

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

ENROLLED

Committee Substitute

for

House Bill 2218

BY DELEGATES WESTFALL, GARCIA, FAST, KELLY, KUMP, FLUHARTY

AND WARNER

[Passed March 11, 2023; in effect ninety days from passage.]

1 AN ACT to amend and reenact §17C-14-15 of the Code of West Virginia, 1931, as amended,
2 relating to distracted driving; modifying the scope of prohibitions on distracted driving by
3 establishing the Electronically Distracted Driving Act; defining terms; providing limitations
4 for the use of wireless telecommunications devices and stand-alone electronic devices;
5 prohibiting certain actions by all drivers; prohibiting certain actions by school bus drivers
6 and commercial motor vehicle drivers; providing that each violation constitutes a separate
7 offense; providing for penalties for violations, including criminal penalties, fines, driver's
8 license suspension and revocation, and points on the driver's record maintained by the
9 Division of Motor Vehicles; providing exceptions; and providing a name for certain
10 amendments.

Be it enacted by the Legislature of West Virginia:

ARTICLE 14. MISCELLANEOUS RULES.

§17C-14-15. Electronically Distracted Driving Act.

- 1 (a) *Definitions* — As used in this section:
- 2 (1) “Smartwatch” means a wearable computer that provides a local touchscreen for daily
3 use, associated with applications, and connected to a cellular or Wi-Fi network;
- 4 (2) “Stand-alone electronic device” means a portable device other than a wireless
5 telecommunications device which stores audio or video data files to be retrieved on demand by a
6 user;
- 7 (3) “Utility services” means and includes electric, natural gas, water, wastewater, cable,
8 telephone, or telecommunications services, or the repair, location, relocation, improvement, or
9 maintenance of utility poles, transmission structures, pipes, wires, fibers, cables, easements,
10 rights-of-way, or associated infrastructure;
- 11 (4) “Wireless telecommunications device” means one of the following portable devices:
- 12 (A) A cellular telephone;
- 13 (B) A portable telephone;

14 (C) A text-messaging device;

15 (D) A personal digital assistant;

16 (E) A stand-alone computer including, but not limited to, a tablet, laptop, or notebook
17 computer;

18 (F) A handheld global positioning system receiver;

19 (G) A device capable of displaying a video, movie, broadcast television image, or visual
20 image;

21 (H) Any substantially similar portable wireless device that is used to initiate or receive
22 communication, information, or data;

23 (I) "Wireless telecommunications device" does not include a smartwatch, any type of radio
24 including but not limited to, radios used by first responders or school bus operators; citizens band
25 radio or radio hybrid; commercial two-way radio communication device or its functional equivalent;
26 subscription-based emergency communication device; prescribed medical device; amateur or
27 ham radio device, or any built-in vehicle equipment for security, navigation, communications, or
28 remote diagnostics; and

29 (5) "Voice-operated or hands-free feature or function" means a feature or function that
30 allows a person to use a wireless telecommunications device without the use of either hand,
31 except to activate, deactivate, or initiate the feature or function with a single touch or single swipe.

32 (b) The driver of a school bus shall not use or operate a wireless telecommunications
33 device or two-way radio while loading or unloading passengers.

34 (c) The driver of a school bus shall not use or operate a wireless telecommunications
35 device while the bus is in motion nor while stationary in traffic nor at a traffic control signal, unless
36 that device is being used in a similar manner as a two-way radio to allow live communication
37 between the driver and school officials or public safety officials.

38 (d) A driver shall exercise due care in operating a motor vehicle on the highways of this
39 state and shall not engage in any actions involving any stand-alone electronic device or wireless
40 telecommunications device that distracts such driver from the safe operation of the vehicle.

41 (e) While operating a motor vehicle on any street, highway, or property open to the public
42 for vehicular traffic in this state, no driver may:

43 (1) Physically hold or support, with any part of his or her body, a wireless communication
44 device or stand-alone electronic device: *Provided*, That such prohibition shall not apply to the
45 wearing of a smartwatch;

46 (2) Write, send, or read any text-based communication including, but not limited to, a text
47 message, instant message, e-mail, or social media interaction on a wireless telecommunications
48 device or stand-alone electronic device: *Provided*, That such prohibition shall not apply to a voice-
49 operated or hands-free communication feature which is automatically converted by such device
50 to be sent as a message in a written form;

51 (3) Make any communication involving a wireless telecommunications device, including a
52 phone call, voice message, or one-way voice communication: *Provided*, That such prohibition
53 shall not apply to a voice operated or hands-free communication feature or function;

54 (4) Engage in any form of electronic data retrieval or electronic data communication on a
55 wireless telecommunications device or stand-alone electronic device;

56 (5) Manually enter letters, numbers, or symbols into any website, search engine, or
57 application on a wireless telecommunications device or stand-alone electronic device;

58 (6) Watch a video or movie on a wireless telecommunications device or standalone
59 electronic device other than watching data related to the navigation of such vehicle;

60 (7) Record, post, send, or broadcast video, including a video conference on a wireless
61 telecommunications device or stand-alone electronic device: *Provided*, That such prohibition
62 does not apply to electronic devices used for the sole purpose of continuously recording or
63 broadcasting video within or outside of the motor vehicle; or

64 (8) Actively play any game on a wireless telecommunications device or stand-alone
65 electronic device.

66 (f) While operating a commercial motor vehicle on any highway of this state, no driver may:

67 (1) Use more than a single button on a wireless telecommunications device to initiate or
68 terminate a voice communication; or

69 (2) Reach for a wireless telecommunications device or stand-alone electronic device in
70 such a manner that requires the driver to:

71 (A) No longer be in a seated driving position; or

72 (B) No longer be properly restrained by a safety belt.

73 (g) Each violation of this section shall constitute a separate offense.

74 (h) It is a misdemeanor for any driver to violate any of the provisions of this section. Every
75 driver convicted of a misdemeanor for a violation of any of the provisions of this section shall be
76 punished as follows:

77 (1) For a first conviction with no prior conviction of and no plea of no contest accepted to
78 a charge of violating this section within the previous 24-month period, as measured from the date
79 of any prior conviction or plea, a fine of not more than \$100;

80 (2) For a second conviction within a 24-month period, as measured from the date of any
81 prior conviction or plea, a fine of not more than \$200;

82 (3) For a third or subsequent conviction within a 24-month period, as measured from the
83 date of any prior conviction or plea:

84 (A) A fine of not more than \$350;

85 (B) Three points on the driver's record maintained by the Division of Motor Vehicles; and

86 (C) At the court's discretion, suspension of the driver's license for a period of 90 days;

87 (4) Any driver who causes physical harm to property as the proximate result of committing
88 a violation of this section is guilty of a misdemeanor punishable up to 30 days in jail or a fine not
89 less than \$100 and not more than \$500;

90 (5) Any driver who causes serious physical harm to another person as the proximate result
91 of committing a violation of this section is guilty of a misdemeanor and shall be fined not less than
92 \$500 nor more than \$1,000, or confined in jail up to 120 days, or both fined and confined, and
93 such driver shall have his or her license to operate a motor vehicle revoked by the Commissioner
94 of the Division of Motor Vehicles for a period of one year; and

95 (6) Any driver who causes the death of another as the proximate result of committing a
96 violation of this section is guilty of negligent homicide and shall be punished in accordance with
97 §17C-5-1 of this code.

98 (i) The Department of Transportation shall cause to be erected signs upon any highway
99 entering the state of West Virginia on which a welcome to West Virginia sign is posted, and any
100 other highway where the Division of Highways deems appropriate, posted at a distance of not
101 more than one mile from each border crossing, each sign to bear an inscription clearly
102 communicating to motorists entering the state that texting, or the use of a wireless communication
103 device without hands-free equipment, is illegal within this state.

104 (j) Nothing contained in this section shall be construed to authorize seizure of a cell phone
105 or electronic device by any law-enforcement agency.

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

110 (l) This section shall not apply to:

111 (1) Drivers reporting to state, county, or local authorities a traffic accident, medical
112 emergency, fire, an actual or potential criminal or delinquent act, or a road condition that causes
113 an immediate and serious traffic or safety hazard;

114 (2) An employee or contractor of a utility services provider acting within the scope of his
115 or her employment while responding to a utility emergency;

116 (3) A driver operating a commercial vehicle while using a mobile data terminal that
117 transmits and receives data;

118 (4) A law-enforcement officer, firefighter, emergency medical services personnel,
119 ambulance driver, or other similarly employed public safety first responder during the performance
120 of his or her official duties; or

121 (5) While in a motor vehicle that is lawfully parked.

122 (m) This section does not supersede the provisions of §17B-2-3a of this code, or any more
123 restrictive provisions for drivers of commercial motor vehicles prescribed either by the provisions
124 of §17E-1-1 *et seq.* of this code or by federal law or rule.

125 (n) The amendments to this section adopted during the regular session of the Legislature
126 in 2023, shall be known as the Robin W. Ames Memorial Act.

The Clerk of the House of Delegates and the Clerk of the Senate hereby certify that the foregoing bill is correctly enrolled.

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Clerk of the House of Delegates

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Clerk of the Senate

Originated in the House of Delegates.

In effect ninety days from passage.

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Speaker of the House of Delegates

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President of the Senate

The within is this the.....
Day of, 2023.

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Governor