

H. B. 3066

(By Delegates Miley and Manchin)
[Introduced March 22, 2013; referred to the
Committee on the Judiciary.]

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A BILL to amend and reenact §17C-14-15 of the code of West
Virginia, 1931, as amended, relating to traffic regulations,
laws of the road; miscellaneous rules; and prohibiting the
denial of insurance coverage based on the prohibited use of
electronic communications devices while driving.

Be it enacted by the Legislature of West Virginia:

That §17C-14-15 of the code of West Virginia, 1931, as
amended, be amended and reenacted 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.**

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

1 or highway while:

2 (1) Texting; or

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

5 (b) For purposes of this section, ~~the following terms shall~~
6 ~~mean:~~

7 (1) "Cell phone" ~~shall mean~~ means a cellular, analog, wireless
8 or digital telephone.

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

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

22 (A) Voice radios, mobile radios, land mobile radios,
23 commercial mobile radios or two way radios with the capability to
24 transmit and receive voice transmissions utilizing a push-to-talk

1 or press-to-transmit function; or

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

7 (4) "Engaging in a call" means when a person talks into or
8 listens on an electronic communication device, but ~~shall~~ may not
9 include when a person dials or enters a phone number on a pushpad
10 or screen to initiate the call.

11 (5) "Hands-free electronic communication device" means an
12 electronic communication device that has an internal feature or
13 function, or that is equipped with an attachment or addition,
14 whether or not permanently part of such electronic communication
15 device, by which a user engages in a call without the use of either
16 hand or both hands.

17 (6) "Hands-free equipment" means the internal feature or
18 function of a hands-free electronic communication device or the
19 attachment or addition to a hands-free electronic communication
20 device by which a user may engage in a call or text without the use
21 of either hand or both hands.

22 (7) "Texting" means manually entering alphanumeric text into,
23 or reading text from, an electronic communication device, and
24 includes, but is not limited to, short message service, e-mailing,

1 instant messaging, a command or request to access a World Wide Web
2 page or engaging in any other form of electronic text retrieval or
3 entry, for present or future communication. For purposes of this
4 section, "texting" does not include the following actions:

5 (A) Reading, selecting or entering a telephone number, an
6 extension number, or voicemail retrieval codes and commands into an
7 electronic device by the pressing the device in order to initiate
8 or receive a phone call or using voice commands to initiate or
9 receive a telephone call;

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

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

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

19 (A) Viewing or transmitting images or data;

20 (B) Playing games;

21 (C) Composing, sending, reading, viewing, accessing, browsing,
22 transmitting, saving or retrieving e-mail, text messages or other
23 electronic data; or

24 (D) Engaging in a call.

1 (c) Subsection (a) of this section ~~shall~~ does not apply to:

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

5 (2) A person using an electronic communication device to
6 report to appropriate authorities a fire, a traffic accident, a
7 serious road hazard, or a medical or hazardous materials
8 emergencies.

9 (3) The activation or deactivation of hands-free equipment or
10 a function of hands-free equipment.

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

16 (e) Any person who violates the provisions of subsection (a)
17 of this section is guilty of a traffic offense and, upon conviction
18 thereof, shall for a first offense be fined \$100; for a second
19 offense be fined \$200; and for a third or subsequent offense be
20 fined \$300. No court costs or other fees ~~shall~~ may be assessed for
21 a violation of subsection (a) of this section.

22 (f) Notwithstanding any other provision of this code to the
23 contrary, points may not be entered on any driver's record
24 maintained by the Division of Motor Vehicles as a result of a

1 violation of this section, except for the third and subsequent
2 convictions of the offense, for which three points shall be entered
3 on any driver's record maintained by the Division of Motor
4 Vehicles.

5 (g) Driving or operating a motor vehicle on a public street or
6 highway while texting shall be enforced as a primary offense ~~as of~~
7 ~~July 1, 2012~~. Driving or operating a motor vehicle on a public
8 street or highway while using a cell phone or other electronic
9 communication device without hands-free equipment shall be enforced
10 as a secondary offense ~~as of July 1, 2012, and as a primary offense~~
11 ~~as of~~ until July 1, 2013, when it shall be enforced as a primary
12 offense for purposes of citation.

13 (h) Within ninety days of the effective date of this section,
14 the Department of Transportation shall cause to be erected signs
15 upon any highway entering the State of West Virginia on which a
16 welcome to West Virginia sign is posted, and any other highway
17 where the Division of Highways ~~deems~~ considers appropriate, posted
18 at a distance of not more than one mile from each border crossing,
19 each sign to bear an inscription clearly communicating to motorists
20 entering the state that texting, or the use of a wireless
21 communication device without hands-free equipment, is illegal
22 within this state.

23 (i) Nothing contained in this section ~~shall~~ may be construed
24 to authorize seizure of a cell phone or electronic device by any

1 law-enforcement agency.

2 (j) No policy providing liability coverage for personal lines
3 insurance may contain a provision which may be used to deny
4 coverage or exclude payment of any legal damages recoverable by law
5 for injuries proximately caused by a violation of this section, as
6 long as those amounts are within the coverage limits of the
7 insured.

NOTE: The purpose of this bill is to prohibit the denial of insurance coverage based on the prohibited use of electronic communications devices while driving.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.