

HOUSE No. 4795

The Commonwealth of Massachusetts

The committee of conference on the disagreeing votes of the two branches with reference to the Senate amendments of the House Bill relative to safe driving (House, No. 4475), reports recommending passage of the accompanying bill (House, No. 4795).

An Act relative to safe driving.

FOR THE COMMITTEE:

NAME:	DISTRICT/ADDRESS:
Joseph F. Wagner	8th Hampden
Michael A. Costello	1st Essex
Donald F. Humason, Jr.	4th Hampden
Steven A. Baddour	First Essex
Stephen M. Brewer	Worcester, Hampden, Hampshire and Franklin
Robert L. Hedlund	Plymouth and Norfolk

The Commonwealth of Massachusetts

In the Year Two Thousand and Ten

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 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 a keystroke entry sent between mobile 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 other portable electronic equipment capable of
19 providing data communication between 2 or more persons, including, without limitation, a
20 mobile 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,
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 handheld or portable cellular, analog, wireless, satellite or digital
29 telephone, including a telephone with 2-way radio functionality, capable of sending or receiving
30 telephone communications and with which a user initiates, terminates or engages in a call using
31 at least 1 hand. For the purposes of this chapter, “mobile telephone” shall not include amateur
32 radios operated by those licensed by the Federal Communications Commission to operate such
33 radios, or citizen band radios.

34 **SECTION 4.** The fourteenth paragraph of section 8 of said chapter 90, as so appearing, is
35 hereby amended by adding the following sentence:- An applicant for the renewal of a license 75
36 years of age or older shall apply for a renewal in person at a registry branch office.

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

39 An applicant for a license or renewal thereof appearing in person at a registry branch shall take
40 and pass a vision test administered by the registry; provided, however, that except as required by
41 the registrar in regulations, instead of passing the vision test an applicant may provide a vision
42 screening certificate, signed by an optometrist or ophthalmologist to demonstrate compliance with
43 minimum visual standards to obtain and hold license.

44 **SECTION 6.** Said chapter 90 is hereby further amended by inserting after section 8L the
45 following section:-

46 Section 8M. No person under 18 years of age shall use a mobile telephone, hands-free mobile
47 telephone or mobile electronic device while operating a motor vehicle on any public way. For the
48 purposes of this section, a junior operator shall not be considered to be operating a motor vehicle
49 if the vehicle is stationary and not located in a part of the public way intended for travel.

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

56 It shall be an affirmative defense for a junior operator to produce evidence that the use of a
57 mobile telephone, hands-free mobile telephone or mobile electronic device that is the basis of the
58 alleged violation was for emergency purposes. For the purpose of this section, an emergency
59 shall mean that the junior operator used the hands-free mobile telephone or mobile electronic
60 device to communicate with another to report any of the following: (i) that the motor vehicle was
61 disabled; (ii) that medical attention or assistance was required; (iii) that police intervention, fire
62 department or other emergency service was necessary for the personal safety of the operator or a
63 passenger; or (iv) that a disabled vehicle or an accident was present in the public way.

64 A penalty under this subsection shall not be a surchargeable offense under section 113B of
65 chapter 175.

66 **SECTION 7.** Said chapter 90 is hereby further amended by inserting after section 12 the
67 following section:-

68 Section 12A. (a) No operator of a vehicle or vessel used in public transportation, including a
69 train, passenger bus, school bus or other vehicle used to transport pupils, passenger ferry boat,
70 water shuttle or other equipment used in public transportation owned by, or operated under the
71 authority of the Massachusetts Bay Transportation Authority, the Woods Hole, Martha's
72 Vineyard and Nantucket Steamship Authority, Massachusetts Port Authority, or the
73 Massachusetts Department of Transportation, shall use a mobile telephone, hands-free mobile
74 telephone or other mobile electronic device while operating such vehicle or vessel; provided,

75 however that this section shall not apply to the operator of a vehicle or vessel used in public
76 transportation using a mobile telephone, hands-free mobile telephone or mobile electronic
77 device in the performance of the operator's official duties; provided, however, that in order for
78 the use of any such device to be made "in the performance of the operator's official duties," such
79 use must have been made in conformance with applicable written guidelines issued by a public
80 entity listed in this paragraph relative to circumstances when operators are permitted to use said
81 devices in the performance of their official duties or pursuant to directives from federal
82 authorities having regulatory jurisdiction over such public entity's operations.

83 Whoever violates this section shall be punished by a fine of \$500. A violation of this section
84 shall not be a moving violation for purposes of the safe driver insurance plan under section 113B
85 of chapter 175.

86 (b) It shall be an affirmative defense for an operator under this section to produce evidence that
87 the use of a mobile telephone that is the basis of the alleged violation was in the case of an
88 emergency. For the purpose of this paragraph, an emergency shall mean that the operator needed
89 to communicate with another to report any of the following: (1) that the vehicle or vessel was
90 disabled; (2) that medical attention or assistance was required on the vehicle or vessel; (3) that
91 police intervention, fire department or other emergency services was necessary for the personal
92 safety of a passenger or to otherwise ensure the safety of the passengers; or (4) that a disabled
93 vehicle or an accident was present on a roadway.

94 **SECTION 8.** Section 13 of said chapter 90, as appearing in the 2008 Official Edition, is hereby
95 amended by striking out the first sentence and inserting in place thereof the following sentence:-

96 No person, when operating a motor vehicle, shall permit to be on or in the vehicle or on or about
97 his person anything which may interfere with or impede the proper operation of the vehicle or
98 any equipment by which the vehicle is operator or controlled, except that a person may operate a
99 motor vehicle while using a federally licensed 2-way radio or mobile telephone, except as
100 provided in sections 8M, 12A and 13B, as long as 1 hand remains on the steering wheel at all
101 times.

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

104 Section 13B. (a) No operator of a motor vehicle shall use a mobile telephone, or any handheld
105 device capable of accessing the internet, to manually compose, send or read an electronic
106 message while operating a motor vehicle. For the purposes of this section, an operator shall not
107 be considered to be operating a motor vehicle if the vehicle is stationary and not located in a part
108 of the public way intended for travel.

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

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

113 **SECTION 10.** Said chapter 90 is hereby further amended by inserting after section 22H the
114 following section:-

115 Section 22I. (a) For the purposes of this section, “health care provider” shall mean a registered
116 nurse, licensed practical nurse, physician, physician assistant, psychologist, occupational
117 therapist, physical therapist, optometrist, ophthalmologist, osteopath or podiatrist who is a
118 licensed health care provider under chapter 112.

119 (b) If a health care provider acting in his professional capacity or law enforcement officer has
120 reasonable cause to believe that an operator is not physically or medically capable of safely
121 operating a motor vehicle or has a cognitive or functional impairment that will affect that
122 person’s ability to safely operate a motor vehicle, the health care provider or officer may make a
123 report to the registrar, requesting medical evaluation of the operator’s ability to safely operate a
124 motor vehicle; provided, however, that such report shall not be made solely on the basis of age.
125 The report shall state the health care provider’s or officer’s good faith belief that the operator
126 cannot safely operate a motor vehicle and shall disclose the medical information underlying his
127 good faith belief in his report to the registrar. The good faith belief shall be based upon personal
128 observation, physical evidence, or, in the case of a law enforcement officer, an investigation
129 which shall be described in the report. A report regarding an operator’s ability to safely operate a
130 motor vehicle shall not be based solely on the diagnosis of a medical condition or cognitive or
131 functional impairment, but shall be based on observations or evidence of the actual affect of that
132 condition or impairment on the operator’s ability to safely operate a motor vehicle.

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

137 (c) Not later than 30 days after receipt of the report, the registrar shall conduct a review to
138 determine the operator's capacity for continued licensure to operate a motor vehicle. The
139 commissioner of public health shall, in consultation with the registrar and with medical experts
140 on cognitive or functional impairments, and with the medical advisory board established in
141 section 8C, promulgate regulations designating the cognitive or functional impairments that are
142 likely to affect a person's ability to safely operate a motor vehicle. The registrar shall consider
143 information contained in a report under subsection (b) in determining whether to issue or
144 suspend a license to operate a motor vehicle.

145 (d) A report to the registry pursuant to this section shall be confidential and shall be used by the
146 registrar only to determine a person's qualifications to operate a motor vehicle. All reports made
147 and all medical records reviewed and maintained by the registry under this section shall be
148 confidential, or upon written request of the respondent to examine any medical records or reports
149 made about the respondent under this section.

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

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

153 **SECTION 11.** Section 24 of said chapter 90, as appearing in the 2008 Official Edition, is hereby
154 amended by inserting after the word "vehicle", in line 730, the following words:- or whoever
155 while operating a motor vehicle in violation of section 8M, 12A or 13B, such violation proved
156 beyond a reasonable doubt, is the proximate cause of injury to any other person, vehicle or
157 property by operating said motor vehicle negligently so that the lives or safety of the public
158 might be endangered.

159 **SECTION 12.** Section 113B of chapter 175 of the General Laws, as so appearing, is hereby
160 amended by striking out the fourteenth paragraph and inserting in place thereof the following
161 paragraph:-

162 Upon receiving notification from the merit rating board that a driver has had 3 surchargeable
163 incidents within the past 24 months, the registrar shall, after a hearing based solely on the
164 accuracy of the merit rating board's records, require the driver to participate in and complete a
165 driver education program satisfactory to the registrar. If the driver fails to provide to the registrar
166 proof of completion of the driver education program within 90 days after the registrar mails to
167 the driver notice of the requirement, the registrar shall suspend the driver's license or right to
168 operate a motor vehicle until the registrar receives proof of completion of the driver education
169 program.

170 **SECTION 13.** Notwithstanding any general or special law to the contrary, the registrar of motor
171 vehicles shall not impose any additional fee for transactions conducted by telephone or in person
172 at any registry location in excess of those fees charged for transactions conducted through the
173 commonwealth's website.

174 **SECTION 14.** The registrar of motor vehicles, in cooperation with the highway safety division,
175 shall develop and implement a public awareness campaign for both junior and adult operators
176 which shall include, but not be limited to, the dangers and consequences of distracted driving,
177 information on the restrictions of mobile telephone and mobile electronic device use while
178 operating a motor vehicle under sections 8M, 12A and 13B of chapter 90 of the General Laws,
179 and information on the fines and punishments which may be imposed for violations of said
180 chapter 90. Said campaign shall commence not later than January 1, 2011.

181 **SECTION 15.** Section 12 shall apply to surchargeable offenses that occur on or after the
182 effective date of this act.