

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Introduced

House Bill 2740

FISCAL
NOTE

BY DELEGATES WESTFALL, HOTT AND WAMSLEY

[Introduced February 24, 2021; Referred to the
Committee on Technology and Infrastructure then the
Judiciary]

1 A BILL to amend and reenact §17C-14-15 of the Code of West Virginia, 1931, as amended,
 2 relating to distracted driving; increasing the scope of prohibitions on distracted driving by
 3 establishing the Distracted Driving Act, prohibiting the use of a stand-alone electronic
 4 device or telecommunications devices unless by first responders or utility services as
 5 explicitly permitted under the act.

Be it enacted by the Legislature of West Virginia:

ARTICLE 14. MISCELLANEOUS RULES.

**~~§17C-14-15. Prohibited use of an electronic communications device driving without
handheld features; definitions; exceptions; penalties~~ West Virginia Distracted
Driving Act.**

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

3 ~~(1) Texting; or~~

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

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

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

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

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

17 ~~(A) Voice radios, mobile radios, land mobile radios, commercial mobile radios or two way~~
18 ~~radios with the capability to transmit and receive voice transmissions utilizing a push-to-talk or~~
19 ~~press-to-transmit function; or~~

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

23 ~~(4) "Engaging in a call" means when a person talks into or listens on an electronic~~
24 ~~communication device, but shall not include when a person dials or enters a phone number on a~~
25 ~~pushpad or screen to initiate the call.~~

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

30 ~~(6) "Hands-free equipment" means the internal feature or function of a hands-free~~
31 ~~electronic communication device or the attachment or addition to a hands-free electronic~~
32 ~~communication device by which a user may engage in a call or text without the use of either hand~~
33 ~~or both hands.~~

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

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

42 ~~(B) Inputting, selecting or reading information on a global positioning system or navigation~~

43 system; or

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

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

49 ~~(A) Viewing or transmitting images or data;~~

50 ~~(B) Playing games;~~

51 ~~(C) Composing, sending, reading, viewing, accessing, browsing, transmitting, saving or~~
52 ~~retrieving e-mail, text messages or other electronic data; or~~

53 ~~(D) Engaging in a call.~~

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

55 ~~(1) A law enforcement officer, a firefighter, an emergency medical technician, a paramedic~~
56 ~~or the operator of an authorized emergency vehicle in the performance of their official duties;~~

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

59 ~~(3) The activation or deactivation of hands-free equipment or a function of hands-free~~
60 ~~equipment.~~

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

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

68 ~~(f) Notwithstanding any other provision of this code to the contrary, points may not be~~

69 ~~entered on any driver's record maintained by the Division of Motor Vehicles as a result of a~~
70 ~~violation of this section, except for the third and subsequent convictions of the offense, for which~~
71 ~~three points shall be entered on any driver's record maintained by the Division of Motor Vehicles.~~

72 ~~(g) Driving or operating a motor vehicle on a public street or highway while texting shall~~
73 ~~be enforced as a primary offense. Driving or operating a motor vehicle on a public street or~~
74 ~~highway while using a cell phone or other electronic communication device without hands-free~~
75 ~~equipment shall be enforced as a secondary offense until July 1, 2013, when it shall be enforced~~
76 ~~as a primary offense for purposes of citation~~

77 (a) Definitions:

78 (1) "Stand-alone electronic device" means a portable device other than a wireless
79 telecommunications device which stores audio or video data files to be retrieved on demand by a
80 user.

81 (2) "Utility services" means and includes electric, natural gas, water, waste-water, cable,
82 telephone, or telecommunications services or the repair, location, relocation, improvement, or
83 maintenance of utility poles, transmission structures, pipes, wires, fibers, cables, easements,
84 rights of way, or associated infrastructure.

85 (3) "Wireless telecommunications device" means one of the following portable devices:

86 (A) A cellular telephone;

87 (B) A portable telephone;

88 (C) A text-messaging device;

89 (D) A personal digital assistant;

90 (E) A stand-alone computer, including, but not limited to, a tablet, laptop or notebook
91 computer;

92 (F) A global positioning system receiver;

93 (G) A device capable of displaying a video, movie, broadcast television image, or visual
94 image; or

95 (H) Any substantially similar portable wireless device that is used to initiate or receive
96 communication, information or data.

97 (I) Such term shall not include a radio, citizens band radio, citizens band radio hybrid,
98 commercial two-way radio communication device or its functional equivalent, subscription-based
99 emergency communication device, prescribed medical device, amateur or ham radio device, or
100 in-vehicle security, navigation, communications or remote diagnostics system.

101 (4) "Voice-operated or hands-free feature or function" means a feature or function that
102 allows a person to use an electronic wireless communications device without the use of either
103 hand, except to activate, deactivate, or initiate the feature or function with a single touch or single
104 swipe.

105 (5) For the purposes of this section, an "electronic communication device" does not
106 include:

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

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

113 (b) The driver of a school bus shall not use or operate a wireless telecommunications
114 device or two-way radio while loading or unloading passengers.

115 (c) The driver of a school bus shall not use or operate a wireless telecommunications
116 device while the bus is in motion, unless it is being used in a similar manner as a two-way radio
117 to allow live communication between the driver and school officials or public safety officials.

118 (d) A driver shall exercise due care in operating a motor vehicle on the highways of this
119 state and shall not engage in any actions which shall distract such driver from the safe operation
120 of such vehicle.

121 (e) While operating a motor vehicle on any street, highway, or property open to the public
122 for vehicular traffic in this state, no individual shall:

123 (1) Physically hold or support, with any part of his or her body a wireless communication
124 device or stand-alone communication device; or

125 (2) Write, send, or read any text-based communication, including, but not limited to, a text
126 message, instant message, e-mail, or social media interaction on a wireless telecommunications
127 device or stand-alone electronic device: *Provided*, That such prohibition shall not apply to a voice-
128 operated or hands-free communication feature which is automatically converted by such device
129 to be sent as a message in a written form; or

130 (3) Make any communication, including a phone call, voice message, or one-way voice
131 communication: *Provided*, That such prohibition shall not apply to a voice operated or hands-free
132 communication feature or function; or

133 (4) Engage in any form of electronic data retrieval or electronic data communication on a
134 wireless telecommunications device or stand-alone electronic device; or

135 (5) Manually enter letters, numbers, or symbols into any website, search engine, or
136 application on a wireless telecommunications device or stand-alone electronic device; or

137 (6) Watch a video or movie on a wireless telecommunications device or standalone
138 electronic device other than watching data related to the navigation of such vehicle; or

139 (7) Record, post, send, or broadcast video, including a video conference on a wireless
140 telecommunications device or stand-alone electronic device: *Provided*, That such prohibition shall
141 not apply to electronic devices used for the sole purpose of continuously recording or
142 broadcasting video within or outside of the motor vehicle; or

143 (8) Play any game on a wireless telecommunications device or standalone electronic
144 device.

145 (f) While operating a commercial motor vehicle on any highway of this state, no individual
146 shall:

147 (1) Use more than a single button on a wireless telecommunications device to initiate or
148 terminate a voice communication; or

149 (2) Reach for a wireless telecommunications device or stand-alone electronic device in
150 such a manner that requires the driver to no longer be in a seated driving position or properly
151 restrained by a safety belt.

152 (g) Each violation of this Code section shall constitute a separate offense.

153 (h) Except as provided for in paragraph (B) of this section, any person convicted of
154 violating this act shall be guilty of an unclassified misdemeanor which shall be punished as
155 follows:

156 (1) For a first conviction with no conviction of and no plea of no contest accepted to a
157 charge of violating this act within the previous 24-month period of time, a fine of not more than
158 \$150 and charged two points.

159 (2) For a second conviction within a 24-month period of time, a fine of not more than \$250
160 and charged three points.

161 (3) For a third or subsequent conviction within a 24-month period of time, a fine of not more
162 than \$500 and charged four points, and at the court's discretion suspension of the offender's
163 driver's license for a period of 90 days.

164 (4) Any person who causes physical harm to property as the proximate result of committing
165 a violation of this act is guilty of a misdemeanor punishable up to 30 days in jail or a fine not less
166 than \$100 and not more than \$500.

167 (5) Any person who causes serious physical harm to another person as the proximate
168 result of committing a violation of this act is guilty of a misdemeanor and, upon conviction thereof,
169 shall be fined not less than \$500 nor more than \$1,000, or confined in jail up to 120 days or both
170 fined and confined, and such person shall have his or her license to operate a motor vehicle
171 revoked by the Commissioner of the Division of Motor Vehicles for a period of one year.

172 (6) Any person who causes the death of another as the proximate result of committing a

173 violation of this act is guilty of negligent homicide, as defined by §17C-5-1 of this code, and shall
174 be imprisoned in a state correctional facility for not more than one year, or by a fine of not less
175 than \$100 nor more than \$1,000, or both fined and imprisoned, according to §17C-5-1 of this
176 code.

177 ~~(h)(i) Within ninety days of the effective date of this section, the~~ The Department of
178 Transportation shall cause to be erected signs upon any highway entering the state of West
179 Virginia on which a welcome to West Virginia sign is posted, and any other highway where the
180 Division of Highways deems appropriate, posted at a distance of not more than one mile from
181 each border crossing, each sign to bear an inscription clearly communicating to motorists entering
182 the state that texting, or the use of a wireless communication device without hands-free
183 equipment, is illegal within this state.

184 ~~(j)~~ (j) Nothing contained in this section shall be construed to authorize seizure of a cell
185 phone or electronic device by any law- enforcement agency.

186 ~~(k)~~ (k) No policy providing liability coverage for personal lines insurance shall contain a
187 provision which may be used to deny coverage or exclude payment of any legal damages
188 recoverable by law for injuries proximately caused by a violation of this section, as long as such
189 amounts are within the coverage limits of the insured.

190 (l) This section shall not apply to:

191 (1) Drivers reporting to state, county or local authorities a traffic accident, medical
192 emergency, fire, an actual or potential criminal or delinquent act, or road condition that causes an
193 immediate and serious traffic or safety hazard;

194 (2) An employee or contractor of a utility services provider acting within the scope of his
195 or her employment while responding to a utility emergency;

196 (3) A person operating a commercial truck while using a mobile data terminal that transmits
197 and receives data;

198 (4) A law-enforcement officer, firefighter, emergency medical services personnel,

199 ambulance driver, or other similarly employed public safety first responder during the performance
200 of his or her official duties; or
201 (5) While in a motor vehicle which is lawfully parked.
202 (m) This section does not supersede the provisions of §17B-2-3A of this code or any more
203 restrictive provisions for drivers of commercial motor vehicles prescribed by the provisions of
204 §17E-1-1 et seq. of this code or federal law or rule.

NOTE: The purpose of this bill is to expand prohibitions on distracted driving of motorists utilizing a wireless communication device or stand-alone electronic device.

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