

1 Police.

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

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

1 code, to establish a method to certify the physical disability and
2 to require use of an alternative restraint system where feasible or
3 to waive the requirement for the use of any restraint system.

4 (c) Any person who violates the provisions of this section
5 shall be fined ~~not more than~~ \$25. No court costs or other fees
6 ~~shall~~ may be assessed for a violation of this section. ~~Enforcement~~
7 ~~of this section shall be accomplished only as a secondary action~~
8 ~~when a driver of a passenger vehicle has been detained for probable~~
9 ~~cause of violating another section of this code.~~

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

1 actual computation of the dollar amount reduction shall be
2 determined by the court.

3 (e) Notwithstanding any other provision of this code to the
4 contrary, no points may be entered on any driver's record
5 maintained by the Division of Motor Vehicles as a result of a
6 violation of this section.

7 (f) ~~Commencing the first day of July, one thousand nine~~
8 ~~hundred ninety-three~~ The Governor's Highway Safety Program, in
9 cooperation with the ~~division of public safety~~ West Virginia State
10 Police and any other state departments or agencies and with county
11 and municipal law-enforcement agencies, shall initiate and conduct
12 an educational program designed to encourage compliance with safety
13 belt usage laws. This program shall be focused on the
14 effectiveness of safety belts, the monetary savings and the other
15 benefits to the public from usage of safety belts and the
16 requirements and penalties specified in this law.

17 (g) Nothing contained in this section ~~shall be construed to~~
18 ~~abrogate or alter~~ abrogates or alters the provisions of section
19 forty-six of this article relating to the mandatory use of child
20 passenger safety devices.

21 **ARTICLE 14. MISCELLANEOUS RULES.**

22 **§17C-14-15. Prohibited use of an electronic communications device**
23 **driving without handheld features; definitions;**
24 **exceptions; penalties.**

25 (a) Except as provided in subsection (c) of this section, a

26 person may not drive or operate a motor vehicle on a public street
27 or highway while:

28 (1) Texting; or

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

31 (b) For purposes of this section, the following terms shall
32 mean:

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

35 (2) "Driving" or "operating a motor vehicle" means operating
36 a motor vehicle, with the motor running, including while
37 temporarily stationary because of traffic, a traffic control
38 device, or other momentary delays, but does not include operating
39 a motor vehicle after the driver has moved the vehicle to the side
40 of, or off, a highway and halted in a location where the vehicle
41 can safely remain stationary.

42 (3) "Electronic communication device" means a cell telephone,
43 personal digital assistant, electronic device with mobile data
44 access, laptop computer, pager, broadband personal communication
45 device, two-way messaging device, electronic game, or portable
46 computing device. For the purposes of this section, an "electronic
47 communication device" does not include:

48 (A) Voice radios, mobile radios, land mobile radios,
49 commercial mobile radios or two way radios with the capability to
50 transmit and receive voice transmissions utilizing a push-to-talk
51 or press-to-transmit function; or

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

57 (4) "Engaging in a call" means when a person talks into or
58 listens on an electronic communication device, but shall not
59 include when a person dials or enters a phone number on a pushpad
60 or screen to initiate the call.

61 (5) "Hands-free electronic communication device" means an
62 electronic communication device that has an internal feature or
63 function, or that is equipped with an attachment or addition,
64 whether or not permanently part of such electronic communication
65 device, by which a user engages in a call without the use of either
66 hand or both hands.

67 (6) "Hands-free equipment" means the internal feature or
68 function of a hands-free electronic communication device or the
69 attachment or addition to a hands-free electronic communication
70 device by which a user may engage in a call or text without the use
71 of either hand or both hands.

72 (7) "Texting" means manually entering alphanumeric text into,
73 or reading text from, an electronic communication device, and
74 includes, but is not limited to, short message service, e-mailing,
75 instant messaging, a command or request to access a World Wide Web
76 page or engaging in any other form of electronic text retrieval or
77 entry, for present or future communication. For purposes of this

78 section, "texting" does not include the following actions:

79 (A) Reading, selecting or entering a telephone number, an
80 extension number, or voicemail retrieval codes and commands into an
81 electronic device by the pressing the device in order to initiate
82 or receive a phone call or using voice commands to initiate or
83 receive a telephone call;

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

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

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

93 (A) Viewing or transmitting images or data;

94 (B) Playing games;

95 (C) Composing, sending, reading, viewing, accessing, browsing,
96 transmitting, saving or retrieving e-mail, text messages or other
97 electronic data; or

98 (D) Engaging in a call.

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

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

103 (2) A person using an electronic communication device to

104 report to appropriate authorities a fire, a traffic accident, a
105 serious road hazard, or a medical or hazardous materials
106 emergencies.

107 (3) The activation or deactivation of hands-free equipment or
108 a function of hands-free equipment.

109 (d) This section does not supersede the provisions of section
110 three-a, article two, chapter seventeen-b of this code or any more
111 restrictive provisions for drivers of commercial motor vehicles
112 prescribed by the provisions of chapter seventeen-e of this code or
113 federal law or rule.

114 (e) Any person who violates the provisions of subsection (a)
115 of this section is guilty of a traffic offense and, upon conviction
116 thereof, shall for a first offense be fined \$100; for a second
117 offense be fined \$200; and for a third or subsequent offense be
118 fined \$300. No court costs or other fees shall be assessed for a
119 violation of subsection (a) of this section.

120 (f) Notwithstanding any other provision of this code to the
121 contrary, points may not be entered on any driver's record
122 maintained by the Division of Motor Vehicles as a result of a
123 violation of this section, except for the third and subsequent
124 convictions of the offense, for which three points shall be entered
125 on any driver's record maintained by the Division of Motor
126 Vehicles.

127 (g) Driving or operating a motor vehicle on a public street or
128 highway while texting shall be enforced as a primary offense. ~~as of~~
129 ~~July 1, 2012.~~ Driving or operating a motor vehicle on a public

130 street or highway while using a cell phone or other electronic
131 communication device without hands-free equipment shall be enforced
132 as a secondary offense ~~as of July 1, 2012, and as a primary offense~~
133 ~~as of~~ until July 1, 2013, when it shall be enforced as a primary
134 offense for purposes of citation.

135 (h) Within ninety days of the effective date of this section,
136 the Department of Transportation shall cause to be erected signs
137 upon any highway entering the state of West Virginia on which a
138 welcome to West Virginia sign is posted, and any other highway
139 where the Division of Highways deems appropriate, posted at a
140 distance of not more than one mile from each border crossing, each
141 sign to bear an inscription clearly communicating to motorists
142 entering the state that texting, or the use of a wireless
143 communication device without hands-free equipment, is illegal
144 within this state.

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

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