§ 1225-d. Use of portable electronic devices. 1. Except as otherwise provided in this section, no person shall operate a motor vehicle while using any portable electronic device while such vehicle is in motion; provided, however, that no person shall operate a commercial motor vehicle while using any portable electronic device 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 portable electronic device 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.

1-a. No motor carrier shall allow or require its drivers to use a portable electronic device while operating a commercial motor vehicle as provided in this section.

2. For the purposes of this section, the following terms shall have the following meanings:

(a) "Portable electronic device" shall mean any hand-held mobile telephone, as defined by subdivision one of section twelve hundred twenty-five-c of this article, 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 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, or other electronic data.

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

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

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.

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 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.

5. 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.

6. 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.