

# HOUSE . . . . . No.

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## The Commonwealth of Massachusetts

PRESENTED BY:

***Eugene L. O'Flaherty***

*To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:*

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

**An Act Relative to License Suspension for Breath Test Refusal.**

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Eugene L. O'Flaherty</i>	<i>2nd Suffolk</i>	<i>5/23/2012</i>
<i>Daniel B. Winslow</i>	<i>9th Norfolk</i>	<i>5/25/2012</i>
<i>Garrett J. Bradley</i>	<i>3rd Plymouth</i>	<i>5/25/2012</i>
<i>Martha M. Walz</i>	<i>8th Suffolk</i>	<i>5/29/2012</i>
<i>George N. Peterson, Jr.</i>	<i>9th Worcester</i>	<i>5/29/2012</i>
<i>Bradley H. Jones, Jr.</i>	<i>20th Middlesex</i>	<i>5/24/2012</i>
<i>Bradford Hill</i>	<i>4th Essex</i>	<i>5/24/2012</i>
<i>David M. Torrisi</i>	<i>14th Essex</i>	<i>5/29/2012</i>
<i>Colleen M. Garry</i>	<i>36th Middlesex</i>	<i>5/30/2012</i>
<i>Russell E. Holmes</i>	<i>6th Suffolk</i>	<i>6/8/2012</i>
<i>Martha Coakley</i>	<i>Attorney General</i>	

# HOUSE . . . . . No.

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By Mr. O'Flaherty of Chelsea, a petition (subject to Joint Rule 12) of Eugene L. O'Flaherty, Martha M. Coakley and others relative to the suspension of driver's licenses for refusing to take a breathalyzer test. Transportation.

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## The Commonwealth of Massachusetts

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In the Year Two Thousand Twelve  
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An Act Relative to License Suspension for Breath Test Refusal.

*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: Subsection (1)(d) of section 24 of chapter 90, as appearing in the 2010  
2   Official Edition, is hereby amended in line 453 by inserting after the words “nolo contendere”  
3   the following:- “ or admits to a finding of sufficient facts”.

4           SECTION 2: Said section 24 of Chapter 90, as so appearing, is hereby amended by  
5   striking paragraph (1)(f)(1) and inserting in place thereof the following:-

6           (f) (1) Whoever operates a motor vehicle upon any way or in any place to which the  
7   public has right to access, or upon any way or in any place to which the public has access as  
8   invitees or licensees, shall be deemed to have consented to submit to a chemical test or analysis  
9   of his breath or blood in the event that he is arrested for operating a motor vehicle while under  
10   the influence of intoxicating liquor; provided, however, that no such person shall be deemed to  
11   have consented to a blood test unless such person has been brought for treatment to a medical  
12   facility licensed under the provisions of section 51 of chapter 111; and provided, further, that no

13 person who is afflicted with hemophilia, diabetes or any other condition requiring the use of  
14 anticoagulants shall be deemed to have consented to a withdrawal of blood. Such test shall be  
15 administered at the direction of a police officer, as defined in section 1 of chapter 90C, having  
16 reasonable grounds to believe that the person arrested has been operating a motor vehicle upon  
17 such way or place while under the influence of intoxicating liquor. If the person arrested refuses  
18 to submit to such test or analysis, after having been informed that his license or permit to operate  
19 motor vehicles or right to operate motor vehicles in the commonwealth shall be suspended for a  
20 period of at least 180 days and up to a lifetime loss, for such refusal, no such test or analysis shall  
21 be made and he shall have his license or right to operate suspended in accordance with this  
22 paragraph for a period of 180 days; provided, however, that any person who is under the age of  
23 21 years or who has been previously convicted of a violation under this section, subsection (a) of  
24 section 24G, operating a motor vehicle with a percentage by weight of blood alcohol of eight  
25 one-hundredths or greater, or while under the influence of intoxicating liquor in violation of  
26 subsection (b) of said section 24G, section 24L or subsection (a) of section 8 of chapter 90B,  
27 section 8A or 8B of said chapter 90B, or section 131/2 of chapter 265 or a like violation by a  
28 court of any other jurisdiction or assigned to an alcohol or controlled substance education,  
29 treatment, or rehabilitation program by a court of the commonwealth or any other jurisdiction for  
30 a like offense shall have his license or right to operate suspended forthwith for a period of 3  
31 years for such refusal; provided, further, that any person previously convicted of, or assigned to a  
32 program for, 2 such violations shall have his license or right to operate suspended forthwith for a  
33 period of 5 years for such refusal; and provided, further, that a person previously convicted of, or  
34 assigned to a program for, 3 or more such violations shall have his license or right to operate  
35 suspended forthwith for life based upon such refusal. If a person refuses to submit to any such

test or analysis after having been convicted of a violation of section 24L, the registrar shall suspend his license or right to operate for 10 years. If a person refuses to submit to any such test or analysis after having been convicted of a violation of subsection (a) of section 24G, operating a motor vehicle with a percentage by weight of blood alcohol of eight one-hundredths or greater, or while under the influence of intoxicating liquor in violation of subsection (b) of said section 24G, or section 131/2 of chapter 265, the registrar shall revoke his license or right to operate for life. If a person refuses to take a test under this paragraph, the police officer shall:

(i) immediately, on behalf of the registrar, take custody of such person's license or right to operate issued by the commonwealth;

(ii) provide to each person who refuses such test, on behalf of the registrar, a written notification of suspension in a format approved by the registrar; and

(iii) impound the vehicle being driven by the operator and arrange for the vehicle to be impounded for a period of 12 hours after the operator's refusal, with the costs for the towing, storage and maintenance of the vehicle to be borne by the operator.

The police officer before whom such refusal was made shall, within 24 hours, prepare a report of such refusal. Each report shall be made in a format approved by the registrar and shall be made under the penalties of perjury by the police officer before whom such refusal was made. Each report shall set forth the grounds for the officer's belief that the person arrested had been operating a motor vehicle on a way or place while under the influence of intoxicating liquor, and shall state that such person had refused to submit to a chemical test or analysis when requested by the officer to do so, such refusal having been witnessed by another person other than the defendant. Each report shall identify the police officer who requested the chemical test or

analysis and the other person witnessing the refusal. Each report shall be sent forthwith to the registrar along with a copy of the notice of intent to suspend in a form, including electronic or otherwise, that the registrar deems appropriate. A license or right to operate which has been confiscated pursuant to this subparagraph shall be forwarded to the registrar forthwith. The report shall constitute prima facie evidence of the facts set forth therein at any administrative hearing regarding the suspension specified in this section.

The suspension of a license or right to operate shall become effective immediately upon receipt of the notification of suspension from the police officer. A suspension for a refusal of either a chemical test or analysis of breath or blood shall run consecutively and not concurrently, both as to any additional suspension periods arising from the same incident, and as to each other.

No license or right to operate shall be restored under any circumstances and no restricted or hardship permits shall be issued during the suspension period imposed by this paragraph; provided, however, that the defendant may immediately, upon the entry of a not guilty finding or dismissal of all charges under this section, section 24G, section 24L, or section 131/2 of chapter 265, and in the absence of any other alcohol related charges pending against said defendant, apply for and be immediately granted a hearing before the court which took final action on the charges for the purpose of requesting the restoration of said license. At said hearing, there shall be a rebuttable presumption that said license be restored, unless the commonwealth shall establish, by a fair preponderance of the evidence, that restoration of said license would likely endanger the public safety. In all such instances, the court shall issue written findings of fact with its decision.