



**MEMORANDUM**

**DATE:** April 10, 2009  
**TO:** Bruce Blehart  
**CC:** Jerry Barrett  
**FROM:** Ted Thurn  
**RE:** Massachusetts Senate Bill 1939 – “An Act Relative To Drowsy Driving” The bill establishes numerous provisions to prevent drowsy driving

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- Information Received \_\_\_\_\_
- Please see me \_\_\_\_\_

**1. Massachusetts Senate Bill 1939**

**Position: For Further Discussion**

**Synopsis**

Senate Bill 1939 is a comprehensive bill addressing the many different aspects of the drowsy driving issue. The bill amends specific sections of the Massachusetts General Laws (MGL) which are to prevent drowsy driving accidents and to educate the public and law enforcement officials on the issue of drowsy driving. The bill also includes provisions which would establish a body mass index (BMI) for individuals applying for a commercial driver’s license (CDL); and the bill establishes penalties for individuals who are driving while drowsy or who cause an accident or vehicular homicide while driving drowsy.

The bill is based on recommendations from a report titled “Asleep at the Wheel” (attached). The report was developed by the Massachusetts Special Commission on Drowsy Driving in an effort to capture an accurate account of the prevalence of this dangerous trend within the Commonwealth of Massachusetts. The Special Commission was comprised of legislators, industry professionals, research experts, legal experts, and law enforcement officials. The Commission released their findings in February 2009 and the chair of the Commission, Senator Richard T. Moore, is also the sponsor of this piece of legislation.

Senator Moore's Chief of Staff informed me that although they are aware that the bill will probably not pass this legislative session, they feel the legislation is a good opportunity to start a conversation on drowsy driving.

### **Analysis**

There are 14 different provisions in the bill which range from the straightforward - adding drowsy driving questions on a driver's education exam - to the more complex - equivocating drowsy driving with drunk driving. In order to obtain a greater understanding of what the bill is trying to accomplish, a list of all the bills provisions are provided. Also included are recommendations regarding the position AASM might want to take on each specific issue.

- (1) **Drivers Examinations to Include Questions on Drowsy Driving**  
*(Section 8 of Chapter 90 of the Massachusetts General Laws [M.G.L]: Operator's licenses; applications; examinations)*

Requires that the examination for a motor vehicles license add questions which address the importance of obtaining adequate sleep and how to recognize the signs of driver impairment associated with drowsiness and sleep disorders and any appropriate countermeasures to drowsiness.

*Position: Support Amendment*

- (2) **School Bus Operators to Receive Education on Drowsy Driving**  
*(Section 8A of Chapter 90 M.G.L: Operators of school buses; licensing; training; instructors)*

Requires that individuals who are applying for a license to be a school bus operator receive education on obtaining adequate sleep and how to recognize the signs of driver impairment associated with drowsiness and sleep disorders and any appropriate countermeasures to drowsiness.

*Position: Support Amendment*

- (3) **Add Sleep Physician to Medical Advisory Board**  
*(Section 8C of Chapter 90 M.G.L: Medical advisory board; standards of fitness for applicants for learner's permits or licenses)*

Would add a sleep physician to the Massachusetts Department of Public Health Medical Advisory Board. The Board establishes the standards for applicants who are applying for a learner's permit or license.

*Position: Support Amendment*

- (4) **Lowers the Limit to Remove Abandoned Cars from 72 to 4 Hours.**  
*(Section 22C of Chapter 90 M.G.L: Abandoned motor vehicles; removal and disposal)*

Lowers the limit of deeming if a car has been abandoned on the highway from 72 to 4 hours. Amendment would allow the city to remove a vehicle after four hours.

In the report “Asleep at the Wheel” it states that drowsy drivers may veer off the road. The commission recommended that rumble strips are installed on highway in order to alert the driver and prevent run-off the road accidents. The report also recommended that the roads are cleared of abandoned vehicles. The commission feels that abandoned vehicles left for days hinder the rumble strips effectiveness and may cause fatal accidents.

*Position: Support Amendment*

- (5) **Include Drowsy Drivers as a Habitual Traffic Offender**  
*(Section 22F of Chapter 90 M.G.L: Habitual traffic offender; revocation of license; requirements for reinstatement)*

The Section “Habitual Traffic Offender” would establish a category for a person who is falling asleep while operating a motor vehicle or impaired by drowsiness or sleep deprivation as a habitual traffic offender.

It would equivocate drowsy driving with other habitual offenses which include:

- Operating a motor vehicle while under the influence of intoxicating liquor or narcotic;
- Operating a motor vehicle recklessly or negligently so that the lives and safety of the public might be endangered
- Operating a motor vehicle after the person’s motor vehicle license has been suspended.

A person convicted three times of these offenses within a five year period will be designated as a habitual traffic offender and could have their license revoked.

*Position: Needs Further Discussion*

- (6) **Penalties for Person Who is Drowsy Driving**  
(Section 24 of Chapter 90 M.G.L.: Driving while under influence of intoxicating liquor, etc.; second and subsequent offenses; punishment; treatment programs; reckless and unauthorized driving; failure to stop after collision)

Section addressing driving while under influence would be amended to include drowsy driving. Basically, by adding this language a person who is convicted of operating a vehicle while drowsy could face the same penalties as a drunk driver. The amended language would read:

“Whoever operates a motor vehicle with alcohol in their blood of .08 or greater, or while under the influence of intoxicating liquor, or of marijuana, narcotic drugs, depressants or stimulant substances or the vapors of glue or who has fallen asleep while operating a motor vehicle, or who was impaired by drowsiness of which the person was aware or could reasonably be expected to be aware shall be punished by a fine of not less than \$500 nor more than \$5,000 or by imprisonment for not more than 2 1/2 years, or both such fine and imprisonment. Evidence that the operator of a motor vehicle was awake for at least 22 of the 24 hours prior to said operation of a motor vehicle or at least 140 hours of the 168 hours prior to said operation of a motor vehicle that is involved in a crash that results in death, debilitating injury, or property damage in excess of \$50,000, shall constitute sufficient evidence to conclude that said motor vehicle operator was impaired by drowsiness.

*Position: Needs Further Discussion*

- (7) **Requirements for Commercial Drivers Who Have BMI above 33 kg/m<sup>2</sup>**  
(Section 6 of Chapter 90F M.G.L.: Commercial driver licensing; testing procedures)

Would require that a person wishing to renew or obtain a commercial drivers license (CDL) who has a body mass index (BMI) above 33 kg/m<sup>2</sup> would be required to undergo an objective diagnostic screening test for obstructive sleep apnea (OSA). The Registry of Motor Vehicle’s Medical Advisory Board will develop criteria for drivers who test positive for OSA would be required to document the efficacy of and compliance with therapy for OSA if they wish to renew or obtain a CDL.

*Position: Needs Further Discussion*

Although there seems to be a dearth of material on this subject, a new study in the Journal of Occupational and Environmental Medicine finds that tests to evaluate truck drivers for obstructive sleep apnea (OSA) based on obesity are effective and

should be utilized. The authors of this study go a step further by suggesting the implementation of federally mandated OSA screenings for the trucking industry.

(8) **Penalties for Person Who Commits Homicide by Drowsy Driving**  
(*Section 24G of Chapter 90 M.G.L: Homicide by motor vehicle; punishment*)

Section addressing homicide by motor vehicle would be amended to include drowsy driving. By adding this language a person who is convicted of operating a vehicle while drowsy and causing an accident could face the same penalties as a drunk driver. The amended section would read:

“Whoever has alcohol in their blood of .08 or greater, or while under the influence of intoxicating liquor, or of marijuana, narcotic drugs, depressants, or stimulant substances or the vapors of glue or who was impaired by drowsiness or sleep deprivation, or has fallen asleep while operating a motor vehicle and so operates a motor vehicle recklessly or negligently so that the lives or safety of the public might be endangered, and by any such operation so described causes the death of another person, shall be guilty of homicide by a motor vehicle while under the influence of an intoxicating substance, and shall be punished by imprisonment in the state prison for not less than 2 1/2 years or more than 15 years and a fine of not more than \$5000, or by imprisonment in a jail or house of correction for not less than 1 year nor more than 2 1/2 years and a fine of not more than \$5,000. Evidence that the operator of a motor vehicle was awake for at least 22 of the 24 hours prior to the operation of a motor vehicle or at least 140 hours of the 168 hours prior to said operation of a motor vehicle shall constitute sufficient evidence to conclude that said motor vehicle operator was impaired by drowsiness.

*Position: Needs Further Discussion*

(9 &10) **Law Enforcement to Receive Education in Recognizing the signs of Reduced Alertness from Drowsiness, Sleep Deprivation or Sleep Disorders.**  
(*Section 24M of Chapter 90 M.G.L: Training for law enforcement personnel regarding alcohol-related offenses; alcohol sensitive selective traffic enforcement program*)

Currently, the municipal police training committee and the chief administrative justice of the trial court department receive training in alcohol education. This section would be amended to include that they receive education in recognizing the signs of reduced alertness from drowsiness, sleep deprivation or sleep disorders.

The language does not address how they would recognize the signs or what type of education they would need to receive.

***Position: Possible Support***

Language needs further criteria on how law enforcement officials would receive training and what parameters would be used to recognize drowsiness, sleep deprivation or sleep disorders.

- (11) **Office of Public Safety to Establish a Sleep Deprivation Sensitive Selective Traffic Enforcement Program.**  
*(Section 24M of Chapter 90 M.G.L: Training for law enforcement personnel regarding alcohol-related offenses; alcohol sensitive selective traffic enforcement program)*

Currently, the executive office of public safety implements an alcohol sensitive and selective traffic enforcement program. The section would be amended to include that the office also establish a sleep deprivation sensitive selective traffic enforcement program.

Again, the bill does not address what would encompass a sleep deprivation sensitive selective traffic enforcement program.

***Position: Possible Support***

Language needs further criteria on how the program would be established, what information would be included in the program, and what parameters would be used for a sensitive and selective enforcement program).

- (12) **Accident Reports to Include Information on Drowsy Driving**  
*(Section 26 of Chapter 90 M.G.L: Accident reports; supplemental report; penalty for violation)*

Accident reports would be revised include language that would ask for the collection of information relative to whether drowsiness or sleep caused or contributed to the accident. The report would request information regarding the amount and timing of sleep that the operator of the motor vehicle obtained in the 168 hours prior to the accident.

***Position: Possible Support***

Support would be based on if objective, evidence-based procedures and data can be demonstrated which could accurately ascertain that the person was driving drowsy.

- (13) **Investigation of accidents by the deputy registrar or chief deputy registrar**  
*(Section 29 of Chapter 90 M.G.L.: Deputy registrar, chief deputy registrar, etc.; appointment; duties; investigation of motor vehicle accidents; suspension or revocation of licenses)*

Would add a Section 291/2 which would allow the registrar to collect information relative to whether drowsiness or sleep caused or contributed to an accident. The registrar would also be able to collect information regarding the amount and timing of sleep that the operator of the motor vehicle obtained in the 168 hours prior to the accident.

***Position:***        ***Support Amendment***

Support would be based on if objective, evidence-based procedures and data can be demonstrated which could accurately ascertain that the person was driving drowsy.

- (14) **Establish Commission to Study Drowsy Driving**

Would establish a special commission to study the impact drowsy driving on the safety of the highways and the effects of sleep deprivation on drivers operating on said highways, adjacent parking areas, or any other places.

The commission shall consist of: 5 members of the house of representatives; 5 members of the senate; the secretary of the executive office of public safety or his designee; the registrar of motor vehicles or his designee; the commissioner of public health or his designee; the president of the Massachusetts District Attorney's Association or his designee; the president of the Massachusetts Association of Chiefs of Police or his designee; and 5 persons to be appointed by the governor, 3 of whom shall be members of the medical or academic community with specialty experience in sleep deprivation research.

The commission shall study the impact of drowsy driving on the safety of the highways with respect to determining scientific or other evidence that should be used by police officers in determining the effects of sleep deprivation on drivers, the appropriate sanctions for operating under the influence of sleep deprivation, the training requirements that shall be followed by driver education programs and police training programs with respect to recognition of the causes, symptoms and effects of drowsiness on drivers and with respect to countermeasures to reduce the safety hazards associated with sleep deprivation and sleep disorders, and an evaluation of the adequacy and safety of highway rest areas and the possible need for improvements to rest area policies, planning, and operations.

The commission will submit a report, including legislative recommendations, if any, to the Senate and House of Representatives by December 1, 2010.

***Position:***        ***Support Amendment***