

ENROLLED

COMMITTEE SUBSTITUTE

FOR

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FOR

Senate Bill No. 211

(BY SENATORS KESSLER (MR. PRESIDENT) AND HALL,
BY REQUEST OF THE EXECUTIVE)

[Passed March 10, 2012; in effect ninety days from passage.]

AN ACT 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 traffic offense of operating a motor vehicle while texting without the use of hands-free technology; establishing the offense of operating a motor vehicle while using an electronic communication device without the use of hands-free technology; defining terms; providing exceptions; clarifying means of enforcement as a primary offense; impact of violation on insurance coverage; impact of violation on law enforcement ability to seize or confiscate device; requiring signage on certain highways for motorists entering state; providing penalties; providing for increased fines for multiple offenses; assessing points against driver's license for multiple offenses; exempting offense from the assessment of court costs and fees; and limitations.

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. Prohibited use of an electronic communications device driving without handheld features; definitions; exceptions; penalties.

1 (a) Except as provided in subsection (c) of this section, a
2 person may not drive or operate a motor vehicle on a public
3 street or highway while:

4 (1) Texting; or

5 (2) Using a cell phone or other electronic communica-
6 tions device, unless the use is accomplished by hands-free
7 equipment.

8 (b) For purposes of this section, the following terms shall
9 mean:

10 (1) "Cell phone" shall mean a cellular, analog, wireless
11 or digital telephone.

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

19 (3) "Electronic communication device" means a cell
20 telephone, personal digital assistant, electronic device with
21 mobile data access, laptop computer, pager, broadband
22 personal communication device, 2-way messaging device,
23 electronic game, or portable computing device. For the
24 purposes of this section, an "electronic communication
25 device" does not include:

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

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

35 (4) “Engaging in a call” means when a person talks into
36 or listens on an electronic communication device, but shall
37 not include when a person dials or enters a phone number on
38 a pushpad or screen to initiate the call.

39 (5) “Hands-free electronic communication device” means
40 an electronic communication device that has an internal
41 feature or function, or that is equipped with an attachment
42 or addition, whether or not permanently part of such
43 electronic communication device, by which a user engages in
44 a call without the use of either hand or both hands.

45 (6) “Hands-free equipment” means the internal feature
46 or function of a hands-free electronic communication device
47 or the attachment or addition to a hands-free electronic
48 communication device by which a user may engage in a call
49 or text without the use of either hand or both hands.

50 (7) “Texting” means manually entering alphanumeric
51 text into, or reading text from, an electronic communication
52 device, and includes, but is not limited to, short message
53 service, e-mailing, instant messaging, a command or request
54 to access a World Wide Web page or engaging in any other
55 form of electronic text retrieval or entry, for present or
56 future communication. For purposes of this section,
57 “texting” does not include the following actions:

58 (A) Reading, selecting or entering a telephone number, an
59 extension number, or voicemail retrieval codes and com-
60 mands into an electronic device by the pressing the device in

61 order to initiate or receive a phone call or using voice
62 commands to initiate or receive a telephone call;

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

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

69 (8) "Using a cell phone or other electronic communica-
70 tion device" means holding in a person's hand or hands an
71 electronic communication device while:

72 (A) Viewing or transmitting images or data;

73 (B) Playing games;

74 (C) Composing, sending, reading, viewing, accessing,
75 browsing, transmitting, saving or retrieving e-mail, text
76 messages or other electronic data; or

77 (D) Engaging in a call.

78 (c) Subsection (a) of this section shall not apply to:

79 (1) A law-enforcement officer, a firefighter, an emer-
80 gency medical technician, a paramedic or the operator of an
81 authorized emergency vehicle in the performance of their
82 official duties;

83 (2) A person using an electronic communication device to
84 report to appropriate authorities a fire, a traffic accident, a
85 serious road hazard, or a medical or hazardous materials
86 emergencies.

87 (3) The activation or deactivation of hands-free equip-
88 ment or a function of hands-free equipment.

89 (d) This section does not supersede the provisions of
90 section three-a, article two, chapter seventeen-b of this code
91 or any more restrictive provisions for drivers of commercial

92 motor vehicles prescribed by the provisions of chapter
93 seventeen-e of this code or federal law or rule.

94 (e) Any person who violates the provisions of subsection
95 (a) of this section is guilty of a traffic offense and, upon
96 conviction thereof, shall for a first offense be fined \$100; for
97 a second offense be fined \$200; and for a third or subsequent
98 offense be fined \$300. No court costs or other fees shall be
99 assessed for a violation of subsection (a) of this section.

100 (f) Notwithstanding any other provision of this code to
101 the contrary, points may not be entered on any driver's
102 record maintained by the Division of Motor Vehicles as a
103 result of a violation of this section, except for the third and
104 subsequent convictions of the offense, for which three points
105 shall be entered on any driver's record maintained by the
106 Division of Motor Vehicles.

107 (g) Driving or operating a motor vehicle on a public
108 street or highway while texting shall be enforced as a
109 primary offense as of July 1, 2012. Driving or operating a
110 motor vehicle on a public street or highway while using a
111 cell phone or other electronic communication device without
112 hands-free equipment shall be enforced as a secondary
113 offense as of July 1, 2012, and as a primary offense as of July
114 1, 2013 for purposes of citation.

115 (h) Within ninety days of the effective date of this
116 section, the Department of Transportation shall cause to be
117 erected signs upon any highway entering the state of West
118 Virginia on which a welcome to West Virginia sign is posted,
119 and any other highway where the Division of Highways
120 deems appropriate, posted at a distance of not more than one
121 mile from each border crossing, each sign to bear an inscrip-
122 tion clearly communicating to motorists entering the state
123 that texting, or the use of a wireless communication device
124 without hands-free equipment, is illegal within this state.

125 (i) Nothing contained in this section shall be construed
126 to authorize seizure of a cell phone or electronic device by
127 any law- enforcement agency.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

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Chairman Senate Committee

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Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

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Clerk of the Senate

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Clerk of the House of Delegates

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President of the Senate

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Speaker of the House of Delegates

The within this the
Day of, 2012.

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Governor