



DAVID J. SWARTS
Commissioner

STATE OF NEW YORK DEPARTMENT OF MOTOR VEHICLES

6 EMPIRE STATE PLAZA, ALBANY, NY 12228

"P" 25 (2009)

"M" 25 (2009)

Albany, New York

November 2, 2009

TO: All Enforcement Agencies and Magistrates

SUBJECT: Chapter 403 of the Laws of 2009 – Use of a Portable Electronic Device
While Driving

Effective November 1, 2009, Chapter 403 of the Laws of 2009 adds a new section 1225-d to the Vehicle and Traffic Law, banning the use of a portable electronic device while operating a moving vehicle. A "portable electronic device" is defined as a hand-held mobile telephone, personal digital assistant (PDA), handheld device with mobile data access, laptop computer, pager, broadband personal communication device, two-way messaging device, electronic game, or portable computing device.

A driver is in violation of this law if he or she is "holding a portable electronic device while viewing, taking, or transmitting images, playing games, or composing, sending, reading, viewing, accessing, browsing, transmitting, saving or retrieving email, text messages, or other electronic data". A violation is punishable by a fine of not more than \$150 and a surcharge of \$80 (\$85 in town and village courts).

This law may only be enforced by "secondary enforcement," which means that a summons may only be issued if there is reasonable cause to believe that another violation of the law has been committed.

It is not a violation of the law if the portable electronic device is used for the sole purpose of communicating with an emergency response coordinator, a hospital, a physician's office or health clinic, an ambulance company, a fire department or a police department. Police and peace officers, members of a fire company or the operator of an authorized emergency vehicle are exempt from this law if they use the device in the performance of their official duties.

A copy of Chapter 403 is attached for your reference. Please share this information with appropriate staff. Thank you.

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Attachment

§ 4. The vehicle and traffic law is amended by adding a new section 1225-d to read as follows:

§ 1225-d. Use of portable electronic devices. 1. Except as otherwise provided in this section, no person shall operate a motor vehicle while using any portable electronic device while such vehicle is in motion.

2. For the purposes of this section, the following terms shall have the following meanings:

(a) "Portable electronic device" shall mean any hand-held mobile telephone, as defined by subdivision one of section twelve hundred twenty-five-c of this article, personal digital assistant (PDA), handheld device with mobile data access, laptop computer, pager, broadband personal communication device, two-way messaging device, electronic game, or portable computing device.

(b) "Using" shall mean holding a portable electronic device while viewing, taking or transmitting images, playing games, or composing, sending, reading, viewing, accessing, browsing, transmitting, saving or retrieving e-mail, text messages, or other electronic data.

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

4. A person who holds a portable electronic device in a conspicuous manner while operating a motor vehicle is presumed to be using such device. The presumption established by this subdivision is rebuttable by evidence showing that the operator was not using the device within the meaning of this section.

5. The provisions of this section shall not be construed as authorizing the seizure or forfeiture of a portable electronic device, unless otherwise provided by law.

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