

1 COMMITTEE SUBSTITUTE

2 FOR

3 **Senate Bill No. 211**

4 (By Senators Kessler (Mr. President) and Hall,

5 By Request of the Executive)

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7 [Originating in the Committee on Transportation and
8 Infrastructure; reported January 25, 2012.]

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12 A BILL to amend the Code of West Virginia, 1931, as amended, by
13 adding thereto a new section, designated §17C-14-15, relating
14 to traffic safety; establishing the offense of operating a
15 motor vehicle while sending or reading a text message or using
16 a wireless communication device without hands-free technology;
17 providing exceptions; providing definitions; and providing
18 penalties.

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

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

23 **ARTICLE 14. MISCELLANEOUS RULES.**

24 **§17C-14-15. Writing, sending or reading a text message by means of**

1 **an electronic communications device or using a**
2 **wireless communication device while driving unlawful;**
3 **definitions; exceptions; penalties.**

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

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

13 (c) This section does not supersede the provisions of section
14 three-a, article two, chapter seventeen-b of this code or any more
15 restrictive provisions for drivers of commercial motor vehicles
16 prescribed by the provisions of chapter seventeen-e of this code or
17 federal law or rule.

18 (d) As used in this section:

19 (1) "Driving" or "operating a motor vehicle" means operating
20 a motor vehicle, with the motor running, including while temporarily
21 stationary because of traffic, a traffic control device, or other
22 momentary delays, but does not include operating a motor vehicle
23 when the driver moved the vehicle to the side of, or off, a highway
24 and halted in a location where the vehicle can safely remain

1 stationary;

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

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

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

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

23 (A) Reading, selecting or entering a telephone number, an
24 extension number, or voicemail retrieval codes and commands into an

1 electronic device for the purpose of initiating or receiving a phone
2 call or using voice commands to initiate or receive a telephone
3 call;

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

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

10 (e) Any person who violates the provisions of subsection (a)
11 of this section is guilty of a traffic offense and, upon conviction
12 thereof, shall for a first offense be fined \$100; for a second
13 offense be fined \$200; and for a third or subsequent offense be
14 fined \$400. No court costs or other fees shall be assessed for a
15 violation of subsection (a).

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

20 (g) This traffic offense shall not be a primary offense for
21 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.