

COMMITTEE SUBSTITUTE

FOR

**H. B. 2555**

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(BY DELEGATES MARTIN, CANN, FERRO, COWLES  
AND KOMINAR)

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(Originating in the Committee on the Judiciary)  
[February 10, 2011]

A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §17C-14-15, relating to establishing the misdemeanor offense of operating a motor vehicle while sending, reading or receiving a text message; providing exceptions; providing definitions; and establishing a traffic offense for violations which may not be considered a misdemeanor; and providing for penalties.

*Be it enacted by the Legislature of West Virginia:*

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §17C-14-15, to read as follows:

**ARTICLE 14. MISCELLANEOUS RULES.**

**§17C-14-15. Writing, sending or reading a text message by means of an electronic communications device while driving unlawful; definitions; exceptions; penalties.**

1       (a) Except as provided in subdivision (b) of this section,  
2       a person may not drive or operate a motor vehicle on a public  
3       street or highway while texting.

4       (b) A driver is permitted use an electronic communication  
5       device to text while driving during an emergency, when it is  
6       necessary for the driver to contact law-enforcement officials  
7       or other emergency services.

8       (c) The provisions of this section do not apply to any  
9       person under the age of eighteen with a level one or level two  
10       graduated driver's license who operates a motor vehicle  
11       pursuant to section three-a, article two, chapter seventeen-b  
12       of this code.

13       (d) As used in this section:

14 (1) “Driving” or “operating a motor vehicle” means  
15 operating a motor vehicle, with the motor running, including  
16 while temporarily stationary because of traffic, a traffic  
17 control device, or other momentary delays, but does not  
18 include operating a motor vehicle when the driver moved the  
19 vehicle to the side of, or off, a highway and halted in a  
20 location where the vehicle can safely remain stationary;

21 (2) “Electronic communication device” includes but is  
22 not limited to, a cellular telephone; personal digital assistant;  
23 pager; computer; or any other device used to input, write,  
24 send, receive or read text. For the purposes of this section, an  
25 “electronic communication device” does not include:

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

30 (B) Other voice radios used by a law-enforcement officer,  
31 an emergency services provider, an employee or agent of  
32 public safety organizations, first responders, Amateur Radio

33 Operators(HAM) licensed by the Federal Communications  
34 Commission and school bus operators;

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

43 (A) Reading, selecting or entering a telephone number,  
44 an extension number, or voicemail retrieval codes and  
45 commands into an electronic device for the purpose of  
46 initiating or receiving a phone call or using voice commands  
47 to initiate or receive a telephone call;

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

50 (C) Using a device capable of performing multiple  
51 functions, including fleet management systems, dispatching

52 devices, smart phones, citizens band radios, music players,  
53 for a purpose that is not otherwise prohibited in this section.

54 (e) Any person who violates the provisions of subsection  
55 (a) of this section is guilty of a traffic offense which may not  
56 be construed to be a misdemeanor and, upon conviction  
57 thereof, shall for a first offense be fined \$100; for a second  
58 offense be fined \$200; and for a third or subsequent offense  
59 be fined \$400. No court costs or other fees shall be assessed  
60 for a violation of subsection (a).

61 (f) Notwithstanding any other provision of this code to  
62 the contrary, points may not be entered on any driver's record  
63 maintained by the Division of Motor Vehicles as a result of  
64 a violation of this section.

65 (g) This traffic offense shall not be a primary offense for  
66 citation.

NOTE: The purpose of this bill is to create the misdemeanor offense of operating a motor vehicle while texting, and creating certain exceptions thereto.

This section is new; therefore, it has been completely underscored.