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H. B. 3057

(By Delegates Howell, Hamrick, Rowan, A. Evans,
E. Nelson, Ashley, McCuskey, Hamilton, Westfall,
Azinger and Hunt)

[Introduced March 22, 2013; referred to the
Committee on Roads and Transportation then the
Judiciary.]

A BILL to amend and reenact §17C-14-15 of the Code of West
Virginia, 1931, as amended, relating to traffic safety;
specifically, establishing the offense of operating a motor
vehicle using a wearable computer with a head-mounted display.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 14. MISCELLANEOUS RULES.

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

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

- (1) Texting; or
- (2) Using a cell phone or other electronic communications

1 device, unless the use is accomplished by hands-free equipment; or

2 (3) Using a wearable computer with head mounted display.

3 (b) For purposes of this section, the following terms ~~shall~~
4 mean:

5 (1) "Cell phone" ~~shall mean~~ means a cellular, analog, wireless
6 or digital telephone.

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

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

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

24 (B) Other voice radios used by a law-enforcement officer, an

1 emergency services provider, an employee or agent of public safety
2 organizations, first responders, Amateur Radio Operators (HAM)
3 licensed by the Federal Communications Commission and school bus
4 operators.

5 (4) "Engaging in a call" means when a person talks into or
6 listens on an electronic communication device but ~~shall~~ does not
7 include when a person dials or enters a phone number on a pushpad
8 or screen to initiate the call.

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

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

20 (7) "Texting" means manually entering alphanumeric text into
21 or reading text from an electronic communication device and
22 includes, but is not limited to, short message service, e-mailing,
23 instant messaging, a command or request to access a World Wide Web
24 page or engaging in any other form of electronic text retrieval or

1 entry for present or future communication. For purposes of this
2 section, "texting" does not include the following actions:

3 (A) Reading, selecting or entering a telephone number, an
4 extension number or voicemail retrieval codes and commands into an
5 electronic device by ~~the~~ pressing the device in order to initiate
6 or receive a phone call or using voice commands to initiate or
7 receive a telephone call;

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

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

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

17 (A) Viewing or transmitting images or data;

18 (B) Playing games;

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

22 (D) Engaging in a call.

23 (9) "Wearable computer with a head mounted display" means a
24 computing device which is worn on the head and projects visual

1 information into the field of vision of the wearer.

2 (c) Subsection (a) of this section ~~shall~~ does not apply to:

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

6 (2) A person using an electronic communication device to
7 report to appropriate authorities a fire, a traffic accident, a
8 serious road hazard or a medical or hazardous materials
9 emergencies; or

10 (3) The activation or deactivation of hands-free equipment or
11 a function of hands-free equipment.

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

17 (e) ~~Any~~ A person who violates the provisions of subsection (a)
18 of this section is guilty of a traffic offense and, upon conviction
19 thereof, shall for a first offense be fined \$100; for a second
20 offense be fined \$200; and for a third or subsequent offense be
21 fined \$300. No court costs or other fees shall be assessed for a
22 violation of subsection (a) of this section.

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

1 maintained by the Division of Motor Vehicles as a result of a
2 violation of this section except for the third and subsequent
3 convictions of the offense for which three points shall be entered
4 on ~~any~~ a driver's record maintained by the Division of Motor
5 Vehicles.

6 (g) Driving or operating a motor vehicle on a public street or
7 highway while texting shall be enforced as a primary offense as of
8 July 1, 2012. Driving or operating a motor vehicle on a public
9 street or highway while using a cell phone or other electronic
10 communication device without hands-free equipment shall be enforced
11 as a secondary offense as of July 1, 2012, and as a primary offense
12 as of July 1, 2013 for purposes of citation. Using a wearable
13 computer with a head mounted display shall be enforced as a primary
14 offense as of July 1, 2013.

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

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

NOTE: The purpose of this bill is to provide that using a wearable computer with a head-mounted display violates the provisions of this section.

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