

HOUSE No. 4466

The Commonwealth of Massachusetts

By Mr. Murphy of Burlington, for the committee on Ways and Means, on part of the Bill relative to safe driving (House, No. 4238), and on a part of the Bill relative to distracted driving (House, No. 4460) that the accompanying bill (House, No. 4466) ought to pass. February 4, 2010.

AN ACT RELATIVE TO SAFE DRIVING. .

FOR THE COMMITTEE:

NAME:

Charles Murphy

DISTRICT/ADDRESS:

21st Middlesex

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 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 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 on any public
36 way. For the purposes of this paragraph, a junior operator shall not be considered to be operating
37 a motor vehicle if the vehicle is stationary and not located in a part of the roadway intended for
38 travel.

39 A junior operator who violates the preceding paragraph shall have his license or permit
40 suspended for 60 days for a first offense, for 180 days for a second offense and for 1 year for a
41 third or subsequent offense. The registrar shall impose a \$500 reinstatement fee upon a junior
42 operator who seeks to have his license reinstated following a suspension under the preceding
43 paragraph. A junior operator whose license is suspended pursuant to this paragraph shall not be
44 eligible for license reinstatement until he also completes a program selected by the registrar that
45 encourages attitudinal changes in young drivers who have committed a violation of the motor
46 vehicle laws and until he successfully completes a driving test as required by the registrar. In
47 addition to any reinstatement fee, there shall be a surcharge of \$50, assessed against a person
48 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.

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

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

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

67 SECTION 7. Said chapter 90 is hereby further amended by inserting after section 8C the
68 following new 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, optometrist, ophthalmologist, osteopath, chiropractor,
72 podiatrist, registered nurse or physician assistant licensed in accordance with the provisions of
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 may not be based solely on the diagnosis of a
79 medical condition or cognitive or functional impairment, but must 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 (a) 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 persons to operate motor vehicles; 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 new section:-

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

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

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

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

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

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

129 Section 13B. (a) No operator of a motor vehicle shall use a mobile telephone, mobile electronic
130 device or other device capable of accessing the internet to compose, send or read an electronic
131 message while operating such vehicle. For the purposes of this section, an operator shall not be
132 considered to be operating a motor vehicle if the vehicle is stationary and not located in a part of
133 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 shall be considered a moving violation for purposes of the safe driver insurance
137 plan under section 113B of chapter 175.

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

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

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

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

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