

1 **ENROLLED**

2 COMMITTEE SUBSTITUTE

3 FOR

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5 FOR

6 **Senate Bill No. 211**

7 (BY SENATORS KESSLER (MR. PRESIDENT) AND HALL,

8 BY REQUEST OF THE EXECUTIVE)

9 _____
10 [Passed March 10, 2012; in effect ninety days from passage.]
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13
14 AN ACT to amend the Code of West Virginia, 1931, as amended, by
15 adding thereto a new section, designated §17C-14-15, relating
16 to traffic safety; establishing the traffic offense of
17 operating a motor vehicle while texting without the use of
18 hands-free technology; establishing the offense of operating
19 a motor vehicle while using an electronic communication device
20 without the use of hands-free technology; defining terms;
21 providing exceptions; clarifying means of enforcement as a
22 primary offense; impact of violation on insurance coverage;
23 impact of violation on law enforcement ability to seize or
24 confiscate device; requiring signage on certain highways for

1 motorists entering state; providing penalties; providing for
2 increased fines for multiple offenses; assessing points
3 against driver's license for multiple offenses; exempting
4 offense from the assessment of court costs and fees; and
5 limitations.

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

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

ARTICLE 14. MISCELLANEOUS RULES.

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

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

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

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

- 9 (1) "Cell phone" shall mean a cellular, analog, wireless or
10 digital telephone.
- 11 (2) "Driving" or "operating a motor vehicle" means operating

12 a motor vehicle, with the motor running, including while
13 temporarily stationary because of traffic, a traffic control
14 device, or other momentary delays, but does not include operating
15 a motor vehicle after the driver has moved the vehicle to the side
16 of, or off, a highway and halted in a location where the vehicle
17 can safely remain stationary.

18 (3) "Electronic communication device" means a cell telephone,
19 personal digital assistant, electronic device with mobile data
20 access, laptop computer, pager, broadband personal communication
21 device, 2-way messaging device, electronic game, or portable
22 computing device. For the purposes of this section, an "electronic
23 communication device" does not include:

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

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

33 (4) "Engaging in a call" means when a person talks into or
34 listens on an electronic communication device, but shall not
35 include when a person dials or enters a phone number on a pushpad

36 or screen to initiate the call.

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

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

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

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

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

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

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

69 (A) Viewing or transmitting images or data;

70 (B) Playing games;

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

74 (D) Engaging in a call.

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

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

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

83 (3) The activation or deactivation of hands-free equipment or

84 a function of hands-free equipment.

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

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

96 (f) Notwithstanding any other provision of this code to the
97 contrary, points may not be entered on any driver's record
98 maintained by the Division of Motor Vehicles as a result of a
99 violation of this section, except for the third and subsequent
100 convictions of the offense, for which three points shall be entered
101 on any driver's record maintained by the Division of Motor
102 Vehicles.

103 (g) Driving or operating a motor vehicle on a public street or
104 highway while texting shall be enforced as a primary offense as of
105 July 1, 2012. Driving or operating a motor vehicle on a public
106 street or highway while using a cell phone or other electronic
107 communication device without hands-free equipment shall be enforced

108 as a secondary offense as of July 1, 2012, and as a primary offense
109 as of July 1, 2013 for purposes of citation.

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

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