

7805

I N S E N A T E

June 10, 2014

Introduced by Sen. LANZA -- read twice and ordered printed, and when printed to be committed to the Committee on Consumer Protection

AN ACT to amend the general business law, in relation to prohibiting manufacturers and distributors from providing certain portable electronic devices for sale in this state; and to amend the vehicle and traffic law, in relation to eliminating the exemption granted to certain persons relating to the use of portable devices

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

- 1 Section 1. The general business law is amended by adding a new section
2 390-d to read as follows:
3 S 390-D. DISTRIBUTION OF PORTABLE ELECTRONIC DEVICES. 1. FOR THE
4 PURPOSES OF THIS SECTION, "PORTABLE ELECTRONIC DEVICE" SHALL MEAN ANY
5 HAND-HELD MOBILE TELEPHONE, AS DEFINED BY SUBDIVISION ONE OF SECTION
6 TWELVE HUNDRED TWENTY-FIVE-C OF THE VEHICLE AND TRAFFIC LAW, PERSONAL
7 DIGITAL ASSISTANT (PDA), HANDHELD DEVICE WITH MOBILE DATA ACCESS, LAPTOP
8 COMPUTER, PAGER, BROADBAND PERSONAL COMMUNICATION DEVICE, TWO-WAY
9 MESSAGING DEVICE, ELECTRONIC GAME, PORTABLE COMPUTING DEVICE, OR ANY
10 OTHER ELECTRONIC DEVICE WHICH CAN BE USED TO INPUT, WRITE, SEND,
11 RECEIVE, OR READ TEXT FOR PRESENT OR FUTURE COMMUNICATION.
12 2. ON AND AFTER JANUARY FIRST, TWO THOUSAND SEVENTEEN, NO MANUFACTURER
13 OR DISTRIBUTOR SHALL PROVIDE FOR SALE IN THIS STATE ANY PORTABLE ELEC-
14 TRONIC DEVICE, UNLESS THE ABILITY OF SUCH DEVICE TO INPUT, WRITE, SEND,
15 RECEIVE AND READ TEXT, DIGITAL INFORMATION AND IMAGES WHEN THE HOLDER OF
16 SUCH DEVICE IS OPERATING A MOTOR VEHICLE TRAVELING AT TEN OR MORE MILES
17 AN HOUR.
18 3. ANY MANUFACTURER OR DISTRIBUTOR WHICH VIOLATES THE PROVISIONS OF
19 SUBDIVISION TWO OF THIS SECTION, AND ANY PERSON WHO SELLS A PORTABLE
20 ELECTRONIC DEVICE PROVIDED IN VIOLATION OF SUCH SUBDIVISION SHALL BE
21 SUBJECT TO A CIVIL PENALTY OF FIVE HUNDRED DOLLARS FOR EACH DEVICE.
22 S 2. Subdivisions 1, 3 and 4 of section 1225-d of the vehicle and
23 traffic law, subdivision 1 as amended by section 6 and subdivision 4 as
24 amended by section 10 of part C of chapter 58 of the laws of 2013, and

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

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1 subdivision 3 as added by chapter 403 of the laws of 2009, are amended
2 to read as follows:

3 1. Except as otherwise provided in this section, no person shall oper-
4 ate a motor vehicle while using any portable electronic device while
5 such vehicle is in motion; provided, however, that no person shall oper-
6 ate a commercial motor vehicle while using any portable electronic
7 device on a public highway including while temporarily stationary
8 because of traffic, a traffic control device, or other momentary delays.
9 [Provided further, however, that a person shall not be deemed to be
10 operating a commercial motor vehicle while using a portable electronic
11 device on a public highway when such vehicle is stopped at the side of,
12 or off, a public highway in a location where such vehicle is not other-
13 wise prohibited from stopping by law, rule, regulation or any lawful
14 order or direction of a police officer.]

15 3. Subdivision one of this section shall not apply to [(a)] the use of
16 a portable electronic device for the sole purpose of communicating with
17 any of the following regarding an emergency situation: an emergency
18 response operator; a hospital; a physician's office or health clinic; an
19 ambulance company or corps; a fire department, district or company; or a
20 police department[, (b) any of the following persons while in the
21 performance of their official duties: a police officer or peace officer;
22 a member of a fire department, district or company; or the operator of
23 an authorized emergency vehicle as defined in section one hundred one of
24 this chapter].

25 4. A person who holds a portable electronic device in a conspicuous
26 manner while operating a motor vehicle or while operating a commercial
27 motor vehicle on a public highway including while temporarily stationary
28 because of traffic, a traffic control device, or other momentary delays
29 [but not including when such commercial motor vehicle is stopped at the
30 side of, or off, a public highway in a location where such vehicle is
31 not otherwise prohibited from stopping by law, rule, regulation or any
32 lawful order or direction of a police officer] is presumed to be using
33 such device[, except that a person operating a commercial motor vehicle
34 while using a portable electronic device when such vehicle is stopped at
35 the side of, or off, a public highway in a location where such vehicle
36 is not otherwise prohibited from stopping by law, rule, regulation or
37 any lawful order or direction of a police officer shall not be presumed
38 to be using such device]. The presumption established by this subdivi-
39 sion is rebuttable by evidence tending to show that the operator was not
40 using the device within the meaning of this section.

41 S 3. This act shall take effect on the thirtieth day after it shall
42 have become a law.