

1 **ENROLLED**

2 **COMMITTEE SUBSTITUTE**

3 **for**

4 **H. B. 2108**

5  
6 (By Delegate Fleischauer)

7 [Passed April 10, 2013; in effect ninety days from passage.]

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9  
10 AN ACT to amend and reenact §17C-15-49 of the Code of West  
11 Virginia, 1931, as amended ; and to amend and reenact §17C-14-  
12 15, of said code, all relating to the operation of motor  
13 vehicles; making the offense of failure to wear safety belts  
14 a primary offense; and prohibiting denial of insurance  
15 coverage for prohibited use of electronic communications  
16 devices while driving.

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

18 That §17C-15-49 of the Code of West Virginia, 1931, as  
19 amended, be amended and reenacted; and that §17C-14-15 of said code  
20 be amended and reenacted, all to read as follows:

21 **CHAPTER 17C. TRAFFIC REGULATIONS AND LAWS OF THE ROAD.**

22 **ARTICLE 15. EQUIPMENT.**

23 **§17C-15-49. Operation of vehicles with safety belts; exception;**  
24 **penalty; civil actions; educational program by**  
25 **West Virginia State Police.**

1 (a) A person may not operate a passenger vehicle on a public  
2 street or highway of this state unless the person, any passenger in  
3 the back seat under eighteen years of age, and any passenger in the  
4 front seat of the passenger vehicle is restrained by a safety belt  
5 meeting applicable federal motor vehicle safety standards. For the  
6 purposes of this section, the term "passenger vehicle" means a  
7 motor vehicle which is designed for transporting ten passengers or  
8 less, including the driver, except that the term does not include  
9 a motorcycle, a trailer, or any motor vehicle which is not required  
10 on the date of the enactment of this section under a federal motor  
11 vehicle safety standard to be equipped with a belt system. The  
12 provisions of this section apply to all passenger vehicles  
13 manufactured after January 1, 1967, and being 1968 models and  
14 newer.

15 (b) The required use of safety belts as provided herein does  
16 not apply to a duly appointed or contracted rural mail carrier of  
17 the United States Postal Service who is actually making mail  
18 deliveries or to a passenger or operator with a physically  
19 disabling condition whose physical disability would prevent  
20 appropriate restraint in the safety belt if the condition is duly  
21 certified by a physician who states the nature of the disability as  
22 well as the reason the restraint is inappropriate. The Division of  
23 Motor Vehicles shall adopt rules, in accordance with the provisions  
24 of chapter twenty-nine-a of this code, to establish a method to  
25 certify the physical disability and to require use of an  
26 alternative restraint system where feasible or to waive the

1 requirement for the use of any restraint system.

2 (c) Any person who violates the provisions of this section  
3 shall be fined \$25. No court costs or other fees may be assessed  
4 for a violation of this section.

5 (d) A violation of this section is not admissible as evidence  
6 of negligence or contributory negligence or comparative negligence  
7 in any civil action or proceeding for damages, and is not  
8 admissible in mitigation of damages: *Provided*, That the court may,  
9 upon motion of the defendant, conduct an in camera hearing to  
10 determine whether an injured party's failure to wear a safety belt  
11 was a proximate cause of the injuries complained of. Upon a  
12 finding by the court, the court may then, in a jury trial, by  
13 special interrogatory to the jury, determine: (1) That the injured  
14 party failed to wear a safety belt; and (2) that the failure to  
15 wear the safety belt constituted a failure to mitigate damages.  
16 The trier of fact may reduce the injured party's recovery for  
17 medical damages by an amount not to exceed five percent thereof.  
18 In the event the plaintiff stipulates to the reduction of five  
19 percent of medical damages, the court shall make the calculations  
20 and the issue of mitigation of damages for failure to wear a safety  
21 belt may not be presented to the jury. In all cases, the actual  
22 computation of the dollar amount reduction shall be determined by  
23 the court.

24 (e) Notwithstanding any other provision of this code to the  
25 contrary, no points may be entered on any driver's record  
26 maintained by the Division of Motor Vehicles as a result of a

1 violation of this section.

2 (f) The Governor's Highway Safety Program, in cooperation with  
3 the West Virginia State Police and any other state departments or  
4 agencies and with county and municipal law-enforcement agencies,  
5 shall initiate and conduct an educational program designed to  
6 encourage compliance with safety belt usage laws. This program  
7 shall be focused on the effectiveness of safety belts, the monetary  
8 savings and the other benefits to the public from usage of safety  
9 belts and the requirements and penalties specified in this law.

10 (g) Nothing contained in this section abrogates or alters the  
11 provisions of section forty-six of this article relating to the  
12 mandatory use of child passenger safety devices.

13 **ARTICLE 14. MISCELLANEOUS RULES.**

14 **§17C-14-15. Prohibited use of an electronic communications device**  
15 **driving without handheld features; definitions;**  
16 **exceptions; penalties.**

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

20 (1) Texting; or

21 (2) Using a cell phone or other electronic communications  
22 device, unless the use is accomplished by hands-free equipment.

23 (b) For purposes of this section, the following terms shall  
24 mean:

25 (1) "Cell phone" shall mean a cellular, analog, wireless or

26 digital telephone.

27       (2) "Driving" or "operating a motor vehicle" means operating  
28 a motor vehicle, with the motor running, including while  
29 temporarily stationary because of traffic, a traffic control  
30 device, or other momentary delays, but does not include operating  
31 a motor vehicle after the driver has moved the vehicle to the side  
32 of, or off, a highway and halted in a location where the vehicle  
33 can safely remain stationary.

34       (3) "Electronic communication device" means a cell telephone,  
35 personal digital assistant, electronic device with mobile data  
36 access, laptop computer, pager, broadband personal communication  
37 device, two-way messaging device, electronic game, or portable  
38 computing device. For the purposes of this section, an "electronic  
39 communication device" does not include:

40       (A) Voice radios, mobile radios, land mobile radios,  
41 commercial mobile radios or two way radios with the capability to  
42 transmit and receive voice transmissions utilizing a push-to-talk  
43 or press-to-transmit function; or

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

49       (4) "Engaging in a call" means when a person talks into or  
50 listens on an electronic communication device, but shall not  
51 include when a person dials or enters a phone number on a pushpad

52 or screen to initiate the call.

53           (5) "Hands-free electronic communication device" means an  
54 electronic communication device that has an internal feature or  
55 function, or that is equipped with an attachment or addition,  
56 whether or not permanently part of such electronic communication  
57 device, by which a user engages in a call without the use of either  
58 hand or both hands.

59           (6) "Hands-free equipment" means the internal feature or  
60 function of a hands-free electronic communication device or the  
61 attachment or addition to a hands-free electronic communication  
62 device by which a user may engage in a call or text without the use  
63 of either hand or both hands.

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

71           (A) Reading, selecting or entering a telephone number, an  
72 extension number, or voicemail retrieval codes and commands into an  
73 electronic device by the pressing the device in order to initiate  
74 or receive a phone call or using voice commands to initiate or  
75 receive a telephone call;

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

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

82 (8) "Using a cell phone or other electronic communication  
83 device" means holding in a person's hand or hands an electronic  
84 communication device while:

85 (A) Viewing or transmitting images or data;

86 (B) Playing games;

87 (C) Composing, sending, reading, viewing, accessing, browsing,  
88 transmitting, saving or retrieving e-mail, text messages or other  
89 electronic data; or

90 (D) Engaging in a call.

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

92 (1) A law-enforcement officer, a firefighter, an emergency  
93 medical technician, a paramedic or the operator of an authorized  
94 emergency vehicle in the performance of their official duties;

95 (2) A person using an electronic communication device to  
96 report to appropriate authorities a fire, a traffic accident, a  
97 serious road hazard, or a medical or hazardous materials  
98 emergencies.

99 (3) The activation or deactivation of hands-free equipment or  
100 a function of hands-free equipment.

101 (d) This section does not supersede the provisions of section  
102 three-a, article two, chapter seventeen-b of this code or any more  
103 restrictive provisions for drivers of commercial motor vehicles

104 prescribed by the provisions of chapter seventeen-e of this code or  
105 federal law or rule.

106 (e) Any person who violates the provisions of subsection (a)  
107 of this section is guilty of a traffic offense and, upon conviction  
108 thereof, shall for a first offense be fined \$100; for a second  
109 offense be fined \$200; and for a third or subsequent offense be  
110 fined \$300. No court costs or other fees shall be assessed for a  
111 violation of subsection (a) of this section.

112 (f) Notwithstanding any other provision of this code to the  
113 contrary, points may not be entered on any driver's record  
114 maintained by the Division of Motor Vehicles as a result of a  
115 violation of this section, except for the third and subsequent  
116 convictions of the offense, for which three points shall be entered  
117 on any driver's record maintained by the Division of Motor  
118 Vehicles.

119 (g) Driving or operating a motor vehicle on a public street or  
120 highway while texting shall be enforced as a primary offense.  
121 Driving or operating a motor vehicle on a public street or highway  
122 while using a cell phone or other electronic communication device  
123 without hands-free equipment shall be enforced as a secondary  
124 offense until July 1, 2013, when it shall be enforced as a primary  
125 offense for purposes of citation.

126 (h) Within ninety days of the effective date of this section,  
127 the Department of Transportation shall cause to be erected signs  
128 upon any highway entering the state of West Virginia on which a  
129 welcome to West Virginia sign is posted, and any other highway

130 where the Division of Highways deems appropriate, posted at a  
131 distance of not more than one mile from each border crossing, each  
132 sign to bear an inscription clearly communicating to motorists  
133 entering the state that texting, or the use of a wireless  
134 communication device without hands-free equipment, is illegal  
135 within this state.

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

139       (j) No policy providing liability coverage for personal lines  
140 insurance shall contain a provision which may be used to deny  
141 coverage or exclude payment of any legal damages recoverable by law  
142 for injuries proximately caused by a violation of this section, as  
143 long as such amounts are within the coverage limits of the insured.