S T A T E O F N E W Y O R K

6436

2009-2010 Regular Sessions

I N A S S E M B L Y

March 3, 2009

Introduced by M. of A. ORTIZ -- read once and referred to the Committee on Transportation

AN ACT to amend the vehicle and traffic law, in relation to prohibiting a driver from using a cellular telephone while operating a motor vehicle; and to repeal section 1225-c of such law relating thereto

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

Section 1. Legislative intent. The legislature hereby finds and determines that operating a motor vehicle while talking on a cellular or wireless telephone endangers public safety. Researchers at the University of Toronto reported in the New England Journal of Medicine (February 13, 1997), that driving while talking on a telephone increased the risk of accident four-fold. Their findings also revealed that operating a motor vehicle while talking on a telephone posed the same risk of accident as driving with a high blood alcohol level of .10. In recent years, there has been a rapid growth in the use of wireless communications. That growth has resulted in a substantial increase in the number of motorists who talk on the telephone while driving. As more and more drivers use cellular and wireless telephones, our roads become less and less safe.

The purpose of this legislation is to educate the public of the serious and deadly risks involved with using a cellular or wireless telephone while operating a motor vehicle. Because the underlying objective is to educate, the penalty set forth in this legislation is a mere traffic infraction rather than a crime. This legislation does recognize that there are emergency situations in which the use of a cellular or wireless telephone while operating a motor vehicle is critical. In such a situation, an individual may assert, as an affirmative defense, that the violation was made for the sole purpose of obtaining emergency assistance. This legislation does not apply to operators of authorized emergency vehicles, such as policemen, firemen and emergency medical techni-

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

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cians. Nothing contained in this legislation shall prevent a passenger or non-driving occupant from using a cellular or wireless telephone in a motor vehicle.

S 2. Section 1225-c of the vehicle and traffic law is REPEALED.

S 3. The vehicle and traffic law is amended by adding a new section 397-c to read as follows:

S 397-C. USE OF A CELLULAR OR WIRELESS TELEPHONE WHILE OPERATING A MOTOR VEHICLE; PROHIBITED. 1. AS USED IN THIS SECTION, A "CELLULAR OR WIRELESS TELEPHONE" MEANS A CELLULAR MOBILE RADIO TELEPHONE OR OTHER RADIO TELEPHONE CAPABLE OF SENDING OR RECEIVING TELEPHONE COMMUNICATIONS WITHOUT AN ACCESS LINE FOR SERVICE.

2. (A) NO PERSON SHALL OPERATE A MOTOR VEHICLE WHILE USING A CELLULAR OR WIRELESS TELEPHONE.

(B) NOTHING CONTAINED HEREIN SHALL PREVENT ANY PASSENGER OR OCCUPANT OF A MOTOR VEHICLE, OTHER THAN THE OPERATOR, FROM USING A CELLULAR OR WIRELESS TELEPHONE.

(C) THE PROVISIONS OF THIS SECTION SHALL NOT APPLY TO OPERATORS OF AUTHORIZED EMERGENCY VEHICLES AS DEFINED IN SECTION ONE HUNDRED ONE OF THIS CHAPTER.

(D) EVERY PERSON CONVICTED OF VIOLATING THE PROVISIONS OF THIS SECTION SHALL BE PUNISHED BY A CIVIL FINE OF NOT MORE THAN ONE HUNDRED DOLLARS.

(E) A PERSON PROSECUTED UNDER THE PROVISIONS OF THIS SECTION MAY ASSERT AS AN AFFIRMATIVE DEFENSE THAT THE VIOLATION WAS MADE FOR THE SOLE PURPOSE OF OBTAINING EMERGENCY ASSISTANCE IF HE OR SHE HAD REASON TO FEAR FOR HIS OR HER LIFE OR SAFETY, OR BELIEVED THAT A CRIMINAL ACT WAS ABOUT TO BE PERPETRATED AGAINST HIM OR HER NECESSITATING THE USE OF SUCH CELLULAR OR WIRELESS TELEPHONE WHILE OPERATING A MOTOR VEHICLE.

S 4. This act shall take effect on the one hundred eightieth day after it shall have become a law.