

# STATE OF NEW YORK

2435

2017-2018 Regular Sessions

## IN ASSEMBLY

January 20, 2017

Introduced by M. of A. DINOWITZ, GALEF, ORTIZ, QUART -- Multi-Sponsored  
by -- M. of A. GOTTFRIED -- read once and referred to the Committee  
on Transportation

AN ACT to amend the vehicle and traffic law, in relation to prohibiting  
the use of a portable electronic device while operating a bicycle and  
to prohibit local governments from regulating the use of portable  
electronic devices by bicycle operators; and providing for the repeal  
of certain provisions upon expiration thereof

The People of the State of New York, represented in Senate and Assem-  
bly, do enact as follows:

1 Section 1. The vehicle and traffic law is amended by adding a new  
2 section 1238-a to read as follows:

3 § 1238-a. Use of portable electronic devices; prohibited. 1. For the  
4 purposes of this section, the following terms shall mean:

5 (a) "Portable electronic device" shall mean any hand-held mobile tele-  
6 phone, personal digital assistant (PDA), handheld device with mobile  
7 data access, laptop computer, pager, broadband personal communication  
8 device, two-way messaging device, electronic game, or portable computing  
9 device, or any other electronic device when used to input, write, send,  
10 receive, or read text for present or future communication.

11 (b) "Using" shall mean holding a portable electronic device to, or in  
12 the immediate proximity of, the user's ear; or their hand while viewing,  
13 taking or transmitting images, playing games, or, for the purpose of  
14 present or future communication: performing a command or request to  
15 access a world wide web page, composing, sending, reading, viewing,  
16 accessing, browsing, transmitting, saving or retrieving e-mail, text  
17 messages, instant messages, telephone calls, or other electronic data.

18 (c) "Hand-held mobile telephone" shall mean a mobile telephone with  
19 which a user engages in a call using at least one hand.

20 (d) "Hands-free mobile telephone" shall mean a mobile telephone that  
21 has an internal feature or function, or that is equipped with an attach-

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

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1 ment or addition, whether or not permanently part of such mobile tele-  
2 phone, by which a user engages in a call without the use of either hand,  
3 whether or not the use of either hand is necessary to activate, deacti-  
4 vate or initiate a function of such telephone.

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

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

12 2. (a) Except as otherwise provided in this section, no person shall  
13 operate a bicycle upon a public highway, bicycle lane or roadway while  
14 using a portable electronic device to engage in a call while such bicy-  
15 cle is in motion.

16 (b) An operator of a bicycle who holds a portable electronic device  
17 to, or in the immediate proximity of his or her ear while such bicycle  
18 is in motion is presumed to be engaging in a call within the meaning of  
19 this section. The presumption established by this subdivision is rebutt-  
20 able by evidence tending to show that the operator was not engaged in a  
21 call.

22 (c) The provisions of this section shall not be construed as authoriz-  
23 ing the seizure or forfeiture of a portable electronic device, unless  
24 otherwise provided by law.

25 3. Subdivision two of this section shall not apply to (a) cities  
26 having a population of more than one million, (b) the use of a portable  
27 electronic device for the sole purpose of communicating with any of the  
28 following regarding an emergency situation: an emergency response opera-  
29 tor; a hospital, physician's office or health clinic; an ambulance  
30 company or corps; a fire department, district or company; or a police  
31 department, (c) any of the following persons while in the performance of  
32 their official duties: officers or employees of any federal, state, or  
33 city law enforcement agency; a member of a fire department, district or  
34 company; or the operator of an authorized emergency vehicle as defined  
35 in section one hundred one of this chapter, (d) the use of a hands-free  
36 mobile telephone or a portable electronic device in a voice activated  
37 mode, or (e) the use of a portable electronic device while remaining in  
38 a stationary position during such use.

39 4. It shall be a traffic infraction to violate the provisions of  
40 subdivision two of this section punishable by a civil penalty of not  
41 more than fifty dollars. Notwithstanding the foregoing, a person shall  
42 not be liable for a civil penalty for a first violation of subdivision  
43 two of this section unless damage to real property or the personal prop-  
44 erty of another or personal injury was caused due to an incident involv-  
45 ing a bicycle operated by such a person at the time of such first  
46 violation. In addition, any person who violates any provision of subdi-  
47 vision two of this section more than once within any eighteen month  
48 period shall be subject to the imposition of an additional civil penalty  
49 of not less than fifty dollars nor more than two hundred dollars.

50 § 2. Except as otherwise provided in section one of this act, no  
51 municipal corporation, as defined in section 2 of the general municipal  
52 law, shall, after June 1, 2017, enact any local law, ordinance or code  
53 relating to the operation of a bicycle while using a portable electronic  
54 device unless the terms of such law, ordinance or code are identical to  
55 section 1238-a of the vehicle and traffic law, as added by section one  
56 of this act. The provisions of this act shall invalidate and preempt any

1 such local law, ordinance or code, enacted after June 1, 2017 unless the  
2 terms of such law, ordinance or code are identical to section 1238-a of  
3 the vehicle and traffic law, as added by section one of this act.

4 § 3. The provisions of this act shall preempt any local law, ordi-  
5 nance, code, rule or regulation relating to the operation of a bicycle  
6 while using a portable electronic device, except that nothing in this  
7 act shall preclude any state or local agency, which, by permit, license  
8 or registration regulates the business or professional activities of  
9 individuals from imposing more stringent restrictions than provided in  
10 this act for the use of portable electronic devices upon such individ-  
11 uals during the course of engaging in the business or professional  
12 activity that is the subject of such agency's permit, license or regis-  
13 tration.

14 § 4. For the purpose of informing and educating persons who operate  
15 bicycles in this state, any law enforcement official authorized to issue  
16 appearance tickets pursuant to the vehicle and traffic law may, during  
17 the period commencing November 1, 2017 and ending November 30, 2017,  
18 stop a bicyclist and issue verbal warnings to persons who would be in  
19 violation of the provisions of section 1238-a of the vehicle and traffic  
20 law, as added by section one of this act, were the provisions thereof  
21 effective on the day such warning is issued.

22 § 5. The court shall waive any fine for which a person who violates  
23 the provisions of section 1238-a of the vehicle and traffic law, as  
24 added by section one of this act, would be liable if such person  
25 supplies the court with proof that, between the date on which he or she  
26 is charged with having violated such section and the appearance date for  
27 such violation, he or she possesses a hands-free mobile telephone as  
28 defined in paragraph (d) of subdivision 1 of section 1238-a of the vehi-  
29 cle and traffic law, as added by section one of this act; provided,  
30 however, that such waiver of fine shall not apply to a second or subse-  
31 quent violation under such section.

32 § 6. This act shall take effect immediately, except that sections one,  
33 three and five of this act shall take effect December 1, 2017; section  
34 two shall expire and be deemed repealed December 1, 2017; section four  
35 of this act shall take effect November 1, 2017 and shall expire and be  
36 deemed repealed December 1, 2017; and section five of this act shall  
37 expire and be deemed repealed March 1, 2018.