

COMMITTEE SUBSTITUTE

for

H. B. 2108

(BY DELEGATE FLEISCHAUER)

(Originated in the Committee on the Judiciary)

[March 13, 2013]

A BILL 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.

§17C-15-49. Operation of vehicles with safety belts; exception; penalty; civil actions; educational program by ~~division of public safety~~ West Virginia State Police.

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

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

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

36 (d) A violation of this section is not admissible as evidence
37 of negligence or contributory negligence or comparative
38 negligence in any civil action or proceeding for damages, and
39 ~~shall~~ is not ~~be~~ admissible in mitigation of damages: *Provided,*
40 That the court may, upon motion of the defendant, conduct an in
41 camera hearing to determine whether an injured party's failure
42 to wear a safety belt was a proximate cause of the injuries
43 complained of. Upon ~~such~~ a finding by the court, the court may
44 then, in a jury trial, by special interrogatory to the jury,
45 determine: (1) That the injured party failed to wear a safety belt;
46 and (2) that the failure to wear the safety belt constituted a
47 failure to mitigate damages. The trier of fact may reduce the
48 injured party's recovery for medical damages by an amount not
49 to exceed five percent thereof. In the event the plaintiff stipulates
50 to the reduction of five percent of medical damages, the court
51 shall make the calculations and the issue of mitigation of
52 damages for failure to wear a safety belt ~~shall~~ may not be
53 presented to the jury. In all cases, the actual computation of the
54 dollar amount reduction shall be determined by the court.

55 (e) Notwithstanding any other provision of this code to the
56 contrary, no points may be entered on any driver's record

57 maintained by the Division of Motor Vehicles as a result of a
58 violation of this section.

59 (f) ~~Commencing the first day of July, one thousand nine~~
60 ~~hundred ninety-three~~ The Governor's Highway Safety Program,
61 in cooperation with the ~~division of public safety~~ West Virginia
62 State Police and any other state departments or agencies and
63 with county and municipal law-enforcement agencies, shall
64 initiate and conduct an educational program designed to
65 encourage compliance with safety belt usage laws. This program
66 shall be focused on the effectiveness of safety belts, the
67 monetary savings and the other benefits to the public from usage
68 of safety belts and the requirements and penalties specified in
69 this law.

70 (g) Nothing contained in this section ~~shall be construed to~~
71 ~~abrogate or alter~~ abrogates or alters the provisions of section
72 forty-six of this article relating to the mandatory use of child
73 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
13 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
16 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 (6) “Hands-free equipment” means the internal feature or
44 function of a hands-free electronic communication device or the

45 attachment or addition to a hands-free electronic communication
46 device by which a user may engage in a call or text without the
47 use of either hand or both hands.

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

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
68 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.

84 (3) The activation or deactivation of hands-free equipment
85 or a function of hands-free equipment.

86 (d) This section does not supersede the provisions of section
87 three-a, article two, chapter seventeen-b of this code or any more
88 restrictive provisions for drivers of commercial motor vehicles
89 prescribed by the provisions of chapter seventeen-e of this code
90 or federal law or rule.

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

104 (g) Driving or operating a motor vehicle on a public street or
105 highway while texting shall be enforced as a primary offense. ~~as~~

106 ~~of July 1, 2012.~~ Driving or operating a motor vehicle on a public
107 street or highway while using a cell phone or other electronic
108 communication device without hands-free equipment shall be
109 enforced as a secondary offense ~~as of July 1, 2012, and as a~~
110 ~~primary offense as of~~ until July 1, 2013, when it shall be
111 enforced as a primary offense for purposes of citation.

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

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

125 (j) No policy providing liability coverage for personal lines
126 insurance shall contain a provision which may be used to deny

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127 coverage or exclude payment of any legal damages recoverable
128 by law for injuries proximately caused by a violation of this
129 section, as long as such amounts are within the coverage limits
130 of the insured.