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Protecting the Sender: Liability Protection for the Senders of Electronic Communication

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Since its introduction to the general public in 1992, text messaging has developed into something that is an integral part of today’s society.\(^1\) The first smartphone that encompassed early versions of the applications seen in today’s smartphones was introduced in 1997.\(^2\) The public embraced the features and applications and the ability to be even more “connected” through their mobile devices. As technology has progressed, text messaging has only increased as today virtually all phones are equipped with text message capabilities.

\(^1\) Victoria Shannon, 15 years of text messages, a ‘cultural phenomenon,’ N.Y. TIMES (Dec. 5, 2007),

\(^2\) Justin Meyers, Watch The Incredible 70-Year Evolution of The Cell Phone, BUSINESS INSIDER (May 6, 2011, 10:47 AM),
Electronic communication has been widely available and used by the general public since the 1990’s, but until the smartphone was introduced, that communication was confined to the location of the computers at the sending and receiving end of the electronic message. Today, that communication is accessible almost anywhere. The variety of electronic communication has also vastly increased since the development of the smartphone. Mobile phone users are now able to carry on an electronic conversation with someone during situations where an audible conversation is impractical, impossible, or unacceptable.

The companies who produce these mobile devices are some of the highest regarded in the world and the competition among them is fierce. This is evidenced by the television commercials where one mobile company mocks a competitor, poking fun at the features and capabilities of the rival as being lame, unnecessary or poorly designed. There is even competition among consumers where loyalty to one brand can escalate to the level of insulting other people for using a different product or where consumers will make a point of not purchasing a product because they do not like the “type of people” who use the product.

Fifteen years ago, it was fairly common for teenagers to get a cell phone once they were permitted to venture out on their own, whether that be riding the subway without their parents or when they got their driver’s permit or license. Today, kids as young as ten have cell phones and today’s phones have the ability to send and receive text messages. At progressively younger ages, kids are communicating with one another via electronic communication to the point that it has garnered criticism by social scientists.\footnote{Lauren Suval, \textit{Does Texting Hinder Social Skills?}, \textsc{World of Psychology}, \url{http://psychcentral.com/blog/archives/2012/05/02/does-texting-hinder-social-skills/} (last visited March 7, 2014) (quoting psychologist and sociologist Sherry Turkle’s broadcast entitled, “Connected, but Alone?” in which she argues that technological devices are redefining human connections and text messaging is not an adequate substitution for real connections and may contribute to isolation in some individuals).}

Such a state of constantly being “connected” has also attracted criticism as professionals have a more difficult time disconnecting from their job at the end of the work day because they receive electronic communications about work wherever they
are.\textsuperscript{5} Software companies use this fact as motivation for producing more features and applications that make staying connected easier for people.\textsuperscript{6} Through notifications, alerts, messages, requests, updates and numerous other kinds of “pings” smartphones can receive, users cannot help but remain engaged and aware of all that is happening in the digital world that fits in the palm of their hand.

Along with all of the technological advances, impressive features and user numbers that have sky rocketed at a similar pace as the mobile companies’ stock prices, a devastating trend has emerged. Mobile phone users are using their devices while they are driving, which is killing and injuring thousands of

\begin{itemize}
\item \textsuperscript{6} See Nicole Cozma, Adding accounts on Android in 3 easy steps, CNET (May 2, 2011, 4:01 PM), \url{http://howto.cnet.com/8301-11310_39-20058888-285/adding-accounts-on-android-in-3-easy-steps/} (explaining how users can have their business and personal email addresses linked to their mobile phone so they do not miss any emails received while they are out of the office).
\end{itemize}
people every year. In response, campaigns have been launched across the country by concerned citizens, families who have lost a loved one, mobile phone service providers, government agencies and even the companies who create the mobile devices. The campaigns vary in terms of the methods used for spreading the word about the dangers of texting and driving. Many of the campaigns use emotionally charged messages in an effort to influence the public. For example, At&t released a commercial in 2012 that featured the victim of a traumatic brain injury he

7 Don’t Text & Drive- Statistics, DONTTEXTDRIVE.COM, http://www.donttextdrive.com/statistics/ (last visited March 7, 2014) (referring to the US Department of Transportation estimate that cell phones are involved in 1.6 million auto accidents each year that cause half a million injuries and 6,000 deaths).

suffered after a car accident that was caused by texting and driving.\(^9\) While undoubtedly there are individuals who have been so moved by such campaigns that they have stopped using their mobile devices while driving, the statistics show that the behavior is only getting worse.

As the statistics have grown, companies who produce the mobile devices, those who provide the service network on which the devices run, and most of those who develop and create the applications that are used on the mobile devices were proactive in their efforts to avoid liability. By including language in the “Terms of Use” or other similar locations within a program, the companies are protected from liability for any injury or death resulting from a car accident that was caused by an individual who was using his or her mobile device while operating a motor vehicle.\(^{10}\)

\(^9\) At&t TV Spot For At&t Against Texting and Driving, ISPOT.TV (Sept. 19, 2012) [http://www.ispot.tv/ad/7V7Y/at-and-t-at-and-t-against-texting-and-driving](http://www.ispot.tv/ad/7V7Y/at-and-t-at-and-t-against-texting-and-driving).

\(^{10}\) “Always drive vigilantly . . . in accordance with traffic laws. It is strictly forbidden to send traffic updates (such as updates on road accidents and traffic congestion), while driving. Such updates may only be sent after you have stopped your vehicle in an appropriate location permitted by law.” Terms
The subject of liability protection raises this question: how are individuals who are the “source” of electronic communication protected from liability? Can an individual be liable if the recipient of the electronic communication was driving at the time it was sent and was subsequently distracted by the communication, which resulted in the driver getting into an accident? A recent New Jersey Court of Appeals says yes. The court explained that the sender of the electronic communication can be liable for a resulting accident, but only if the sender knew or had special reason to know that the recipient would read the communication while driving. This reasoning raises another question, what about mobile applications that are specifically designed to be used while driving? 78% of Americans drive to work by themselves, without a passenger, and these numbers arguably give rise to a special reason to know that a driver will use the application while operating a motor vehicle. The

see also “You agree and acknowledge that you assume full, exclusive and sole responsibility for the use of the Service and that they use of the Service is entirely at your own risk. You acknowledge that you must observe all traffic laws while using the Service.” Terms of Use: Limitation of Liability and Warranty, Waze, https://www.waze.com/legal/tos (emphasis in original).
difference is that the company behind the application is protected by the warning language forbidding anyone from using the application while driving. Individuals do not have a venue where such language can be displayed that protects them.

This Note will begin by examining and comparing current state laws pertaining to the use of mobile devices while driving. Specific attention will be given to the current laws in New York, New Jersey, and Texas. Next, the Note will discuss the recent New Jersey case, *Kubert v. Best*, which brought the issue of individual senders of electronic communication being liable for a resulting accident to light. The Note will then discuss the mobile applications and features that are helping assuage the issue of using a mobile device while driving, as well as those that are perpetuating the problem. Finally, the Note will present model legislation that will protect individuals who send any form of electronic communication from liability if an accident results from the communication recipient reading the message while operating a motor vehicle.
I. Current State Laws Pertaining to Cell Phone Use while Driving

In an effort to reduce the occurrence of texting and driving, forty-two states, Washington D.C.,\textsuperscript{11} Puerto Rico, Guam, and the U.S. Virgin Islands have passed laws banning text messaging while operating a motor vehicle as of March 2014.\textsuperscript{12} Five additional states outlaw text messaging for novice drivers.\textsuperscript{13} However, these laws vary significantly and some are considerably weaker than others.

\footnotesize{\textsuperscript{11} Distracted Driving Prevention, D.C. Code §§ 50-1731.02 to .04, .06 (2009) (prohibiting operators of motor vehicles from composing, sending, receiving or reading a written message or image using a text-based communication system, including text messages, instant messages or electronic mail; violations constitute a moving violation).}


\footnotesize{\textsuperscript{13} Id.}
New Jersey state law prohibits drivers from cell phone use of any kind.\textsuperscript{14} Additionally, the New Jersey Legislature has enacted a law to provide criminal penalties for individuals who are distracted by use of a cell phone while driving and subsequently injure others.\textsuperscript{15} This law allows a jury to conclude that a driver, who was using a cell phone and caused injury in an accident, may be guilty of the fourth-degree crime of assault by auto.\textsuperscript{16} Further, since October 2013, state laws outlawing the use of cell phones and texting while driving allow violations to be considered a “first offense.” Thus a police officer may issue a citation to a driver for using a cell phone in any manner without any other traffic violations taking place.\textsuperscript{17}

In September 2013, the state of New York introduced “text stops” as a part of its campaign against distracted driving. Approximately 300 signs were posted along state highways with messages such as “It can wait, text stop 5 miles” and as well as signs attached to existing rest stop signs that read “texting

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  \item \textsuperscript{14} N.J.S.A. § 39:4-97.3; See infra Appendix A.
  \item \textsuperscript{16} Id.
  \item \textsuperscript{17} New Jersey’s New Texting and Cell Phone Law, \url{http://nj1015.com/newjerseys-new-texting-law/} (last visited Nov. 18, 2013).
\end{itemize}
The signs not only serve as a reminder to drivers that there are available pull-over locations along their route where it is safe to use a wireless device, but also a reminder that the law against the use of electronic devices while driving has been strengthened. A bill signed into law in the summer of 2013 heightened the penalty for texting while driving and state troopers began using unmarked SUVs that provide a higher vantage point, and thus, a better view of what drivers are doing while driving. These SUVs, known as Concealed Identity Traffic Enforcement (CITE) vehicles, come in various colors in order to blend in among the other vehicles on the road. As a result, the number of tickets issued for distracted driving was 365%


19 N.Y. VEH. & TRAF. LAW § 1225-d (McKinney 2013).

20 NY highway signs direct drivers to ‘text stops’, supra note 18.

higher from July 4 weekend through Labor Day weekend 2013 than it was during the same time frame in 2012.\footnote{22}{Id.}

In stark contrast to the New York and New Jersey Laws, in Texas, legislation passed in 2009 and updated in 2013 bans all drivers from cell phone use, including texting, in a school zone or on public school property during school zone hours.\footnote{23}{Get the Facts, supra note 14.} Unfortunately, a texting and driving bill that would expand that law to all drivers at all times was introduced in 2013 but died in a State Senate committee, which means that despite the fact
that the majority of Texans think there should be a law,\textsuperscript{24} Texas will not have a texting and driving ban until at least 2015.\textsuperscript{25}

In Oklahoma and Mississippi, state law only prohibits drivers with a learner’s or intermediate license and school bus and public transit drivers from the use of a cell phone while driving, which is true for both talking on a cell phone and texting.\textsuperscript{26} In February 2013, the Oklahoma House of Representatives voted against a bill that would have banned

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\textsuperscript{24} Josh Hinkle, \textit{Texting and driving still not banned in Texas}, KXAN.com (June 5, 2013), \url{http://www.kxan.com/news/texting-and-driving-still-not-banned-in-texas}, (quoting state Representative Tom Craddick who stated that the Chairman of the Senate Transportation Committee (Robert Nichols) “thought he knew better for Texas when he refused to allow even a vote on [a] bill that would save lives” after a survey showed that eighty-five percent of Texans believe texting while driving should be illegal).

\textsuperscript{25} Texas: Cell phone laws, legislation, HANDS FREE INFO (Nov. 12, 2008), \url{http://handsfreeinfo.com/texas-cell-phone-laws-legislation/}.

\textsuperscript{26} Get the Facts, supra note 14.
\end{flushleft}
texting while driving in the State.\textsuperscript{27} Reasons cited for voting against the bill included difficulty of enforcement and infringement on personal freedoms.\textsuperscript{28} In 2013, at least eighteen distracted driving ban proposals were “left for dead” in the Mississippi House Judiciary Committee.\textsuperscript{29}

\textsuperscript{27} \textit{Oklahoma: Curb on Texting While Driving is Blocked}, N.Y. Times (Feb. 28, 2013), \url{http://www.nytimes.com/2013/03/01/us/oklahoma-curb-on-texting-while-driving-is-blocked.html?_r=0} (Representative Josh Cockcroft, who opposed the bill to texting while driving, agreed that it was foolish to text while operating a motor vehicle, but reasoned that it is a slippery slope asking, “But where do you stop? Can I not eat a cheeseburger in my car?” The Republican-controlled House committee that derailed the bill cited concerns over difficulty of enforcement and infringement upon personal freedoms).

\textsuperscript{28} \textit{Id.}

\textsuperscript{29} \textit{Mississippi: Cell phone laws, legislation}, \url{http://handsfreeinfo.com/mississippi-cell-phone-laws-legislation/} (listing the “dead” distracted driving legislation from the last five sessions).
New Mexico\textsuperscript{30} and South Dakota\textsuperscript{31} state laws only apply to driver’s with a learner’s or intermediate license. Missouri law

\textsuperscript{30} In 2013, no distracted driving legislation was approved despite several bills clearing committee votes. One of the most outspoken opponents of distracted driving legislation is New Mexico Senate Majority Leader Michael Sanchez, who is responsible for blocking the 2013 texting measure. New Mexico: Cell phone laws, legislation, HANDSFREEINFO.COM (Jan. 7, 2014), http://handsfreeinfo.com/new-mexico-cell-phone-laws-legislation/. The reasons for his opposition are primarily centered on his concern with imposing strict penalties for crimes. He believes tough penalties do not deter and the focus should be on educating young people. Steve Terrell, Bill to ban texting and driving stuck in Senate logjam, SANTAFENEWMEXICAN.COM (March 5, 2013), http://www.santafewnemexican.com/news/local_news/bill-to-ban-texting-and-driving-stuck-in-senate-logjam/article_888cd69f-8ed5-5c27-b795-464ed842061b.html.

\textsuperscript{31} On February 21, 2014, the legislative bodies of South Dakota approved a state-wide texting and driving ban. Prior to this approval, texting and driving was only banned for some teen drivers. The ban will be considered “secondary enforcement” so police officers must have reason other than using a wireless
against texting and driving only pertains to drivers under twenty-one.\textsuperscript{32} Arizona,\textsuperscript{33} Montana\textsuperscript{34} and South Carolina\textsuperscript{35} have no communication device while driving in order to pull over the driver. \textit{South Dakota: Cell phone laws, legislation,}\textsc{handsfreeinfo.com} (Feb. 22, 2014), \url{http://handsfreeinfo.com/south-dakota-cell-phone-laws-legislation/}.

\textsuperscript{32} Mo. Ann. Stat. § 304.820 (West 2013). At least five bills have been filed in the state House of Representatives for 2014 that seek to ban texting messaging by all drivers and toughen the existing distracted driving law. \textit{Missouri: Cell phone laws, legislation, handsfreeinfo.com} (Jan. 15, 2014), \url{http://handsfreeinfo.com/missouri-cell-phone-laws-legislation/}.

Representative Don Gosen proposes license loss and possible jail time for offenders; a stricter penalty than what most states impose currently. \textit{Id.} Gosen also seeks a ban on the use of Google Glass technology while driving. \textit{Id.}

\textsuperscript{33} The state legislature has repeatedly rejected outlawing texting while driving, but the state Department of Public Safety is taking on the fight even without a law in place. A DPS spokesman indicated that the department will use the existing law on “speed not reasonable and prudent” as a way to cite distracted drivers. The enforcement effort comes after a DPS officer was killed by the driver of a big-rig who was looking at
state law whatsoever pertaining to cell phone use while driving.\textsuperscript{36}

As state laws continue to progress and statistics increasingly make their way into television commercials and onto highway billboards, the message is clear. Texting and driving, and more broadly, distracted driving is a huge problem in our country. However inundated the public is on the dangers, the numbers indicate that far too many people are ignoring the risks. Americans continue using cell phones, tablets, GPS photos of scantily clad women on his cell phone when he crashed into a DPS cruiser in May 2013. Along with an education campaign, the increased enforcement began in January 2014. Arizona DPS to crack down on texting drivers (Nov. 11, 2013), AZFAMILY.COM, \url{http://www.azfamily.com/news/Arizona-DPS-to-crack-down-on-texting-drivers-231479791.html}.

\textsuperscript{35} At least ten state wide distracted driving bills were proposed for consideration by the South Carolina Legislature in 2013, but none cleared the House or Senate before the session ended. South Carolina: Cell phone laws, legislation, HANDSFREEINFO.COM (Jan. 11, 2014), \url{http://handsfreeinfo.com/south-carolina-cell-phone-laws-legislation/}. 
devices and programs, and even laptop computers while driving, turning their cars into portable offices and centers of entertainment. While cell phone companies and car manufacturers have expressed concerns over the growing number of injuries and fatalities, programs and applications continue to be developed and released by software companies that only add to this distraction behind the wheel of a car. Such applications and programs will be examined in more detail below.

II. Kubert v. Best

A recent New Jersey case took aim at the issue of texting and driving in an unprecedented manner. In Kubert v. Best, the court addressed the issue of whether an individual who is sending a text message “from a location remote from the driver of a motor vehicle can be liable to the persons injured because the driver was distracted by the text” message. The court


38 Id.

39 Id.
concluded that the sender of a text message has a duty not to text an individual who is driving if the sender “knows, or has special reason to know, the recipient will view the message while driving.”

In Kubert, the plaintiffs suffered serious injuries after being involved in a car accident with an eighteen year old driver, Best, who crossed over the center-line of the road while he was texting. The plaintiffs filed a claim against the Best’s seventeen year old friend, Shannon Colonna, who sent him a text just prior to the accident. The plaintiffs’ attorney presented evidence of the Best’s activities leading up to the accident. During this time period, Best and Colonna were casually dating and exchanged numerous text messages every day. On the day of the accident, the two had exchanged sixty-two text messages with each party sending approximately the same number. Prior to the accident, Best and Colonna had lunch together before he had to

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41 Id. at *1.
42 Id.
43 Id. at *6.
44 Id.
go to work.\textsuperscript{45} One minute after punching out of work for the day, Best sent a text message to Colonna.\textsuperscript{46} Evidence also showed that the two exchanged text messages after Best had started driving home.\textsuperscript{47} The accident occurred four to five minutes after Best began driving home from work.\textsuperscript{48}

Colonna’s attorney argued to the trial court that because she was not present at the scene, Colonna could not be liable for the accident.\textsuperscript{49} Further, Colonna did not have a legal duty to abstain from texting Best while he was driving, and finally, Colonna did not know that Best was driving at the time.\textsuperscript{50} The trial court granted summary judgment in favor of Colonna.

On appeal, Plaintiffs argued that Colonna is potentially liable if a jury determines that her texting was a proximate cause of the accident.\textsuperscript{51} Plaintiffs also argued that while Colonna was not physically present at the scene of the accident, she was “electronically present” in Best’s vehicle just prior to

\textsuperscript{45} Id. at *7.
\textsuperscript{46} Id.
\textsuperscript{47} Id. at *8.
\textsuperscript{48} Id.
\textsuperscript{49} Id. at *10.
\textsuperscript{50} Id.
\textsuperscript{51} Id.
the accident. Further, they claimed that Colonna aided and abetted Best’s unlawful conduct of texting while operating a motor vehicle. Finally, Plaintiffs argued that Colonna had an independent duty to abstain from texting an individual who was driving a motor vehicle and a jury could find from the evidence that Colonna had knowledge that Best was driving at the time she sent the text message immediately prior to the accident.

As referenced above, the court of appeals held that while there was insufficient evidence in the present case to hold Colonna liable for the Plaintiff’s injuries, one could be liable.

While it is clear that the Superior Court of New Jersey, Appellate Division was attempting to curtail this habit of texting and driving that has proven to be so devastating, the ruling goes too far. Such a ruling is a slippery slope and opens the door to liability being imposed on countless parties when it comes to electronic communication. For example, it is currently against New Jersey law to talk on a mobile phone while operating a motor vehicle. However, individuals who are engaged in a phone

52 Id. at *17-*18.
53 Id. at *11.
54 Id.
55 Id. at *32.
call with someone who is driving are not liable for an accident that takes place during the course of the phone call. The reason for this is that the individual who is not driving is not making the choice to violate the law by talking on the phone.

If liability is to be imposed, it opens the door for liability to all other forms of communication available through smartphone technology. Users of Facebook, for example, can receive notifications when another user requests to be their “friend,” when another user adds a photo of them, when another user “comments” on their photo, when another user “comments” on their “comment.” ⁵⁶ The number of notifications through Facebook alone is immense. Additional forms of electronic communication that would also “ping” a smartphone include Twitter, Pinterest, Instagram and LinkedIn, among others. ⁵⁷

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⁵⁶ [FACEBOOK](http://www.facebook.com) (last visited March 10, 2014).

⁵⁷ See Mobile & Apps, Use Twitter on the Go, [TWITTER](https://support.twitter.com/groups/54-mobile-apps#topic_222) (last visited Feb. 27, 2014); iPhone Basics, [PINTEREST](https://help.pinterest.com/entries/22999523-iphone-basics) (last visited Feb. 27, 2014); Help Center, [INSTAGRAM](http://help.instagram.com/546541825361643) (last visited Feb. 27, 2014); Help Center, [LINKEDIN](https://help.linkedin.com)
The opportunities for a driver to be distracted are countless. The New Jersey Court of Appeals’ decision in Kubert v. Best opens the door to frivolous law suits that are based on the perceived knowledge of the sender of some form of electronic communication. This is a dangerous door to open and there needs to be protection in place for the senders of electronic communication.

III. Push Notifications

Push notifications are an example of an existing distraction designed to provide alerts and information for data enabled device applications. These notifications are a channel where mobile device applications can communicate with and engage users. Entrepreneur, Ariel Seidman described the ability of push notifications when he wrote, “it’s hard to over-hype the power of mobile push notifications. For the first time in human history, you can tap almost two billion people on the shoulder


and say ‘[H]ey! Pay attention to this!’”  

Seidman is correct and herein lies the problem. Push notifications are vitally important for a company’s success in a digital world, but these notifications are designed to pull the users’ attention away from other things. In many cases, the other thing may be driving a car.

To examine the intricacies of push notifications more closely, the Apple operating system (“iOS”) provides three kinds of notifications. First, there is a sound notification where there is an audible alert. Second, there is an alert banner that appears on the device’s screen. Third, there is a badge which appears as an image or number attached to the relevant application’s icon.  

Android developers describe the notification system as one that keeps mobile device users up to speed about all events or new chat messages as they happen. Android notifications can be


60 Understanding Notifications, supra note 60.

customized to include specific information when a user simply glances at the device, and the notifications can be prioritized per the user’s preference.\textsuperscript{62} The priority level can be set from maximum for critical and urgent notifications to minimum for notifications users will only see when they expand certain features on the device. \textsuperscript{63}

Any notifications that are above the minimum priority level cause the device to “wake” in order to display the notification. Application developers are encouraged to use distinct icons for their notifications so users can easily distinguish between notifications when they glance at their phone.\textsuperscript{64}

Most devices have a feature that allows users to adjust which push notifications they receive and users can also disable push notifications completely. Further, many devices have a “Do Not Disturb” feature that will temporarily disable all notifications.\textsuperscript{65}

\begin{flushleft}
\textsuperscript{62} Id.
\textsuperscript{63} Id.
\textsuperscript{64} Id.
\end{flushleft}
The Apple Do Not Disturb feature has various setting options for users to select. Users may manually engage the Do Not Disturb feature which will silence any alerts or calls received while the feature is enabled. Users may also schedule the feature to be enabled during a specific time frame, such as overnight or while at school or work. Further, users may enable the Do Not Disturb Feature but still allow calls from specific individuals while the feature is engaged. Finally, a user may choose the setting where if someone calls the user twice within three minutes, the call will not be silenced, even while the Do Not Disturb Feature is enabled.66

It is clear that Apple and Android developers are aware of the importance of push notifications but also that there are times when the notifications should be minimized or turned off altogether. By making icons easily recognizable, developers emphasize how users can quickly distinguish one notification from another. The problem here is that a user who is driving too often chooses not to engage the Do Not Disturb feature while driving but rather chooses to “quickly” glance to see what notification has appeared on his or her device. By having these options and settings available, companies are able to avoid liability should an accident result from a driver being

66 Id.
distracted by an electronic communication because it comes down to the choice of the user.

IV. Mobile Applications Perpetuating the Problem

As discussed above, push notifications use push technology to advance notifications from the servers of third party applications that consumers download onto mobile devices, and many push notifications use an audible sound to notify a user of an update. A good example is the CNN application. Throughout the day as there is breaking news on a world wide scale, the CNN application uses push notifications to alert users to the breaking news.

While push notifications keep users up to date, they also provide a regular distraction. Some of the reviews of the CNN application complain about receiving push notifications too often, when the news is not truly “breaking.” By inundating consumers with information, alerts and notifications, third

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67 Understanding Notifications, supra note 60.


69 Id.
party applications are only adding to the number of distractions drivers today face. If a driver receives a push notification from CNN, which is supposed to keep users up to date with “breaking news,” it is understandable that someone might feel a sense of urgency about checking his or her phone to see what has happened. Far too often, that “breaking news” has to do with celebrity gossip when such a category should arguably only include news that users need to know for their own or their loved ones’ safety.

Another example is the Twitter push notifications. On one of the site’s support pages, Twitter advertises the ability to stay connected by reading Tweets “on the go.” Specifically, users “can get updates about traffic problems in the middle of [their] commute.” Along the same lines, a mobile application growing in popularity, Waze, is specifically designed to connect drivers while on the road. As outlined on the applications website, users keep the application “open” on their phone in

70 Getting started with Twitter, TWITTER, https://support.twitter.com/articles/215585 (last visited Nov. 18, 2013).

71 Id.

order to “contribute” information related to the current driving conditions such as traffic delays, accidents, police traps or other road hazards which gives the Waze users traveling behind them a “heads up” to what lies ahead. 73

The purpose of Waze seems to be very clear given the description; it is an application that is used while driving. However, the application developers do include cautions under the application’s Terms of Use advising users to adhere to traffic laws and that it is “strictly forbidden” to send traffic updates while driving and are only permitted after a driver has stopped his or her vehicle in a location permitted by law. 74

Thus, Waze is an application to be used by drivers once they have safely pulled off of the road in a lawfully permitted location, in order to provide updates for drivers traveling behind them about a road condition that may or may not still exist by the time the driver has the opportunity to safely provide the road condition information. Alternatively, it is an application to be used by passengers who can simply check a box to confirm that they are a passenger and not a driver, provided the driver is not distracted in any way by the passenger’s use of the application. Meanwhile, all of the other drivers who

73 Id.
74 Terms of Use, supra note 10.
receive the updates must wait until they have stopped their vehicle in a lawfully permitted location before turning their attention to the updates provided by drivers traveling ahead of them on the road.

If an accident occurs as a result of a driver checking a push notification, should third party applications be held liable for creating an unnecessary distraction? Should CNN be more conservative about what notifications it deems to be “breaking news?” Should application developers who create a program specifically designed to be used while driving share in the liability of a resulting accident? Should an application’s Terms of Use protect the developers from liability even when it is glaringly obvious that an application will be used by numerous drivers in an unsafe manner? Or does it come down to whether or not an individual makes the choice to read a text, push notification, or traffic report while behind the wheel? The court’s ruling in Kubert v. Best calls attention to the discrepancy between the potential liabilities imposed upon application developers versus individuals.

V. **Efforts to Reduce the Problem**
New York designer, Joey Cofone, recently developed a concept he hopes will be adopted by Apple, that would enable drivers to enable “Car Mode” while operating a vehicle. Similar to the existing “Airplane Mode,” car mode would be activated by users by connecting their phone to their car’s Bluetooth system. When activated, no text message alerts would go off and an automatic message would be sent to anyone attempting to text the driver. Cofone hopes Apple will add Car Mode as a feature on future iPhones and he also hopes Apple will partner with insurance companies that can track and reward drivers who use the program.

Concepts such as Car Mode take great strides in reducing the number of drivers who engage in electronic communication while driving. However, it requires cars that have Bluetooth and it still requires drivers to enable Car Mode. Further, if drivers are willing to pick up their phones to send text messages or send a Tweet, there is a good chance drivers will be willing to disable Car Mode, while driving, to see if they have any new messages.

75 Sarah Afzal, iPhone ‘Car Mode’ Concept Helps You Stop Driving and Texting, MASHABLE (Nov. 6, 2013)

Web campaigns such as dosomething.org is aimed at teen drivers and includes a list of “5 Tricks That Will Stop You From Texting While Driving.” The very existence of lists such as this makes it clear that the decision to simply not text while driving is more complex than smartphone developers ever imagined. Some consumers are even looking to Apple to develop a solution to the epidemic created, in large part, by the success of its product.

BMW has introduced ConnectedDrive as an equipment option on certain vehicles that offers a variety of iPhone compatible applications that provide drivers with information during their drive. In addition to reading any incoming text messages and emails drivers, the system also has voice recognition for


77 Brian S. Hall, Holding Apple to a Higher Standard—Solving Texting While Driving, TECHPINIONS (April 1, 2013) http://techpinions.com/holding-apple-to-a-higher-standard-texting-while-driving/15425.

message dictation. It also displays the driver’s Facebook and Twitter pages through the car’s audio system display screen and all Facebook updates and Tweets are read to the driver at the push of a button.\(^7^9\) Both Audi and Mercedes have developed similar options that can be added to certain vehicles.\(^8^0\)

In the not too distant future, it is likely that more and more applications will be developed to help curb the use of electronic communication devices while driving. However, the efforts will only help solve the problem as long as drivers are willing to pay for the added feature on their car or willing to enable the application that prevents texting while driving. Thus, it is crucial that legislation be passed to protect the individual senders of electronic communications so the New


Jersey court’s decision is not repeated or relied on in other jurisdictions.

VI. Proposed New Jersey Legislation

In response to the *Kubert v. Best* court of appeals decision, New Jersey Assemblywoman Caroline Casagrande proposed legislation that would provide immunity to the sender of a text message to the operator of a motor vehicle. Casagrande’s bill is intended to protect individuals who are too far removed from an incident to be held liable. This swift response following the New Jersey court’s decision is appropriate and necessary. However, in the face of the seemingly endless possible avenues for electronic communication, such protection must be applied more broadly.

VII. Model Legislation

Companies and application developers have the necessary language that protects them from liability for any accident resulting from a driver using their application at the time of the accident. However, individuals do not have the luxury of a team of attorneys who can draft this language that protects them.

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from liability. Therefore, legislation is a necessary step to prevent courts from imposing liability on individuals. As discussed previously, many states have been reluctant to pass important legislation outlawing the use of a wireless communication device while driving. The model legislation proposed here is intended to be an additional element to the wireless communication laws currently in place as well as those passed in the future. Additionally, the legislation includes protection for individuals who are knowingly engaged in a conversation with the operator of a motor vehicle when such behavior is in violation of state law.

The states that have already passed wireless communication device laws have the statistics and studies to show it is not too difficult to enforce the laws. Any states that are considering such laws are encouraged to look at the statistics from others who have successfully implemented the laws and are actively enforcing them; New York’s implementation is a good example. Despite the reasoning provided by some legislators,

82 See supra notes 24, 27, 29, 31-33.

83 Oklahoma: Curb on Texting While Driving is Blocked, N.Y. Times (Feb. 28, 2013), http://www.nytimes.com/2013/03/01/us/oklahoma-curb-on-texting-while-driving-is-blocked.html?_r=0

(Representative Josh Cockcroft, who opposed the bill to texting
passing such laws no more infringes upon personal liberties than laws requiring seatbelts. In fact, due to the fact that the use of a mobile phone while driving not only puts the life of the driver choosing to use the phone at risk, but the lives of other drivers on the road as well, mobile phone laws arguably infringe upon personal liberties less than seatbelt laws.

Legislation intended to protect individual senders of electronic communication must be written in a way that it will remain applicable as technology continues to progress. The while driving, agreed that it was foolish to text while operating a motor vehicle, but reasoned that it is a slippery slope asking, “But where do you stop? Can I not eat a cheeseburger in my car?” The Republican-controlled House committee that derailed the bill cited concerns over difficulty of enforcement and infringement upon personal freedoms). See also, Scott K. Parks, Texas supporters of texting ban say statistics underestimate dangers of distracted driving, DALLASNEWS.COM (Sept. 13, 2013), http://www.dallasnews.com/news/local-news/20130913-no-officer-i-wasn-t-texting-.---.ece (referring to the texting ban passed by both the Texas House and Senate in 2011 but the bill was vetoed by Texas Governor Rick Perry, “saying it amounted to unwarranted government intrusion”).
legislation outlined below is intended to be used as a model for state governments that wish to keep pace with the ever-changing world of technology.

**Electronic Communication Sender Protection Act**

§1. Title and Effective Date

(a) The title of this law is the Electronic Communication Sender Protection Act and may be cited as E.C.S.P.A. It shall become effective on __________.

(b) This law applies retroactively and is to be applied to any case where an individual was held liable within the context that this law is intended to prevent.

§2. Purpose

(a) Provides protection from civil liability damages resulting from a motor vehicle accident for any individual who sends electronic communication in the form of a text message to a mobile device regardless of whether the sender has knowledge that the intended recipient is operating a motor vehicle at the time or special knowledge that the recipient would view the electronic communication while operating a motor vehicle.
(b) Provides protection from civil liability damages resulting from a motor vehicle accident for any individual who sends electronic communication in the form of a Facebook message or notification to a mobile device regardless of whether sender has knowledge that the intended recipient is operating a motor vehicle at the time or special knowledge that the recipient would view the electronic communication while operating a motor vehicle.

(c) Provides protection from civil liability damages resulting from a motor vehicle accident for individual who sends electronic communication in the form of a “Tweet” or Twitter notification to a mobile device regardless of whether sender has knowledge that the intended recipient is operating a motor vehicle at the time or special knowledge that the recipient would view the electronic communication while operating a motor vehicle.

(d) Provides protection from civil liability damages resulting from a motor vehicle accident for individual who sends electronic communication in the form of a LinkedIn message or notification to a mobile device regardless of whether sender has knowledge that the intended recipient is operating a motor vehicle at the
time or special knowledge that the recipient would view the electronic communication while operating a motor vehicle.

(e) Provides protection from civil liability damages resulting from a motor vehicle accident for individual who sends electronic communication in the form of electronic mail [e-mail] to a mobile device regardless of whether sender has knowledge that the intended recipient is operating a motor vehicle at the time or special knowledge that the recipient would view the electronic communication while operating a motor vehicle.

(f) Provides protection from civil liability damages resulting from a motor vehicle accident for a remote individual who knowingly engages in a conversation via mobile phone device with the operator of a motor vehicle who is in violation of the state’s ban against using a mobile phone device while operating a motor vehicle.

Explanatory Note

Section two is written with the awareness that electronic communication and social media platforms are an ever-changing area. The specific forms of communication listed are not
intended to be an exhaustive list. This law is intended to cover all forms of electronic communication that can be accessed by a wireless communication device whether the form of communication exists at the time of enactment or in the future.

§3. Review and Renewal

(a) This Act is to be reviewed every three years from the effective date.

(b) This Act may be renewed every third year from the effective date, and must be renewed for the first six years from the effective date.

§4. Scope of Coverage

This Act shall apply to any individual who sends any form of electronic communication to the wireless communication device of an operator of a motor vehicle. Such individual will not be liable for damages resulting from a motor vehicle accident, directly or indirectly caused by the communication recipient’s violation of the state’s ban on the use of wireless communication devices while driving.

§5. Definitions

When used in this Act:

(a) The term “cell phone” means any portable cellular, analog, wireless or digital communication device.
(b) The term “electronic communication device” means any cell phone, personal digital assistant, electronic device with mobile data access, laptop computer, pager, broadband personal communication device, two-way messaging device, electronic game, or portable computing device.

(c) The term “data enabled device” refers to any portable device with computing and connectivity capabilities from any location, allowing users to download and use applications of varying complexity.

(d) The term “electronic communication” means communication generated by a computer.  

(e) The term “short message service (SMS)” refers to a system for sending short text messages, as from one handheld electronic device to another; also referred to as a “text message.”

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84 Electronic Communication, DICTIONARY.COM,

85 SMS, DICTIONARY.COM,
(f) The term “Twitter via SMS” means communications received via Twitter from accounts a Twitter user has specifically chosen to “follow.”

(g) The term “Facebook mobile messenger” refers to a Facebook Application that allows users to send text messages to other Facebook users instantly using their cell phone.

(h) The term “social media” means websites and other means of online communication used by groups of people to share information and establish social and professional contacts.

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86 Twitter for SMS, TWITTER, https://support.twitter.com/articles/14020# (last visited Nov. 18, 2013).


(i) The term “push notification” refers to user updates and alerts sent from third-party developers to a user’s data enabled device.89

(j) The term “Tweet” means a short message consisting of 140 characters or less posted via the Twitter website directed to other Twitter users.90

(k) The term “direct message” means a short message consisting of 140 characters or less sent via the Twitter website directed to a specific Twitter user.91

(l) The term “tag” refers to a creating a link in another Facebook user’s Timeline which triggers the sending of an alert to that user.92

89 Understanding Notifications, supra note 60.


The term “e-mail” means a method for sending electronic messages from one individual to another using telecommunications links between computers.\(^\text{93}\)

### VIII. Conclusion

This proposed legislation is influenced by the New Jersey Assembly Bill No. 4410 introduced in 2013.\(^\text{94}\) However, the Assembly Bill falls short in its coverage. The proposed legislation encompasses all forms of electronic communication, which is necessary as long as mobile phone technology continues to advance. It is important that there not be any loop holes where a court may find an individual liable for any form of electronic communication sent to a driver.


\(^{93}\) *E-mail,* DICTIONARY.COM, [http://dictionary.reference.com/browse/e-mail?sa=t](http://dictionary.reference.com/browse/e-mail?sa=t) (last visited Nov. 18, 2013).

\(^{94}\) Assemb. B. 4410, supra note 81.
During the daylight hours, approximately 660,000 drivers are using a handheld electronic device while driving.\textsuperscript{95} Researchers estimate that nationwide, more than 3,000 teens die each year from texting and driving, while another 300,000 are injured.\textsuperscript{96} There is no indication that these numbers will do anything other than continue to increase as technology progresses and people become more reliant upon mobile devices.

The statistics indicate that high numbers of drivers are still choosing to use mobile devices for electronic communication despite the risks. Most states have responded by passing legislation outlawing this behavior. In addition to these state laws, the model legislation proposed in this Note is necessary to protect individual senders of electronic communication from being liable for the actions of another person. The proposed legislation provides for individuals what the disclaimer and “terms of use” language provides companies.


There is still a long way to go in the battle against texting and driving. The passing of this legislation will further the efforts to make the guilty parties face the consequences of their actions. In addition to the message of no tolerance increased enforcement of existing state laws sends, this legislation would send a message to drivers that if they choose to violate the law, they alone will suffer the consequences. Legislation is vital to ensure drivers are held accountable should they choose to use those devices while driving. Legislation that protects the senders of electronic communication is an important step in the pursuit of this goal.
# Appendix A

<table>
<thead>
<tr>
<th>State</th>
<th>Statute</th>
<th>Summary</th>
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</thead>
<tbody>
<tr>
<td>Alabama</td>
<td>ALA. CODE § 32-5A-350 (2012)</td>
<td>Prohibiting all persons from operating a motor vehicle while using a wireless telecommunication device to write, send, or read a text-based communication</td>
</tr>
<tr>
<td>Alaska</td>
<td>ALASKA STAT. ANN. § 28.35.161 (West 2012)</td>
<td>Making it a crime for a motor vehicle operator to read or type a text message or other nonvoice message while vehicle is in motion</td>
</tr>
<tr>
<td>Arizona</td>
<td>None</td>
<td></td>
</tr>
<tr>
<td>Arkansas</td>
<td>ARK. CODE ANN. § 27-51-1501 (West 2009)</td>
<td>&quot;Paul's Law&quot; prohibits drivers of motor vehicles from using handheld wireless telephones to engage in text messaging</td>
</tr>
<tr>
<td>California</td>
<td>CAL. VEH. CODE § 23123.5 (West 2013)</td>
<td>Prohibiting motor vehicle operators from using a electronic communication device to write, send or read text-based communication while driving; Violations punished by $20 fine</td>
</tr>
<tr>
<td>Colorado</td>
<td>COLO. REV. STAT. ANN. § 42-4-239 (West 2009)</td>
<td>Prohibiting motor vehicle drivers from using a wireless telephone to text message or similar forms of manual data entry; Violations are class A traffic infractions</td>
</tr>
<tr>
<td>Connecticut</td>
<td>CONN. GEN. STAT. ANN. § 14-296aa (West 2013)</td>
<td>Prohibiting motor vehicle operators on a highway from using a hand-held mobile device to type, send or read text messages; Any violations shall appear on driving record</td>
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<tr>
<td>State</td>
<td>Code Reference</td>
<td>Description</td>
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<tr>
<td>Delaware</td>
<td>DEL. CODE ANN. TIT. 21, § 4176C (West 2012)</td>
<td>Prohibiting all persons from driving a motor vehicle while using an electronic communication device while such motor vehicle is in motion</td>
</tr>
<tr>
<td>District of Columbia</td>
<td>D.C. CODE § 50-1731.04 (2004)</td>
<td>Prohibiting all drivers from using mobile telephones or other electronic devices while operating a motor vehicle</td>
</tr>
<tr>
<td>Florida</td>
<td>FLA. STAT. ANN. § 316.305 (West 2013)</td>
<td>Law enforcement may issue a citation as secondary offense to persons texting while driving when driver has been detained for suspected violation of primary offense</td>
</tr>
<tr>
<td>Georgia</td>
<td>GA. CODE ANN. § 40-6-241.1 (West 2010)</td>
<td>Making it unlawful for all drivers to operate a motor vehicle while using a wireless telecommunication device to write, send or read any text based communication, including but not limited to a text message, instant message, e-mail or internet data</td>
</tr>
<tr>
<td>Hawaii</td>
<td>HAW. REV. STAT. § 291C-137 (West 2013)</td>
<td>Prohibiting all persons from operating a motor vehicle while using a mobile electronic device</td>
</tr>
<tr>
<td>Idaho</td>
<td>IDAHO CODE ANN. § 49-1401A (West 2012)</td>
<td>Making texting while driving a motor vehicle infraction but not a moving violation for purposes of motor vehicle insurance rates</td>
</tr>
<tr>
<td>Illinois</td>
<td>625 ILL. COMP. STAT. 5/12-610.2 (West 2014)</td>
<td>Prohibiting all persons from operating a motor vehicle on a roadway while using an electronic communication device</td>
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<tr>
<td>State</td>
<td>Code ANN. Section</td>
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<tr>
<td>Indiana</td>
<td>IND. CODE ANN. § 9-21-8-5 (West 2011)</td>
<td>Prohibits motor vehicle operators from typing, transmitting or reading text messages or electronic mail messages</td>
</tr>
<tr>
<td>Iowa</td>
<td>IOWA CODE ANN. § 321.276 (West 2013)</td>
<td>Prohibiting all persons from using a handheld electronic communication device to write, send, or read a text message while driving a motor vehicle</td>
</tr>
<tr>
<td>Kansas</td>
<td>KAN. STAT. ANN. § 8-15,111 (West 2010)</td>
<td>Prohibiting motor vehicle operators from using a wireless communication device to manually type, send or read a written communication</td>
</tr>
<tr>
<td>Kentucky</td>
<td>KY. REV. STAT. ANN. § 189.292 (West 2011)</td>
<td>Prohibiting all persons from writing, sending or reading a text-based communication (including text messages, instant messages and emails) while operating a motor vehicle that is in motion</td>
</tr>
<tr>
<td>Louisiana</td>
<td>LA. REV. STAT. ANN. § 32:300.5 (2013)</td>
<td>Prohibiting motor vehicle operators from using a wireless communication device to write, send or read a text-based communication or to access, read, or post to a social networking site</td>
</tr>
<tr>
<td>Maine</td>
<td>ME. REV. STAT. ANN. TIT. 29, § 2119 (2013)</td>
<td>Prohibiting persons from operating a motor vehicle while engaging in text messaging</td>
</tr>
<tr>
<td>Maryland</td>
<td>MD. CODE ANN., TRANSF. § 21-11-24.1 (West 2012)</td>
<td>Prohibits motor vehicle operators from using a text message device to write, send or read a text or electronic message while in the travel portion of the roadway</td>
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<tr>
<td>State</td>
<td>Code/Reference</td>
<td>Description</td>
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<tr>
<td>Massachusetts</td>
<td>MASS. GEN. LAWS ANN. Ch. 90, § 13B (West 2010)</td>
<td>Prohibits motor vehicle operators from using any hand held device capable of accessing the internet to manually compose, send or read an electronic message while vehicle is in motion</td>
</tr>
<tr>
<td>Michigan</td>
<td>MICH. COMP. LAWS. ANN. § 257.6026 (West 2013)</td>
<td>Prohibits all persons from reading, manually typing, or sending a text message on a 2-way communication device that is located in the person's hand or lap while operating a motor vehicle while moving</td>
</tr>
<tr>
<td>Minnesota</td>
<td>MINN. STAT. ANN. § 169.475 (West 2008)</td>
<td>Prohibiting all motor vehicle operators from using a wireless communications device to compose, read, or send an electronic message when the vehicle is in motion or a part of traffic</td>
</tr>
<tr>
<td>Mississippi</td>
<td>Pending: Senate Bill 2434 was passed in Feb. 2014</td>
<td></td>
</tr>
<tr>
<td>Missouri</td>
<td>MO. ANN. STAT. § 304.820 (West 2013)</td>
<td>Prohibiting all persons under twenty-one years of age from operating a motor vehicle while sending, reading or writing an electronic message using a handheld mobile telephone</td>
</tr>
<tr>
<td>Montana</td>
<td>None</td>
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</tr>
<tr>
<td>Nebraska</td>
<td>NEB. REV. STAT. § 60-6, 179.01 (West 2010)</td>
<td>Prohibits operators of a motor vehicle in motion from reading, typing or sending written communication using a wireless communication device</td>
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<tr>
<td>State</td>
<td>Statute</td>
<td>Description</td>
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<tr>
<td>Nevada</td>
<td>NEV. REV. STAT. ANN. § 484B.165 (West 2011)</td>
<td>Prohibits motor vehicle operators from manually entering text into a hand held wireless communication device, or send, or read data using such device to access or search the internet or to engage in nonvoice communications with another person.</td>
</tr>
<tr>
<td>New Hampshire</td>
<td>N.H. REV. STAT. ANN. § 265:105-a (West 2010)</td>
<td>Prohibiting motor vehicle operators from using two hands to type-on or operate an electronic or telecommunications device.</td>
</tr>
<tr>
<td>New Mexico</td>
<td>Pending: Senate Bill 19 was passed on Feb. 7, 2014</td>
<td>Bill would allow police to ticket drivers they see typing on cellphones or reading messages while driving or stopped in traffic.</td>
</tr>
<tr>
<td>New York</td>
<td>N.Y. VEH. &amp; TRAF. LAW § 1225-d (McKinney 2013)</td>
<td>Prohibiting motor vehicle operators from viewing, taking or transmitting images, playing games, or performing a command or request to access the internet, composing, sending, reading, viewing, accessing, browsing, transmitting, saving, or retrieving electronic data on any electronic device while vehicle is in motion; Violations constitute a traffic infraction.</td>
</tr>
<tr>
<td>North Carolina</td>
<td>N.C. GEN. STAT. § 20-137.4A (West 2012)</td>
<td>Making it unlawful for any motor vehicle operator to use a mobile phone to manually enter multiple letters in the device as a means of communicating with another person or to read any electronic message transmitted to or stored within the device.</td>
</tr>
<tr>
<td>State</td>
<td>Code Section</td>
<td>Description</td>
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</tr>
<tr>
<td>North Dakota</td>
<td>N.D. CENT. CODE ANN. § 39-08-23 (West 2011)</td>
<td>Prohibiting motor vehicle operators from using a wireless communication device to compose, send or read electronic communication while traveling on streets and highways, including during a temporary stop.</td>
</tr>
<tr>
<td>Ohio</td>
<td>OHIO REV. CODE ANN. § 4511.204 (West 2013)</td>
<td>Making it a secondary offense for motor vehicle operators to use a handheld electronic wireless communication device to write, send or read a text based communication.</td>
</tr>
<tr>
<td>Oklahoma</td>
<td>OKLA. STAT. ANN. TIT. 47, § 11-901c (West 2010)</td>
<td>Outlawing texting while driving for learner's permit holders, intermediate drivers, school bus drivers and transit drivers.</td>
</tr>
<tr>
<td>Oregon</td>
<td>Or. REV. STAT. ANN. § 811.507 (West 2011)</td>
<td>Prohibiting all persons operating a motor vehicle from using a mobile communication device.</td>
</tr>
<tr>
<td>Pennsylvania</td>
<td>75 PA. LEGIS. SERV. 3316 (West)</td>
<td>Prohibiting the use of an Interactive Wireless Communication Device to send, read or write a text-based message.</td>
</tr>
<tr>
<td>Rhode Island</td>
<td>R.I. GEN. LAWS ANN. § 31-22-30 (West 2009)</td>
<td>Prohibiting all motor vehicle operators from using a wireless handset to compose, read or send text messages on any public highway.</td>
</tr>
<tr>
<td>South Carolina</td>
<td>None</td>
<td>Pending legislation will ban text messaging while driving and enforcement will be as a secondary offense.</td>
</tr>
<tr>
<td>South Dakota</td>
<td>Pending: House Bill 1177 and Senate Bill 179 were approved on Feb. 21, 2014</td>
<td>Prohibiting drivers of motor vehicles from using a handheld mobile device or personal digital assistant to transmit or read a</td>
</tr>
<tr>
<td>State</td>
<td>Code Reference</td>
<td>Description</td>
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<tr>
<td>Texas</td>
<td>TEX. TRANSP. CODE ANN. §§ 545.425, 545.4252 (West 2013)</td>
<td>Prohibiting drivers in school zones or on public school property during school zone hours from using a hand held device to draft, send or read a text message while operating a motor vehicle.</td>
</tr>
<tr>
<td>Utah</td>
<td>UTAH CODE ANN. § 41-6a-1716 (West 2012)</td>
<td>Prohibiting the use of a handheld device for the transfer of information without the use of electrical conductors or wires while operating a motor vehicle.</td>
</tr>
<tr>
<td>Vermont</td>
<td>Vt. STAT. ANN. Tit. 23, § 1099 (West 2013)</td>
<td>Prohibiting the reading, manual composition or sending of text messages, instant messages or emails using a portable electronic device by motor vehicle operators.</td>
</tr>
<tr>
<td>Virginia</td>
<td>VA. CODE ANN. § 46.2-1078.1 (West 2013)</td>
<td>Making it unlawful for any motor vehicle operator to use any handheld personal communications device to manually enter multiple letters or text as a means of communicating with another person or read any electronic message transmitted to or stored within the device.</td>
</tr>
<tr>
<td>Washington</td>
<td>WASH. REV. CODE ANN. § 46.61.668 (West 2013)</td>
<td>Making it unlawful for all motor vehicle operators to send, read or write a text message using an electronic wireless communication device.</td>
</tr>
<tr>
<td>State</td>
<td>Code</td>
<td>Law</td>
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<td>----------------------------------------------------------------------</td>
</tr>
<tr>
<td>West Virginia</td>
<td>2013 W. VA. ADV. LEGIS. SERV. 173 (LexisNexis)</td>
<td>Prohibiting all persons from operating a motor vehicle with the motor running, including while temporarily idle, on a public street while texting or using a cell phone or other electronic communications device</td>
</tr>
<tr>
<td>Wisconsin</td>
<td>Wis. STAT. ANN. § 346.89(3)(a) (West 2012)</td>
<td>Prohibiting all persons from driving any motor vehicle while composing or sending an electronic text message or electronic mail message</td>
</tr>
<tr>
<td>Wyoming</td>
<td>Wyo. STAT. ANN. § 31-5-237 (West 2010)</td>
<td>Outlawing the use of a handheld electronic wireless communication device to write, send or read a text-based communication by any persons operating a motor vehicle</td>
</tr>
</tbody>
</table>