

## HOUSE BILL No. 2216

By Committee on Transportation

1-28

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9 AN ACT regulating traffic; restricting the use of wireless telephones  
10 while driving; amending K.S.A. 8-2106 and repealing the existing  
11 section.

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13 *Be it enacted by the Legislature of the State of Kansas:*

14 New Section 1. (a) The use of a wireless telephone by an operator  
15 of a moving motor vehicle on a public road or highway shall be unlawful  
16 except when the telephone is a hands-free wireless telephone.

17 (b) The operator of a motor vehicle may use a hand-held wireless  
18 telephone while driving with one hand on the steering wheel only if:

19 (1) The operator has reason to fear for such operator's life or safety,  
20 or believes that a criminal act may be perpetrated against such operator  
21 or another person; or

22 (2) the operator is using the telephone to report to appropriate au-  
23 thorities a fire, a traffic accident, a serious road hazard or medical or  
24 hazardous materials emergency, or to report the operator of another mo-  
25 tor vehicle who is driving in a reckless, careless or otherwise unsafe man-  
26 ner or who appears to be driving under the influence of alcohol or drugs.  
27 A hand-held wireless telephone user's telephone records or the testimony  
28 or written statements from appropriate authorities receiving such calls  
29 shall be deemed sufficient evidence of the existence of all lawful calls  
30 made under this paragraph.

31 (c) (1) From and after the effective date of this act, and prior to July  
32 1, 2006, a law enforcement officer shall issue a warning citation to anyone  
33 violating this section; and

34 (2) from and after July 1, 2006, persons violating this section shall be  
35 fined not more than \$50 including court costs.

36 (d) No court shall report violation of this section to the department  
37 of revenue.

38 (e) Evidence of an operator of a motor vehicle unlawfully using a  
39 wireless telephone shall not be admissible in any action for the purpose  
40 of determining any aspect of comparative negligence or mitigation of  
41 damages.

42 (f) Law enforcement officers shall not stop drivers for violations of  
43 this section in the absence of another violation of law. A citation for vi-

1 olation of this section shall not be issued without citing the violation that  
2 initially caused the officer to effect the enforcement stop.

3 (g) The provisions of this section shall not apply to any person while  
4 in actual performance of such person's official duties while operating an  
5 authorized emergency vehicle as defined in K.S.A. 8-1404, and amend-  
6 ments thereto, except that this subsection shall not apply to wreckers, tow  
7 trucks or car carriers.

8 (h) As used in this section:

9 (1) "Hands-free wireless telephone" means a mobile telephone that  
10 has an internal feature or function, or that is equipped with an attachment  
11 or addition, whether or not permanently part of such mobile telephone,  
12 by which a user engages in a conversation without the use of either hand;  
13 except that this definition shall not preclude the use of either hand to  
14 activate, deactivate or initiate a function of the telephone;

15 (2) "use of a wireless telephone" shall include, but not be limited to,  
16 talking or listening to another person on the telephone.

17 Sec. 2. K.S.A. 8-2106 is hereby amended to read as follows: 8-2106.

18 (a) A law enforcement officer may prepare and deliver to a person a  
19 written traffic citation on a form approved by the division of motor ve-  
20 hicles, if the law enforcement officer stops the person for a violation of:

21 (1) The uniform act regulating traffic on highways, which violation is  
22 a misdemeanor or a traffic infraction;

23 (2) K.S.A. 8-262, 8-287, 8-2,144, 8-1599, 21-3610, 21-3610a, 21-3722,  
24 21-3724, 21-3725, 21-3728, 21-4101, 40-3104, 40-3106, 41-715, 41-724,  
25 41-727, 47-607, 66-1,111, 66-1,129, 66-1,139, 66-1,140, 66-273, 66-1314,  
26 66-1324, 66-1330, 66-1331, 66-1332, 68-2104, 68-2106, subsection (b) of  
27 K.S.A. 79-34,122, ~~or K.S.A. 8-1599~~, and amendments thereto;

28 (3) K.S.A. 31-155 and amendments thereto involving transportation  
29 of bottle rockets;

30 (4) K.S.A. 66-1314 or 66-1328, and amendments thereto, and any  
31 rules and regulations adopted pursuant thereto;

32 (5) any rules and regulations adopted pursuant to K.S.A. 2-1212, 68-  
33 2001 or 31-146, and amendments thereto;

34 (6) any rules and regulations adopted pursuant to K.S.A. 31-133 and  
35 amendments thereto relating to transportation of materials or fuel; or

36 (7) K.S.A. 8-1343 through 8-1347 and amendments thereto relating  
37 to the child passenger safety act; ~~or~~

38 (8) K.S.A. 8-2501 through 8-2507 and amendments thereto relating  
39 to the safety belt use act; *or*

40 (9) *section 1, and amendments thereto, relating to the use of wireless*  
41 *telephones while operating a motor vehicle.*

42 (b) The citation shall contain a notice to appear in court, the name  
43 and address of the person, the type of vehicle the person was driving,

1 whether hazardous materials were being transported, whether an acci-  
2 dent occurred, the state registration number of the person's vehicle, if  
3 any, a statement whether the vehicle is a commercial vehicle, whether  
4 the person is licensed to drive a commercial motor vehicle, the offense  
5 or offenses charged, the time and place when and where the person shall  
6 appear in court, the signature of the law enforcement officer, and any  
7 other pertinent information.

8 (c) The time specified in the notice to appear shall be at least five  
9 days after the alleged violation unless the person charged with the vio-  
10 lation demands an earlier hearing.

11 (d) The place specified in the notice to appear shall be before a judge  
12 of the district court within the county in which the offense is alleged to  
13 have been committed.

14 (e) Except in the circumstances to which subsection (a) of K.S.A. 8-  
15 2104, and amendments thereto, apply, in the discretion of the law en-  
16 forcement officer, a person charged with a misdemeanor may give written  
17 promise to appear in court by signing at least one copy of the written  
18 citation prepared by the law enforcement officer, in which event the law  
19 enforcement officer shall deliver a copy of the citation to the person and  
20 shall not take the person into physical custody.

21 (f) When a person is charged with a traffic infraction, the notice to  
22 appear shall provide a place where the person may make a written entry  
23 of appearance, waive the right to a trial and plead guilty or no contest.  
24 The notice to appear shall provide a space where the law enforcement  
25 officer shall enter the appropriate fine specified in the uniform fine sched-  
26 ule contained in K.S.A. 8-2118, and amendments thereto, for the violation  
27 charged and court costs in the amount provided by law. If the notice to  
28 appear does not do so, the law enforcement officer shall provide a person  
29 charged with a traffic infraction a form explaining the person's right to  
30 appear and right to a trial, the person's right to pay the appropriate fine  
31 and court costs prior to the appearance date, and that failure to either  
32 pay such fine and court costs or appear at the specified time may result  
33 in suspension of the person's driver's license. The law enforcement officer  
34 shall provide the person with the address of the court to which the written  
35 entry of appearance, waiver of trial, plea of guilty or no contest and pay-  
36 ment of fine and court costs shall be mailed.

37 (g) Any officer violating any of the provisions of subsection (f) is guilty  
38 of misconduct in office and shall be subject to removal from office.

39 Sec. 3. K.S.A. 8-2106 is hereby repealed.

40 Sec. 4. This act shall take effect and be in force from and after its  
41 publication in the statute book.