

# HOUSE . . . . . No. 4477

---

## The Commonwealth of Massachusetts

---

HOUSE OF REPRESENTATIVES, January 15, 2008.

The committee on Transportation, to whom was referred the petition (accompanied by bill, House, No. 3679) of Joseph F. Wagner relative to further regulating the use of certain communication devices while operating a motor vehicle, reports recommending that the accompanying bill (House, No. 4477) ought to pass.

For the committee,

JOSEPH F. WAGNER.

**The Commonwealth of Massachusetts**

---

In the Year Two Thousand and Eight.

---

AN ACT FURTHER REGULATING THE USE OF CERTAIN COMMUNICATION  
DEVICES WHILE OPERATING A MOTOR VEHICLE.

*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  
2     appearing in the 2006 Official Edition, is hereby amended by  
3     adding the following definitions:—

4     “Mobile telephone”, a cellular, analog, wireless, satellite or dig-  
5     ital telephone, including a telephone with two-way radio function-  
6     ality, capable of sending or receiving telephone communications  
7     and with which a user initiates, terminates or engages in a call  
8     using at least one hand.

9     “Hands-free accessory”, an attachment, add-on, built-in feature  
10    or addition to a mobile telephone, whether or not permanently  
11    installed in a motor vehicle, that, when used, allows the operator  
12    of a motor vehicle to maintain both hands on the steering wheel at  
13    all times.

14    “Hands-free mobile telephone”, a hand-held mobile telephone  
15    that has an internal feature or function, or that is equipped with a  
16    hands-free accessory, whether or not permanently part of such  
17    hand-held mobile telephone, by which a user initiates, terminates  
18    and engages in a call without the use of either hand.

19    “Mobile electronic device”, any hand-held or other portable  
20    electronic equipment capable of providing data communication  
21    between two or more persons, including a text messaging device,  
22    a paging device, a personal digital assistant, a laptop computer,  
23    equipment that is capable of playing a video game or digital video  
24    disk, or equipment on which digital photographs are taken or  
25    transmitted, or any combination thereof, or equipment that is  
26    capable of visually receiving a television broadcast, but shall not  
27    include any audio equipment or any equipment installed in a  
28    motor vehicle for the purpose of providing navigation or emer-  
29    gency assistance to the operator of such motor vehicle or video

30 entertainment to the passengers in the rear seats of such motor  
31 vehicle.

1 SECTION 2. Section 8 of said Chapter 90, as so appearing, is  
2 hereby amended by inserting after the sixth paragraph the  
3 following two paragraphs:—

4 No person under 18 years of age shall use a mobile telephone, a  
5 hands-free mobile telephone or a mobile electronic device while  
6 operating a motor vehicle on any public way. A junior operator  
7 who holds a mobile telephone, a hands-free mobile telephone or a  
8 mobile electronic device while operating a vehicle shall be pre-  
9 sumed to be using said telephone or device under this section.  
10 This presumption may be rebuttable by evidence tending to show  
11 that the junior operator was not using said telephone or device.  
12 For the purposes of this paragraph, a junior operator shall not be  
13 considered to be operating a motor vehicle if the vehicle is sta-  
14 tionary and not located in a part of the roadway intended for  
15 travel.

16 A junior operator who violates the preceding paragraph shall be  
17 punished by a fine of \$100 and shall have his license or permit  
18 suspended for 60 days for a first offense, by a fine of \$250 and  
19 shall have his license or permit suspended for 180 days for a  
20 second offense, and by a fine of \$500 and shall have his license or  
21 permit suspended for 1 year for a third or subsequent offense. It  
22 shall be an affirmative defense for a junior operator to produce  
23 documentary or other evidence that the use of a mobile telephone  
24 that is the basis of the alleged violation was made for emergency  
25 purposes, including, but not limited to, an emergency call to a law  
26 enforcement agency, health care provider, fire department or other  
27 emergency services agency or entity.

1 SECTION 3. Section 13 of said Chapter 90, as so appearing, is  
2 hereby amended by striking out, in line 6, the words, “or mobile  
3 telephone”.

1 SECTION 4. Said section 13 of said Chapter 90, as so  
2 appearing, is hereby further amended by striking out the fifth sen-  
3 tence, in lines 25 to 29 inclusive.

1     SECTION 5. Said Chapter 90, as so appearing, is hereby  
2 amended by inserting after Section 24X the following section:—

3     24Y. No person shall operate a motor vehicle on a public way  
4 while using a mobile electronic device or a mobile telephone,  
5 unless said telephone is a hands-free mobile telephone. An oper-  
6 ator who holds a mobile electronic device or mobile telephone  
7 while operating a vehicle shall be presumed to be using said  
8 device or telephone under this section. This presumption may be  
9 rebuttable by evidence tending to show that the operator was not  
10 using said device or telephone. For the purposes of this section, an  
11 operator shall not be considered to be operating a motor vehicle if  
12 the vehicle is stationary and not located in a part of the roadway  
13 intended for travel.

14     A violation of this section shall be punishable by a fine of \$100  
15 for a first offense, by a fine of \$250 for a second offense and by a  
16 fine of \$500 for a third or subsequent offense. It shall be an affir-  
17 mative defense for an operator to produce documentary or other  
18 evidence that the use of a mobile telephone that is the basis of the  
19 alleged violation was made for emergency purposes, including,  
20 but not limited to, an emergency call to a law enforcement agency,  
21 health care provider, fire department or other emergency services  
22 agency or entity.

23     This section shall not apply to the following persons operating  
24 motor vehicles in the execution of their duties:—

- 25     (1) the driver of a fire-fighting vehicle;  
26     (2) the driver of a rescue vehicle or an ambulance; or  
27     (3) a state, county, or local public safety official, if operating  
28 the vehicle with due regard to the safety of others.