§ 1225-c. Use of mobile telephones. 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. § 20.3.

(c) "Using" shall mean (i) holding a mobile telephone to, or in the immediate proximity of, the user's ear; and (ii) with respect to a person operating a commercial motor vehicle, holding a mobile telephone to, or in the immediate proximity of, the user's ear, or dialing or answering a mobile telephone by pressing more than a single button, or reaching for a mobile telephone in a manner that requires such person to maneuver so that he or she is no longer in a seated driving position, restrained by a seat belt that is installed in accordance with section 393.93 of title 49 of the code of federal regulations and adjusted in accordance with the vehicle manufacturer's instructions.

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

(e) "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. Provided, however, that for purposes of this section, a mobile telephone used by a person operating a commercial motor vehicle shall not be deemed a "hands-free mobile telephone" when such person dials or answers such mobile telephone by pressing more than a single button.

(f) "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) "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.

(h) "Commercial motor vehicle" shall have the same meaning as such term is defined by subdivision four-a of section two of the transportation law.

(i) "Motor carrier" shall have the same meaning as such term is defined by subdivision seventeen of section two of the transportation law.

2. (a) Except as otherwise provided in this section, no person shall operate a motor vehicle upon a public highway while using a mobile telephone to engage in a call while such vehicle is in motion; provided, however, that no person shall operate a commercial motor vehicle while using a mobile telephone to engage in a call on a public highway including while temporarily stationary because of traffic, a traffic control device, or other momentary delays. Provided further, however, that a person shall not be deemed to be operating a commercial motor vehicle while using a mobile telephone to engage in a call on a public highway 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.

(b) An operator of any motor vehicle who holds a mobile telephone to, or in the immediate proximity of, his or her ear while such vehicle is in motion is presumed to be engaging in a call within the meaning of this section; provided, however, that an operator of a commercial motor vehicle who holds a mobile telephone to, or in the immediate proximity of, his or her ear while such vehicle is temporarily stationary because of traffic, a traffic control device, or other momentary delays is also presumed to be engaging in a call within the meaning of this section except that a person operating a commercial motor vehicle while using a mobile telephone to engage in a call 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 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 mobile telephone, unless otherwise provided by law.

(d) No motor carrier shall allow or require its drivers to use a hand-held mobile telephone while operating a commercial motor vehicle as provided in this section.

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

4. A violation of subdivision two 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.