

HOUSE No. 4795

The Commonwealth of Massachusetts

In the Year Two Thousand 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
10 amended by inserting after the definition of “Gross vehicle weight rating” the following
11 definition:-

12 “Hands-free mobile telephone”, a hand-held mobile telephone that has an internal feature
13 or function, or that is equipped with a hands-free accessory, whether or not permanently part of

14 such hand-held mobile telephone, by which a user engages in a call without the use of either
15 hand, whether or not the use of either hand is necessary to activate, deactivate or initiate a
16 telephone call.

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

20 “Mobile electronic device”, any hand-held or other portable electronic equipment capable
21 of providing data communication between 2 or more persons, including, without limitation, a
22 mobile telephone, a text messaging device, a paging device, a personal digital assistant, a laptop
23 computer, electronic equipment that is capable of playing a video game or digital video disk,
24 equipment on which digital photographs are taken or transmitted or any combination thereof, or
25 equipment that is capable of visually receiving a television broadcast; provided, however, that
26 mobile electronic device shall not include any audio equipment or any equipment installed, or
27 affixed, either temporarily or permanently, in a motor vehicle for the purpose of providing
28 navigation or emergency assistance to the operator of such motor vehicle or video entertainment
29 to the passengers in the rear seats of such motor vehicle.

30 “Mobile telephone”, a handheld or portable cellular, analog, wireless, satellite or digital
31 telephone, including a telephone with 2-way radio functionality, capable of sending or receiving
32 telephone communications and with which a user initiates, terminates or engages in a call using
33 at least 1 hand. For the purposes of this chapter, “mobile telephone” shall not include amateur
34 radios operated by those licensed by the Federal Communications Commission to operate such
35 radios, or citizen band radios.

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

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

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

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

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

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

57 shall have his license or permit suspended for 180 days; and for a third or subsequent offense by
58 a fine of \$500 and shall have his license or permit suspended for 1 year.

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

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

69 SECTION 7. Said chapter 90 is hereby further amended by inserting after section 12 the
70 following section:-

71 Section 12A. (a) No operator of a vehicle or vessel used in public transportation,
72 including a train, passenger bus, school bus or other vehicle used to transport pupils, passenger
73 ferry boat, water shuttle or other equipment used in public transportation owned by, or operated
74 under the authority of the Massachusetts Bay Transportation Authority, the Woods Hole,
75 Martha's Vineyard and Nantucket Steamship Authority, Massachusetts Port Authority, or the
76 Massachusetts Department of Transportation, shall use a mobile telephone, hands-free mobile
77 telephone or other mobile electronic device while operating such vehicle or vessel; provided,
78 however that this section shall not apply to the operator of a vehicle or vessel used in public

79 transportation using a mobile telephone, hands-free mobile telephone or mobile electronic
80 device in the performance of the operator's official duties; provided, however, that in order for
81 the use of any such device to be made "in the performance of the operator's official duties," such
82 use must have been made in conformance with applicable written guidelines issued by a public
83 entity listed in this paragraph relative to circumstances when operators are permitted to use said
84 devices in the performance of their official duties or pursuant to directives from federal
85 authorities having regulatory jurisdiction over such public entity's operations.

86 Whoever violates this section shall be punished by a fine of \$500. A violation of this
87 section shall not be a moving violation for purposes of the safe driver insurance plan under
88 section 113B of chapter 175. (b) It shall be an affirmative defense for an operator under this
89 section to produce evidence that the use of a mobile telephone that is the basis of the alleged
90 violation was in the case of an emergency. For the purpose of this paragraph, an emergency shall
91 mean that the operator needed to communicate with another to report any of the following: (1)
92 that the vehicle or vessel was disabled; (2) that medical attention or assistance was required on
93 the vehicle or vessel; (3) that police intervention, fire department or other emergency services
94 was necessary for the personal safety of a passenger or to otherwise ensure the safety of the
95 passengers; or (4) that a disabled vehicle or an accident was present on a roadway.

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

99 No person, when operating a motor vehicle, shall permit to be on or in the vehicle or on
100 or about his person anything which may interfere with or impede the proper operation of the

101 vehicle or any equipment by which the vehicle is operator or controlled, except that a person
102 may operate a motor vehicle while using a federally licensed 2-way radio or mobile telephone,
103 except as provided in sections 8M, 12A and 13B, as long as 1 hand remains on the steering
104 wheel at all times.

105 SECTION 9. Said chapter 90 is hereby further amended by inserting after section 13A
106 the following section:-Section 13B. (a) No operator of a motor vehicle shall use a mobile
107 telephone, or any handheld device capable of accessing the internet, to manually compose, send
108 or read an electronic message while operating a motor vehicle. For the purposes of this section,
109 an operator shall not be considered to be operating a motor vehicle if the vehicle is stationary and
110 not located in a part of the public way intended for travel.

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

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

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

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

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

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

139 (c) Not later than 30 days after receipt of the report, the registrar shall conduct a review to
140 determine the operator's capacity for continued licensure to operate a motor vehicle. The
141 commissioner of public health shall, in consultation with the registrar and with medical experts
142 on cognitive or functional impairments, and with the medical advisory board established in
143 section 8C, promulgate regulations designating the cognitive or functional impairments that are

144 likely to affect a person’s ability to safely operate a motor vehicle. The registrar shall consider
145 information contained in a report under subsection (b) in determining whether to issue or
146 suspend a license to operate a motor vehicle.

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

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

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

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

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

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

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

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

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