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**Senate Bill No. 209**

(By Senators Unger, Klempa, K. Facemyer, Jenkins,  
Plymale, Foster, Snyder, Browning, McCabe, Stollings, Palumbo,  
Minard, Williams, Yost, Sypolt, Barnes and Kessler (Acting  
President))

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[Introduced January 19, 2011; referred to the Committee on  
Transportation and Infrastructure; and then to the Committee on  
the Judiciary.]

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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 misdemeanor criminal  
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.**

1 **§17C-14-15. Writing, sending or reading a text message by means**  
2 **of a wireless communications device while driving**  
3 **unlawful; definitions; exceptions; penalties.**

4 (a) Except as provided in subdivision (b) of this section,  
5 a person may not operate a motor vehicle while writing, sending  
6 or reading a text message by means of a wireless communications  
7 device.

8 (b) The provisions of this section do not apply to a driver  
9 who is writing, sending or reading a text message by means of a  
10 wireless communications device while operating a motor vehicle  
11 when:

12 (1) The driver is writing, sending or reading a text  
13 message by means of a wireless communications device when is  
14 necessary for the driver to contact law-enforcement officials or  
15 other emergency services ; or

16 (2) Acting in the course and scope of his or her employment  
17 as an emergency services personnel, the driver is responding to  
18 an emergency situation while operating an authorized emergency  
19 vehicle, as defined in section six, article one of this chapter.

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

1 (d) As used in this section:

2 (1) "Driving" or "operating a motor vehicle" means  
3 operating a motor vehicle, with the motor running, including  
4 while temporarily stationary because of traffic, a traffic  
5 control device, or other momentary delays, but does not include  
6 operating a motor vehicle when the driver moved the vehicle to  
7 the side of, or off, a highway and halted in a location where the  
8 vehicle can safely remain stationary;

9 (2) "Electronic device" means and includes, but is not  
10 limited to, a cellular telephone, personal digital assistant,  
11 pager, computer, or any other device used to input, write, send,  
12 receive, or read text. An "electronic device" does not include:

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

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

22 (3) "Writing, sending or reading a text message by means of  
23 a wireless communications device" means manually entering  
24 alphanumeric text into, or reading text from, an electronic

1 device, including, but not limited to, short message service,  
2 e-mailing, instant messaging, a command or request to access a  
3 World Wide Web page, or engaging in any other form of electronic  
4 text revival or entry, for present or future communication, but  
5 does not include:

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

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

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

17 (e) Any person who violates the provisions of subsection  
18 (a) of this section is guilty of a misdemeanor and, upon  
19 conviction thereof, shall for a first offense be fined \$50; for a  
20 second offense be fined \$100; and for a third or subsequent  
21 offense be fined \$200. No court costs or other fees shall be  
22 assessed for a violation of subsection (a).

23 (f) Notwithstanding any other provision of this code to the  
24 contrary, points may not be entered on any driver's record

1 maintained by the Division of Motor Vehicles as a result of a  
2 violation of this section.

NOTE: The purpose of this bill is to create the misdemeanor offense of operating a motor vehicle while writing, sending or reading a text message by means of a wireless communications device.

This section is new; therefore, strike-throughs and underscoring have been omitted.