

1 **Senate Bill No. 211**

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

3 By Request of the Executive)

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5 [Introduced January 17, 2011; referred to the Committee on
6 Transportation and Infrastructure; and then to the Committee on
7 the Judiciary.]

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

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

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

1 follows:

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

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

4 **§17B-2-3a. Graduated driver's license.**

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

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

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

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

23 (A) Presents a completed application, as prescribed by the

1 provisions of section six of this article, and which is accompanied
2 by a writing, duly acknowledged, consenting to the issuance of the
3 graduated driver's license and executed by a parent or guardian
4 entitled to custody of the applicant;

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

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

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

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

18 (2) *Terms and conditions of instruction permit.* -- A level one
19 instruction permit issued under the provisions of this section is
20 valid until thirty days after the date the applicant attains the
21 age of eighteen and is not renewable. However, any permit holder
22 who allows his or her permit to expire prior to successfully
23 passing the road skills portion of the driver examination, and who

1 has not committed any offense which requires the suspension,
2 revocation or cancellation of the instruction permit, may reapply
3 for a new instruction permit under the provisions of section six of
4 this article. The division shall immediately revoke the permit
5 upon receipt of a second conviction for a moving violation of
6 traffic regulations and laws of the road or violation of the terms
7 and conditions of a level one instruction permit, which convictions
8 have become final unless a greater penalty is required by this
9 section or any other provision of this code. Any person whose
10 instruction permit has been revoked is disqualified from retesting
11 for a period of ninety days. However, after the expiration of
12 ninety days, the person may retest if otherwise eligible. In
13 addition to all other provisions of this code for which a driver's
14 license may be restricted, suspended, revoked or canceled, the
15 holder of a level one instruction permit may only operate a motor
16 vehicle under the following conditions:

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

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

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

5 (D) Without any measurable blood alcohol content, in
6 accordance with the provisions of subsection (h), section two,
7 article five, chapter seventeen-c of this code; and

8 (E) Maintains current school enrollment and is making
9 satisfactory academic progress or otherwise shows compliance with
10 the provisions of section eleven, article eight, chapter eighteen
11 of this code.

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

1 eighteen years is a primary offense. A person violating the
2 provisions of this paragraph is guilty of a misdemeanor and, upon
3 conviction thereof, shall for the first offense be fined \$25; for
4 a second offense be fined \$50; and for a third or subsequent
5 offense be fined \$75.

6 (d) *Level two intermediate driver's license.* -- An applicant
7 sixteen years of age or older, meeting all other requirements of
8 the code, may be issued a level two intermediate driver's license.

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

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

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

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

1 education courses or to provide driver's education training to any
2 student;

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

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

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

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

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

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

22 (i) Lawful employment;

23 (ii) A school-sanctioned activity;

1 (iii) A religious event; or

2 (iv) An emergency situation that requires the licensee to
3 operate a motor vehicle to prevent bodily injury or death of
4 another;

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

8 (D) For the first six months after issuance of a level two
9 intermediate driver's license, the licensee may not operate a motor
10 vehicle carrying any passengers less than twenty years old, unless
11 these passengers are family members of the licensee; for the second
12 six months after issuance of a level two intermediate driver's
13 license, the licensee may not operate a motor vehicle carrying more
14 than one passenger less than twenty years old, unless these
15 passengers are family members of the licensee;

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

19 (F) Maintains current school enrollment and is making
20 satisfactory academic progress or otherwise shows compliance with
21 the provisions of section eleven, article eight, chapter eighteen
22 of this code;

23 (G) A holder of a level two intermediate driver's license who

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

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

1 At the discretion of the commissioner, completion of an
2 approved driver improvement program may be used to negate the
3 effect of a minor traffic violation as defined by the commissioner
4 against the one year conviction-free driving criteria for early
5 eligibility for a level three driver's license and may also negate
6 the effect of one minor traffic violation for purposes of avoiding
7 a second conviction under paragraph (I) of this subdivision; and

8 (I) Upon the second conviction for a moving traffic violation
9 or a violation of the terms and conditions of the level two
10 intermediate driver's license, the licensee's privilege to operate
11 a motor vehicle shall be revoked or suspended for the applicable
12 statutory period or until the licensee's eighteenth birthday,
13 whichever is longer unless a greater penalty is required by this
14 section or any other provision of this code. Any person whose
15 driver's license has been revoked as a level two intermediate
16 driver, upon reaching the age of eighteen years and if otherwise
17 eligible may reapply for an instruction permit, then a driver's
18 license in accordance with the provisions of sections five, six and
19 seven of this article.

20 (e) *Level three, full Class E license.* -- The level three
21 license is valid until thirty days after the date the licensee
22 attains his or her twenty-first birthday. Unless otherwise
23 provided in this section or any other section of this code, the

1 holder of a level three full Class E license is subject to the same
2 terms and conditions as the holder of a regular Class E driver's
3 license.

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

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

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

12 (B) Has held the level two intermediate license conviction
13 free for the twelve-month period immediately preceding the date of
14 the application;

15 (C) Has completed any driver improvement program required
16 under paragraph (G), subdivision (2), subsection (d) of this
17 section; and

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

22 (E) Presents a driver's eligibility certificate or otherwise
23 shows compliance with the provisions of section eleven, article

1 eight, chapter eighteen of this code; or

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

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

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

9 (f) A person violating the provisions of the terms and
10 conditions of a level one or level two intermediate driver's
11 license is guilty of a misdemeanor and, upon conviction thereof,
12 shall for the first offense be fined \$25; for a second offense be
13 fined \$50; and for a third or subsequent offense be fined \$75.

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

15 **ARTICLE 14. MISCELLANEOUS RULES.**

16 **§17C-14-15. Writing, sending or reading a text message by means**
17 **of an electronic communications device or using a**
18 **wireless communication device while driving**
19 **unlawful; definitions; exceptions; penalties.**

20 (a) Except as provided in subdivision (b) of this section, a
21 person may not drive or operate a motor vehicle on a public street
22 or highway while texting or using a wireless communication device

1 without hands-free equipment.

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

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

11 (d) As used in this section:

12 (1) "Driving" or "operating a motor vehicle" means operating
13 a motor vehicle, with the motor running, including while
14 temporarily stationary because of traffic, a traffic control device
15 or other momentary delays, but does not include operating a motor
16 vehicle when the driver moved the vehicle to the side of, or off,
17 a highway and halted in a location where the vehicle can safely
18 remain stationary;

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

1 (A) Voice radios, mobile radios, land mobile radios,
2 commercial mobile radios or two-way radios with the capability to
3 transmit and receive voice transmissions utilizing a "push to talk"
4 or "press to transmit" function; or

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

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

17 (A) Reading, selecting or entering a telephone number, an
18 extension number, or voicemail retrieval codes and commands into an
19 electronic device for the purpose of initiating or receiving a
20 phone call or using voice commands to initiate or receive a
21 telephone call;

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

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

5 (e) Any person who violates the provisions of subsection (a)
6 of this section is guilty of a traffic offense which may not be
7 construed to be a misdemeanor and, upon conviction thereof, shall
8 for a first offense be fined \$100; for a second offense be fined
9 \$200; and for a third or subsequent offense be fined \$400. Court
10 costs or other fees may not be assessed for a violation of
11 subsection (a).

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

16 (g) This traffic offense may not be a primary offense for
17 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, strike-throughs and underscoring have been omitted.