STATE OF NEW YORK

11284

IN ASSEMBLY

July 25, 2018

Introduced by COMMITTEE ON RULES -- (at request of M. of A. Ortiz) -- read once and referred to the Committee on Transportation

AN ACT to amend the vehicle and traffic law, in relation to enacting the non-motion under the influence of electronics act

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

Section 1. Short title. This act shall by known and may be cited as the "non-motion under the influence of electronics act".

§ 2. Paragraph (b) of subdivision 2, and subdivisions 3, 4, and 6 of section 1225-d of the vehicle and traffic law, paragraph (b) of subdivision 2 as amended by section 8 and subdivision 4 as amended by section 10 of part C of chapter 58 of the laws of 2013, subdivision 3 as added by chapter 403 of the laws of 2009, and subdivision 6 as amended by section 7 of part B of chapter 55 of the laws of 2014, are amended to read as follows:

(b) "Using" shall mean holding a portable electronic device while viewing, taking or transmitting images **or videos**, playing games, **inputting information into a music app or GPS-based navigation app** or, for the purpose of present or future communication: performing a command or request to access a world wide web page, composing, sending, reading, viewing, accessing, browsing, transmitting, saving or retrieving e-mail, text messages, instant messages, or other electronic data. **"Using" shall not mean operating a portable electronic device by a voice command system which requires no physical touching of such device.**

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**, (c) the operator of a vehicle that is legally parked**.

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

LBD16380-01-8

4. A person who holds a portable electronic device in a conspicuous manner while operating a motor vehicle or while operating a commercial motor vehicle on a public highway including while temporarily stationary because of traffic, [~~a~~] **stopped at a traffic light, stop sign, railroad crossing or any other** traffic control device, or other momentary delays but not including when such commercial motor vehicle is stopped at the side of, or off, a public highway in a location where such vehicle is not otherwise prohibited from stopping by law, rule, regulation or any lawful order or direction of a police officer is presumed to be using such device, except that a person operating a commercial motor vehicle while using a portable electronic device when such vehicle is stopped at the side of, or off, a public highway in a location where such vehicle is not otherwise prohibited from stopping by law, rule, regulation or any lawful order or direction of a police officer shall not be presumed to be using such device. The presumption established by this subdivision is rebuttable by evidence tending to show that the operator was not using the device within the meaning of this section.

6. **(a)** A violation of this section shall be a traffic infraction and shall be punishable by a fine of not less than fifty dollars nor more than two hundred dollars upon conviction of a first violation; upon conviction of a second violation, both of which were committed within a period of eighteen months, such violation shall be punished by a fine of not less than fifty dollars nor more than two hundred fifty dollars; upon conviction of a third or subsequent violation, all of which were committed within a period of eighteen months, such violation shall be punished by a fine of not less than fifty dollars nor more than four hundred fifty dollars.

(b) Notwithstanding any other provision of this section, a violation of this section that occurs when the operator is temporarily stationary because of traffic, stopped at a traffic light, stop sign, railroad crossing or another traffic control device shall be a traffic infraction and shall be punishable by a fine of fifty dollars and one point against such person's drivers license upon conviction of a first violation; upon conviction of a second violation, both of which were committed within a period of eighteen months, such violation shall be punished by a fine of one hundred dollars and two points against such person's license; upon conviction of a third or subsequent violation, all of which were committed within a period of eighteen months, such violation shall be punished by a fine of one hundred fifty dollars and three points against such person's drivers license.

§ 3. This act shall take effect immediately.