

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

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HOUSE BILL 1104

Short Title: Ban Cell Phone Use While Driving. (Public)

Sponsors: Representatives McAllister; Adams, B. Allen, Harrell, Hunter, Jones, Luebke, Michaux, Parmon, Tolson, and Womble.

Referred to: Public Utilities.

April 4, 2005

A BILL TO BE ENTITLED

AN ACT TO MAKE USING A MOBILE PHONE UNLAWFUL WHILE DRIVING A MOTOR VEHICLE ON A PUBLIC STREET OR HIGHWAY.

The General Assembly of North Carolina enacts:

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

"§ 20-140.6. Unlawful use of a mobile phone.

(a) Definitions. – For purposes of this section, the following terms shall mean:

- (1) Mobile telephone. – A device used by subscribers and other users of wireless telephone service to access such service.
- (2) 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.
- (3) Using. – Holding a mobile telephone to, or in the immediate proximity of, the user's ear.
- (4) Handheld mobile telephone. – A mobile telephone with which a user engages in a call using at least one hand.
- (5) Hands-free mobile telephone. – A mobile telephone that has an internal feature or function, or that is equipped with an attachment or addition, whether or not permanently part of such 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.
- (6) Engage in a call. – Talking into or listening on a handheld mobile telephone, but shall not include holding a mobile telephone to activate, deactivate, or initiate a function of such telephone.

1 (7) Immediate proximity. – That distance as permits the operator of a
2 mobile telephone to hear telecommunications transmitted over such
3 mobile telephone, but shall not require physical contact with such
4 operator's ear.

5 (b) Offense. – Except as otherwise provided in this section, no person shall
6 operate a motor vehicle upon a public street or highway while using a mobile telephone
7 to engage in a call while such vehicle is in motion. An operator of a motor vehicle who
8 holds a mobile telephone to, or in the immediate proximity of, his or her ear while such
9 vehicle is in motion is presumed to be engaging in a call within the meaning of this
10 section. The presumption established by this subsection is rebuttable by evidence
11 tending to show that the operator was not engaged in a call.

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

14 (d) Exceptions. – The provisions of subsection (b) of this section shall not apply
15 to the following:

16 (1) The use of a mobile telephone for the sole purpose of communicating
17 with any of the following regarding an emergency situation: an
18 emergency response operator; a hospital, physician's office, or health
19 clinic; a public or privately owned ambulance company or service; a
20 fire department; or a law enforcement agency.

21 (2) Any of the following persons while in the performance of their official
22 duties: a law enforcement officer; a member of a fire department; or
23 the operator of a public or private ambulance.

24 (3) The use of a hands-free mobile telephone.

25 (e) School Bus Drivers. – A person shall not use a mobile telephone or other
26 electronic device, including those with hands-free accessories, while operating a moving
27 school bus that is carrying passengers; provided, however, this section shall not apply to
28 a school bus driver who places an emergency call to school officials or for the purposes
29 listed in subdivision (d)(1) of this section.

30 (f) Persons Less Than 18. – No person under the age of 18 or any person
31 operating under a limited or provisional license shall operate a motor vehicle upon a
32 public street or highway while using a mobile telephone or a hands-free mobile
33 telephone. This subsection shall not apply if the driver places a call for the purposes
34 listed in subdivision (d)(1) of this section.

35 (g) Local Ordinances. – No local government may pass any ordinance regulating
36 the use of mobile telephones.

37 (h) A violation of this section shall be an infraction and shall be punishable by a
38 fine of one hundred dollars (\$100.00) and the cost of court. There shall be no points
39 assessed by the Division for a violation of this section."

40 **SECTION 2.** This act becomes effective December 1, 2005, and applies to
41 offenses committed on or after that date.