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

2453

2009-2010 Regular Sessions

I N  A S S E M B L Y

January 16, 2009

Introduced by M. of A. ORTIZ, KOON, FIELDS, SCHROEDER, GALEF, MILLMAN, MAISEL, SCHIMEL, SPANO -- Multi-Sponsored by -- M. of A. DelMONTE -- read once and referred to the Committee on Transportation

AN ACT to amend the vehicle and traffic law and the insurance law, in relation to prohibiting the writing, sending or reading of text messages on a mobile telephone while driving

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

Section 1. Paragraph (d) of subdivision 1 of section 1225-c of the vehicle and traffic law, as added by chapter 69 of the laws of 2001, is amended and a new paragraph (h) is added to read as follows:

(d) "Hand-held mobile telephone" shall mean a mobile telephone OR PORTABLE ELECTRONIC DEVICE with which a user engages in a call OR WRITES, SENDS OR READS A TEXT MESSAGE using at least one hand, PROVIDED THAT THE TERM "HAND-HELD MOBILE TELEPHONE" SHALL NOT INCLUDE VEHICLE-INTEGRATED VOICE-ACTIVATED DEVICES.

(H) "WRITE, SEND OR READ A TEXT MESSAGE" SHALL MEAN THE MANUAL ENTRY OR RETRIEVAL OF A TEXT-BASED MESSAGE COMMONLY REFERRED TO AS A TEXT MESSAGE, INSTANT MESSAGE, ELECTRONIC MESSAGE OR EMAIL, TO COMMUNICATE WITH ANY PERSON OR DEVICE.

S 2. Paragraph (a) of subdivision 2 and subdivision 3 of section 1225-c of the vehicle and traffic law, as added by chapter 69 of the laws of 2001, are amended to read as follows:

(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 PORTABLE ELECTRONIC DEVICE to engage in a call OR WRITE, SEND OR READ A TEXT MESSAGE while such vehicle is in motion.

3. Subdivision two of this section shall not apply to (a) the use of a mobile telephone OR PORTABLE ELECTRONIC 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

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

LBD03408-01-9

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.

S 3. Subdivision 4 of section 502 of the vehicle and traffic law is amended by adding a new paragraph (c-3) to read as follows:

(C-3) "CELL PHONE SAFETY" COMPONENT. THE COMMISSIONER SHALL PROVIDE IN THE PRE-LICENSING COURSE, SET FORTH IN PARAGRAPH (B) OF THIS SUBDIVISION A MANDATORY COMPONENT IN THE "CELL PHONE SAFETY" COMPONENT AS A PREREQ-UISITE FOR OBTAINING A LICENSE TO OPERATE A MOTOR VEHICLE. THE PURPOSE OF THE COMPONENT IS TO EDUCATE PROSPECTIVE LICENSEES OF THE POTENTIAL DANGERS OF DRIVING WHILE USING A CELL PHONE. FOR THE PURPOSES OF THIS PARAGRAPH, "CELL PHONE" SHALL BE DEFINED AS A HAND-HELD MOBILE TELEPHONE WITH WHICH A USER ENGAGES A CALL OR WRITES, SENDS OR READS A TEXT-BASED COMMUNICATION USING AT LEAST ONE HAND AS DEFINED IN PARAGRAPH (H) OF SUBDIVISION ONE OF SECTION TWELVE HUNDRED TWENTY-FIVE-C OF THIS CHAPTER. THE COMMISSIONER SHALL ESTABLISH A CURRICULUM FOR SUCH "CELL PHONE SAFE-TY" COMPONENT WHICH SHALL INCLUDE, BUT NOT BE LIMITED TO, INFORMATION ON THE LAW RELATED TO DRIVING WHILE USING A CELL PHONE, THE PENALTIES FOR USING A CELL PHONE WHILE DRIVING AND THE POTENTIAL DANGERS OF DISTRACTED DRIVERS. IN DEVELOPING SUCH CURRICULUM, THE COMMISSIONER SHALL CONSULT WITH LAW ENFORCEMENT PERSONNEL, HIGHWAY SAFETY OFFICIALS AND ANY OTHER GROUP THE COMMISSIONER BELIEVES CAN CONTRIBUTE TO A COMPREHENSIVE STATE-MENT OF THE ISSUE.

S 4. Paragraphs (a), (b) and (d) of subdivision 4 of section 502 of the vehicle and traffic law, as amended by chapter 585 of the laws of 2002, are amended to read as follows:

(a) (i) Upon submission of an application for a driver's license, the applicant shall be required to take and pass a test, or submit evidence of passage of a test, with respect to the laws relating to traffic, the laws relating to driving while ability is impaired and while intoxicat-ed, under the overpowering influence of "Road Rage", [or] "Work Zone Safety" awareness as defined by the commissioner OR "CELL PHONE SAFETY" AS DEFINED BY THE COMMISSIONER, the ability to read and comprehend traf-fic signs and symbols and such other matters as the commissioner may prescribe, and to satisfactorily complete a course prescribed by the commissioner of not less than four hours and not more than five hours, consisting of classroom driver training and highway safety instruction or the equivalent thereof. Such test shall include at least seven writ-ten questions concerning the effects of consumption of alcohol or drugs on the ability of a person to operate a motor vehicle and the legal and financial consequences resulting from violations of section eleven hundred ninety-two of this chapter, prohibiting the operation of a motor vehicle while under the influence of alcohol or drugs. Such test shall include one or more written questions concerning the devastating effects of "Road Rage" on the ability of a person to operate a motor vehicle and the legal and financial consequences resulting from assaulting, threat-ening or interfering with the lawful conduct of another person legally using the roadway. Such test shall include one or more questions concerning the potential dangers to persons and equipment resulting from the unsafe operation of a motor vehicle in a work zone. SUCH TEST SHALL INCLUDE ONE OR MORE WRITTEN QUESTIONS RELATING TO THE HAZARDS AND LEGAL CONSEQUENCES OF DRIVING WHILE USING A CELL PHONE. Such test shall be

administered by the commissioner. The commissioner shall cause the applicant to take a vision test and a test for color blindness. Upon passage of the vision test, the application may be accepted and the application fee shall be payable.

(ii) The commissioner shall promulgate rules and regulations establishing eligibility standards for the taking and passing of knowledge tests in other than written form.

(b) Upon successful completion of the requirements set forth in paragraph (a) of this subdivision which shall include an alcohol and drug education component as described in paragraph (c) of this subdivision, a "Road Rage" awareness component as described in paragraph (c-1) of this subdivision and a "Work Zone Safety" awareness component as described in paragraph (c-2) of this subdivision AND A "CELL PHONE SAFETY" COMPONENT AS DESCRIBED IN PARAGRAPH (C-3) OF THIS SUBDIVISION, the commissioner shall cause the applicant to take a road test in a representative vehicle of a type prescribed by the commissioner which shall be appropriate to the type of license for which application is made, except that the commissioner may waive the road test requirements for certain classes of applicants. The commissioner shall have the power to establish a program to allow persons other than employees of the department to conduct road tests in representative vehicles when such tests are required for applicants to obtain a class A, B or C license. If she chooses to do so, she shall set forth her reasons in writing and conduct a public hearing on the matter. She shall only establish such a program after holding the public hearing.

(d) The commissioner shall make available for distribution upon registration at each location where the pre-licensing course will be given, instructional handbooks outlining the content of the entire curriculum of the pre-licensing course including the information required to be included in the course pursuant to paragraphs (c), (c-1) [and], (c-2) AND (C-3) of this subdivision. The commissioner shall also provide for the additional training of the instructors necessary for the competent instruction of the alcohol and drug education and "Road Rage" awareness [and], "Work Zone Safety" awareness, AND "CELL PHONE SAFETY" subject matters of the pre-licensing course.

S 5. Subsection (a) of section 2336 of the insurance law, as amended by chapter 751 of the laws of 2005, is amended to read as follows:

(a) Any schedule of rates or rating plan for motor vehicle liability and collision insurance submitted to the superintendent shall provide for an appropriate reduction in premium charges for any insured for a three year period after successfully completing a motor vehicle accident prevention course, known as the national safety council's defensive driving course, or any driver improvement course approved by the department of motor vehicles as being equivalent to the national safety council's defensive driving course, provided that, except as provided in article twelve-C of the vehicle and traffic law, there shall be no reduction in premiums for a self instruction defensive driving course or a course which does not provide for actual classroom instruction for a minimum number of hours as determined by the department of motor vehicles. Such reduction in premium charges shall be subsequently modified to the extent appropriate, based upon analysis of loss experience statistics and other relevant factors. All such accident prevention courses shall be monitored by the department of motor vehicles and shall include components of instruction in "Road Rage" awareness [and], in "Work Zone Safety" awareness AND "CELL PHONE SAFETY" as defined by the commissioner of motor vehicles. The provisions of this section shall not

apply to attendance at a program pursuant to article twenty-one of the vehicle and traffic law as a result of any traffic infraction.

S 6. Subsection (a) of section 2336 of the insurance law, as amended by chapter 585 of the laws of 2002, is amended to read as follows:

(a) Any schedule of rates or rating plan for motor vehicle liability and collision insurance submitted to the superintendent shall provide for an appropriate reduction in premium charges for any insured for a three year period after successfully completing a motor vehicle accident prevention course, known as the national safety council's defensive driving course, or any driver improvement course approved by the department of motor vehicles as being equivalent to the national safety council's defensive driving course, provided that in either event there shall be no reduction in premiums for a self instruction defensive driving course or a course which does not provide for actual classroom instruction for a minimum number of hours as determined by the department of motor vehicles. Such reduction in premium charges shall be subsequently modified to the extent appropriate, based upon analysis of loss experience statistics and other relevant factors. All such accident prevention courses shall be monitored by the department of motor vehicles and shall include components of instruction in "Road Rage" awareness [and], in "Work Zone Safety" awareness AND "CELL PHONE SAFETY" as defined by the commissioner of motor vehicles. The provisions of this section shall not apply to attendance at a program pursuant to article twenty-one of the vehicle and traffic law as a result of any traffic infraction.

S 7. This act shall take effect on the one hundred eightieth day after it shall have become a law, provided that the amendments to subsection (a) of section 2336 of the insurance law made by section five of this act shall be subject to the expiration and reversion of such subsection as provided in section 5 of chapter 751 of the laws of 2005, as amended, when upon such date section six of this act shall take effect.