

8568--B

2009-2010 Regular Sessions

I N A S S E M B L Y

May 28, 2009

Introduced by M. of A. GANTT, KOON, HOYT, GALEF, WEISENBERG, GLICK, TITONE, JAFFEE, MILLMAN, DeLMONTE, CASTRO, HOOPER -- Multi-Sponsored by -- M. of A. COOK, MAGEE, McENENY, PEOPLES, PERRY, SKARTADOS -- read once and referred to the Committee on Transportation -- reported and referred to the Committee on Codes -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- again reported from said committee with amendments, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the vehicle and traffic law, in relation to the graduated licensing program; to repeal section 503-a of such law relating thereto; and providing for the repeal of certain provisions upon expiration thereof

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. Subdivision 4 of section 501 of the vehicle and traffic
2 law, as amended by chapter 644 of the laws of 2002, is amended to read
3 as follows:
4 4. Probationary licenses. Any driver's license, other than a class DJ
5 and class MJ license [or limited class DJ and MJ license], shall be
6 considered probationary until the expiration of six months following the
7 date of issuance thereof, and thereafter as provided in section five
8 hundred ten-b of this title, but this subdivision shall not apply to
9 renewals of a license, or, unless so provided by the commissioner, to a
10 license for which a road test has been waived by the commissioner.
11 S 2. Paragraphs (c) and (d) of subdivision 1 of section 501-b of the
12 vehicle and traffic law, as added by chapter 644 of the laws of 2002,
13 are amended to read as follows:
14 (c) operate a motor vehicle with more than [two passengers] ONE
15 PASSENGER who [are] IS under the age of twenty-one and who [are] IS not
16 [members] A MEMBER of such holder's immediate family, provided, however,
17 that the provisions of this [subparagraph] PARAGRAPH shall not apply

EXPLANATION--Matter in *ITALICS* (underscored) is new; matter in brackets [] is old law to be omitted.

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1 when such holder is accompanied by a duly licensed parent, guardian,
2 person in a position of loco parentis, driver education teacher or driv-
3 ing school instructor;
4 (d) be eligible for issuance of a class DJ [or], MJ, D OR M license
5 unless such permit [and/or limited class DJ or MJ license issued pursu-
6 ant to section five hundred three-a of this article, singly or in combi-
7 nation, have] HAS been valid for at least six months. Any time period in
8 which such class DJ or MJ learner's permit [or limited class DJ or MJ
9 license] has been suspended or revoked shall not be counted in determin-
10 ing the length of time that such learner's permit [or limited license]
11 has been valid.

12 S 3. Paragraph (b) of subdivision 2 of section 501-b of the vehicle
13 and traffic law, as added by chapter 644 of the laws of 2002, is amended
14 to read as follows:

15 (b) with more than [two passengers] ONE PASSENGER who [are] IS under
16 the age of twenty-one and who [are] IS not [members] A MEMBER of such
17 holder's immediate family, provided, however, that the provisions of
18 this [subparagraph] PARAGRAPH shall not apply when such holder is accom-
19 panied by a duly licensed parent, guardian, person in a position of loco
20 parentis, driver education teacher or driving school instructor.

21 S 4. The vehicle and traffic law is amended by adding a new section
22 1225-d to read as follows:

23 S 1225-D. USE OF PORTABLE ELECTRONIC DEVICES. 1. EXCEPT AS OTHERWISE
24 PROVIDED IN THIS SECTION, NO PERSON SHALL OPERATE A MOTOR VEHICLE WHILE
25 USING ANY PORTABLE ELECTRONIC DEVICE WHILE SUCH VEHICLE IS IN MOTION.

26 2. FOR THE PURPOSES OF THIS SECTION, THE FOLLOWING TERMS SHALL HAVE
27 THE FOLLOWING MEANINGS:

28 (A) "PORTABLE ELECTRONIC DEVICE" SHALL MEAN ANY HAND-HELD MOBILE TELE-
29 PHONE, AS DEFINED BY SUBDIVISION ONE OF SECTION TWELVE HUNDRED
30 TWENTY-FIVE-C OF THIS ARTICLE, PERSONAL DIGITAL ASSISTANT (PDA),
31 HANDHELD DEVICE WITH MOBILE DATA ACCESS, LAPTOP COMPUTER, PAGER, BROAD-
32 BAND PERSONAL COMMUNICATION DEVICE, TWO-WAY MESSAGING DEVICE, ELECTRONIC
33 GAME, OR PORTABLE COMPUTING DEVICE.

34 (B) "USING" SHALL MEAN HOLDING A PORTABLE ELECTRONIC DEVICE WHILE
35 VIEWING, TAKING OR TRANSMITTING IMAGES, PLAYING GAMES, OR COMPOSING,
36 SENDING, READING, VIEWING, ACCESSING, BROWSING, TRANSMITTING, SAVING OR
37 RETRIEVING E-MAIL, TEXT MESSAGES, OR OTHER ELECTRONIC DATA.

38 3. SUBDIVISION ONE OF THIS SECTION SHALL NOT APPLY TO (A) THE USE OF A
39 PORTABLE ELECTRONIC DEVICE FOR THE SOLE PURPOSE OF COMMUNICATING WITH
40 ANY OF THE FOLLOWING REGARDING AN EMERGENCY SITUATION: AN EMERGENCY
41 RESPONSE OPERATOR; A HOSPITAL; A PHYSICIAN'S OFFICE OR HEALTH CLINIC; AN
42 AMBULANCE COMPANY OR CORPS; A FIRE DEPARTMENT, DISTRICT OR COMPANY; OR A
43 POLICE DEPARTMENT, (B) ANY OF THE FOLLOWING PERSONS WHILE IN THE
44 PERFORMANCE OF THEIR OFFICIAL DUTIES: A POLICE OFFICER OR PEACE OFFICER;
45 A MEMBER OF A FIRE DEPARTMENT, DISTRICT OR COMPANY; OR THE OPERATOR OF
46 AN AUTHORIZED EMERGENCY VEHICLE AS DEFINED IN SECTION ONE HUNDRED ONE OF
47 THIS CHAPTER.

48 4. A PERSON WHO HOLDS A PORTABLE ELECTRONIC DEVICE IN A CONSPICUOUS
49 MANNER WHILE OPERATING A MOTOR VEHICLE IS PRESUMED TO BE USING SUCH
50 DEVICE. THE PRESUMPTION ESTABLISHED BY THIS SUBDIVISION IS REBUTTABLE BY
51 EVIDENCE SHOWING THAT THE OPERATOR WAS NOT USING THE DEVICE WITHIN THE
52 MEANING OF THIS SECTION.

53 5. THE PROVISIONS OF THIS SECTION SHALL NOT BE CONSTRUED AS AUTHORIZ-
54 ING THE SEIZURE OR FORFEITURE OF A PORTABLE ELECTRONIC DEVICE, UNLESS
55 OTHERWISE PROVIDED BY LAW.

6. A VIOLATION OF THIS SECTION SHALL BE A TRAFFIC INFRACTION AND SHALL BE PUNISHABLE BY A FINE OF NOT MORE THAN ONE HUNDRED FIFTY DOLLARS. PROVIDED, HOWEVER, THAT A SUMMONS FOR OPERATING A MOTOR VEHICLE IN VIOLATION OF THIS SECTION SHALL ONLY BE ISSUED WHEN THERE IS REASONABLE CAUSE TO BELIEVE THAT THE PERSON OPERATING SUCH MOTOR VEHICLE HAS COMMITTED A VIOLATION OF THE LAWS OF THIS STATE OTHER THAN A VIOLATION OF THIS SECTION.

S 5. Paragraph (d) of subdivision 2 of section 502 of the vehicle and traffic law, as amended by chapter 644 of the laws of 2002, is amended to read as follows:

(d) An applicant for a class DJ or MJ license shall be at least sixteen years of age and such applicant must submit written consent to the issuance of such license by the applicant's parent or guardian. Upon receipt of withdrawal of such consent, any class DJ or MJ license, learner's permit or license application shall be cancelled. No class DJ or MJ license [or limited class DJ or MJ license] shall be issued unless the applicant presents, at the time of the road test administered pursuant to paragraph (b) of subdivision four of THIS section [five hundred two of this article], a written certification by the applicant's parent or guardian that such applicant has operated a motor vehicle for no less than [twenty] FIFTY hours, AT LEAST FIFTEEN HOURS OF WHICH SHALL BE AFTER SUNSET, under the immediate supervision of a person as authorized pursuant to subparagraph (ii) of paragraph (a) or paragraph (b) of subdivision five of section five hundred one of this article, a driver education teacher pursuant to section eight hundred six-a of the education law or a driving school instructor pursuant to subdivision seven-a of section three hundred ninety-four of this chapter.

S 6. Section 503-a of the vehicle and traffic law is REPEALED.

S 7. Subdivision 3 of section 509 of the vehicle and traffic law, as added by chapter 780 of the laws of 1972, is amended to read as follows:

3. Whenever a PERMIT OR license is required to operate a motor vehicle, no person shall operate any motor vehicle in violation of any restriction contained on [his], OR APPLICABLE TO, THE PERMIT OR license.

S 8. Subdivisions 1, 2 and 3 of section 510-b of the vehicle and traffic law, as amended by chapter 644 of the laws of 2002, are amended to read as follows:

1. A license, other than a class DJ or class MJ license [or a limited class DJ or class MJ license], shall be suspended, for a period of sixty days, (i) upon the first conviction of the licensee of a violation, committed during the probationary period provided for in subdivision four of section five hundred one of this title, of any provision of section eleven hundred twenty-nine of this chapter, section eleven hundred eighty of this chapter or any ordinance or regulation limiting the speed of motor vehicles and motorcycles, section eleven hundred eighty-two of this chapter, or subdivision one of section eleven hundred ninety-two of this chapter or section twelve hundred twelve of this chapter; or (ii) upon the second conviction of the licensee of a violation, committed during the aforesaid probationary period, of any other provision of this chapter or of any other law, ordinance, order, rule or regulation relating to traffic.

2. A license, other than a class DJ or class MJ license [or a limited class DJ or class MJ license], considered probationary pursuant to subdivision three of this section shall be revoked upon the conviction of the licensee of a violation or violations committed within six months following the restoration or issuance of such license, which conviction

1 or convictions would result in the suspension of a probationary license
2 pursuant to subdivision one of this section.

3 3. Any license, other than a class DJ or class MJ license [or a limit-
4 ed class DJ or class MJ license], which is restored or issued to a
5 person who has had his last valid license suspended or revoked pursuant
6 to the provisions of this section shall be considered probationary until
7 the expiration of six months following the date of restoration or issu-
8 ance thereof.

9 S 9. Section 510-c of the vehicle and traffic law, as added by chapter
10 644 of the laws of 2002, is amended to read as follows:

11 S 510-c. Suspension and revocation of [certain] LEARNER'S PERMITS AND
12 DRIVER'S LICENSES FOR VIOLATIONS COMMITTED BY HOLDERS OF class DJ or
13 class MJ learner's permits or [driver's] licenses. 1. (a) A [class DJ or
14 class MJ] learner's permit OR A DRIVER'S LICENSE shall be suspended for
15 a period of sixty days:

16 (i) upon a conviction or finding of a serious traffic violation as
17 defined in subdivision [four] TWO of this section, WHEN SUCH VIOLATION
18 WAS committed while the holder had a class DJ or class MJ learner's
19 permit OR A CLASS DJ OR MJ LICENSE; or

20 (ii) upon the second conviction or finding of such PERMIT OR LICENSE
21 holder of a violation of any other provision of this chapter or any
22 other law, ordinance, order, rule or regulation relating to traffic, AND
23 WHEN SUCH VIOLATION WAS committed while such holder had [such] A CLASS
24 DJ OR CLASS MJ learner's permit OR A CLASS DJ OR MJ LICENSE.

25 (b) A [class DJ or class MJ] learner's permit OR A DRIVER'S LICENSE
26 shall be revoked for a period of sixty days upon the conviction or find-
27 ing of the PERMIT OR LICENSE holder of a violation or violations,
28 committed within six months after the restoration of [a class DJ or
29 class MJ learner's] SUCH permit OR LICENSE suspended pursuant to para-
30 graph (a) of this subdivision, which convictions or findings would
31 result in the suspension of such permit OR LICENSE pursuant to paragraph
32 (a) of this subdivision.

33 2. [(a) A class DJ or class MJ driver's license or limited class DJ or
34 class MJ license shall be suspended, for a period of sixty days:

35 (i) upon a conviction or finding of a serious traffic violation as
36 defined in subdivision four of this section, committed while the holder
37 had such license; or

38 (ii) upon the second conviction or finding of the holder of a
39 violation of any other provision of this chapter or any other law, ordi-
40 nance, order, rule or regulation relating to traffic, committed while
41 such holder had such license.

42 (b) A class DJ or class MJ driver's license or a limited class DJ or
43 class MJ license shall be revoked for a period of sixty days upon the
44 conviction or finding of the holder of a violation or violations,
45 committed within six months either after the restoration of such driv-
46 er's license suspended pursuant to paragraph (a) of this subdivision or
47 after the restoration of a learner's permit suspended or revoked pursu-
48 ant to subdivision one of this section, which convictions or findings
49 would result in the suspension of such license pursuant to paragraph (a)
50 of this subdivision.

51 3. A driver's license which has been restored following a suspension
52 of a class DJ or class MJ driver's license or a limited class DJ or
53 class MJ license pursuant to subdivision two of this section shall be
54 revoked for a period of sixty days upon the conviction or finding, with-
55 in six months of such restoration, of any violation or violations which
56 would result in the suspension of a class DJ or class MJ driver's

1 license or a limited class DJ or class MJ license pursuant to paragraph
2 (a) of subdivision two of this section.
3 4.] For purposes of this section, the term "serious traffic violation"
4 shall mean operating a motor vehicle in violation of any of the follow-
5 ing provisions of this chapter: articles twenty-five and twenty-six;
6 subdivision one of section six hundred; section six hundred one;
7 sections eleven hundred eleven, eleven hundred seventy, eleven hundred
8 seventy-two and eleven hundred seventy-four; subdivisions (a), (b), (c),
9 (d) and (f) of section eleven hundred eighty, provided that the
10 violation involved ten or more miles per hour over the established
11 limit; section eleven hundred eighty-two; subdivision three-a of section
12 twelve hundred twenty-nine-c for violations involving use of safety
13 belts or seats by a child under the age of sixteen; and section twelve
14 hundred twelve of this chapter.

15 S 10. Subdivision 3-a of section 1229-c of the vehicle and traffic
16 law, as added by chapter 644 of the laws of 2002, is amended to read as
17 follows:

18 3-a. No person holding a class DJ learner's permit or class DJ license
19 issued pursuant to section five hundred two of this chapter, [or a
20 limited class DJ or MJ license issued pursuant to section five hundred
21 three-a of this chapter,] shall operate a motor vehicle in this state
22 unless such person is restrained by a safety belt approved by the
23 commissioner, and all passengers under the age of four are restrained in
24 a specially designed seat which meets the federal motor vehicle safety
25 standards set forth in 49 C.F.R. 571.213 and which is either permanently
26 affixed or is affixed to such vehicle by a safety belt and, in the case
27 of any other passenger under the age of sixteen, he or she is restrained
28 by a safety belt approved by the commissioner. No person sixteen years
29 of age or over shall be a passenger in a motor vehicle operated by a
30 person holding a class DJ learner's permit, a class DJ license or a
31 limited class DJ license unless such passenger is restrained by a safety
32 belt approved by the commissioner.

33 S 11. Except as otherwise provided in section twelve of this act, no
34 municipal corporation, as defined in section 2 of the general municipal
35 law, shall, after June 10, 2009, enact any local law, ordinance or code
36 relating to the operation of a motor vehicle while using a portable
37 electronic device unless the terms of such law, ordinance or code are
38 identical to section 1225-d of the vehicle and traffic law, as added by
39 section four of this act. The provisions of this act shall invalidate
40 and preempt any such local law, ordinance or code, enacted after June
41 10, 2009, unless the terms of such law, ordinance or code are identical
42 to section 1225-d of the vehicle and traffic law, as added by section
43 four of this act.

44 S 12. The provisions of this act shall preempt any local law, ordi-
45 nance, code, rule or regulation relating to the operation of a motor
46 vehicle while using a portable electronic device, except that nothing in
47 this act shall preclude any state or local agency, which, by permit,
48 license or registration regulates the business or professional activ-
49 ities of individuals from imposing more stringent restrictions than
50 provided in this act for the use of portable electronic devices upon
51 such individuals during the course of engaging in the business or
52 professional activity that is the subject of such agency's permit,
53 license or registration.

54 S 13. The commissioner of motor vehicles, in consultation with the
55 superintendent of the state police, shall study the effects of the use
56 of portable electronic devices and similar equipment in conjunction with

1 the operation of a motor vehicle, and the effects of other forms of
2 driver inattention and distraction, on highway and traffic safety, and
3 shall submit a report of his or her findings to the governor, the tempo-
4 rary president of the senate, the speaker of the assembly, and the
5 chairs of the transportation committees of the senate and the assembly,
6 not later than 4 years from the effective date of this act. Such report
7 shall include, but not be limited to:

- 8 1. an examination of motor vehicle accident, fatality and injury
9 statistics relating to the use of portable electronic devices and simi-
10 lar equipment while operating a motor vehicle;
- 11 2. an examination of motor vehicle accident, fatality and injury
12 statistics relating to other forms of driver inattention and
13 distraction;
- 14 3. a review and analysis of studies examining the effects of the use
15 of portable electronic devices or similar equipment on highway and traf-
16 fic safety;
- 17 4. a review and analysis of studies and statistics relating to other
18 types of driver inattention and distraction which affect highway and
19 traffic safety; and
- 20 5. recommendations for improving highway and traffic safety and reduc-
21 ing motor vehicle accidents, if any, related to driver inattention and
22 distraction.

23 S 14. This act shall take effect immediately; provided, however, that:

- 24 (a) sections one, two, three, five, six, eight, nine and ten of this
25 act shall take effect on the one hundred eightieth day after it shall
26 have become a law and shall apply to licenses issued on or after such
27 effective date. Any license issued pursuant to section 503-a of the
28 vehicle and traffic law prior to such effective date shall remain in
29 effect until the expiration date of such license;
- 30 (b) sections four and twelve of this act shall take effect November 1,
31 2009; and
- 32 (c) section eleven of this act shall expire and be deemed repealed
33 November 1, 2009.