



RON TUSLER

STATE REPRESENTATIVE • 3rd ASSEMBLY DISTRICT
Testimony Before the

Assembly Committee on Criminal Justice & Public Safety

on

Assembly Bill 463

September 21, 2017

Mr. Chairman and members of the committee, thank you for the opportunity for a public hearing on Assembly Bill 463. Addressing the issue of distracted driving has become increasingly important since the dawn of the cellphone.

In 2007, we experienced a drastic change in the way we communicate with the invention and popularization of smart phones. In 2010, our legislative body addressed texting while driving. However, innovation has extended beyond texting. This bill addresses these advances in technology to make our roads safer for drivers, bikers, walkers runners and everyone else using our roads.

Further, this bill gives law enforcement the flexibility that it lacked with our 2010 texting bill. The current law is limited to two forms of communications: texting and emailing. This bill is much more comprehensive. It prevents any data use while driving, sparing a few exceptions. Those exceptions are: 1. Navigation, 2. Hands-Free Technology and functions, such as Bluetooth and Siri (346.89(3)(b)4.), 3. Law Enforcement (346.89(3)(b)1.), 4. Amateur Radio Operators, as are already excluded in law (346.89(3)(b)3.) and 5. transmitting or receiving emergency messages or messages related to the vehicle. (346.89(3)(b)2.)

Under this bill a driver can still use their phone to make a phone call and use Bluetooth or use other hands-free functions, like Siri. This bill is not as draconian as the Illinois law that *requires* drivers to make phone calls using hands-free technology. Further, we clarify existing law so that the use of a phone as GPS is not illegal and the current exception for de minimis activation or deactivation of a hands-free function of a device remains unchanged. These exceptions maximize our phones' capabilities without taking our eyes off the road or our hands off the wheel.

We cannot necessarily predict what cool new features our phones will have in five or ten years, but what I can say with 100% confidence is that if you are driving your vehicle, your hands should be on the wheel and eyes on the road, not your cellphone.

Additionally, the language we are proposing will strengthen our distracted-driving law if challenged in court. Indiana's texting while driving ban, similar to Wisconsin's current texting and emailing while driving prohibition, was invalidated by the 7th Circuit Court of Appeals, which decisions Wisconsin is bound by, because it was too narrow. The observations made in the court's opinion could easily apply to Wisconsin's current law. The language in this bill both addresses this potential legal challenge as well as brings future distracting technologies under the umbrella of the

law.

This bill is especially important because distracted driving can harm more than the person on their phone behind the wheel. No one thinks they will get into a car accident, but the reality is that no one can control what the drivers around them are doing. Due to distracted driving there were 121 deaths on Wisconsin roads in 2016, up 68% from 2014, and 25,594 accidents, nearly 4,000 more than when the texting-while-driving law went into effect in 2011. If we aim for zero drunk driving deaths on Wisconsin roads we can aim for zero distracted driving deaths and crashes as well; both can have serious life-altering or fatal consequences and unfortunately there are too many innocent victims.

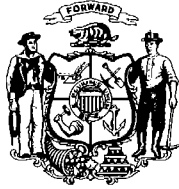
While the general inattentive driving statute remains in law and unchanged, by bolstering our data-distracted driving statute it highlights the unnecessary dangers and pushes back against cultural expectation of constant communication before it becomes a societal bad habit. All forms of distracted or impaired driving are condemnable, but far too often I see drivers on the highway in Appleton and on my commute down to Madison staring down at their cellphones weaving in their own and into other lanes. I pray they, or another driver, does not get hurt or killed because of a tweet, Facebook post, or snap—none of which are ever important enough that it cannot wait until you have reached your destination or take the 30 seconds to pull over. Taking a stand, passing this bill and declaring as the legislature that *this* matters, that we will not tolerate preventable accidents and deaths from distracted driving, will serve as a strong and loud deterrent across the state.

To bolster the deterrent effect, this bill increases the fine minimum from \$20 to \$100, with a maximum of \$400. What tweet is worth \$400? Further, if you kill someone while driving distracted, this law makes it easier for district attorneys to prove homicide by negligent operation of a vehicle – a Class G felony. There is no tweet, Facebook post, or snap that is worth \$400 or one's life.

The Bottom line of this legislation: no person may use a cellphone, tablet, computer, or other device to enter, transmit, or access data while driving. It's as simple as that; keep your hands on the wheel and your eyes on the road. I ask you to please thoughtfully consider this legislation today. Ask your family, friends, and neighbors about some of the crazy near-misses they have seen on the roads due to distracted driving and then think about how you would feel if it were your spouse, child, or friend who was killed by a distracted driver when that death could have been easily preventable.

On a final note, I would like to refer you to the testimony of Kierstin Kloeckner, who contacted me on Facebook but unfortunately could not make it today due to a scheduling conflict, who shares her experience as a hit-and-run victim of a distracted driver.

Thank you for your time and I am open to questions.



Van H. Wanggaard

Wisconsin State Senator

Testimony on Assembly Bill 463

Thank you Mr. Chairman and committee members for the hearing today on Assembly Bill 463 (AB 463), relating to certain uses of interactive electronic devices while driving and providing a criminal penalty. I apologize for not being able to attend today's hearing in person.

As a former police officer and traffic investigator, I know first-hand the dangers of distracted driving. When I was on the force, distractions were much more limited; the radio, people in the car. Distracted driving became more of a problem towards the end of my career as cell phones became more popular. In 2010, Wisconsin passed a texting while driving ban. Penalties are as low as \$20.

Of course, the advent of smartphones since 2010 has led to a huge increase in distractions – all of which are NOT prohibited under the texting while driving statute. Facebook, Twitter, Snapchat, and the Internet are available to virtually everyone at virtually every second. And in that second, your vehicle will travel 144 feet on the freeway. Your car will travel the length of a football field in the 2 ½ seconds you take to read a text, and if you respond quickly, a quarter of a mile. It's mindboggling how far and fast you would travel checking Facebook or Twitter. And yet people are doing it.

This bill strengthens and modernizes Wisconsin's texting while driving ban. Under AB 463, the minimum penalty is increased from \$20 to \$100. The bill also removes the specific reference to texting, and replaces it with accessing or transmitting data using an interactive electronic device. Finally, the bill also establishes that accessing or transmitting data constitutes negligence for the crime of homicide by negligent use of a vehicle. It is important to note that voice, hands-free and GPS functions are exempt for the definition of accessing and transmitting data.

Last year, one of every five accidents were caused by distracted driving. One of every five traffic deaths were the result of distracted driving and over the last two years those distracted driving deaths have increased by two-thirds.

This should not be a controversial bill. Safe driving is something we should all get behind. Updating and strengthening our texting while driving law is not only important, it is necessary.

Serving Racine and Kenosha Counties - Senate District 21



Testimony of Heath P. Straka
Wisconsin Association for Justice
Before the Assembly Committee on
Criminal Justice and Public Safety
September 21, 2017
Regarding
2017 Assembly Bill 463

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BRYAN M. ROESSLER
EXECUTIVE DIRECTOR

Headline: Biggest Spike in Traffic Deaths in 50 Years? Blame Apps.
November 15, 2016.ⁱ

Why this bill is needed?

1. Data distracted driving is a problem.
2. Wisconsin law needs an update to keep pace with smart phone technology.
3. Wisconsin's penalties are now out of step with neighboring states.

Facts About Data Distracted Driving

- **Data Distracted Driving: Takes your eyes off the road, takes your hands off the wheel and takes your mind off driving.**
- **NHTSA Study: One Third of U.S. Drivers aged 18-64 read or send text or email messages while driving.**ⁱⁱ Citing figures from the Centers for Disease Control and Prevention, the National Highway Traffic Safety Administration estimates that one third of drivers on the road read or send email or other electronic messages while driving.
- **Handheld Device Use Highest Among the Riskiest Drivers: Those Aged 16-24.** According to NHTSA drivers aged 16-24 are most likely to be observed visibly manipulating handheld devices.ⁱⁱⁱ
 - In 2015, 42% of high school students who drove in the past 30 days reported sending a text or email while driving.^{iv} This group was also more likely to self-report other unsafe behaviors including being less likely to wear a seatbelt, more likely to travel with a driver who had been drinking and more likely to drink and drive themselves.
- **Distracted Driving Responsible for Thousands of Deaths and Hundreds of Thousands of Injuries.** In 2015, data distracted driving and other distracted driving behaviors led to 3,477 deaths and 391,000 injuries. In 2014 it was estimated that the death count total 3,100 and the number of injured people totaled 420,000.
 - **Between 10-20 Percent of Traffic Fatalities Linked to Distracted Driving.**^v

- **Technology Will Improve Safety in Future; But Crashes Will Continue to Be Problem in Near Term.** Likely connected to an improving economy, there has been a slight uptick in crashes in Wisconsin in recent years.

2016 crash statistics with comparison to prior years*

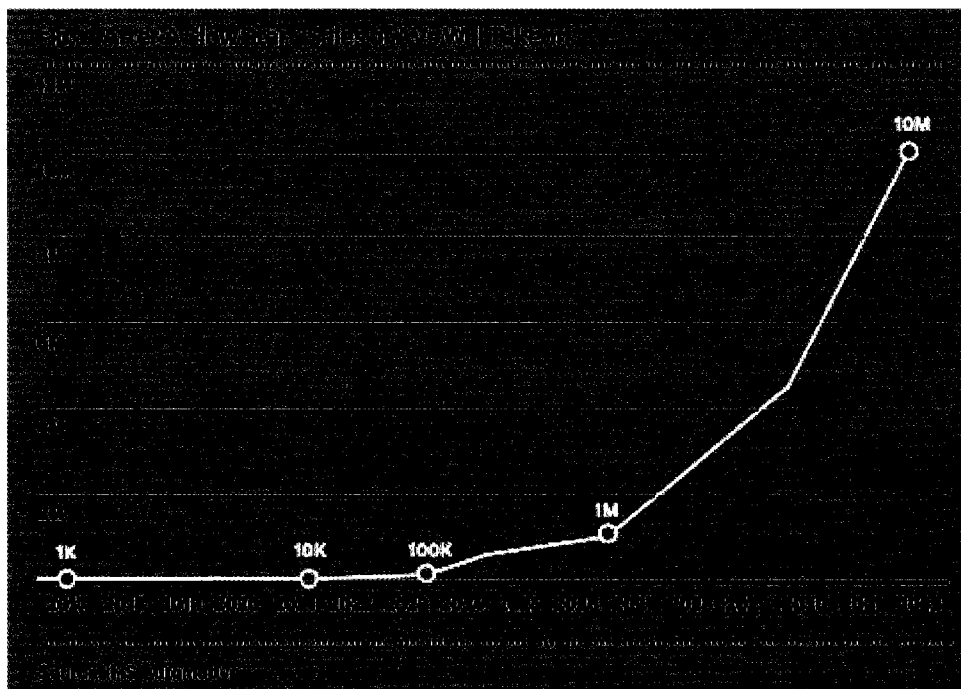
	2011	2012	2013	2014	2015	2016	11-15 Average
Fatal crashes	515	535	491	451	513	524	501
Injury crashes	28,965	28,453	28,474	28,801	29,845	31,066	28,908
Property damage crashes	83,036	80,397	89,016	90,484	91,255	97,461	86,838
Total crashes	112,516	109,385	118,254	119,736	121,613	129,051	116,301

Source: [Wisconsin DOT](#)

- **Wisconsin’s Original Text Messaging Ban Has Been Eclipsed by Phone Technology.**
 - **Wisconsin Banned Texting and Driving as of December 2010.** 2009 Wisconsin Act 220 went into effect in [December 2010](#).
 - **Smart Phones Had Yet to Dominate Market.** As CNET reported in May 2009, “traditional mobile-phone sales still dominate[d] the market[.]” This is in contrast to iPhone and Android smart phones now dominant. [CNET.com, [5/20/09](#)]
 - **Blackberry Still Ascendant.** While smartphones, like the iPhone, introduced in 2007 were on the rise in 2009, arguably the most prominent smart phone was offered by Research in Motion. In May 2009, BlackBerry’s market share had risen in from 13.3 percent in 2008 to 19.9 percent worldwide in the first quarter of 2009. [CNET.com, [5/20/09](#)]

Safer Cars are Coming, But They Are Not Here Yet.

- **Safer Vehicles are Coming, But Autonomous Vehicles Not Expected to Dominate Until 2040.** The rise of autonomous vehicles, connected vehicles, as well as active and passive safety measures in traditionally controlled vehicles is expected to improve traffic safety. Even without autonomous vehicle development, with every passing year, cars and light trucks become safer with the incorporation of active and passive safety features like lane assist, back-up cameras, and other sensors.
- **The Changeover Will Take Time.** In 2016 the average age of cars and light trucks on the road rose to 11.5 years. Automakers should be commended for making higher quality vehicles that consumers are willing to drive and own longer than ever.^{vi} Based on current ownership trends, it will take approximately 15 years for the U.S. vehicle fleet to turn over.^{vii}
- **Millions of Traditionally Controlled Vehicles Will Remain on Highways for Approximately 15 Years After All Vehicles Sold are Equipped with A/V Technology.** We should be encouraging the adoption of new technology and investment while also updating the laws we need to keep us safe today.



Source: Bloomberg Philanthropies / The Aspen Institute

Wisconsin's Original Text Messaging Ban Is Too Narrow and now Vulnerable to A Legal Challenge.

- **Wisconsin's law is too narrowly focused.** Because Wisconsin's law was enacted in 2010, it addressed 'texting'. Wis. Stat. s. 346.89(3)(a) declares: "No person may drive, as defined in s. 343.305 (1) (b), any motor vehicle while composing or sending an electronic text message or an electronic mail message."
- **Similar Law in Indiana Invalidated.** Indiana's text messaging ban, like Wisconsin's, banned only sending and receiving text messages. The law was ruled unenforceable by the 7th circuit in a 2016 decision, *United States v. Gregorio Paniagua-Garcia*, 15-2540, (7th Cir., decided Feb. 18, 2016).
 - **As Judge Richard Posner noted:** Under the facts of the case, the defendant argued that their traffic stop was unlawful because the officer claimed to have observed the defendant using their phone. Indiana's text messaging ban narrowly defined what was banned. The court reasoned the officer could not determine what activity the driver was engaged in at the time the officer observed the defendant. Indiana's law allowed "making and receiving phone calls, inputting addresses, reading driving directions and maps with GPS applications, reading news and weather programs, retrieving and playing music or audio books, surfing the Internet, playing video games—even watching movies or television[.]"
 - **The analysis against Indiana's law would apply to Wisconsin's.**

Wisconsin's Original Text Messaging Includes Penalties That Are Out of Step with Neighboring States.

- Michigan
 - Minimum: \$100 (\$200 for second and subsequent violations). Enacted 2010.
- Illinois
 - Minimum: \$75. Enacted 2016.
- Minnesota
 - Minimum: \$50 (\$225 for second and subsequent violations). Enacted 2015.
- Iowa
 - Minimum: \$100.50. Enacted 2017.
 - Legislation also makes texting while driving a primary offense (meaning police can stop and cite a driver observed texting while driving with no other violations present). [KWQC, [6/29/17](#)]
 - The enacted legislation made distracted driving a Class C felony (punishable by up to 10 years in prison) for crashes causing death. [Des Moines Register, [4/17/17](#)]

See the National Conference of State Legislators, *Distracted Driving*, Updated July 26, 2017

ⁱ Neal E. Boudette, Biggest Spike in Traffic Deaths in 50 Years? Blame Apps, New York Times, November 16, 2016.

ⁱⁱ National Traffic Law Center. (2017, May). Investigation and prosecution of distracted driving cases (Report No. DOT HS 812 407). Washington, DC: National Highway Traffic Safety Administration. (Citing Centers for Disease Control and Prevention. Mobile Device Use While Driving – United States and Seven European Countries, 2011. Morbidity and Mortality Weekly Report, March 15, 2013/62(10); 177-182).

ⁱⁱⁱ Pickrell, T. M., Li, R., & KC, S. (2016, September). Driverelectronic device use in 2015 (Traffic Safety Facts Research Note. Report No. DOT HS 812 326). Washington, DC: National Highway Traffic Safety Administration.

^{iv} Centers for Disease Control and Prevention, Youth Risk Behavior Surveillance- United States, 2015. 2016. https://www.cdc.gov/motorvehiclesafety/distracted_driving/index.html

^v Nidhi Kalra, How Policymakers Can Promote Safety, Mobility, and Efficiency in an Uncertain World, Rand Institute November 16, 2016.

According to the Wisconsin DOT, the figure may be as high as 1 in 5 traffic fatalities are linked to distracted driving.

^{vi} IHS Markit, Vehicles Getting Older: Average Age of Light Cars and Trucks in U.S. Rises Again in 2016 to 11.6 Years, IHS Markit Says, November 22, 2016.

^{vii} Johana Bhuiyan, The complete timeline to self-driving cars, Recode.com May 16, 2016.



Wisconsin State Fire Chiefs' Association, Inc.

Together We Can Make a Difference

- Education
- Prevention
- Safety
- Suppression
- EMS

DATE: September 20, 2017
TO: Committee on Criminal Justice and Public Safety
FROM: Wisconsin State Fire Chiefs Association
RE: Support Assembly Bill 463

Assembly Bill 463 will protect the First Responders in Wisconsin when responding to emergencies on the highways. AB 463 will expand on the current prohibition of texting with your phone while driving to prohibit the use of interactive electronic devices to enter, transmit or access data while driving.

There are over 42,000 first responders responding to over 750,000 emergencies in Wisconsin every year. Those 750,000 emergencies each year creates a high risk of exposure to accidents and injuries when those emergency vehicles are responding on the highways with in-attentive drivers who are using their electronic devices and driving. In addition to emergency vehicles there are many residents and visitors to Wisconsin that are exposed to the in-attentive drivers using electronic devices when driving on Wisconsin highways.

The Wisconsin State Fire Chiefs are concerned with the number of in-attentive drivers on Wisconsin highways. The Wisconsin State Fire Chiefs Association asks that you please support Assembly Bill 463.

If you have questions please contact:
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WI State Fire Chiefs Assoc.
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608-444-3324 cell

2120 Fish Hatchery Rd. • Madison, WI 53713
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Jeff Leavell

Past President

Wisconsin Defense Counsel

Edward Lump

President and CEO

Wisconsin Restaurant Association

Testimony In Support Of AB 463
Ms. Kierstin Kloeckner Middleton, WI

Good morning. I am writing in support of bill 463, presented by Rep. Ron Tusler. For the past thirty years, I have been commuting year round to both school and work primarily through cycling or walking. In that time, I have noticed an enormous increase in distracted drivers of automobiles. It has gotten to the point where I actually believe I will end up dying due to a distracted or aggressive motorist hitting me on my daily commute. I have chosen to continue commuting by bike and foot because of the overall health benefits and the environmental benefits and I will not change that. Each day, on my commute of less than two miles each way, I witness people either texting on their phones, searching for music on their phones or eating while driving. They do not realize they are essentially driving a weapon. A weapon that could kill me, and others, in a split second of looking down.

Four years ago, during a sunny October day around noon, I was biking home on a residential street. I was wearing a bright yellow jacket to be visible. There were no obstructions to block the view of a driver seeing me. The posted speed limit of the road was thirty miles per hour and the road was very wide but with no bike lanes. I remember thinking what a beautiful day it was. I was noticing the blue sky and the intense yellow of the leaves falling. Then I felt the impact from behind on my left arm. I tried to move but couldn't. I was essentially hit and hooked by a side mirror and I was being dragged along the road...still upright. I remember screaming while I looked in the driver's window and noticed the man didn't have a clue what to do. He swerved, I broke loose and went down hard onto the road, narrowly missing going under the van. There I was, lying in the middle of the road and although he slowed down, when he saw me try to get up, he sped away. He was never caught and I was so severely injured that I had to wait for neighbors to come out and help me get home. My bike was ruined and I couldn't walk for days due to swelling in my leg and arm. I couldn't ride for weeks and when I did, I was terrified. The police told me they were quite sure he had been on his cell phone or distracted by something else. To this day I can't ride down that road without looking behind me each time I cross that point where I was hit.

Fast forward a couple years when a woman was struck and killed while commuting to work in Cross Plains. Something she did every day for years. She was killed due to a distracted truck driver who said "he didn't see her."

It's almost a running sad joke here in Wisconsin that if you hit a pedestrian or cyclist while driving a car, all you have to do is say "you didn't see them" or "they changed lanes abruptly" and you will be let off the hook with very little fine or investigation if you were not found under the influence. This needs to stop. Driving a car is a privilege, not a right. Driving a car takes your full attention and even the slightest distraction can mean life or death.

When I was in Washington state this summer, I can honestly say I felt much safer walking and cycling because there are distracted driving laws in place holding the drivers of cars responsible. We cannot assume drivers will make the wisest decisions if left to make that decision on their own. Humans are opportunists and they will almost always choose to take risks to get ahead. This is why we need to have a law in place holding drivers responsible and having set consequences if drivers choose to make a poor decision.

I ask you to pass this bill to help keep people like me alive while trying to get to work. I ask you to pass this bill to make it safe for children to bike to school. I ask you to pass this bill to

Testimony In Support Of AB 463
Ms. Kierstin Kloeckner Middleton, WI

keep Wisconsin moving forward.

Kierstin Kloeckner
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*Please note I have a 24 hour cancellation policy for all appointments