

MOBILE PHONE & TEXTING¹

These laws take effect on September 30, 2010

Requirements

Use of mobile phone or electronic device by operator who is under 18.

Penalty structure:

1st offense: \$100 CMVI; RMV 60 day suspension and attitude course.

2nd offense: \$250 CMVI; 180 day suspension

3rd offense: \$500 CMVI; 1 year suspension

This law covers any mobile phone, including a hands-free device, and any mobile electronic device (including texting device, a pager, PDA, laptop, video games and digital cameras, etc.)

Only exception: Emergency use for disabled vehicle or accident, medical attention, police/emergency services needed.

Statute

G.L. c. 90, § 8M

Penalty

CMVI

\$100

See other info

Mobile phone use or texting by public transportation operator.

Covers all buses, trains, vessels and vehicles owned by MBTA, MassPort, Steamship Authority.

Fact that unit is hands-free is no defense.

Only exceptions:

Use permitted by written job guidelines.

Emergency used (same definition above).

Statute

G.L. c. 90, § 12A

Penalty

CMVI

\$500

Mobile phone use as an adult operator without having at least one hand on

¹ See Chapter 155 of the Acts of 2010.

the steering wheel.

- 2nd offense within 12 months: \$75
- 3rd offense within 12 months: \$150

Statute

G.L. c. 90, § 13

Penalty

CMVI

\$35

See other info

Texting while operating a vehicle. The operator used an electronic device or mobile phone to manually compose, send or read an electronic message.

- 2nd offense CMVI \$250
- 3rd offense CMVI \$500

Statute

G.L. c. 90, § 13B

Penalty

CMVI

\$100

See other info

Negligent operation and injury from mobile phone use.

Elements

While committing any of the offenses above:

- Using a mobile phone as a minor (§ 8M);
- Using a phone or texting as a public transportation operator (§ 12A); or
- Sending or receiving a "text" (§ 13B).

The operator drove negligently so that the lives and safety of the public might be endangered; and

Caused injury to some other person, vehicle or property.

Right of arrest: While no statutory arrest exists for negligent operation, case law states it constitutes a breach of the peace justifying warrantless arrest *when observed by an officer*. *Comm. v. Ceria*, 13 Mass. App. Ct. 230 (1982).

Penalty: HC NLT 2 weeks, NMT 2 years; and/or Fine NLT \$20, NMT \$200.

\$250 head injury surcharge. No CWOFF without judge's written finding that it is "in the interests of justice"

RMV revocation: 60 days for 1st offense; 1 year for subsequent offenses within 3 years. If junior operator: 180 days for 1st offense; 1 year for subsequent offenses within 3 years. May revoke registration if defendant is exclusive owner of vehicle.

Statute

G.L. c. 90,

§ 24(2)(a)

Penalty

Crime

See other info

Elderly drivers

Mandatory in-person license renewals for drivers 75 and older. The driver must take an eye test at the registry branch or submit a "vision certificate" from an optometrist or ophthalmologist.

New procedure to request medical evaluation of motorist. G.L. c. 90, § 22I creates a procedure, known by registry officials as the "Complaint Medical." Section 22I authorizes a police officer or a health care provider to request that the registry conduct an evaluation of an operator to assess his or her ability to safely drive a motor vehicle. The written request must present "reasonable cause to believe" that the motorist is physically or medically incapable of safe operation, or that the motorist has a "cognitive or functional impairment" affecting safe operation.

This report may not be based solely on a driver's age.

So long as their reports are made in "good faith," officers and health care providers are immune from civil liability. They are also immune if they fail to report.

The registry must conduct its review of the operator's capacity no later than 30 days from the receipt of the report. The reports are confidential, not public records.

Chapter 155 of the Acts of 2010

Approved, July 2, 2010 effective in 90 days

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 piece of digital communication that is designed or intended to be transmitted between a mobile electronic device and any other electronic device; provided, however, that electronic message shall include, but not be limited to, electronic mail, electronic message, 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 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 other 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, 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 handheld or portable cellular, analog, wireless, satellite or digital telephone, including a telephone with 2-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. For the purposes of this chapter, “mobile telephone” shall not include amateur radios operated by those licensed by the Federal Communications Commission to operate such radios, or citizen band radios.

SECTION 4. The fourteenth paragraph of section 8 of said chapter 90, as so appearing, is hereby amended by adding the following sentence:- 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 5. 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, instead of passing the vision test an applicant may provide a vision screening certificate, signed by an optometrist or ophthalmologist to demonstrate compliance with minimum visual standards to obtain and hold license.

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

Section 8M. No person under 18 years of age shall use a mobile telephone, hands-free mobile telephone or mobile electronic device while operating a motor vehicle on any public way. For the purposes of this section, 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 public way intended for travel.

A junior operator who violates the preceding paragraph shall be punished by a fine of \$100 and shall have his license or permit suspended for 60 days for a first offense and shall not be eligible for license reinstatement until he also completes a program selected by the registrar that encourages attitudinal changes in young drivers; for a second offense by a fine of \$250 and shall have his license or permit suspended for 180 days; and for a third or subsequent offense by a fine of \$500 and shall have his license or permit suspended for 1 year.

It shall be an affirmative defense for a junior operator to produce 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 for emergency purposes. For the purpose of this section, an emergency shall mean that the junior operator used the hands-free mobile telephone or mobile electronic device to communicate with another to report any of the following: (i) that the motor vehicle was disabled; (ii) that medical attention or assistance was required; (iii) that police intervention, fire department or other emergency service

was necessary for the personal safety of the operator or a passenger; or (iv) that a disabled vehicle or an accident was present in the public way.

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

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

Section 12A. (a) No operator of a vehicle or vessel used in public transportation, including a train, passenger bus, school bus or other vehicle used to transport pupils, passenger ferry boat, water shuttle or other equipment used in public transportation owned by, or operated under the authority of the Massachusetts Bay Transportation Authority, the Woods Hole, Martha's Vineyard and Nantucket Steamship Authority, Massachusetts Port Authority, or the Massachusetts Department of Transportation, 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 vehicle or vessel used in public transportation using a mobile telephone, hands-free mobile telephone or mobile electronic device in the performance of the operator's official duties; provided, however, that in order for the use of any such device to be made "in the performance of the operator's official duties," such use must have been made in conformance with applicable written guidelines issued by a public entity listed in this paragraph relative to circumstances when operators are permitted to use said devices in the performance of their official duties or pursuant to directives from federal authorities having regulatory jurisdiction over such public entity's operations.

Whoever violates this section shall be punished by a fine of \$500. A violation of this section shall not be a moving violation for purposes of the safe driver insurance plan under section 113B of chapter 175.

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

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

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

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

SECTION 9. 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, or any handheld device capable of accessing the internet, to manually compose, send or read an electronic message while operating a 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.

(b) 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.

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

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

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

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

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

(c) Not later than 30 days after receipt of the report, the registrar shall conduct a review to determine the operator's capacity for continued licensure to operate a motor vehicle. The commissioner of public health shall, in consultation with the registrar and with medical experts on cognitive or functional impairments, and with the medical advisory board established in 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. The registrar shall consider information contained in a report under subsection (b) in determining whether to issue or suspend a license to operate a motor vehicle.

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

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

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

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

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

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

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

SECTION 14. 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 operators which 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 and 13B of chapter 90 of the General Laws, and information on the fines and punishments which may be imposed for violations of said chapter 90. Said campaign shall commence not later than January 1, 2011.

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