

111TH CONGRESS
1ST SESSION

H. R. 3535

To amend title 23, United States Code, to reduce the amount of Federal highway funding available to States that do not enact a law prohibiting an individual from sending or receiving text messages while operating a motor vehicle.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 8, 2009

Mrs. MCCARTHY of New York (for herself, Mrs. LOWEY, and Mr. CUMMINGS) introduced the following bill; which was referred to the Committee on Transportation and Infrastructure

A BILL

To amend title 23, United States Code, to reduce the amount of Federal highway funding available to States that do not enact a law prohibiting an individual from sending or receiving text messages while operating a motor vehicle.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Avoiding Life-Endan-
5 gering and Reckless Texting by Drivers Act of 2009” or
6 the “ALERT Drivers Act”.

1 **SEC. 2. FINDINGS.**

2 Congress finds that—

3 (1) cell phones and other electronic devices are
4 not only instrumentalities and channels of interstate
5 commerce, but products of interstate commerce;

6 (2) for those reasons, regulation of the use of
7 cellular telephones or other electronic devices to send
8 text messages is covered by the power of Congress
9 to regulate interstate commerce as enumerated in
10 article I, section 8 of the Constitution;

11 (3) additionally, the Supreme Court held in
12 *South Dakota v. Dole*, 483 U.S. 203 (June 23,
13 1987), that Congress may condition Federal high-
14 way funding on State compliance with certain condi-
15 tions;

16 (4) people in the United States are using cel-
17 lular telephones and other personal electronic devices
18 to send text messages or emails, more commonly
19 known as “texting,” with increasing frequency;

20 (5) according to the *New York Times*, more
21 than 110,000,000,000 text messages were sent in
22 the United States during the month of December
23 2008 alone, a tenfold increase in just 3 years;

24 (6) texting and portable email are valuable to
25 consumers, businesses, and private individuals
26 throughout the United States, but those services also

1 create an extreme risk when used by individuals op-
2 erating motor vehicles;

3 (7) a 2008 study by Nationwide Insurance
4 found that 20 percent of drivers in the United
5 States send text messages while operating motor ve-
6 hicles;

7 (8) according to a study by Car and Driver
8 Magazine, texting while driving is more dangerous
9 than driving while intoxicated;

10 (9) a recent study by the Virginia Tech Trans-
11 portation Institute found operators of motor vehicles
12 who sent text messages while driving had a collision
13 risk that was 23 times greater while texting as com-
14 pared to the risk when the operators were not
15 texting;

16 (10) another study by the University of Utah
17 found that college students using a driving simulator
18 were 8 times more likely to have an accident while
19 texting;

20 (11) after a serious accident occurred on the
21 Boston public trolley system in May 2009, the trol-
22 ley operator was found to have been texting his
23 girlfriend at the time of the accident;

24 (12) the problem of texting while driving has
25 been recognized across the country;

1 (13) as of the date of enactment of this Act, 14
2 States and the District of Columbia ban all drivers
3 from texting while operating motor vehicles, and 11
4 other states have a modified ban on texting while
5 driving;

6 (14) the risks created by texting while driving
7 are increasing nationwide as the use of texting in-
8 creases nationwide;

9 (15) it is necessary, therefore, for Congress to
10 act to protect the safety of all people in the United
11 States on highways and roads in the United States;
12 and

13 (16) Federal legislation to address the problem
14 of texting while driving is necessary to ensure min-
15 imum standards of protection across the country, in
16 the same manner as the national minimum drinking
17 age provides a uniform standard of protection.

18 **SEC. 3. OPERATION OF MOTOR VEHICLES WHILE TEXTING.**

19 (a) IN GENERAL.—Chapter 1 of title 23, United
20 States Code, is amended by adding at the end the fol-
21 lowing:

22 **“§ 167. Operation of motor vehicles while texting**

23 “(a) DEFINITIONS.—In this section:

24 “(1) HAND-HELD MOBILE TELEPHONE.—

1 “(A) IN GENERAL.—The term ‘hand-held
2 mobile telephone’ means a mobile telephone or
3 other portable electronic communication device
4 with which a user engages in a call or writes,
5 sends, or reads a text message using at least 1
6 hand.

7 “(B) EXCLUSION.—The term ‘hand-held
8 mobile telephone’ does not include a vehicle-in-
9 tegrated, voice-activated device.

10 “(2) MOTOR VEHICLE.—The term ‘motor vehi-
11 cle’ has the meaning given the term in section
12 154(a).

13 “(3) TEXT MESSAGE.—The term ‘text message’
14 includes a text-based message, instant message, elec-
15 tronic message, and email.

16 “(4) WRITING; SENDING; READING.—The terms
17 ‘writing’, ‘sending’, and ‘reading’, with respect to a
18 text message, mean the manual entry, sending, or
19 retrieval of a text message, respectively, to commu-
20 nicate with any person or device.

21 “(b) WITHHOLDING OF APPORTIONMENTS FOR NON-
22 COMPLIANCE.—

23 “(1) IN GENERAL.—On October 1 of the second
24 fiscal year beginning after the date of promulgation
25 of the regulations under subsection (d), and annually

1 thereafter, the Secretary shall withhold 25 percent
2 of the amount required to be apportioned to any
3 State under each of paragraphs (1), (3), and (4) of
4 section 104(b) for the fiscal year if the Secretary de-
5 termines that the State does not meet the require-
6 ment under paragraph (2) as of that date.

7 “(2) REQUIREMENT.—A State shall meet the
8 requirement under this paragraph if the State has
9 enacted and is enforcing a law that—

10 “(A) except in the event of an emergency,
11 prohibits an operator of a moving motor vehicle
12 from writing, sending, or reading a text mes-
13 sage using a hand-held mobile telephone; and

14 “(B) requires, upon conviction of a viola-
15 tion of that prohibition, the imposition of pen-
16 alties in accordance with the requirements for
17 minimum penalties described in the regulations
18 promulgated under subsection (d).

19 “(c) RECOVERY OF FUNDS WITHHELD.—All funds
20 withheld under this section from apportionment to a State
21 for 1 or more fiscal years shall be available for appor-
22 tionment to the State immediately upon a determination by
23 the Secretary that the State meets the requirement under
24 paragraph (2).

1 “(d) REGULATIONS.—Not later than 180 days after
2 the date of enactment of this section, the Secretary shall
3 promulgate regulations to carry out this section, including
4 requirements for minimum penalties for violations of the
5 prohibition under subsection (b)(2)(A) that—

6 “(1) specify a minimum penalty for a first of-
7 fense; and

8 “(2) stipulate that penalties shall be graduated
9 for repeated offenses.”.

10 (b) CONFORMING AMENDMENT.—The analysis for
11 chapter 1 of title 23, United States Code, is amended by
12 adding at the end of the items relating to that chapter
13 the following:

“167. Operation of motor vehicles while texting.”.

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