

# State of South Dakota

SEVENTY-SEVENTH SESSION  
LEGISLATIVE ASSEMBLY, 2002

256H0027

## HOUSE BILL NO. 1061

Introduced by: Representatives Solum, Bradford, Kooistra, and Slaughter and Senator McIntyre

1 FOR AN ACT ENTITLED, An Act to prohibit the use of mobile telephones in moving vehicles  
2 under certain circumstances.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. Terms used in this Act mean:

- 5 (1) "Engage in a call," talking into or listening on a hand-held mobile telephone, but does  
6 not include holding a mobile telephone to activate, deactivate, or initiate a function  
7 of such telephone;
- 8 (2) "Hands-free mobile telephone," a mobile telephone that has an internal feature or  
9 function, or that is equipped with an attachment or addition, whether or not  
10 permanently part of such mobile telephone, by which a user engages in a call without  
11 the use of either hand, whether or not the use of either hand is necessary to activate,  
12 deactivate, or initiate a function of such telephone;
- 13 (3) "Hand-held mobile telephone," a mobile telephone with which a user engages in a call  
14 using at least one hand;
- 15 (4) "Immediate proximity," that distance as permits the operator of a mobile telephone



1 to hear telecommunications transmitted over such mobile telephone, but does not  
2 require physical contact with such operator's ear;

3 (5) "Mobile telephone," the device used by subscribers and other users of wireless  
4 telephone service to access such service;

5 (6) "Using," holding a mobile telephone to, or in the immediate proximity of, the user's  
6 ear;

7 (7) "Wireless telephone service," two-way real time voice telecommunications service  
8 that is interconnected to a public switched telephone network and is provided by a  
9 commercial mobile radio service, as defined by 47 C.F.R. § 20.3.

10 Section 2. Except as provided in section 3 of this Act, no person may operate a motor vehicle  
11 upon a public highway while using a mobile telephone to engage in a call while such vehicle is  
12 in motion. An operator of a motor vehicle who holds a mobile telephone to, or in the immediate  
13 proximity of his or her ear while such vehicle is in motion is presumed to be engaging in a call  
14 within the meaning of this section. The presumption established by this section is rebuttable by  
15 evidence tending to show that the operator was not engaged in a call. The provisions of this  
16 section may not be construed as authorizing the seizure or forfeiture of a mobile telephone,  
17 unless otherwise provided by law. A law enforcement officer shall issue a warning for a first  
18 violation of this section. Any subsequent violation of this section is a traffic infraction and is  
19 punishable by a fine of not more than one hundred dollars.

20 Section 3. The provisions of section 2 of this Act do not apply to:

21 (1) The use of a mobile telephone for the sole purpose of communicating with any of the  
22 following regarding an emergency situation: an emergency response operator; a  
23 hospital, physician's office, or health clinic; an ambulance company or corps; a fire  
24 department, district, or company; or a police department;

1       (2) Any of the following persons while in the performance of their official duties: a law  
2           enforcement officer; a member of a fire department, district, or company; the operator  
3           of an authorized emergency vehicle; or the operator of an authorized school district  
4           vehicle; or

5       (3) The use of a hands-free mobile telephone.

6       Section 4. The court shall waive any fine of any person who violates section 2 of this Act if  
7       such person proves to the court that, between the date of the violation and the appearance date  
8       for such violation, the violator has acquired a hands-free mobile telephone as defined in this Act.  
9       However, such waiver of the fine does not apply to a second or subsequent violation under  
10      section 2 of this Act.