

**HOUSE . . . . . No. 4466**

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**The Commonwealth of Massachusetts**

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**In the Year Two Thousand Ten**  
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AN ACT RELATIVE TO SAFE DRIVING..

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

1 SECTION 1. Section 1 of chapter 90 of the General Laws, as appearing in the 2008  
2 Official Edition, is hereby amended by inserting after the definition of “Department” the  
3 following definition:-

4 “Electronic message”, a self-contained piece of digital communication that is designed or  
5 intended to be transmitted between mobile electronic devices; provided, however, that the term  
6 electronic message shall include, but shall not be limited to, electronic mail, a text message, an  
7 instant message, a command or request to access an internet site or any message that includes a  
8 keystroke entry sent between mobile electronic devices.

9 SECTION 2. Said section 1 of said chapter 90, as so appearing, is hereby further  
10 amended by inserting after the definition of “Gross vehicle weight rating” the following  
11 definition:-

12 “Hands-free mobile telephone”, a hand-held mobile telephone that has an internal feature  
13 or function, or that is equipped with a hands-free accessory, whether or not permanently part of

14 such hand-held mobile telephone, by which a user engages in a call without the use of either  
15 hand, whether or not the use of either hand is necessary to activate, deactivate or initiate a  
16 telephone call.

17 SECTION 3. Said section 1 of said chapter 90, as so appearing, is hereby further  
18 amended by inserting after the definition of “Mobile construction crane” the following 2  
19 definitions:-

20 “Mobile electronic device”, any hand-held or portable electronic equipment capable of  
21 providing data communication between 2 or more persons including, without limitation, a mobile  
22 telephone, a text messaging device, a paging device, a personal digital assistant, a laptop  
23 computer, electronic equipment that is capable of playing a video game or digital video disk or  
24 equipment on which digital photographs are taken or transmitted, or any combination thereof, or  
25 equipment that is capable of visually receiving a television broadcast; provided, however, that  
26 mobile electronic device shall not include any audio equipment or any equipment installed or  
27 affixed, either temporarily or permanently, in a motor vehicle for the purpose of providing  
28 navigation or emergency assistance to the operator of such motor vehicle or video entertainment  
29 to the passengers in the rear seats of such motor vehicle.

30 “Mobile telephone”, a cellular, analog, wireless, satellite or digital telephone, including a  
31 mobile telephone with two-way radio functionality, capable of sending or receiving telephone  
32 communications and with which a user initiates, terminates or engages in a call using at least 1  
33 hand.

34 SECTION 4. Section 8 of said chapter 90, as so appearing, is hereby amended by  
35 inserting after the sixth paragraph the following 2 paragraphs:-

36 No person holding a junior operator's license shall use a mobile telephone, a hands-free  
37 mobile telephone or a mobile electronic device while operating a motor vehicle on any public  
38 way. For the purposes of this paragraph, a junior operator shall not be considered to be operating  
39 a motor vehicle if the vehicle is stationary and not located in a part of the roadway intended for  
40 travel.

41 A junior operator who violates the preceding paragraph shall have his license or permit  
42 suspended for 60 days for a first offense, for 180 days for a second offense and for 1 year for a  
43 third or subsequent offense. The registrar shall impose a \$500 reinstatement fee upon a junior  
44 operator who seeks to have his license reinstated following a suspension under the preceding  
45 paragraph. A junior operator whose license is suspended pursuant to this paragraph shall not be  
46 eligible for license reinstatement until he also completes a program selected by the registrar that  
47 encourages attitudinal changes in young drivers who have committed a violation of the motor  
48 vehicle laws and until he successfully completes a driving test as required by the registrar. In  
49 addition to any reinstatement fee, there shall be a surcharge of \$50, assessed against a person  
50 who seeks to have his license reinstated following a revocation or suspension under this  
51 paragraph. The first \$25 of each surcharge shall be transferred by the registrar of motor vehicles  
52 to the state treasurer for deposit into the Spinal Cord Injury Trust Fund. The remaining amount  
53 shall be transferred by the registrar to the state treasurer for deposit in the General Fund. It shall  
54 be an affirmative defense for a junior operator to produce documentary or other evidence that the  
55 use of a mobile telephone, hands-free mobile telephone or mobile electronic device that is the  
56 basis of the alleged violation was made for emergency purposes, including, but not limited to, an  
57 emergency call to a law enforcement agency, health care provider, fire department or other  
58 emergency services agency or entity.

59 SECTION 5. Said section 8 of said chapter 90, as so appearing, is hereby further  
60 amended by inserting after the word “first.”, in line 197, the following words:- An applicant for  
61 the renewal of a license 75 years of age or older shall apply for a renewal in person at a registry  
62 branch office.

63 SECTION 6. Said section 8 of said chapter 90, as so appearing, is hereby further  
64 amended by adding the following paragraph:-

65 An applicant for a license or renewal thereof appearing in person at a registry branch  
66 shall take and pass a vision test administered by the registry; provided, however, that except as  
67 required by the registrar in regulations, said applicant may provide a vision screening certificate  
68 to demonstrate compliance with the minimum visual standards to obtain and hold a license.

69 SECTION 7. Said chapter 90 is hereby further amended by inserting after section 8C the  
70 following new section:-

71 Section 8C½. (a) For the purposes of this section the following word shall, unless the  
72 context clearly requires otherwise, have the following meaning:

73 “Health care provider”, a physician, optometrist, ophthalmologist, osteopath,  
74 chiropractor, podiatrist, registered nurse or physician assistant licensed in accordance with the  
75 provisions of chapter 112 or otherwise authorized or permitted by law to administer health care  
76 in the commonwealth.

77 (b) A health care provider may report to the registrar every patient 16 years of age or  
78 older who has a cognitive or functional impairment that the health care provider reasonably  
79 believes will affect that person’s ability to safely operate a motor vehicle. Determinations

80 regarding a person's ability to safely operate a motor vehicle may not be based solely on the  
81 diagnosis of a medical condition or cognitive or functional impairment, but must be based on the  
82 actual effect of that condition or impairment on the person's ability to safely operate a motor  
83 vehicle.

84 (c) The commissioner of public health shall, in consultation with the registrar and with  
85 experts on cognitive or functional impairments, with medical experts and with the medical  
86 advisory board established pursuant to section 8C, promulgate regulations designating the  
87 cognitive or functional impairments that are likely to affect a person's ability to safely operate a  
88 motor vehicle.

89 (d) A report made by a health care provider pursuant to subsection (a) shall be upon a  
90 form prescribed or provided by the registrar. Each report shall include the person's name,  
91 address, date of birth, sex and a description of how the person's current medical status affects the  
92 person's ability to safely operate a motor vehicle. The registrar shall consider this information in  
93 determining whether to issue or suspend a license to operate a motor vehicle.

94 (e) If a health care provider makes a report pursuant to this section to the registrar in good  
95 faith, that person shall be immune from civil liability that might otherwise result from making  
96 the report. If a health care provider does not make a report, that person shall be immune from  
97 civil liability that might otherwise result from not making the report.

98 (f) Reports filed under this section shall be confidential and shall be used by the registrar  
99 only to determine the qualifications of persons to operate motor vehicles; provided, however,  
100 that a person who is the subject of a report filed under this section shall have access to that report  
101 upon written request.

102 SECTION 8. Said chapter 90 is hereby further amended by inserting after section 12 the  
103 following new section:-

104 Section 12A. (a) No operator of a vehicle or vessel used in public transportation,  
105 including a train, passenger bus, passenger ferry boat, water shuttle or other equipment owned  
106 by, or operated under the authority of the Massachusetts bay transportation authority, a regional  
107 transit authority established in chapter 161B, the Woods Hole, Martha's Vineyard & Nantucket  
108 steamship authority, Massachusetts port authority, the Massachusetts department of  
109 transportation or a privately-owned transportation company or a school bus or other vehicle used  
110 to transport pupils shall use a mobile telephone, hands-free mobile telephone or other mobile  
111 electronic device while operating such vehicle or vessel; provided, however, that this section  
112 shall not apply to the operator of a public safety vehicle utilizing a mobile telephone, hands-free  
113 mobile telephone or other mobile electronic device in the performance of his official duties.

114 (b) Whoever violates this section shall be punished by a fine of \$500. A violation of this  
115 section shall be a moving violation for purposes of the safe driver insurance plan under section  
116 113B of chapter 175.

117 (c) In addition to any other provision or penalty of law, whoever violates this section and  
118 is found to be in an at-fault accident as a proximate result of using a mobile telephone or mobile  
119 electronic device for electronic messaging while operating a moving motor vehicle shall be  
120 considered to have operated the motor vehicle in a reckless manner and shall be subject to the  
121 provisions and penalties in paragraph (a) of subdivision (2) of section 24.

122 (d) It shall be an affirmative defense for an operator under this section to produce  
123 documentary or other evidence that the use of a mobile telephone, hands-free mobile telephone

124 or other mobile electronic device that is the basis of the alleged violation was made for  
125 emergency purposes, including, but not limited to, an emergency call to a law enforcement  
126 agency, health care provider, fire department or other emergency services agency or entity.

127 SECTION 9. Section 13 of said chapter 90, as so appearing, is hereby amended by  
128 inserting after the words “or mobile telephone”, in line 6, the following words:- , except as  
129 provided for in sections 8, 12A and 13B,.

130 SECTION 10. Said chapter 90 is hereby further amended by inserting after section 13A  
131 the following section:-

132 Section 13B. (a) No operator of a motor vehicle shall use a mobile telephone, mobile  
133 electronic device or other device capable of accessing the internet to compose, send or read an  
134 electronic message while operating such vehicle. For the purposes of this section, an operator  
135 shall not be considered to be operating a motor vehicle if the vehicle is stationary and not located  
136 in a part of the roadway intended for travel.

137 (b) Whoever violates this section shall be punished by a fine of \$100 for a first offense,  
138 by a fine of \$250 for a second offense and by a fine of \$500 for a third or subsequent offense. A  
139 violation of this section shall be considered a moving violation for purposes of the safe driver  
140 insurance plan under section 113B of chapter 175.

141 (c) In addition to any other provision or penalty of law, whoever violates this section and  
142 is found to be in an at-fault accident as a proximate result of using a mobile telephone or mobile  
143 electronic device for electronic messaging while operating a moving motor vehicle shall be  
144 considered to have operated the motor vehicle in a reckless manner and shall be subject to the  
145 provisions and penalties in paragraph (a) of subdivision (2) of section 24.

146 (d) It shall be an affirmative defense for an operator to produce documentary or other  
147 evidence that the use of a mobile telephone or other mobile electronic device that is the basis of  
148 the alleged violation was made for emergency purposes including, but not limited to, an  
149 emergency call to a law enforcement agency, health care provider, fire department or other  
150 emergency services agency or entity.

151 SECTION 11. Section 24 of said chapter 90, as so appearing, is hereby amended by  
152 inserting after the words “motor vehicle”, in line 730, the following words:- or whoever as a  
153 proximate result of violating the provisions of sections 12A and 13B is in an at-fault accident,.

154 SECTION 12. The registrar of motor vehicles, in cooperation with the highway safety  
155 division, shall develop and implement a public awareness campaign for both junior and adult  
156 drivers which shall include, but shall not be limited to, the dangers and consequences of  
157 distracted driving, information on the restrictions of mobile telephone and mobile electronic  
158 device use while operating a motor vehicle pursuant to sections 8, 12A and 13B and information  
159 on the fines and punishments which may be imposed for violations of said sections 8, 12A and  
160 13B. The campaign shall commence no later than July 1, 2010.

161 SECTION 13. Notwithstanding any general or special law to the contrary, the second  
162 sentence of subsection (b) of section 12A of chapter 90 of the General Laws, inserted by section  
163 8, and the second sentence of subsection (b) of section 13B of said chapter 90, inserted by  
164 section 10, shall take effect 6 months after passage of this act.