HOUSE DOCKET, NO. 1727 FILED ON: 1/20/2011

HOUSE . . . . . No. 1569

The Commonwealth of Massachusetts

PRESENTED BY:

George N. Peterson, Jr.

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying:

An Act relative to reflective material.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
George N. Peterson, Jr.	*9th Worcester*

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HOUSE . . . . . No. 1569

By Mr. Peterson of Grafton, a petition (accompanied by bill, House, No. 1569) of George N. Peterson, Jr. for legislation to require the use of illuminated flashlights or reflective material by pedestrians participating in physical training activities on roadways during certain hours. Public Safety and Homeland Security.

The Commonwealth of Massachusetts

An Act relative to reflective material.

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. Chapter 85 of the General Laws, as appearing in the 2008 Official Edition, is hereby amended by inserting after section 36 the following new sections:-

Section 37. Every city and town shall, pursuant to clause (16B) of section 21 of chapter 40, provide a non-criminal ticketing procedure against violators of the provisions of section 38 of this chapter. Cities and towns shall print notices of such violations in tag form in the same manner as notices pursuant to section 20A or 20C of chapter 90 are printed for such cities and towns.

A police officer taking cognizance of any such violation may request the offender to state his true name and address. Whoever, upon such request, refuses to state his name and address, or states a false name and address or a name and address which is not his name and address in ordinary use, shall be punished by a fine of not less than $20 nor more than $50. Any such offender so refusing to state his name and address may be arrested without a warrant, but no person shall be arrested without a warrant for any other such violation.

Every police officer who takes cognizance of such violations may give the offender a notice, which shall be in tag form, as provided in this section, to appear before the clerk of the district court having jurisdiction, at any time during office hours, not later than 21 days after the date of such violation. If the offender is under 16 years of age, the officer may give such notice to the parent or guardian of the offender. All tags shall be prepared in triplicate and shall be prenumbered.

Said tag shall contain but shall not be limited to the following information: the name and address of the offender, if served with notice in hand at the time of such violation; the date, time, place and nature of the violation; the amount of the fine; instructions for the return of the tag; and

23 a notice which reads as follows: This notice may be returned by mail, personally, or by an
24 authorized person, and if property returned shall be deemed non-criminal. A court hearing may
25 be obtained upon the written request of the offender. Failure to obey this notice within 21 days
26 after the date of the violation will result in the offender's appearance in court on a criminal
27 complaint. Such notice shall be signed by the officer, and shall be signed by the offender
28 whenever practicable in acknowledgment that the notice has been received. The officer shall, if
29 possible, deliver to the offender at the time and place of the violation a copy of said notice.
30 Whenever it is not possible to deliver a copy of said notice to the offender at the time and place
31 of violation, said copy shall be mailed or delivered by the officer, or by his commanding officer
32 or any person authorized by said commanding officer to the offender's last known address. The
33 mailing of such notice by the officer, his commanding officer or the person so authorized, to the
34 said offender shall be deemed a sufficient notice, and a certificate of the officer or person stating
35 that such notice has been mailed in accordance with this section shall be deemed prima facie
36 evidence thereof, and shall be admissible in any court of the commonwealth as to the facts
37 contained therein.

38 At or before the completion of each tour of duty, the officer shall give to his
39 commanding officer those copies of each notice of such a violation taken cognizance of during
40 such tour. Said commanding officer shall retain and safely preserve one of such copies and shall
41 at a time no later than the beginning of the next court day after receipt of such notice deliver
42 another of such copies to the clerk of the court before whom the offender has been notified to
43 appear. The clerk of each district court shall maintain a separate docket of all such notices to
44 appear.

45 Any person notified to appear before the clerk of a district court, as provided herein, may
46 appear before such clerk and confess the offense charged, either personally or through an agent
47 duly authorized in writing, or by mailing to such clerk the notice accompanied by the fine
48 provided therein, such payment to be made only by postal note, money order or check made out
49 to the clerk of the court. Returning the notice to the clerk of court and payment of the fine
50 established shall operate as a final disposition of the case. Proceedings under this section shall
51 not be deemed criminal; and no person notified to appear before the clerk of a district court as
52 provided herein shall be required to report to any probation officer, and no record of the case
53 shall be entered in the probation records.

54 If any person notified to appear before the clerk of the district court fail to appear or,
55 having appeared, desire not to avail himself of the benefits of the procedure established by this
56 section, the clerk shall, as soon as may be, notify the officer concerned, who shall forthwith
57 make a complaint against the offender and follow the procedure established for criminal cases. If
58 any person fails to appear in accordance with the summons issued upon such complaint, the clerk
59 shall send such person by registered mail, return receipt requested, a notice that the complaint is
60 pending and that if the person fails to appear within 21 days from the mailing of such notice, a
61 warrant for his arrest will be issued. If any person fails to appear within 21 days from the mailing

62 of such notice the court shall issue a warrant for his arrest. The notice to appear, provided herein,
63 shall be printed in such form as the chief justice for the Boston municipal court department and
64 the chief justice for the district court department may prescribe for their respective departments;
65 provided, however, that any city or town may request that the notice prepared for said city or
66 town pursuant to section 21A or section 20C of chapter 90 be so revised or adapted that said
67 notice may also be used for the notice provided for in this section.

68 Section 38. A pedestrian who is participating in a physical training activity on a
69 roadway, highway, street, or bridge during the period from one-half hour after sunset to one-half
70 hour before sunrise shall carry an illuminated flashlight or wear reflective material visible from
71 the front and rear for a distance of six hundred feet, when directly in front of lawful lower beams
72 of headlamps of a motor vehicle.

73 For the purposes of this section, "physical training activity" includes but is not limited to
74 walking, jogging, or running performed by a pedestrian for the purposes of physical exercise.

75 Violations of this section shall be punished by a fine of not more than $10. The parent or
76 guardian of any person under age 18 shall not authorize or knowingly permit any such person to
77 violate any of the provisions of this section. A violation of any provision of this section by a
78 minor under the age of 18 shall not affect any civil right or liability nor shall such violation be
79 considered a criminal offense.

80 A violation of any provision of this section shall not, in any civil proceeding, constitute
81 negligence or be admissible as evidence of negligence, nor shall a conviction for such a violation
82 be shown to affect the credibility of a witness in any proceeding.

83 This section shall not apply to a person who is running in response to a bona fide
84 emergency.