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SENATE BILL DRS35161-ML-145 (03/16)

Short Title: Brian Garlock Act.

(Public)

Sponsors: Senators Tarte, Lee, and Ballard (Primary Sponsors).

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO MAKE USING A MOBILE TELEPHONE OR ELECTRONIC
3 COMMUNICATION DEVICE UNLAWFUL WHILE OPERATING A MOTOR
4 VEHICLE ON A PUBLIC STREET, HIGHWAY, OR PUBLIC VEHICULAR AREA
5 UNLESS HANDS-FREE EQUIPMENT IS USED BY THE OPERATOR.

6 The General Assembly of North Carolina enacts:

7 **SECTION 1.** This act shall be known as the "Brian Garlock Act."

8 **SECTION 2.** G.S. 20-137.3, 20-137.4, and 20-137.4A are repealed.

9 **SECTION 3.** Article 3 of Chapter 20 of the General Statutes is amended by adding
10 a new section to read:

11 "**§ 20-137.3A. Unlawful use of a mobile telephone or electronic communication device.**

12 (a) Definitions. – The following definitions apply in this section:

13 (1) Electronic communication device. – Any electronic device other than a
14 mobile telephone that is capable of providing data communication between
15 two or more persons, including a personal digital assistant, an electronic
16 device with mobile data access, a laptop computer, a pager, a smartwatch, a
17 broadband personal communication device, a two-way messaging device, an
18 electronic game, and a portable computing device. This term does not
19 include equipment installed and used in a motor vehicle for the purposes of
20 (i) providing emergency assistance, information, or other services to the
21 person operating the motor vehicle or (ii) providing video entertainment to
22 the passengers in the rear seats of a motor vehicle.

23 (2) Emergency situation. – Circumstances such as medical concerns, unsafe
24 road conditions, matters of public safety, or mechanical problems that create
25 a risk of harm for the operator or passengers of a motor vehicle or school
26 bus.

27 (3) Hands-free equipment. – An internal feature or function of a mobile
28 telephone or electronic communication device, or an attachment or addition
29 to a mobile telephone or electronic communication device, whether or not
30 permanently part of the mobile telephone or electronic communication
31 device, by which a person uses a mobile telephone or electronic
32 communication device without the use of either hand. This term includes
33 equipment physically or electronically integrated into a motor vehicle that
34 allows a person to use a mobile telephone or electronic communication
35 device without the use of either hand. This term does not include a computer



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- 1 device that is worn on the head and projects visual information into the field
2 of vision of the wearer.
- 3 (4) Mobile telephone. – A device used to access wireless telephone service.
4 (5) Operate a motor vehicle. – Operating a motor vehicle on a public street,
5 highway, or public vehicular area, with the motor running. This term does
6 not include situations where the motor vehicle is temporarily stationary
7 because of traffic, a traffic control device, or other momentary delays, or
8 situations where the driver has moved the motor vehicle off, or to the side of,
9 a public street, highway, or public vehicular area to a location where the
10 motor vehicle can safely remain stationary.
- 11 (6) School bus. – As defined in G.S. 20-4.01(27)d4. The term also includes any
12 school activity bus as defined in G.S. 20-4.01(27)d3. and any vehicle
13 transporting public, private, or parochial school students for compensation.
- 14 (7) Smartwatch. – A wristwatch that is capable of providing data
15 communication.
- 16 (8) Using a mobile telephone or electronic communication device. – Holding in
17 a person's hand or hands, or wearing on a person's wrist, a mobile telephone
18 or electronic communication device while doing any of the following:
19 a. Viewing or transmitting images or data.
20 b. Playing games.
21 c. Composing, sending, reading, viewing, accessing, browsing,
22 transmitting, saving, or retrieving e-mail, text messages, or other
23 electronic data.
24 d. Talking into or listening to a mobile telephone or electronic
25 communication device.
- 26 (9) Wireless telephone service. – A service that is a two-way real-time voice
27 telecommunications service that is interconnected to a public switched
28 telephone network and is provided by a commercial mobile radio service, as
29 such term is defined by 47 C.F.R. § 20.3.
- 30 (b) General Prohibition. – Except as otherwise provided in subsections (c), (d), (e), and
31 (f) of this section, no person shall operate a motor vehicle while using a mobile telephone or
32 electronic communication device unless the use is accomplished by hands-free equipment.
- 33 (c) Prohibition for Persons Under 18 Years of Age. – Except for the sole purpose listed
34 in subdivision (4) of subsection (f) of this section, no person under 18 years of age shall operate
35 a motor vehicle while using a mobile telephone or electronic communication device.
- 36 (d) Prohibition for School Bus Operators. – Except for the sole purpose listed in
37 subdivision (4) of subsection (f) of this section, no person shall operate a school bus while
38 using a mobile telephone or electronic communication device.
- 39 (e) Prohibition for Commercial Motor Vehicle Operators. – No person shall operate a
40 commercial motor vehicle subject to Part 390 or 392 of Title 49 of the Code of Federal
41 Regulations while using a mobile telephone or electronic communication device in violation of
42 those Parts. Nothing in this subsection shall be construed to (i) prohibit the use of hands-free
43 equipment or (ii) supersede any more restrictive provisions for operators of commercial motor
44 vehicles prescribed by federal law or regulation.
- 45 (f) Exceptions. – The provisions of subsection (b) of this section shall not apply to any
46 of the following:
47 (1) Pressing a single button to activate or deactivate hands-free equipment or a
48 function of hands-free equipment.
49 (2) The use of a global positioning system, navigation system, or portable music
50 player affixed, mounted, or installed in a motor vehicle. Nothing in this
51 subdivision shall be construed as authorizing a person to manually type or

1 enter text, numbers, or symbols into a global positioning system, navigation
2 system, or portable music player while the person is operating a motor
3 vehicle.

4 (3) The use of a smartwatch for the purpose of determining the time of day.

5 (4) The use of a mobile telephone or electronic communication device for the
6 purpose of communicating an emergency situation to any of the following:

7 a. An emergency response operator.

8 b. A publicly or privately owned ambulance company or service.

9 c. A hospital.

10 d. A fire department.

11 e. A law enforcement agency.

12 (5) The use of a mobile telephone or electronic communication device by any of
13 the following while in the performance of, and for a purpose related to, their
14 official duties:

15 a. A law enforcement officer.

16 b. A member of a fire department.

17 c. A first responder.

18 d. The operator of a public or private ambulance.

19 (g) Rebuttable Presumption. – A person who holds a mobile telephone or electronic
20 communication device in his or her hand or hands while operating a motor vehicle shall be
21 presumed to be using a mobile telephone or electronic communication device. This
22 presumption may be rebutted by evidence presented by the person that (i) the person was not
23 using a mobile telephone or electronic communication device within the meaning of this
24 section or (ii) an exception listed in subsection (c), (d), or (f) of this section applies.

25 (h) Seizure. – The provisions of this section shall not be construed as authorizing the
26 seizure or forfeiture of a mobile telephone or electronic communication device, unless
27 otherwise provided by law.

28 (i) Penalty. – Any person who commits a violation of subsection (d) of this section is
29 guilty of a Class 2 misdemeanor, which shall include a fine of not less than two hundred dollars
30 (\$200.00) and the costs of court. Any person who commits a violation of subsection (c) of this
31 section is guilty of an infraction and shall pay a fine of fifty dollars (\$50.00) and shall not be
32 assessed court costs. Any person who commits a violation of subsection (b) or (e) of this
33 section is guilty of an infraction and shall pay a fine of two hundred dollars (\$200.00) and shall
34 not be assessed court costs.

35 (j) Waiver. – Any person who commits a violation of this section may waive the right
36 to a hearing or trial and admit responsibility or guilt for the violation pursuant to G.S. 7A-148.

37 (k) Points. – No drivers license points or insurance surcharge shall be assessed as a
38 result of a violation of this section.

39 (l) Negligence. – Failure to comply with the provisions of this section shall not
40 constitute negligence per se or contributory negligence by the operator in any action for the
41 recovery of damages arising out of the operation, ownership, or maintenance of a motor vehicle
42 or school bus.

43 (m) Local Ordinance. – No local government may pass an ordinance regulating the use
44 of mobile telephones or electronic communication devices while operating a motor vehicle,
45 commercial motor vehicle, or school bus."

46 **SECTION 4.** This act becomes effective December 1, 2017, and applies to
47 offenses committed on or after that date. Prosecutions for offenses committed before the
48 effective date of this act are not abated or affected by this act, and the statutes that would be
49 applicable but for this act remain applicable to those prosecutions.