### ENROLLED

COMMITTEE SUBSTITUTE

for

## H. B. 2108

(BY DELEGATE FLEISCHAUER)

\_\_\_\_\_

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

\_\_\_\_\_

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

Be it enacted by the Legislature of West Virginia:

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

# CHAPTER 17C. TRAFFIC REGULATIONS AND LAWS OF THE ROAD.

#### ARTICLE 15. EQUIPMENT.

14

models and newer.

# §17C-15-49. Operation of vehicles with safety belts; exception; penalty; civil actions; educational program by 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 the back seat under eighteen years of age, and any passenger 3 4 in the front seat of the passenger vehicle is restrained by a safety 5 belt meeting applicable federal motor vehicle safety standards. For the purposes of this section, the term "passenger vehicle" 6 means a motor vehicle which is designed for transporting ten 7 8 passengers or less, including the driver, except that the term does 9 not include a motorcycle, a trailer, or any motor vehicle which is not required on the date of the enactment of this section under 10 a federal motor vehicle safety standard to be equipped with a belt 11 system. The provisions of this section apply to all passenger 12 vehicles manufactured after January 1, 1967, and being 1968 13
- 15 (b) The required use of safety belts as provided herein does not apply to a duly appointed or contracted rural mail carrier of 16 the United States Postal Service who is actually making mail 17 18 deliveries or to a passenger or operator with a physically disabling condition whose physical disability would prevent 19 appropriate restraint in the safety belt if the condition is duly 20 certified by a physician who states the nature of the disability as 21 well as the reason the restraint is inappropriate. The Division of 22 23 Motor Vehicles shall adopt rules, in accordance with the provisions of chapter twenty-nine-a of this code, to establish a 24 25 method to certify the physical disability and to require use of an alternative restraint system where feasible or to waive the 26 27 requirement for the use of any restraint system.

- 28 (c) Any person who violates the provisions of this section 29 shall be fined \$25. No court costs or other fees may be assessed 30 for a violation of this section.
- 31 (d) A violation of this section is not admissible as evidence of negligence or contributory negligence or comparative 32 33 negligence in any civil action or proceeding for damages, and is not admissible in mitigation of damages: Provided, That the 34 35 court may, upon motion of the defendant, conduct an in camera hearing to determine whether an injured party's failure to wear 36 a safety belt was a proximate cause of the injuries complained 37 of. Upon a finding by the court, the court may then, in a jury 38 39 trial, by special interrogatory to the jury, determine: (1) That the 40 injured party failed to wear a safety belt; and (2) that the failure 41 to wear the safety belt constituted a failure to mitigate damages. 42 The trier of fact may reduce the injured party's recovery for medical damages by an amount not to exceed five percent 43 44 thereof. In the event the plaintiff stipulates to the reduction of 45 five percent of medical damages, the court shall make the calculations and the issue of mitigation of damages for failure to 46 wear a safety belt may not be presented to the jury. In all cases, 47 48 the actual computation of the dollar amount reduction shall be determined by the court. 49
  - (e) Notwithstanding any other provision of this code to the contrary, no points may be entered on any driver's record maintained by the Division of Motor Vehicles as a result of a violation of this section.

50

51

52

53

54

55

5657

58 59

60 61

62

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

#### Enr. Com. Sub. For H. B. No. 2108] 4

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

#### 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 communications
- 6 device, unless the use is accomplished by hands-free equipment.
- 7 (b) For purposes of this section, the following terms shall
- 8 mean:
- 9 (1) "Cell phone" shall mean a cellular, analog, wireless or 10 digital telephone.
- 11 (2) "Driving" or "operating a motor vehicle" means
- 12 operating a motor vehicle, with the motor running, including
- while temporarily stationary because of traffic, a traffic control
- 14 device, or other momentary delays, but does not include
- 15 operating a motor vehicle after the driver has moved the vehicle
- to the side of, or off, a highway and halted in a location where
- 17 the vehicle can safely remain stationary.
- 18 (3) "Electronic communication device" means a cell
- 19 telephone, personal digital assistant, electronic device with
- 20 mobile data access, laptop computer, pager, broadband personal
- 21 communication device, 2-way messaging device, electronic
- 22 game, or portable computing device. For the purposes of this
- 23 section, an "electronic communication device" does not include:

- 24 (A) Voice radios, mobile radios, land mobile radios, 25 commercial mobile radios or two way radios with the capability 26 to transmit and receive voice transmissions utilizing a push-to-27 talk or press-to-transmit function; or
- 28 (B) Other voice radios used by a law-enforcement officer, an 29 emergency services provider, an employee or agent of public 30 safety organizations, first responders, Amateur Radio Operators 31 (HAM) licensed by the Federal Communications Commission 32 and school bus operators.
- 33 (4) "Engaging in a call" means when a person talks into or 34 listens on an electronic communication device, but shall not 35 include when a person dials or enters a phone number on a 36 pushpad or screen to initiate the call.
- 37 (5) "Hands-free electronic communication device" means an 38 electronic communication device that has an internal feature or 39 function, or that is equipped with an attachment or addition, 40 whether or not permanently part of such electronic 41 communication device, by which a user engages in a call without 42 the use of either hand or both hands.

43

44 45

46

47

- (6) "Hands-free equipment" means the internal feature or function of a hands-free electronic communication device or the attachment or addition to a hands-free electronic communication device by which a user may engage in a call or text without the use of either hand or both hands.
- 48 (7) "Texting" means manually entering alphanumeric text into, or reading text from, an electronic communication device, 49 and includes, but is not limited to, short message service, 50 e-mailing, instant messaging, a command or request to access a 51 52 World Wide Web page or engaging in any other form of electronic text retrieval or entry, for present or future 53 communication. For purposes of this section, "texting" does not 54 include the following actions: 55

#### Enr. Com. Sub. For H. B. No. 2108] 6

- 56 (A) Reading, selecting or entering a telephone number, an
- 57 extension number, or voicemail retrieval codes and commands
- 58 into an electronic device by the pressing the device in order to
- 59 initiate or receive a phone call or using voice commands to
- 60 initiate or receive a telephone call;
- 61 (B) Inputting, selecting or reading information on a global
- 62 positioning system or navigation system; or
- 63 (C) Using a device capable of performing multiple functions,
- 64 including fleet management systems, dispatching devices, smart
- 65 phones, citizens band radios or music players, for a purpose that
- 66 is not otherwise prohibited in this section.
- 67 (8) "Using a cell phone or other electronic communication
- device" means holding in a person's hand or hands an electronic
- 69 communication device while:
- 70 (A) Viewing or transmitting images or data;
- 71 (B) Playing games;
- 72 (C) Composing, sending, reading, viewing, accessing,
- 73 browsing, transmitting, saving or retrieving e-mail, text
- 74 messages or other electronic data; or
- 75 (D) Engaging in a call.
- 76 (c) Subsection (a) of this section shall not apply to:
- 77 (1) A law-enforcement officer, a firefighter, an emergency
- 78 medical technician, a paramedic or the operator of an authorized
- 79 emergency vehicle in the performance of their official duties;
- 80 (2) A person using an electronic communication device to
- 81 report to appropriate authorities a fire, a traffic accident, a
- 82 serious road hazard, or a medical or hazardous materials
- 83 emergencies.

- (3) The activation or deactivation of hands-free equipment or a function of hands-free equipment.
- (d) This section does not supersede the provisions of section
  three-a, article two, chapter seventeen-b of this code or any more
  restrictive provisions for drivers of commercial motor vehicles
  prescribed by the provisions of chapter seventeen-e of this code
  or federal law or rule.

91

92 93

94

95

96

104

105

106

107 108

109

110

- (e) Any person who violates the provisions of subsection (a) of this section is guilty of a traffic offense and, upon conviction thereof, shall for a first offense be fined \$100; for a second offense be fined \$200; and for a third or subsequent offense be fined \$300. No court costs or other fees shall be assessed for a violation of subsection (a) of this section.
- 97 (f) Notwithstanding any other provision of this code to the 98 contrary, points may not be entered on any driver's record 99 maintained by the Division of Motor Vehicles as a result of a 100 violation of this section, except for the third and subsequent 101 convictions of the offense, for which three points shall be 102 entered on any driver's record maintained by the Division of 103 Motor Vehicles.
  - (g) Driving or operating a motor vehicle on a public street or highway while texting shall be enforced as a primary offense. Driving or operating a motor vehicle on a public street or highway while using a cell phone or other electronic communication device without hands-free equipment shall be enforced as a secondary offense until July 1, 2013, when it shall be enforced as a primary offense for purposes of citation.
- (h) Within ninety days of the effective date of this section, the Department of Transportation shall cause to be erected signs upon any highway entering the state of West Virginia on which a welcome to West Virginia sign is posted, and any other highway where the Division of Highways deems appropriate,

#### Enr. Com. Sub. For H. B. No. 2108] 8

- posted at a distance of not more than one mile from each border crossing, each sign to bear an inscription clearly communicating to motorists entering the state that texting, or the use of a wireless communication device without hands-free equipment,
- 120 is illegal within this state.
- 121 (i) Nothing contained in this section shall be construed to 122 authorize seizure of a cell phone or electronic device by any law-123 enforcement agency.
- (j) No policy providing liability coverage for personal lines insurance shall contain a provision which may be used to deny coverage or exclude payment of any legal damages recoverable by law for injuries proximately caused by a violation of this section, as long as such amounts are within the coverage limits of the insured.

### 9 [Enr. Com. Sub. For H. B. No. 2108

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

Chairman, Hou	use Committee
	Chairman, Senate Committee
Originating in the Ho	use.
In effect ninety days	from passage.
Clerk of the Hous	e of Delegates
•	Clerk of the Senate
	Speaker of the House of Delegates
	President of the Senate
The within	this the
day of	, 2013.
	Governor