

1 **H. B. 4091**

2
3 (By Mr. Speaker, (Mr. Thompson) and Delegate Armstead)

4 [By Request of the Executive]

5 [Introduced January 17, 2012; referred to the
6 Committee on Roads and Transportation then the Judiciary.]

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10 A BILL to amend and reenact §17B-2-3a of the Code of West Virginia,
11 1931, as amended; and to amend said code by adding thereto a
12 new section, designated §17C-14-15, all relating to traffic
13 safety; establishing the offense of operating a motor vehicle
14 while sending or reading a text message or using a wireless
15 communication device without hands-free technology; providing
16 exceptions; providing definitions; providing penalties; and
17 making graduated driver's license provisions consistent with
18 new offenses.

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

20 That §17B-2-3a of the Code of West Virginia, 1931, as amended,
21 be amended and reenacted; and that said code be amended by adding
22 thereto a new section, designated §17C-14-15, all to read as
23 follows:

24 **CHAPTER 17B. MOTOR VEHICLE DRIVER'S LICENSES.**

1 **ARTICLE 2. ISSUANCE OF LICENSE, EXPIRATION AND RENEWAL.**

2 **§17B-2-3a. Graduated driver's license.**

3 (a) Any person under the age of eighteen may not operate a
4 motor vehicle unless he or she has obtained a graduated driver's
5 license in accordance with the three-level graduated driver's
6 license system described in the following provisions.

7 (b) Any person under the age of twenty-one, regardless of
8 class or level of licensure, who operates a motor vehicle with any
9 measurable alcohol in his or her system is subject to the
10 provisions of section two, article five, chapter seventeen-c of
11 this code and section two, article five-a of said chapter. Any
12 person under the age of eighteen, regardless of class or licensure
13 level, is subject to the mandatory school attendance and
14 satisfactory academic progress provisions of section eleven,
15 article eight, chapter eighteen of this code.

16 (c) *Level one instruction permit.* -- An applicant who is
17 fifteen years or older meeting all other requirements prescribed in
18 this code may be issued a level one instruction permit.

19 (1) *Eligibility.* -- The division shall not issue a level one
20 instruction permit unless the applicant:

21 (A) Presents a completed application, as prescribed by the
22 provisions of section six of this article, and which is accompanied
23 by a writing, duly acknowledged, consenting to the issuance of the
24 graduated driver's license and executed by a parent or guardian

1 entitled to custody of the applicant;

2 (B) Presents a certified copy of a birth certificate issued by
3 a state or other governmental entity responsible for vital records
4 unexpired, or a valid passport issued by the United States
5 government evidencing that the applicant meets the minimum age
6 requirement and is of verifiable identity;

7 (C) Passes the vision and written knowledge examination and
8 completes the driving under the influence awareness program, as
9 prescribed in section seven of this article;

10 (D) Presents a driver's eligibility certificate or otherwise
11 shows compliance with the provisions of section eleven, article
12 eight, chapter eighteen of this code; and

13 (E) Pays a fee of \$5, which shall permit the applicant two
14 attempts at the written knowledge test.

15 (2) *Terms and conditions of instruction permit.* -- A level one
16 instruction permit issued under the provisions of this section is
17 valid until thirty days after the date the applicant attains the
18 age of eighteen and is not renewable. However, any permit holder
19 who allows his or her permit to expire prior to successfully
20 passing the road skills portion of the driver examination, and who
21 has not committed any offense which requires the suspension,
22 revocation or cancellation of the instruction permit, may reapply
23 for a new instruction permit under the provisions of section six of
24 this article. The division shall immediately revoke the permit

1 upon receipt of a second conviction for a moving violation of
2 traffic regulations and laws of the road or violation of the terms
3 and conditions of a level one instruction permit, which convictions
4 have become final unless a greater penalty is required by this
5 section or any other provision of this code. Any person whose
6 instruction permit has been revoked is disqualified from retesting
7 for a period of ninety days. However, after the expiration of
8 ninety days, the person may retest if otherwise eligible. In
9 addition to all other provisions of this code for which a driver's
10 license may be restricted, suspended, revoked or canceled, the
11 holder of a level one instruction permit may only operate a motor
12 vehicle under the following conditions:

13 (A) Under the direct supervision of a licensed driver, twenty-
14 one years of age or older, or a driver's education or driving
15 school instructor who is acting in an official capacity as an
16 instructor, who is fully alert and unimpaired, and the only other
17 occupant of the front seat. The vehicle may be operated with no
18 more than two additional passengers, unless the passengers are
19 family members;

20 (B) Between the hours of five a.m. and ten p.m.;

21 (C) All occupants must use safety belts in accordance with the
22 provisions of section forty-nine, article fifteen, chapter
23 seventeen-c of this code;

24 (D) Without any measurable blood alcohol content, in

1 accordance with the provisions of subsection (h), section two,
2 article five, chapter seventeen-c of this code; and

3 (E) Maintains current school enrollment and is making
4 satisfactory academic progress or otherwise shows compliance with
5 the provisions of section eleven, article eight, chapter eighteen
6 of this code.

7 (F) A holder of a level one instruction permit who is under
8 the age of eighteen years shall be prohibited from using a wireless
9 communication device while operating a motor vehicle, unless the
10 use of the wireless communication device is for contacting a 9-1-1
11 system: Provided, That the holder of a level one instruction permit
12 who is under the age of eighteen years may not contact a 911 system
13 by means of texting as that term is defined in subdivision, (3)
14 subsection (d), section fifteen, article fourteen, chapter
15 seventeen-c of this code: Provided, however, That texting as that
16 term is defined in subdivision (3), subsection (d), section
17 fifteen, article fourteen, chapter seventeen-c of this code by the
18 holder of a level one instruction permit who is under the age of
19 eighteen years is a primary offense. A person violating the
20 provisions of this paragraph is guilty of a misdemeanor and, upon
21 conviction thereof, shall for the first offense be fined \$25; for
22 a second offense be fined \$50; and for a third or subsequent
23 offense be fined \$75.

24 (d) *Level two intermediate driver's license.* -- An applicant

1 sixteen years of age or older, meeting all other requirements of
2 the code, may be issued a level two intermediate driver's license.

3 (1) *Eligibility.* -- The division shall not issue a level two
4 intermediate driver's license unless the applicant:

5 (A) Presents a completed application as prescribed in section
6 six of this article;

7 (B) Has held the level one instruction permit conviction-free
8 for the one hundred eighty days immediately preceding the date of
9 application for a level two intermediate license;

10 (C) Has completed either a driver's education course approved
11 by the state Department of Education or fifty hours of behind-the-
12 wheel driving experience, including a minimum of ten hours of
13 nighttime driving, certified by a parent or legal guardian or other
14 responsible adult over the age of twenty-one as indicated on the
15 form prescribed by the division: *Provided,* That nothing in this
16 paragraph shall be construed to require any school or any county
17 board of education to provide any particular number of driver's
18 education courses or to provide driver's education training to any
19 student;

20 (D) Presents a driver's eligibility certificate or otherwise
21 shows compliance with the provisions of section eleven, article
22 eight, chapter eighteen of this code;

23 (E) Passes the road skills examination as prescribed by
24 section seven of this article; and

1 (F) Pays a fee of \$5.

2 (2) *Terms and conditions of a level two intermediate driver's*
3 *license.* -- A level two intermediate driver's license issued under
4 the provisions of this section shall expire thirty days after the
5 applicant attains the age of eighteen, or until the licensee
6 qualifies for a level three full Class E license, whichever comes
7 first. In addition to all other provisions of this code for which
8 a driver's license may be restricted, suspended, revoked or
9 canceled, the holder of a level two intermediate driver's license
10 may only operate a motor vehicle under the following conditions:

11 (A) Unsupervised between the hours of five a.m. and ten p.m.;

12 (B) Only under the direct supervision of a licensed driver,
13 age twenty-one years or older, between the hours of ten p.m. and
14 five a.m. except when the licensee is going to or returning from:

15 (I) Lawful employment;

16 (ii) A school-sanctioned activity;

17 (iii) A religious event; or

18 (iv) An emergency situation that requires the licensee to
19 operate a motor vehicle to prevent bodily injury or death of
20 another;

21 (C) All occupants shall use safety belts in accordance with
22 the provisions of section forty-nine, article fifteen, chapter
23 seventeen-c of this code;

24 (D) For the first six months after issuance of a level two

1 intermediate driver's license, the licensee may not operate a motor
2 vehicle carrying any passengers less than twenty years old, unless
3 these passengers are family members of the licensee; for the second
4 six months after issuance of a level two intermediate driver's
5 license, the licensee may not operate a motor vehicle carrying more
6 than one passenger less than twenty years old, unless these
7 passengers are family members of the licensee;

8 (E) Without any measurable blood alcohol content in accordance
9 with the provisions of subsection (h), section two, article five,
10 chapter seventeen-c of this code;

11 (F) Maintains current school enrollment and is making
12 satisfactory academic progress or otherwise shows compliance with
13 the provisions of section eleven, article eight, chapter eighteen
14 of this code;

15 (G) A holder of a level two intermediate driver's license who
16 is under the age of eighteen years shall be prohibited from using
17 a wireless communication device while operating a motor vehicle,
18 unless the use of the wireless communication device is for
19 contacting a 9-1-1 system: Provided, That the holder of a level one
20 instruction permit who is under the age of eighteen years may not
21 contact a 911 system by means of texting as that term is defined in
22 subdivision (3), subsection (d), section fifteen, article fourteen,
23 chapter seventeen-c of this code: Provided, however, That texting
24 as that term is defined in subdivision (3), subsection (d), section

1 fifteen, article fourteen, chapter seventeen-c of this code by the
2 holder of a level one instruction permit who is under the age of
3 eighteen years is a primary offense. A person violating the
4 provisions of this paragraph is guilty of a misdemeanor and, upon
5 conviction thereof, shall for the first offense be fined \$25; for
6 a second offense be fined \$50; and for a third or subsequent
7 offense be fined \$75.

8 (H) Upon the first conviction for a moving traffic violation
9 or a violation of paragraph (A), (B), (C), (D) or (G), subdivision
10 (1), subsection (d) of this section of the terms and conditions of
11 a level two intermediate driver's license, the licensee shall
12 enroll in an approved driver improvement program unless a greater
13 penalty is required by this section or by any other provision of
14 this code; and

15 At the discretion of the commissioner, completion of an
16 approved driver improvement program may be used to negate the
17 effect of a minor traffic violation as defined by the commissioner
18 against the one year conviction-free driving criteria for early
19 eligibility for a level three driver's license and may also negate
20 the effect of one minor traffic violation for purposes of avoiding
21 a second conviction under paragraph (I) of this subdivision; and

22 (I) Upon the second conviction for a moving traffic violation
23 or a violation of the terms and conditions of the level two
24 intermediate driver's license, the licensee's privilege to operate

1 a motor vehicle shall be revoked or suspended for the applicable
2 statutory period or until the licensee's eighteenth birthday,
3 whichever is longer unless a greater penalty is required by this
4 section or any other provision of this code. Any person whose
5 driver's license has been revoked as a level two intermediate
6 driver, upon reaching the age of eighteen years and if otherwise
7 eligible may reapply for an instruction permit, then a driver's
8 license in accordance with the provisions of sections five, six and
9 seven of this article.

10 (e) *Level three, full Class E license.* -- The level three
11 license is valid until thirty days after the date the licensee
12 attains his or her twenty-first birthday. Unless otherwise
13 provided in this section or any other section of this code, the
14 holder of a level three full Class E license is subject to the same
15 terms and conditions as the holder of a regular Class E driver's
16 license.

17 A level two intermediate licensee whose privilege to operate
18 a motor vehicle has not been suspended, revoked or otherwise
19 canceled and who meets all other requirements of the code may be
20 issued a level three full Class E license without further
21 examination or road skills testing if the licensee:

22 (1) Has reached the age of seventeen years; and

23 (A) Presents a completed application as prescribed by the
24 provisions of section six of this article;

1 (B) Has held the level two intermediate license conviction
2 free for the twelve-month period immediately preceding the date of
3 the application;

4 (C) Has completed any driver improvement program required
5 under paragraph (G), subdivision (2), subsection (d) of this
6 section; and

7 (D) Pays a fee of \$2.50 for each year the license is valid.
8 An additional fee of \$.50 shall be collected to be deposited in the
9 Combined Voter Registration and Driver's Licensing Fund established
10 in section twelve, article two, chapter three of this code;

11 (E) Presents a driver's eligibility certificate or otherwise
12 shows compliance with the provisions of section eleven, article
13 eight, chapter eighteen of this code; or

14 (2) Reaches the age of eighteen years; and

15 (A) Presents a completed application as prescribed by the
16 provisions of section six of this article; and

17 (B) Pays a fee of \$2.50 for each year the license is valid.
18 An additional fee of \$.50 shall be collected to be deposited in the
19 Combined Voter Registration and Driver's Licensing Fund established
20 in section twelve, article two, chapter three of this code.

21 (f) A person violating the provisions of the terms and
22 conditions of a level one or level two intermediate driver's
23 license is guilty of a misdemeanor and, upon conviction thereof,
24 shall for the first offense be fined \$25; for a second offense be

1 fined \$50; and for a third or subsequent offense be fined \$75.

2 **CHAPTER 17C. TRAFFIC REGULATIONS AND LAWS OF THE ROAD.**

3 **ARTICLE 14. MISCELLANEOUS RULES.**

4 **§17C-14-15. Writing, sending or reading a text message by means**
5 **of an electronic communications device or using a**
6 **wireless communication device while driving**
7 **unlawful; definitions; exceptions; penalties.**

8 (a) Except as provided in subdivision (b) of this section, a
9 person may not drive or operate a motor vehicle on a public street
10 or highway while texting or using a wireless communication device
11 without hands-free equipment.

12 (b) A driver is permitted to use an electronic communication
13 device to text or a wireless communication device without hands-
14 free technology to call while driving during an emergency, when it
15 is necessary for the driver to contact law-enforcement officials or
16 other emergency services.

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

21 (d) As used in this section:

22 (1) "Driving" or "operating a motor vehicle" means operating
23 a motor vehicle, with the motor running, including while
24 temporarily stationary because of traffic, a traffic control device

1 or other momentary delays, but does not include operating a motor
2 vehicle when the driver moved the vehicle to the side of, or off,
3 a highway and halted in a location where the vehicle can safely
4 remain stationary;

5 (2) "Electronic communication device" includes, but is not
6 limited to, a cellular telephone; personal digital assistant,
7 pager, computer or any other device used to input, write, send,
8 receive or read text. For the purposes of this section, an
9 "electronic communication device" does not include:

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

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

19 (3) "Texting" means manually entering alphanumeric text into,
20 or reading text from, an electronic communication device, and
21 includes, but is not limited to, short message service, e-mailing,
22 instant messaging, a command or request to access a World Wide Web
23 page or engaging in any other form of electronic text retrieval or
24 entry for present or future communication. For purposes of this

1 section, "texting" does not include the following actions:

2 (A) Reading, selecting or entering a telephone number, an
3 extension number, or voicemail retrieval codes and commands into an
4 electronic device for the purpose of initiating or receiving a
5 phone call or using voice commands to initiate or receive a
6 telephone call;

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

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

13 (e) Any person who violates the provisions of subsection (a)
14 of this section is guilty of a traffic offense which may not be
15 construed to be a misdemeanor and, upon conviction thereof, shall
16 for a first offense be fined \$100; for a second offense be fined
17 \$200; and for a third or subsequent offense be fined \$400. Court
18 costs or other fees may not be assessed for a violation of
19 subsection (a).

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

24 (g) This traffic offense may not be a primary offense for

1 citation.

NOTE: The purpose of this bill is to create the secondary offense of operating a motor vehicle while texting or using a wireless communications device without hands-free technology.

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

§17C-14-15 is new; therefore, it has been completely underscored.