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

S. 741 A. 2031

2009-2010 Regular Sessions

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

January 15, 2009

IN SENATE -- Introduced by Sens. LAVALLE, YOUNG -- read twice and ordered printed, and when printed to be committed to the Committee on Transportation

IN ASSEMBLY -- Introduced by M. of A. THIELE -- read once and referred to the Committee on Transportation

AN ACT to amend the vehicle and traffic law, in relation to the use of mobile telephones to text message while driving

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

Section 1. Subdivision 1 of 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:

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.

(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.

(c) "TEXT MESSAGE" ALSO REFERRED TO AS SHORT MESSAGING SERVICE (SMS), SHALL MEAN THE PROCESS BY WHICH USERS SEND OR RECEIVE MESSAGES ON WIRELESS HANDSETS. FOR PURPOSES OF THIS SECTION, AN E-MAIL SHALL BE CONSIDERED A "TEXT MESSAGE".

(D) "Using" shall mean holding a mobile telephone to, or in the immediate proximity of, the user's ear OR COMPOSING OR SENDING TEXT MESSAGES WHILE OPERATING A MOTOR VEHICLE ON ANY PUBLIC STREET OR PUBLIC HIGHWAY WITHIN THIS STATE.

[(d)] (E) "Hand-held mobile telephone" shall mean a mobile telephone with which a user engages in a call using at least one hand.

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

LBD04004-01-9

[(e)] (F) "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.

(G) "WIRELESS HANDSET" SHALL MEAN A PORTABLE COMPUTING DEVICE, INCLUDING CELLULAR TELEPHONES AND PERSONAL DIGITAL ASSISTANTS (PDAS) CAPABLE OF TRANSMITTING DATA IN THE FORM OF AN E-MAIL OR TEXT MESSAGE.

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

[(g)] (I) "Immediate proximity" shall mean that distance as permits the operator of a mobile telephone to hear telecommunications transmitted over such mobile telephone, but shall not require physical contact with such operator's ear.

S 2. Subdivisions 3 and 4 of section 1225-c of the vehicle and traffic law are renumbered subdivisions 4 and 5 and a new subdivision 3 is added to read as follows:

3. NO PERSON SHALL USE A WIRELESS HANDSET TO COMPOSE OR SEND TEXT MESSAGES WHILE DRIVING A MOTOR VEHICLE ON ANY PUBLIC STREET OR PUBLIC HIGHWAY WITHIN THE STATE WHILE THE MOTOR VEHICLE IS IN MOTION. ANY PERSON SEEN DIALING A CELLULAR TELEPHONE WHILE A MOTOR VEHICLE IS IN MOTION ON A PUBLIC STREET OR PUBLIC HIGHWAY WITHIN THE STATE IS PRESUMED TO BE COMPOSING OR SENDING A TEXT MESSAGE WITHIN THE MEANING OF THIS SECTION. THE PRESUMPTION ESTABLISHED BY THIS SUBDIVISION IS REBUTTABLE BY EVIDENCE TENDING TO SHOW THAT THE OPERATOR WAS NOT SENDING OR COMPOSING A TEXT MESSAGE.

S 3. This act shall take effect on the first of November next succeeding the date on which it shall have become a law.