STATE OF NEW YORK

2687--A

2019-2020 Regular Sessions

IN SENATE

January 28, 2019

Introduced by Sens. MAYER, BIAGGI, CARLUCCI, HARCKHAM -- read twice and ordered printed, and when printed to be committed to the Committee on Transportation -- reported favorably from said committee and committed to the Committee on Finance -- 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 creating a pilot program for the field testing of mobile telephones or portable electronic devices by local police departments in Westchester county; and providing for the repeal of such 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 1225-e to read as follows:

§ 1225-e. Pilot program for field testing of mobile telephones and portable electronic devices. 1. Purpose. For the county of Westchester, the commissioner shall authorize a two year pilot program for such county to allow local police departments to field test mobile telephones and portable electronic devices following an accident or collision involving damage to real or personal property, personal injury or death. The commissioner shall not require any police department to participate in such program.

2. Definitions. For the purposes of this section:

(a) "Field testing" shall mean the use of an electronic scanning device:

(1) approved and utilized in accordance with rules jointly promulgated by the commissioner and the commissioner of criminal justice services;

(2) approved and certified for use by Westchester county;

(3) used only to scan the log records on the mobile telephone or portable electronic device of the operator of the motor vehicle to determine whether or not the operator of a motor vehicle was using a mobile tele-

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

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phone or a portable electronic device in violation of section twelve hundred twenty-five-c or twelve hundred twenty-five-d of this article, provided, however, that such use of an electronic scanning device shall be limited to a search of log records that have been activated by typing or swiping actions on a mobile telephone or electronic portable device in the prior sixty minutes in determining whether the operator of a motor vehicle was using a mobile telephone or portable electronic device in violation of either such section at or near the time of the accident or collision which provides the grounds for such testing. No such electronic scan shall access, collect or store user data or the content or origin of any communication or game conducted, or image or electronic data viewed, on a mobile telephone or portable electronic device.

(b) "Log records" shall mean the log records of keyboard usage, activity logs and applications logs for mobile telephones and portable electronic devices. For the purposes of this section, log records shall include only log records which have been activated by typing or swiping a mobile telephone or portable electronic device, and shall not include any log records that were activated by Bluetooth or voice activation technology.

(c) "Mobile telephone" shall mean a mobile telephone as defined in paragraph (a) of subdivision one of section twelve hundred twenty-five-c of this article.

(d) "Portable electronic device" shall mean a portable electronic device as defined in paragraph (a) of subdivision two of section twelve hundred twenty-five-d of this article.

(e) "User data" shall mean text messages, contacts, call history, pictures, videos, files, contents of databases, contents of applications, names of applications or deleted data.

(f) "Using" shall mean:

(1) for the purposes of mobile telephones, as defined in paragraph (c) of subdivision one of section twelve hundred twenty-five-c of this article; and

(2) for the purposes of portable electronic devices, as defined in paragraph (b) of subdivision two of section twelve hundred twenty-five-d of this article.

3. Scope of field testing. (a) Every person operating a motor vehicle which has been involved in an accident or collision involving damage to real or personal property, personal injury or death, and who has in his or her possession at or near the time of such accident or collision, a mobile telephone or personal electronic device, shall at the request of a police officer, submit his or her mobile telephone and/or portable electronic device to the police officer solely for the purpose of field testing such mobile telephone and/or portable electronic device. If such field testing determines that the operator of the motor vehicle was using his or her mobile telephone or portable electronic device in violation of section twelve hundred twenty-five-c or twelve hundred twenty-five-d of this article, the results of such testing shall constitute evidence of any such violation.

(b) The department, Westchester county and any police departments and their respective agents participating in the pilot program authorized by this section may store log records collected during electronic scans and use such log records only to determine the accuracy of field testing and the prevalence of violations of section twelve hundred twenty-five-c or twelve hundred twenty-five-d of this article. No user data may be collected or stored by the department, Westchester county or any police

departments or their respective agents participating in the pilot program authorized by this section.

4. Report. At the conclusion of such pilot program, the commissioner in consultation with the commissioner of criminal justice services shall assess the program and submit a report to the legislature and the governor, which shall include, but not be limited to, the impact of the program on reducing traffic accidents, the amount of phones tested, and data analyzing the cost, efficiency, and accuracy of the field testing.

5. Participation. Participation in the pilot program for the county of Westchester shall be optional and subject to participation guidelines established by the commissioner.

§ 2. This act shall take effect on the ninetieth day after it shall have become a law and shall expire and be deemed repealed two years after such date.