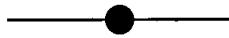


2013 APR 22 AM 11:49

OFFICE OF THE CLERK
SENATE OF WEST VIRGINIA

WEST VIRGINIA LEGISLATURE
FIRST REGULAR SESSION, 2013

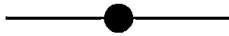


ENROLLED

COMMITTEE SUBSTITUTE
FOR

House Bill No. 2108

(By Delegate Fleischauer)



Passed April 10, 2013

In effect ninety days from passage.

HB 2108

2013 APR 22 AM 11:49

OFFICE OF THE CLERK
WEST VIRGINIA
SECRETARY OF STATE

ENROLLED

COMMITTEE SUBSTITUTE

for

H. B. 2108

(BY DELEGATE FLEISCHAUER)

[Passed April 10, 2013; in effect ninety days from passage.]

AN ACT to amend and reenact §17C-15-49 of the Code of West Virginia, 1931, as amended; and to amend and reenact §17C-14-15, of said code, all relating to the operation of motor vehicles; making the offense of failure to wear safety belts a primary offense; and prohibiting denial of insurance coverage for prohibited use of electronic communications devices while driving.

Be it enacted by the Legislature of West Virginia:

That §17C-15-49 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §17C-14-15 of said code be amended and reenacted, all to read as follows:

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

ARTICLE 15. EQUIPMENT.

**§17C-15-49. Operation of vehicles with safety belts; exception;
penalty; civil actions; educational program by West
Virginia State Police.**

1 (a) A person may not operate a passenger vehicle on a public
2 street or highway of this state unless the person, any passenger
3 in the back seat under eighteen years of age, and any passenger
4 in the front seat of the passenger vehicle is restrained by a safety
5 belt meeting applicable federal motor vehicle safety standards.
6 For the purposes of this section, the term "passenger vehicle"
7 means a motor vehicle which is designed for transporting ten
8 passengers or less, including the driver, except that the term does
9 not include a motorcycle, a trailer, or any motor vehicle which
10 is not required on the date of the enactment of this section under
11 a federal motor vehicle safety standard to be equipped with a belt
12 system. The provisions of this section apply to all passenger
13 vehicles manufactured after January 1, 1967, and being 1968
14 models and newer.

15 (b) The required use of safety belts as provided herein does
16 not apply to a duly appointed or contracted rural mail carrier of
17 the United States Postal Service who is actually making mail
18 deliveries or to a passenger or operator with a physically
19 disabling condition whose physical disability would prevent
20 appropriate restraint in the safety belt if the condition is duly
21 certified by a physician who states the nature of the disability as
22 well as the reason the restraint is inappropriate. The Division of
23 Motor Vehicles shall adopt rules, in accordance with the
24 provisions of chapter twenty-nine-a of this code, to establish a
25 method to certify the physical disability and to require use of an
26 alternative restraint system where feasible or to waive the
27 requirement for the use of any restraint system.

28 (c) Any person who violates the provisions of this section
29 shall be fined \$25. No court costs or other fees may be assessed
30 for a violation of this section.

31 (d) A violation of this section is not admissible as evidence
32 of negligence or contributory negligence or comparative
33 negligence in any civil action or proceeding for damages, and is
34 not admissible in mitigation of damages: *Provided*, That the
35 court may, upon motion of the defendant, conduct an in camera
36 hearing to determine whether an injured party's failure to wear
37 a safety belt was a proximate cause of the injuries complained
38 of. Upon a finding by the court, the court may then, in a jury
39 trial, by special interrogatory to the jury, determine: (1) That the
40 injured party failed to wear a safety belt; and (2) that the failure
41 to wear the safety belt constituted a failure to mitigate damages.
42 The trier of fact may reduce the injured party's recovery for
43 medical damages by an amount not to exceed five percent
44 thereof. In the event the plaintiff stipulates to the reduction of
45 five percent of medical damages, the court shall make the
46 calculations and the issue of mitigation of damages for failure to
47 wear a safety belt may not be presented to the jury. In all cases,
48 the actual computation of the dollar amount reduction shall be
49 determined by the court.

50 (e) Notwithstanding any other provision of this code to the
51 contrary, no points may be entered on any driver's record
52 maintained by the Division of Motor Vehicles as a result of a
53 violation of this section.

54 (f) The Governor's Highway Safety Program, in cooperation
55 with the West Virginia State Police and any other state
56 departments or agencies and with county and municipal
57 law-enforcement agencies, shall initiate and conduct an
58 educational program designed to encourage compliance with
59 safety belt usage laws. This program shall be focused on the
60 effectiveness of safety belts, the monetary savings and the other
61 benefits to the public from usage of safety belts and the
62 requirements and penalties specified in this law.

63 (g) Nothing contained in this section abrogates or alters the
64 provisions of section forty-six of this article relating to the
65 mandatory use of child passenger safety devices.

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
2 person may not drive or operate a motor vehicle on a public
3 street or highway while:

4 (1) Texting; or

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

7 (b) For purposes of this section, the following terms shall
8 mean:

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

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

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

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

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

33 (4) “Engaging in a call” means when a person talks into or
34 listens on an electronic communication device, but shall not
35 include when a person dials or enters a phone number on a
36 pushpad or screen to initiate the call.

37 (5) “Hands-free electronic communication device” means an
38 electronic communication device that has an internal feature or
39 function, or that is equipped with an attachment or addition,
40 whether or not permanently part of such electronic
41 communication device, by which a user engages in a call without
42 the use of either hand or both hands.

43 (6) “Hands-free equipment” means the internal feature or
44 function of a hands-free electronic communication device or the
45 attachment or addition to a hands-free electronic communication
46 device by which a user may engage in a call or text without the
47 use of either hand or both hands.

48 (7) “Texting” means manually entering alphanumeric text
49 into, or reading text from, an electronic communication device,
50 and includes, but is not limited to, short message service,
51 e-mailing, instant messaging, a command or request to access a
52 World Wide Web page or engaging in any other form of
53 electronic text retrieval or entry, for present or future
54 communication. For purposes of this section, “texting” does not
55 include the following actions:

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

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

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

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

70 (A) Viewing or transmitting images or data;

71 (B) Playing games;

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

75 (D) Engaging in a call.

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

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

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

84 (3) The activation or deactivation of hands-free equipment
85 or a function of hands-free equipment.

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

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

97 (f) Notwithstanding any other provision of this code to the
98 contrary, points may not be entered on any driver's record
99 maintained by the Division of Motor Vehicles as a result of a
100 violation of this section, except for the third and subsequent
101 convictions of the offense, for which three points shall be
102 entered on any driver's record maintained by the Division of
103 Motor Vehicles.

104 (g) Driving or operating a motor vehicle on a public street or
105 highway while texting shall be enforced as a primary offense.
106 Driving or operating a motor vehicle on a public street or
107 highway while using a cell phone or other electronic
108 communication device without hands-free equipment shall be
109 enforced as a secondary offense until July 1, 2013, when it shall
110 be enforced as a primary offense for purposes of citation.

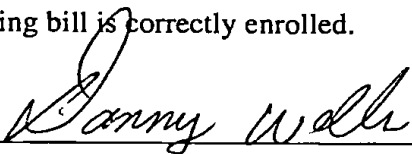
111 (h) Within ninety days of the effective date of this section,
112 the Department of Transportation shall cause to be erected signs
113 upon any highway entering the state of West Virginia on which
114 a welcome to West Virginia sign is posted, and any other
115 highway where the Division of Highways deems appropriate,

116 posted at a distance of not more than one mile from each border
117 crossing, each sign to bear an inscription clearly communicating
118 to motorists entering the state that texting, or the use of a
119 wireless communication device without hands-free equipment,
120 is illegal within this state.

121 (i) Nothing contained in this section shall be construed to
122 authorize seizure of a cell phone or electronic device by any law-
123 enforcement agency.

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

That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.



Chairman, House Committee



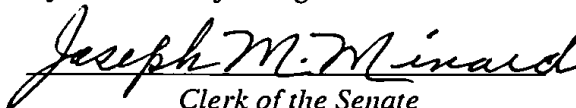
Chairman, Senate Committee

Originating in the House.

In effect ninety days from passage.



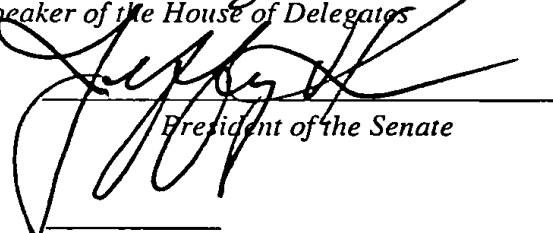
Clerk of the House of Delegates



Clerk of the Senate



Speaker of the House of Delegates



President of the Senate

The within is approved this the 22nd
day of April, 2013.



Governor

PRESENTED TO THE GOVERNOR

APR 17 2013

Time 11:24 am