

SENATE No. 2305

The Commonwealth of Massachusetts

In the Year Two Thousand Ten

An Act Text of the Senate amendment to the House Bill relative to safe driving H4475.

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 is hereby amended by
2 inserting after the definition of “Department”, as appearing in the 2008 Official Edition, the
3 following definition:-

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

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

11 “Mobile telephone”, a handheld or portable cellular, analog, wireless, satellite or digital
12 telephone, including a telephone with 2-way radio functionality, capable of sending or receiving
13 telephone communications and with which a user initiates, terminates or engages in a call using

14 at least 1 hand. For the purposes of this chapter, “mobile telephone” shall not include amateur
15 radios operated by those licensed by the Federal Communications Commission to operate such
16 radios, or citizen band radios.

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

19 ”Voice-operated device”, a device which allows a user to compose, send or receive an
20 electronic message while operating a motor vehicle without the use of either hand except to
21 activate, deactivate or initiate a feature or function.

22 SECTION 4. Section 8 of said chapter 90 of the general laws, as so appearing, is hereby
23 amended by inserting, in line 4, after word ‘registrar’ the following words :- nor any person who
24 is an to illegal or undocumented alien.

25 SECTION 5. Said section 8 of said chapter 90, as so appearing, is hereby further
26 amended by adding the following paragraph:-

27 An applicant for a license or renewal of a license appearing in person at a registry branch
28 shall take and pass a vision test administered by the registry; provided, however, that an
29 applicant may provide a vision screening certificate signed by an optometrist or ophthalmologist
30 to demonstrate compliance with the minimum visual standards to obtain and hold a license.

31 SECTION 6. Said chapter 90 of the General Laws is hereby amended by inserting after
32 section 8L the following 2 sections:-

33 Section 8M. (a) For purposes of this section “hands-free mobile telephone” shall mean a
34 hand-held mobile telephone that has an internal feature or function, or that is equipped with a

35 hands-free accessory, whether or not permanently part of such hand-held mobile telephone, by
36 which a user engages in a call without the use of either hand, whether or not the use of either
37 hand is necessary to activate, deactivate or initiate a telephone call.

38 (b) No person under 18 years of age shall use a mobile telephone or hands-free mobile
39 telephone while operating a motor vehicle on any public way. For the purposes of this section, a
40 junior operator shall not be considered to be operating a motor vehicle if the vehicle is stationary
41 and not located in a part of the public way intended for travel.

42 A junior operator who violates the preceding paragraph shall be punished by a fine of
43 \$100 and shall have his license or permit suspended for 60 days for a first offense and shall not
44 be eligible for license reinstatement until he also completes a program selected by the registrar
45 that encourages attitudinal changes in young drivers, by a fine of \$250 and shall have his license
46 or permit suspended for 180 days for a second offense, and by a fine of \$500 and shall have his
47 license or permit suspended for 1 year for a third or subsequent offense.

48 It shall be an affirmative defense for a junior operator to produce documentary or other
49 evidence that the use of a mobile telephone that is the basis of the alleged violation was made for
50 emergency purposes. For the purpose of this section, an emergency shall mean that the junior
51 operator needed to communicate with another to report any of the following: (i) that the motor
52 vehicle was disabled; (ii) that medical attention or assistance was required; (iii) that police
53 intervention was necessary for the personal safety of the operator or a passenger; or (iv) the
54 presence of a disabled vehicle or an accident in the public way.

55 A penalty under this section shall not be a surchargeable offense under section 113B of
56 chapter 175.

57 Section 8N. (a) For purposes of this section, a "health care provider" shall be a primary
58 care physician or other treating health care professional, as defined in chapter 112, with
59 knowledge of an applicant's overall physical and cognitive abilities.

60 (b) Notwithstanding any provision of the first paragraph of section 8, an applicant for a
61 license, or the renewal of a license, age 75 or older shall apply in person. The applicant shall
62 submit an elderly driving assessment form completed by the applicant's health care provider in
63 the health care provider's professional capacity and the applicant shall submit the assessment
64 form to the registrar. The elderly driving assessment form shall assess the applicant's cognitive
65 and physical ability, including a vision test, which shall include, but not be limited to, contrast
66 sensitivity testing, and any other condition that might prevent such applicant from operating a
67 motor vehicle. The elderly driving assessment form shall be developed by the registrar in
68 consultation with the medical advisory board established in section 8C. An applicant for a
69 license renewal shall complete the form upon the expiration of 60 months from attainment of the
70 age of 75 years, and every 36 months thereafter. No license shall be issued until the registrar is
71 satisfied that the applicant is a qualified person to receive such a license. The registry shall
72 charge a fee not to exceed \$30 for purposes of this paragraph.

73 An applicant age 75 or older who, after having submitted the assessment form, has been
74 determined by the registrar not to meet the minimum cognitive, visual and physical abilities
75 required to safely operate a motor vehicle, may petition the registrar for a road test as prescribed
76 by the registrar to demonstrate the requisite driving skills necessary for licensure. Unless the
77 registrar determines that permitting the driver to take a road test would present a safety risk to
78 the general public, the driver shall be permitted to take a road test to determine proficiency

79 operating a motor vehicle. The registrar shall make a determination as to whether licensure is
80 warranted.

81 A person age 75 years or older, whose license to operate a motor vehicle has been
82 suspended or revoked by the registrar under this chapter or section 113B of chapter 175, may
83 request reconsideration by the registrar. Upon reconsideration, the registrar shall determine
84 whether the person has demonstrated that the person is capable of safely operating a motor
85 vehicle and the registrar shall issue findings to support the registrar's determinations which shall
86 be based on standards developed by the registrar, in consultation with the medical advisory
87 board.

88 Any such determination by the registrar under this section may be appealed under section
89 28.

90 With respect to any person whose license to operate a motor vehicle is not renewed under
91 this section, the registrar shall provide an identification card as provided for in section 8E.

92 SECTION 7. Said chapter 90 is hereby further amended by inserting after section 12 the
93 following section:-

94 Section 12A. (a) No operator of a vehicle or vessel used in public transportation,
95 including a train, passenger bus, school bus or other vehicle used to transport pupils, taxi,
96 passenger ferry boat, water shuttle or other equipment used in public transportation owned by, or
97 operated under the authority of the Massachusetts Bay Transportation Authority, the Woods
98 Hole, Martha's Vineyard & Nantucket Steamship Authority, Massachusetts Port Authority, or the
99 Massachusetts Department of Transportation, shall use a mobile telephone, hands-free mobile
100 telephone or other mobile electronic device while operating such vehicle or vessel. Whoever

101 violates this section shall be punished by a fine of \$500. A violation of this section shall be a
102 moving violation for purposes of the safe driver insurance plan under section 113B of chapter
103 175.

104 (b) It shall be an affirmative defense for an operator under this section to produce
105 evidence that the use of a mobile telephone that is the basis of the alleged violation was made in
106 the case of an emergency. For the purpose of this paragraph, an emergency shall mean that the
107 operator needs to communicate with another person to report any of the following: (1) that the
108 vehicle or vessel is disabled; (2) that medical attention or assistance is required on the vehicle or
109 vessel; (3) that police intervention is necessary for the personal safety of a passenger or to
110 otherwise ensure the safety of the passengers; or (4) the presence of a disabled vehicle or an
111 accident on a roadway.

112 SECTION 8. Section 13 of said chapter 90, as appearing in the 2008 Official Edition, is
113 hereby amended by striking out, in line 5, the words “citizens band” and inserting in place
114 thereof the following words:- federally licensed 2-way.

115 SECTION 9. Said chapter 90 is hereby further amended by inserting after section 13A
116 the following section:-

117 Section 13B. (a) No operator of a motor vehicle shall use a mobile telephone, or any
118 handheld device capable of accessing the internet, to manually compose, send, or read an
119 electronic message while operating a motor vehicle unless using a voice-operated device. For the
120 purposes of this section, an operator shall not be considered to be operating a motor vehicle if the
121 vehicle is stationary and not located in a part of the public way intended for travel.

122 (b) A violation of this section shall be punishable by a fine of \$100 for a first offense, by
123 a fine of \$250 for a second offense and by a fine of \$500 for a third or subsequent offense.

124 (c) A penalty under this section shall not be a surchargeable offense under section 113B of
125 chapter 175.

126 SECTION 10. Subsection (a) of section 22 of said chapter 90, as appearing in the 2008
127 Official Edition, is hereby amended by adding the following sentence:- An operator whose
128 license is suspended or revoked on suspicion of mental or physical disability shall be entitled to a
129 hearing within 3 business days, but may postpone the hearing for up to 30 days at the operator's
130 discretion.

131 SECTION 11. Subsection (b) of section 22 of said chapter 90 , as so appearing, is hereby
132 amended by adding at the end thereof the following paragraph:

133 In any hearing where an a licensee's has potential suspension or revocation is due in
134 whole or in part to the operator's physical or mental disability, the hearing shall be held within
135 14 days of the event which prompted the registrar to initiate said hearing, unless otherwise
136 agreed upon by the involved parties. The registrar will consider all written and oral submissions
137 by any interested parties at the hearing, and any and all medical evidence offered shall be made
138 public for purposes of the hearing only. Any public record of the hearing shall have any and all
139 medical evidence redacted, and any person, entity or agency present at the hearing that later
140 disseminates said medical evidence without permission from the operator shall be liable to the
141 operator for a sum of not less than \$1,000 and not more than \$5,000 for each violation under this
142 section. If a person who disseminates medical evidence offered at a hearing under this paragraph
143 without permission from the operator is an employee of the commonwealth, that person shall be

144 immediately suspended without pay from the person's position, pending a disciplinary hearing in
145 accordance with the regular procedures of the agency by which the person is employed, unless
146 the dissemination of the medical evidence was otherwise authorized or required by law. For
147 purposes of the hearing, medical evidence shall only be accepted if reported or recorded by a
148 qualified, licensed medical professional. The registrar shall notify the involved parties in writing
149 of the registrar's decision whether or not to revoke the operator's license not later than 7 days
150 after the hearing.

151 SECTION 12. Said chapter 90 is hereby further amended by inserting after Section 22H
152 the following new section:-

153 Section 22I. (a) For purposes of this section, "health care provider" shall mean a
154 registered nurse, licensed practical nurse, physician, physician assistant, psychologist,
155 occupational therapist, physical therapist, optometrist, ophthalmologist or podiatrist who is a
156 licensed health care provider under chapter 112.

157 (b) If a health care provider acting in the health care provider's professional capacity or
158 law enforcement officer has good cause to believe that an operator is not physically or medically
159 capable of safely operating a motor vehicle, the provider or officer may make a report to the
160 registrar, requesting medical evaluation, as the registrar may prescribe, provided that such report
161 is not made solely on the basis of age. The report shall state the provider's or officer's good faith
162 belief that the operator cannot safely operate a motor vehicle. In making such report to the
163 registrar, a health care provider shall disclose the medical information underlying his good faith
164 belief in his report to the registrar. The good faith belief shall be based upon personal

165 observation, physical evidence, or, in the case of a law enforcement officer, an investigation
166 which shall be described in the report.

167 A health care provider or law enforcement officer who reports, in good faith, pursuant to
168 this section shall be immune from civil liability that might otherwise result from making the
169 report. A health care provider or law enforcement officer who does not report shall be immune
170 from civil liability that might otherwise result from not making the report.

171 Upon receipt of the report, the registrar shall suspend the license of the operator. Not later
172 than 30 days after receipt of the report, the registrar shall conduct a review to determine the
173 operator's capacity for continued licensure to operator a motor vehicle. The registrar shall
174 develop standards, in consultation with the medical advisory board established under section 8C,
175 by which the determination shall be made.

176 (c) Reports to the registry under this section shall be confidential and shall be used by the
177 registrar only to determine a person's qualifications to operate a motor vehicle. All reports made
178 and all medical records reviewed and maintained by the registry under this section shall be
179 confidential, except upon order of a court of competent jurisdiction or upon the written request of
180 the respondent to examine any medical records or reports made about the respondent under this
181 section.

182 A report made under this section shall not be a public record as defined in section 7 of
183 chapter 4.

184 The registrar shall include the information about the procedures authorized in this section
185 on the electronic website of the registrar.

186 SECTION 13. Section 24 of said chapter 90, as appearing in the 2008 Official Edition, is
187 hereby amended by inserting after the word “vehicle”, in line 730, the following words:- or
188 whoever while operating a motor vehicle in violation of section 12A or section 13B, such
189 violation proved beyond a reasonable doubt, is the proximate cause of injury to any other person,
190 vehicle or property by operating the motor vehicle negligently so that the lives or safety of the
191 public might be endangered.

192 SECTION 14. Chapter 90 of the General Laws is hereby amended by striking out section
193 24G, as so appearing, and inserting in place thereof the following section:-

194 Section 24G. (a) Whoever, upon any way or in any place to which the public has a right
195 of access, or upon any way or in any place to which members of the public have access as
196 invitees or licensees, operates a motor vehicle with a percentage, by weight, of alcohol in their
197 blood of .08 or greater, or while under the influence of intoxicating liquor, or of marihuana,
198 narcotic drugs, depressants, or stimulant substances, all as defined in section 1 of chapter 94C, or
199 the vapors of glue, and so operates a motor vehicle recklessly or negligently so that the lives or
200 safety of the public might be endangered, and by any such operation so described causes the
201 death of another person, shall be guilty of homicide by a motor vehicle while under the influence
202 of an intoxicating substance, and shall be punished by imprisonment in the state prison for not
203 less than 2 ½ years nor more than 15 years and a fine of not more than \$5,000, or by
204 imprisonment in a jail or house of correction for not less than 1 year nor more than 2 ½ years and
205 a fine of not more than \$5,000. The sentence imposed upon such person shall not be reduced to
206 less than 1 year, nor suspended, nor shall a person convicted under this subsection be eligible for
207 probation, parole or furlough or receive any deduction from the person’s sentence until such
208 person has served at least 1 year of such sentence; provided, however, that the commissioner of

209 correction may, on the recommendation of the warden, superintendent or other person in charge
210 of a correctional institution or the administrator of a county correctional institution, grant to an
211 offender committed under this subsection a temporary release in the custody of an officer of such
212 institution for the following purposes only: to attend the funeral of a relative; to visit a critically
213 ill relative; to obtain emergency medical or psychiatric services unavailable at the institution; or
214 to engage in employment under a work release program. Prosecutions commenced under this
215 section shall neither be continued without a finding nor placed on file.

216 The provisions of section 87 of chapter 276 shall not apply to a person charged with a
217 violation of this subsection.

218 (b) Whoever, upon any way or in any place to which the public has a right of access or
219 upon any way or in any place to which members of the public have access as invitees or
220 licensees, operates a motor vehicle with a percentage, by weight, of alcohol in their blood of .08
221 or greater, or while under the influence of intoxicating liquor, or of marihuana, narcotic drugs,
222 depressants or stimulant substances, all as defined in section 1 of chapter 94C, or the vapors of
223 glue, or whoever operates a motor vehicle negligently so that the lives or safety of the public
224 might be endangered and by any such operation causes the death of another person, shall be
225 guilty of homicide by a motor vehicle and shall be punished by imprisonment in a jail or house
226 of correction for not less than 30 days nor more than 2 ½ years, or by a fine of not less than \$300
227 nor more than \$3,000, or both.

228 (c) Whoever, upon any way or in any place to which the public has a right of access or
229 upon any way or in any place to which members of the public have access as invitees or
230 licensees, operates a motor vehicle recklessly so that the lives or safety of the public might be

231 endangered and by any such operation causes the death of another person, shall be guilty of
232 reckless homicide by a motor vehicle and shall be punished by imprisonment in a jail or house of
233 correction for not more than 2 ½ years, or by imprisonment in the state prison for not more than
234 10 years, or by a fine of not more than \$3,000, or by both such fine and imprisonment. For the
235 purpose of this section, a person operates recklessly when he consciously disregards a substantial
236 and unjustifiable risk that the lives or safety of the public might be endangered.

237 (d) The registrar shall revoke the license or right to operate of a person convicted of a
238 violation of subsection (a), (b) or (c) of this section or punished under section 13 ½ of chapter
239 265 when a motor vehicle is the instrument of the offense for a period of 10 years after the date
240 of conviction for a first offense. The registrar shall revoke the license or right to operate of a
241 person convicted for a subsequent violation of this section for the life of such person. No appeal,
242 motion for a new trial or exceptions shall operate to stay the revocation of the license or of the
243 right to operate; provided, however, such license shall be restored or such right to operate shall
244 be reinstated if the prosecution of such person ultimately terminates in favor of the defendant.

245 SECTION 15. Section 113B of Chapter 175 of the General Laws, as so appearing, is
246 hereby amended by striking out the fourteenth paragraph and inserting in place thereof the
247 following paragraph:-

248 Upon receiving notification from the merit rating board that a driver has had 3
249 surchargeable incidents within the past 24 months, the registrar shall, after a hearing based solely
250 on the accuracy of the merit rating board's records, require the driver to participate in and
251 complete a driver education program satisfactory to the registrar. If the driver fails to provide to
252 the registrar proof of completion of the driver education program within 90 days after the

253 registrar mails to the driver notice of the requirement, the registrar shall suspend the driver's
254 license or right to operate a motor vehicle until the registrar receives proof of completion of the
255 driver education program.

256 SECTION 16. Notwithstanding any general or special law to the contrary, the registrar
257 of motor vehicles shall notify all persons whose license to operate a motor vehicle is set to expire
258 by mail, not later than 30 days before the expiration.

259 SECTION 17. Notwithstanding any general or special law to the contrary, the registrar
260 of motor vehicles shall not impose any additional fee for transactions conducted via telephone or
261 in person at any registry location in excess of those fees charged for transactions conducted via
262 the commonwealth's web portal.

263 SECTION 18. Upon revocation of a license to operate a motor vehicle under section 8 of
264 chapter 90 of the General Laws, the registrar shall provide a list of alternative means of
265 transportation options to the person whose license has been revoked. The list shall include at
266 least 1 paratransit option that is in compliance with 42 U.S.C. § 12101.

267 SECTION 19. There shall be a special commission to study the long-term alternative
268 transportation needs of senior citizens. The commission shall consist of the secretary of elder
269 affairs or the secretary's designee who shall serve as chair; the secretary of transportation or the
270 secretary's designee; the director of the office on disability or the director's designee; 1 person to
271 be appointed by the president of the senate and 1 person to be appointed by the speaker of the
272 house of representatives; and 2 persons to be appointed by the governor, 1 of whom shall be a
273 representative of the Massachusetts Chapter of American Association of Retired Persons and 1

274 of whom shall be a representative of a disability rights organization. Each member shall serve
275 without compensation.

276 The commission shall review the public transportation alternatives for seniors citizens
277 and the disabled and may develop model plans that could be utilized by municipalities, state
278 agencies and regional transportation authorities. The commission shall: (1) examine the
279 transportation needs of senior citizens in the commonwealth; (2) examine and evaluate
280 transportation services for senior citizens inside and outside of the commonwealth; (3) establish
281 best practices and evaluate programs and services available to urban, suburban and rural
282 populations; (4) evaluate regional disparities in transportation options and explore solutions to
283 those disparities; (5) provide recommendations for improvements in the management of local
284 and regional transportation services for seniors; (6) examine and develop recommendations on
285 ways in which the commonwealth and its municipalities can meet the transportation needs of
286 senior citizens for the next 15 years: and (7) examine and develop recommendations on methods
287 by which the commonwealth may meet the transportation needs of senior citizens, including, but
288 not limited to, recommendations regarding revenue sources and establishing new incentives for
289 public-private partnerships in the development of transportation services.

290 The commission may hold public hearings to assist in the collection and evaluation of
291 data and testimony.

292 The commission shall submit its findings and recommendations relative to public
293 transportation options for seniors citizens and the disabled, together with drafts of legislation
294 necessary to carry those recommendations into effect, by filing the same with the clerks of the
295 house of representatives and senate, the house and senate committees on ways and means, the

296 joint committee on elder affairs and the joint committee on transportation not later than March 1,
297 2012.

298 SECTION 20. Notwithstanding any general or special law to the contrary, section 30A½
299 of chapter 90 of the General Laws shall not apply to section 8N of chapter 90.

300 SECTION 21. Section 15 of this act shall apply to surchargeable offenses that occur on
301 or after the effective date of this act.