

1 **Senate Bill No. 470**

2 (By Senators Unger, Beach, Klempa, K. Facemyer, Jenkins, Plymale,  
3 Foster, Snyder, Browning, McCabe, Stollings, Palumbo, Minard,  
4 Williams, Yost, Sypolt, Barnes, Kessler (Acting President),  
5 Edgell, Miller, Tucker, Fanning, Prezioso, Wills and Wells)

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7 [Introduced February 9, 2011; referred to the Committee on  
8 Transportation and Infrastructure; and then to the Committee on  
9 the Judiciary.]

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11 A BILL to amend the Code of West Virginia, 1931, as amended, by  
12 adding thereto a new section, designated §17C-14-15, relating  
13 to establishing the misdemeanor offense of unlawful use of a  
14 wireless communication device for nonvoice interpersonal  
15 communication while operating a motor vehicle on a street or  
16 highway; providing definitions; providing exceptions; and  
17 establishing misdemeanor criminal penalties.

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

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

22 **ARTICLE 14. MISCELLANEOUS RULES.**

23 **§17C-14-15. Unlawful use of a wireless communication device for**  
24 **nonvoice interpersonal communication; definitions;**

1                   **exceptions; penalties.**

2           (a) It is unlawful for any driver while operating a motor  
3 vehicle on the roads or highways of this state to manually type or  
4 enter multiple letters, numbers, symbols or other text in a  
5 wireless communication device, or send or read data in the device,  
6 for the purpose of nonvoice interpersonal communication, including  
7 texting, e-mailing and instant messaging.

8           (b) For the purposes of this section, texting means manually  
9 entering alphanumeric text into or reading text from an electronic  
10 device.

11          (1) Texting includes, but is not limited to, short message  
12 service, e-mailing, instant messaging, a command or request to  
13 access a World Wide Web page or engaging in any other form of  
14 electronic text retrieval or entry for present or future  
15 communication.

16          (2) Texting does not include:

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

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

24          (C) Using a device capable of performing multiple functions

1 including, but not limited to, fleet management systems,  
2 dispatching devices, smart phones, citizen band radios or music  
3 players for a purpose that is otherwise not prohibited in this  
4 section.

5 (c) For the purposes of this section, electronic devices  
6 include, but are not limited to, a cellular telephone, personal  
7 digital assistant, pager, computer, or any device used to input,  
8 write, send, receive or read text.

9 (d) This section does not apply to a driver who is:

10 (1) A law enforcement, fire service, or emergency medical  
11 services professional performing official duties;

12 (2) Reporting an emergency or criminal or suspicious activity  
13 to law-enforcement authorities; or

14 (3) Not operating a motor vehicle on the travel portion of a  
15 public street or highway.

16 (e) This section does not supersede the provisions restricting  
17 texting and cell phone use for drivers under the age of eighteen  
18 possessing a level one or level two graduated driver's license or  
19 any more restrictive provisions for drivers of commercial motor  
20 vehicles prescribed by the provisions of chapter seventeen-e of  
21 this code or federal law or regulation.

22 (f) Unless a greater penalty is prescribed by this code or  
23 federal statute or regulation pertaining to a class of driver, any  
24 driver who violates the provisions of subsection (a) of this

1 section is guilty of a misdemeanor and, upon conviction thereof,  
2 shall for a first offense be fined \$50; for a second offense be  
3 fined \$100; and for a third or subsequent offense be fined \$200.  
4 Court costs or other fees may not be assessed for a violation of  
5 this section and notwithstanding any other section of this code to  
6 the contrary, points may not be entered on any driving record  
7 administered by the Division of Motor Vehicles as a result of  
8 violation of this section.

NOTE: The purpose of this bill is to establish the misdemeanor offense of unlawful use of a wireless communication device for the purposes of nonvoice interpersonal communication while operating a motor vehicle on a street or highway. The bill provides for a \$50 fine for anyone convicted of a violation of this section for the first offense and increases the fine for second and third offenses.

§17C-14-15 is new; therefore, underscoring and strike-throughs have been omitted.