

1148

2011-2012 Regular Sessions

I N A S S E M B L Y

(PREFILED)

January 5, 2011

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:

1 Section 1. Legislative intent. The legislature hereby finds and deter-
2 mines that operating a motor vehicle while talking on a cellular or
3 wireless telephone endangers public safety. Researchers at the Universi-
4 ty of Toronto reported in the New England Journal of Medicine (February
5 13, 1997), that driving while talking on a telephone increased the risk
6 of accident four-fold. Their findings also revealed that operating a
7 motor vehicle while talking on a telephone posed the same risk of acci-
8 dent as driving with a high blood alcohol level of .10. In recent years,
9 there has been a rapid growth in the use of wireless communications.
10 That growth has resulted in a substantial increase in the number of
11 motorists who talk on the telephone while driving. As more and more
12 drivers use cellular and wireless telephones, our roads become less and
13 less safe.

14 The purpose of this legislation is to educate the public of the seri-
15 ous and deadly risks involved with using a cellular or wireless tele-
16 phone while operating a motor vehicle. Because the underlying objective
17 is to educate, the penalty set forth in this legislation is a mere traf-
18 fic infraction rather than a crime. This legislation does recognize that
19 there are emergency situations in which the use of a cellular or wire-
20 less telephone while operating a motor vehicle is critical. In such a
21 situation, an individual may assert, as an affirmative defense, that the
22 violation was made for the sole purpose of obtaining emergency assist-
23 ance. This legislation does not apply to operators of authorized emer-

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

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1 gency vehicles, such as policemen, firemen and emergency medical techni-
2 cians. Nothing contained in this legislation shall prevent a passenger
3 or non-driving occupant from using a cellular or wireless telephone in a
4 motor vehicle.

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 Section 1225-c of the vehicle and traffic law is REPEALED.

6 S 3. The vehicle and traffic law is amended by adding a new section
7 397-c to read as follows:

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

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

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

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

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

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

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