

111<sup>TH</sup> CONGRESS  
1<sup>ST</sup> SESSION

# S. 1536

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 writing, sending, or reading text messages while operating a motor vehicle.

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## IN THE SENATE OF THE UNITED STATES

JULY 29, 2009

Mr. SCHUMER (for himself, Mr. MENENDEZ, Mrs. HAGAN, and Ms. LANDRIEU) introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

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## 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 writing, sending, or reading 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  
2 while operating 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 at the  
23 time of the accident;

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

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 for Congress to act to pro-  
10 tect the safety of all people in the United States on  
11 highways and roads in the United States; and

12           (16) a Federal law to address the problem of  
13 texting while driving is necessary to ensure min-  
14 imum standards of protection across the United  
15 States, in the same manner as the national min-  
16 imum drinking age provides a uniform standard of  
17 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 voice-acti-  
9           vated device.

10          “(2) MOTOR VEHICLE.—The term ‘motor vehi-  
11          cle’ means—

12                 “(A) a vehicle driven or drawn by mechan-  
13                 ical power and manufactured primarily for use  
14                 on public highways; and

15                 “(B) a railcar or other component of a  
16                 fixed guideway system that is not subject to  
17                 regulation by the Federal Railroad Administra-  
18                 tion.

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

22          “(4) WRITING; SENDING; READING.—The terms  
23          ‘writing’, ‘sending’, and ‘reading’, with respect to a  
24          text message, mean the manual entry, sending, or

1 retrieval of a text message, respectively, to commu-  
2 nicate with any person or device.

3 “(b) WITHHOLDING OF APPORTIONMENTS FOR NON-  
4 COMPLIANCE.—

5 “(1) IN GENERAL.—On October 1 of the second  
6 fiscal year beginning after the date of promulgation  
7 of the regulations under subsection (d), and annually  
8 thereafter, the Secretary shall withhold 25 percent  
9 of the amount required to be apportioned to any  
10 State under each of paragraphs (1), (3), and (4) of  
11 section 104(b) for the fiscal year if the Secretary de-  
12 termines that the State does not meet the require-  
13 ment under paragraph (2) as of that date.

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

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

21 “(B) requires, upon conviction of a viola-  
22 tion of that prohibition, the imposition of pen-  
23 alties in accordance with the requirements for  
24 minimum penalties described in the regulations  
25 promulgated under subsection (d).

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

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

12               “(1) specify a minimum penalty for a first of-  
 13 fense; and

14               “(2) stipulate that penalties shall be graduated  
 15 for repeated offenses.”.

16       (b) CONFORMING AMENDMENT.—The analysis for  
 17 title 23, United States Code, is amended by adding at the  
 18 end of the items relating to chapter 1 the following:

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

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