

1 COMMITTEE SUBSTITUTE

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5 **Senate Bill No. 211**

6 (By Senators Kessler (Mr. President) and Hall,

7 By Request of the Executive)

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9 [Originating in the Committee on the Judiciary;

10 reported February 1, 2012.]

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14 A BILL to amend the Code of West Virginia, 1931, as amended, by  
15 adding thereto a new section, designated §17C-14-15, relating  
16 to traffic safety; establishing the offense of operating a  
17 motor vehicle while sending or reading a text message or using  
18 a wireless communication device without hands-free technology;  
19 providing exceptions; providing definitions; and providing  
20 penalties.

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

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

1 **ARTICLE 14. MISCELLANEOUS RULES.**

2 **§17C-14-15. Writing, sending or reading a text message by means of**  
3 **an electronic communications device or using a**  
4 **wireless communication device while driving unlawful;**  
5 **definitions; exceptions; penalties.**

6 (a) Except as provided in subdivision (b) of this section, a  
7 person may not drive or operate a motor vehicle on a public street  
8 or highway while texting or using a wireless communication device  
9 without hands-free equipment.

10 (b) A driver is permitted to use an electronic communication  
11 device to text or a wireless communication device without hands-free  
12 technology to call while driving during an emergency, when it is  
13 necessary for the driver to contact law-enforcement officials or  
14 other emergency services.

15 (c) This section does not supersede the provisions of section  
16 three-a, article two, chapter seventeen-b of this code or any more  
17 restrictive provisions for drivers of commercial motor vehicles  
18 prescribed by the provisions of chapter seventeen-e of this code or  
19 federal law or rule.

20 (d) As used in this section:

21 (1) "Driving" or "operating a motor vehicle" means operating  
22 a motor vehicle, with the motor running, including while temporarily  
23 stationary because of traffic, a traffic control device, or other  
24 momentary delays, but does not include operating a motor vehicle

1 when the driver moved the vehicle to the side of, or off, a highway  
2 and halted in a location where the vehicle can safely remain  
3 stationary;

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

9 (A) Voice radios, mobile radios, land mobile radios,  
10 commercial mobile radios or two-way radios with the capability to  
11 transmit and receive voice transmissions utilizing a push-to-talk  
12 or press-to-transmit function; or

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

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

1 (A) Reading, selecting or entering a telephone number, an  
2 extension number, or voicemail retrieval codes and commands into an  
3 electronic device for the purpose of initiating or receiving a phone  
4 call or using voice commands to initiate or receive a telephone  
5 call;

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

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

12 (e) Any person who violates the provisions of subsection (a)  
13 of this section is guilty of a traffic offense and, upon conviction  
14 thereof, shall for a first offense be fined \$50; for a second  
15 offense be fined \$100; and for a third or subsequent offense be  
16 fined \$200. No court costs or other fees shall be assessed for a  
17 violation of subsection (a).

18 (f) Notwithstanding any other provision of this code to the  
19 contrary, points may not be entered on any driver's record  
20 maintained by the Division of Motor Vehicles as a result of a  
21 violation of this section, except for the third and subsequent  
22 convictions of the offense of texting while driving, for which three  
23 points shall be entered on any driver's record maintained by the  
24 Division of Motor Vehicles.

(g) Driving or operating a motor vehicle on a public street or highway while texting, except as provided in subdivision (b) of this section, shall be a primary offense for citation. Using a wireless communication device without hands-free equipment for any other purpose prohibited in this section shall be a secondary offense for purposes of citation.

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(NOTE: The purpose of this bill is to create the secondary offense of operating a motor vehicle while using a wireless communications device without hands-free technology, and a primary offense of texting while operating a motor vehicle.)