S T A T E O F N E W Y O R K

S. 389--A A. 1028--A

2009-2010 Regular Sessions

S E N A T E - A S S E M B L Y

(PREFILED)

January 7, 2009

IN SENATE -- Introduced by Sens. BRESLIN, ADAMS, DUANE, KRUEGER, KRUGER, MONTGOMERY, ONORATO, SAMPSON, STACHOWSKI, STAVISKY -- 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

IN ASSEMBLY -- Introduced by M. of A. CANESTRARI, ALESSI -- read once and referred to the Committee on Transportation -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the vehicle and traffic law, in relation to use of hand-held communication devices while operating a motor vehicle

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

Section 1. Section 1225-c of the vehicle and traffic law, as added by chapter 69 of the laws of 2001, is amended to read as follows:

S 1225-c. Use of mobile telephones. 1. For purposes of this section, the following terms shall mean:

(a) "Mobile telephone" shall mean the device used by subscribers and other users of wireless telephone service to access such service.

(A-1) "HAND-HELD COMMUNICATION DEVICE" SHALL MEAN THE DEVICE USED BY SUBSCRIBERS THAT PROVIDES WIRELESS E-MAILS, PUSH E-MAIL, MOBILE TELEPHONE SERVICE, TEXT MESSAGING, INTERNET FAXING, WEB BROWSING AND OTHER WIRELESS FUNCTIONS. THIS TERM SHALL ALSO MEAN AND INCLUDE A TWO-WAY RADIO DEVICE THAT PROVIDES RADIO COMMUNICATION BETWEEN MOBILE AND LAND STATIONS OR BETWEEN MOBILE STATIONS.

(b) "Wireless telephone service" shall mean two-way real time voice telecommunications service that is interconnected to a public switched telephone network and is provided by a commercial mobile radio service, as such term is defined by 47 C.F.R. S 20.3.

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

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(c) "Using" shall mean holding a mobile telephone OR HAND-HELD COMMUNICATION DEVICE to, or in the immediate proximity of, the user's ear OR PERFORMING TEXT MESSAGING, INTERNET FAXING, WEB BROWSING OR OTHER WIRELESS COMMUNICATION FUNCTIONS WHILE OPERATING A MOTOR VEHICLE UPON A PUBLIC HIGHWAY.

(d) "Hand-held mobile telephone" OR "HAND-HELD COMMUNICATION DEVICE" shall mean a mobile telephone OR HAND-HELD COMMUNICATION DEVICE with which a user engages in a call using at least one hand.

(e) "Hands-free mobile telephone" shall mean a mobile telephone that has an internal feature or function, or that is equipped with an attachment or addition, whether or not permanently part of such mobile telephone, by which a user engages in a call without the use of either hand, whether or not the use of either hand is necessary to activate, deactivate or initiate a function of such telephone.

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

(g) "Immediate proximity" shall mean that distance as permits the operator of a mobile telephone OR HAND-HELD COMMUNICATION DEVICE to hear telecommunications transmitted over such mobile telephone OR HAND-HELD COMMUNICATION DEVICE, but shall not require physical contact with such operator's ear.

2. (a) Except as otherwise provided in this section, no person shall operate a motor vehicle upon a public highway while using a mobile telephone OR HAND-HELD COMMUNICATION DEVICE to engage in a call while such vehicle is in motion.

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

(c) The provisions of this section shall not be construed as authorizing the seizure or forfeiture of a mobile telephone, unless otherwise provided by law.

3. Subdivision two of this section shall not apply to (a) the use of a mobile telephone OR HAND-HELD COMMUNICATION DEVICE for the sole purpose of communicating with any of the following regarding an emergency situation: an emergency response operator; a hospital, 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, [or] (c) the use of a hands-free mobile telephone, OR (D) THE USE OF A MOBILE TELEPHONE OR HAND-HELD COMMUNICATION DEVICE IN CONNECTION WITH THE BUSINESS OF LICENSED FOR-HIRE VEHICLES.

4. A violation of subdivision two of this section shall be a traffic infraction and shall be punishable by a fine of not more than one hundred dollars.

S 2. This act shall take effect on the ninetieth day after it shall have become a law.