

998--B

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I N S E N A T E

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Introduced by Sens. MARCELLINO, ALESİ, ROBACH, AVELLA, FUSCHILLO, GOLD-
EN, JOHNSON, KENNEDY, LARKIN, LAVALLE, MAZIARZ, RANZENHOFER, VALESKY
-- read twice and ordered printed, and when printed to be committed to
the Committee on Transportation -- committee discharged, bill amended,
ordered reprinted as amended and recommitted to said committee --
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 and the insurance law, in
relation to the use of portable electronic devices while driving

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

1 Section 1. Subdivisions 1 and 2 of section 1225-c of the vehicle and
2 traffic law, as added by chapter 69 of the laws of 2001, are amended to
3 read as follows:
4 1. For purposes of this section, the following terms shall mean:
5 (a) "Mobile telephone" shall mean the device used by subscribers and
6 other users of wireless telephone service to access such service.
7 (b) "Wireless telephone service" shall mean two-way real time voice
8 telecommunications service that is interconnected to a public switched
9 telephone network and is provided by a commercial mobile radio service,
10 as such term is defined by 47 C.F.R. S 20.3.
11 (c) ["Using" shall mean holding a mobile telephone to, or in the imme-
12 diate proximity of, the user's ear.
13 (d)] "Hand-held mobile telephone" shall mean a mobile telephone with
14 which a user engages in a call using at least one hand.
15 [(e)] (D) "Hands-free mobile telephone" shall mean a mobile telephone
16 that has an internal feature or function, or that is equipped with an
17 attachment or addition, whether or not permanently part of such mobile
18 telephone, by which a user engages in a call without the use of either

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

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1 hand[, whether or not the use of either hand is necessary to activate,
2 deactivate or initiate a function of such telephone.

3 (f) "Engage in a call" shall mean talking into or listening on a hand-
4 held mobile telephone, but shall not include holding a mobile telephone
5 to activate, deactivate or initiate a function of such telephone.

6 (g) "Immediate proximity" shall mean that distance as permits the
7 operator of a mobile telephone to hear telecommunications transmitted
8 over such mobile telephone, but shall not require physical contact with
9 such operator's ear].

10 2. (a) Except as otherwise provided in this section, no person shall
11 operate a motor vehicle upon a public highway [while using a mobile
12 telephone to engage in a call] TALKING INTO, LISTENING TO, DIALING,
13 ACTIVATING, DEACTIVATING OR INITIATING ANY FUNCTION OF A HAND-HELD
14 MOBILE PHONE while such vehicle is in motion.

15 (b) [An operator of a motor vehicle who holds a mobile telephone to,
16 or in the immediate proximity of his or her ear while such vehicle is in
17 motion is presumed to be engaging in a call within the meaning of this
18 section. The presumption established by this subdivision is rebuttable
19 by evidence tending to show that the operator was not engaged in a call.

20 (c)] The provisions of this section shall not be construed as author-
21 izing the seizure or forfeiture of a mobile telephone, unless otherwise
22 provided by law.

23 S 2. Subdivision 6 of section 1225-d of the vehicle and traffic law,
24 as added by chapter 403 of the laws of 2009, is amended to read as
25 follows:

26 6. A violation of this section shall be a traffic infraction and shall
27 be punishable by a fine of not more than one hundred fifty dollars.
28 [Provided, however, that a summons for operating a motor vehicle in
29 violation of this section shall only be issued when there is reasonable
30 cause to believe that the person operating such motor vehicle has
31 committed a violation of the laws of this state other than a violation
32 of this section.]

33 S 3. Subdivision 4 of section 502 of the vehicle and traffic law is
34 amended by adding a new paragraph (c-3) to read as follows:

35 (C-3) CELL PHONE SAFETY COMPONENT. THE COMMISSIONER SHALL PROVIDE IN
36 THE PRE-LICENSING COURSE, SET FORTH IN PARAGRAPH (B) OF THIS SUBDIVISION
37 A MANDATORY COMPONENT IN "CELL PHONE SAFETY" AS A PREREQUISITE FOR
38 OBTAINING A LICENSE TO OPERATE A MOTOR VEHICLE. THE PURPOSE OF THE
39 COMPONENT IS TO EDUCATE PROSPECTIVE LICENSEES OF THE POTENTIAL DANGERS
40 OF DRIVING WHILE USING A CELL PHONE. FOR THE PURPOSES OF THIS PARAGRAPH,
41 "CELL PHONE" SHALL BE DEFINED AS A PORTABLE ELECTRONIC DEVICE AS DEFINED
42 IN PARAGRAPH (A) OF SUBDIVISION TWO OF SECTION TWELVE HUNDRED
43 TWENTY-FIVE-D OF THIS CHAPTER. THE COMMISSIONER SHALL ESTABLISH A
44 CURRICULUM FOR SUCH "CELL PHONE SAFETY" COMPONENT WHICH SHALL INCLUDE,
45 BUT NOT BE LIMITED TO, INFORMATION ON THE LAWS RELATED TO DRIVING WHILE
46 USING A CELL PHONE AS DESCRIBED IN SECTIONS TWELVE HUNDRED TWENTY-FIVE-C
47 AND TWELVE HUNDRED TWENTY-FIVE-D OF THIS CHAPTER, THE PENALTIES FOR
48 USING A CELL PHONE WHILE DRIVING AND THE POTENTIAL DANGERS OF DISTRACTED
49 DRIVERS. IN DEVELOPING SUCH CURRICULUM, THE COMMISSIONER SHALL CONSULT
50 WITH LAW ENFORCEMENT PERSONNEL, HIGHWAY SAFETY OFFICIALS AND ANY OTHER
51 GROUP THE COMMISSIONER BELIEVES CAN CONTRIBUTE TO A COMPREHENSIVE STATE-
52 MENT OF THE ISSUE.

53 S 4. Paragraphs (a), (b) and (d) of subdivision 4 of section 502 of
54 the vehicle and traffic law, as amended by chapter 585 of the laws of
55 2002, subparagraph (i) of paragraph (a) as amended by chapter 387 of the
56 laws of 2010, are amended to read as follows:

1 (a) (i) Upon submission of an application for a driver's license, the
2 applicant shall be required to take and pass a test, or submit evidence
3 of passage of a test, with respect to the laws relating to traffic, the
4 laws relating to driving while ability is impaired and while intoxicat-
5 ed, under the overpowering influence of "Road Rage", [or] "Work Zone
6 Safety" awareness as defined by the commissioner OR CELL PHONE SAFETY AS
7 DEFINED BY THE COMMISSIONER, the law relating to exercising due care to
8 avoid colliding with a parked, stopped or standing authorized emergency
9 vehicle pursuant to section eleven hundred forty-four-a of this chapter,
10 the ability to read and comprehend traffic signs and symbols and such
11 other matters as the commissioner may prescribe, and to satisfactorily
12 complete a course prescribed by the commissioner of not less than four
13 hours and not more than five hours, consisting of classroom driver
14 training and highway safety instruction or the equivalent thereof. Such
15 test shall include at least seven written questions concerning the
16 effects of consumption of alcohol or drugs on the ability of a person to
17 operate a motor vehicle and the legal and financial consequences result-
18 ing from violations of section eleven hundred ninety-two of this chap-
19 ter, prohibiting the operation of a motor vehicle while under the influ-
20 ence of alcohol or drugs. Such test shall include one or more written
21 questions concerning the devastating effects of "Road Rage" on the abil-
22 ity of a person to operate a motor vehicle and the legal and financial
23 consequences resulting from assaulting, threatening or interfering with
24 the lawful conduct of another person legally using the roadway. Such
25 test shall include one or more questions concerning the potential
26 dangers to persons and equipment resulting from the unsafe operation of
27 a motor vehicle in a work zone. SUCH TEST SHALL INCLUDE ONE OR MORE
28 WRITTEN QUESTIONS RELATING TO THE HAZARDS AND LEGAL CONSEQUENCES OF
29 DRIVING WHILE USING A PORTABLE ELECTRONIC DEVICE AS DEFINED IN PARAGRAPH
30 (A) OF SUBDIVISION TWO OF SECTION TWELVE HUNDRED TWENTY-FIVE-D OF THIS
31 CHAPTER. Such test may include one or more questions concerning the law
32 for exercising due care to avoid colliding with a parked, stopped or
33 standing authorized emergency vehicle pursuant to section eleven hundred
34 forty-four-a of this chapter. Such test shall be administered by the
35 commissioner. The commissioner shall cause the applicant to take a
36 vision test and a test for color blindness. Upon passage of the vision
37 test, the application may be accepted and the application fee shall be
38 payable.

39 (ii) The commissioner shall promulgate rules and regulations estab-
40 lishing eligibility standards for the taking and passing of knowledge
41 tests in other than written form.

42 (b) Upon successful completion of the requirements set forth in para-
43 graph (a) of this subdivision which shall include an alcohol and drug
44 education component as described in paragraph (c) of this subdivision, a
45 "Road Rage" awareness component as described in paragraph (c-1) of this
46 subdivision and a "Work Zone Safety" awareness component as described in
47 paragraph (c-2) of this subdivision AND A "CELL PHONE SAFETY" COMPONENT
48 AS DESCRIBED IN PARAGRAPH (C-3) OF THIS SUBDIVISION, the commissioner
49 shall cause the applicant to take a road test in a representative vehi-
50 cle of a type prescribed by the commissioner which shall be appropriate
51 to the type of license for which application is made, except that the
52 commissioner may waive the road test requirements for certain classes of
53 applicants. The commissioner shall have the power to establish a program
54 to allow persons other than employees of the department to conduct road
55 tests in representative vehicles when such tests are required for appli-
56 cants to obtain a class A, B or C license. If she chooses to do so, she

1 shall set forth her reasons in writing and conduct a public hearing on
2 the matter. She shall only establish such a program after holding the
3 public hearing.

4 (d) The commissioner shall make available for distribution upon regis-
5 tration at each location where the pre-licensing course will be given,
6 instructional handbooks outlining the content of the entire curriculum
7 of the pre-licensing course including the information required to be
8 included in the course pursuant to paragraphs (c), (c-1) [and], (c-2)
9 AND (C-3) of this subdivision. The commissioner shall also provide for
10 the additional training of the instructors necessary for the competent
11 instruction of the alcohol and drug education and "Road Rage" awareness
12 [and], "Work Zone Safety" awareness, AND CELL PHONE SAFETY subject
13 matters of the pre-licensing course.

14 S 5. Subsection (a) of section 2336 of the insurance law, as amended
15 by chapter 751 of the laws of 2005, is amended to read as follows:

16 (a) Any schedule of rates or rating plan for motor vehicle liability
17 and collision insurance submitted to the superintendent shall provide
18 for an appropriate reduction in premium charges for any insured for a
19 three year period after successfully completing a motor vehicle accident
20 prevention course, known as the national safety council's defensive
21 driving course, or any driver improvement course approved by the depart-
22 ment of motor vehicles as being equivalent to the national safety coun-
23 cil's defensive driving course, provided that, except as provided in
24 article twelve-C of the vehicle and traffic law, there shall be no
25 reduction in premiums for a self instruction defensive driving course or
26 a course which does not provide for actual classroom instruction for a
27 minimum number of hours as determined by the department of motor vehi-
28 cles. Such reduction in premium charges shall be subsequently modified
29 to the extent appropriate, based upon analysis of loss experience
30 statistics and other relevant factors. All such accident prevention
31 courses shall be monitored by the department of motor vehicles and shall
32 include components of instruction in "Road Rage" awareness [and], in
33 "Work Zone Safety" awareness AND CELL PHONE SAFETY as defined by the
34 commissioner of motor vehicles. The provisions of this section shall not
35 apply to attendance at a program pursuant to article twenty-one of the
36 vehicle and traffic law as a result of any traffic infraction.

37 S 6. Subsection (a) of section 2336 of the insurance law, as amended
38 by chapter 585 of the laws of 2002, is amended to read as follows:

39 (a) Any schedule of rates or rating plan for motor vehicle liability
40 and collision insurance submitted to the superintendent shall provide
41 for an appropriate reduction in premium charges for any insured for a
42 three year period after successfully completing a motor vehicle accident
43 prevention course, known as the national safety council's defensive
44 driving course, or any driver improvement course approved by the depart-
45 ment of motor vehicles as being equivalent to the national safety coun-
46 cil's defensive driving course, provided that in either event there
47 shall be no reduction in premiums for a self instruction defensive driv-
48 ing course or a course which does not provide for actual classroom
49 instruction for a minimum number of hours as determined by the depart-
50 ment of motor vehicles. Such reduction in premium charges shall be
51 subsequently modified to the extent appropriate, based upon analysis of
52 loss experience statistics and other relevant factors. All such accident
53 prevention courses shall be monitored by the department of motor vehi-
54 cles and shall include components of instruction in "Road Rage" aware-
55 ness [and], in "Work Zone Safety" awareness AND CELL PHONE SAFETY as
56 defined by the commissioner of motor vehicles. The provisions of this

1 section shall not apply to attendance at a program pursuant to article
2 twenty-one of the vehicle and traffic law as a result of any traffic
3 infraction.

4 S 7. This act shall take effect immediately; provided that the amend-
5 ments to subsection (a) of section 2336 of the insurance law made by
6 section five of this act shall be subject to the expiration and rever-
7 sion of such subsection as provided in section 5 of chapter 751 of the
8 laws of 2005, as amended, when upon such date section six of this act
9 shall take effect.