

1 COMMITTEE SUBSTITUTE

2 FOR

3 **H. B. 2555**

4 (By Delegates Martin, Cann, Ferro, Cowles
5 and Kominar)

6 (Originating in the Committee on the Judiciary)

7
8 [February 10, 2011]

9
10 A BILL to amend the Code of West Virginia, 1931, as amended, by
11 adding thereto a new section, designated §17C-14-15, relating
12 to establishing the misdemeanor offense of operating a motor
13 vehicle while sending, reading or receiving a text message;
14 providing exceptions; providing definitions; and establishing
15 a traffic offense for violations which may not be considered
16 a misdemeanor; and providing for penalties.

17 *Be it enacted by the Legislature of West Virginia:*

18 That the Code of West Virginia, 1931, as amended, be amended
19 by adding thereto a new section, designated §17C-14-15, to read as
20 follows:

21 **ARTICLE 14. MISCELLANEOUS RULES.**

22 **§17C-14-15. Writing, sending or reading a text message by means of**
23 **an electronic communications device while driving**
24 **unlawful; definitions; exceptions; penalties.**

25 (a) Except as provided in subdivision (b) of this section, a

1 person may not drive or operate a motor vehicle on a public street
2 or highway while texting.

3 (b) A driver is permitted use an electronic communication
4 device to text while driving during an emergency, when it is
5 necessary for the driver to contact law-enforcement officials or
6 other emergency services.

7 (c) The provisions of this section do not apply to any person
8 under the age of eighteen with a level one or level two graduated
9 driver's license who operates a motor vehicle pursuant to section
10 three-a, article two, chapter seventeen-b of this code.

11 (d) As used in this section:

12 (1) "Driving" or "operating a motor vehicle" means operating
13 a motor vehicle, with the motor running, including while
14 temporarily stationary because of traffic, a traffic control
15 device, or other momentary delays, but does not include operating
16 a motor vehicle when the driver moved the vehicle to the side of,
17 or off, a highway and halted in a location where the vehicle can
18 safely remain stationary;

19 (2) "Electronic communication device" includes but is not
20 limited to, a cellular telephone; personal digital assistant;
21 pager; computer; or any other device used to input, write, send,
22 receive or read text. For the purposes of this section, an
23 "electronic communication device" does not include:

24 (A) Voice radios, mobile radios, land mobile radios,
25 commercial mobile radios or two-way radios with the capability to

1 transmit and receive voice transmissions utilizing a "push to talk"
2 or "press to transmit" function; or

3 (B) Other voice radios used by a law-enforcement officer, an
4 emergency services provider, an employee or agent of public safety
5 organizations, first responders, Amateur Radio Operators(HAM)
6 licensed by the Federal Communications Commission and school bus
7 operators;

8 (3) "Texting" means manually entering alphanumeric text into,
9 or reading text from, an electronic communication device, and
10 includes, but is not limited to, short message service, e-mailing,
11 instant messaging, a command or request to access a World Wide Web
12 page, or engaging in any other form of electronic text retrieval or
13 entry, for present or future communication. For purposes of this
14 section, "texting" does not include the following actions:

15 (A) Reading, selecting or entering a telephone number, an
16 extension number, or voicemail retrieval codes and commands into an
17 electronic device for the purpose of initiating or receiving a
18 phone call or using voice commands to initiate or receive a
19 telephone call;

20 (B) Inputting, selecting, or reading information on a global
21 positioning system or navigation system; or

22 (C) Using a device capable of performing multiple functions,
23 including fleet management systems, dispatching devices, smart
24 phones, citizens band radios, music players, for a purpose that is
25 not otherwise prohibited in this section.

1 (e) Any person who violates the provisions of subsection (a)
2 of this section is guilty of a traffic offense which may not be
3 construed to be a misdemeanor and, upon conviction thereof, shall
4 for a first offense be fined \$100; for a second offense be fined
5 \$200; and for a third or subsequent offense be fined \$400. No
6 court costs or other fees shall be assessed for a violation of
7 subsection (a).

8 (f) Notwithstanding any other provision of this code to the
9 contrary, points may not be entered on any driver's record
10 maintained by the Division of Motor Vehicles as a result of a
11 violation of this section.

12 (g) This traffic offense shall not be a primary offense for
13 citation.

NOTE: The purpose of this bill is to create the misdemeanor offense of operating a motor vehicle while texting, and creating certain exceptions thereto.

This section is new; therefore, it has been completely underscored.