

6325

I N   S E N A T E

(PREFILED)

January 6, 2016

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Introduced by Sen. MURPHY -- read twice and ordered printed, and when printed to be committed to the Committee on Transportation

AN ACT to amend the vehicle and traffic law, in relation to portable electronic device field tests for drivers of motor vehicles that have been involved in an accident

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

1     Section 1. The vehicle and traffic law is amended by adding a new  
2     section 1225-dd to read as follows:  
3     S 1225-DD. PORTABLE ELECTRONIC DEVICE FIELD TESTING. 1. EVERY PERSON  
4     OPERATING A MOTOR VEHICLE WHICH HAS BEEN INVOLVED IN AN ACCIDENT SHALL,  
5     AT THE REQUEST OF A POLICE OFFICER, SUBMIT TO A PORTABLE ELECTRONIC  
6     DEVICE FIELD TEST USING AVAILABLE TECHNOLOGY TO BE ADMINISTERED BY THE  
7     POLICE OFFICER. FOR PURPOSES OF THIS SECTION THE TERM "PORTABLE ELEC-  
8     TRONIC DEVICE" SHALL HAVE THE SAME MEANING AS DEFINED IN PARAGRAPH (A)  
9     OF SUBDIVISION TWO OF SECTION TWELVE HUNDRED TWENTY-FIVE-D OF THIS ARTI-  
10    CLE.  
11    2. ANY PERSON WHO OPERATES A MOTOR VEHICLE IN THIS STATE SHALL BE  
12    DEEMED TO HAVE GIVEN CONSENT TO A PORTABLE ELECTRONIC DEVICE FIELD TEST  
13    FOR THE PURPOSE OF DETERMINING PORTABLE ELECTRONIC DEVICE USAGE WHEN  
14    INVOLVED IN AN ACCIDENT WHILE OPERATING A MOTOR VEHICLE INCLUDING PHONE  
15    ACTIVITY FOR THE PERIOD OF TIME IMMEDIATELY PRECEDING THE ACCIDENT,  
16    PROVIDED THAT SUCH TEST IS ADMINISTERED BY OR AT THE DIRECTION OF A  
17    POLICE OFFICER:  
18    (A) HAVING REASONABLE GROUNDS TO BELIEVE SUCH PERSON TO HAVE BEEN  
19    OPERATING IN VIOLATION OF SECTION TWELVE HUNDRED TWENTY-FIVE-D OF THIS  
20    ARTICLE;  
21    (B) FOR THE PURPOSES OF THIS SECTION, "REASONABLE GROUNDS" TO BELIEVE  
22    THAT A PERSON HAS BEEN OPERATING A MOTOR VEHICLE IN VIOLATION OF SECTION  
23    TWELVE HUNDRED TWENTY-FIVE-D OF THIS ARTICLE SHALL BE DETERMINED BY  
24    VIEWING THE TOTALITY OF CIRCUMSTANCES SURROUNDING THE INCIDENT WHICH,  
25    WHEN TAKEN TOGETHER, INDICATE THAT THE OPERATOR WAS DRIVING IN VIOLATION  
26    OF SUCH SECTION. SUCH CIRCUMSTANCES MAY INCLUDE ANY VISIBLE OR BEHAV-

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

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1 IORAL INDICATION OF PORTABLE ELECTRONIC DEVICE USE, THE EXISTENCE OF AN  
2 ILLUMINATED PORTABLE ELECTRONIC DEVICE DISPLAY IN THE VEHICLE DRIVEN BY  
3 THE OPERATOR, OR ANY OTHER EVIDENCE SURROUNDING THE CIRCUMSTANCES OF THE  
4 INCIDENT WHICH INDICATES THAT THE OPERATOR HAS BEEN OPERATING A MOTOR  
5 VEHICLE WHILE USING A PORTABLE ELECTRONIC DEVICE AT THE TIME OF THE  
6 INCIDENT.

7 3. (A) IF THERE ARE REASONABLE GROUNDS TO BELIEVE THAT A PERSON OPER-  
8 ATING A MOTOR VEHICLE INVOLVED IN AN ACCIDENT HAS BEEN USING A PORTABLE  
9 ELECTRONIC DEVICE IN VIOLATION OF SECTION TWELVE HUNDRED TWENTY-FIVE-D  
10 OF THIS ARTICLE; AND HAVING THEREAFTER BEEN REQUESTED TO SUBMIT TO A  
11 FIELD TEST REFUSES TO SUBMIT TO SUCH OR ANY PORTION THEREOF, SUCH TEST  
12 SHALL NOT BE GIVEN AND A WRITTEN REPORT OF SUCH REFUSAL SHALL BE IMME-  
13 DIATELY MADE BY THE POLICE OFFICER BEFORE WHOM SUCH REFUSAL WAS MADE.  
14 PRIOR TO ANY FIELD TEST REQUESTS UNDER THIS SECTION, THE ADMINISTERING  
15 POLICE OFFICER MUST EXPLAIN TO THE PERSON OPERATING THE MOTOR VEHICLE  
16 INVOLVED IN SUCH ACCIDENT THAT IF THEY REFUSE SUCH FIELD TEST A WRITTEN  
17 REPORT WILL BE COMPLETED DOCUMENTING SUCH REFUSAL. WRITTEN REPORTS MAY  
18 BE VERIFIED BY HAVING THE REPORT SWORN TO, OR BY AFFIXING TO SUCH REPORT  
19 A FORM NOTICE THAT FALSE STATEMENTS MADE THEREIN ARE PUNISHABLE AS A  
20 CLASS A MISDEMEANOR PURSUANT TO SECTION 210.45 OF THE PENAL LAW AND SUCH  
21 FORM NOTICE TOGETHER WITH THE SUBSCRIPTION OF THE DEPONENT SHALL CONSTI-  
22 TUTE A VERIFICATION OF THE REPORT.

23 (B) THE REPORT OF THE POLICE OFFICER SHALL SET FORTH REASONABLE  
24 GROUNDS TO BELIEVE SUCH PERSON HAD BEEN DRIVING IN VIOLATION OF SECTION  
25 TWELVE HUNDRED TWENTY-FIVE-D OF THIS ARTICLE AND IF SAID PERSON REFUSED  
26 TO SUBMIT TO SUCH FIELD TEST.

27 4. ALL POLICE OFFICERS SHALL RECEIVE PERIODIC TRAINING REGARDING PORT-  
28 ABLE ELECTRONIC DEVICE FIELD TESTING METHODS. FURTHER EXPLANATION AND  
29 TRAINING SHALL BE PROVIDED ON IMPROVEMENTS AND EVOLVING PROCEDURES WHEN  
30 THEY BECOME AVAILABLE.

31 S 2. This act shall take effect immediately.