

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

S

5

SENATE BILL 1289
Judiciary II Committee Substitute Adopted 6/6/06
Third Edition Engrossed 6/8/06
House Committee Substitute Favorable 6/29/06
House Committee Substitute #2 Favorable 7/6/06

Short Title: Cell Phone Use by Drivers Under 18 Prohibited.

(Public)

Sponsors:

Referred to:

May 11, 2006

A BILL TO BE ENTITLED

AN ACT TO REDUCE FATALITIES AMONG NEW TEEN DRIVERS BY MAKING THE USE OF A MOBILE PHONE UNLAWFUL FOR A PERSON LESS THAN EIGHTEEN YEARS OF AGE AND WHO HOLDS A PROVISIONAL LICENSE WHILE DRIVING A MOTOR VEHICLE ON A PUBLIC STREET OR HIGHWAY OR PUBLIC VEHICULAR AREA, AS RECOMMENDED BY THE NC CHILD FATALITY TASK FORCE.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 20 of the General Statutes is amended by adding a new section to read:

"§ 20-137.3. Unlawful use of a mobile phone by persons under 18 years of age.

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

(1) Additional technology. – Any technology that provides access to digital media such as a camera, electronic mail, music, the Internet, or games.

(2) Mobile telephone. – A device used by subscribers and other users of wireless telephone service to access the service. The term includes: (i) a device with which a user engages in a call using at least one hand, and (ii) a device that has an internal feature or function, or that is equipped with an attachment or addition, whether or not permanently part of the mobile telephone, by which a user engages in a call without the use of either hand, whether or not the use of either hand is necessary to activate, deactivate, or initiate a function of such telephone.

(3) Wireless telephone service. – A service that is a two-way real-time voice telecommunications service that is interconnected to a public

1 switched telephone network and is provided by a commercial mobile
2 radio service, as such term is defined by 47 C.F.R. § 20.3.

3 (b) Offense. – Except as otherwise provided in this section, no person under the
4 age of 18 years shall operate a motor vehicle on a public street or highway or public
5 vehicular area while using a mobile telephone or any additional technology associated
6 with a mobile telephone while the vehicle is in motion. This prohibition shall not apply
7 to the use of a mobile telephone or additional technology in a stationary vehicle.

8 (c) Seizure. – The provisions of this section shall not be construed as authorizing
9 the seizure or forfeiture of a mobile telephone, unless otherwise provided by law.

10 (d) Exceptions. – The provisions of subsection (b) of this section shall not apply
11 if the use of a mobile telephone is for the sole purpose of communicating with:

12 (1) Any of the following regarding an emergency situation: an emergency
13 response operator; a hospital, physician's office, or health clinic; a
14 public or privately owned ambulance company or service; a fire
15 department; or a law enforcement agency.

16 (2) The motor vehicle operator's parent or legal guardian.

17 (e) Penalty. – Any person violating this section shall have committed an
18 infraction and shall pay a fine of twenty-five dollars (\$25.00). This offense is an offense
19 for which a defendant may waive the right to a hearing or trial and admit responsibility
20 for the infraction pursuant to G.S. 7A-148. No drivers license points, insurance
21 surcharge, or court costs shall be assessed as a result of a violation of this section."

22 **SECTION 2.** G.S. 20-11(c) reads as rewritten:

23 "(c) Level 1 Restrictions. – A limited learner's permit authorizes the permit holder
24 to drive a specified type or class of motor vehicle only under the following conditions:

25 (1) The permit holder must be in possession of the permit.

26 (2) A supervising driver must be seated beside the permit holder in the
27 front seat of the vehicle when it is in motion. No person other than the
28 supervising driver can be in the front seat.

29 (3) For the first six months after issuance, the permit holder may drive
30 only between the hours of 5:00 a.m. and 9:00 p.m.

31 (4) After the first six months after issuance, the permit holder may drive at
32 any time.

33 (5) Every person occupying the vehicle being driven by the permit holder
34 must have a safety belt properly fastened about his or her body, or be
35 restrained by a child passenger restraint system as provided in
36 G.S. 20-137.1(a), when the vehicle is in motion.

37 (6) The permit holder shall not use a mobile telephone or other additional
38 technology associated with a mobile telephone while operating the
39 motor vehicle on a public street or highway or public vehicular area."

40 **SECTION 3.** G.S. 20-11(d) reads as rewritten:

41 "(d) Level 2. – A person who is at least 16 years old but less than 18 years old
42 may obtain a limited provisional license if the person meets all of the following
43 requirements:

- 1 (1) Has held a limited learner's permit issued by the Division for at least
2 12 months.
- 3 (2) Has not been convicted of a motor vehicle moving violation or seat
4 belt infraction or a violation of G.S. 20-137.3 during the preceding six
5 months.
- 6 (3) Passes a road test administered by the Division.
- 7 (4) Has a driving eligibility certificate or a high school diploma or its
8 equivalent."

9 **SECTION 4.** G.S. 20-11(e) reads as rewritten:

10 "(e) Level 2 Restrictions. – A limited provisional license authorizes the license
11 holder to drive a specified type or class of motor vehicle only under the following
12 conditions:

- 13 (1) The license holder shall be in possession of the license.
- 14 (2) The license holder may drive without supervision in any of the
15 following circumstances:
 - 16 a. From 5:00 a.m. to 9:00 p.m.
 - 17 b. When driving to or from work.
 - 18 c. When driving to or from an activity of a volunteer fire
19 department, volunteer rescue squad, or volunteer emergency
20 medical service, if the driver is a member of the organization.
- 21 (3) The license holder may drive with supervision at any time. When the
22 license holder is driving with supervision, the supervising driver shall
23 be seated beside the license holder in the front seat of the vehicle when
24 it is in motion. The supervising driver need not be the only other
25 occupant of the front seat, but shall be the person seated next to the
26 license holder.
- 27 (4) When the license holder is driving the vehicle and is not accompanied
28 by the supervising driver, there may be no more than one passenger
29 under 21 years of age in the vehicle. This limit does not apply to
30 passengers who are members of the license holder's immediate family
31 or whose primary residence is the same household as the license
32 holder. However, if a family member or member of the same
33 household as the license holder who is younger than 21 years of age is
34 a passenger in the vehicle, no other passengers under 21 years of age,
35 who are not members of the license holder's immediate family or
36 members of the license holder's household, may be in the vehicle.
- 37 (5) Every person occupying the vehicle being driven by the license holder
38 shall have a safety belt properly fastened about his or her body, or be
39 restrained by a child passenger restraint system as provided in
40 G.S. 20-137.1(a), when the vehicle is in motion.
- 41 (6) The license holder shall not use a mobile telephone or other additional
42 technology associated with a mobile telephone while operating the
43 vehicle on a public street or highway or public vehicular area."

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

1 (f) Level 3. – A person who is at least 16 years old but less than 18 years old
2 may obtain a full provisional license if the person meets all of the following
3 requirements:

- 4 (1) Has held a limited provisional license issued by the Division for at
5 least six months.
6 (2) Has not been convicted of a motor vehicle moving violation or seat
7 belt infraction or a violation of G.S. 20-137.3 during the preceding six
8 months.
9 (3) Has a driving eligibility certificate or a high school diploma or its
10 equivalent.

11 A person who meets these requirements may obtain a full provisional license by mail."

12 **SECTION 6.** G.S. 20-11(g) reads as rewritten:

13 (g) Level 3 Restrictions. – The restrictions on Level 1 and Level 2 drivers
14 concerning time of driving, supervision, and passenger limitations do not apply to a full
15 provisional license. However, the prohibition against operating a motor vehicle while
16 using a mobile telephone under G.S. 20-137.3(b) shall apply to a full provisional
17 license."

18 **SECTION 7.** G.S. 20-11(l) reads as rewritten:

19 (l) Violations. – It is unlawful for the holder of a limited learner's permit, a
20 temporary permit, or a limited provisional license to drive a motor vehicle in violation
21 of the restrictions that apply to the permit or license. Failure to comply with a restriction
22 concerning the time of driving or the presence of a supervising driver in the vehicle
23 constitutes operating a motor vehicle without a license. Failure to comply with the
24 restriction regarding the use of a mobile telephone while operating a motor vehicle is an
25 infraction punishable by a fine of twenty-five dollars (\$25.00). Failure to comply with
26 any other restriction, including seating and passenger limitations, is an infraction
27 punishable by a monetary penalty as provided in G.S. 20-176. Failure to comply with
28 the provisions of ~~subsection (e)~~ subsections (e) and (g) of this section shall not
29 constitute negligence per se or contributory negligence by the driver or passenger in any
30 action for the recovery of damages arising out of the operation, ownership or
31 maintenance of a motor vehicle. Any evidence of failure to comply with the provisions
32 of subdivisions (1), (2), (3), (4), and (5) of subsection (e) of this section shall not be
33 admissible in any criminal or civil trial, action, or proceeding except in an action based
34 on a violation of this section. No drivers license points or insurance surcharge shall be
35 assessed for failure to comply with seating and occupancy limitations in subsection (e)
36 of this section. No drivers license points or insurance surcharge shall be assessed for
37 failure to comply with subsection (e) or (g) of this section regarding the use of a mobile
38 telephone while operating a motor vehicle."

39 **SECTION 8.** This act becomes effective December 1, 2006, and applies to
40 offenses committed on or after that date.