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SENATE BILL DRS35011-NE-12

Short Title: Hands Free NC.

(Public)

Sponsors: Senators Burgin, Corbin, and Woodard (Primary Sponsors).

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT MAKING IT UNLAWFUL TO USE A WIRELESS COMMUNICATION DEVICE
3 WHILE OPERATING A MOTOR VEHICLE ON A PUBLIC STREET, HIGHWAY, OR
4 PUBLIC VEHICULAR AREA.

5 The General Assembly of North Carolina enacts:

6 SECTION 1. This act shall be known as "The Hands Free NC Act."

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 G.S. 20-137.3, 20-137.4, and 20-137.4A are repealed.

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

10 "**§ 20-137.3A. Unlawful use of a wireless communication device.**

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

12 (1) Emergency situation. – Circumstances such as medical concerns, unsafe road
13 conditions, matters of public safety, or mechanical problems that create a risk
14 of harm for the operator or passengers of a motor vehicle.

15 (2) Operate a motor vehicle. – Operating a motor vehicle on a public street,
16 highway, or public vehicular area. The term does not include situations where
17 the motor vehicle is off, or to the side of, a public street, highway, or public
18 vehicular area in a location where the motor vehicle can safely remain
19 stationary.

20 (3) School bus. – As defined in G.S. 20-4.01(27)n. The term also includes any
21 school activity bus, as defined in G.S. 20-4.01(27)m., and any vehicle
22 transporting public, private, or parochial school students for compensation.

23 (4) Texting. – Manually entering text into, or reading text from, a wireless
24 communication device. The term includes short message services, e-mailing,
25 instant messaging, a command or request to access a Web page, pressing more
26 than a single button to initiate or terminate a call, or engaging in any other
27 form of electronic text retrieval or entry, for present or future communication.

28 (5) Wireless communication device. – Any of the following:

29 a. A cell phone, personal digital assistant, electronic device with mobile
30 data access, laptop computer, pager, smartwatch, broadband personal
31 communication device, electronic game, and portable computing
32 device.

33 b. A device through which personal wireless services, as defined in 47
34 U.S.C. § 332(c)(7)(C)(i), are transmitted.

35 (b) Prohibited Conduct. – No person shall operate a motor vehicle under any of the
36 following circumstances:



- 1 (1) With a wireless communication device in the person's hand.
2 (2) While physically holding or supporting a wireless communication device with
3 the person's body; provided this subdivision does not prohibit wearable
4 technology that may be in contact with the person's body but does not require
5 any physical exertion to support.
6 (3) While watching a video or movie or communicating by video on a wireless
7 communication device.
8 (4) While texting on a wireless communication device.
9 (c) Persons Under 18 Years of Age. – No person under the age of 18 years shall operate
10 a motor vehicle while using a wireless communication device, except (i) to follow the route
11 recommended by an electronic navigation system, so long as all address information is entered
12 before operating the vehicle, and (ii) as provided in subdivision (1) of subsection (d) of this
13 section.
14 (d) Exceptions. – Subsection (b) of this section shall not apply to any of the following:
15 (1) The use of a wireless communication device for the purpose of
16 communicating an emergency situation to any of the following:
17 a. An emergency response operator.
18 b. A publicly or privately owned ambulance company or service.
19 c. A hospital.
20 d. A fire department.
21 e. A law enforcement agency.
22 (2) The use of a wireless communication device by any of the following while in
23 the performance of official duties:
24 a. A law enforcement officer.
25 b. A member of a fire department.
26 c. The operator of a public or private ambulance.
27 d. A first responder responsible for the protection and preservation of
28 life, property, evidence, or the environment.
29 e. The operator of a vehicle registered to a public utility or
30 communications service provider when the operator is an employee of
31 the public utility or communications service provider using the device
32 to carry out official duties.
33 f. An amateur radio operator responding to an emergency situation.
34 (e) Nothing in this section prohibits the use, while operating a motor vehicle, of
35 manufacturer-installed or aftermarket equipment that is integrated into the vehicle.
36 (f) Penalties. – Any person who violates this section shall be penalized as follows:
37 (1) A person who violates this section and has not previously been found
38 responsible for a violation that occurred within the 36-month period prior to
39 the date of the current violation is guilty of an infraction, punishable by a fine
40 of one hundred dollars (\$100.00) and no insurance points.
41 (2) A person who violates this section and has previously been found responsible
42 for a violation of this section that occurred within the 36-month period prior
43 to the date of the current violation is guilty of an infraction, punishable by a
44 fine of one hundred fifty dollars (\$150.00) and insurance points as authorized
45 by G.S. 58-36-75(i).
46 (3) A person who violates this section and has previously been found responsible
47 for two or more violations of this section that occurred within the 36-month
48 period prior to the date of the current violation is guilty of an infraction,
49 punishable by a fine of two hundred dollars (\$200.00) and insurance points as
50 authorized by G.S. 58-36-75(i).

1 (4) A person who violates this section while operating a school bus shall be
2 subject to the penalties provided in subdivisions (1) through (3) of this
3 subsection but is guilty of a Class 2 misdemeanor for any violation instead of
4 an infraction.

5 (g) Seizure. – The provisions of this section shall not be construed as authorizing the
6 seizure or forfeiture of a wireless communication device.

7 (h) Local Ordinance. – No local government may pass an ordinance regulating the use of
8 a wireless communication device while operating a motor vehicle.

9 (i) The Commissioner of Motor Vehicles and the Department of Public Instruction shall
10 incorporate in driver education programs and driver licensing programs instructions designed to
11 encourage compliance with this section as an important means of reducing motor vehicle
12 accidents and on the requirements and penalties specified in this law."

13 **SECTION 4.** G.S. 58-36-75 is amended by adding a new subsection to read:

14 "(i) Unlawful Use of a Wireless Communication Device. – The North Carolina Rate
15 Bureau shall assign one insurance point under the Safe Driver Incentive Plan for a person found
16 responsible under G.S. 20-137.3A(f)(2) and two insurance points for a person found responsible
17 under G.S. 20-137.3A(f)(3)."

18 **SECTION 5.(a)** G.S. 20-11(c)(6) reads as rewritten:

19 "(6) The permit holder shall not use a ~~mobile telephone or other additional~~
20 ~~technology associated with a mobile telephone~~ wireless communication
21 device while operating the motor vehicle on a public street or highway or
22 public vehicular area."

23 **SECTION 5.(b)** G.S. 20-11(d)(2) reads as rewritten:

24 "(2) Has not been convicted of a motor vehicle moving violation or seat belt
25 infraction or a violation of ~~G.S. 20-137.3~~ G.S. 20-137.3A during the preceding
26 six months."

27 **SECTION 5.(c)** G.S. 20-11(e)(6) reads as rewritten:

28 "(6) The license holder shall not use a ~~mobile telephone or other additional~~
29 ~~technology associated with a mobile telephone~~ wireless communication
30 device while operating the vehicle on a public street or highway or public
31 vehicular area."

32 **SECTION 5.(d)** G.S. 20-11(f)(2) reads as rewritten:

33 "(2) Has not been convicted of a motor vehicle moving violation or seat belt
34 infraction or a violation of ~~G.S. 20-137.3~~ G.S. 20-137.3A during the preceding
35 six months."

36 **SECTION 5.(e)** G.S. 20-11(g) reads as rewritten:

37 "(g) Level 3 Restrictions. – The restrictions on Level 1 and Level 2 drivers concerning
38 time of driving, supervision, and passenger limitations do not apply to a full provisional license.
39 However, the prohibition against operating a motor vehicle while using a ~~mobile telephone~~
40 wireless communication device under G.S. 20-137.3(b) G.S. 20-137.3A shall apply to a full
41 provisional license."

42 **SECTION 5.(f)** G.S. 20-11(l) reads as rewritten:

43 "(l) Violations. – It is unlawful for the holder of a limited learner's permit, a temporary
44 permit, or a limited provisional license to drive a motor vehicle in violation of the restrictions
45 that apply to the permit or license. Failure to comply with a restriction concerning the time of
46 driving or the presence of a supervising driver in the vehicle constitutes operating a motor vehicle
47 without a license. Failure to comply with the restriction regarding the use of a ~~mobile telephone~~
48 wireless communication device while operating a motor vehicle is an infraction punishable by a
49 ~~fine of twenty five dollars (\$25.00)~~ as provided in G.S. 20-137.3A. Failure to comply with any
50 other restriction, including seating and passenger limitations, is an infraction punishable by a
51 monetary penalty as provided in G.S. 20-176. Failure to comply with the provisions of

1 subsections (e) and (g) of this section shall not constitute negligence per se or contributory
2 negligence by the driver or passenger in any action for the recovery of damages arising out of the
3 operation, ownership or maintenance of a motor vehicle. Any evidence of failure to comply with
4 the provisions of subdivisions (1), (2), (3), (4), and (5) of subsection (e) of this section shall not
5 be admissible in any criminal or civil trial, action, or proceeding except in an action based on a
6 violation of this section. No drivers license points or insurance surcharge shall be assessed for
7 failure to comply with seating and occupancy limitations in subsection (e) of this section. ~~No~~
8 ~~drivers license points or insurance surcharge shall be assessed for failure to comply with~~
9 ~~subsection (e) or (g) of this section regarding the use of a mobile telephone while operating a~~
10 ~~motor vehicle."~~

11 **SECTION 6.** This act becomes effective July 1, 2021, and applies to offenses
12 committed on or after that date. For the six months immediately after the effective date of this
13 act, law enforcement shall only issue warning tickets for offenses committed. Prosecutions for
14 offenses committed under G.S. 20-137.3, 20-137.4, and 20-137.4A before the effective date of
15 this act are not abated or affected by this act, and the statutes that would be applicable but for
16 this act remain applicable to those prosecutions.