

111TH CONGRESS  
1ST SESSION

# S. 1938

To establish a program to reduce injuries and deaths caused by cellphone use and texting while driving.

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IN THE SENATE OF THE UNITED STATES

OCTOBER 27, 2009

Mr. ROCKEFELLER (for himself, Mrs. HUTCHISON, Mr. LAUTENBERG, Mr. SCHUMER, Mr. THUNE, and Ms. KLOBUCHAR) 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 establish a program to reduce injuries and deaths caused by cellphone use and texting while driving.

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; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the  
5 “Distracted Driving Prevention Act of 2009”.

6 (b) TABLE OF CONTENTS.—The table of contents for  
7 this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Distracted driving incentive grants.
- Sec. 3. Distracted driving national education program.
- Sec. 4. Research and data collection.
- Sec. 5. Research program.

Sec. 6. FCC report on distracted driving technology.  
 Sec. 7. Provision of information to States.  
 Sec. 8. Commercial motor vehicles and school buses.  
 Sec. 9. Funding.

1 **SEC. 2. DISTRACTED DRIVING INCENTIVE GRANTS.**

2 (a) IN GENERAL.—Chapter 4 of title 23, United  
 3 States Code, is amended by adding at the end the fol-  
 4 lowing:

5 **“§413. Distracted driving incentive grants**

6 “(a) IN GENERAL.—The Secretary shall make a  
 7 grant under this section to any State that enacts and im-  
 8 plements a statute that meets the requirements of sub-  
 9 sections (b) and (c) of this section.

10 “(b) PROHIBITION ON TEXTING WHILE DRIVING.—  
 11 A State statute meets the requirements of this subsection  
 12 if the statute—

13 “(1) prohibits the use of a personal wireless  
 14 communications device by a driver for texting while  
 15 driving;

16 “(2) makes violation of the statute a primary  
 17 offense;

18 “(3) establishes—

19 “(A) a minimum fine for a first violation  
 20 of the statute; and

21 “(B) increased fines for repeat violations;  
 22 and

1           “(4) provides increased civil and criminal pen-  
2           alties than would otherwise apply if a vehicle acci-  
3           dent is caused by a driver who is using such a device  
4           in violation of the statute.

5           “(c) PROHIBITION ON HANDHELD CELLPHONE USE  
6 WHILE DRIVING.—A State statute meets the require-  
7 ments of this subsection if the statute—

8           “(1) prohibits a driver from holding a personal  
9           wireless communications device to conduct a tele-  
10          phone call while driving;

11          “(2) allows the use of hands-free devices that  
12          enable a driver, other than a driver who has not at-  
13          tained the age of 18, to initiate, conduct, or receive  
14          a telephone call without holding the device;

15          “(3) makes violation of the statute a primary  
16          offense;

17          “(4) requires distracted driving issues to be  
18          tested as part of the State driver’s license examina-  
19          tion;

20          “(5) establishes—

21                  “(A) a minimum fine for a first violation  
22                  of the statute; and

23                  “(B) increased fines for repeat violations;  
24                  and

1           “(6) provides increased civil and criminal pen-  
2           alties than would otherwise apply if a vehicle acci-  
3           dent is caused by a driver who is using such a device  
4           in violation of the statute.

5           “(d) PERMITTED EXCEPTIONS.—A statute that  
6           meets the requirements of subsections (b) and (c) may  
7           provide exceptions for—

8           “(1) use of a personal wireless communications  
9           device by a driver to contact emergency services;

10           “(2) manipulation of such a device by a driver  
11           to activate, deactivate, or initialize the hands-free  
12           functionality of the device;

13           “(3) use of a personal wireless communications  
14           device by emergency services personnel while oper-  
15           ating an emergency services vehicle and engaged in  
16           the performance of their duties as emergency serv-  
17           ices personnel; and

18           “(4) use of a device by an individual employed  
19           as a commercial motor vehicle driver, or a school bus  
20           driver, within the scope of such individual’s employ-  
21           ment if such use is permitted under the regulations  
22           promulgated pursuant to section 31152 of title 49.

23           “(e) GRANT YEAR.—The Secretary shall make a  
24           grant under this section to a State in any year in which  
25           the State—

1           “(1) enacts a law that meets the requirements  
2 of subsections (b) and (c) before July 1; or

3           “(2) maintains a statute, that meets the re-  
4 quirements of subsections (b) and (c), enacted in a  
5 previous year that is in effect through June 30th of  
6 the grant year.

7           “(f) DISBURSEMENT AND APPORTIONMENT.—Grants  
8 to qualifying States shall be disbursed after July 1 each  
9 year according to the apportionment criteria of section  
10 402(c).

11          “(g) USE OF GRANT FUNDS.—A State that receives  
12 a grant under this section—

13           “(1) shall use at least 50 percent of the  
14 grant—

15           “(A) to educate and advertise to the public  
16 information about the dangers of texting or  
17 using a cellphone while driving;

18           “(B) for traffic signs that notify drivers  
19 about the distracted driving law of the State;

20           “(C) for law enforcement of the distracted  
21 driving law; or

22           “(D) for a combination of such uses; and

23           “(2) may use up to 50 percent of the grant for  
24 other projects that improve traffic safety and that  
25 are consistent with the criteria in section 402(a).

1 “(h) DEFINITIONS.—In this section:

2 “(1) DRIVING.—The term ‘driving’ means oper-  
3 ating a motor vehicle on a public road, including op-  
4 eration while temporarily stationary because of traf-  
5 fic, a traffic light or stop sign, or otherwise. It does  
6 not include operating a motor vehicle when the vehi-  
7 cle has pulled over to the side of, or off, an active  
8 roadway and has stopped in a location where it can  
9 safely remain stationary.

10 “(2) HANDS-FREE DEVICE.—The term ‘hands-  
11 free device’ means a device that allows a driver to  
12 use a personal wireless communications device to ini-  
13 tiate, conduct, or receive a telephone call without  
14 holding the personal wireless communications device.

15 “(3) PERSONAL WIRELESS COMMUNICATIONS  
16 DEVICE.—The term ‘personal wireless communica-  
17 tions device’ means a device through which personal  
18 wireless services (as defined in section  
19 332(c)(7)(C)(i) of the Communications Act of 1934  
20 (47 U.S.C. 332(c)(7)(C)(i))) are transmitted. It does  
21 not include a global navigation satellite system re-  
22 ceiver used for positioning, emergency notification,  
23 or navigation purposes.

24 “(4) PRIMARY OFFENSE.—The term ‘primary  
25 offense’ means an offense for which a law enforce-



1 the public about the risks associated with distracted driv-  
2 ing, including those associated with—

3 (1) texting (as defined in section 413(h)(6) of  
4 title 23, United States Code) while driving; and

5 (2) the use of personal wireless communications  
6 devices (as defined in section 413(h)(3) of that title)  
7 while driving.

8 (c) ADVERTISING.—The Administrator may use, or  
9 authorize the use of, funds available to carry out this sec-  
10 tion to pay for the development, production, publication,  
11 and broadcast of electronic and print media advertising  
12 in carrying out traffic safety education and advertising  
13 campaigns under this section. The Administrator—

14 (1) shall give consideration to advertising di-  
15 rected at non-English speaking populations, includ-  
16 ing those who listen, read, or watch nontraditional  
17 media; and

18 (2) may use a portion of the funds available for  
19 this program to target local jurisdictions that have  
20 enacted laws prohibiting texting or the use of per-  
21 sonal wireless communications devices while driving.

22 (d) COORDINATION WITH STATES.—The Adminis-  
23 trator may coordinate with the States to carry out the  
24 education and advertising campaigns under this section to  
25 coincide with high-visibility enforcement of State laws pro-



1 hibiting texting while driving or the use of personal wire-  
2 less communications devices while driving.

3 (e) ANNUAL EVALUATION.—The Administrator shall  
4 conduct an annual evaluation of the effectiveness of the  
5 education and advertising campaigns under this section,  
6 and report the results to the Senate Committee on Com-  
7 merce, Science, and Transportation, and the House of  
8 Representatives Committee on Energy and Commerce.

9 **SEC. 4. RESEARCH AND DATA COLLECTION.**

10 (a) IN GENERAL.—Section 408(e)(2) of title 23,  
11 United States Code, is amended to read as follows:

12 “(2) DATA ON USE OF ELECTRONIC DEVICES.—

13 “(A) The model data elements required  
14 under paragraph (1) shall include data ele-  
15 ments, as determined appropriate by the Sec-  
16 retary, in consultation with the States and ap-  
17 propriate elements of the law enforcement com-  
18 munity, on the impact on traffic safety of the  
19 use of electronic devices while driving.

20 “(B) In order to meet the requirements of  
21 subparagraph (A), State and local governments  
22 shall—

23 “(i) require that official vehicle acci-  
24 dent investigation reports include a des-  
25 ignated space to record whether or not the

1 use of a personal wireless communications  
2 device (as defined in section 413(h)(3))  
3 was in use at the time of the accident by  
4 any driver involved in the accident;

5 “(ii) require that all law enforcement  
6 officers, as part of a vehicle accident inves-  
7 tigation, inquire about and record the in-  
8 formation required by clause (i); and

9 “(iii) incorporate the information col-  
10 lected under clause (i) into its traffic safe-  
11 ty information system.”.

12 (b) EFFECTIVE DATE.—The amendment made by  
13 subsection (a) shall apply with respect to grants under sec-  
14 tion 408 of title 23, United States Code, for fiscal years  
15 beginning after fiscal year 2010.

16 **SEC. 5. RESEARCH PROGRAM.**

17 (a) IN GENERAL.—The Secretary of Transportation  
18 shall establish a research program to study distracted  
19 driving by passenger and commercial vehicle drivers.

20 (b) SCOPE.—The program shall include studies of—

21 (1) driver behavior;

22 (2) vehicle technology; and

23 (3) portable electronic devices that are com-  
24 monly brought into passenger or commercial vehi-  
25 cles.

1 (c) RESEARCH AGREEMENTS.—

2 (1) IN GENERAL.—In carrying out this section  
3 the Secretary may grant research contracts to non-  
4 governmental entities to study distracted driving.

5 (2) LIMITATIONS.—The Secretary may not  
6 grant a research contract under this section to any  
7 person that produces or sells—

8 (A) electronic equipment that is used in ve-  
9 hicles;

10 (B) portable electronic equipment com-  
11 monly brought into passenger or commercial ve-  
12 hicles; or

13 (C) passenger or commercial vehicles.

14 **SEC. 6. FCC REPORT ON DISTRACTED DRIVING TECH-**  
15 **NOLOGY.**

16 Within 180 days after the date of enactment of this  
17 Act, the Federal Communications Commission shall sub-  
18 mit a report to the Senate Committee on Commerce,  
19 Science, and Transportation and the House of Represent-  
20 atives Committee on Energy and Commerce that identi-  
21 fies—

22 (1) data the Commission can collect and ana-  
23 lyze that will assist in understanding and reducing  
24 the problem of distracted driving involving the use of  
25 personal communications devices;



1 **“§31152. Regulation of the use of distracting devices**  
2 **in commercial motor vehicles and school**  
3 **buses**

4 “(a) IN GENERAL.—No later than 1 year after the  
5 enactment of the Distracted Driving Prevention Act of  
6 2009, the Secretary of Transportation shall prescribe reg-  
7 ulations on the use of electronic or wireless devices, includ-  
8 ing cell phones and other distracting devices, by an indi-  
9 vidual employed as the operator of—

10 “(1) a commercial motor vehicle while that indi-  
11 vidual is engaged in the performance of such individ-  
12 ual’s duties as the operator of the commercial motor  
13 vehicle; or

14 “(2) a school bus (as defined in section  
15 30125(a)(1)) that is a commercial motor vehicle (as  
16 defined in section 31301(4)(A)) while that individual  
17 is engaged in the performance of such individual’s  
18 duties as the operator of the school bus.

19 “(b) BASIS FOR REGULATIONS.—The Secretary shall  
20 base the regulations required by subsection (a) on accident  
21 data analysis, the results of ongoing research, and other  
22 information, as appropriate.

23 “(c) PROHIBITED USE.—The Secretary shall prohibit  
24 the use of such devices in circumstances in which the Sec-  
25 retary determines that their use interferes with the driv-

1 er's safe operation of a school bus or commercial motor  
2 vehicle.

3 “(d) PERMITTED USE.—Under the regulations, the  
4 Secretary may permit the use of a device, the use of which  
5 is prohibited under subsection (c), if the Secretary deter-  
6 mines that such use is necessary for the safety of the driv-  
7 er or the public in emergency circumstances.”.

8 (b) CONFORMING AMENDMENT.—The table of con-  
9 tents for chapter 311 of title 49, United States Code, is  
10 amended by inserting after the item relating to section  
11 31151 the following:

“31152. Regulation of the use of distracting devices in commercial motor vehi-  
cles and school buses.”.

12 **SEC. 9. FUNDING.**

13 Section 2001(a) of Public Law 109–59 is amended—

14 (1) by striking “and” in paragraph (4);

15 (2) by striking “2009.” in paragraph (4) and  
16 inserting “2009, \$94,500,000 for fiscal year 2010,  
17 and \$94,500,000 for fiscal year 2011. If any amount  
18 of the funds authorized by this paragraph has not  
19 been allocated to States meeting the criteria of sec-  
20 tion 406 of title 23, United States Code, by July 1  
21 of a fiscal year beginning after fiscal year 2009, the  
22 unallocated amount shall be allocated to States  
23 meeting the criteria of section 413 of that title.”;  
24 and

1           (3) by redesignating paragraph (11) as para-  
2           graph (12) and inserting after paragraph (10) the  
3           following:

4           “(11) DISTRACTED DRIVING PROGRAM.—For  
5           carrying out section 3 of the Distracted Driving Pre-  
6           vention Act of 2009, \$30,000,000 for each of fiscal  
7           years 2010 and 2011.”.

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