WEST virginia legislature

2023 regular session

Committee Substitute

for

House Bill 2218

By Delegates Westfall, Garcia, Fast, Kelly, Kump, Fluharty and Warner

[Introduced January 11, 2023; Referred to the Committee on Technology and Infrastructure then the Judiciary]

A BILL to amend and reenact §17C-14-15 of the Code of West Virginia, 1931, as amended, relating to distracted driving; increasing the scope of prohibitions on distracted driving by establishing the Electronically Distracted Driving Act; defining terms; providing exclusions from those terms; providing limitations for the use of wireless telecommunications devices; providing guidelines for safe operation of a vehicle; prohibiting certain actions by all drivers; prohibiting certain actions by commercial drivers; providing each violation of this code section shall constitute a separate offense; providing penalties for violations of these provisions; providing exceptions; providing that the provisions of this section do not supersede other provisions of this code or any more restrictive provisions for drivers of commercial motor vehicles; and establishing a naming provision for changes made in the 2023 Legislative session.

Be it enacted by the Legislature of West Virginia:

ARTICLE 14. MISCELLANEOUS RULES.

§17C-14-15. ~~Prohibited use of an electronic communications device driving without handheld features; definitions; exceptions; penalties~~ Electronically Distracted Driving Act.

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

~~(1) Texting; or~~

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

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

~~(1) “Cell phone” shall mean a cellular, analog, wireless or digital telephone.~~

~~(2) “Driving” or “operating a motor vehicle” means operating a motor vehicle, with the motor running, including while temporarily stationary because of traffic, a traffic control device, or other momentary delays, but does not include 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 the vehicle can safely remain stationary.~~

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

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

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

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

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

~~(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.~~

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

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

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

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

~~(8) “Using a cell phone or other electronic communication device” means holding in a person’s hand or hands an electronic communication device while:~~

~~(A) Viewing or transmitting images or data;~~

~~(B) Playing games;~~

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

~~(D) Engaging in a call.~~

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

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

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

~~(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.~~

~~(f) Notwithstanding any other provision of this code to the contrary, points may not be entered on any driver’s record maintained by the Division of Motor Vehicles as a result of a violation of this section, except for the third and subsequent convictions of the offense, for which three points shall be entered on any driver’s record maintained by the Division of 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~~

(a) Definitions:

(1) “Smartwatch” means a wearable computer that provides a local touchscreen for daily use, associated with applications, and connected to a cellular or wifi network.

(2) “Stand-alone electronic device” means a portable device other than a wireless telecommunications device which stores audio or video data files to be retrieved on demand by a user.

(3) “Utility services” means and includes electric, natural gas, water, wastewater, cable, telephone, or telecommunications services or the repair, location, relocation, improvement, or maintenance of utility poles, transmission structures, pipes, wires, fibers, cables, easements, rights-of-way, or associated infrastructure.

(4) “Wireless telecommunications device” means one of the following portable devices:

(A) A cellular telephone;

(B) A portable telephone;

(C) A text-messaging device;

(D) A personal digital assistant;

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

(F) A global positioning system receiver;

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

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

(I) Such term shall not include a smartwatch, audio recorder,radio, citizens band radio, citizens band radio hybrid, commercial two-way radio communication device or its functional equivalent, subscription-based emergency communication device, prescribed medical device, amateur or ham radio device, or in-vehicle security, navigation, communications, or remote diagnostics system.

(5) “Voice-operated or hands-free feature or function” means a feature or function that allows a person to use an electronic wireless communications device without the use of either hand, except to activate, deactivate, or initiate the feature or function with a single touch or single swipe.

(6) For the purposes of this section, an “electronic communication device” does not include:

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

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

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

(c) The driver of a school bus shall not use or operate a wireless telecommunications device while the bus is in motion, unless that device is being used in a similar manner as a two-way radio to allow live communication between the driver and school officials or public safety officials.

(d) A driver shall exercise due care in operating a motor vehicle on the highways of this state and shall not engage in any actions which shall distract such driver from the safe operation of such vehicle.

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

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

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

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

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

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

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

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

(8) Play any game on a wireless telecommunications device or standalone electronic device.

(f) While operating a commercial motor vehicle on any highway of this state, no individual shall:

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

(2) Reach for a wireless telecommunications device or stand-alone electronic device in such a manner that requires the driver to no longer be in a seated driving position or properly restrained by a safety belt.

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

(h) Except as otherwise provided for herein, any person convicted of violating this section shall be guilty of an unclassified misdemeanor which shall be punished as follows:

(1) For a first conviction with no prior conviction of and no plea of no contest accepted to a charge of violating this section within the previous 24-month period, a fine of not more than $100.

(2) For a second conviction within a 24-month period, a fine of not more than $200.

(3) For a third or subsequent conviction within a 24-month period, a fine of not more than $300, and three points shall be entered on any driver’s record maintained by the Division of Motor Vehicles, and, at the court’s discretion, suspension of the offender’s driver’s license for a period of 90 days.

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

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

(6) Any person who causes the death of another as the proximate result of committing a violation of this section is guilty of negligent homicide, as defined by §17C-5-1 of this code, and shall be imprisoned in a state correctional facility for not more than one year, or by a fine of not less than $100 nor more than $1,000, or both fined and imprisoned, according to §17C-5-1 of this code.

~~(h)~~(i) ~~Within ninety days of the effective date of this section, the~~ 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, 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, is illegal within this state.

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

~~(i)~~ (k) 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.

(l) This section shall not apply to:

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

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

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

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

(5) A person operating a vehicle as part of a ridesharing arrangement under §17C-22-1, *et. seq.* of this Code;

(6) A transportation network company driver while engaged in the service of a transportation network company as those terms are defined in § 17-29-1 *et seq.* of this Code;

(7) A driver of a taxicab, limousine, or other for-hire vehicle service, while actively engaged in such service;

(8) A person using a wireless communication device or standalone electronic device in a vehicle equipped with an automated driving system when the automated driving system is engaged; or

(9) While in a motor vehicle which is lawfully parked.

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

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

NOTE: The purpose of this bill is to expand prohibitions on distracted driving of motorists utilizing a wireless communication device or stand-alone electronic device.

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