

13103497D

## SENATE BILL NO. 1238

Offered January 9, 2013

A *BILL to amend and reenact § 46.2-341.20 of the Code of Virginia, to amend the Code of Virginia by adding a section numbered 46.2-853.1, and to repeal § 46.2-1078.1 of the Code of Virginia, relating to unlawful texting while driving; penalty.*

Patron—Barker

Referred to Committee on Transportation

**Be it enacted by the General Assembly of Virginia:**

**1. That § 46.2-341.20 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding a section numbered 46.2-853.1 as follows:**

**§ 46.2-341.20. Disqualification for multiple serious traffic violations.**

A. For the purposes of this section, the following offenses, if committed in a commercial motor vehicle, are serious traffic violations:

1. Driving at a speed 15 or more miles per hour in excess of the posted speed limits;
2. Reckless driving;
3. A violation of a state law or local ordinance relating to motor vehicle traffic control arising in connection with a fatal traffic accident;
4. Improper or erratic traffic lane change;
5. Following the vehicle ahead too closely;
6. Driving a commercial motor vehicle without obtaining a commercial driver's license;
7. Driving a commercial motor vehicle without a commercial driver's license in the driver's immediate possession;
8. Driving a commercial motor vehicle without the proper class of commercial driver's license and/or endorsements for the specific vehicle group being operated or for the passengers or type of cargo being transported; and

9. ~~A violation of § 46.2-1078.1~~ *Texting while driving in violation of § 46.2-853.1* or a substantially similar law of any other jurisdiction.

For the purposes of this section, parking, vehicle weight, and vehicle defect violations shall not be considered traffic violations.

B. Beginning September 30, 2005, the following offenses shall be treated as serious traffic violations if committed while operating a noncommercial motor vehicle, but only if (i) the person convicted of the offense was, at the time of the offense, the holder of a commercial driver's license; (ii) the offense was committed on or after September 30, 2005; and (iii) the conviction, by itself or in conjunction with other convictions that satisfy the requirements of this section, resulted in the revocation, cancellation, or suspension of such person's driver's license or privilege to drive.

1. Driving at a speed 15 or more miles per hour in excess of the posted speed limits;
2. Reckless driving;
3. A violation of a state law or local ordinance relating to motor vehicle traffic control arising in connection with a fatal traffic accident;
4. Improper or erratic traffic lane change; or
5. Following the vehicle ahead too closely.

C. The Department shall disqualify for the following periods of time, any person whose record as maintained by the Department shows that he has committed, within any three-year period, the requisite number of serious traffic violations:

1. A 60-day disqualification period for any person convicted of two serious traffic violations; or
  2. A 120-day disqualification period for any person convicted of three serious traffic violations.
- D. Any disqualification period imposed pursuant to this section shall run consecutively, and not concurrently, with any other disqualification period imposed hereunder.

**§ 46.2-853.1. Reckless driving; texting while driving; exceptions; penalty.**

A. For the purposes of this section, "emergency vehicle" means:

1. Any law-enforcement vehicle operated by or under the direction of a federal, state, or local law-enforcement officer;
2. Any regional detention center vehicle operated by or under the direction of a correctional officer responding to an emergency call or operating in an emergency situation;
3. Any vehicle used to fight fire, including publicly owned state forest warden vehicles when traveling in response to a fire alarm or emergency call;

INTRODUCED

SB1238

59 4. Any ambulance or rescue or life-saving vehicle designed or used for the principal purpose of  
60 supplying resuscitation or emergency relief where human life is endangered;

61 5. Any Department of Emergency Management vehicle or Office of Emergency Medical Services  
62 vehicle when responding to an emergency call or operating in an emergency situation;

63 6. Any Department of Corrections vehicle designated by the Director of the Department of  
64 Corrections when (i) responding to an emergency call at a correctional facility, (ii) participating in a  
65 drug-related investigation, (iii) pursuing escapees from a correctional facility, or (iv) responding to a  
66 request for assistance from a law-enforcement officer; and

67 7. Any vehicle equipped with alternating, blinking, or flashing red or red and white secondary  
68 warning lights pursuant to § 46.2-1029.2.

69 B. It is unlawful for any person to operate a moving motor vehicle on the highways of the  
70 Commonwealth while using any handheld personal communications device to (i) manually enter multiple  
71 letters or text in the device as a means of communicating with another person or (ii) read any email or  
72 text message transmitted to the device or stored within the device, provided that this prohibition shall  
73 not apply to any name or number stored in the device nor to any caller identification information. A  
74 violation of this section is punishable as reckless driving. However, upon the trial of any person  
75 charged with texting while driving where the degree of culpability is slight, the court in its discretion  
76 may find the accused not guilty of reckless driving but guilty of texting while driving. An attorney for  
77 the Commonwealth may reduce a charge of reckless driving to texting while driving at any time prior to  
78 the court's decision and shall notify the court of such change. Texting while driving shall be punishable  
79 as a traffic infraction punishable by a fine of not more than \$50.

80 C. The provisions of this section shall not apply to (i) the operator of any emergency vehicle who is  
81 engaged in the performance of his official duties, (ii) an operator who is lawfully parked or stopped,  
82 (iii) the use of a factory-installed or aftermarket global positioning system (GPS), (iv) the use of a  
83 wireless communications device used to transmit or receive data as part of a digital dispatch system, or  
84 (v) an operator who uses a handheld personal communications device to report an emergency.

85 2. That § 46.2-1078.1 of the Code of Virginia is repealed.