STATE OF NEW YORK

2435

2017-2018 Regular Sessions

IN ASSEMBLY

January 20, 2017

Introduced by M. of A. DINOWITZ, GALEF, ORTIZ, QUART -- Multi-Sponsored by -- M. of A. GOTTFRIED -- read once and referred to the Committee on Transportation

AN ACT to amend the vehicle and traffic law, in relation to prohibiting the use of a portable electronic device while operating a bicycle and to prohibit local governments from regulating the use of portable electronic devices by bicycle operators; and providing for the repeal of certain provisions upon expiration thereof

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

Section 1. The vehicle and traffic law is amended by adding a new section 1238-a to read as follows:

§ 1238-a. Use of portable electronic devices; prohibited. 1. For the purposes of this section, the following terms shall mean:

(a) "Portable electronic device" shall mean any 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, or any other electronic device when used to input, write, send, receive, or read text for present or future communication.

(b) "Using" shall mean holding a portable electronic device to, or in the immediate proximity of, the user's ear; or their hand while viewing, taking or transmitting images, playing games, 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, telephone calls, or other electronic data.

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

(d) "Hands-free mobile telephone" shall mean a mobile telephone that has an internal feature or function, or that is equipped with an attach-

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

LBD03179-01-7

ment 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.

(e) "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.

(f) "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.

2. (a) Except as otherwise provided in this section, no person shall operate a bicycle upon a public highway, bicycle lane or roadway while using a portable electronic device to engage in a call while such bicycle is in motion.

(b) An operator of a bicycle who holds a portable electronic device to, or in the immediate proximity of his or her ear while such bicycle 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 portable electronic device, unless otherwise provided by law.

3. Subdivision two of this section shall not apply to (a) cities having a population of more than one million, (b) 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, physician's office or health clinic; an ambulance company or corps; a fire department, district or company; or a police department, (c) any of the following persons while in the performance of their official duties: officers or employees of any federal, state, or city law enforcement agency; 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, (d) the use of a hands-free mobile telephone or a portable electronic device in a voice activated mode, or (e) the use of a portable electronic device while remaining in a stationary position during such use.

4. It shall be a traffic infraction to violate the provisions of subdivision two of this section punishable by a civil penalty of not more than fifty dollars. Notwithstanding the foregoing, a person shall not be liable for a civil penalty for a first violation of subdivision two of this section unless damage to real property or the personal property of another or personal injury was caused due to an incident involving a bicycle operated by such a person at the time of such first violation. In addition, any person who violates any provision of subdivision two of this section more than once within any eighteen month period shall be subject to the imposition of an additional civil penalty of not less than fifty dollars nor more than two hundred dollars.

§ 2. Except as otherwise provided in section one of this act, no municipal corporation, as defined in section 2 of the general municipal law, shall, after June 1, 2017, enact any local law, ordinance or code relating to the operation of a bicycle while using a portable electronic device unless the terms of such law, ordinance or code are identical to section 1238-a of the vehicle and traffic law, as added by section one of this act. The provisions of this act shall invalidate and preempt any

such local law, ordinance or code, enacted after June 1, 2017 unless the terms of such law, ordinance or code are identical to section 1238-a of the vehicle and traffic law, as added by section one of this act.

§ 3. The provisions of this act shall preempt any local law, ordinance, code, rule or regulation relating to the operation of a bicycle while using a portable electronic device, except that nothing in this act shall preclude any state or local agency, which, by permit, license or registration regulates the business or professional activities of individuals from imposing more stringent restrictions than provided in this act for the use of portable electronic devices upon such individuals during the course of engaging in the business or professional activity that is the subject of such agency's permit, license or registration.

§ 4. For the purpose of informing and educating persons who operate bicycles in this state, any law enforcement official authorized to issue appearance tickets pursuant to the vehicle and traffic law may, during the period commencing November 1, 2017 and ending November 30, 2017, stop a bicyclist and issue verbal warnings to persons who would be in violation of the provisions of section 1238-a of the vehicle and traffic law, as added by section one of this act, were the provisions thereof effective on the day such warning is issued.

§ 5. The court shall waive any fine for which a person who violates the provisions of section 1238-a of the vehicle and traffic law, as added by section one of this act, would be liable if such person supplies the court with proof that, between the date on which he or she is charged with having violated such section and the appearance date for such violation, he or she possesses a hands-free mobile telephone as defined in paragraph (d) of subdivision 1 of section 1238-a of the vehicle and traffic law, as added by section one of this act; provided, however, that such waiver of fine shall not apply to a second or subsequent violation under such section.

§ 6. This act shall take effect immediately, except that sections one, three and five of this act shall take effect December 1, 2017; section two shall expire and be deemed repealed December 1, 2017; section four of this act shall take effect November 1, 2017 and shall expire and be deemed repealed December 1, 2017; and section five of this act shall expire and be deemed repealed March 1, 2018.