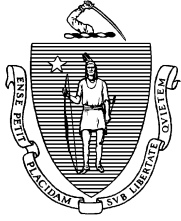


Senate, No. 2305, printed as amended

[SENATE, March 4, 2010 -- Text of the Senate amendment to the House Bill relative to safe driving H4475.]



The Commonwealth of Massachusetts

IN THE YEAR OF TWO THOUSAND AND TEN

1 **SECTION 1.** Section 1 of chapter 90 of the General Laws is hereby amended by inserting
2 after the definition of “Department”, as appearing in the 2008 Official Edition, the following
3 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 however
6 that electronic message shall include, but not be limited to, electronic mail, electronic message, a
7 text message, an instant message, a command or request to access an internet site, or any message
8 that includes keystroke entries sent between mobile devices.

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

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

17 **SECTION 3.** Said section 1 of said chapter 90 is hereby further amended by inserting after
18 the definition of “Transporter”, as so appearing, the following definition:-

19 ”Voice-operated device”, a device which allows a user to compose, send or receive an
20 electronic message while operating a motor vehicle without the use of either hand except to
21 activate, deactivate or initiate a feature or function.

22 **SECTION 4.** Section 8 of said chapter 90 of the general laws, as so appearing, is hereby
23 amended by inserting, in line 4, after word ‘registrar’ the following words :- nor any person who is
24 an to illegal or undocumented alien.

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

27 An applicant for a license or renewal of a license appearing in person at a registry branch
28 shall take and pass a vision test administered by the registry; provided, however, that an applicant
29 may provide a vision screening certificate signed by an optometrist or ophthalmologist to
30 demonstrate compliance with the minimum visual standards to obtain and hold a license.

31 **SECTION 6.** Said chapter 90 of the General Laws is hereby amended by inserting after
32 section 8L the following 2 sections:-

33 Section 8M. (a) For purposes of this section “hands-free mobile telephone” shall mean a
34 hand-held mobile telephone that has an internal feature or function, or that is equipped with a
35 hands-free accessory, whether or not permanently part of such hand-held mobile telephone, by
36 which a user engages in a call without the use of either hand, whether or not the use of either hand
37 is necessary to activate, deactivate or initiate a telephone call.

38 (b) No person under 18 years of age shall use a mobile telephone or hands-free mobile
39 telephone while operating a motor vehicle on any public way. For the purposes of this section, a
40 junior operator shall not be considered to be operating a motor vehicle if the vehicle is stationary
41 and not located in a part of the public way intended for travel.

42 A junior operator who violates the preceding paragraph shall be punished by a fine of \$100
43 and shall have his license or permit suspended for 60 days for a first offense and 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, by a fine of \$250 and shall have his license or
46 permit suspended for 180 days for a second offense, and by a fine of \$500 and shall have his license
47 or permit suspended for 1 year for a third or subsequent offense.

48 It shall be an affirmative defense for a junior operator to produce documentary or other
49 evidence that the use of a mobile telephone that is the basis of the alleged violation was made for
50 emergency purposes. For the purpose of this section, an emergency shall mean that the junior
51 operator needed to communicate with another to report any of the following: (i) that the motor
52 vehicle was disabled; (ii) that medical attention or assistance was required; (iii) that police
53 intervention was necessary for the personal safety of the operator or a passenger; or (iv) the
54 presence of a disabled vehicle or an accident in the public way.

55 A penalty under this section shall not be a surchargeable offense under section 113B of
56 chapter 175.

57 Section 8N. (a) For purposes of this section, a "health care provider" shall be a primary care
58 physician or other treating health care professional, as defined in chapter 112, with knowledge of an
59 applicant's overall physical and cognitive abilities.

60 (b) Notwithstanding any provision of the first paragraph of section 8, an applicant for a
61 license, or the renewal of a license, age 75 or older shall apply in person. The applicant shall
62 submit an elderly driving assessment form completed by the applicant's health care provider in the
63 health care provider's professional capacity and the applicant shall submit the assessment form to
64 the registrar. The elderly driving assessment form shall assess the applicant's cognitive and physical
65 ability, including a vision test, which shall include, but not be limited to, contrast sensitivity testing,
66 and any other condition that might prevent such applicant from operating a motor vehicle. The

67 elderly driving assessment form shall be developed by the registrar in consultation with the medical
68 advisory board established in section 8C. An applicant for a license renewal shall complete the form
69 upon the expiration of 60 months from attainment of the age of 75 years, and every 36 months
70 thereafter. No license shall be issued until the registrar is satisfied that the applicant is a qualified
71 person to receive such a license. The registry shall charge a fee not to exceed \$30 for purposes of
72 this paragraph.

73 An applicant age 75 or older who, after having submitted the assessment form, has been
74 determined by the registrar not to meet the minimum cognitive, visual and physical abilities
75 required to safely operate a motor vehicle, may petition the registrar for a road test as prescribed by
76 the registrar to demonstrate the requisite driving skills necessary for licensure. Unless the registrar
77 determines that permitting the driver to take a road test would present a safety risk to the general
78 public, the driver shall be permitted to take a road test to determine proficiency operating a motor
79 vehicle. The registrar shall make a determination as to whether licensure is warranted.

80 A person age 75 years or older, whose license to operate a motor vehicle has been suspended
81 or revoked by the registrar under this chapter or section 113B of chapter 175, may request
82 reconsideration by the registrar. Upon reconsideration, the registrar shall determine whether the
83 person has demonstrated that the person is capable of safely operating a motor vehicle and the
84 registrar shall issue findings to support the registrar's determinations which shall be based on
85 standards developed by the registrar, in consultation with the medical advisory board.

86 Any such determination by the registrar under this section may be appealed under section
87 28.

88 With respect to any person whose license to operate a motor vehicle is not renewed under
89 this section, the registrar shall provide an identification card as provided for in section 8E.

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

92 Section 12A. (a) No operator of a vehicle or vessel used in public transportation, including a
93 train, passenger bus, school bus or other vehicle used to transport pupils, taxi, passenger ferry boat,
94 water shuttle or other equipment used in public transportation owned by, or operated under the
95 authority of the Massachusetts Bay Transportation Authority, the Woods Hole, Martha's Vineyard
96 & Nantucket Steamship Authority, Massachusetts Port Authority, or the Massachusetts Department
97 of Transportation, shall use a mobile telephone, hands-free mobile telephone or other mobile
98 electronic device while operating such vehicle or vessel. Whoever violates this section shall be
99 punished by a fine of \$500. A violation of this section shall be a moving violation for purposes of
100 the safe driver insurance plan under section 113B of chapter 175.

101 (b) It shall be an affirmative defense for an operator under this section to produce evidence
102 that the use of a mobile telephone that is the basis of the alleged violation was made in the case of
103 an emergency. For the purpose of this paragraph, an emergency shall mean that the operator needs
104 to communicate with another person to report any of the following: (1) that the vehicle or vessel is
105 disabled; (2) that medical attention or assistance is required on the vehicle or vessel; (3) that police
106 intervention is necessary for the personal safety of a passenger or to otherwise ensure the safety of
107 the passengers; or (4) the presence of a disabled vehicle or an accident on a roadway.

108 **SECTION 8.** Section 13 of said chapter 90, as appearing in the 2008 Official Edition, is
109 hereby amended by striking out, in line 5, the words “citizens band” and inserting in place thereof
110 the following words:- federally licensed 2-way.

111 **SECTION 9.** Said chapter 90 is hereby further amended by inserting after section 13A the
112 following section:-

113 Section 13B. (a) No operator of a motor vehicle shall use a mobile telephone, or any
114 handheld device capable of accessing the internet, to manually compose, send, or read an electronic

115 message while operating a motor vehicle unless using a voice-operated device. For the purposes of
116 this section, an operator shall not be considered to be operating a motor vehicle if the vehicle is
117 stationary and not located in a part of the public way intended for travel.

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

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

122 **SECTION 10.** Subsection (a) of section 22 of said chapter 90, as appearing in the 2008
123 Official Edition, is hereby amended by adding the following sentence:- An operator whose license
124 is suspended or revoked on suspicion of mental or physical disability shall be entitled to a hearing
125 within 3 business days, but may postpone the hearing for up to 30 days at the operator's discretion.

126 **SECTION 11.** Subsection (b) of section 22 of said chapter 90 , as so appearing, is hereby
127 amended by adding at the end thereof the following paragraph:

128 In any hearing where an a licensee's has potential suspension or revocation is due in whole
129 or in part to the operator's physical or mental disability, the hearing shall be held within 14 days of
130 the event which prompted the registrar to initiate said hearing, unless otherwise agreed upon by the
131 involved parties. The registrar will consider all written and oral submissions by any interested
132 parties at the hearing, and any and all medical evidence offered shall be made public for purposes of
133 the hearing only. Any public record of the hearing shall have any and all medical evidence redacted,
134 and any person, entity or agency present at the hearing that later disseminates said medical evidence
135 without permission from the operator shall be liable to the operator for a sum of not less than \$1,000
136 and not more than \$5,000 for each violation under this section. If a person who disseminates
137 medical evidence offered at a hearing under this paragraph without permission from the operator is
138 an employee of the commonwealth, that person shall be immediately suspended without pay from
139 the person's position, pending a disciplinary hearing in accordance with the regular procedures of

140 the agency by which the person is employed, unless the dissemination of the medical evidence was
141 otherwise authorized or required by law. For purposes of the hearing, medical evidence shall only
142 be accepted if reported or recorded by a qualified, licensed medical professional. The registrar shall
143 notify the involved parties in writing of the registrar's decision whether or not to revoke the
144 operator's license not later than 7 days after the hearing.

145 **SECTION 12.** Said chapter 90 is hereby further amended by inserting after Section 22H the
146 following new section:-

147 Section 22I. (a) For purposes of this section, "health care provider" shall mean a registered
148 nurse, licensed practical nurse, physician, physician assistant, psychologist, occupational therapist,
149 physical therapist, optometrist, ophthalmologist or podiatrist who is a licensed health care provider
150 under chapter 112.

151 (b) If a health care provider acting in the health care provider's professional capacity or law
152 enforcement officer has good cause to believe that an operator is not physically or medically
153 capable of safely operating a motor vehicle, the provider or officer may make a report to the
154 registrar, requesting medical evaluation, as the registrar may prescribe, provided that such report is
155 not made solely on the basis of age. The report shall state the provider's or officer's good faith
156 belief that the operator cannot safely operate a motor vehicle. In making such report to the registrar,
157 a health care provider shall disclose the medical information underlying his good faith belief in his
158 report to the registrar. The good faith belief shall be based upon personal observation, physical
159 evidence, or, in the case of a law enforcement officer, an investigation which shall be described in
160 the report.

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

165 Upon receipt of the report, the registrar shall suspend the license of the operator. Not later
166 than 30 days after receipt of the report, the registrar shall conduct a review to determine the
167 operator's capacity for continued licensure to operator a motor vehicle. The registrar shall develop
168 standards, in consultation with the medical advisory board established under section 8C, by which
169 the determination shall be made.

170 (c) Reports to the registry under this section shall be confidential and shall be used by the
171 registrar only to determine a person's qualifications to operate a motor vehicle. All reports made
172 and all medical records reviewed and maintained by the registry under this section shall be
173 confidential, except upon order of a court of competent jurisdiction or upon the written request of
174 the respondent to examine any medical records or reports made about the respondent under this
175 section.

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

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

180 **SECTION 13.** Section 24 of said chapter 90, as appearing in the 2008 Official Edition, is
181 hereby amended by inserting after the word "vehicle", in line 730, the following words:- or whoever
182 while operating a motor vehicle in violation of section 12A or section 13B, such violation proved
183 beyond a reasonable doubt, is the proximate cause of injury to any other person, vehicle or property
184 by operating the motor vehicle negligently so that the lives or safety of the public might be
185 endangered.

186 **SECTION 14.** Chapter 90 of the General Laws is hereby amended by striking out section
187 24G, as so appearing, and inserting in place thereof the following section:-

188 Section 24G. (a) Whoever, upon any way or in any place to which the public has a right of
189 access, or upon any way or in any place to which members of the public have access as invitees or
190 licensees, operates a motor vehicle with a percentage, by weight, of alcohol in their blood of .08 or
191 greater, or while under the influence of intoxicating liquor, or of marihuana, narcotic drugs,
192 depressants, or stimulant substances, all as defined in section 1 of chapter 94C, or the vapors of
193 glue, and so operates a motor vehicle recklessly or negligently so that the lives or safety of the
194 public might be endangered, and by any such operation so described causes the death of another
195 person, shall be guilty of homicide by a motor vehicle while under the influence of an intoxicating
196 substance, and shall be punished by imprisonment in the state prison for not less than 2 ½ years nor
197 more than 15 years and a fine of not more than \$5,000, or by imprisonment in a jail or house of
198 correction for not less than 1 year nor more than 2 ½ years and a fine of not more than \$5,000. The
199 sentence imposed upon such person shall not be reduced to less than 1 year, nor suspended, nor
200 shall a person convicted under this subsection be eligible for probation, parole or furlough or
201 receive any deduction from the person's sentence until such person has served at least 1 year of
202 such sentence; provided, however, that the commissioner of correction may, on the recommendation
203 of the warden, superintendent or other person in charge of a correctional institution or the
204 administrator of a county correctional institution, grant to an offender committed under this
205 subsection a temporary release in the custody of an officer of such institution for the following
206 purposes only: to attend the funeral of a relative; to visit a critically ill relative; to obtain emergency
207 medical or psychiatric services unavailable at the institution; or to engage in employment under a
208 work release program. Prosecutions commenced under this section shall neither be continued
209 without a finding nor placed on file.

210 The provisions of section 87 of chapter 276 shall not apply to a person charged with a
211 violation of this subsection.

212 (b) Whoever, upon any way or in any place to which the public has a right of access or upon
213 any way or in any place to which members of the public have access as invitees or licensees,
214 operates a motor vehicle with a percentage, by weight, of alcohol in their blood of .08 or greater, or
215 while under the influence of intoxicating liquor, or of marihuana, narcotic drugs, depressants or
216 stimulant substances, all as defined in section 1 of chapter 94C, or the vapors of glue, or whoever
217 operates a motor vehicle negligently so that the lives or safety of the public might be endangered
218 and by any such operation causes the death of another person, shall be guilty of homicide by a
219 motor vehicle and shall be punished by imprisonment in a jail or house of correction for not less
220 than 30 days nor more than 2 ½ years, or by a fine of not less than \$300 nor more than \$3,000, or
221 both.

222 (c) Whoever, upon any way or in any place to which the public has a right of access or upon
223 any way or in any place to which members of the public have access as invitees or licensees,
224 operates a motor vehicle recklessly so that the lives or safety of the public might be endangered and
225 by any such operation causes the death of another person, shall be guilty of reckless homicide by a
226 motor vehicle and shall be punished by imprisonment in a jail or house of correction for not more
227 than 2 ½ years, or by imprisonment in the state prison for not more than 10 years, or by a fine of not
228 more than \$3,000, or by both such fine and imprisonment. For the purpose of this section, a person
229 operates recklessly when he consciously disregards a substantial and unjustifiable risk that the lives
230 or safety of the public might be endangered.

231 (d) The registrar shall revoke the license or right to operate of a person convicted of a
232 violation of subsection (a), (b) or (c) of this section or punished under section 13 ½ of chapter 265
233 when a motor vehicle is the instrument of the offense for a period of 10 years after the date of
234 conviction for a first offense. The registrar shall revoke the license or right to operate of a person
235 convicted for a subsequent violation of this section for the life of such person. No appeal, motion

236 for a new trial or exceptions shall operate to stay the revocation of the license or of the right to
237 operate; provided, however, such license shall be restored or such right to operate shall be reinstated
238 if the prosecution of such person ultimately terminates in favor of the defendant.

239 **SECTION 15.** Section 113B of Chapter 175 of the General Laws, as so appearing, is hereby
240 amended by striking out the fourteenth paragraph and inserting in place thereof the following
241 paragraph:-

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

249 **SECTION 16.** Notwithstanding any general or special law to the contrary, the registrar of
250 motor vehicles shall notify all persons whose license to operate a motor vehicle is set to expire by
251 mail, not later than 30 days before the expiration.

252 **SECTION 17.** Notwithstanding any general or special law to the contrary, the registrar of
253 motor vehicles shall not impose any additional fee for transactions conducted via telephone or in
254 person at any registry location in excess of those fees charged for transactions conducted via the
255 commonwealth's web portal.

256 **SECTION 18.** Upon revocation of a license to operate a motor vehicle under section 8 of
257 chapter 90 of the General Laws, the registrar shall provide a list of alternative means of
258 transportation options to the person whose license has been revoked. The list shall include at least 1
259 paratransit option that is in compliance with [42 U.S.C. § 12101](#).

260 **SECTION 19.** There shall be a special commission to study the long-term alternative
261 transportation needs of senior citizens. The commission shall consist of the secretary of elder affairs
262 or the secretary's designee who shall serve as chair; the secretary of transportation or the secretary's
263 designee; the director of the office on disability or the director's designee; 1 person to be appointed
264 by the president of the senate and 1 person to be appointed by the speaker of the house of
265 representatives; and 2 persons to be appointed by the governor, 1 of whom shall be a representative
266 of the Massachusetts Chapter of American Association of Retired Persons and 1 of whom shall be a
267 representative of a disability rights organization. Each member shall serve without compensation.

268 The commission shall review the public transportation alternatives for seniors citizens and
269 the disabled and may develop model plans that could be utilized by municipalities, state agencies
270 and regional transportation authorities. The commission shall: (1) examine the transportation needs
271 of senior citizens in the commonwealth; (2) examine and evaluate transportation services for senior
272 citizens inside and outside of the commonwealth; (3) establish best practices and evaluate programs
273 and services available to urban, suburban and rural populations; (4) evaluate regional disparities in
274 transportation options and explore solutions to those disparities; (5) provide recommendations for
275 improvements in the management of local and regional transportation services for seniors; (6)
276 examine and develop recommendations on ways in which the commonwealth and its municipalities
277 can meet the transportation needs of senior citizens for the next 15 years: and (7) examine and
278 develop recommendations on methods by which the commonwealth may meet the transportation
279 needs of senior citizens, including, but not limited to, recommendations regarding revenue sources
280 and establishing new incentives for public-private partnerships in the development of transportation
281 services.

282 The commission may hold public hearings to assist in the collection and evaluation of data
283 and testimony.

284 The commission shall submit its findings and recommendations relative to public
285 transportation options for seniors citizens and the disabled, together with drafts of legislation
286 necessary to carry those recommendations into effect, by filing the same with the clerks of the
287 house of representatives and senate, the house and senate committees on ways and means, the joint
288 committee on elder affairs and the joint committee on transportation not later than March 1, 2012.

289 **SECTION 20.** Notwithstanding any general or special law to the contrary, section 30A½ of
290 chapter 90 of the General Laws shall not apply to section 8N of chapter 90.

291 **SECTION 21.** Section 15 of this act shall apply to surchargeable offenses that occur on or
292 after the effective date of this act.