

# SENATE . . . . . No. 2250

---

Senate, June 10, 2019 – Text of the Senate amendment (Senator Boncore) to the House Bill requiring the hands-free use of mobile telephones while driving (House, No. 3793, amended)

---

## The Commonwealth of Massachusetts

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

1           SECTION 1. Section 1 of chapter 90 of the General Laws is hereby amended by inserting  
2 after the definition of “Hands-free mobile telephone”, as appearing in the 2016 Official Edition,  
3 the following definition:-

4           “Hands-free mode”, operation of a mobile electronic device by which a user engages in a  
5 voice communication or receives audio without the use of the user’s hand; provided, however,  
6 that a mobile electronic device may require a single tap or swipe to activate, deactivate or initiate  
7 the hands-free mode feature.

8           SECTION 2. Said section 1 of said chapter 90 is hereby further amended by inserting  
9 after the word “vehicle”, in line 239, as so appearing, the following words:- ; provided further,  
10 that the registry of motor vehicles may promulgate regulations to further define “mobile  
11 electronic device”.

12           SECTION 3. Section 7B of said chapter 90, as so appearing, is hereby amended by  
13 striking out, in line 172, the word “telephone” and inserting in place thereof the following  
14 words:- electronic device.

15 SECTION 4. Said section 7B of said chapter 90, as so appearing, is hereby further  
16 amended by striking out, in lines 177 and 178, the words “intervention is necessary for the  
17 personal safety of a passenger or to otherwise ensure the safety of the passengers; and (d)” and  
18 inserting in place thereof the following words:- or fire department intervention or some other  
19 emergency service is necessary for the safety of the operator, a passenger or a pedestrian in or  
20 near the roadway; (d) that police intervention is necessary due to a motor vehicle being operated  
21 in a manner that poses a threat to the safety of travelers on the roadway or to pedestrians; or (e).

22 SECTION 5. Section 8M of said chapter 90, as so appearing, is hereby amended by  
23 inserting after the word “travel”, in line 6, the following words:- by a motor vehicle or bicycle.

24 SECTION 6. Said section 8M of said chapter 90, as so appearing, is hereby further  
25 amended by inserting after the word “purposes”, in line 19, the following words:- and that no  
26 other person in the vehicle was capable of using a mobile telephone, hands free-mobile telephone  
27 or mobile electronic device.

28 SECTION 7. Said section 8M of said chapter 90, as so appearing, is hereby further  
29 amended by striking out, in line 26, the words “or (iv)” and inserting in place thereof the  
30 following words:- (iv) that police or fire department intervention or some other emergency  
31 service was necessary for the safety of a pedestrian in or near the roadway; (v) that police  
32 intervention was necessary due to a motor vehicle being operated in a manner that posed a threat  
33 to the safety of travelers on the roadway or to pedestrians; or (vi).

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

37           A third or subsequent offense under this section shall be a surchargeable incident under  
38 section 113B of chapter 175 or under a motor vehicle liability policy as defined in section 34A  
39 that is issued pursuant to said chapter 175.

40           SECTION 9. Section 12A of said chapter 90, as so appearing, is hereby amended by  
41 striking out, in lines 23 to 25 inclusive, the words “not be a moving violation for purposes of the  
42 safe driver insurance plan under section 113B of chapter 175” and inserting in place thereof the  
43 following words:- be a surchargeable incident for a violation occurring on a way intended for  
44 motor vehicles under section 113B of chapter 175 or under a motor vehicle liability policy as  
45 defined in section 34A that is issued pursuant to said chapter 175.

46           SECTION 10. Said section 12A of said chapter 90, as so appearing, is hereby further  
47 amended by striking out, in line 35, the words “or (4)” and inserting in place thereof the  
48 following words:- (4) that police department intervention is necessary due to a motor vehicle  
49 being operated in a manner that poses a threat to the safety of travelers on the roadway or to  
50 pedestrians; or (5).

51           SECTION 11. Section 13 of said chapter 90 is hereby amended by striking out, in line 3,  
52 as so appearing, the word “may” and inserting in place thereof the following words:- is likely to.

53           SECTION 12. Said section 13 of said chapter 90 is hereby further amended by striking  
54 out, in line 4, as so appearing, the word “operator” and inserting in place thereof the following  
55 word:- operated.

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

59 SECTION 14. Said section 13 of said chapter 90 is hereby further amended by striking  
60 out, in line 7, as so appearing, the words “as long as” and inserting in place thereof the following  
61 words:- if the operator can do so without diverting attention from the roadway and.

62 SECTION 15. Said section 13 of said chapter 90 is hereby further amended by inserting  
63 after the word “vehicle”, in line 31, the following sentence:- , nor shall a person view video  
64 content on a mobile electronic device while operating a motor vehicle.

65 SECTION 16. Said chapter 90 is hereby further amended by striking out section 13B, as  
66 so appearing, and inserting in place thereof the following section:-

67 Section 13B. (a) For the purposes of this section, “emergency purposes” shall mean that  
68 the operator used the mobile electronic device for voice communication with another person to  
69 report, with a reasonable belief, that: (i) the motor vehicle was disabled; (ii) medical attention or  
70 assistance was required; (iii) police or fire department intervention or some other emergency  
71 service was necessary for the safety of the operator, a passenger or a pedestrian in or near the  
72 roadway; (iv) a disabled vehicle or an accident was present in the roadway; or (v) police  
73 intervention was necessary due to a motor vehicle being operated in a manner that poses a threat  
74 to the safety of travelers on the roadway or to pedestrians.

75 (b) An operator of a motor vehicle shall not touch or hold in the operator’s hand a mobile  
76 electronic device or use a mobile electronic device to compose, send or read an electronic  
77 message while operating a vehicle except to perform a single tap or swipe to activate, deactivate  
78 or initiate hands-free mode or a command to a global positioning system or navigation device.

79 Nothing in this section shall prohibit the use of an installed system embedded in the  
80 vehicle that enhances the operator’s view to maneuver the vehicle. For the purposes of this

81 section, an operator shall not be considered to be operating a motor vehicle if the vehicle is  
82 stationary and not located in part of a roadway intended for travel by a motor vehicle or bicycle.

83 (c) A violation of this section shall be punishable by a fine of \$100 for a first offense, a  
84 fine of \$250 for a second offense and a fine of \$500 for a subsequent offense. A third or  
85 subsequent violation of this section or of section 8M shall be a surchargeable incident under  
86 section 113B of chapter 175 or under a motor vehicle liability policy as defined by section 34A  
87 issued pursuant to said chapter 175. In addition to any fines pursuant to this subsection, an  
88 operator who commits a second or subsequent offense under this section shall be required to  
89 complete a program selected by the registrar of motor vehicles that encourages a change in driver  
90 behavior and attitude about distracted driving. Nothing in this subsection shall authorize the  
91 seizure or forfeiture of a hands-free mobile telephone or a mobile electronic device.

92 (d) Documentary or other evidence that the use of a mobile electronic device was for  
93 emergency purposes and that no other person in the vehicle was capable of using a mobile  
94 electronic device shall be an affirmative defense to an alleged violation of this section.

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

98 (f) The registry of motor vehicles may promulgate regulations to implement this section.

99 SECTION 17. Said chapter 90 is hereby further amended by adding the following  
100 section:-

101           Section 63. Every law enforcement agency shall, for each stop made by a law  
102 enforcement officer of the agency pursuant to this chapter, collect and submit to the executive  
103 office of public safety and security: (i) the reason for the stop; (ii) the date, time and street  
104 address or approximate location of the stop; (iii) the perceived race and ethnicity of the driver  
105 subject to the stop; (iv) the gender and age of the driver subject to the stop; (v) whether a search  
106 was initiated, including a search of a vehicle or the vehicle operator or passengers and, if a  
107 search was initiated, whether the search was conducted with the consent of the operator or  
108 passengers; (vi) the results of any search; (vii) whether the stop or subsequent search resulted in  
109 a warning, citation, arrest or other action; and (viii) the badge number of the officer initiating the  
110 stop.

111           The secretary of public safety and security shall ensure a standardized process to  
112 facilitate data collection for law enforcement agencies and procedures for law enforcement  
113 officials to collect such data under this section. The failure of a law enforcement officer to  
114 collect such data shall not affect the validity of the underlying stop.

115           Annually, not later than March 1, the secretary shall collect, analyze and submit a report  
116 of the statewide data collected pursuant to this section, excluding officer badge numbers, to the  
117 joint committee on the judiciary, the joint committee on public safety and homeland security and  
118 the senate and house committees on ways and means. The secretary shall make the data collected  
119 under the first paragraph available to the public online in machine-readable format, excluding  
120 any personally identifiable information.

121           The secretary of public safety and security shall promulgate regulations to implement this  
122 section.

123 SECTION 18. Chapter 155 of the acts of 2010 is hereby amended by striking out section  
124 14 and inserting in place thereof the following section:-

125 Section 14. The registrar of motor vehicles, in cooperation with the highway safety  
126 division, the department of elementary and secondary education, the department of higher  
127 education and municipal law enforcement, shall develop and implement an annual public  
128 awareness campaign for junior and adult operators. The campaign shall include, but not be  
129 limited to, the dangers and consequences of distracted driving, information on the restrictions of  
130 mobile telephone and mobile electronic device use while operating a motor vehicle under  
131 sections 8M, 12A, 13 and 13B of chapter 90 of the General Laws, information on the fines and  
132 punishments that may be imposed for violations of said chapter 90 and bicycle safety. The  
133 registrar of motor vehicles shall include information on the hazards of distracted driving in each  
134 revised publication of the driver's manual.

135 SECTION 19. Notwithstanding any general or special law to the contrary, the division of  
136 insurance shall conduct a study on the impact of reducing the amount of time unsafe driver  
137 points remain on a driver's record. The report and any recommendations shall be submitted to  
138 the clerks of the senate and house of representatives, the joint committee on transportation and  
139 the senate and house committees on ways and means not later than December 31, 2019.