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.

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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

throughout the United States, but those services also

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- 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;
 - (8) according to a study by Car and Driver Magazine, texting while driving is more dangerous than driving while intoxicated;
 - (9) a recent study by the Virginia Tech Transportation Institute found operators of motor vehicles who sent text messages while driving had a collision risk that was 23 times greater while texting as compared to the risk when the operators were not texting;
 - (10) another study by the University of Utah found that college students using a driving simulator were 8 times more likely to have an accident while texting;
 - (11) after a serious accident occurred on the Boston public trolley system in May 2009, the trolley operator was found to have been texting his girlfriend at the time of the accident;
- 24 (12) the problem of texting while driving has 25 been recognized across the country;

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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

- thereafter, the Secretary shall withhold 25 percent of the amount required to be apportioned to any State under each of paragraphs (1), (3), and (4) of section 104(b) for the fiscal year if the Secretary determines that the State does not meet the requirement under paragraph (2) as of that date.
 - "(2) REQUIREMENT.—A State shall meet the requirement under this paragraph if the State has enacted and is enforcing a law that—
 - "(A) except in the event of an emergency, prohibits an operator of a moving motor vehicle from writing, sending, or reading a text message using a hand-held mobile telephone; and
 - "(B) requires, upon conviction of a violation of that prohibition, the imposition of penalties in accordance with the requirements for minimum penalties described in the regulations promulgated under subsection (d).
- "(c) RECOVERY OF FUNDS WITHHELD.—All funds withheld under this section from apportionment to a State for 1 or more fiscal years shall be available for apportionment to the State immediately upon a determination by the Secretary that the State meets the requirement under paragraph (2).

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- 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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