

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]

1 A BILL to amend and reenact §17C-14-15 of the Code of West Virginia, 1931, as amended,
2 relating to distracted driving; increasing the scope of prohibitions on distracted driving by
3 establishing the Electronically Distracted Driving Act; defining terms; providing exclusions
4 from those terms; providing limitations for the use of wireless telecommunications devices;
5 providing guidelines for safe operation of a vehicle; prohibiting certain actions by all
6 drivers; prohibiting certain actions by commercial drivers; providing each violation of this
7 code section shall constitute a separate offense; providing penalties for violations of these
8 provisions; providing exceptions; providing that the provisions of this section do not
9 supersede other provisions of this code or any more restrictive provisions for drivers of
10 commercial motor vehicles; and establishing a naming provision for changes made in the
11 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.

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

3 ~~(1) Texting; or~~

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

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

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

8 ~~(2) "Driving" or "operating a motor vehicle" means operating a motor vehicle, with the motor~~
9 ~~running, including while temporarily stationary because of traffic, a traffic control device, or other~~
10 ~~momentary delays, but does not include operating a motor vehicle after the driver has moved the~~

11 ~~vehicle to the side of, or off, a highway and halted in a location where the vehicle can safely remain~~
12 ~~stationary.~~

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

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

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

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

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

30 ~~(6) "Hands-free equipment" means the internal feature or function of a hands-free~~
31 ~~electronic communication device or the attachment or addition to a hands-free electronic~~
32 ~~communication device by which a user may engage in a call or text without the use of either hand~~
33 ~~or both hands.~~

34 ~~(7) "Texting" means manually entering alphanumeric text into, or reading text from, an~~
35 ~~electronic communication device, and includes, but is not limited to, short message service, e-~~
36 ~~mailing, instant messaging, a command or request to access a World Wide Web page or engaging~~

37 in any other form of electronic text retrieval or entry, for present or future communication. For
38 purposes of this section, "texting" does not include the following actions:

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

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

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

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

49 (A) Viewing or transmitting images or data;

50 (B) Playing games;

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

53 (D) Engaging in a call.

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

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

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

59 (3) The activation or deactivation of hands-free equipment or a function of hands-free
60 equipment.

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

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

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

72 ~~(g) Driving or operating a motor vehicle on a public street or highway while texting shall be~~
73 ~~enforced as a primary offense. Driving or operating a motor vehicle on a public street or highway~~
74 ~~while using a cell phone or other electronic communication device without hands-free equipment~~
75 ~~shall be enforced as a secondary offense until July 1, 2013, when it shall be enforced as a primary~~
76 ~~offense for purposes of citation~~

77 (a) Definitions:

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

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

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

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

88 (A) A cellular telephone;

89 (B) A portable telephone;

90 (C) A text-messaging device;

91 (D) A personal digital assistant;

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

93 computer;

94 (F) A global positioning system receiver;

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

96 image; or

97 (H) Any substantially similar portable wireless device that is used to initiate or receive

98 communication, information or data.

99 (I) Such term shall not include a smartwatch, audio recorder, radio, citizens band radio,

100 citizens band radio hybrid, commercial two-way radio communication device or its functional

101 equivalent, subscription-based emergency communication device, prescribed medical device,

102 amateur or ham radio device, or in-vehicle security, navigation, communications, or remote

103 diagnostics system.

104 (5) “Voice-operated or hands-free feature or function” means a feature or function that

105 allows a person to use an electronic wireless communications device without the use of either

106 hand, except to activate, deactivate, or initiate the feature or function with a single touch or single

107 swipe.

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

109 include:

110 (A) Voice radios, mobile radios, land mobile radios, commercial mobile radios, or two-way

111 radios with the capability to transmit and receive voice transmissions utilizing a push-to-talk or

112 press-to-transmit function; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

162 (3) For a third or subsequent conviction within a 24-month period, a fine of not more than
163 \$300, and three points shall be entered on any driver's record maintained by the Division of Motor

164 Vehicles, and, at the court's discretion, suspension of the offender's driver's license for a period of
165 90 days.

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

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

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

178 ~~(h)(i) Within ninety days of the effective date of this section, the~~ The Department of
179 Transportation shall cause to be erected signs upon any highway entering the state of West
180 Virginia on which a welcome to West Virginia sign is posted, and any other highway where the
181 Division of Highways deems appropriate, posted at a distance of not more than one mile from each
182 border crossing, each sign to bear an inscription clearly communicating to motorists entering the
183 state that texting, or the use of a wireless communication device without hands-free equipment, is
184 illegal within this state.

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

187 ~~(k)~~ (k) No policy providing liability coverage for personal lines insurance shall contain a
188 provision which may be used to deny coverage or exclude payment of any legal damages

189 recoverable by law for injuries proximately caused by a violation of this section, as long as such
190 amounts are within the coverage limits of the insured.

191 (l) This section shall not apply to:

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

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

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

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

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

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

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

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

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

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

215 (n) The amendments to this section adopted during the 2023 session of the Legislature
216 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.