

ENGROSSED

COMMITTEE SUBSTITUTE

FOR

H. B. 2621

(By Delegates Guthrie, Hatfield, Shook,
Miley, Webster and Martin)

(Originating in the Committee on the Judiciary)

[March 24, 2009]

A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §17C-14-15, relating to establishing the offense of unlawful use of a wireless communication device while operating a motor vehicle on a street or highway; providing exceptions and conditions for certain lawful uses; definitions; misdemeanor criminal penalties; and, limitation of enforcement.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §17C-14-15, to read as follows:

ARTICLE 14. MISCELLANEOUS RULES.

§17C-14-15. Unlawful use of wireless communication devices while operating a motor vehicle; exceptions; penalty.

(a) The use of a wireless electronic communication device

by an operator of a moving motor vehicle on a public road or highway shall be unlawful except when the wireless communication device is a hands-free wireless electronic communication device being used hands-free, provided that its placement does not interfere with the operation of federally required safety equipment and the operator exercises a high degree of caution in the operation of the motor vehicle.

(b) The provisions of this section do not apply to a driver who uses a wireless communication device when:

(1) The driver immediately fears for his, her, or another person's life or safety, or the driver believes that he, she, or another person is, or is about to become, the victim of a criminal act;

(2) The driver uses the wireless communication device to contact law-enforcement authorities, emergency personnel for the purpose of reporting criminal activity, a fire, a traffic accident, a serious road hazard, a medical emergency, a hazardous materials emergency or any other condition which threatens bodily injury, public health, welfare or safety; or

(3) Emergency services personnel while responding to an emergency situation, may use a wireless communication device while operating an authorized emergency vehicle, as defined in section six, article one, of this chapter, in the course and scope of his or her duties.

(c) As used in this section:

(1) "Hands-free wireless communication device" means a wireless communication device equipped with an internal feature or function, or an attachment or addition, whether or not permanently part of the device, by which a user engages in a conversation, sends or receives a message, interchanges information, or otherwise communicates without the use of either hand: *Provided, That this definition does not preclude the use of either hand to activate, deactivate or initiate a function of the device;*

(2) "Use a wireless communication device" means to verbally or visually converse, message, or otherwise interchange information, including utilization of the internet on a wireless communication device, whether by audio or video communication, telephone, text messaging, or any other form of electronic communication; and

(3) "Wireless communication device" means a cellular, analog, wireless or digital device, computer or telephone, capable of accessing, sending or receiving wireless electronic messages, conversation or other interchange of information, including, but not limited to, a wireless telephone service, a wireless internet service or a wireless text messaging service. A "wireless communication device" does not include:

(A) voice radios, mobile radios, land mobile radios, commercial mobile radios or two-way radios with the capability to transmit and receive voice transmissions utilizing a "push to

talk" or "press to transmit" function; or

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

(d) Any person who violates the provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$25. No court costs or other fees shall be assessed for a violation of this section.

(e) Enforcement of this section shall be accomplished only as a secondary action when a driver has been detained for probable cause of violating another section of this code or a municipal ordinance.

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