

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Introduced

House Bill 2904

**FISCAL
NOTE**

BY DELEGATED HANSEN, FLEISCHAUER, WALKER,

WILLIAMS, DOYLE AND STATLER

[Introduced March 03, 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 the Robin W. Ames Memorial Act which revises current law for unlawfully using
 3 electronic communication devices while driving; creating new penalties, including
 4 community service, misdemeanor jail time and creating a felony for serious injury or death;
 5 revising what constitutes a violation of unlawful use of an electronic communication
 6 device; and authorizing seizure of electronic communication devices in certain
 7 circumstances.

*PREAMBLE: THIS LAW SHALL BE DESIGNATED AS THE ROBIN W. AMES
 MEMORIAL 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.**

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) "Bodily injury" means an injury that causes substantial physical pain, illness, or any
 8 impairment of physical condition.

9 ~~(1)~~ (2) "Cell phone" shall mean a cellular, analog, wireless or digital telephone.

10 ~~(2)~~ (3) "Driving" or "operating a motor vehicle" means operating a motor vehicle, with the
 11 motor running, including while temporarily stationary because of traffic, a traffic control device, or
 12 other momentary delays, but does not include operating a motor vehicle after the driver has
 13 moved the vehicle to the side of, or off, a highway and halted in a location where the vehicle can

14 safely remain stationary.

15 ~~(3)~~ (4) "Electronic communication device" means a cell telephone, personal digital
16 assistant, electronic device with mobile data access, laptop computer, pager, broadband personal
17 communication device, two-way messaging device, electronic game, or portable computing
18 device. For the purposes of this section, an "electronic communication device" does not include:

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

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

25 ~~(4)~~ (5) "Engaging in a call" means when a person talks into or listens on an electronic
26 communication device, but shall not include when a person dials or enters a phone number on a
27 pushpad or screen to initiate the call.

28 ~~(5)~~ (6) "Hands-free electronic communication device" means an electronic communication
29 device that has an internal feature or function, or that is equipped with an attachment or addition,
30 whether or not permanently part of such electronic communication device, by which a user
31 engages in a call without the use of either hand or both hands.

32 ~~(6)~~ (7) "Hands-free equipment" means the internal feature or function of a hands-free
33 electronic communication device or the attachment or addition to a hands-free electronic
34 communication device by which a user may engage in a call or text without the use of either hand
35 or both hands.

36 (8) "Serious bodily injury" means bodily injury that creates a substantial risk of death, that
37 causes serious or prolonged disfigurement, prolonged impairment of health, or prolonged loss or
38 impairment of the function of any bodily organ.

39 ~~(7)~~ (9) "Texting" means manually entering alphanumeric text into, or reading text from, an

40 electronic communication device, and includes, but is not limited to, short message service, e-
41 mailing, instant messaging, a command or request to access a World Wide Web page or engaging
42 in any other form of electronic text retrieval or entry, for present or future communication. For
43 purposes of this section, “texting” does not include the following actions:

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

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

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

52 ~~(8) (10)~~ “Using a cell phone or other electronic communication device” means holding in
53 a person’s hand or hands an electronic communication device while:

54 (A) Viewing or transmitting images or data;

55 (B) Playing games;

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

58 (D) Engaging in a call.

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

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

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

64 (3) The activation or deactivation of hands-free equipment or a function of hands-free
65 equipment.

66 (d) This section does not supersede the provisions of ~~section three-a, article two, chapter~~
67 ~~seventeen-b~~ §17B-2-3a of this code or any more restrictive provisions for drivers of commercial
68 motor vehicles prescribed by the provisions of ~~chapter seventeen-e~~ §17E-1-1 et seq. of this code
69 or federal law or rule.

70 (e) Any person who violates the provisions of subsection (a) of this section is guilty of a
71 traffic offense and, upon conviction thereof, shall for a first offense be fined \$100, and shall, within
72 180 days from the date of conviction, complete 20 hours of community service, and an approved
73 driver improvement course which includes curriculum on distracted driving; for a second offense
74 be fined \$200, and shall, within 180 days from the date of conviction, complete 40 hours of
75 community service, and an approved driver improvement course which includes curriculum on
76 distracted driving; and for a third or subsequent offense be fined \$300, and shall, within 180 days
77 from the date of conviction, complete 60 hours of community service, and an approved driver
78 improvement course which includes curriculum on distracted driving. No court costs or other fees
79 shall be assessed for a violation of subsection (a) of this section.

80 (f) The Commissioner of the Division of Motor Vehicles shall suspend the license or permit
81 to drive and any nonresident operating privilege of any person convicted of a second offense
82 under subsection (e) of this section for a period of 30 days. The commissioner shall suspend the
83 license or permit to drive and any nonresident operating privilege of any person convicted of a
84 third offense under subsection (e) for a period of 180 days. For each subsequent offense under
85 subsection (e) following a third offense, the commissioner shall add an additional 180 days to the
86 period of suspension.

87 (g) The Commissioner of the Division of Motor Vehicles shall further suspend the license
88 or permit to drive and any nonresident operating privilege of any person who is convicted of an
89 offense under subsection (e) of this section, and who fails to complete the community service and
90 distracted driving obligations set forth in subsection (e) of this section within 180 days. Said
91 suspension shall remain in effect until the obligations imposed by subsection (e) are completed.

92 (h) Any person who violates the provisions of subsection (a) of this section, and in doing
93 so, proximately causes the death of any person, is guilty of a felony and, upon conviction thereof,
94 shall be imprisoned in a state correctional facility for not less than three nor more than 15 years
95 and shall be fined not less than \$1,000 nor more than \$3,000, and shall have his or her license to
96 operate a motor vehicle revoked by the Commissioner of the Division of Motor Vehicles for a
97 period of 10 years: *Provided*, That any death charged under this subsection must occur within
98 one year of the offense: *Provided, however*, That if the person has previously been convicted
99 under any provision of this section, the person shall have his or her license to operate a motor
100 vehicle revoked by the Commissioner of the Division of Motor Vehicles for life.

101 (i) Any person who violates the provisions of subsection (a) of this section, and in doing
102 so, proximately causes serious bodily injury to any person other than himself or herself, is guilty
103 of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for not
104 less than two nor more than 10 years and shall be fined not less than \$1,000 nor more than
105 \$3,000, and shall have his or her license to operate a motor vehicle revoked by the Commissioner
106 of the Division of Motor Vehicles for a period of five years: *Provided*, That if the person has
107 previously been convicted under any provision of this section, the person shall have his or her
108 license to operate a motor vehicle revoked by the Commissioner of the Division of Motor Vehicles
109 for life.

110 (j) Any person who violates the provisions of subsection (a) of this section, and in doing
111 so, proximately causes a bodily injury to any person other than himself or herself, is guilty of a
112 misdemeanor and, upon conviction thereof, shall be confined in jail for not less than one day nor
113 more than one year and shall be fined not less than \$200 nor more than \$1,000, and shall have
114 his or her license to operate a motor vehicle revoked by the Commissioner of the Division of Motor
115 Vehicles for a period of two years: *Provided*, That if the person has previously been convicted
116 under any provision of this section, the person shall have his or her license to operate a motor
117 vehicle revoked by the Commissioner of the Division of Motor Vehicles for five years. Any jail term

118 imposed pursuant to this subsection shall include actual confinement of not less than 24 hours:
119 Provided, however, that a person sentenced pursuant to this subsection shall receive credit for
120 any period of actual confinement he or she served upon arrest for the subject offense.

121 (k) For any period of revocation imposed pursuant to a conviction under subsection (h), (i)
122 or (j) of this section that is not a lifetime revocation, the license to operate a motor vehicle in this
123 state may not be reissued until the offender completes 60 hours of community service, and an
124 approved driver improvement course, which includes curriculum on distracted driving.

125 ~~(f)~~ (l) Notwithstanding any other provision of this code to the contrary, points may not be
126 entered on any driver's record maintained by the Division of Motor Vehicles as a result of a
127 violation of this section, except for the third and subsequent convictions of the offense under
128 subsection (e), for which three points shall be entered on any driver's record maintained by the
129 Division of Motor Vehicles.

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

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

142 ~~(i)~~ (o) Nothing contained in this section shall be construed to authorize seizure of a cell
143 phone or electronic device by any law- enforcement agency, except in the case of a violation of

144 subsection h), (i) or (j).

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

NOTE: The purpose of this bill is to enact the Robin W. Ames Memorial Act, which provides for enhanced penalties for unlawfully using electronic communication devices while driving; creating new penalties including community service, misdemeanor jail time and creating a felony for serious injury or death; and revising what constitutes a violation of unlawful use of an electronic communication 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.