

3619--A

Cal. No. 569

2009-2010 Regular Sessions

I N S E N A T E

March 25, 2009

Introduced by Sen. DILAN -- read twice and ordered printed, and when printed to be committed to the Committee on Transportation -- reported favorably from said committee and committed to the Committee on Codes -- reported favorably from said committee, ordered to first and second report, ordered to a third reading, amended and ordered reprinted, retaining its place in the order of third reading

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
18 when such holder is accompanied by a duly licensed parent, guardian,

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

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

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

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

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

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

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

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

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

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

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

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

55 6. A VIOLATION OF THIS SECTION SHALL BE A TRAFFIC INFRACTION AND SHALL
56 BE PUNISHABLE BY A FINE OF NOT MORE THAN ONE HUNDRED FIFTY DOLLARS.

1 PROVIDED, HOWEVER, THAT A SUMMONS FOR OPERATING A MOTOR VEHICLE IN
2 VIOLATION OF THIS SECTION SHALL ONLY BE ISSUED WHEN THERE IS REASONABLE
3 CAUSE TO BELIEVE THAT THE PERSON OPERATING SUCH MOTOR VEHICLE HAS
4 COMMITTED A VIOLATION OF THE LAWS OF THIS STATE OTHER THAN A VIOLATION
5 OF THIS SECTION.

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

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

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

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

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

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

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

49 2. A license, other than a class DJ or class MJ license [or a limited
50 class DJ or class MJ license], considered probationary pursuant to
51 subdivision three of this section shall be revoked upon the conviction
52 of the licensee of a violation or violations committed within six months
53 following the restoration or issuance of such license, which conviction
54 or convictions would result in the suspension of a probationary license
55 pursuant to subdivision one of this section.

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

7 S 9. Section 510-c of the vehicle and traffic law, as added by chapter
8 644 of the laws of 2002, is amended to read as follows:

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

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

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

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

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

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

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

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

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

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

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

16 3-a. No person holding a class DJ learner's permit or class DJ license
17 issued pursuant to section five hundred two of this chapter, [or a
18 limited class DJ or MJ license issued pursuant to section five hundred
19 three-a of this chapter,] shall operate a motor vehicle in this state
20 unless such person is restrained by a safety belt approved by the
21 commissioner, and all passengers under the age of four are restrained in
22 a specially designed seat which meets the federal motor vehicle safety
23 standards set forth in 49 C.F.R. 571.213 and which is either permanently
24 affixed or is affixed to such vehicle by a safety belt and, in the case
25 of any other passenger under the age of sixteen, he or she is restrained
26 by a safety belt approved by the commissioner. No person sixteen years
27 of age or over shall be a passenger in a motor vehicle operated by a
28 person holding a class DJ learner's permit, a class DJ license or a
29 limited class DJ license unless such passenger is restrained by a safety
30 belt approved by the commissioner.

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

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

52 S 13. The commissioner of motor vehicles, in consultation with the
53 superintendent of the state police, shall study the effects of the use
54 of portable electronic devices and similar equipment in conjunction with
55 the operation of a motor vehicle, and the effects of other forms of
56 driver inattention and distraction, on highway and traffic safety, and

1 shall submit a report of his or her findings to the governor, the tempo-
2 rary president of the senate, the speaker of the assembly, and the
3 chairs of the transportation committees of the senate and the assembly,
4 not later than 4 years from the effective date of this act. Such report
5 shall include, but not be limited to:

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

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

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