

COMMITTEE SUBSTITUTE

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Senate Bill No. 211

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

By Request of the Executive)

[Originating in the Committee on the Judiciary;
reported February 1, 2012.]

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

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 14. MISCELLANEOUS RULES.

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

1 (a) Except as provided in subdivision (b) of this section,
2 a person may not drive or operate a motor vehicle on a public
3 street or highway while texting or using a wireless communi-
4 cation device without hands-free equipment.

5 (b) A driver is permitted to use an electronic communica-
6 tion device to text or a wireless communication device
7 without hands-free technology to call while driving during
8 an emergency, when it is necessary for the driver to contact
9 law-enforcement officials or other emergency services.

10 (c) This section does not supersede the provisions of
11 section three-a, article two, chapter seventeen-b of this code
12 or any more restrictive provisions for drivers of commercial
13 motor vehicles prescribed by the provisions of chapter
14 seventeen-e of this code or federal law or rule.

15 (d) As used in this section:

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

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

28 (A) Voice radios, mobile radios, land mobile radios,
29 commercial mobile radios or two-way radios with the
30 capability to transmit and receive voice transmissions
31 utilizing a push-to-talk or press-to-transmit function; or

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

37 (3) “Texting” means manually entering alphanumeric
38 text into, or reading text from, an electronic communication
39 device, and includes, but is not limited to, short message
40 service, e-mailing, instant messaging, a command or request
41 to access a World Wide Web page or engaging in any other
42 form of electronic text retrieval or entry, for present or
43 future communication. For purposes of this section,
44 “texting” does not include the following actions:

45 (A) Reading, selecting or entering a telephone number, an
46 extension number, or voicemail retrieval codes and com-
47 mands into an electronic device for the purpose of initiating
48 or receiving a phone call or using voice commands to initiate
49 or receive a telephone call;

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

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

56 (e) Any person who violates the provisions of subsection
57 (a) of this section is guilty of a traffic offense and, upon
58 conviction thereof, shall for a first offense be fined \$50; for

59 a second offense be fined \$100; and for a third or subsequent
60 offense be fined \$200. No court costs or other fees shall be
61 assessed for a violation of subsection (a).

62 (f) Notwithstanding any other provision of this code to
63 the contrary, points may not be entered on any driver's
64 record maintained by the Division of Motor Vehicles as a
65 result of a violation of this section, except for the third and
66 subsequent convictions of the offense of texting while
67 driving, for which three points shall be entered on any
68 driver's record maintained by the Division of Motor Vehicles.

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

(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.)