WEST VIRGINIA CODE: §17c-14-15

§17C-14-15. Electronically Distracted Driving Act.

(a) Definitions — As used in this section:

(1) “Smartwatch” means a wearable computer that provides a local touchscreen for daily use, associated with applications, and connected to a cellular or Wi-Fi network;

(2) “Stand-alone electronic device” means a portable device other than a wireless telecommunications device which stores audio or video data files to be retrieved on demand by a user;

(3) “Utility services” means and includes electric, natural gas, water, wastewater, cable, telephone, or telecommunications services, or the repair, location, relocation, improvement, or maintenance of utility poles, transmission structures, pipes, wires, fibers, cables, easements, rights-of-way, or associated infrastructure;

(4) “Wireless telecommunications device” means one of the following portable devices:

(A) A cellular telephone;

(B) A portable telephone;

(C) A text-messaging device;

(D) A personal digital assistant;

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

(F) A handheld global positioning system receiver;

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

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

(I) “Wireless telecommunications device” does not include a smartwatch, any type of radio including but not limited to, radios used by first responders or school bus operators; citizens band radio or radio hybrid; commercial two-way radio communication device or its functional equivalent; subscription-based emergency communication device; prescribed medical device; amateur or ham radio device, or any built-in vehicle equipment for security, navigation, communications, or remote diagnostics;

WV Legislature

(5) "Voice-operated or hands-free feature or function" means a feature or function that allows a person to use a wireless telecommunications device without the use of either hand, except to activate, deactivate, or initiate the feature or function with a single touch or single swipe.

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

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

(d) A driver shall exercise due care in operating a motor vehicle on the highways of this state and shall not engage in any actions involving any stand-alone electronic device or wireless telecommunications device that distracts such driver from the safe operation of the vehicle.

(e) While operating a motor vehicle on any street, highway, or property open to the public for vehicular traffic in this state, a driver may not:

(1) Physically hold or support, with any part of his or her body, a wireless communication device or stand-alone electronic device: *Provided*, That this prohibition does not apply to the wearing of a smartwatch;

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

(3) Make any communication involving a wireless telecommunications device, including a phone call, voice message, or one-way voice communication: *Provided*, That this prohibition does not apply to a voice operated or hands-free communication feature or function;

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

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

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

(7) Record, post, send, or broadcast video, including a video conference on a wireless telecommunications device or stand-alone electronic device: *Provided*, That this prohibition does not apply to electronic devices used for the sole purpose of continuously recording or

WV Legislature

broadcasting video within or outside of the motor vehicle; or

(8) Actively play any game on a wireless telecommunications device or stand-alone electronic device.

(f) While operating a commercial motor vehicle on any highway of this state, a driver may:

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

(2) Reach for a wireless telecommunications device or stand-alone electronic device in such a manner that requires the driver to:

(A) No longer be in a seated driving position; or

(B) No longer be properly restrained by a safety belt.

(g) Each violation of this section shall constitutes a separate offense.

(h) It is a misdemeanor for any driver to violate any of the provisions of this section. Every driver convicted of a misdemeanor for a violation of any of the provisions of this section shall be punished as follows:

(1) For a first conviction with no prior conviction of and no plea of no contest accepted to a charge of violating this section within the previous 24-month period, as measured from the date of any prior conviction or plea, a fine of not more than $100;

(2) For a second conviction within a 24-month period, as measured from the date of any prior conviction or plea, a fine of not more than $200;

(3) For a third or subsequent conviction within a 24-month period, as measured from the date of any prior conviction or plea:

(A) A fine of not more than $350;

(B) Three points on the driver's record maintained by the Division of Motor Vehicles; and

(C) At the court's discretion, suspension of the driver's license for a period of 90 days;

(4) Any driver who causes physical harm to property as the proximate result of committing a violation of this section is guilty of a misdemeanor punishable up to 30 days in jail or a fine not less than $100 and not more than $500;

(5) Any driver who causes serious physical harm to another person as the proximate result of committing a violation of this section is guilty of a misdemeanor and shall be fined not less than $500 nor more than $1,000, or confined in jail up to 120 days, or both fined and confined, and the driver shall have his or her license to operate a motor vehicle revoked by

WV Legislature

the Commissioner of the Division of Motor Vehicles for a period of one year; and

(6) Any driver who causes the death of another as the proximate result of committing a violation of this section is also subject to prosecution under the applicable vehicular homicide provision of §17C-5-1 of this code.

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

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

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

(l) This section shall not apply to:

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

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

(3) A driver operating a commercial vehicle while using a mobile data terminal that transmits and receives data;

(4) A law-enforcement officer, firefighter, emergency medical services personnel, ambulance driver, or other similarly employed public safety first responder during the performance of his or her official duties; or

(5) A person in a motor vehicle that is lawfully parked.

(m) This section does not supersede the provisions of §17B-2-3a of this code, or any more restrictive provisions for drivers of commercial motor vehicles prescribed either by the provisions of §17E-1-1 *et seq.* of this code or by federal law or rule.

(n) The amendments to this section adopted during the regular session of the Legislature in 2023, shall be known as the Robin W. Ames Memorial Act.

WV Legislature