



ADVOCATES
for Highway & Auto Safety

**STATEMENT OF JACQUELINE S. GILLAN
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ADVOCATES FOR HIGHWAY AND AUTO SAFETY**

ON

**Improving Highway and Vehicle Safety:
Reauthorization of the National Highway Traffic Safety Administration**

BEFORE THE

**SENATE SUBCOMMITTEE ON CONSUMER PROTECTION, PRODUCT
SAFETY AND INSURANCE**

COMMITTEE ON COMMERCE, SCIENCE AND TRANSPORTATION

JULY 27, 2011

Introduction

Good afternoon Chairman Pryor, Ranking Member Toomey, and members of the Senate Subcommittee on Consumer Protection, Product Safety, and Insurance. I am Jacqueline Gillan, Vice President of Advocates for Highway and Auto Safety (Advocates). Advocates is a coalition of public health, safety, and consumer organizations, and insurers and insurance agents that promotes highway safety through the adoption of safety policies and regulations, and the enactment of state and federal traffic safety laws. Advocates is a unique coalition dedicated to improving traffic safety by addressing motor vehicle crashes as a public health issue.

The Senate Commerce, Science and Transportation Committee, under the leadership of Democrats and Republicans, has been responsible for some of the most significant advances in highway and auto safety beginning with the drafting and passage of legislation in the early 1970s leading to the creation of the National Highway Traffic Safety Administration (NHTSA). In the past 20 years this Committee has passed other bills requiring airbags as standard equipment in the front seat of all passenger vehicles as well as directing agency action on numerous vehicle safety standards on tire safety, child restraints, rollover protection, anti-ejection prevention, roof crush strength, and side impact protection. Furthermore, this Committee has worked tirelessly to ensure the agency's decisions and deliberations on safety issues are transparent and that consumers have access to critical and essential information about vehicle safety and defects.

I welcome this opportunity to appear before you today to strongly endorse the Committee's draft reauthorization bill of NHTSA. The bill contains many needed safety provisions to continue improvement of highway safety and reduction of traffic fatalities. I discuss many of these provisions in my testimony. I also raise several important provisions that are not included in the bill but that are part of the unfinished safety agenda and are worthy of your time and leadership including: an incentive grant program to encourage state adoption of teen driver safety, or graduated driver license (GDL) laws; requiring an upgrade of the safety standard for seat back strength; and, stronger efforts to encourage adoption of all-rider motorcycle helmet laws in states.

Lives Saved by Safety Systems and Programs

Laws issued by Congress, including those that came out of this Committee, and rules issued by NHTSA requiring safety standards and technologies have saved thousands of lives. NHTSA studies show that since 1960 motor vehicle safety technologies have saved more than 328,500 lives.¹ For example, frontal air bags, a safety technology that this Committee championed in 1991,² saved 2,381 lives in 2009 and have saved more than 30,000 people since 1991.³ Seat belts saved the lives of an estimated 12,713 people over the age of four in 2009, and more than 72,000 lives in the years from 2005 through 2009.⁴ Child restraints saved the lives of 309 children age four and under in 2009 and more than 9,300 young children since 1975.⁵ These safety measures have the potential to save many additional lives and prevent costly injuries if they are used to protect everyone at risk who needs them. For example, in 2009 if all passenger vehicle occupants age four and over had worn seat belts, an additional 3,688 lives could have been saved, and a 100 percent motorcycle helmet use rate would have saved an additional 732

lives in motorcycle crashes.⁶ In addition to laws requiring safety technologies, laws such as the 21-year-old-minimum-drinking-age law saved 623 lives in 2009, and 3,940 lives from 2005-2009.⁷

A comprehensive NHTSA reauthorization bill with adequate funding and requiring additional, reasonable safety standards will allow NHTSA to pursue a robust regulatory safety agenda that will lead to many more lives being saved.

Sufficient Funding for NHTSA is Essential

NHTSA's funding and staffing levels have suffered over the years to the point where the agency, which is responsible for 95 percent of transportation-related fatalities and 99 percent of transportation injuries, receives only 1 percent of the overall U.S. Department of Transportation (DOT) budget. NHTSA is responsible for the safety of 300 million Americans who drive or ride in or around some of the nearly 250 million registered motor vehicles that use our nation's highways.⁸ Even with the recent downturn in motor vehicle traffic fatalities, 33,808 people were killed and more than 2.2 million injured in 2009 on our highways at an annual cost of more than \$230 billion.⁹ Motor vehicle crashes are the leading cause of death for all Americans ages 5 to 34.¹⁰ In order to maintain safety gains and to improve on the agency's efforts in detecting and investigating safety threats, a justified and necessary increase in funding is essential.

The current agency budget for motor vehicle safety activities and research is a small portion of NHTSA's overall budget. It is totally inadequate in the face of the agency's mission and safety responsibilities. Current funding for the vehicle safety program budget is only about \$140 million for Fiscal Year 2011.¹¹ While the current Administration has increased agency and staffing in the past two years, NHTSA remains woefully under-resourced. The agency ability to keep up with technology and crash and injury trends is imperiled by lack of sufficient resources.

The agency budget for vehicle safety should reflect the important life-saving mission of the agency. In order to provide a solid foundation for NHTSA to address the safety of current and future vehicles, I urge the Committee to assure this small agency is given the funds needed to do its job. Laws and programs administered by NHTSA are responsible for saving an estimated 350,000 lives since 1975.¹² NHTSA authorization for the motor vehicle safety program should be increased to \$240M in FY2012, and \$280M in FY2013, in line with what the Committee proposed in last year's Motor Vehicle Safety Act of 2010.¹³

RECOMMENDATION:

- ***Increase NHTSA's funding level for the vehicle safety program to \$240M in FY2012, and \$280M in FY2013.***

Highway Safety

Traffic Safety and Incentive Grant Programs

Over the past 15 years, through three separate authorization laws,¹⁴ the nation has spent billions of dollars on traffic safety programs comprised of the Highway Safety Programs (Section 402)¹⁵ and various issue-specific incentive grant programs.¹⁶ The dollar amounts are huge: more than \$3.5 billion has been authorized for highway safety and various incentive grant programs in the past 10 years. The highway safety and incentive grant programs have supported many worthwhile efforts, especially state and local enforcement campaigns that have been the cornerstone of local safety initiatives. Also, several states have adopted optimal safety laws in response to the incentive grant programs. In part, as a result of these efforts, NHTSA estimates that many lives have been saved through seat belt and child restraint use.¹⁷ Yet, no discernable major progress was made in bringing down the total number of traffic deaths until 2008 when the nation's economy began to falter. While these programs are the foundation of federal and state traffic safety efforts, there is a need for establishing performance measures and better oversight.

Lack of Performance Measures and Effective Oversight

The Section 402 highway safety grant program has been the traditional means of providing the states with federal funding to support state and local safety initiatives, education and enforcement efforts. Over time, however, states' insistence on providing greater program flexibility, both in terms of funding and performance, has complicated program accountability and oversight. By 1998, NHTSA had "adopted a performance-based approach to oversight, under which the states set their own highway safety goals and targets. . . ."¹⁸ Even with each state developing an annual safety plan, weaknesses in state plans were revised through subsequent "improvement plans" but agency regional offices made limited and inconsistent use of the revised plans.¹⁹ In fact, Congress had to require that NHTSA review each state highway safety program at least once every three years and perform other standard oversight procedures.²⁰

For this reason, Advocates supports the need for NHTSA to be accountable for the oversight of the grant program and we support the provision in the bill that would ensure regular reviews of the expenditure of program funds. (Sec. 112).

RECOMMENDATION:

- ***Require NHTSA to conduct reviews of state highway safety grant programs on a regular schedule and at least once every three years.***

Teen Driver Safety Incentive Grant Program

OVER 36,000 FATALITIES IN MOTOR VEHICLE CRASHES INVOLVING TEEN DRIVERS 2005-2009



Sources: Advocates for Highway and Auto Safety;
National Highway Traffic Safety Administration

March 2011

Motor vehicle crashes remain the leading cause of death for teenagers between 15 and 20 years of age, killing more young people than homicide, suicide, cancer, and birth defects combined.²¹ A total of 5,623 people were killed in the fatal crashes involving young drivers in 2009, including young drivers themselves, their passengers, pedestrians and the drivers and occupants of other vehicles.²² Since 1999, more than 90,000 fatalities have occurred nationwide in motor vehicle crashes involving teen drivers.²³ Additionally, teen driving crashes have been estimated to cost society more than \$34 billion annually.²⁴

Fortunately, there is a proven method for reducing teen driving crashes. Graduated driver license (GDL) laws phase in driving privileges over time, using restrictions on nighttime driving, teen passengers, and use of cell phones. Research has shown the effectiveness of strong state GDL programs in reducing teen driver crashes, saving lives, and lowering societal costs.

Despite the proven success of GDL laws, state laws vary widely in strength. As a result, millions of novice teen drivers lack some of the most basic protections that could prevent teen crashes and save lives. It is time for Congress to intercede in this public health crisis to encourage state adoption of strong, comprehensive GDL laws.

Legislation that takes this action has already been introduced in Congress. The Safe Teen and Novice Driver Uniform Protection (STANDUP) Act, S. 528, requires state GDL laws to meet proven minimum standards. The bill also provides for \$25 million per year for three years, funded through the Highway Trust Fund, as incentive grants to accelerate state action to adopt these lifesaving laws.

These proposed incentives are a tiny fraction of the overall Highway Trust Fund resources: the \$25 million annual cost of incentives is less than one tenth of one percent (0.07%) of the Average Annual Total Receipts (\$33.41 billion) coming into the Highway Trust Fund Highway Account throughout the past 10 years. Furthermore, the \$25 million annual cost of the proposed incentives is less than one tenth of one percent (0.07%) of the costs associated with crashes involving teen drivers ages 16 and 17 (\$34.4 billion in 2006).

We strongly urge the committee to include teen driving incentive grants in the NHTSA authorization legislation.

RECOMMENDATION:

- *Include the teen driver safety incentive grant program from S. 528.*

Impaired Driving Countermeasures - Grants and Research

Drinking and driving continues to be a national scourge on our nation's highways. While a number of measures have successfully reduced the historically high levels of carnage caused by drunk driving back in the 1980s, nearly a third of traffic deaths occur in alcohol-involved crashes.²⁵ Although the total number of alcohol-related crash deaths declined in 2009 to 10,839 people, seven percent less than in 2008, alcohol involved crashes still accounted for 32 percent of all traffic fatalities.²⁶ Except for the recent 2008-2009 dip in fatalities during the recession, the annual level of alcohol-involved crash fatalities did not decline significantly in the prior 10 years.²⁷ Previous decreases in fatalities were in large measure due to a wave of enactment of state anti-impaired driving laws, serious enforcement of those laws and educational efforts by MADD and others to raise awareness of the problem. In order to continue to reduce the number of needless alcohol related crash deaths suffered on our highways each year, and to maintain the fatality reductions of recent years, more must be done to keep impaired drivers off our streets and roads. We think technology can help solve this problem.

Advocates strongly supports requiring the use of ignition interlocks for all drunk driving offenders in every state to prevent them from starting their vehicle when they are impaired. An alcohol ignition interlock device (IID) is similar to a breathalyzer used by police to determine if a driver has an illegally high blood alcohol concentration (BAC) level. The IID is linked to the vehicle ignition system and requires a driver who has been previously convicted of an impaired driving offense, and required by a court to install an IID, to breathe into the device. If the analyzed result exceeds the programmed BAC legal limit for the driver, the vehicle will not start. A majority of Americans support the use of IIDs to keep impaired drivers off the road. In 2009, a survey conducted by the Insurance Institute for Highway Safety (IIHS) found that 84 percent of respondents said that IIDs for convicted drunk drivers is a good idea.²⁸ Advocates also strongly supports legislation introduced by Senator Lautenberg (D-NJ), the Drunk Driving Repeat Offender Prevention Act of 2011, S. 273, that encourages state adoption of IID technology and

includes potential sanctions for states that do not act in a timely manner. Advocates commends the Committee for including incentive grants for states that adopt and implement alcohol ignition interlock laws in its NHTSA reauthorization bill.

In addition, Advocates supports legislation introduced by Senator Udall (D-NM), the Research of Alcohol Detection Systems for Stopping Alcohol-related Fatalities Everywhere (ROADS SAFE) Act, S. 510, and the Committee's inclusion of that bill's language in the NHTSA reauthorization legislation. This will direct NHTSA to carry out a research effort to explore the benefits and challenges of in-vehicle technology to prevent alcohol-impaired driving. (Sec. 111). Future technology can be built into vehicles to detect alcohol and prevent drivers with illegal levels of alcohol in their blood stream from operating a motor vehicle. This type of technology could work without invasive testing or intrusive detection methods, and would not engage unless the driver's BAC level is above the legal limit. This project holds realistic hope that thousands of annual deaths can be prevented and we should support research to make this technology a reality.

RECOMMENDATION:

- ***Congress should adopt reauthorization legislation that funds:***
 - ***Incentive grant program to encourage state adoption of ignition interlock devices for all offenders; and,***
 - ***Research to develop an automatic, non-invasive in-vehicle driver alcohol detection system to prevent persons who are legally intoxicated from driving motor vehicles.***

Distracted Driving Grants

Although various kinds of distractions have been a part of driving since the automobile was invented, the emergence of personal electronic communications devices that can readily be used while operating a vehicle has presented a whole new category of driver distraction and danger. The growing use of built-in and after-market or nomadic devices by drivers began with cell phone use but has proliferated through a myriad of personal electronics that allow drivers to access the internet, perform office work and to send and receive text messages while driving. As a result, in 2009, there were an estimated 5,474 fatalities and 448,000 injuries in crashes where driver distraction was a factor.²⁹

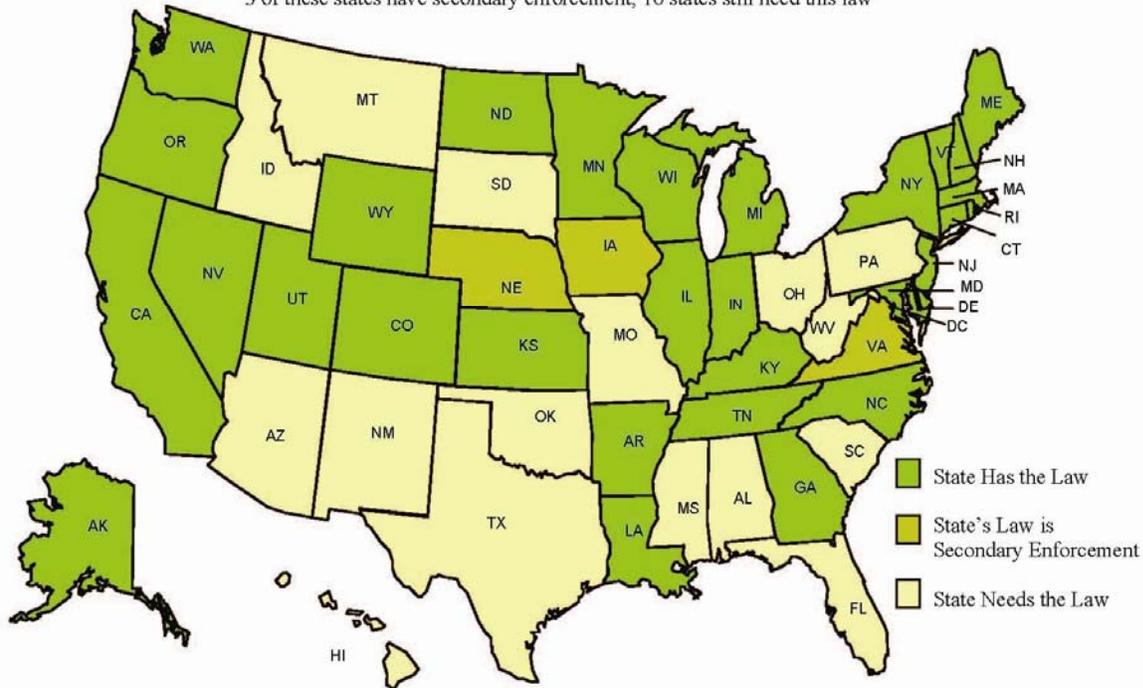
Text messaging while driving poses the most extreme and evident crash risk danger. Diversion of attention from the driving task to input or read a text message clearly interferes with drivers' ability to safely operate a motor vehicle. A 2009 study found that text messaging while driving increases the risk of a safety-critical event by more than 23 times compared to drivers who are focused on the driving task.³⁰

A mounting number of research studies and data show that the use of a mobile telephone while driving, whether hand-held or hands-free, is equivalent to driving under the influence of alcohol at the threshold of the legal limit of .08 percent blood alcohol concentration (BAC). Hand-held mobile phone use and dialing while driving require drivers to divert attention from the road and from the driving task, yet hands-free phone use has also been shown to involve cognitive distraction that is no less dangerous in terms of diverting attention from the driving task and the potential risk of crash involvement.

To date, 34 states and the District of Columbia have enacted all-driver text messaging bans, although 3 of these states have secondary enforcement, but 16 states have no such law.³¹

ALL-DRIVER TEXT MESSAGING BANS

34 states and DC have text messaging bans for all drivers,
3 of these states have secondary enforcement; 16 states still need this law



The Administration has taken some good first steps to reverse the rising tide of crashes that involve distracted driving as a factor. The Secretary of Transportation has made distracted driving a number one priority and convened two national conferences on distracted driving³² in an effort to keep the focus on this safety problem at the national level. Just after the first such conference, President Obama issued a proclamation banning text messaging by federal employees,³³ and the DOT took measures to curb distracted driving in commercial vehicles.³⁴ However, the problem of distracted driving in commercial vehicles is not limited only to text messaging. For that reason, Advocates filed a petition for rulemaking with the Federal Motor Carrier Safety Administration (FMCSA), which regulates commercial vehicle operations, seeking a review of all types of electronic devices used in commercial vehicles, not just those that support text messaging.³⁵

Advocates welcomes the proposed Distracted Driver Grant program (Sec. 108) to encourage states to adopt primary enforcement laws to prohibit drivers from sending and receiving text messages while operating a motor vehicle, and put prohibitions on cellular telephone use by drivers who are under 18 years of age. These are reasonable safety measures that should be the law in every state and we support the need to encourage adoption of these laws.

RECOMMENDATION:

- *Include an incentive grant program to encourage enactment of state laws that prohibit distracted driving.*

All Rider Motorcycle Helmet Laws

NHTSA estimates that 80 percent of motorcycle crashes injure or kill a rider.³⁶ 2008 was the 11th straight year in which motorcycle crash fatalities increased, rising to 5,290 motorcyclists killed and 96,000 injured.³⁷ This is more than double the motorcycle fatalities in 1998 and a level not seen since 1981.³⁸ While motorcycle fatalities finally decreased to 4,462 in 2009, that figure still represents fatality numbers that are more than double what the death toll was in 1997, the last year in which motorcycle fatalities experienced a decline.³⁹ While fatality and injury rates for other types of vehicles have dropped over the years, the fatality and injury rates for motorcycles have generally been on the rise.⁴⁰

At present, motorcycles make up less than three percent of all registered vehicles and only 0.4 percent of all vehicle miles traveled, but motorcyclists accounted for 13 percent of total traffic fatalities and 19 percent of all occupant fatalities.⁴¹ Helmets saved the lives of 1,483 motorcyclists in 2009 and 732 more in all states could have been saved if all motorcyclists had worn helmets.⁴² NHTSA estimates that 148,000 motorcyclists have been killed in traffic crashes since 1966.⁴³

In the years following enactment of federal traffic safety statutes, annual motorcycle rider deaths were much lower in part because most states had all-rider motorcycle helmet laws. Congress used the power of the sanction to require states to enact helmet use laws.⁴⁴ When the sanction was repealed by Congress, the states followed suit with more than half the states repealing their helmet laws.⁴⁵

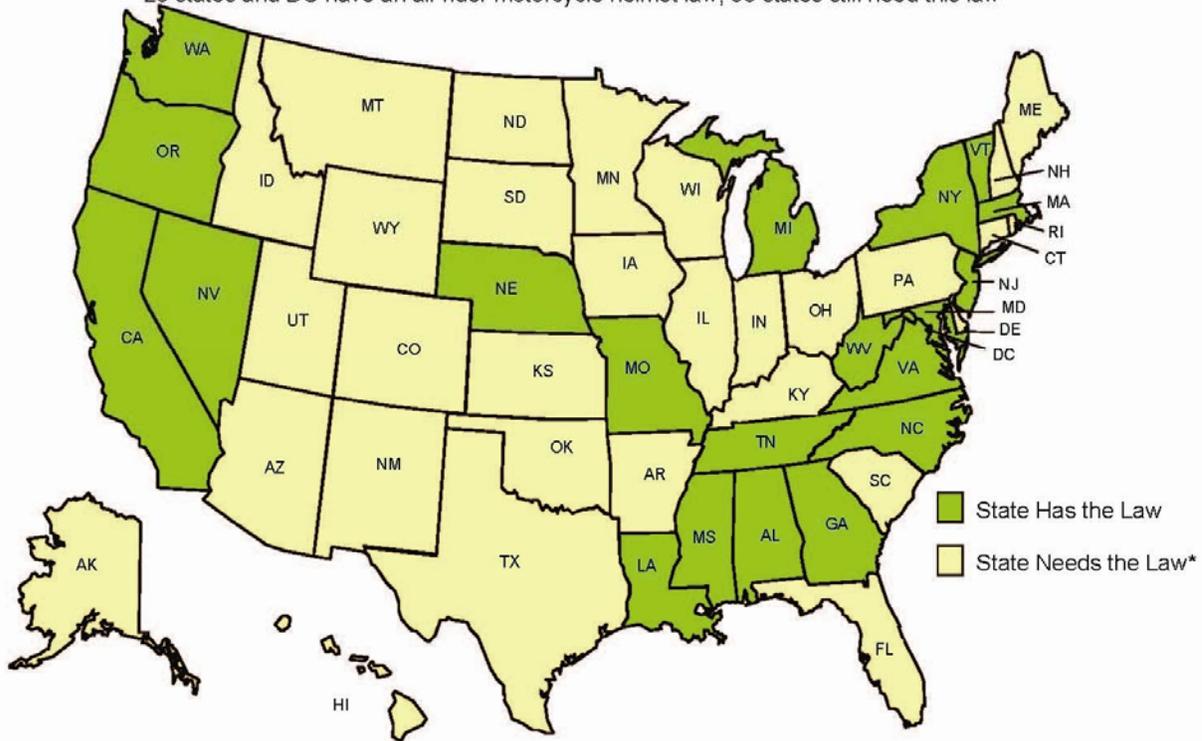
Today, only 20 states and the District of Columbia require helmet use by all motorcycle riders. The map below indicates the status of the law in each state. In 2007, the NTSB recommended that all states without an all-rider helmet law should adopt one.⁴⁶ Research conclusively and convincingly shows that all-rider helmet laws save lives and reduce medical costs. While helmets will not prevent crashes from occurring, they have a significant and positive effect on preventing head and brain injuries during crashes. These are the most life-threatening and long-term injuries as well as the most costly. In 1992, California's all-rider helmet law took effect resulting in a 40 percent drop in its Medicaid costs and total hospital charges for medical treatment of motorcycle riders.⁴⁷

RECOMMENDATION:

- *Include a provision that requires states to adopt all-rider motorcycle helmet laws.*

ALL-RIDER MOTORCYCLE HELMET LAWS

20 states and DC have an all-rider motorcycle helmet law; 30 states still need this law



Motor Vehicle Safety Standards

Motor Vehicle Safety Standards for the 21st Century

I now turn to the need for NHTSA, in the second decade of the twenty-first century, to upgrade its motor vehicle safety standards to address issues posed by the transition from a mechanical to an electronic vehicle fleet. Nearly every aspect of modern motor vehicles depends on electronics and computerized systems but there are no minimum standards to ensure that safety systems reliant on electronics will not malfunction or degrade prematurely. In the last session of Congress, this Committee marked up the Motor Vehicle Safety Act of 2010⁴⁸ which included many provisions aimed at protecting electronic-based safety systems. The concerns raised during a series of hearings held by this Committee,⁴⁹ and by the House Energy and Commerce Committee,⁵⁰ led to a number of conclusions and recommendations regarding what additional standards are needed to improve the safety performance of motor vehicles and what procedural changes are necessary to improve the performance of NHTSA.

With respect to vehicle safety, it is evident that electronic systems are relied on for nearly every vehicle function from power windows to airbag deployment to brake and throttle controls. For this reason, a minimum standard is needed to ensure that the electronic systems that operate and control vehicle safety systems are shielded to protect against electromagnetic or other forms of interference and from damage and deterioration during routine use, wear and tear. For this reason, Advocates supports both a minimum safety standard to govern the electronics that are built into motor vehicles (Sec. 504), as well as establishment of a center by NHTSA for

electronics knowledge and expertise (Sec. 501) that can leverage the agency's access to information and engineers trained in vehicle-based electronics, software and related disciplines. The importance of these areas of expert knowledge will only become more critical as vehicle safety functions and performance become more dependent on computerization and electronics.

The Committee's hearings also pointed to the need for a fail-safe brake system override that can cause motor vehicles to come to a full stop regardless of whether the inputs causing unintended acceleration come from faulty vehicle controls or the driver. Brake performance should always take precedence over conflicting commands to accelerate. For this reason, Advocates supports the direction to NHTSA to require a brake override standard (Sec. 502) and to investigate the need for additional requirements to govern pedal placement and potential obstructions (Sec. 503).

As vehicles become platforms for not just safety systems but also for "infotainment" and work-related communications devices, the potential for diversion of driver attention from the driving task has increased. This Committee has been a leader in trying to eliminate driver distractions, having marked up the Distracted Driving Prevention Act of 2009, S. 1938, in the 111th Congress and including provisions in the Committee draft NHTSA authorization bill. The Committee again is promoting safe driving by including a provision to prevent drivers from viewing video monitors and screens for entertainment purposes while driving. (Sec. 507). It is a fundamental premise of driving safety that the driver should be paying attention to the road and traffic while driving, not engaging in other activities or distractions. The availability of viewing screens needlessly adds another diverting temptation that should not be permitted when operating a motor vehicle. For this reason, the Federal Motor Carrier Safety Regulations (FMCSR) have long prohibited commercial motor vehicle drivers from having a television screen or "other means of visually receiving a television broadcast" in the front seat of the vehicle.⁵¹ We support this measure as a reasonable and commonsense limitation on the driver while operating a motor vehicle.

Advocates also strongly supports the Committee's commitment to future safety research by including a requirement to upgrade the current federal regulation on Event Data Recorders (EDRs). (Sec. 506). EDRs will provide an immense wealth of objective vehicle information in the event of a crash that can be used to help in crash reconstruction and in aiding research to develop more effective crash avoidance and crashworthiness countermeasures in the future.

RECOMMENDATIONS:

- ***Congress should adopt reauthorization legislation that:***
 - ***Establishes safety standards for vehicle stopping distance, brake override and electronic systems performance;***
 - ***Prohibits electronic screens from displaying visual entertainment programs that are visible to the driver;***
 - ***Considers the need to adopt safety standards for pedal placement and push-button ignition systems;***
 - ***Requires event data recorders on all new passenger vehicles and revises the requirements of the current event data recorder regulations; and,***
 - ***Creates at NHTSA a center for electronics, software and engineering expertise.***

NHTSA's Authority to Address Safety and Consumer Issues Should Be Expanded

Mr. Chairman, NHTSA is over 40 years old⁵² and should be given authority and powers commensurate with the agency's experience and mandate. This responsibility should be coupled with powers that permit the agency to fully perform its duties and allow the agency to exercise its enforcement authority to increase compliance. For this reason Advocates supports amending several federal laws to provide NHTSA with enhanced authority to address existing safety problems with 21st century approaches that will allow the agency to leverage its resources to protect the American public.

For this reason we support amending federal law to permit NHTSA to fully participate in traffic and vehicle safety legislative discussions that take place in state capitals.⁵³ (Sec. 409). The expertise garnered through federal safety programs and activities, and knowledge derived from national data collection, should be directly shared by NHTSA with state and local officials considering relevant legislation. In a modern age of instant communications and information search engines, it is implausible that any federal official providing data and statistical results on a safety issue could overcome the will and access to information of state and local officials or, by so doing, interfere with the legislative process on the state and local levels.

Likewise, we believe that after more than 30 years it is time to rescind some or all of the restriction that prohibits NHTSA from allowing seat belt reminders that continue to sound after the first eight seconds of vehicle operation, or that prohibits manufacturers from voluntarily introducing front and rear seat belt reminder systems into their vehicles.⁵⁴ (Sec. 302). The belt reminder "buzzer" restriction has held back technology and innovation that has been used to save lives in Europe and around the world. The result has been that belt use rates in this country are lower than they could or should be. Manufacturers are even graded on the sophistication of their seat belt reminder systems under the European vehicle safety consumer rating system called EURO NCAP.⁵⁵ Although the New Car Assessment Program (NCAP) consumer ratings system was invented in the U.S, by NHTSA, the agency does not include seat belt reminder systems in its U.S. ratings.

We also concur that NHTSA needs additional authority regarding odometer fraud and the importation of vehicles and vehicle equipment. (Sections 305-307). As we note elsewhere, the use of electronic systems has changed most aspects of modern motor vehicles including odometers and the methods used to commit odometer fraud by rolling back vehicle odometers. The wording of the governing statutory provision,⁵⁶ as well as how the information is disclosed and the penalties for odometer fraud⁵⁷ all need to be updated.

RECOMMENDATIONS:

- ***Congress should adopt reauthorization legislation that:***
 - ***Permits NHTSA to share its expertise with state and local legislatures;***
 - ***Allows NHTSA to require and vehicle manufacturers to provide advanced seat belt use reminder systems for all designated seating positions in passenger vehicles; and***
 - ***Extends NHTSA's authority to combat odometer fraud.***

Greater Transparency and Accountability is Needed to Protect Consumers

During hearings held by this Committee regarding the adoption of the Motor Vehicle Safety Act of 2010, numerous problems that impede and hinder the public's right to know about vehicle defects, unfortunately, came to light. Among the issues that were discovered as part of the investigation of how the agency handled the consumer complaints regarding sudden unintended acceleration, were issues related to the agency's performance of its investigatory functions, its handling of recalls and defect information, as well as the disclosure of critical safety data and information to the public and public access to agency safety databases and information. Many of these issues were addressed in last year's Motor Vehicle Safety Act⁵⁸ and should be included in the agency reauthorization bill because they will achieve valuable and necessary improvements in NHTSA's policies and procedures.

For example, NHTSA information and interaction with the public over vehicle safety recalls will be vastly improved if more information about recalls and defects is available. Many consumers have difficulty understanding whether their vehicle, or a used vehicle they wish to purchase, has been the subject of a safety recall. Providing that information in an easy-to-access and user friendly database that consumers can search by the vehicle identification number (VIN) of their vehicle is a commonsense solution to an all too common problem. (Sec. 401) Likewise, providing consumers with ready internet access to reports and communications regarding vehicle safety and recalls (Sec. 403) that are required to be provided to the Secretary of Transportation will go a long way toward making safety information about motor vehicles available to the people who own and lease them.

At the same time, providing the public with greater disclosure of the Early Warning Data, (Sec. 404) that was originally required to be provided under the Transportation Recall Enhancement, Accountability and Documentation (TREAD) Act,⁵⁹ will allow the public to assist the agency with information and analysis of the volumes of data sent to the agency by manufacturers. In addition, promoting the reporting of defect complaints and information by requiring an in-vehicle consumer notice (Sec. 407) and by establishing a hotline for employees of manufacturers, dealerships and mechanics to report information regarding safety defects or problems (Sec. 402), will assist the agency in identifying and substantiating safety problems that have not previously come to light.

Equally important, we must ensure that people within the industry who are willing to disclose information about safety problems and defects are protected from retaliation. (Sec. 408). So-called "whistle blower" protection is available in a number of industries to ensure that when an employee with inside knowledge of a defect or safety problem comes forward in the public interest, that person will not have to suffer retribution for their act of civic responsibility. At the same time, government officials who have worked for NHTSA should have some restrictions placed on their capacity to use their knowledge and expertise for manufacturers that interact with NHTSA regarding safety recall issues. (Sec. 410 Revolving Door). Advocates agrees that reasonable limits should be adopted to deter former NHTSA employees from influencing the progress or outcome of vehicle safety matters by communicating with or appearing before

agency personnel on behalf of vehicle manufacturers. These are appropriate and necessary measures to ensure public confidence in the agency's safety activities.

Advocates also supports the need for corporate officers of vehicle and equipment manufacturers to take personal responsibility for the documents that are requested or required to be provided to the Secretary and NHTSA (Sec. 405) during the conduct of a safety defect investigation. Unfortunately, experience shows that unless senior company officials understand that they will be personally accountable for the accuracy of the information that is submitted, the company may not make the full disclosure needed by the agency to conduct a thorough investigation. Along with this change it is also necessary to substantially increase the maximum penalties for violation of the key vehicle safety act disclosure requirements to a maximum of \$250,000,000 (Sec. 303). The failure to provide honest and full disclosure and cooperation of potential safety defects could result in deaths and injuries and those that choose to place their interests above the safety of consumers should pay a high price for such behavior.

Advocates supports the need to ensure that disclosures of defects and noncompliance with safety requirements are made known to persons who rent or lease motor vehicles (Sec. 411). An owner of a business that rents motor vehicles to the public, and knows that the rental vehicles are subject to a safety recall or failure of compliance should make their customers aware of the information before renting the vehicle. The disclosure should be clear and conspicuous so that the person renting the vehicle is adequately informed of the safety problem and gives informed consent before renting the vehicle. Likewise, the same consumer disclosure should be made applicable to owners of used car businesses who resell vehicles that are subject to a safety recall or noncompliance. In both instances the business that owns the vehicle is in a much better position to know or determine whether the vehicle has been the subject of a safety recall or noncompliance notice.

We also favor requiring NHTSA to conduct a study of its crash data collected through the National Automotive Sampling System (NASS). (Sec. 412). The NASS is the cornerstone of motor vehicle crash data providing information to NHTSA in order to estimate highway deaths and injuries and crash trends. NASS was designed by a panel of experts in data collection and statistical analysis to collect data on crashes from multiple sources to provide a detailed and comprehensive assessment of the crash event and resulting injuries. The plan envisioned 75 teams of two to four investigators assigned to a geographical area with a total of 200 trained investigators examining two statistically sampled crashes per week, for a total of nearly 19,000 crashes each year. Currently, NASS collects far fewer cases, less than 5,000 each year, which is barely sufficient to provide a representative sample and threatens the agency's ability to conduct analysis on emerging crash and injury trends because the database will be too small to identify injury patterns.

RECOMMENDATIONS:

- ***Congress should adopt reauthorization legislation that:***
 - ***Requires NHTSA to update and improve its vehicle safety databases and ensures that manufacturer notices of software upgrades are available to consumers;***
 - ***Makes more early warning data publicly available;***

- *Provides consumers with information on how to report vehicle defects inside new vehicles;*
- *Establishes a hotline for reporting vehicle defects, noncompliance and safety problems by mechanics and employees of manufacturers and dealerships;*
- *Affords employment protection to whistle blowers;*
- *Prevents senior NHTSA officials who leave the agency from communicating or appearing before agency officials on vehicle safety matters for two years;*
- *Requires senior officials of motor vehicle manufacturers to take personal responsibility when filing reports with NHTSA;*
- *Increases the penalties for violations of safety regulations;*
- *Requires that owners of car rental and used car businesses must disclose vehicle safety recall or noncompliance information to prospective renters or purchasers; and,*
- *Requires NHTSA to review the NASS data collection program and report to Congress with recommendations for improving the program.*

Child Safety Standards

Motor vehicle crashes are the leading cause of death for children four to 14 years old. In 2009, 329 children ages four through seven died in motor vehicle crashes.⁶⁰ Improper restraint in an adult seat belt, or lack of any restraint at all, significantly contributes to traffic fatalities among this young population. With one exception, seatback strength, the Committee has included all of the following provisions to improve child safety in the reauthorization bill. Advocates supports both the Committee bill and the Committee's efforts to strengthen child safety standards.

Protection for Older Children

In 2002, Congress passed *Anton's Law*⁶¹, again because of the leadership of this Committee, to improve child restraints for older children, aged four to 10 years old. The law instructed NHTSA to establish performance requirements of child restraints for children weighing more than 50 pounds and develop a 10-year old child test dummy. While NHTSA issued a Supplemental Notice of Proposed Rulemaking (SNPRM) in November, 2010 to address child restraint systems, the requirements of Anton's Law have gone largely unfulfilled. Advocates' commends the Committee for expanding requirements for child restraint systems for children weighing more than 65 pounds in its reauthorization proposal, but also calls on Congress to direct NHTSA to implement regulations protecting older child passengers in a timely manner.

Side Impact Crashes

Current federal safety standards require U.S.-marketed child restraints to meet dynamic testing simulating a 30 mph frontal impact. This test is conducted by decelerating a test sled instead of conducting a crash test. In response to Section 14 of the TREAD Act, NHTSA issued an Advance Notice of Proposed Rulemaking (ANPRM), on May 1, 2002, on the development of a side impact protection standard for child restraint systems (CRS).⁶² The following year, the agency decided not to proceed with rulemaking due to the lack of data to evaluate the problem, available countermeasures and proper injury criteria, but stated that research on the subject would continue.⁶³

In recent papers summarizing the research conducted to evaluate potential child side impact test procedures, NHTSA identified that children represent over 50% of rear seat occupants in vehicle collisions. “Side Impacts are the second most frequent collisions resulting in child occupants sustaining serious life-threatening head, neck and chest injuries.”⁶⁴ The agency concluded that additional testing is needed to refine test parameters, validate the test methodology and to examine additional child restraint systems. There was no indication as to when research and testing would be concluded. It has been more than 10 years since the enactment of the TREAD Act and nine years since NHTSA stated that it would undertake efforts to address child protection in side impacts.

Child Restraint Anchorage Systems

For many years, parents have been advised for safety reasons to secure children in the rear seat of vehicles. NHTSA has taken some action to accommodate child restraints secured in vehicle rear seats, but has failed to initiate other measures to improve rear seat safety for children.

In 1999, NHTSA required that by 2002 passenger vehicles and child restraints must be equipped with lower anchorages and tethers for children – the “LATCH” system – in order to promote an easier system of child restraint in place of using vehicle seat belts to secure child restraints. Although parents have long been advised that the center rear seating position is the safest for a child, no LATCH System was required in the center rear seating position. Instead, the agency required LATCH be installed at both outboard rear seating positions. A child who is secured in the outboard LATCH-equipped seating position is at greater risk in a side impact crash than a child in the center seating position.

A 2005 agency report established that many parents and other adults were confused about how the LATCH system works, could not identify or find the lower anchorages, and did not realize that there were no LATCH systems in the rear center seating position of passenger vehicles.⁶⁵ Amending Federal Motor Vehicle Safety Standard Number 225 to improve the visibility of, accessibility to, and ease of use for lower anchorages and tethers in all rear seat seating positions will increase use rates.

Rear Seat Belt Reminders

Although seat belt systems are installed at all seating positions in passenger vehicles, reminder systems to buckle up are only mandated in the front seating positions. Seat belt use in the rear seats is significantly lower than front seat use rates—in 2009, rear seat belt use was 70 percent, compared to 84 percent use by front seat occupants.⁶⁶ According to a 2010 press release from the Illinois Department of Transportation, 2009 crash data indicated that fatally injured rear seat passengers were twice as likely to be unbuckled than fatally injured front seat passengers.⁶⁷ 2005 data linked with hospital discharge data illustrated that failure to wear a seatbelt in the rear seat was associated with a 44 percent increase in the cost of a hospital stay following a collision.

Rear seat reminder systems can both remind the driver and rear seat occupants to buckle up and alert the driver when a passenger unbuckles the seat belt while the vehicle is moving. Given that a majority of parents secure their children in child restraints in the rear seat of vehicles, rear seat reminder systems are needed to ensure that they are buckled up. Rear seat belt reminders would also likely increase belt use rates among teen passengers riding with a teen driver.

On August 28, 2007, safety groups filed a petition with NHTSA requesting that seat belt reminder systems be required in the rear seats of cars and in the second and third row of seats in multipurpose passenger vehicles, including minivans and sport utility vehicles.⁶⁸ The agency has not yet responded to the petition. Congressional action to initiate rulemaking is needed in order to move forward in a timely manner with this lifesaving feature.

Unattended Passenger Reminders

All too often, adults inadvertently leave infants and young children in child restraint systems in the rear seats of passenger vehicles. Exposure of young children, particularly in hot and cold weather, leads to hyper- and hypothermia that can result in death or severe injuries. A review of media reports on the 494 child vehicular hyperthermia, or heat stroke deaths between 1998 and 2010 found that 54% (268) of the incidents occurred when the child was unknowingly forgotten in the vehicle by a caregiver. Fifty-four (54%) of the children who die in hot vehicles are under the age of two (2). Such inadvertent deaths can be avoided by equipping vehicles with sensors to detect the presence of the child and sound a warning at the time the driver locks the vehicle with a child inside. Similar warning features currently remind drivers when they have left the key in the ignition, left the headlamps on, and when a door is open while the vehicle is in motion.

Seatback Strength

The safety standard for seatback performance has not been upgraded since it was first adopted in 1967. When the driver or front passenger seatback fails or collapses in a crash, it endangers both the front and rear seat occupants. Regulatory compliance rear impact crash tests for fuel system integrity (FMVSS 301), conducted by NHTSA, reveal that almost every seatback fails, allowing a front seat occupant to be propelled into the rear seating area. Seat belt systems that are effective in frontal crashes are not designed to keep front seat occupants from slipping out of the belt system when the seatback collapses, leading to an increase in the risk of injury to the front seat occupant.

Parents have long been advised to secure young children in the rear seat. Also, as the U.S. passenger vehicle fleet gradually downsizes in response to more costly fuels and environmental concerns, the distance between forward seatbacks and rear seated occupants will be reduced. Children's Hospital of Philadelphia (CHOP) has determined that collapsing seatbacks are a serious threat to children seated behind adult occupants. Many children were found to have been injured in crashes in which seatbacks collapse or there is excessive seat deformation. The failure of a seatback directly in front of a child places the child at risk, and when there is an occupant in the seat that fails there is double risk of injury to the child. NHTSA noted in a 1997 study that an examination of the interaction between front seatback failures and injuries to rear seat occupants may be important to assess the entirety of the occupant protection implications of seatback failure. In 2004, NHTSA stated that the weight of a passenger when added to the weight of the seatback itself will, even in a low severity crash, produce loads exceeding the level required by FMVSS 207.

RECOMMENDATIONS:

- *Congress should require NHTSA to:*

- *Establish a two year deadline for NHTSA to complete development and adopt into regulation the HIII-10C 10-year-old child crash test dummy;*
- *Issue a final rule regarding child restraint side impact safety within 2 years;*
- *Issue final rules within 2 years that require more visible, recognizable and easy-to-use LATCH attachment equipment and LATCH systems in the center rear seating position of all vehicles in which a center LATCH system can be properly installed;*
- *Issue a final rule within three years requiring that all seating positions including vehicle rear seats be equipped with seat belt reminder systems;*
- *Include rear seat belt reminders as part of the New Car Assessment Program (NCAP) to encourage industry compliance prior to issuance of final rule.*
- *Issue a final rule on child-left-behind reminders; and,*
- *Issue a final rule within 2 years that upgrades the performance of seats, including seatbacks, head restraints, and active/passive restraint to increase the protection of children and adults in passenger motor vehicle crashes.*

Conclusion

The quality of life for all Americans depends on a safe, reliable, economical and environmentally sound surface transportation system. Transportation solutions to promote mobility and the economy must involve not only financial investments, but investments in safety as well. Highway crashes cost our nation more than \$230 billion annually. This is money that could be better spent on addressing surface transportation needs. Making necessary changes to the performance and effectiveness of the state traffic safety grant programs, including incentive grant programs to spur state adoption of lifesaving laws on teen driving, impaired driving and occupant protection and directing government action to improve the safety of motor vehicles will prevent crashes, reduce deaths and injuries and lower societal costs that are an economic drain on our economy.

The decrease in highway fatalities that has occurred over the last two years affords an opportunity to continue the downward trend and make substantial and lasting reductions in annual fatalities. There are no acceptable excuses for delaying any longer the adoption of lifesaving laws and vehicle safety standards that can help secure these lower fatality levels in the future. Over the course of the next 2 years we can save thousands of lives each year if we act wisely and act now. If the opportunity slips away without action we could suffer more than 65,000 fatalities and another 4 million injuries in that 2-year time frame.

Thank you for the opportunity to testify before you today and I am pleased to answer your questions.

Endnotes

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- ³ *Traffic Safety Facts 2009*, Lives Saved in 2009 by Restraint Use and Minimum-Drinking-Age Laws, Back Cover, DOT HS 811 383, National Highway Traffic Safety Administration (NHTSA) (Sept. 2010).
- ⁴ *Traffic Safety Facts 2009*, *op cit*.
- ⁵ *Id.*
- ⁶ *Id.*
- ⁷ *Id.*
- ⁸ State Motor Vehicle Registrations, 2009, Federal Highway Administration (FHWA) available at <http://www.fhwa.dot.gov/policyinformation/statistics/2009/pdf/mv1.pdf>, last accessed on July 25, 2011.
- ⁹ *The Economic Impact of Motor Vehicle Crashes 2000*, DOT HS 809 446, NHTSA (May 2002).
- ¹⁰ “Injury Prevention and Control: Motor Vehicle Safety,” Centers for Disease Control and Prevention, May 2011, available at <http://www.cdc.gov/motorvehiclesafety/index.html>.
- ¹¹ Comparative Statement of New Budget Authority, National Highway Traffic Safety Administration, FY 2012 Budget Request, Exhibit II – 1, available at <http://www.dot.gov/budget/2012/budgetestimates/nhtsa.pdf>.
- ¹² *Traffic Safety Facts 2009*, *op cit*.
- ¹³ S. 3302, 111th Cong., 2nd Sess.
- ¹⁴ The Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), Pub. L. 109-59 (Aug. 10, 2005); the Transportation Equity Act for the 21st Century (TEA-21), Pub. L. 105-178 (June 9, 1998); and, the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), Pub. L. 102-240 (Dec. 18, 1991).
- ¹⁵ 23 U.S.C. § 402.
- ¹⁶ SAFETEA-LU included incentive grant programs for occupant protection, safety belt performance, traffic safety information systems, alcohol-impaired driving countermeasures, motorcyclist safety, and child safety and child booster seat safety.
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- ¹⁸ *Highway Safety: Better Guidance Could Improve Oversight of State Highway Safety Programs*, p. 1, GAO-03-474, Government Accountability Office (GAO) (Apr. 2003).
- ¹⁹ *Id.*, p. 4.
- ²⁰ 23 U.S.C. § 412; enacted as Title II, § 2008(a), SAFETEA-LU, Pub. L. 109-59 (Aug. 10, 2005).
- ²¹ *10 Leading Causes of Death, United States, 2007, All Races, Both Sexes, Age Groups 15 - 19*, retrieved from Centers for Disease Control and Prevention, Injury Prevention and Control: Data and Statistics (WISQARS) Leading Causes of Death Reports, 1999 - 2007, <http://webappa.cdc.gov/sasweb/ncipc/leadcaus10.html>.
- ²² *Traffic Safety Facts 2009*, Young Drivers, DOT HS 811 400, National Highway Traffic Safety Administration (NHTSA).
- ²³ *Id.*; *Traffic Safety Facts 2008*, Young Drivers, DOT HS 811 169, National Highway traffic Safety Administration (NHTSA); *Traffic Safety Facts Research Note*, Fatal Crashes Involving Young Drivers, DOT HS 811 218, National Highway traffic Safety Administration (NHTSA).
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- ³⁴ See *Limiting the Use of Wireless Communications Devices*, Final Rule, 75 FR 59118 (Sept. 27, 2010); *Regulatory Guidance Concerning the Applicability of the Federal Motor Carrier Safety Regulations to Texting by Commercial Motor Vehicle Drivers*, Notice of Regulatory Guidance, 75 FR 4305 (Jan. 27, 2010).
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- ³⁶ Motorcycle Safety, National Highway and Traffic Safety Administration, DOT HS 807 709 (Oct. 1999), available at <http://www.nhtsa.dot.gov/people/injury/pedbimot/motorcycle/motosafety.html>.
- ³⁷ *Motorcycles*, Traffic Safety Facts 2008, DOT HS 811 159, at 1, NHTSA (2009).
- ³⁸ *A Highway Safety Countermeasures Guide for State Highway Safety Offices*, DOT HS 810 891, p. 5-4, NHTSA (3d ed., Jan. 2008) (NHTSA Safety Countermeasures Guide).
- ³⁹ *Traffic Safety Facts 2008*, Table 10, p. 28.
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- ⁴¹ *Highlights of 2009 Motor Vehicle Crashes*, pp. 1 & 3.
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- ⁴³ *Motorcycles*, Traffic Safety Facts 2008, at 3.
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- ⁴⁸ Motor Vehicle Safety Act of 2010, Report No. S. 111-381 (Dec. 21, 2010).
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⁵² NHTSA was formally established by the Highway Safety Act of 1970.

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