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

The General Assembly of North Carolina enacts:

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

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 G.S. 20-137.3, 20-137.4, and 20-137.4A are repealed.

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

§ 20-137.3A. Unlawful use of a mobile telephone or electronic communication device.
(a) Definitions. — The following definitions apply in this section:
(1) Electronic communication device. — Any electronic device other than a
mobile telephone that is capable of providing data communication between
two or more persons, including a personal digital assistant, an electronic
device with mobile data access, a laptop computer, a pager, a smartwatch, a
broadband personal communication device, a two-way messaging device, an
electronic game, and a portable computing device. This term does not
include equipment installed and used in a motor vehicle for the purposes of
(i) providing emergency assistance, information, or other services to the
person operating the motor vehicle or (ii) providing video entertainment to
the passengers in the rear seats of a motor vehicle.
(2) Emergency situation. — Circumstances such as medical concerns, unsafe
road conditions, matters of public safety, or mechanical problems that create
a risk of harm for the operator or passengers of a motor vehicle or school
bus.
(3) Hands-free equipment. — An internal feature or function of a mobile
telephone or electronic communication device, or an attachment or addition
to a mobile telephone or electronic communication device, whether or not
permanently part of the mobile telephone or electronic communication
device, by which a person uses a mobile telephone or electronic
communication device without the use of either hand. This term includes
equipment physically or electronically integrated into a motor vehicle that
allows a person to use a mobile telephone or electronic communication
device without the use of either hand. This term does not include a computer
device that is worn on the head and projects visual information into the field of vision of the wearer.

(4) Mobile telephone. – A device used to access wireless telephone service.

(5) Operate a motor vehicle. – Operating a motor vehicle on a public street, highway, or public vehicular area, with the motor running. This term does not include situations where the motor vehicle is temporarily stationary because of traffic, a traffic control device, or other momentary delays, or situations where the driver has moved the motor vehicle off, or to the side of, a public street, highway, or public vehicular area to a location where the motor vehicle can safely remain stationary.

(6) School bus. – As defined in G.S. 20-4.01(27)d4. The term also includes any school activity bus as defined in G.S. 20-4.01(27)d3. and any vehicle transporting public, private, or parochial school students for compensation.

(7) Smartwatch. – A wristwatch that is capable of providing data communication.

(8) Using a mobile telephone or electronic communication device. – Holding in a person’s hand or hands, or wearing on a person’s wrist, a mobile telephone or electronic communication device while doing any of the following:
   a. Viewing or transmitting images or data.
   b. Playing games.
   c. Composing, sending, reading, viewing, accessing, browsing, transmitting, saving, or retrieving e-mail, text messages, or other electronic data.
   d. Talking into or listening to a mobile telephone or electronic communication device.

(9) Wireless telephone service. – A service that is a two-way real-time voice telecommunications service that is interconnected to a public switched telephone network and is provided by a commercial mobile radio service, as such term is defined by 47 C.F.R. § 20.3.

(b) General Prohibition. – Except as otherwise provided in subsections (c), (d), (e), and (f) of this section, no person shall operate a motor vehicle while using a mobile telephone or electronic communication device unless the use is accomplished by hands-free equipment.

(c) Prohibition for Persons Under 18 Years of Age. – Except for the sole purpose listed in subdivision (4) of subsection (f) of this section, no person under 18 years of age shall operate a motor vehicle while using a mobile telephone or electronic communication device.

(d) Prohibition for School Bus Operators. – Except for the sole purpose listed in subdivision (4) of subsection (f) of this section, no person shall operate a school bus while using a mobile telephone or electronic communication device.

(e) Prohibition for Commercial Motor Vehicle Operators. – No person shall operate a commercial motor vehicle subject to Part 390 or 392 of Title 49 of the Code of Federal Regulations while using a mobile telephone or electronic communication device in violation of those Parts. Nothing in this subsection shall be construed to (i) prohibit the use of hands-free equipment or (ii) supersede any more restrictive provisions for operators of commercial motor vehicles prescribed by federal law or regulation.

(f) Exceptions. – The provisions of subsection (b) of this section shall not apply to any of the following:
   (1) Pressing a single button to activate or deactivate hands-free equipment or a function of hands-free equipment.
   (2) The use of a global positioning system, navigation system, or portable music player affixed, mounted, or installed in a motor vehicle. Nothing in this subdivision shall be construed as authorizing a person to manually type or
enter text, numbers, or symbols into a global positioning system, navigation
system, or portable music player while the person is operating a motor
vehicle,
(3) The use of a smartwatch for the purpose of determining the time of day,
(4) The use of a mobile telephone or electronic communication device for the
purpose of communicating an emergency situation to any of the following:
a. An emergency response operator,
b. A publicly or privately owned ambulance company or service,
c. A hospital,
d. A fire department,
e. A law enforcement agency,
(5) The use of a mobile telephone or electronic communication device by any of
the following while in the performance of, and for a purpose related to, their
official duties:
a. A law enforcement officer,
b. A member of a fire department,
c. A first responder,
d. The operator of a public or private ambulance,
(g) Rebuttable Presumption. — A person who holds a mobile telephone or electronic
communication device in his or her hand or hands while operating a motor vehicle shall be
presumed to be using a mobile telephone or electronic communication device. This
presumption may be rebutted by evidence presented by the person that (i) the person was not
using a mobile telephone or electronic communication device within the meaning of this
section or (ii) an exception listed in subsections (c), (d), or (f) of this section applies.
(h) Seizure. — The provisions of this section shall not be construed as authorizing the
seizure or forfeiture of a mobile telephone or electronic communication device, unless
otherwise provided by law.
(i) Penalty. — Any person who commits a violation of subsection (d) of this section is
guilty of a Class 2 misdemeanor, which shall include a fine of not less than one hundred dollars
($100.00) and the costs of court. Any person who commits a violation of subsection (c) of this
section is guilty of an infraction and shall pay a fine of twenty-five dollars ($25.00) and shall
not be assessed court costs. Any person who commits a violation of subsection (b) or (e) of this
section is guilty of an infraction and shall pay a fine of one hundred dollars ($100.00) and shall
not be assessed court costs.
(j) Waiver. — Any person who commits a violation of this section may waive the right
to a hearing or trial and admit responsibility or guilt for the violation pursuant to G.S. 7A-148.
(k) Points. — There shall be no insurance premium surcharge or assessment of points
under the classification plan adopted under G.S. 58-36-65 for a violation of this section. One
drivers license point shall be assessed for the following:
(1) A second offense under this section if committed within three years of the
first offense committed under this section,
(2) A third or subsequent offense under this section if committed within five
years of the most recent prior offense committed under this section.
(l) Negligence. — Failure to comply with the provisions of this section shall not
constitute negligence per se or contributory negligence by the operator in any action for the
recovery of damages arising out of the operation, ownership, or maintenance of a motor vehicle
or school bus.
(m) Local Ordinance. — No local government may pass an ordinance regulating the use
of mobile telephones or electronic communication devices while operating a motor vehicle,
commercial motor vehicle, or school bus."

SECTION 4. G.S. 20-16(c) reads as rewritten:
"(c) The Division shall maintain a record of convictions of every person licensed or required to be licensed under the provisions of this Article as an operator and shall enter therein records of all convictions of such persons for any violation of the motor vehicle laws of this State and shall assign to the record of such person, as of the date of commission of the offense, a number of points for every such conviction in accordance with the following schedule of convictions and points, except that points shall not be assessed for convictions resulting in suspensions or revocations under other provisions of laws: Further, any points heretofore charged for violation of the motor vehicle inspection laws shall not be considered by the Division of Motor Vehicles as a basis for suspension or revocation of driver's license:

Schedule of Point Values

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Littering pursuant to G.S. 14-399 when the littering involves the use of a motor vehicle ........................................................................................................................................................................ 1
Certain violations of G.S. 20-137.3A for unlawful use of a mobile telephone or related electronic device ........................................ 1

Schedule of Point Values for Violations While Operating a Commercial Motor Vehicle

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Littering pursuant to G.S. 14-399 when the littering involves the use of a motor vehicle ........................................................................................................................................................................ 1
Certain violations of G.S. 20-137.3A for unlawful use of a mobile telephone or related electronic device ........................................ 1

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SECTION 5. This act becomes effective December 1, 2015, and applies to offenses committed on or after that date.