

July 15, 2010

The Honorable Henry Waxman
Chairman
Committee on Energy and Commerce
U.S. House of Representatives
Washington, DC 20515

The Honorable Joe Barton
Ranking Member
Committee on Energy and Commerce
U.S. House of Representatives
Washington, DC 20515

The Honorable Jay Rockefeller
Chairman
Committee on Commerce, Science
and Transportation
U.S. Senate
Washington, DC 20510

The Honorable Kay Bailey Hutchison
Ranking Member
Committee on Commerce, Science
and Transportation
U.S. Senate
Washington, DC 20510

Dear Chairmen Waxman and Rockefeller and Ranking Members Barton and Hutchison:

The undersigned organizations represent a broad cross section of vehicle manufacturers, suppliers, dealers, consumers, and other businesses that depend on a vibrant U.S. automotive sector. We are committed to working constructively with the Congress on legislation that promotes the National Highway Traffic Safety Administration's (NHTSA) mission to save lives, prevent injuries and reduce economic costs due to road traffic crashes. In this regard, it is noteworthy that motor vehicle fatalities today are at record lows – a positive reflection of the strong commitment of the industry and NHTSA to developing innovative safety technologies and identifying and remedying safety-related defects as quickly as possible.

We appreciate the significant work done in the House Committee on Energy and Commerce and the Senate Committee on Commerce, Science and Transportation. At the same time, we remain concerned that several provisions of H.R. 5381 and S. 3302 could negatively impact safety by needlessly undermining aspects of and tilting a process that today relies on the speedy identification and remedy of safety-related defects to one that will involve more guarded communications and second-guessing by lawyers.

Specifically, we believe the following provisions in each of the bills must be addressed as legislation moves forward:

H.R. 5381

Section 201. Public Availability of Early Warning Data. We are concerned about any wholesale changes in the treatment of raw, unverified data submitted by manufacturers under Early

Warning Reporting. Language in the bill instructing NHTSA to enter into a rulemaking to create new "categories" of information that must be "made available to the public" regardless of whether it includes confidential business information may cause competitive harm and is inconsistent with the Freedom of Information Act (FOIA). The current EWR regulations do exactly what Congress intended, by putting vital information in the hands of agency defect investigators. NHTSA and the courts have already rendered an appropriate decision in this area.

Section 206. Appeal of Defect Petition Rejection. The ability of consumers or third parties to appeal defect petition rejections was addressed by the courts in 1988 (*Center for Auto Safety v. Dole*). That decision recognized that such appeals were unnecessary. In addition, overturning this decision could slow the recall process by allowing needless appeals of many properly rendered decisions into the courts. For an agency that is believed by some to be under staffed and underfunded, this provision will redirect limited resources to one of the least productive areas (defending agency decisions) and undermine the ability of NHTSA investigators to do their job. *This section is not constructive in advancing auto safety and should be deleted from the House bill.*

Section 301. Vehicle Safety User Fee. We are not in favor of including a new open ended fee on the cost of each new vehicle. While the fee proposed may seem small, it is important to view it in the larger context of regulatory requirements that will impact vehicle costs. Only last month, the Administration finalized new fuel economy and greenhouse gas standards for automobiles. The new standards will provide significant energy security and environmental benefits, but they will also increase the price of a new car by hundreds of dollars over the next several years. Additionally, NHTSA recently finished or is still working on – vehicle rulemakings that are projected by the agency to increase the price of a car by an additional \$400 to \$800. Finally, each of the new technology mandates in this proposal will also have some associated cost for consumers. Furthermore, vehicle owners are not the only ones who benefit from the efforts of NHTSA. Highway safety is a national priority – promoting reductions in health care costs associated with accidents and protecting pedestrians as well as vehicle owners. This national purpose is more suited to the general appropriations process, which is better suited to fund programs providing a general benefit to the public. *This section should be deleted from the House bill.*

Section 501. Preemption of State Law. Preemption is a constitutional doctrine that has been applied by the courts, including the Supreme Court, in numerous situations, to numerous industries (e.g., communications, airlines, food, and railroads). There is no sound legal or policy justification for restricting the application of this doctrine as proposed in the House bill solely in the context of the auto industry. In fact, preemption is a safety-promoting doctrine that has rarely been invoked to limit product liability litigation. The few courts that have applied

preemption have done so only after determining that a complex balance of safety considerations warrants preemption. NHTSA is uniquely suited to balance the complex safety concerns that underlie preemption. To cut off NHTSA's ability to weigh those safety considerations may have the unintended and undesirable consequence of actually harming safety. *This section should be deleted from the House bill.*

S. 3302

Section 201. Civil Penalties. The proposed civil penalty cap of \$300 million is excessive. Auto manufacturers and suppliers already face higher caps than have been imposed on other manufacturers of consumer products just two years ago. The new proposed cap is almost 20 times higher than the cap today. While most of the focus over the last several months has been on auto manufacturers, these penalties would also apply to suppliers, many of whom are smaller businesses that could be severely adversely impacted by a fine as large as \$300 million. *We urge the Senate to set a more reasonable cap.*

Section 307. Corporate Responsibility. Section 307 also requires that certifications on submissions to NHTSA in safety and defect investigations be made by a corporate "officer" rather than the senior U.S.-based "official" responsible for safety. It is more appropriate for these certifications to be made by company safety experts, who have broader knowledge of the issues. As structured, this provision also effectively creates different sign-off requirements for corporate officers depending on where companies are headquartered. *We urge the Senate to adopt the more equitable approach included in the House bill.*

We are also concerned that the individual liability cap proposed in S. 3302 is double the existing cap under Sarbanes-Oxley, in addition to expanded criminal liability provisions in the substitute. Auto makers and suppliers already have very strong incentives to recall and repair vehicles and components as soon as possible; unnecessarily punitive measures on individuals will not make drivers safer.

Section 310. Used Passenger Motor Vehicle Consumer Protection. This provision seeks to require dealership used vehicle departments to check a yet-to-be-created database to (1) identify used vehicles in inventory subject to safety recalls, and (2) to disclose to prospective purchasers/lessees which of those vehicles have yet to be remedied. In practice, it would apply both to used vehicles held in dealership inventory and to those considered by dealers for trade or purchase. We oppose this new mandate for several reasons. First, it would unfairly cover only dealerships, ignoring the private sales that typically account for 33% (10-15 million) annual used vehicle transactions. Second, it would disrupt the marketplace by devaluing used vehicles generally, causing fewer of them to be purchased by dealers for resale, with the unintended consequence of increasing the number of private sales unencumbered by a disclosure mandate.

By lowering used vehicle values, this provision also would decrease the ability of consumers to afford the purchase or lease of a new or newer vehicle. Third, it would impose an economic burden on dealers ranging between \$250-300 million annually, without any identified commensurate safety benefit. *This section should be deleted and alternative proposals that increase safety without unduly impeding commerce should be explored.*

We appreciate the opportunity to share our concerns with you and other members of Congress. We stand ready to work with you and your staff in the time remaining in the 111th Congress to enact legislation that builds on these bills and our collective safety efforts to date.

Sincerely,

Alliance of Automobile Manufacturers
American Highway Users Alliance
American International Automobile Dealers Association
Associated Industries of Massachusetts
Association of International Automobile Manufacturers
Boat Trailer Manufacturers Association
California Manufacturers & Technology Association
Forging Industry Association
Illinois Manufacturers' Association
Industrial Fasteners Institute
National Association of Manufacturers
Motor and Equipment Manufacturers Association
National Marine Manufacturers Association
National Association of Minority Automobile Dealers
National Automobile Dealers Association
Rubber Manufacturers Association
Specialty Equipment Market Association
Texas Association of Business
The Ohio Manufacturers' Association
Trailer Manufacturers Association
Truck Manufacturers Association
U.S. Chamber of Commerce