones or use a mobile telephone when the school bus is in motion.	No penalty specified.
Arkansas	Ark. Code Ann. § 6-19-120 (2003).	Prohibits the driver use of a mobile telephone while operating a school bus.	Unclassified misdemeanor. Fine of \$100 - \$250.

<sup>13</sup> N.Y. Veh. & Traf. Code § 1225-c (McKinney 2002)..

<sup>14</sup> Table prepared from information derived from Sundeen at 3.

State	Rule or Statute	Summary	Penalties
<b>California</b>	<p>Cal. Veh. Code § 28090 (West 2001).</p> <p>A.B. (Assembly bill) 2785 (CA 2004), signed by the Governor on September 14, 2004. To be codified as Chapter No. 505.</p>	<p>Rental cars with mobile telephone equipment must include written operating instructions concerning its safe use.</p> <p>Makes it an infraction to drive a school bus or transit vehicle while using a wireless telephone. Contains exceptions.</p>	<p>\$100 maximum for first violation; \$200 maximum for second; \$250 for third and subsequent violations committed within one year.</p> <p>Driving infraction.</p>
<b>Delaware</b>	<p>H.Con.Res. 30 (2002)(apparently not codified).</p> <p>H.B. 379 (DE 2004); Chap. No. 274 (June 24, 2004).</p> <p>S. B. 174 (DE 2004); Chap. No. 318 (July 6, 2004).</p>	<p>Established a task force to study and make findings and recommendations regarding driver distractions, including mobile telephone use.</p> <p>Clarifies that school bus drivers can use a radio or electronic device to make or receive calls for assistance.</p> <p>Prohibits the use of a mobile telephone while operating a school bus.</p>	<p>Not applicable.</p> <p>No applicable (amendment to existing law).</p> <p>\$50 to \$100 fine for first offense. \$100 to \$100 fine and six month bus driving suspension for subsequent offenses.</p>



State	Rule or Statute	Summary	Penalties
<b>District of Columbia</b>	D.C. Code §§ 50-2151 to 2157 (2004).	<p>Mobile telephone use is prohibited by a driver of a motor vehicle, unless equipped with a hands-free accessory. Exceptions for emergency situations and law enforcement and emergency personnel.</p> <p>Total prohibition of mobile telephone use by drivers of a moving school bus carrying passengers; and a person holding a learner's permit.</p>	<p>Fine of \$100; provided that the fine shall be suspended for a first time violator who, subsequent to the violation but prior to the imposition of a fine, provides proof of acquisition of a hands-free accessory of the required type.</p> <p>Violation is to be treated as a moving violation.</p>
<b>Florida</b>	Fla. Stat. Ann. § 316.304 (West 2001).	Mobile telephone use is permitted only if it provides sound through one ear and allows surrounding sound to be heard with the other ear.	\$30 for each violation; non-moving violation.
<b>Illinois</b>	<p>625 Ill. Comp. Stat. 5/12-610 (2003).</p> <p>625 Ill. Comp. Stat. 5/12-813.1 (2003).</p>	<p>A single-sided headset or earpiece is permitted with a mobile telephone while driving.</p> <p>Drivers of school buses prohibited from using a mobile telephone while driving; emergency exceptions.</p>	<p>No penalty.</p> <p>Petty offense; punishable by a \$110 to \$250 fine.</p>

State	Rule or Statute	Summary	Penalties
<b>Kentucky</b>	Ky. Rev. Stat. Ann. § 65.873 (2003).	Prohibits local governments from restricting mobile telephone use by drivers of motor vehicles.	Not applicable.
<b>Louisiana</b>	La. Rev. Stat. Ann. § 33:31 (West 2004).	Local jurisdictions prohibited from regulating mobile telephone use by drivers of motor vehicles.	Not applicable.
<b>Maine</b>	Me. Rev. Stat. Ann. tit. 29-A M.R.S. §§ 1304, 1311 (West 2003).	<p>Persons who have been issued a learners permit may not operate a motor vehicle while operating a mobile telephone.</p> <p>Provides a restricted license for those under age 18; such persons may not operate a motor vehicle while using a mobile telephone.</p>	<p>“Traffic infraction.”</p> <p>License restrictions may be extended for periods of time (180 days).</p>

State	Rule or Statute	Summary	Penalties
<b>Massachusetts</b>	<p>Mass. Gen. Laws Ann. ch. 90, § 13 (West 2004).</p> <p>Mass. Gen. Laws Ann. ch. 90, § 7B (West 2004).</p>	<p>Mobile telephone use is permitted as long as it does not interfere with the operation of the vehicle and one hand remains on the steering wheel at all times.</p> <p>No person shall operate a moving school bus while using a mobile telephone. Emergency exception.</p>	<p>\$35 maximum for first violation; \$35 to \$75 for second violation; \$75 to \$150 for third and subsequent violations committed within one year.</p> <p>No penalty specified.</p>
<b>Mississippi</b>	Miss. Code Ann. § 63-3-212 (2004).	Local jurisdictions are prohibited from enacting ordinances restricting mobile telephone use in motor vehicles.	Not applicable.
<b>Nevada</b>	Nev. Rev. Stat. Ann. § 707.375 (Michie 2004).	Local jurisdictions are prohibited from regulating use of mobile telephones by drivers of motor vehicles.	Not applicable.

State	Rule or Statute	Summary	Penalties
<b>New Jersey</b>	<p>N.J. Stat. Ann. § 39:4-97.3 (West 2004).</p> <p>N.J. Stat. Ann. § 39:3B-25 (West 2004)</p>	<p>Use of a hands-free mobile telephone by the operator of a moving motor vehicle is permitted only if “its placement does not interfere with the operation of federally required safety equipment and the operator exercises a high degree of caution in the operation of the motor vehicle.”</p> <p>Drivers of school buses are prohibited from using mobile telephones, except: 1) when the bus is parked in a safe area off highway; or 2) in an emergency situation.</p>	<p>Not less than \$100 and not more than \$250.</p> <p>Not less than \$250 or more than \$500.</p>
<b>New York</b>	N.Y. Veh. & Traf. Code § 1225-c (McKinney 2002).	Drivers are prohibited from talking on hand-held mobile telephones while operating motor vehicles.	Not more than \$100.
<b>Oklahoma</b>	H.B. 1081 (2001) (apparently not codified).	Prohibits local jurisdictions from restricting use of mobile telephones by drivers of motor vehicles.	Not applicable.

State	Rule or Statute	Summary	Penalties
<b>Oregon</b>	Or. Rev. State. § 801.038 (2003).	A city, county or other local government may not enact or enforce any charter provision, ordinance, resolution or other provision regulating the use of mobile telephones in motor vehicles.	Not applicable.
<b>Rhode Island</b>	R.I. Gen. Laws § 31-22-11.8 (2004).	The use of a mobile telephone by a school bus driver is prohibited while the bus is transporting children, except in the case of an emergency.	\$50 fine.
<b>Tennessee</b>	Tenn. Code Ann. § 5508-192 (2004).	School bus driver prohibited from using a hand held mobile telephone while such a vehicle is in motion and is transporting children. Exception for mobile telephone or two-way radio communications made to and from a central dispatch, a school transportation department, or a similar office.	Class C misdemeanor. Fine of \$50.

## Legislative Trends

States continue to consider and enact legislation concerning the use of mobile telephones by the drivers of motor vehicles. The NCSL determined that, in 2003 alone, legislators in forty-one states and the District of Columbia considered one hundred sixteen bills concerning mobile telephone use or related distracted driving issues.<sup>15</sup> However, most of these bills were not passed.<sup>16</sup>

To date, no state has outright banned all use of any mobile telephone device while driving. However, there has been a trend toward at least considering a prohibition on the driver use of hand-held telephones. For example, New York, prohibits the use of hand-held telephones while driving except during emergency situations; however, the New York law permits the driver to use hands-free mobile telephone devices. Forty-eight bills which were introduced in thirty-three states considered similar legislation to implement hands-free mobile telephone requirements. None of these bills were enacted into law in 2003, although two such bills have been enacted and implemented in 2004, which are discussed below.

Several states have begun to focus on mobile telephone use by young drivers. Many proposals would restrict use based on age/or type of permit. In 2003, Maine enacted a law to restrict mobile telephone use by drivers under the age of twenty-one who have a learner's permit or a restricted drivers license.

Currently, several states prohibit the drivers of school buses from using mobile telephones while operating a school bus. In 2003, legislatures in six states proposed bills which would implement such restrictions. Arkansas and Tennessee enacted such laws in 2003.

A growing trend is to require the collection of crash data information. Several states currently require law enforcement officers to collect information concerning any connection between mobile telephone use and a motor vehicle crash. Other states have enacted legislation which requires the conduct of studies of the effects of mobile telephone use on traffic safety.

Another legislative theme is for the states to assert authority over the jurisdiction of mobile telephone use and to restrict local mobile telephone use laws. Several states — Kentucky, Louisiana, and Nevada among them — have laws that prohibit local restriction or regulation of mobile telephone use by drivers of motor vehicles.

Certain proposals would place special requirements on the use of mobile telephone use by the drivers of motor vehicles. Such requirements may involve the use of special headsets or hands-free equipment. For example, California in 2001 enacted legislation that required rental cars equipped with mobile telephone equipment must be furnished with written instructions for the safe use of such equipment.

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<sup>15</sup> Sundeen at 4-11.

<sup>16</sup> *Id.*

States have considered other distracted driving legislation concerning distractions to the operator of a motor vehicle. In 2003, Louisiana enacted legislation that prohibited driving a motor vehicle equipped with a television capable of receiving any pre-recorded visual presentation, unless the device is behind the driver's seat or is not visible by the driver.

The state legislatures of six states considered measures that would have increased driver responsibility for the involvement in a crash while the driver was using a mobile telephone. None of these bills was enacted.

## **State Legislative Activity in 2004**

In 2004, three jurisdictions enacted legislation concerning the use of mobile telephones by the drivers of motor vehicles: the District of Columbia, New Jersey, and Delaware. The District and New Jersey laws are summarized.

### **District of Columbia.**

On January 4, 2004, the District of Columbia City Council approved hands-held restrictions on mobile telephone use by motor vehicle operators as part of the Distracted Driving Safety Act of 2004 ("Act"),<sup>17</sup> an act that also set other standards for "distracted driving."

Beginning on July 1, 2004, it became illegal for drivers to use a mobile telephone or other electronic device while driving in the District of Columbia, unless the telephone or device is equipped with a hands-free accessory. The act is designed to improve traffic safety in the District of Columbia by reducing the number of crashes caused by inattentive drivers who become distracted by the use of phones or other electronic devices.<sup>18</sup> The District police department began issuing warnings on July 1, 2004, and actual ticketing began on August 1, 2004.

The statute specifically states that no one "shall use a mobile telephone or other electronic device while operating a moving vehicle in the District of Columbia, unless the telephone or device is equipped with a hands-free accessory."<sup>19</sup> Exceptions to the prohibition is made for: 1) emergency use of a mobile telephone, including calls to 911 or 311, a hospital, an ambulance service provider, a fire department, a law enforcement agency, or a first-aid squad; 2) use by law enforcement and emergency personnel or by a driver of an authorized emergency vehicle, acting within the scope of official duties; or initiating or terminating a

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<sup>17</sup> D.C. Law 15-311 (effective Mar. 30, 2004); codified at D.C. Code §§ 50-2151 to 2157 (2004).

<sup>18</sup> The D.C. Metropolitan District of Columbia Police Department website contains a comprehensive summary of the act. See [<http://mpdc.gov/info/traffic/distracteddriver.shtml>].

<sup>19</sup> *Id.* § 50-2153(a).

telephone call, or turning the telephone on or off.<sup>20</sup> The driver of a school bus is specifically prohibited from using a mobile telephone, except in cases or emergency or under certain very specific cases.<sup>21</sup> A person holding a learner's permit is prohibited from using any mobile telephone or other device, including those with hands-free accessories, while operating a moving vehicle on a public highway, except in an emergency.<sup>22</sup> No age restriction or limitation specified within the context of the learner's permit.

The statute requires that following a motor vehicle accident, the police officer's report must include whether a mobile telephone was present in a vehicle; whether the use of such telephone contributed to the cause of the accident; and whether any other distraction contributed to the cause of the accident.<sup>23</sup> The Director of the District Department of Transportation is required to annually publish and submit to the City Council a report containing statistics concerning the possible relationship between motor vehicle accidents in the District of Columbia and the use of mobile telephones or other electronic devices by motor vehicle operators.<sup>24</sup> The Mayor is also required to submit a report to the City Council containing recommendations concerning mobile telephone use in motor vehicles.<sup>25</sup>

The statute provides penalty provisions. A fine of \$100 is to be imposed for violation of the statutory requirements. However, the fine shall be suspended for a first time violator who, subsequent to the violation but prior to the imposition of the fine, provides proof of a hands-free accessory of the type required by the law.<sup>26</sup>

### **New Jersey.**

The New Jersey statute was enacted into law on January 20, 2004, and is more limited in scope than the District of Columbia law. The statute provides that the use of a wireless telephone by the operator of a moving motor vehicle on a public road or highway shall be unlawful, except when the telephone is a hands-free wireless telephone, provided that its placement does not interfere with the operation of federally required safety equipment and the operator exercises a high degree of caution in the operation of the motor vehicle.<sup>27</sup> An exception is allowed to use a hand-held telephone if: the driver has reason to fear for his life or safety, or believes that a criminal act may be perpetrated against himself or another person; or the operator is using the telephone to report a fire, traffic accident, hazard, or other

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<sup>20</sup> *Id.* § 50-2153(b).

<sup>21</sup> *Id.* § 50-2154(a).

<sup>22</sup> *Id.* § 50-2154(b).

<sup>23</sup> *Id.* § 50-2156(a).

<sup>24</sup> *Id.* § 50-2158(a).

<sup>25</sup> *Id.* § 50-2158(b).

<sup>26</sup> *Id.* § 50-2155(a).

<sup>27</sup> N.J. Stat. Ann. § 39:4-97.3(a) (West 2004).



dangerous condition. The penalty for the violation of the New Jersey statute is a fine of not less than \$100, and not more than \$250.<sup>28</sup>

### **Other States.**

In 2004, various states have continued their efforts to regulate the use of mobile telephones by the drivers of motor vehicles. Delaware<sup>29</sup> enacted two laws relating to the use of radios or electronic devices by the drivers of school buses<sup>30</sup> and prohibiting the use of mobile telephones while operating a school bus.<sup>31</sup>

Pending state legislation is summarized in the following table.

**Table 2. 2004 State Legislative Activity Concerning Mobile Telephone Use and Motor Vehicle Operation**

<b>State</b>	<b>Bill Number</b>	<b>Bill Summary and Penalties</b>	<b>Status of State Activity</b>
<b>Alabama</b>	H.B. 117 (AL 2004).	Prohibits the use of hand-held mobile telephones while driving. Headsets can only allow sound to one ear. Fines of up to \$50.	Referred to the House Public Safety Committee (February 3, 2004).

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<sup>28</sup> *Id.* § 39:4-97.3(d).

<sup>29</sup> See references on chart of state legislative activity in 2004.

<sup>30</sup> H.B. 379 (DE 2004) to be codified at Del. Code Ann. Ch. 274.

<sup>31</sup> S.B. 174 (DE 2004) to be codified at Del. Code Ann. Ch. 318.

State	Bill Number	Bill Summary and Penalties	Status of State Activity
<b>Arizona</b>	H.B. 2691 (AZ 2004).	Prohibits the use of hand-held telephones while driving. Exceptions provided for emergency situations. Violations have fines of \$50. If driver involved in an accident, fine may be \$200. Law enforcement required to collect information about mobile telephone use on crash report forms.	Referred to the House Rules Committee (February 16, 2004).
<b>California</b>	<p>A.B. (Assembly bill) 1828 (CA 2004).</p> <p>A.B. (Assembly bill) 2785 (CA 2004). Enacted.</p> <p>S.B. 1320 (CA 2004).</p>	<p>Prohibits the use of a hand-held mobile telephone while operating a motor vehicle. Exceptions for emergency situations. Convictions for a first offense are punishable by a \$20 fine. Subsequent offenses are punishable for a \$50 fine.</p> <p>Prohibits operating a school bus or a transit bus while using a mobile telephone.</p> <p>Prohibits the use of a mobile telephone while driving in a school zone.</p>	<p>Referred to the Assembly Transportation Committee. Not heard (April 19, 2004).</p> <p>Signed by the Governor on September 14, 2004. To be codified at Chapter No. 505.</p> <p>Referred to the Senate Transportation Committee (April 20, 2004).</p>

State	Bill Number	Bill Summary and Penalties	Status of State Activity
<b>Colorado</b>	H.B. 1173 (CO 2004).	Makes it a secondary traffic offense for a holder of a temporary instruction permit or a minor's instruction permit to drive while using a mobile telephone or other mobile communication device (other than a hands-free device). Provides exemptions and penalty assessments.	Passed House and referred to the Senate Committee on Transportation. Postponed indefinitely (March 3, 2004).
<b>Connecticut</b>	H.B. 5553 (CT 2004).	Prohibits the use of hand-held telephones while driving. Prohibits drivers from using a mobile electronic device to perform any personal computer function, sending or receiving any electronic mail, playing any video game or digital video disk, or taking or transmitting any digital photograph while operating a motor vehicle. Fines range from \$75 for a first violation, to \$150 for a second violation, to \$250 for a third and subsequent violation.	Referred to the Joint Judiciary Committee. Failed joint favorable deadline (March 22, 2004).
<b>Delaware</b>	H.B. 224 (DE 2004).	Prohibits the use of hand-held mobile telephones while	Reported out of the Public Safety Committee without

State	Bill Number	Bill Summary and Penalties	Status of State Activity
<b>Delaware (cont.)</b>		operating a motor vehicle and makes it a secondary offense. Contains emergency exceptions. Requires schools to place inattentive driving on the school curriculum. Prohibits use of a mobile telephone while operating a school bus. Preempts local jurisdictions from enacting restrictions on the use of mobile telephones while driving. Requires sellers of mobile telephones to educate customers about improper use of the telephone while driving. Requires the Dept. of Public Safety to collect crash statistics related to mobile telephone use while driving.	recommendation (June 11, 2004).
	H.B. 379 (DE 2004).	Clarifies that school bus drivers can use a radio or electronic device to make or receive calls for assistance.	Signed by the Governor and became Chapter No. 274 (June 24, 2004).
	S.B. 174 (DE 2004).	Prohibits the use of a mobile telephone while operating a school bus. Penalties provided.	Signed by the Governor and became Chapter No. 318 (July 6, 2004).
	S.B. 244 (DE 2004).	Prohibits drivers with only a learner's permit from using a	Passed Senate. Referred to House Public Safety Committee. Laid

State	Bill Number	Bill Summary and Penalties	Status of State Activity
<b>Delaware (cont.)</b>		mobile telephone.	on table (June 1, 2004).
<b>District of Columbia</b> (See discussion above).	B15-0035 (DC 2004).	Prohibits the use of hand-held telephones while driving. Provides exceptions for emergency situations. Violators may be punished with fines of \$100. Requires police to collect information on crash reports about mobile telephone use. Requires the Department of Motor Vehicles to publish crash statistics concerning the relationship between mobile telephone use and motor vehicle crashes.	Enacted on January 6, 2004.
<b>Georgia</b>	H.B. 1241 (GA 2004).	Prohibits restricted drivers (Class D) from using mobile telephones while operating a motor vehicle.	Referred to the House Motor Vehicles Committee (January 29, 2004).
<b>Illinois</b>	H.B. 5020 (IL 2004).	Provides that a person who holds an instruction permit, or a person who has held a driver's license for less than one year, may not use a mobile telephone while driving a vehicle. Provides that a person who is not subject to those prohibitions may use a mobile	Tabled by sponsor (March 25, 2004).

State	Bill Number	Bill Summary and Penalties	Status of State Activity
Illinois (cont.)		<p>telephone while driving if he or she obeys all traffic laws. Provides that if a person permitted to use a wireless telephone commits a traffic violation while using a wireless telephone, he or she, in addition to other violations, is guilty of a petty offense punishable by a fine of not more than \$79. Provides that a violation of the provision or a similar provision of a local ordinance is an offense against laws or ordinances regarding the movement of traffic. Contains emergency exceptions.</p>	
	H.B. 6568 (IL 2004).	<p>Provides that a person under age 19 may not use a mobile or other telephone while driving. Contains emergency exceptions. Violation is a petty offense punishable by a fine of \$100.</p>	Referred to the House Rules Committee (February 6, 2004).
	H.B. 6636 (IL 2004).	<p>Makes it a petty offense to drive a motor vehicle while using a mobile telephone, unless that telephone is designed for hands-</p>	Referred to the House Rules Committee (February 9, 2004).

State	Bill Number	Bill Summary and Penalties	Status of State Activity
<b>Illinois (cont.)</b>	S.B. 2575 (IL 2004).	<p>free operation and is used in that manner while driving. Fine of not more than \$20 for a first offense and not more than \$50 for each subsequent offense. Contains emergency exceptions.</p> <p>Provides that a person who holds an instruction permit or a graduated license may not use a mobile telephone while driving. Contains emergency exceptions.</p>	Referred to the House Rules Committee (February 4, 2004).
<b>Indiana</b>	S.B. 131 (IN 2004).	<p>Makes it a Class B infraction with a fine of \$1,000 to operate a motor vehicle and simultaneously use a mobile telephone, except in emergencies. Authorizes a person who views the operation of a vehicle with simultaneous mobile telephone use and driving on certain highways to report the incident to the state police or sheriff. Requires the state police or sheriff to issue a notice to the registered owner of the motor vehicle.</p>	Referred to the Committee on Criminal and Civil and Public Policy (January 6, 2004).

State	Bill Number	Bill Summary and Penalties	Status of State Activity
<b>Iowa</b>	H.B. 2158 (IA 2004).	Prohibits the use of a hand-held mobile telephone while driving. There is a \$25 fine upon conviction.	Referred to the House Transportation Committee (February 4, 2004).
<b>Kentucky</b>	H.B. 602 (KY 2004).	Prohibits the use of hand-held mobile telephones while operating a motor vehicle. Requires the Department of Transportation to study the effects of the use of mobile telephones and similar equipment and driver distraction on traffic safety. Department must submit a report to the Governor and the legislature in four years. Pre-empts local laws.	Referred to House Transportation Committee (February 26, 2004).
<b>Maryland</b>	H.B. 1151 (MD 2004).  H.B. 1152 (MD 2004).	Prohibits minors under the age of 18 from using any mobile telephone while driving. Excepts emergencies. Authorizes a maximum fine of \$500 for violations.  Prohibits drivers from engaging in distracting activity including use of a mobile telephone or other electronic device. Excepts hands-free devices. Excepts emergencies. Requires information in accident reports.	Reported unfavorably from the House Committee on Environmental Matters (March 15, 2004).  Reported unfavorably from House Environmental Matters Committee (March 22, 2004).



State	Bill Number	Bill Summary and Penalties	Status of State Activity
Maryland (cont.)		Requires report to the legislature regarding mobile phone use and auto crashes.	
	H.B. 189 (MD 2004).	Prohibits holders of learner's instructional permits or provisional driver's licenses from using specific interactive wireless communication devices while operating a motor vehicle. Excepts emergencies.	Reported unfavorably from the House Committee on Environmental Matters (March 1, 2004).
	H.B. 275 (MD 2004).	Provides that evidence of a motor vehicle driver's operation of a hand-held telephone may be considered by the trier of fact in determining whether the driver was negligent under specified circumstances. Makes specific exceptions.	Referred to House Judiciary Committee. Reported unfavorably (March 15, 2004).
H.B. 29 (MD 2004).	Prohibits hand-held telephone use while driving. Makes specific exceptions. Requires that a violation be enforced only as a secondary action. Violation of the statute may not be classified as a moving violation for assessing	Environmental Matters Committee reported unfavorably (February 13, 2004).	

State	Bill Number	Bill Summary and Penalties	Status of State Activity
<b>Maryland (cont.)</b>	H.B. 5 (MD 2004).	points. Requires the Motor Vehicle Administration to impose a restriction on learners' instructional permits and provisional drivers' licenses that prohibits permit holders or licensees from using a specified wireless communication device while operating a motor vehicle. Makes specified exceptions.	Reported unfavorably from the House Committee on Environmental Matters (March 15, 2004).
	S.B. 630 (MD 2004).	Prohibits minors from using a mobile telephone while driving.	Referred to the Senate Judicial Proceedings Committee. Reported unfavorably (March 1, 2004).
<b>Michigan</b>	H.B. 5084 (MI 2003).	Prohibits an individual under 18 years of age who is driving on a permit or in graduated licensing status from using a hand-held mobile telephone while operating a motor vehicle.	Referred to the Committee on Transportation (September 25, 2003).
	H.B. 5085 (MI 2003).	Prohibits the use of a mobile telephone while driving.	Referred to the Committee on Transportation (September 25, 2003).

State	Bill Number	Bill Summary and Penalties	Status of State Activity
<b>Minnesota</b>	H.B. 2712 (MN 2004).	Prohibits operation of a mobile telephone in a moving motor vehicle by the holder of a provisional driver's license or instruction permit.	Referred to the Committee on Transportation Policy (March 3, 2004).
	S.B. 2805 (MN 2004).	Prohibits operation of a mobile telephone in a moving motor vehicle by the holder of a provisional driver's license or instruction permit.	Referred to the Senate Committee on Finance (April 26, 2004).
<b>Nebraska</b>	L.B. 1111 (NE 2004).	Makes changes regarding holders of provisional operator's permits; prohibits certain forms of mobile telephone use; sets forth penalty provisions.	Referred to Legislative Committee on Transportation and Telecommunications. Hearing notice (February 10, 2004).

State	Bill Number	Bill Summary and Penalties	Status of State Activity
<p><b>New Jersey</b></p> <p>(See discussion above.)</p>	<p>A.B.(Assembly bill) 3159 (NJ 2004).</p>	<p>Requires driver distraction (including mobile telephone use) to be noted in traffic accident reports.</p>	<p>Introduced and filed (June 24, 2004).</p>
	<p>A.B. (Assembly bill) 664; 965 (NJ 2004).</p>	<p>Prohibits the use of mobile telephones while driving.</p>	<p>Referred to the Assembly Transportation Committee (January 13, 2004).</p>
	<p>S.B. 338 (NJ 2004).</p>	<p>Prohibits the use of a mobile telephone while operating a motor vehicle. Permits hands-free devices. Requires the DMV to collect data on crash report forms.</p>	<p>Enacted January 20, 2004.</p>
<p><b>New York</b></p>	<p>A.B. (Assembly bill) 3675 (NY 2004).</p>	<p>Provides that drivers who, while using a mobile telephone, cause accidents which result in serious injury or death shall be subject to the same criminal penalties as drivers who cause serious injury or death while driving under the influence of alcohol or drugs. Imposes a penalty of two points against a person's license when convicted of a violation of driving while using a mobile telephone.</p>	<p>Referred to the Assembly Codes Committee (February 10, 2004).</p>

State	Bill Number	Bill Summary and Penalties	Status of State Activity
New York (cont.)	A.B. (Assembly bill) 4114 (NY 2004).	Requires that police motor vehicle crash reports include information about whether mobile telephones were present in the vehicles and whether the mobile telephones were a contributing factor to the crash.	Referred to the Assembly Transportation Committee (January 7, 2004).
	A.B. (Assembly bill) 5689 (NY 2004).	Prohibits drivers under the age of 18 from using a hands-free mobile telephone while operating a motor vehicle.	Referred to the Assembly Transportation Committee (March 3, 2004).
	A.B. 6379 (Assembly Bill) 6379 (NY 2004).	Prohibits drivers from using hands-free mobile telephones while operating a motor vehicle.	Referred to the Assembly Transportation Committee (March 4, 2004).
	S.B. 3521 (NY 2004).	Amends existing law so that drivers receive one point on their driving records if they are convicted of using a mobile telephone while operating a motor vehicle.	Amended in the Senate Transportation Committee (January 23, 2004).

State	Bill Number	Bill Summary and Penalties	Status of State Activity
<b>Rhode Island</b>	H.B.7065 (RI 2004).	Prohibits the use of hand-held mobile telephones while driving a motor vehicle or a bicycle. Fines are \$35 for a first offense; \$70 for a second offense; and \$140 for a third or subsequent offense.	Referred to the House Corporations Committee (January 8, 2004).
	H.B. 7107 (RI 2004).	Prohibits minors, persons under the age of 18, from using a mobile telephone either while operating a motor vehicle or as a passenger. \$50 fine.	Referred to the House Judiciary Committee (January 8, 2004).
<b>South Carolina</b>	H.R. 4412 (SC 2003).	Provides that a person who possesses a beginner's permit may not operate a motor vehicle while using a mobile telephone or other wireless communications device.	Referred to the Committee on Education and Public Works (January 13, 2004).
	H.R. 4703 (SC 2004).	Prohibits the use of hand-held telephones while operating a motor vehicle. Convictions for violations are punishable by a fine of \$50 and for imprisonment of not more than 10 days.	Referred to the House Judiciary Committee (February 4, 2004).

State	Bill Number	Bill Summary and Penalties	Status of State Activity
South Dakota	S.B. 126 (SD 2004).	Requires the DMV to collect information about mobile telephone involvement in motor vehicle crashes. Requires the Department of Public Safety and the Division of Insurance to evaluate whether the use or nonuse of mobile telephones by motorists should be a factor in insurance premiums, tort liability, and safety instructions.	Tabled in Senate Transportation Committee (January 29, 2004).
	S.B. 136 (SD 2004).	No person with a restricted minor's permit may operate a motor vehicle while using a mobile telephone or other wireless telecommunication device. Emergency exception. The term, for the purpose of the statute, means the talking, listening, or placing or receiving a call on any mobile telephone or other wireless telecommunication device, or operating its keys, buttons, or other controls.	Deferred legislative action (January 29, 2004).

State	Bill Number	Bill Summary and Penalties	Status of State Activity
<b>Tennessee</b>	H.B. 3306 (TN 2004).	Prohibits the drivers of trucks with gross vehicle rating over 16,000 pounds from using a hand-held telephone while driving. \$50 fine.	Referred to the House Transportation Committee (February 12, 2004).
	S.B. 2293 (TN 2004).	Prohibits drivers with a learner's permit, an intermediate license, or a restricted license from using a mobile telephone while driving. \$50 fine.	Passed Senate (March 30, 2004).
<b>Utah</b>	H.B. 190 (UT 2003).	Prohibits school bus drivers from using a mobile telephone while driving a school bus. Exceptions: medical emergency, safety hazard, or criminal activity.	Amended (February 4, 2004).
<b>Vermont</b>	H.B. 575 (VT 2004).	Prohibits the use of hand-held mobile telephones while driving.	Referred to the House Transportation Committee (January 14, 2004).
	S.B. 199 (VT 2004).	Prohibits the use of hand-held mobile telephones while operating a motor vehicle. Emergency exceptions.	Referred to the Senate Transportation Committee (January 6, 2004).
<b>Virginia</b>	S.B. 581 (VA 2004).	Prohibits the use of hand-held mobile telephones while operating a motor vehicle. \$100 fine.	Passed by indefinitely by the Senate Transportation Committee (January 22, 2004).



State	Bill Number	Bill Summary and Penalties	Status of State Activity
Wyoming	H.B. 76 (WY 2004).	Prohibits the use of a mobile telephone (cellular or satellite) while operating a motor vehicle.	Introduced (February 9, 2004).

### **Legal Considerations Related to the Enactment of Federal Legislation**

Over the years, Congress has repeatedly conditioned the use of federal highway funds to encourage states to enact desired transportation-related legislation. For example, Congress has used this legislative device in dealing with various issues related to the issue of driving while intoxicated. The Highway Safety Amendments of 1984 effectively established the national minimum drinking age by providing that Congress would withhold 5 percent (increasing to 10 percent) of federal highway funds for a state's failure to enact a minimum drinking age of twenty-one.<sup>32</sup> Similarly, other federal legislation has been enacted that conditions the receipt of federal highway funds on state adoption of federal standards governing the revocation or suspension of drivers' licenses of individuals convicted of drug offenses;<sup>33</sup> the operation of motor vehicles by intoxicated minors;<sup>34</sup> and the establishment of minimum penalties for repeat offenders for driving while intoxicated or driving under the influence.<sup>35</sup> The pending federal legislation making federal highway funding contingent on state restriction on the use of mobile telephones by drivers of motor vehicles would appear to follow these legislative models.

As the Supreme Court has stated: "Congress has frequently employed the Spending Power to further broad policy objectives by conditioning receipt of federal moneys upon compliance by the recipient with federal statutory and administrative directives. The Court has repeatedly upheld against constitutional challenge the use of this legislative device to induce governments and private parties to cooperate voluntarily with federal policy."<sup>36</sup> Various criteria concerning Congress' discretion have been provided by the Court. The conditions placed upon the receipt of funds, like the spending itself, must advance the general welfare, but the decision of that

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<sup>32</sup> 23 U.S.C. § 158.

<sup>33</sup> 23 U.S.C. § 159.

<sup>34</sup> 23 U.S.C. §161.

<sup>35</sup> 23 U.S.C. § 164.

<sup>36</sup> *Fullilove v. Klutznick*, 448 U.S. 448, 474 (1980)(Chief Justice Burger announcing judgment of the Court).

rests largely, if not wholly, with Congress.<sup>37</sup> Since the states may choose to receive or not to receive the proffered federal funds, Congress must set out the conditions unambiguously, so that the states may rationally decide.<sup>38</sup> The Court has suggested that the conditions must be related to the federal interest for which the funds are expended.<sup>39</sup> Furthermore, the power to condition funds may not be used to induce the states to engage in activities that would be unconstitutional.<sup>40</sup>

If the state accepts the federal funds on conditions, and then does not follow the prescribed federal requirements, the typical remedy is federal administrative action to terminate the funding and to recoup funds that the state has already received.<sup>41</sup> It has also been determined that under certain circumstances the recipients and the potential recipients in a particular program may sue to compel states to observe the standards.<sup>42</sup>

## Conclusion

Along with the substantial growth in mobile telephone use has been concern about the use of mobile telephones by the drivers of motor vehicles. At the present time, a variety of state laws and local ordinances provide some regulation of mobile telephone use. In addition, a number of states are considering legislation to regulate mobile telephone use by drivers of motor vehicles.

Federal legislation has been introduced in the 108<sup>th</sup> Congress which would effectively require individual states to enact legislation to restrict mobile telephone use by drivers of motor vehicles. Noncomplying states would be subject to the loss of federal highway funds. The legislation appears similar to existing legislative precedent directing states to enact certain legislation or be subject to the loss of federal highway funds.

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<sup>37</sup> *South Dakota v. Dole*, 480 U.S. 203, 207 (the placing of conditions on the receipt of federal highway funds)(1987).

<sup>38</sup> *Id.*.

<sup>39</sup> *Id.*

<sup>40</sup> *Id.* at 210-211.

<sup>41</sup> *Bell v. New Jersey*, 461 U.S. 773 (1983); *Bennett v. New Jersey*, 470 U.S. 632 (1985); *Bennett v. Kentucky Dept. of Education*, 470 U.S. 656 (1985).

<sup>42</sup> *King v. Smith*, 392 U.S. 309 (1968).