

SENATE, No. 2290

[February 25, 2010 - Text of Senate, No. 2290, as a new text of House Bill No. 4475, relative to safe driving.]

The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

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. “Electronic
6 message” includes, but is not limited to electronic mail, electronic message, 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
10 amended by inserting after the definition of “Mobile construction crane” the following
11 definition:-

12 “Mobile telephone”, a handheld or portable cellular, analog, wireless, satellite or digital
13 telephone, including a telephone with two-way radio functionality, capable of sending or
14 receiving telephone communications and with which a user initiates, terminates or engages in a
15 call using at least one hand.

16 **SECTION 3.** The second paragraph of section 8 of said chapter 90, as so appearing, is
17 hereby amended by inserting after clause (e) the following clause:-

18 (f) No person under 18 years of age shall use a mobile telephone while operating a motor
19 vehicle on any public way. For the purposes of this paragraph, a junior operator shall not be
20 considered to be operating a motor vehicle if the vehicle is stationary and not located in a part of
21 the public way intended for travel.

22 A junior operator who violates the preceding paragraph shall be punished by a fine of
23 \$100 and shall have his license or permit suspended for 180 days for a first offense, by a fine of
24 \$250 and shall have his license or permit suspended for 1 year for a second offense, and by a fine
25 of \$500 and shall have his license or permit suspended for 1 year for a third or subsequent
26 offense.

27 It shall be an affirmative defense for a junior operator to produce documentary or other
28 evidence that the use of a mobile telephone that is the basis of the alleged violation was made in
29 the case of an emergency. For the purpose of this paragraph, an emergency shall mean that the
30 junior operator needs to communicate with another to report any of the following: (a) that the
31 motor vehicle is disabled; (b) that medical attention or assistance is required; (c) that police
32 intervention is necessary for the personal safety of the operator or a passenger; or (d) the
33 presence of a disabled vehicle or an accident in the public way.

34 The provisions of this subsection shall be enforced by law enforcement agencies only
35 when an operator of a motor vehicle has been stopped for a violation of the motor vehicle laws or
36 some other offense. A penalty under this subsection shall not be a surchargeable
37 offense under section 113B of chapter 175.

38 **SECTION 4.** Said section 8 of said chapter 90, as so appearing, is hereby amended by
39 adding the following 5 paragraphs:-

40 Notwithstanding any provision of the first paragraph of this section, a license applicant,
41 or applicant for the renewal of a license, age 75 years or older shall pass an examination, to be
42 developed by the registrar in consultation with the medical advisory board established in section
43 8C. The examination shall assess the ability of an applicant 75 years or older to operate a motor
44 vehicle in a safe manner, including but not limited to the applicant's cognitive and physical
45 abilities. An applicant for a license renewal shall pass an examination upon the expiration of 36
46 months from attainment of the age of 75 years, and every 36 months thereafter. The registry shall
47 charge a fee not to exceed \$30 for said examination.

48 Before a license is granted pursuant to this subsection, the applicant shall pass an examination as
49 to his qualifications as the registrar shall require; and no license shall be issued until the registrar or his
50 authorized agent is satisfied that the applicant is a proper person to receive it.

51 An applicant age 75 years or older who has failed the examination may petition the registrar for a
52 road test, as prescribed by the registrar, to demonstrate the requisite driving skills necessary for continued
53 licensure. The registrar or registrar's agent shall grant the petition to conduct a road test; provided,
54 however, that the registrar shall not grant the petition if the registrar determines that the applicant presents
55 a safety risk to the general public. Upon conclusion of the road test, the registrar shall determine whether
56 licensure, or continued licensure, is warranted.

57 Any operator age 75 years or older, whose license to operate a motor vehicle has been suspended
58 or revoked by the registrar pursuant to chapter 90 or section 113B of chapter 175, shall be entitled to
59 appeal said suspension or revocation to the registrar. The registrar shall determine whether the person has
60 demonstrated that he is capable of safely operating a motor vehicle and shall issue findings to support his

61 determinations. The registrar shall develop standards by which this will be determined in consultation
62 with the medical advisory board.

63 Any person aggrieved by a decision of the registrar pursuant to this subsection may
64 appeal pursuant to section 28 of chapter 90.

65 **SECTION 5.** Chapter 90 of the General Laws is hereby further amended by inserting
66 after section 12 the following section:-

67 Section 12A. (a) No operator of a vehicle or vessel used in public transportation,
68 including a train, passenger bus, school bus or other vehicle used to transport pupils, taxi,
69 passenger ferry boat, water shuttle or other equipment used in public transportation owned by, or
70 operated under the authority of the Massachusetts Bay Transportation Authority, the Woods
71 Hole, Martha's Vineyard & Nantucket Steamship Authority, Massachusetts Port Authority, or
72 state transportation department, shall use a mobile telephone, hands-free mobile telephone or
73 other mobile electronic device while operating such vehicle or vessel. Whoever violates this
74 section shall be punished by a fine of \$500. A violation of the preceding sentence shall be a
75 moving violation for purposes of the safe driver insurance plan under section 113B of chapter
76 175.

77 (c) It shall be an affirmative defense for an operator under this section to produce
78 documentary or other evidence that the use of a mobile telephone that is the basis of the alleged
79 violation was made in the case of an emergency. For the purpose of this paragraph, an
80 emergency shall mean that the operator needs to communicate with another to report any of the
81 following: (a) that the vehicle or vessel is disabled; (b) that medical attention or assistance is
82 required on the vehicle or vessel; (c) that police intervention is necessary for the personal safety

83 of a passenger or to otherwise ensure the safety of the passengers; or (d) the presence of a
84 disabled vehicle or an accident on a roadway.

85 **SECTION 6.** Chapter 90 of the General Laws is hereby further amended by inserting
86 after section 13A the following section:-

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

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

94 (c) The provisions of this section shall be enforced by law enforcement agencies only
95 when an operator of a motor vehicle has been stopped for a violation of the motor vehicle laws or
96 some other offense. A penalty under this section shall not be a surchargeable
97 offense under section 113B of chapter 175.

98 **SECTION 7.** Section 22(b) of Chapter 90 of the General Laws, as appearing in the 2008
99 Official Edition, is hereby amended by adding at the end thereof the following:

100 In any hearing where an applicant age 75 years or older has potential suspension or
101 revocation is due in whole or in part to the operator's physical or mental handicap, the hearing
102 shall be held within 14 days of the event which prompted the registrar to initiate said hearing,
103 unless otherwise agreed upon by the involved parties. The registrar will consider all written and

104 oral submissions by any interested parties at said hearing, and any and all medical evidence
105 offered shall be made public for purposes of said hearing only. Any public record of said hearing
106 shall have any and all medical evidence redacted, and any person, entity or agency present at said
107 hearing that later disseminates said medical evidence without permission from the operator shall
108 be liable to the operator for a sum of not less than \$1,000 and not more than \$5,000 for each
109 violation under this section. For purposes of said hearing, medical evidence shall only be
110 accepted if reported or recorded by a qualified, licensed medical professional. The registrar shall
111 notify the involved parties in writing of his decision whether or not to revoke the operator's
112 license no later than 7 days after the hearing.

113 **SECTION 8.** Said Chapter 90 is hereby further amended by inserting after Section 22H
114 the following new section:-

115 Section 22I. (a) As used in this section, the following words shall have the following
116 meaning:-

117 "Health care provider", a registered nurse, licensed practical nurse, physician, physician
118 assistant, occupational therapist, physical therapist, optometrist, ophthalmologist or podiatrist
119 who is a licensed health care provider under the provisions of chapter 112.

120 (b) If a health care provider or law enforcement officer has good cause to believe that an
121 operator is not physically or medically capable to safely operate a motor vehicle, the provider or
122 officer may make a report to the registrar, requesting medical evaluation, as the registrar may
123 prescribe. Said report shall state the provider's or officer's good faith belief that the operator
124 cannot safely operate a motor vehicle. Any health care provider who makes such report and
125 states his good faith belief shall file said report with the registrar. Said report shall be based upon

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

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

132 Upon receipt of said report, the registrar shall suspend the license of said operator. Not
133 later than 30 days after receipt of said report the registrar shall conduct a review to determine the
134 operator's capacity for continued licensure to operator a motor vehicle.

135 (c) Reports to the registry pursuant to this section shall be confidential and shall be used
136 by the registrar only to determine a person's qualifications to operate a motor vehicle. All
137 reports made and all medical records reviewed and maintained by the registry under this section
138 shall be confidential, except upon order of a court of competent jurisdiction.

139 A report made pursuant to this section shall not be a public record as defined in section 7
140 of chapter 4.

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

143 **SECTION 9.** Section 24 of chapter 90, as so appearing, is hereby amended by inserting
144 after 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 10.** Section 113B of Chapter 175 of the General Laws, as appearing in the
150 2008 Official Edition, is hereby amended by striking out the fourteenth paragraph and inserting
151 in place thereof the following paragraph:-

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

159 **SECTION 11.** Section 30A½ of chapter 166 of the acts of 2009 shall not apply to
160 Section 1.

161 **SECTION 12.** Section 10 of this act shall apply to surchargeable offenses that occur on
162 or after the effective date of this act.