

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:	DISTRICT/ADDRESS:
Charles Murphy	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:

SECTION 1 □ Section 1 of chapter 90 of the General Laws, as appearing in the 2008 Official Edition, is hereby amended by inserting after the definition of “Department” the following definition:-

“Electronic message”, a self-contained piece of digital communication that is designed or intended to be transmitted between mobile electronic devices; provided, however, that the term electronic message shall include, but shall not be limited to, electronic mail, a text message, an instant message, a command or request to access an internet site or any message that includes a keystroke entry sent between mobile electronic devices.

SECTION 2 □ Said section 1 of said chapter 90, as so appearing, is hereby further amended by inserting after the definition of “Gross vehicle weight rating” the following definition:-

“Hands-free mobile telephone”, a hand-held mobile telephone that has an internal feature or function, or that is equipped with a hands-free accessory, whether or not permanently part of such hand-held mobile telephone, by which a user engages in a call without the use of either hand, whether or not the use of either hand is necessary to activate, deactivate or initiate a telephone call.

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

“Mobile electronic device”, any hand-held or portable electronic equipment capable of providing data communication between 2 or more persons including, without limitation, a mobile telephone, a text messaging device, a paging device, a personal digital assistant, a laptop computer, electronic equipment that is capable of playing a video game or digital video disk or equipment on which digital photographs are taken or transmitted, or any combination thereof, or equipment that is capable of visually receiving a television broadcast; provided, however, that mobile electronic device shall not include any audio equipment or any equipment installed or affixed, either temporarily or permanently, in a motor vehicle for the purpose of providing

navigation or emergency assistance to the operator of such motor vehicle or video entertainment to the passengers in the rear seats of such motor vehicle.

“Mobile telephone”, a cellular, analog, wireless, satellite or digital telephone, including a mobile telephone with two-way radio functionality, capable of sending or receiving telephone communications and with which a user initiates, terminates or engages in a call using at least 1 hand.

SECTION 4 □ Section 8 of said chapter 90, as so appearing, is hereby amended by inserting after the sixth paragraph the following 2 paragraphs:-

No person holding a junior operator’s license shall use a mobile telephone, a hands-free mobile telephone or a mobile electronic device while operating a motor vehicle on any public way □ For the purposes of this paragraph, a junior operator shall not be considered to be operating a motor vehicle if the vehicle is stationary and not located in a part of the roadway intended for travel.

A junior operator who violates the preceding paragraph shall have his license or permit suspended for 60 days for a first offense, for 180 days for a second offense and for 1 year for a third or subsequent offense □ The registrar shall impose a \$500 reinstatement fee upon a junior operator who seeks to have his license reinstated following a suspension under the preceding paragraph. A junior operator whose license is suspended pursuant to this paragraph shall not be eligible for license reinstatement until he also completes a program selected by the registrar that encourages attitudinal changes in young drivers who have committed a violation of the motor vehicle laws and until he successfully completes a driving test as required by the registrar. In addition to any reinstatement fee, there shall be a surcharge of \$50, assessed against a person who seeks to have his license reinstated following a revocation or suspension under this paragraph. The first \$25 of each surcharge shall be transferred by the registrar of motor vehicles to the state treasurer for deposit into the Spinal Cord Injury Trust Fund. The remaining amount shall be transferred by the registrar to the state treasurer for deposit in the General Fund. It shall be an affirmative defense for a junior operator to produce documentary or other evidence that the use of a mobile telephone, hands-free mobile telephone or mobile electronic device that is the basis of the alleged violation was made for emergency purposes, including, but not limited to, an emergency call to a law enforcement agency, health care provider, fire department or other emergency services agency or entity.

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

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

An applicant for a license or renewal thereof appearing in person at a registry branch shall take and pass a vision test administered by the registry; provided, however, that except as required by

the registrar in regulations, said applicant may provide a vision screening certificate to demonstrate compliance with the minimum visual standards to obtain and hold a license.

SECTION 7. Said chapter 90 is hereby further amended by inserting after section 8C the following new section:-

Section 8C½. (a) For the purposes of this section the following word shall, unless the context clearly requires otherwise, have the following meaning:

“Health care provider”, a physician, optometrist, ophthalmologist, osteopath, chiropractor, podiatrist, registered nurse or physician assistant licensed in accordance with the provisions of chapter 112 or otherwise authorized or permitted by law to administer health care in the commonwealth.

(b) A health care provider may report to the registrar every patient 16 years of age or older who has a cognitive or functional impairment that the health care provider reasonably believes will affect that person’s ability to safely operate a motor vehicle. Determinations regarding a person’s ability to safely operate a motor vehicle may not be based solely on the diagnosis of a medical condition or cognitive or functional impairment, but must be based on the actual effect of that condition or impairment on the person’s ability to safely operate a motor vehicle.

(c) The commissioner of public health shall, in consultation with the registrar and with experts on cognitive or functional impairments, with medical experts and with the medical advisory board established pursuant to section 8C, promulgate regulations designating the cognitive or functional impairments that are likely to affect a person’s ability to safely operate a motor vehicle.

(d) A report made by a health care provider pursuant to subsection (a) shall be upon a form prescribed or provided by the registrar. Each report shall include the person’s name, address, date of birth, sex and a description of how the person’s current medical status affects the person’s ability to safely operate a motor vehicle. The registrar shall consider this information in determining whether to issue or suspend a license to operate a motor vehicle.

(e) If a health care provider makes a report pursuant to this section to the registrar in good faith, that person shall be immune from civil liability that might otherwise result from making the report. If a health care provider does not make a report, that person shall be immune from civil liability that might otherwise result from not making the report.

(f) Reports filed under this section shall be confidential and shall be used by the registrar only to determine the qualifications of persons to operate motor vehicles; provided, however, that a person who is the subject of a report filed under this section shall have access to that report upon written request.

SECTION 8. Said chapter 90 is hereby further amended by inserting after section 12 the following new section:-

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

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

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

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

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

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

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

(b) Whoever violates this section shall be punished by a fine of \$100 for a first offense, by a fine of \$250 for a second offense and by a fine of \$500 for a third or subsequent offense. A violation of this section shall be considered a moving violation for purposes of the safe driver insurance plan under section 113B of chapter 175.

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

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

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

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

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