HOUSE . . . . . No. 4203

The Commonwealth of Massachusetts

The committee of conference on the disagreeing votes of the two branches with reference to the Senate amendment (striking out all after the enacting clause and inserting in place thereof the text contained in Senate document numbered 2250) of the House Bill requiring the hands-free use of mobile telephones while driving (House, No. 3793, amended), reports recommending passage of the accompanying bill (House, No. 4203) November 18, 2019.

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HOUSE . . . . . No. 4203

The Commonwealth of Massachusetts

In the One Hundred and Ninety-First General Court
(2019-2020)

An Act requiring the hands-free use of mobile telephones while 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 2018 Official Edition, is hereby amended by inserting after the definition of "Hands-free mobile telephone" the following definition:-

"Hands-free mode", operation of a mobile electronic device by which a user engages in a voice communication or receives audio without touching or holding the device; provided, however, that a mobile electronic device may require a single tap or swipe to activate, deactivate or initiate the hands-free mode feature.

SECTION 2. Section 7B of said chapter 90, as so appearing, is hereby amended by striking out, in line 172, the word "telephone" and inserting in place thereof the following words:- electronic device.

SECTION 3. Section 8M of said chapter 90, as so appearing, is hereby amended by inserting after the word "shall", in line 1, the following words:- hold in their hand or.

SECTION 4. Said section 8M of said chapter 90, as so appearing, is hereby further amended by inserting after the word “travel”, in line 6, the following words:- by a motor vehicle or bicycle.

SECTION 5. Said section 8M of said chapter 90, as so appearing, is hereby further amended by striking out the fourth paragraph and inserting in place thereof the following paragraph:-

A first or second offense under this section shall not be a surchargeable incident under section 113B of chapter 175 or under a motor vehicle liability policy as defined in section 34A that is issued pursuant to said chapter 175; provided, however, that a third or subsequent offense under this section shall be a surchargeable incident under said section 113B of said chapter 175 or under a motor vehicle liability policy as defined in said section 34A that is issued pursuant to said chapter 175.

SECTION 6. The second paragraph of subsection (a) of section 12A of said chapter 90, as so appearing, is hereby amended by striking out the second sentence and inserting in place thereof the following sentence:- A violation of this section occurring on a way intended for motor vehicles shall be a surchargeable incident under section 113B of chapter 175 or under a motor vehicle liability policy as defined in section 34A that is issued pursuant to said chapter 175.

SECTION 7. Section 13 of said chapter 90, as so appearing, is hereby amended by striking out, in line 4, the word “operator” and inserting in place thereof the following word:- operated.

SECTION 8. Said section 13 of said chapter 90, as so appearing, is hereby further amended by striking out, in line 6, the word “telephone” and inserting in place thereof the following words:- electronic device.

SECTION 9. Said chapter 90 is hereby further amended by striking out section 13B, as so appearing, and inserting in place thereof the following section:-

Section 13B. (a) No operator of a motor vehicle shall hold a mobile electronic device. No operator of a motor vehicle shall use a mobile electronic device unless the device is being used in hands-free mode. No operator of a motor vehicle shall read or view text, images or video displayed on a mobile electronic device; provided, however, that an operator may view a map generated by a navigation system or application on a mobile electronic device that is mounted on or affixed to a vehicle’s windshield, dashboard or center console in a manner that does not impede the operation of the motor 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 public way intended for travel by a motor vehicle or bicycle.

(b) Evidence that the use of a mobile electronic device was in response to an emergency shall be an affirmative defense to an alleged violation of this section. For the purposes of this section, an emergency shall mean that the operator needed to report that: (i) the vehicle was disabled; (ii) medical attention or assistance was required; (iii) police intervention, fire department or other emergency services were necessary for the personal safety of the operator or a passenger or to otherwise ensure the safety of the public; or (iv) a disabled vehicle or an accident was present on a roadway.

(c) This section shall not apply to public safety personnel or emergency first responders using a mobile electronic device while operating an emergency services vehicle and engaged in the performance of their duties.

(d) A violation of this section shall be punishable 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. In addition to any fines pursuant to this subsection, an operator who commits a second or subsequent offense under this section or section 8M shall be required to complete a program selected by the registrar of motor vehicles that encourages a change in driver behavior and attitude about distracted driving. Nothing in this subsection shall authorize the seizure or forfeiture of a hands-free mobile telephone or a mobile electronic device.

(e) A first or second offense under this section or section 8M shall not be a surchargeable incident under section 113B of chapter 175 or under a motor vehicle liability policy as defined in section 34A that is issued pursuant to said chapter 175; provided, however, that a third or subsequent offense under this section or section 8M shall be a surchargeable incident under said section 113B of said chapter 175 or under a motor vehicle liability policy as defined in said section 34A that is issued pursuant to said chapter 175.

SECTION 10. Said chapter 90 is hereby further amended by adding the following section:-

Section 63.

(a) The registry of motor vehicles shall collect data from any issued Massachusetts Uniform Citation regarding the following information: (i) identifying characteristics of the individuals who receive a warning or citation or who are arrested, including the age, race and

gender of the individual; (ii) the traffic infraction; (iii) the date and time of the offense and the municipality in which the offense was committed; (iv) whether a search was initiated as a result of the stop; and (v) whether the stop resulted in a warning, citation or arrest. The registry of motor vehicles shall maintain statistical information on the data required by this section and shall report that information annually to the secretary of public safety and security.

(b) Data or information collected, transmitted or received under this section shall be used only for statistical purposes and shall not contain information that may reveal the identity of any individual who is stopped or any law enforcement officer.

(c) The secretary of public safety and security shall maintain a standardized process to facilitate data collection for law enforcement agencies and procedures for law enforcement officials to collect data under this section. The failure of a law enforcement officer to collect such data shall not affect the validity of the underlying stop.

(d) Annually, the secretary of public safety and security shall transmit the necessary data collected by the registry of motor vehicles to a university, non-profit organization or institution, whether private or public, in the commonwealth with experience in the analysis of such data for annual preparation of an analysis and report of its findings. Upon receipt, the secretary shall immediately make the annual analysis and report, including any aggregate analysis of the data, publicly available by publishing such annual analysis and report online and shall transmit a copy of such annual analysis and report to the attorney general, the department of state police, the Massachusetts Chiefs of Police Association Incorporated, and the clerks of the house of representatives and the senate. The secretary shall, in consultation with the attorney general, if such annual analysis and report suggest that a law enforcement agency appears to have engaged

in racial or gender profiling: (i) require the law enforcement agency for a period of 1 year to collect information, including the reason for the stop, in addition to the other information already required under the Massachusetts Uniform Citation, on all traffic stops, including those not resulting in a warning, citation or arrest; and (ii) mandate implicit bias training using best practices.

(e) Notwithstanding any general or special law to the contrary, data collected, transmitted or received pursuant to subsections (a) and (d) shall be stored in a properly secured system in a cryptographically encrypted form and shall only be provided upon the execution of a written confidentiality agreement with the secretary of public safety and security that is protective of privacy and prohibits the further distribution of the data; provided, however, that nothing in the confidentiality agreement shall prohibit the publication of aggregate analysis of the data. Unencrypted data shall not be accessed, copied or otherwise communicated without the active concurrence and the express written approval of the secretary. Any processing of the data collected or received pursuant to this section shall only result in aggregated information that does not reveal the identity of any person or law enforcement officer.

(f) The secretary of public safety and security shall publish an annual public report, derived from the data used for the annual analysis and report prepared under subsection (d), containing aggregate numbers, listed by municipality and law enforcement agency, for the information categories identified in subsection (a); provided, however, that data concerning age shall be aggregated into categories for persons aged 29 and younger and aged 30 and older; provided further, that data concerning time of day shall be aggregated into categories for offenses committed from 12:01 am to 6:00 am, from 6:01 am to 12:00 pm, from 12:01 pm to 6:00 pm and from 6:01 pm to 12:00 am. The secretary shall take reasonable steps to ensure that

any information in the report cannot be used, directly or indirectly, either alone or together with other information, to identify or derive information about any stop made by a particular law enforcement officer or any individual involved in a stop made by a law enforcement officer. The secretary shall make the information contained in the report available to the public online in machine readable format.

(g) Not later than 30 days following the date on which the annual analysis and report under subsection (d) is received by the secretary of public safety and security, the secretary shall hold not fewer than 3 public hearings in different regions of the commonwealth to present the annual analysis and report and to accept public testimony regarding the report. The executive office of public safety and security shall provide the public with not less than 14 days prior notice of each hearing by publishing the hearing date on the executive office's website and any official social media accounts and by providing written notice to the joint committee on public safety and security, the joint committee on the judiciary and the clerks of the house of representatives and the senate.

SECTION 11. Section 2A of chapter 90C of the General Laws, as appearing in the 2018 Official Edition, is hereby amended by striking out, in line 8, the words "chapter 228 of the acts of 2000" and inserting in place thereof the following words:- section 63 of chapter 90.

SECTION 12. Sections 8 to 10, inclusive, of chapter 228 of the acts of 2000 are hereby repealed.

SECTION 13. Chapter 155 of the acts of 2010 is hereby amended by striking out section 14 and inserting in place thereof the following section:-

Section 14. The registrar of motor vehicles, in cooperation with the highway safety division, the department of elementary and secondary education, the department of higher education and municipal law enforcement, shall develop and implement an annual public awareness campaign for junior and adult operators. The campaign shall include, but 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 under sections 8M, 12A, 13 and 13B of chapter 90 of the General Laws, information on the fines and punishments that may be imposed for violations of said chapter 90 and bicycle safety. The registrar of motor vehicles shall include information on the hazards of distracted driving in each revised publication of the driver's manual.

SECTION 14. Notwithstanding any general or special law to the contrary, the secretary of public safety and security shall investigate and study alternative methods for collecting more accurate data pursuant to section 63 of chapter 90 of the General Laws. The study shall include, but not be limited to, the feasibility of expanding the data collected pursuant to subsection (a) of said section 63 of said chapter 90, including expansion of the data collection to include the race and gender of each individual subject to traffic stops, searches resulting from a traffic stop or frisks resulting from a traffic stop, whether or not a Massachusetts Uniform Citation was issued. The secretary shall file a report with the results of the investigation and study together with legislation, if any, with the joint committee on transportation not later than April 1, 2020.

SECTION 15. This act shall take effect 90 days after passage; provided, however, that notwithstanding any general or special law to the contrary, an operator of a motor vehicle shall be issued a warning for a first violation of section 13B of chapter 90 of the General Laws for

conduct other than the typing or reading of an electronic message occurring after the effective date of this act until March 31, 2020, inclusive.