

HOUSE No. 4475

The Commonwealth of Massachusetts

House bill No. 4466, as changed by the committee on Bills in the Third Reading and as amended and passed to be engrossed by the House. February 4, 2010.

An Act relative to safe driving.

The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

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 not be limited to, electronic mail, a text message, an instant
7 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 amended by
10 inserting after the definition of "Gross vehicle weight rating" the following definition:-

11 "Hands-free mobile telephone", a hand-held mobile telephone that has an internal feature or
12 function, or that is equipped with a hands-free accessory, whether or not permanently part of
13 such hand-held mobile telephone, by which a user engages in a call without the use of either
14 hand, whether or not the use of either hand is necessary to activate, deactivate or initiate a
15 telephone call.

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

18 "Mobile electronic device", any hand-held or portable electronic equipment capable of providing
19 data communication between 2 or more persons including, without limitation, a mobile
20 telephone, a text messaging device, a paging device, a personal digital assistant, a laptop
21 computer, electronic equipment that is capable of playing a video game or digital video disk or
22 equipment on which digital photographs are taken or transmitted, or any combination thereof, or
23 equipment that is capable of visually receiving a television broadcast; provided, however, that
24 mobile electronic device shall not include any audio equipment or any equipment installed or
25 affixed, either temporarily or permanently, in a motor vehicle for the purpose of providing

26 navigation or emergency assistance to the operator of such motor vehicle or video entertainment
27 to the passengers in the rear seats of such motor vehicle.

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

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

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

38 A junior operator who violates the preceding paragraph shall have his license or permit
39 suspended for 7 days for a first offense, for 30 days for a second offense, and for 90 days, for a
40 third or subsequent offense. The registrar shall impose a \$100 reinstatement fee for a first
41 offense, and \$500 for a second or subsequent offense upon a junior operator who seeks to have
42 his license reinstated following a suspension under this paragraph. A junior operator whose
43 license is suspended pursuant to this paragraph shall not be eligible for license reinstatement
44 until he also completes a program selected by the registrar that encourages attitudinal changes in
45 young drivers who have committed a violation of the motor vehicle laws and until he
46 successfully completes or enrolls in a program to complete a driving test as required by the
47 registrar. In addition to any reinstatement fee, there shall be a surcharge of \$50, assessed against
48 a person who seeks to have his license reinstated following a revocation or suspension under this
49 paragraph. The first \$25 of each surcharge shall be transferred by the registrar of motor vehicles
50 to the state treasurer for deposit into the Spinal Cord Injury Trust Fund. The remaining amount
51 shall be transferred by the registrar to the state treasurer for deposit in the General Fund. It shall
52 be an affirmative defense for a junior operator to produce documentary or other evidence that the
53 use of a mobile telephone, hands-free mobile telephone or mobile electronic device that is the
54 basis of the alleged violation was made for emergency purposes, including, but not limited to, an
55 emergency call to a law enforcement agency, health care provider, fire department or other
56 emergency services agency or entity or parent, or guardian.

57 SECTION 5. The fourteenth paragraph of said section 8 of said chapter 90, as so appearing, is
58 hereby amended by adding the following sentence:- An applicant for the renewal of a license 75
59 years of age or older shall apply for a renewal in person at a registry branch office.

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

62 An applicant for a license or renewal thereof appearing in person at a registry branch shall take
63 and pass a vision test administered by the registry; provided, however, that except as required by
64 the registrar in regulations, said applicant may provide a vision screening certificate, signed by

65 an optometrist or ophthalmologist to demonstrate compliance with the minimum visual standards
66 to obtain and hold a license.

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

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

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

75 (b) A health care provider may report to the registrar every patient 16 years of age or older who
76 has a cognitive or functional impairment that the health care provider reasonably believes will
77 affect that person’s ability to safely operate a motor vehicle. Determinations regarding a
78 person’s ability to safely operate a motor vehicle shall not be based solely on the diagnosis of a
79 medical condition or cognitive or functional impairment, but shall be based on the actual effect
80 of that condition or impairment on the person’s ability to safely operate a motor vehicle.

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

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

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

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

99 SECTION 8. Said chapter 90 is hereby further amended by inserting after section 12 the
100 following section:-

101 Section 12A. (a) No operator of a vehicle or vessel used while transporting passengers for a fee
102 or for hire, including a train, passenger bus, passenger van, car, taxi, or paratransit vehicle,
103 passenger ferry boat, water shuttle or other equipment owned by, or operated under the authority
104 of the Massachusetts Bay Transportation Authority, a regional transit authority established in
105 chapter 161B, the Woods Hole, Martha's Vineyard & Nantucket steamship authority,
106 Massachusetts Port Authority, the Massachusetts Department of Transportation or by a privately-
107 owned transportation company, nor an operator of a school bus or other vehicle used to transport
108 pupils shall use a mobile telephone, hands-free mobile telephone or other mobile electronic
109 device while operating such vehicle or vessel; provided, however, that this section shall not
110 apply to the operator of a public safety vehicle utilizing a mobile telephone, hands-free mobile
111 telephone or other mobile electronic device in the performance of his official duties.

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

115 (d) It shall be an affirmative defense for an operator under this section to produce documentary
116 or other evidence that the use of a mobile telephone, hands-free mobile telephone or other mobile
117 electronic device that is the basis of the alleged violation was made for emergency purposes,
118 including, but not limited to, an emergency call to a law enforcement agency, health care
119 provider, fire department or other emergency services agency or entity.

120 SECTION 9. Section 13 of said chapter 90, as appearing in the 2008 Official Edition, is hereby
121 amended by striking out, in line 6, the first time it appears, the word "as" and inserting in place
122 thereof the following words:- , except as provided for in sections 8, 12A and 13B, as.

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

125 Section 13B. (a) No operator of a motor vehicle shall use a mobile electronic device or a mobile
126 telephone, unless said telephone is a hands-free mobile telephone. No operator of a motor
127 vehicle shall use a mobile telephone, mobile electronic device or other device capable of
128 accessing the internet to compose, send or read an electronic message while operating such
129 vehicle; provided, however, that this section shall not apply to the operator of a public safety
130 vehicle utilizing a mobile telephone, hands-free mobile telephone or other mobile electronic
131 device in the performance of his official duties. For the purposes of this section, an operator shall
132 not be considered to be operating a motor vehicle if the vehicle is stationary and not located in a
133 part of the roadway intended for travel.

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

138 (d) It shall be an affirmative defense for an operator to produce documentary or other evidence
139 that the use of a mobile telephone or other mobile electronic device that is the basis of the

140 alleged violation was made for emergency purposes including, but not limited to, an emergency
141 call to a law enforcement agency, health care provider, fire department or other emergency
142 services agency or entity.

143 SECTION 11. Section 24 of chapter 90, as so appearing, is hereby amended by inserting after
144 the words “motor vehicle”, in line 730, the following words:- or whoever while operating a
145 motor vehicle in violation of section 12A or section 13B, such violation proved beyond a
146 reasonable doubt, is the proximate cause of injury to any other person, vehicle or property by
147 operating said motor vehicle negligently so that the lives or safety of the public might be
148 endangered.

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

156 SECTION 13. The second sentence of subsection (b) of section 12A of chapter 90 of the
157 General Laws, inserted by section 8, and the second sentence of subsection (b) of section 13B of
158 said chapter 90, inserted by section 10, shall take effect on September 1, 2010.