



BARBARA J. FIALA  
Commissioner

# STATE OF NEW YORK DEPARTMENT OF MOTOR VEHICLES

6 EMPIRE STATE PLAZA, ALBANY, NY 12228

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Albany, New York

October 21, 2013

TO: All Enforcement Agencies and Magistrates

SUBJECT: New Requirements for Operators of Commercial Motor Vehicles Regarding  
the Use of Cell Phones and Texting Devices

Effective October 28, 2013, Chapter 58 of the Laws of 2013 amends sections 1225-c and 1225-d of the Vehicle and Traffic Law regarding the use of mobile telephones and portable electronic devices by operators of commercial motor vehicles (CMVs) as follows:

- The operator of a CMV is deemed to be "using" a mobile telephone when such person presses more than a single button to dial or answer the phone. Any mobile telephone used in such a manner by the operator of a CMV is not deemed to be a "hands-free device".
- The operator of a CMV is prohibited from using a mobile telephone or a portable electronic device while the vehicle is temporarily stationary because of traffic, a traffic control device, or other momentary delays, and doing so creates a presumption that the vehicle operator is engaged in a call. Instead, the operator must pull to the side of or off the public highway to use the phone or texting device.
- The operator of a CMV who holds a portable electronic device in a conspicuous manner while the vehicle is temporarily stationary because of traffic, a traffic control device, or other momentary delays is presumed to be using the device.
- A motor carrier may not allow or require its drivers to use hand-held mobile telephones or portable electronic devices while driving a CMV.

- The definition of “portable electronic device” is expanded to include, in addition to those devices currently listed, “any other electronic device when used to input, write, send, receive or read text for present or future communication.
- Convictions for using a hand-held mobile telephone or a portable electronic device while operating a CMV are considered “serious traffic violations”, resulting in mandatory suspension of a CDL.
- The law takes effect on October 28, 2013, and applies to violations committed on or after such date.

A copy of Chapter 58 is attached. Please share this information with appropriate staff, including all road patrol enforcement officers.

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Attachment

LAWS OF NEW YORK, 2013

CHAPTER 58

PART C

Section 1. Paragraph (a) of subdivision 4 of section 510-a of the vehicle and traffic law, as amended by section 14 of part E of chapter 60 of the laws of 2005, is amended to read as follows:

(a) A serious traffic violation shall mean operating a commercial motor vehicle in violation of any provision of this chapter or the laws or ordinances of any other state or locality outside of this state that restricts or prohibits the use of a hand-held mobile telephone or a portable electronic device while operating a commercial motor vehicle or in violation of any provision of this chapter or the laws of any other state, the District of Columbia or any Canadian province which (i) limits the speed of motor vehicles, provided the violation involved fifteen or more miles per hour over the established speed limit; (ii) is defined as reckless driving by state or local law or regulation; (iii) prohibits improper or erratic lane change; (iv) prohibits following too closely; (v) relates to motor vehicle traffic (other than parking, standing or stopping) and which arises in connection with a fatal accident; (vi) operating a commercial motor vehicle without first obtaining a commercial driver's license as required by section five hundred one of this title; (vii) operating a commercial motor vehicle without a commercial driver's license in the driver's possession; or (viii) operating a commercial motor vehicle without the proper class of commercial driver's license and/or endorsement for the specific vehicle being operated or for the passengers or type of cargo being transported.

§ 2. Paragraphs (c) and (e) of subdivision 1 of section 1225-c of the vehicle and traffic law, as added by chapter 69 of the laws of 2001, are amended to read as follows:

(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.

(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.

§ 3. Subdivision 1 of section 1225-c of the vehicle and traffic law is amended by adding two new paragraphs (h) and (i) to read as follows:

(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.

§ 4. Paragraphs (a) and (b) of subdivision 2 of section 1225-c of the vehicle and traffic law, as added by chapter 69 of the laws of 2001, are amended to read as follows:

(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 [a] 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.

§ 5. Subdivision 2 of section 1225-c of the vehicle and traffic law is amended by adding a new paragraph (d) to read as follows:

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

§ 6. Subdivision 1 of section 1225-d of the vehicle and traffic law, as added by chapter 403 of the laws of 2009, is amended to read as follows:

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 other-

wise prohibited from stopping by law, rule, regulation or any lawful order or direction of a police officer.

§ 7. Section 1225-d of the vehicle and traffic law is amended by adding a new subdivision 1-a to read as follows:

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.

§ 8. Paragraphs (a) and (b) of subdivision 2 of section 1225-d of the vehicle and traffic law, as added by chapter 403 of the laws of 2009, are amended to read as follows:

(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.

§ 9. Subdivision 2 of section 1225-d of the vehicle and traffic law is amended by adding two new paragraphs (c) and (d) to read as follows:

(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.

§ 10. Subdivision 4 of section 1225-d of the vehicle and traffic law, as amended by chapter 109 of the laws of 2011, is amended to read as follows:

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.

§ 11. This act shall take effect October 28, 2013 and shall apply to violations committed on or after such date.