AUTO ALLIANCE
DRIVING INNOVATION®

STATEMENT

OF

THE ALLIANCE OF AUTOMOBILE MANUFACTURERS

BEFORE THE:

SENATE SUBCOMMITTEE ON CONSUMER PROTECTION, PRODUCT SAFETY & INSURANCE

MAY 21, 2013

PRESENTED BY:

Mitch Bainwol
President and CEO

Thank you, Chairman McCaskill, Ranking Member Heller and Subcommittee members. My name is Mitch Bainwol and I am President and CEO 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 absolutely ranks as our top priority. The Alliance appreciates the opportunity to comment on S. 921, the Raechel and Jacqueline Houck Safe Rental Car Act of 2013.

Let me say up front that we completely identify with the goals of the bill sponsors – to promote speedy repair of recalled vehicles and to prevent another accident like the one that killed Raechel and Jacqueline Houck in 2004.

The Commerce Committee has been considering how to address this issue for some time. Since more than 9 out of 10 vehicle recalls do not involve instructions or recommendations to "stop driving" the vehicle until repaired, how rental car companies should manage these situations has been the subject of some debate. Among the steps that could be taken is to make sure rental car customers should have the same recall information provided to vehicle owners, so they can make an informed decision prior to renting a vehicle, in the unusual event that a recalled vehicle has not yet been repaired. The Commerce Committee considered such an approach in early drafts of MAP-21.

Grounding affected vehicles certainly is warranted and appropriate for recalls that direct owners to stop driving vehicles, but a broad, federal mandate grounding all vehicles regardless of the nature of the recall triggers potential negative impacts that consumer notifications would not. Without accompanying consumer protection provisions, a fleet-wide grounding mandate could negatively impact both prospective renters and ordinary vehicle owners.

Unfortunately, the bill as currently drafted will give rise to unintended, negative consequences for consumers.

First, this bill pits businesses against ordinary consumers in recall situations. To minimize out of service time, rental car companies will demand (and have demanded) "front of the line" access to parts and service, which may force ordinary consumers - moms and dads driving their family vehicles - to the back of the line for recall repairs. These businesses, which may have affected vehicles sitting unrented on their lots, should not be allowed to "jump the line" ahead of individuals that rely on their vehicles every day. Public policy that has the potential to bias compliance in favor of business over families ought to be reviewed very carefully, no matter how noble the intent.

Second, this bill would increase costs by giving rental car companies the opportunity to pursue "loss of use" damages against manufacturers. They entered into the voluntary agreements without loss of use benefits; legislation that fundamentally changes the economic relationship by

instituting this claim is problematic and will produce increased costs that ultimately will be passed along to consumers.

It is critical to note two points: (1) not all recalls are the same, and (2) all recalls are subject to review and approval by NHTSA. Most recalls are initiated by auto manufacturers without any involvement of NHTSA in the decision to recall. However, whether a defect or noncompliance is initially identified by the manufacturer or by NHTSA, the proposed remedy and conditions of the recall – even the language of the notice to consumers – is reviewed by and subject to NHTSA approval. In short, the recall process is very well supervised by our regulator.

The overwhelming majority of recalls do not direct consumers to stop driving their vehicles. However, this bill requires all rental cars to be grounded no matter the circumstances of the recall. This provision gives rise to a myriad of anti–consumer impacts.

To be more specific, in 2010 (the most recent year complete data is available), only 8% of recalls included instructions to consumers to stop driving their vehicles. The flip side of that equation is relevant; NHTSA did not require a "stop drive" instruction for 92% of recalls.

And here's why. Most recalls involve issues that could result in unsafe driving conditions IF left unaddressed over time, rather than posing an immediate danger. For example, one company recently issued a recall because the HVAC knobs in two of its models could break and the inability to operate the "defrost" could create a hazard in icy or snowy weather. Under the language of this bill, these vehicles would have to be grounded… in Florida… in August. This is one example that demonstrates that a one size fits all approach compromises broader consumer interests.

To their credit, the sponsors recognized that the grounding requirement is overly broad and included an exception for certain cases. However, the exception established in Section 3 is not effective because it is inconsistent with current recall practices. The exception in Section 3 requires that interim steps specified in recall notices "alter the vehicle" in order to "eliminate" safety risks. In the defrost knob recall example, there was no interim means to "alter the vehicle." The old knobs needed to be replaced with new knobs. To the extent instructions are included in a recall notice, they typically describe actions that drivers should take – not ways to "alter the vehicle." Moreover, "elimination" of safety risks is not a workable legal standard. It is unlikely that a manufacturer would be willing to assert that some interim measure would actually "eliminate" all safety risks posed by the defect. Further, we do not believe that NHTSA would allow manufacturers to issue a recall notice advising consumers that some step short of complete remedy would "eliminate" the safety risk posed by the defect. Thus the exception, while well motivated, does not effectively mitigate the grounding requirement.

Establishing a federal mandate that rental car companies ground any vehicle subject to a recall regardless of the circumstances of the recall effectively prioritizes rental car companies above other vehicle owners for service and repairs.

Under the current recall program, once NHTSA has reviewed and approved a manufacturer's proposed recall notice, the exact same notice language is sent to all vehicle owners. The language in a notice to rental car companies is identical to the language Joe or Jane Consumer receives. Both the rental car company and the average citizen owner are treated equally under the recall. That strikes us as entirely appropriate.

This bill would introduce the first legal distinction amongst owners in the recall process. While it wouldn't require manufacturers to treat rental car companies differently *per se*, it would incentivize prioritizing recall repairs on rental fleets to avoid economic harm in a way that simply doesn't exist today. Even if rental companies did not receive special treatment, the mere fact that all of the recalled vehicles in their fleets would have to be repaired immediately would result in average vehicle owners being pushed to the back of a long line. Imagine your constituents receiving a recall notice and taking their vehicles to their dealers to be repaired, only to learn that there are 100 rental cars in line in front of them.

In 2000, this Committee rewrote the laws governing recalls with a bias toward initiating recalls as quickly and as widely as possible. By all measures, you were extremely successful. Problems are being identified sooner, and manufacturers and NHTSA are taking swift action. Any requirement that has the potential to change the equities in this process must be evaluated carefully.

If rental fleets are grounded regardless of the recall, rental car companies would want immediate access to parts and service to get their fleets up and running as soon as possible. They would demand priority treatment both from manufacturers and repairers and potentially threaten manufacturers who did not provide priority with "loss of use" lawsuits. It simply is not tenable – or appropriate – to ask manufacturers and repairers to choose or assign priority amongst customers.

It is the longstanding position of both auto manufacturers and NHTSA that recalls should be taken seriously by every vehicle owner and every recalled vehicle should be repaired. We do not want to frustrate consumers seeking to have their vehicles repaired as soon as possible, and we are concerned about potential delays for a class of non-corporate owners.

Establishing a federal mandate that rental car companies ground any vehicle subject to a recall - regardless of the circumstances of the recall - will ultimately increase costs to consumers without any additional safety benefit.

Rental car companies today theoretically could attempt to pursue damages against manufacturers for "loss of use" of the vehicle for the period it is out of service while waiting for repair. However, absent a federal mandate, they likely would not prevail in state courts. Imposing a federal requirement mandating the wholesale grounding of recalled vehicles owned by rental car companies significantly changes the legal equation, going well beyond the purpose of the bill.

"Loss of use" damages can be profoundly anti-consumer. For instance, the Supreme Court of Colorado recently ruled that rental car companies don't even need to show that a vehicle would otherwise have been rented to receive loss of use damages. To combat abuse of consumers, some states, including California and New York, legally prohibit rental car companies from seeking "loss of use" claims directly against consumers or their insurance companies in cases where a consumer damages a vehicle.

This bill mandates that rental car companies ground recalled vehicles until they are repaired, but it puts no time limit on the repair. It is very easy to imagine a rental agency, particularly one in a seasonal market or with low take rates, not worrying about slow completion of recall remedies if the company is able to seek compensation for all of the time the vehicle is "out of service." Today, rental car companies have enormous incentives to perform repairs as soon as possible to get vehicles back in service. They also have means of minimizing costs. This bill unintentionally removes those pro-consumer, pro-safety incentives.

Some argue that "loss of use" damages could be addressed by manufacturers and rental companies up front, in their contracts – after all, in most cases, both parties are large corporations with a symbiotic relationship. This is not universally true – there are large and small manufacturers and large and small rental businesses, and they will not always be bargaining on a "level playing field." But even in cases where both parties are on a similar footing, consumers will wind up paying the tab for a cost that doesn't currently exist. What otherwise seems to be a reasonable attempt to put the agreement by the rental car companies into statute will, in practice, generate new costs.

Given the current state of the industry's practice with respect to recalls, the practical safety effects of S. 921 are likely to be limited. The tragic crash that killed the Houck sisters in 2004 caused the rental car industry to revise its practices regarding the repair of recalled vehicles in order to prevent a similar tragedy. The Alliance commends these companies for voluntarily reforming their process. Last fall, the "Big Four" car rental companies – which account for 94% of rentals – announced an agreement to voluntarily stop renting recalled vehicles until they are repaired. Consequently, special attention needs to be paid to the potential for unintended consequences.

At a minimum, this legislation needs to recognize the adverse impacts noted above and include a pro-consumer provision that explicitly prohibits "loss of use" claims. This will reinforce the existing incentive toward speedy repair of the affected vehicle and minimize costs that ultimately would be passed to consumers. To their credit, some of the rental car companies have clearly stated that pursuing "loss of use" is not their intent and that they would be amenable to a provision prohibiting "loss of use" damages. S. 921 should be amended to include this prohibition. "Loss of use" simply cannot be contracted away without harming the consumer.

The Alliance stands ready to work with the Committee to address potential unintended impacts.

Auto safety is an incredibly important issue, and while the Congress, the Administration, auto manufacturers and other stakeholders have devoted enormous resources to reducing traffic deaths, the fact is that more than 30,000 people die in crashes every year. This Committee has a long history of focusing thoughtfully on policies that will significantly improve road safety. You deserve your share of credit for the historic decline in traffic deaths in the last seven years.

We recommend that the Committee consider further requiring rental companies to provide their customers with recall notices in the unusual case that a recalled vehicle has not yet been repaired. It would provide a very strong incentive for rental companies that have not taken the pledge to ground all recalled vehicles to repair them as quickly as possible, without creating two classes of vehicle owners under the recall statutes. We also recognize that there could be other ways to address the potential unintended consequences, and we are open to considering alternatives. The bottom line is that the Alliance stands ready to work with you to ensure that we can continue to achieve our shared goals without creating new, unintended, and negative consequences for the driving public.