

# **WEST VIRGINIA LEGISLATURE**

## **2016 REGULAR SESSION**

**Introduced**

### **House Bill 4462**

BY DELEGATE CAPUTO

BY REQUEST

[Introduced February 9, 2016; Referred  
to the Committee on Roads and Transportation 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 increasing driver’s license penalties for using wireless communication devices  
 3 while operating a vehicle.

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

1 That §17C-14-15 of the Code of West Virginia, 1931, as amended, be amended and  
 2 reenacted to read as follows:

**ARTICLE 14. MISCELLANEOUS RULES.**

**§17C-14-15. Prohibited use of an electronic communications device driving without  
 handheld features; definitions; exceptions; penalties.**

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

5 (1) Texting; or

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

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

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

10 (2) “Driving” or “operating a motor vehicle” means operating a motor vehicle, with the  
 11 motor running, including while temporarily stationary because of traffic, a traffic control device, or  
 12 other momentary delays, but does not include operating a motor vehicle after the driver has  
 13 moved the vehicle to the side of, or off, a highway and halted in a location where the vehicle can  
 14 safely remain stationary.

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

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

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

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

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

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

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

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

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

45 system; or

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

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

51 (A) Viewing or transmitting images or data;

52 (B) Playing games;

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

55 (D) Engaging in a call.

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

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

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

61 (3) The activation or deactivation of hands-free equipment or a function of hands-free  
62 equipment.

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

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

70 (f) Notwithstanding any other provision of this code to the contrary, ~~points may not be~~

71 ~~entered on any driver's record maintained by the Division of Motor Vehicles as a result of a~~  
72 ~~violation of this section, except for the third and subsequent convictions of the offense, for which~~  
73 ~~three points shall be entered on any driver's record maintained by the Division of Motor Vehicles~~  
74 using an electronic communication device while operating a vehicle in violation of this section will  
75 result in points entered on any driver's record maintained by the Division of Motor Vehicles. A  
76 penalty of three points for the second offense and five points for the third offense shall be entered  
77 on any driver's record maintained by the Division of Motor Vehicles.

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

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

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

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

NOTE: The purpose of this bill is to place penalty points on driver's licenses for using electronic communications devices while operating a motor vehicle.

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