

STATEMENT

OF

THE ALLIANCE OF AUTOMOBILE MANUFACTURERS

BEFORE THE:

**SUBCOMMITTEE ON CONSUMER PROTECTION, PRODUCT
SAFETY AND INSURANCE OF THE SENATE COMMITTEE
ON COMMERCE, SCIENCE, AND TRANSPORTATION**

U.S. SENATE

JULY 27, 2011

PRESENTED BY:

Mr. Robert Strassburger
Vice President of Vehicle Safety and Harmonization

Thank you, Mr. Chairman and Committee members. My name is Robert Strassburger and I am Vice President of Vehicle Safety and Harmonization at the Alliance of Automobile Manufacturers (Alliance). The Alliance is a trade association of twelve car and light truck manufacturers including BMW Group, Chrysler Group LLC, Ford Motor Company, General Motors, Jaguar Land Rover, Mazda, Mercedes-Benz, Mitsubishi Motors, Porsche, Toyota, Volkswagen Group of America and Volvo. For Alliance members, who account for roughly three quarters of all vehicles sold in the U.S. each year, safety is a top priority. The Alliance appreciates the opportunity to comment on the Motor Vehicle and Highway Safety Improvement Act discussion draft and we look forward to working with the Committee as partners in enhancing motor vehicle safety.

As this Committee considers the road ahead for the National Highway Traffic Safety Administration (NHTSA) it is important to bear in mind the broader context of motor vehicle safety in the U.S. today. Fatalities and serious injuries resulting from motor vehicle crashes in the U.S. are at their lowest level in 60 years. This fact is remarkable given that during the same timeframe the number of licensed drivers has more than doubled and annual vehicle miles travelled have more than quadrupled.

This is because the government and the industry are doing many things very well to innovate, develop, and implement effective safety systems and programs. Most of the safety features on motor vehicles in the U.S. – antilock brakes, stability control, side airbags for head and chest protection, side curtains, pre-crash occupant positioning, lane departure warning, collision avoidance and more – were developed and implemented voluntarily by manufacturers, in advance of any regulatory mandates. The industry is moving forward, engaging in high-tech research, and developing and implementing new safety technologies including autonomous braking systems, vehicle safety communications systems for crash avoidance and much more. Our commitment is to continuously improve motor vehicle safety.

Tackling the Primary Causes of Traffic Deaths and Injuries. As a nation, we will never fully realize the potential benefits of vehicle safety technologies until we get vehicle occupants properly restrained and drunk drivers off the road. While safety belt usage is

increasing, over half of vehicle occupants killed in crashes are not restrained by safety belts or child safety seats. Alcohol impairment stubbornly remains a factor in roughly one third of traffic deaths each year. These are unacceptable numbers.

The safety belt is the lynchpin vehicle safety technology. The effectiveness of nearly every other technology designed to protect occupants in a crash is significantly reduced if drivers and passengers are not wearing seatbelts. While we have been reluctant to engage in the debate over incentives versus sanctions, on this critical issue the Alliance now urges Congress to include provisions for withholding a percentage of Highway Trust Fund monies from states that have failed to adopt primary enforcement safety belt laws. Sanctions have worked effectively to accelerate the process of passing laws and creating uniform safety policy in all 50 states and in the District of Columbia. Congress employed this tactic to encourage states to adopt a minimum legal drinking age of 21 (1984), zero alcohol tolerance laws for youth under 21 (1995), and 0.08 percent per se blood alcohol content (BAC) laws (2000). It is time to take a similar step with primary enforcement laws, and we urge you to work with your colleagues on the Environment and Public Works Committee on this issue. The Alliance also supports **Section 302**, which would authorize NHTSA to permit safety belt interlocks as part of an FMVSS compliance strategy. The Alliance is also prepared to support **Section 603**; however, it needs to be revised to clarify what outcome is intended.

With regard to reducing impaired driving, the Alliance supports the provisions in **Section 107**. The Alliance believes that states with higher rates of alcohol-related fatalities (“low and mid-range” states) should be required to devote some portion of funding to support both media in support of high visibility enforcement efforts (107(d)(2)(A)) and alcohol ignition interlock programs for convicted offenders (107(d)(2)(D)). Strong laws, visibly enforced and alcohol ignition interlock (breathalyzer) programs for convicted offenders are proven models with demonstrated results in reducing drunk driving.

The Alliance also supports the provisions in **Section 111**, which would formally authorize the cooperative research program the industry voluntarily entered into and is jointly funding with NHTSA. The Driver Alcohol Detection System for Safety, commonly referred to

as “DADSS,” is a five-plus-year research effort created to develop in-vehicle technology that will quickly and accurately measure a driver’s blood alcohol concentration (BAC) in a non-invasive manner. If the system detects that a driver is drunk, the vehicle’s starting capabilities are disabled. The Insurance Institute for Highway Safety projects that successful implementation of this kind of technology has the potential to prevent more than 8,000 deaths each year.

The Alliance supports **Section 406**, which would allow NHTSA to include crash avoidance technologies in its New Car Assessment Rating program, which provides valuable information to consumers about vehicle safety features.

Finally, the Alliance supports giving NHTSA and the states tools and funding to combat distracted driving. We want to work with the Committee, as we have with NHTSA and the states, to ensure that new laws do not unintentionally sweep in technologies intended to make driving safer. The Alliance and our partners at the American Academy of Orthopedic Surgeons have launched a multimedia campaign that highlights the importance of driver focus to road safety. The high-visibility campaign includes advertising, an interactive and independently branded website and localized elements – including last year’s advertising of the campaign on dozens of metro buses in the Washington, DC area. And our campaign is finalizing plans for reaching out to the nation’s schools with a new element this fall.

Focusing Limited Resources to Achieve Real-World Benefits. Auto engineers develop and test new safety technologies based on their expected performance in real-world situations. Proposed legislation needs to meet the same test. At a time when we are acutely aware of our resource limitations, both industry and government need to prioritize our efforts in order to maximize real-world safety benefits for Americans.

In March 2011, NHTSA published an updated Vehicle Safety and Fuel Economy Rulemaking and Research Priority Plan for 2011-2013, reflecting extensive analysis of traffic safety data and the agency’s expert judgment on the most effective means to continue to accomplish its Congressionally mandated mission to “save lives, prevent injuries and reduce economic costs due to road traffic crashes.” Congress should resist mandating widespread and

far reaching rulemakings – with relatively short deadlines that affect so many aspects of motor vehicle design without greater evidence that they would make meaningful contributions to improving highway and vehicle safety.

Our concern over legislatively-mandated rules is not over improving safety – industry is competing vigorously and moving rapidly to provide ever-increasing levels of safety in its vehicles – but over process. Safety rulemakings are often complex, involving myriad of technical details, analysis of data, and consideration of necessary lead time. Mandates for rules to be issued by specified dates can short-circuit the necessary analyses and potentially lead to unintended safety consequences. The complexity of safety rulemakings requires that careful attention be accorded to the inherent tradeoffs associated with regulations. For example, we have seen tradeoffs among adult high-speed protection in frontal crashes and associated harm to children and others in low-speed crashes. Mandating rules in certain areas, regardless of the public rulemaking record on the subject, prejudices the outcome of the rulemaking process and deprives NHTSA of its ability to make safety-related assessments and determinations of rulemaking priorities.

Accordingly, the Alliance believes the following provisions should be revised or removed on the basis that they inappropriately divert resources from more pressing priorities:

Section 404. This section directs NHTSA to enter into a third 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 early warning reporting regulations do exactly what Congress intended, by putting vital information in the hands of agency defect investigators. Secretary LaHood and Administrator Strickland stated as much in responses for the record to this Committee last year.¹ This issue has already been subject to two rulemakings and NHTSA's judgment has been upheld in court. This provision should be dropped.

¹ "At this time, the agency believes the information reported by manufacturers to NHTSA is useful for identifying potential safety defects in the affected vehicles in the U.S. Since 2004, the first full year in which NHTSA received EWR data, the Office of Defects Investigation (ODI) has used the EWR data to assist in our safety-defect identification investigation process. NHTSA has utilized EWR data to assist in opening 110 defect investigations, which resulted in over 11 million recalled vehicles and equipment. Specifically, EWR data has prompted the opening of 28 defect investigations, accelerated the opening of 30 defect investigations, and supported the opening of 52 other defect investigations." (Response of Secretary LaHood and Administrator Strickland to question number 4 from Sen. Hutchison for hearing record – Toyota Recalls and Government's Response – March 2, 2010 pps. 177-178.)

Sections 401, 403, 407, and 402. The Alliance supports providing consumers with access to information regarding recalls; however, these provisions largely require NHTSA to duplicate existing resources. Automakers and private entities such as CARFAX already provide consumers the means to determine, using the make, model, model year and VIN, whether a vehicle is subject to recall and whether the remedy has been performed (401). Automakers already provide Technical Service Bulletins and other dealer-related communications to NHTSA, which NHTSA makes available on its safecar.gov website (403). Automakers are already required by law to publish in Owner's Manuals information regarding how to report a suspected defect (407). NHTSA already maintains a hotline for reporting defects; the safety benefits of maintaining a separate hotline for manufacturer, dealer or mechanics are not apparent. If Congress believes NHTSA should give special weight to these individuals' reports, they could simply be asked to specify their profession when calling the existing hotline (402).

Section 503. The Alliance recommends deleting **Section 503**, which would direct NHTSA to develop a rule specifying minimum clearances for passenger vehicle foot pedals with respect to other pedals, the vehicle floor, and any other potential obstruction to pedal movement. NHTSA identified pedal placement as an area in need of further research following the release of the NASA report on unintended acceleration. The agency should be allowed to finish and evaluate its research before a determination is made as to whether rulemaking is warranted. Implementing brake override technology as required in **Section 502** is a better, more comprehensive solution to address any lingering concerns about unintended acceleration.

Section 504. In February, NHTSA released the complete results of the study it conducted with NASA concluding that electronic systems played no role in cases of unintended acceleration.² While the Alliance is not opposed to NHTSA expanding its expertise and continuing research into electronic systems, this undefined rulemaking is unlikely to have any significant near-term impact on motor vehicle safety. The agency's rulemaking resources should be devoted to addressing more pressing issues.

² "NASA found no evidence that a malfunction in electronics caused large unintended accelerations." Michael Kirsch, Principal Engineer at the NASA Engineering and Safety Center (NESC) – NHTSA Press Release of February 8, 2011.

Section 506. The Alliance supports equipping new vehicles with event data recorders (EDR) as currently specified under Part 563. Manufacturers who opted not to install EDRs under the voluntary standard will need sufficient lead time to develop and implement this technology in their fleets. NHTSA should have the authority to establish the lead time, including any phase-in schedule, after consultation with the manufacturers.

The Alliance also supports strong privacy protections for consumers. The Alliance believes that information stored on an EDR is the property of the vehicle owner and should not be accessed by anyone without the owner's permission or as required by law. In this regard the provisions in 506(b) are a good start but require additional clarification to ensure data is the property of the owner or lessee at the time it was recorded rather than at the time it was downloaded from the vehicle EDR, and to specify that use of data retrieved under one of the exemptions in (b)(2) is permitted only for the specific purpose indicated by the exemption.

The Alliance also believes that it is premature for Congress to specify the parameters of a second rulemaking before the first rulemaking is even implemented. The better approach would be to allow NHTSA to study the results of the first phase rulemaking as a prologue to any future enhancements to the rule.

Additionally, the Alliance opposes making EDRs subject to an FMVSS. The FMVSS are required by statute to be minimum standards for motor vehicle or motor vehicle equipment performance. By contrast, the EDR rule is – by necessity and design – a regulation that specifies exactly that data that NHTSA wishes to be captured and retained. It is neither a minimum standard nor a performance standard, nor could it reasonably be such a standard and accomplish its intended purpose. It is not appropriately classified as an FMVSS, nor are the FMVSS enforcement mechanisms (stop sale for even slight deviations) appropriate for such a data-intensive, detailed regulation.

Section 604. Mandating a rulemaking to address hyper and hypothermia is inconsistent with the provision in Title I giving states the option (rather than requiring them) to conduct a consumer education program in these areas. Accidental fatalities can be mitigated significantly

with a coordinated, focused public education program. The provision's directive to conduct research recognizes that the reasons why children are abandoned in cars in some instances is not well understood and without such an understanding, it is not possible to evaluate the anticipated effectiveness of potential countermeasures. Finally, the provision as currently drafted would not allow the bifurcation of hyper and hypothermia rulemakings based on research findings based on safety need, practicability, or effectiveness of countermeasures.

Finally, the Alliance believes that several other provisions deserve additional consideration as the bill moves through the legislative process:

Section 303. Motor vehicle manufacturers are already subject to higher civil penalties than other similarly situated manufacturers of consumer products. The proposed increases are so out of proportion either to the current penalty structure or the penalty structure for other manufacturers under the Consumer Product Safety Act as to appear unfairly punitive.

Section 405. This provision reaffirms existing law codified at 18 USC 1001 and adds an additional civil penalty to existing criminal penalties. Layering additional civil fines on top of potential criminal penalties for making false statements to the government is unlikely to enhance motor vehicle safety.

Sections 308, 309, 310, and 311. The Alliance supports what we understand to be the Committee's rationale in proposing these provisions: to give NHTSA authority to prevent fly-by-night actors from injecting defective products into the U.S. market and failing to take responsibility when problems surface. However, as currently structured, these provisions are simply layered on top of existing rules for established, well-capitalized manufacturers and suppliers who already play by the rules. As such these sections will result in additional burdens that increase the cost of doing business for responsible parties without providing concomitant safety benefits in the market. The Alliance believes the better approach would be to direct these provisions specifically at the bad actors, and we would like to work with the Committee and the agency to identify an appropriate approach. Many of the provisions also create discriminatory conditions and may not be consistent with US GATT obligations.

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