

ONE HUNDRED FOURTEENTH CONGRESS  
**Congress of the United States**  
**House of Representatives**  
COMMITTEE ON ENERGY AND COMMERCE  
2125 RAYBURN HOUSE OFFICE BUILDING  
WASHINGTON, DC 20515-6115

Majority (202) 225-2927  
Minority (202) 225-3641

**MEMORANDUM**

**September 22, 2015**

**To: Subcommittee on Commerce, Manufacturing, and Trade Democratic Members and Staff**

**Fr: Committee on Energy and Commerce Democratic Staff**

**Re: “Legislative Hearing on VIN Database and Auto Whistleblower Bills”**

On Friday, September 25, 2015, at 9:15 a.m. in room 2322 of the Rayburn House Office Building, the Subcommittee on Commerce, Manufacturing, and Trade will hold a hearing titled “Legislative Hearing on VIN Database and Auto Whistleblower Bills.”

**I. BACKGROUND**

In 2014, vehicle manufacturers overseen by the National Highway Traffic Safety Administration (NHTSA) recalled nearly 64 million vehicles for safety defects, more than double the previous record for recalls in one year.<sup>1</sup> Of the 803 vehicle recalls in 2014, 123 resulted from NHTSA investigations or actions, and the remaining 680 followed from discoveries made and reported by automakers.<sup>2</sup> As of early August 2015, 32.4 million vehicles had already been recalled for the year.<sup>3</sup>

---

<sup>1</sup> *A Record Year of Recalls: Nearly 64 Million Vehicles*, New York Times (Feb. 12, 2015) (online at [www.nytimes.com/2015/02/13/business/auto-safety-recalls-set-record-of-nearly-64-million-vehicles-in-2014.html?\\_r=0](http://www.nytimes.com/2015/02/13/business/auto-safety-recalls-set-record-of-nearly-64-million-vehicles-in-2014.html?_r=0)).

<sup>2</sup> *Id.*

<sup>3</sup> *More Stringent Auto Recalls for 2015 Are ‘New Normal,’* Detroit News (Aug. 16, 2015) (online at [www.detroitnews.com/story/business/autos/2015/08/16/stringent-auto-recalls-new-normal/31834869/](http://www.detroitnews.com/story/business/autos/2015/08/16/stringent-auto-recalls-new-normal/31834869/)).

## **A. Major Recall Events of 2014 and 2015**

Two major recalls involving a faulty ignition switch in some General Motors (GM) vehicles and a defective airbag inflator manufactured by Takata contributed to the record number of recalls in 2014.<sup>4</sup> In February 2014, GM recalled roughly 2.6 million vehicles worldwide for defective ignition switches.<sup>5</sup> The defective ignition switches led to at least 124 deaths and 275 serious injuries.<sup>6</sup>

Beginning with a NHTSA investigation in June 2014, the defective airbags manufactured by Takata Corporation are reported to have caused the death of at least eight people and injured more than 100 others.<sup>7</sup> The defective airbags resulted in recalls of about 23.4 million airbags in 19.2 million vehicles in 2014 and 2015.<sup>8</sup>

## **B. Recall Notification**

More than 20 percent of recalled cars are never repaired, leaving tens of millions of cars with safety defects on the road.<sup>9</sup> The recall completion rate is 44% for vehicles 5-10 years old and 15% for vehicles older than 10 years.<sup>10</sup> Today, the average age of vehicles on the road is

---

<sup>4</sup> This Committee held hearings on the defective ignition switch on April 1, 2014, and June 18, 2014. Additional information regarding the April 1, 2014, hearing is available [here](#). Additional information regarding the June 18, 2014, hearing is available [here](#). The Takata recalls were the subject of hearings in this subcommittee on December 3, 2014, and June 2, 2015. Additional information regarding the December 3, 2014, hearing is available [here](#). Additional information regarding the June 2, 2015, hearing is available [here](#).

<sup>5</sup> *Ten Times More Deaths Linked to Faulty Switch than GM First Reported*, Fortune (Aug. 24, 2015) (online at [fortune.com/2015/08/24/feinberg-gm-faulty-ignition-switch/](http://fortune.com/2015/08/24/feinberg-gm-faulty-ignition-switch/)).

<sup>6</sup> See note 4.

<sup>7</sup> *Takata Air Bag Recall Shrinks, But Investigation Widens*, NBC News (Sept. 5, 2015) (online at [www.nbcnews.com/business/autos/takata-air-bag-recall-shrinks-investigation-widens-n422071](http://www.nbcnews.com/business/autos/takata-air-bag-recall-shrinks-investigation-widens-n422071)).

<sup>8</sup> *Id.*

<sup>9</sup> *The Truth About Car Recalls*, Consumer Reports (Feb. 24, 2015) (online at [www.consumerreports.org/cro/magazine/2015/04/the-truth-about-car-recalls/index.htm](http://www.consumerreports.org/cro/magazine/2015/04/the-truth-about-car-recalls/index.htm)); National Highway Traffic Safety Administration, *U.S. DOT Hosts Workshop to Boost Recall Complete Rates* (Apr. 28, 2015) (online at [www.nhtsa.gov/About+NHTSA/Press+Releases/2015/nhtsa-retooling-recalls-workshop-04282015](http://www.nhtsa.gov/About+NHTSA/Press+Releases/2015/nhtsa-retooling-recalls-workshop-04282015)).

<sup>10</sup> Auto Alliance, *Auto Alliance Announces National Recall Research Initiative* (Apr. 28, 2015) (online at [www.autoalliance.org/index.cfm?objectid=20CC2DC0-EDAB-11E4-9002000C296BA163](http://www.autoalliance.org/index.cfm?objectid=20CC2DC0-EDAB-11E4-9002000C296BA163)).

11.4 years.<sup>11</sup> Some auto manufacturers have expressed concern that recall completion rates may go down as a result of recall fatigue and over notification, among other reasons.<sup>12</sup>

Automakers conducting recalls use a number of tools to reach car owners to inform those owners about recalls. These tools include direct mail campaigns, advertisements, and promotional activities. To reach owners by mail, automakers seek access to current address information. State automobile registration information has been an effective resource for accurate names and addresses of car owners.<sup>13</sup>

Currently, automakers may obtain state registration information by vehicle identification number (VIN) for purposes of a recall directly from state departments of motor vehicles under the Driver Privacy Protection Act.<sup>14</sup> Automakers also may purchase state registration information, and often additional information about vehicle owners, from private information providers and data brokers.<sup>15</sup>

NHTSA provides a publicly accessible tool to allow car owners to search a database using their VIN to determine if their cars are subject to a recall at [safercar.gov](http://safercar.gov).<sup>16</sup> The website also allows car owners to sign up for recall alerts by email.<sup>17</sup> In addition to [safercar.gov](http://safercar.gov), since August 2014, NHTSA requires manufacturers of 25,000 or more light vehicles to provide a VIN-based recall lookup tool on their website or the website of a third party, to place it prominently on their consumer websites, and to update the information at least once a week.<sup>18</sup>

### **C. Transparency and Automaker Responsiveness to Employee Safety Concerns**

A *New York Times* investigation raised questions about whether Takata and auto manufacturers were aware of airbag problems before they reported problems to NHTSA based

---

<sup>11</sup> *Id.*

<sup>12</sup> See note 9.

<sup>13</sup> *Recalled but Unrepaired Cars Are a Safety Risk to Consumers*, Edmunds (Aug. 20, 2014) (online at [www.edmunds.com/car-safety/recalled-but-unrepaired-cars-are-a-safety-risk-to-consumers.html](http://www.edmunds.com/car-safety/recalled-but-unrepaired-cars-are-a-safety-risk-to-consumers.html)).

<sup>14</sup> 18 U.S. Code § 2721.

<sup>15</sup> See note 13.

<sup>16</sup> National Highway Traffic Safety Administration, *Vehicle Owners* (online at [www.safercar.gov/Vehicle+Owners](http://www.safercar.gov/Vehicle+Owners)) (accessed on Sept. 16, 2015).

<sup>17</sup> National Highway Traffic Safety Administration, *Subscribe to NHTSA's Recall Notification E-mail System* (online at [www-odi.nhtsa.dot.gov/subscriptions/](http://www-odi.nhtsa.dot.gov/subscriptions/)) (accessed on Sept. 16, 2015).

<sup>18</sup> National Highway Traffic Safety Administration, *Early Warning Reporting, Foreign Defect Reporting, and Motor Vehicle and Equipment Recall Regulations* (Aug. 20, 2013) (online at [www.federalregister.gov/articles/2013/08/20/2013-19785/early-warning-reporting-foreign-defect-reporting-and-motor-vehicle-and-equipment-recall-regulations](http://www.federalregister.gov/articles/2013/08/20/2013-19785/early-warning-reporting-foreign-defect-reporting-and-motor-vehicle-and-equipment-recall-regulations)).

on alleged secret testing and reports of destroyed results.<sup>19</sup> On June 22, 2014, the minority staff of the Senate Committee on Commerce, Science, and Transportation issued a report of its investigation of the Takata airbag defects that cited emails from Takata employees raising safety and quality concerns for years before vehicles were recalled.<sup>20</sup> Press reports have also raised the possibility that whistleblowers at GM were ignored or punished for drawing attention to safety flaws, including the faulty ignition switch that ultimately caused GM to issue its massive recall.<sup>21</sup>

## **II. FEDERAL LEGISLATION AND LEGISLATIVE PROPOSALS ON AUTO SAFETY**

### **A. Moving Ahead for Progress in the 21st Century Act (MAP-21)**

MAP-21, which was signed into law on July 6, 2012, included auto-safety provisions such as a prohibition on the sale or importation of new cars or equipment with a defect or noncompliance and a directive to improve safety standards for car seats in side impacts. MAP-21 also required the establishment of a publicly accessible database for consumers to search for recalls on their vehicles and included an anti-retaliation provision for whistleblowers who provide information regarding motor vehicle safety issues.<sup>22</sup>

### **B. H.R. 1181, the Vehicle Safety Improvement Act**

On February 27, 2015, Subcommittee Ranking Member Jan Schakowsky, Full Committee Ranking Member Frank Pallone, Jr., and other Committee Democrats introduced H.R. 1181, the Vehicle Safety Improvement Act. The bill improves administrative accountability by, among other things, requiring NHTSA to promptly review and evaluate information provided by whistleblowers and prohibiting NHTSA from disclosing the information received from whistleblowers to manufacturers, distributors, suppliers or dealers without written consent.

In addition, the bill requires that manufacturers' safety-related communications regarding defective parts be made public on NHTSA's website; improves the Early Warning Reporting

---

<sup>19</sup> *Air Bag Flaw, Long Known to Honda and Takata, Led to Recalls*, New York Times (Sept. 11, 2014) (online at [www.nytimes.com/2014/09/12/business/air-bag-flaw-long-known-led-to-recalls.html](http://www.nytimes.com/2014/09/12/business/air-bag-flaw-long-known-led-to-recalls.html)); *Takata Saw and Hid Risk in Airbags in 2004, Former Workers Say*, New York Times (Nov. 6, 2014) (online at [www.nytimes.com/2014/11/07/business/airbag-maker-takata-is-said-to-have-conducted-secret-tests.html](http://www.nytimes.com/2014/11/07/business/airbag-maker-takata-is-said-to-have-conducted-secret-tests.html)).

<sup>20</sup> Minority Staff, Senate Committee on Commerce, Science, and Transportation, *Danger Behind the Wheel: The Takata Airbag Crisis and How to Fix Our Broken Auto Recall Process* (June 22, 2015) (online at [www.commerce.senate.gov/public/?a=Files.Serve&File\\_id=998a3b71-e717-4a25-904c-5882b2dc23d0](http://www.commerce.senate.gov/public/?a=Files.Serve&File_id=998a3b71-e717-4a25-904c-5882b2dc23d0)).

<sup>21</sup> *GM Recalls: How General Motors Silenced a Whistle-Blower*, Bloomberg (Jun. 18, 2014) (online at [www.bloomberg.com/bw/articles/2014-06-18/gm-recalls-whistle-blower-was-ignored-mary-barra-faces-congress#r=hp-ls](http://www.bloomberg.com/bw/articles/2014-06-18/gm-recalls-whistle-blower-was-ignored-mary-barra-faces-congress#r=hp-ls)).

<sup>22</sup> 49 U.S.C. §30171.

system by requiring manufacturers to submit additional information on fatal incidents that may have been caused by a defect; and eliminates regional recalls. The bill also gives NHTSA imminent hazard authority to expedite recalls in certain cases; increases civil penalty amounts and eliminates most statutory maximum penalties for violations of federal motor vehicle safety laws, like the failure to disclose relevant information to regulators in a timely manner; prohibits dealers from selling or leasing a used vehicle subject to a recall if the vehicle has not been repaired; and requires NHTSA to establish new standards to improve pedestrian safety.

### **III. SUMMARY OF H.R. \_\_\_, THE MOTOR VEHICLE SAFETY WHISTLEBLOWER ACT**

This bill provides monetary incentives for whistleblowers who voluntarily submit information to the Department of Transportation (DOT) regarding safety defects.

#### **A. Qualifying Factors for Award**

Under the discussion draft, employees or contractors of a motor vehicle manufacturer, parts supplier, or dealership who voluntarily provide original information to the Secretary of Transportation, relating to any motor vehicle defect, noncompliance, or any violation of reporting requirements that is likely to cause risk of death or serious injury may be awarded up to 30 percent of monetary penalties collected from a DOT or Department of Justice (DOJ) enforcement action that totals more than \$1 million. In the case of multiple whistleblowers, the total award of no more than 30 percent will be divided between individual whistleblowers.

#### **B. Determination and denial of awards**

This draft bill also gives the Secretary discretion to determine whether to make an award, to whom an award is made, and the amount of the award. The discussion draft specifies criteria to consider when determining an award, including whether a whistleblower reported or attempted to report the information internally, the significance of the information, and the whistleblower's cooperation with law enforcement.

The discussion draft also provides specific circumstances under which an award may be denied, including in the cases of a whistleblower convicted of a crime related to the safety concerns being reported, a whistleblower who substantially contributes to a safety violation, a whistleblower who provides information that was previously submitted by another whistleblower, and a whistleblower who fails to provide information in the proper form. Notably, the draft bill would prohibit making an award to a whistleblower who fails to report or attempt to report the information internally, unless the whistleblower reasonably believed: (i) that reporting internally would have resulted in retaliation; (ii) that the information was already internally reported or part of an internal inquiry; or (iii) that the information was otherwise already known to the employer.

Whistleblowers may appeal award determinations in a United States court of appeals not later than 30 days after the determination is issued. Whistleblowers who knowingly submit false information are not entitled to awards and are subject to criminal penalties.

### **C. Confidentiality**

The discussion draft provides for protection of whistleblowers' confidentiality by prohibiting the Secretary and any other DOT employee from disclosing any information, including information that could reasonably be expected to identify a whistleblower unless: (1) the information is required to be disclosed to a defendant or respondent in connection with a public proceeding instituted by the Secretary, the DOJ, or another appropriate federal agency; (2) the whistleblower provides prior written consent; or (3) the information is received through another source and the Secretary has authority to release the information under another law. When disclosing information under any of these exceptions, reasonable measures must be taken to avoid disclosure of the whistleblower's identity.

## **IV. SUMMARY OF THE VIN DATABASE DISCUSSION DRAFT**

The discussion draft directs the Secretary of Transportation to create within two years a national VIN database using information collected from states' vehicle registration information, to assist auto manufacturers in contacting consumers whose vehicles are affected by a recall.

### **A. Creation of a National VIN Database**

Each state would be required to submit to the Secretary the VIN of every motor vehicle registered in that state, together with the vehicle's year, make, and model and the name, address, and e-mail address, if provided, of the vehicle owner. The discussion draft requires states to ensure that the information on file with the Secretary of Transportation is current, and update information within seven days of any changes made to an individual's registration.

### **B. Access and Security**

Within two days of receiving a request with a list of VINs of affected vehicles from an entity required to send notification of a defect or noncompliance, the Secretary would be required to provide the names, addresses, and, if provided by the registrant, email addresses of the owners of affected vehicles to the requesting entity.

The discussion draft requires the Secretary to maintain reasonable security measures for the information submitted and maintained in the database and allows the engagement of an outside contractor to establish and maintain the database if the contractor complies with the reasonable security measures. Information from the database may be released or disclosed only for contacting consumers about a recall, but there are no limits on the use or security of such information after disclosure.

The draft also requires that the VIN search tool on [safercar.gov](http://safercar.gov) be updated to permit consumers to search multiple VINs in a single request.

The discussion draft provides that information stored in the national VIN database would be exempt from public disclosure under the Freedom of Information Act.

**V. WITNESSES**

**Joe Lafier**

Senior Vice President, Global IS&S  
IHS Automotive

**Shane Karr**

Vice President, Federal Affairs  
Alliance of Automobile Manufacturers

**John Bozzella**

President and CEO  
Association of Global Automakers

**William Wallace**

Policy Analyst  
Consumers Union

**Cleveland Lawrence III**

Co-Director  
Taxpayers Against Fraud