

MOTOR VEHICLE SAFETY ACT OF 2010

JULY 14, 2010.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. WAXMAN, from the Committee on Energy and Commerce, submitted the following

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.R. 5381]

[Including cost estimate of the Congressional Budget Office]

The Committee on Energy and Commerce, to whom was referred the bill (H.R. 5381) to require motor vehicle safety standards relating to vehicle electronics and to reauthorize and provide greater transparency, accountability, and safety authority to the National Highway Traffic Safety Administration, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

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AMENDMENT

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the “Motor Vehicle Safety Act of 2010”.

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.
Sec. 2. Definitions.

TITLE I—VEHICLE ELECTRONICS AND SAFETY STANDARDS

Sec. 101. Electronics and Engineering Expertise.
Sec. 102. Brake override standard.
Sec. 103. Accelerator control systems.
Sec. 104. Pedal placement standard.
Sec. 105. Electronic systems performance standard.
Sec. 106. Push-button ignition systems standard.
Sec. 107. Transmission configuration standard.
Sec. 108. Vehicle event data recorders.
Sec. 109. Commercial motor vehicle rollover prevention and crash mitigation.
Sec. 110. Minimum sound requirement.
Sec. 111. Driver alcohol detection system research.

TITLE II—TRANSPARENCY AND ACCOUNTABILITY

Sec. 201. Public availability of early warning data.
Sec. 202. Improved NHTSA vehicle safety database.
Sec. 203. Promotion of vehicle defect reporting.
Sec. 204. NHTSA hotline for manufacturer, dealer, and mechanic personnel.
Sec. 205. Corporate responsibility for NHTSA reports.
Sec. 206. Appeal of defect petition rejection.
Sec. 207. Deadlines for rulemaking.
Sec. 208. Reports to Congress.
Sec. 209. Restriction on Covered Vehicle Safety Officials.

TITLE III—FUNDING

Sec. 301. Vehicle safety user fee.
Sec. 302. Authorization of appropriations.

TITLE IV—ENHANCED SAFETY AUTHORITIES

Sec. 401. Civil penalties.
Sec. 402. Imminent hazard authority.

TITLE V—ADDITIONAL PROVISIONS

Sec. 501. Preemption of State law.

SEC. 2. DEFINITIONS.

As used in this Act, the following definitions apply:

(1) The term “passenger motor vehicle” means a motor vehicle (as defined in section 30102(a)(6) of title 49, United States Code) that is rated at less than 10,000 pounds gross vehicular weight. Such term does not include—

- (A) a motorcycle;
- (B) a trailer; or
- (C) a low speed vehicle (as defined in section 571.3 in title 49, Code of Federal Regulations).

(2) The term “Secretary” means the Secretary of Transportation, acting through the Administrator of the National Highway Traffic Safety Administration.

TITLE I—VEHICLE ELECTRONICS AND SAFETY STANDARDS

SEC. 101. ELECTRONICS AND ENGINEERING EXPERTISE.

(a) CENTER FOR VEHICLE ELECTRONICS AND EMERGING TECHNOLOGIES.—

(1) **IN GENERAL.**—The Secretary shall establish, within the National Highway Traffic Safety Administration, a Center for Vehicle Electronics and Emerging Technologies. The Center shall—

(A) build, integrate, and aggregate the agency’s expertise in vehicle electronics and other new and emerging technologies;

(B) coordinate with all components of the agency responsible for vehicle safety, including research and development, rulemaking, and defects investigation; and

(C) conduct research into the use of lightweight materials in vehicles, including through the implementation of the Plastic and Composite Intensive Vehicle Safety Roadmap (Report No. DOT HS 810 863).

(2) **LIMITATION.**—Not more than 20 percent of the funds spent by the Center in a given year may be spent for the purposes described in paragraph (1)(C).

(b) **HONORS RECRUITMENT PROGRAM.**—

(1) **ESTABLISHMENT.**—The Secretary shall establish, within the National Highway Traffic Safety Administration, an honors program for engineering students and other students interested in vehicle safety that will enable them to train with engineers and other safety officials for a career in vehicle safety. The Secretary is authorized to provide a stipend to students during their participation in the program.

(2) **TARGETED STUDENT.**—The Secretary shall develop a plan to target and make an aggressive outreach to recruit the top 10 percent of science, technology, engineering and mathematics students attending—

(A) 1890 Land Grant Institutions (as defined in section 2 of the Agricultural Research, Extension, and Education Reform Act of 1998 (7 U.S.C. 7061));

(B) Predominantly Black Institutions (as defined in section 318 of the Higher Education Act of 1965 (20 U.S.C. 1059e));

(C) Tribal Colleges or Universities (as defined in section 316(b) of the Higher Education Act of 1965 (20 U.S.C. 1059c(b))); and

(D) Hispanic Serving Institutions (as defined in section 318 of the Higher Education Act of 1965 (20 U.S.C. 059e)).

SEC. 102. BRAKE OVERRIDE STANDARD.

(a) **UNINTENDED ACCELERATION.**—The Secretary shall initiate a rulemaking proceeding pursuant to section 30111 of title 49, United States Code, to prescribe or amend a Federal motor vehicle safety standard that would mitigate unintended acceleration in passenger motor vehicles. The standard—

(1) shall establish performance requirements that enable a driver to bring a passenger motor vehicle safely to a full stop by normal braking application even if the vehicle is simultaneously receiving accelerator input signals;

(2) may permit compliance with such requirements through a smart pedal system that requires brake pedal application, after a period of time determined by the Secretary, to override an accelerator input signal in order to stop the vehicle; and

(3) may permit vehicles to incorporate a means by which the driver would be able to temporarily disengage the technology or mechanism required under paragraph (1) to facilitate operations, such as maneuvering trailers, or other operating conditions, that may require the simultaneous operation of the service brake and accelerator pedal.

(b) **DEADLINE.**—The Secretary shall issue a final rule under subsection (a) within 1 year after the date of enactment of this Act.

SEC. 103. ACCELERATOR CONTROL SYSTEMS.

(a) **IN GENERAL.**—The Secretary shall initiate a rulemaking proceeding to amend Federal motor vehicle safety standard 124 to require that at least 1 redundant circuit or other mechanism be built into accelerator control systems, including systems controlled by electronic throttle, to maintain vehicle control in the event of failure or malfunction in the accelerator control system.

(b) **DEADLINE.**—The Secretary shall issue a final rule under subsection (a) within 2 years after the date of enactment of this Act.

(c) **COMBINED.**—If the Secretary considers it appropriate, the Secretary may combine the rulemaking proceeding required by subsection (a) with the rulemaking proceeding required by section 102.

SEC. 104. PEDAL PLACEMENT STANDARD.

(a) **CONSIDERATION OF RULE.**—Not later than 18 months after the date of the enactment of this Act, the Secretary shall initiate a rulemaking proceeding pursuant to section 30111 of title 49, United States Code, to consider prescribing or amending Federal motor vehicle safety standards to prevent the potential obstruction of pedal

movement in passenger motor vehicles by establishing minimum clearances for passenger motor vehicle foot pedals with respect to other pedals and the vehicle floor (including aftermarket floor coverings), taking into account various pedal mounting configurations.

(b) **DEADLINE FOR DECISION.**—If the Secretary determines such safety standards are reasonable, practicable, and appropriate, the Secretary shall prescribe the safety standards described in subsection (a) not later than 4 years after the date of enactment of this Act. If the Secretary determines that no additional safety standards are reasonable, practicable, and appropriate the Secretary shall transmit a report to the Committee on Energy and Commerce of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate describing the reasons such standards were not prescribed.

SEC. 105. ELECTRONIC SYSTEMS PERFORMANCE STANDARD.

(a) **IN GENERAL.**—Not later than 2 years after the enactment of this Act, the Secretary shall initiate a rulemaking proceeding pursuant to section 30111 of title 49, United States Code, to consider requiring electronic systems in passenger motor vehicles to meet minimum standards for performance. The Secretary shall consider the findings and recommendations of the National Academy of Sciences pursuant to its study of electronic vehicle controls and unintended acceleration. The standard may include requirements for electronic components, the interaction of those electronic components, or the effect of surrounding environments on those electronic systems.

(b) **DEADLINE FOR DECISION.**—If the Secretary determines such safety standards are reasonable, practicable, and appropriate, the Secretary shall prescribe the safety standards described in subsection (a) not later than 4 years after the date of enactment of this Act. If the Secretary determines that no additional safety standards are reasonable, practicable, and appropriate the Secretary shall transmit a report to the Committee on Energy and Commerce of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate describing the reasons such standards were not prescribed.

SEC. 106. PUSH-BUTTON IGNITION SYSTEMS STANDARD.

(a) **IN GENERAL.**—The Secretary shall initiate a rulemaking proceeding pursuant to section 30111 of title 49, United States Code, to prescribe or amend a Federal motor vehicle safety standard for passenger motor vehicles equipped with push-button ignition systems, to establish the standard operation and function of such systems when used by drivers, including drivers unfamiliar with the vehicle, in an emergency situation when the vehicle is in motion.

(b) **DEADLINE.**—The Secretary shall issue a final rule under subsection (a) within 2 years after the date of enactment of this Act.

SEC. 107. TRANSMISSION CONFIGURATION STANDARD.

(a) **IN GENERAL.**—The Secretary shall initiate a rulemaking proceeding pursuant to section 30111 of title 49, United States Code, to revise Federal motor vehicle safety standard 102, to improve the recognition of the gear selector positions for drivers, including drivers unfamiliar with the vehicle, and to improve the conspicuity of the neutral position.

(b) **DEADLINE.**—The Secretary shall issue a final rule under subsection (a) within 1 year after the date of enactment of this Act.

SEC. 108. VEHICLE EVENT DATA RECORDERS.

(a) **REQUIRED EVENT DATA RECORDERS.**—Not later than 6 months after the date of the enactment of this section, the Secretary shall modify the regulation contained in part 563 of title 49, Code of Federal Regulations, to require that passenger motor vehicles sold in the United States be equipped with an event data recorder that meets the requirements for event data recorders set forth in such part. The Secretary shall require manufacturers to include such event data recorders in their entire fleet beginning in model year 2015.

(b) **REQUIREMENTS FOR EVENT DATA RECORDERS.**—The Secretary shall initiate a rulemaking proceeding pursuant to section 30111 of title 49, United States Code, to require that the event data recorders required to be installed in passenger motor vehicles pursuant to subsection (a) continuously record vehicle operational data that can be stored and accessed for retrieval and analysis in accordance with subsections (c) and (d).

(c) **SPECIFICATIONS.**—The rule—

(1) shall require such recorders to store data covering a reasonable time before, during, and after a crash or airbag deployment, including information on engine performance, steering, braking, acceleration, vehicle speed, seat belt use, and airbag deployment level, deactivation status, deployment time, and deploy-

ment stage, and may require such recorders to store other data, such as data related to vehicle rollovers, as the Secretary considers appropriate;

(2) shall require such recorders to store data covering at least a sufficient period of time to capture all relevant data from a crash, including vehicle rollovers, and shall establish appropriate recording times for capturing data prior to a crash event;

(3) may require such recorders to capture certain events such as rapid deceleration and full braking lasting more than 10 seconds, even if there is not a crash or airbag deployment;

(4) may not require information recorded or transmitted by such data recorders to include the vehicle location, except for the purposes of emergency response;

(5) shall require that data stored on such recorders be accessible, regardless of vehicle manufacturer or model, with commercially available equipment;

(6) shall specify any data format requirements or other requirements, including a standardized data access port, the Secretary determines appropriate to facilitate accessibility and analysis; and

(7) shall require that such recorders meet at least the performance requirements for crash resistance included in part 563 of title 49, Code of Federal Regulations (as amended January 14, 2008), and, if the Secretary determines that these requirements do not provide adequate temperature, crash, or water resistance, shall establish such additional standards.

(d) LIMITATIONS ON INFORMATION RETRIEVAL.—

(1) OWNERSHIP OF DATA.—The rule issued under subsection (b) shall provide that any data in a data recorder required under the rule is the property of the owner or lessee of the motor vehicle in which the data recorder is installed.

(2) PRIVACY.—The rule issued under subsection (b) shall provide that information recorded or transmitted by such a data recorder may not be retrieved by a person other than the owner or lessee of the motor vehicle in which the recorder is installed unless—

(A) a court authorizes retrieval of the information in furtherance of a legal proceeding;

(B) the owner or lessee consents to the retrieval of the information for any purpose, including the purpose of diagnosing, servicing, or repairing the motor vehicle; or

(C) the information is retrieved by a government motor vehicle safety agency for the purpose of improving motor vehicle safety if the personally identifiable information of the owner, lessee, or driver of the vehicle and the vehicle identification number is not disclosed in connection with the retrieved information.

(3) TAMPER RESISTANCE.—The rule issued under subsection (b) shall establish performance requirements for preventing unauthorized access to the data stored on such event data recorder in order to protect the security, integrity, and authenticity of the data.

(e) DISCLOSURE OF EXISTENCE AND PURPOSE OF EVENT DATA RECORDER.—The rule issued under subsection (a) shall provide that any owner's manual or similar documentation provided to the first purchaser of a passenger motor vehicle for purposes other than resale shall disclose that the vehicle is equipped with such a data recorder and explain the purpose of the recorder.

(f) ACCESS TO EVENT DATA RECORDERS IN DEFECT INVESTIGATIONS.—Section 30166(c)(3)(C) of title 49, United States Code, is amended by inserting “, including any electronic data contained within the vehicle's diagnostic system or event data recorder” after “equipment”.

(g) DEADLINE FOR RULEMAKING.—The Secretary shall issue a final rule under subsection (a) not later than 3 years after the date of enactment of this Act.

SEC. 109. COMMERCIAL MOTOR VEHICLE ROLLOVER PREVENTION AND CRASH MITIGATION.

(a) RULEMAKING.—Not later than 6 months after the date of enactment of this Act, the Secretary shall initiate a rulemaking proceeding pursuant to section 30111 of title 49, United States Code, to prescribe or amend a Federal motor vehicle safety standard to reduce commercial motor vehicle rollover and loss of control crashes and mitigate deaths and injuries associated with such crashes for air-braked motor vehicles with a gross vehicle weight rating of more than 26,000 pounds.

(b) REQUIRED PERFORMANCE STANDARDS.—The rulemaking proceeding initiated under subsection (a) shall establish standards to reduce the occurrence of rollovers consistent with stability enhancing technologies that address both rollovers and loss-of-control crashes.

(c) DEADLINE.—The Secretary shall issue a final rule under subsection (a) not later than 18 months after the date of enactment of this Act.

SEC. 110. MINIMUM SOUND REQUIREMENT.

(a) **RULEMAKING.**—Not later than 18 months following the date of enactment of this Act the Secretary shall initiate a rulemaking proceeding under section 30111 of title 49, United States Code, to promulgate a motor vehicle safety standard to establish performance requirements for an alert sound that allows blind and other pedestrians to reasonably detect a nearby electric or hybrid vehicle operating below the cross-over speed, if any. Such standard—

(1) shall require new electric or hybrid vehicles to provide an alert sound conforming to the requirements of the motor vehicle safety standard established under this subsection;

(2) shall not require either driver or pedestrian activation of the alert sound;

(3) shall allow the pedestrian to reasonably detect a nearby electric or hybrid vehicle in critical operating scenarios, including but not limited to constant speed, accelerating, and decelerating;

(4) shall allow manufacturers to provide each vehicle with 1 or more alert sounds that comply with the motor vehicle safety standard at the time of manufacture; and

(5) shall require manufacturers to provide, within reasonable manufacturing tolerances, the same alert sound or set of alert sounds for all vehicles of the same make and model and shall prohibit manufacturers from providing any mechanism for anyone other than the manufacturer or the dealer to disable, alter, replace, or modify the alert sound or set of alert sounds, except that the manufacturer or dealer may alter, replace, or modify the alert sound or set of alert sounds in order to remedy a defect or non-compliance with the motor vehicle safety standard.

(b) **CONSIDERATION.**—When conducting the required rulemaking, the Secretary shall—

(1) determine the minimum level of an alert sound emitted from a motor vehicle that is necessary to provide blind and other pedestrians with the information needed to reasonably detect a nearby electric or hybrid vehicle operating at or below the cross-over speed, if any;

(2) determine the performance requirements for an alert sound that is recognizable to a pedestrian as a motor vehicle in operation; and

(3) consider the overall noise impact to streets and communities.

(c) **PHASE-IN REQUIRED.**—The motor vehicle safety standard prescribed pursuant to subsection (a) shall establish a phase-in period for compliance, as determined by the Secretary, and shall require full compliance with the required motor vehicle safety standard for motor vehicles manufactured on or after September 1 of the calendar year that begins 3 years after the date on which the final rule is issued.

(d) **CONSULTATION.**—When conducting the required study and rulemaking, the Secretary shall consult with—

(1) the Environmental Protection Agency to assure that the motor vehicle safety standard is consistent with existing noise requirements overseen by the Agency;

(2) consumer groups representing individuals who are blind;

(3) automobile manufacturers and professional organizations representing them; and

(4) technical standardization organizations responsible for measurement methods such as the Society of Automotive Engineers, the International Organization for Standardization, and the United Nations Economic Commission for Europe, World Forum for Harmonization of Vehicle Regulations.

(e) **DEADLINE.**—The Secretary shall issue a final rule under subsection (a) not later than 36 months after the date of enactment of this Act.

(f) **STUDY AND REPORT.**—Not later than 4 years after the date of enactment of this Act, the Secretary shall complete a study and report to Congress as to whether there exists a safety need to apply the motor vehicle safety standard required by subsection (a) to conventional motor vehicles. In the event that the Secretary determines there exists a safety need, the Secretary shall initiate rulemaking under section 30111 of title 49, United States Code to extend the standard to conventional motor vehicles.

(g) **DEFINITIONS.**—For purposes of the motor vehicle safety standard required under this section—

(1) the term “alert sound” means a vehicle-emitted sound that enables pedestrians to discern vehicle presence, direction, location, and operation;

(2) the term “cross-over speed” means the speed at which tire noise, wind resistance, or other factors eliminate the need for a separate alert sound, as determined by the Secretary;

(3) the term “conventional motor vehicle” means a motor vehicle powered by a gasoline, diesel, or alternative fueled internal combustion engine as its sole means of propulsion;

(4) the term “electric vehicle” means a motor vehicle with an electric motor as its sole means of propulsion; and

(5) the term “hybrid vehicle” means a motor vehicle which has more than one means of propulsion.

SEC. 111. DRIVER ALCOHOL DETECTION SYSTEM RESEARCH.

(a) RESEARCH.—The Secretary shall carry out a collaborative research effort to continue to explore the feasibility and the potential benefits of, and the public policy challenges associated with, more widespread deployment of in-vehicle technology to prevent alcohol-impaired driving.

(b) REPORT.—Not later than 1 year after the date of the enactment of this Act, the Secretary shall submit a report annually to the Committee on Energy and Commerce of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate—

(1) describing progress in carrying out the collaborative research effort; and

(2) including an accounting for the use of Federal funds obligated or expended in carrying out that effort.

(c) AUTHORIZATION.—From amounts appropriated under section 30104 of title 49, United States Code, the Secretary is authorized to expend \$8,000,000 during each of fiscal years 2011 through 2015 to conduct the research required under this section.

TITLE II—TRANSPARENCY AND ACCOUNTABILITY

SEC. 201. PUBLIC AVAILABILITY OF EARLY WARNING DATA.

(a) IN GENERAL.—Section 30166(m) of title 49, United States Code, is amended by in paragraph (4), by striking subparagraph (C) and inserting the following:

“(C) DISCLOSURE.—The information provided to the Secretary pursuant to this subsection shall be disclosed publicly unless exempt from disclosure under section 552(b) of title 5.”.

(b) REGULATIONS.—Not later than 2 years after the date of enactment of this Act, the Secretary shall issue regulations regarding public access to information submitted pursuant to section 30166(m). The Secretary may establish categories of information provided pursuant to such section that must be made available to the public and categories that are exempt from public disclosure under section 552(b) of title 5, United States Code.

(c) CONSULTATION.—In conducting the rulemaking required under subsection (a), the Secretary shall consult with the Director of the Office of Government Information Services within the National Archives and the Director of the Office of Information Policy of the Department of Justice.

(d) PRESUMPTION AND LIMITATION.—The Secretary shall issue the regulations with a presumption in favor of maximum public availability of information. The following types of information shall not be eligible for protection under section 552(b)(4) of title 5, United States Code, and shall not be withheld from public disclosure:

(1) Production information regarding passenger motor vehicles, information on incidents involving death or injury, and numbers of property damage claims.

(2) Aggregated numbers of consumer complaints.

(e) NULLIFICATION OF PRIOR REGULATIONS.—Beginning 2 years after the date of the enactment of this Act, the regulations establishing early warning reporting class determinations in Appendix C of section 512 of title 49, Code of Federal Regulations, shall have no force or effect.

SEC. 202. IMPROVED NHTSA VEHICLE SAFETY DATABASE.

(a) IN GENERAL.—Not later than 2 years after the date of the enactment of this Act, the Secretary shall improve public accessibility to information on the National Highway Traffic Safety Administration’s publicly accessible vehicle safety databases by—

(1) improving organization and functionality, including design features such as drop-down menus, and allowing for data to be searched, aggregated, and downloaded;

(2) providing greater consistency in presentation of vehicle safety issues; and

(3) improving searchability about specific vehicles and issues through standardization of commonly used search terms.

(b) **VEHICLE RECALL INFORMATION.**—The Secretary shall require that motor vehicle recall information be made available to consumers on the Internet, searchable by vehicle identification number in a format that preserves consumer privacy. The Secretary may initiate a rulemaking proceeding to require that such information be available on manufacturer websites or through other reasonable means.

(c) **ACCESSIBILITY OF MANUFACTURER COMMUNICATIONS.**—Section 30166(f) of title 49, United States Code, is amended by inserting “, and make available on a publicly accessible Internet website,” after “Secretary of Transportation”.

SEC. 203. PROMOTION OF VEHICLE DEFECT REPORTING.

Section 32302 of title 49, United States Code, is amended by adding at the end the following:

“(d) **MOTOR VEHICLE DEFECT REPORTING INFORMATION.**—

“(1) **RULEMAKING REQUIRED.**—Within 1 year after the date of enactment of the Motor Vehicle Safety Act of 2010 the Secretary shall prescribe regulations that require passenger motor vehicle manufacturers to affix, in the glove compartment or in another readily accessible location on the vehicle, a sticker, decal, or other device that provides, in simple and understandable language, information about how to submit a safety-related motor vehicle defect complaint with the National Highway Traffic Safety Administration. The information may not be placed on the label required by section 3 of the Automobile Information Disclosure Act (15 U.S.C. 1232).

“(2) **APPLICATION.**—The requirements established under paragraph (1) shall apply to passenger motor vehicles manufactured in model years beginning more than 1 year after the date on which a final rule is published under that paragraph.”.

SEC. 204. NHTSA HOTLINE FOR MANUFACTURER, DEALER, AND MECHANIC PERSONNEL.

The Secretary shall—

(1) establish a means by which mechanics, automobile dealership personnel, and automobile manufacturer personnel may contact the National Highway Traffic Safety Administration directly and confidentially regarding potential passenger automobile safety defects; and

(2) publicize the means for contacting the National Highway Traffic Safety Administration in a manner that targets mechanics, automobile dealership personnel, and manufacturer personnel.

SEC. 205. CORPORATE RESPONSIBILITY FOR NHTSA REPORTS.

(a) **IN GENERAL.**—Section 30166 of title 49, United States Code, is amended by adding at the end the following:

“(o) **CORPORATE RESPONSIBILITY FOR REPORTS.**—The Secretary shall require, for each company submitting information to the Secretary in response to a request for information in a safety or compliance investigation under this chapter, that a senior official responsible for safety residing in the United States certify that—

“(1) the signing official has reviewed the submission; and

“(2) based on the official’s knowledge, the submission does not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which such statements were made, not misleading.”.

(b) **CIVIL PENALTY.**—Section 30165(a) of title 49, United States Code, is amended—

(1) by striking “A person” in paragraph (3) and inserting “Except as provided in paragraph (4), a person”; and

(2) by adding at the end thereof the following:

“(4) **FALSE, MISLEADING, OR INCOMPLETE REPORTS.**—A person who knowingly and willfully submits materially false, misleading, or incomplete information to the Secretary, after certifying the same information as accurate and complete under the certification process established pursuant to section 30166(o), shall be subject to a civil penalty of not more than \$5,000 per day. The maximum penalty under this paragraph for a related series of daily violations is \$5,000,000.”.

SEC. 206. APPEAL OF DEFECT PETITION REJECTION.

Section 30162 of title 49, United States Code, is amended by adding at the end the following:

“(f) **JUDICIAL REVIEW.**—A decision of the Secretary to deny a petition filed under subsection (a)(2) of this section is agency action subject to judicial review under chapter 7 of title 5, and such action shall not be considered committed to agency discretion within the meaning of section 701(a)(2) of such title. A person aggrieved by the denial of a petition may obtain judicial review by filing an action in the court of appeals of the United States for the circuit in which the person resides or has its principal place of business or the United States Court of Appeals for the District

of Columbia Circuit not more than 180 days after notice of the denial of the petition is published in the Federal Register.”.

SEC. 207. DEADLINES FOR RULEMAKING.

If the Secretary determines that a deadline for a final rule under this Act, or an amendment made by this Act, cannot be met, the Secretary shall—

- (1) notify the Committee on Energy and Commerce of the House of Representatives and the Senate Committee on Commerce, Science, and Transportation and explain why that deadline cannot be met; and
- (2) establish a new deadline for that rule.

SEC. 208. REPORTS TO CONGRESS.

(a) **STUDY ON EARLY WARNING DATA.**—Not later than 3, 5, 7, and 9 years after the date of enactment of this Act, the Office of the Inspector General of the Department of Transportation shall complete a study of the utilization of Early Warning data by the National Highway Traffic Safety Administration (NHTSA). Each study shall evaluate the following:

- (1) The number and type of requests for information made by the NHTSA based on data received in the Early Warning Reporting system.
- (2) The number of safety defect investigations opened by NHTSA using any information reported to the agency through the Early Warning Reporting system.
- (3) The nature and vehicle defect category of all such safety defect investigations.
- (4) The number of investigations described in paragraph (2) that are subsequently closed without further action.
- (5) The duration of each investigation described in paragraph (2)
- (6) The percentage of each investigation that result in a finding of a safety defect or recall by the agency.
- (7) Other information the Office of the Inspector General deems appropriate.

(b) **REPORT ON OPERATIONS OF THE CENTER FOR VEHICLE ELECTRONICS AND EMERGING TECHNOLOGIES.**—Not later than 3 years after the date of enactment of this Act, the Secretary shall report to Congress regarding the operations of the Center for Vehicle Electronics and Emerging Technologies. Such report shall include information about the accomplishments of the Center, the role the Center plays in integrating and aggregating expertise across NHTSA, and priorities of the Center over the next 5 years.

(c) **STUDY OF CRASH DATA COLLECTION.**—Not later than 1 year after the date of enactment of this Act, the Secretary shall issue a report regarding the quality of data collected through the National Automotive Sampling System, including the Special Crash Investigations, and recommendations for improvements to this data collection program. The report shall include information regarding—

- (1) the analysis and conclusions NHTSA can reach based on the amount of data collected in a given year, and the additional analysis and conclusions NHTSA could reach if more crash investigations were conducted each year;
- (2) the number of investigations per year that would allow for optimal data analysis and crash information;
- (3) the results of a comprehensive review of the data elements collected from each crash to determine if additional data should be collected; which review shall include input from interested parties, such as suppliers, automakers, safety advocates, the medical community and research organizations; and
- (4) the resources that would be necessary for NHTSA to implement these recommendations.

(d) **SUBMISSION OF REPORTS.**—Each report shall be submitted to the Committee on Energy and Commerce of the House of Representatives and to the Committee on Commerce, Science, and Transportation of the Senate upon completion.

SEC. 209. RESTRICTION ON COVERED VEHICLE SAFETY OFFICIALS.

(a) **AMENDMENT.**—Subchapter I of chapter 301 of title 49, United States Code, is amended by adding at the end the following:

“§ 30107. Restriction on covered vehicle safety officials

“(a) **IN GENERAL.**—For a period of 1 year after the termination of his or her service or employment, a covered vehicle safety official shall not knowingly make, with the intent to influence, any communication to or appearance before any officer or employee of the National Highway Transportation Safety Administration on behalf of any manufacturer subject to regulation under this chapter in connection with any matter involving vehicle safety on which such person seeks official action by any officer or employee of the National Highway Transportation Safety Administration.

“(b) NO EFFECT ON SECTION 207.—This section does not expand, contract, or otherwise affect the application of any waiver or criminal penalties under section 207 of title 18, United States Code.

“(c) EFFECTIVE DATE.—This section shall apply to covered vehicle safety officials who terminate service or employment with the National Highway Transportation Safety Administration after the date of enactment of the Motor Vehicle Safety Act of 2010.

“(d) DEFINITION.—In this section, the term ‘covered vehicle safety official’ means any officer or employee of the National Highway Transportation Safety Administration who, within the final 12 months of his or her service or employment with the agency, serves or served in a technical or legal capacity, and whose job responsibilities include or included vehicle safety defect investigation, vehicle safety compliance, vehicle safety rulemaking, or vehicle safety research, and any officer or employee of the National Highway Transportation Safety Administration serving in a supervisory or management capacity over such officers or employees.

“(e) SPECIAL RULE FOR DETAILEES.—For purposes of this section, a person who is detailed from one department, agency, or other entity to another department, agency, or other entity shall, during the period such person is detailed, be deemed to be an officer or employee of both departments, agencies, or such entities.

“(f) EXCEPTION FOR TESTIMONY.—Nothing in this section shall prevent an individual from giving testimony under oath, or from making statements required to be made under penalty of perjury.”.

(b) CIVIL PENALTY.—Section 30165(a) of title 49, United States Code, as amended by section 205, is further amended by adding at the end the following:

“(5) SECTION 30107.—A person who violates section 30107 shall be subject to a civil penalty of not more than \$55,000.”.

(c) CONFORMING AMENDMENT.—The table of contents for chapter 301 of title 49, United States Code, is amended by inserting after the item relating to section 30106 the following:

“30107. Restriction on covered vehicle safety officials.”.

TITLE III—FUNDING

SEC. 301. VEHICLE SAFETY USER FEE.

(a) AMENDMENT.—Subchapter I of chapter 301 of title 49, United States Code, is amended by adding at the end the following:

“§ 30108. Vehicle safety user fee

“(a) ESTABLISHMENT OF FUND.—There is established in the Treasury of the United States a separate account for the deposit of fees under this section to be known as the Vehicle Safety Fund.

“(b) ASSESSMENT AND COLLECTION OF VEHICLE SAFETY FEES.—Beginning 1 year after the date of enactment of the Motor Vehicle Safety Act of 2010, the Secretary shall assess and collect, in accordance with this section, a vehicle safety user fee from the manufacturer for each motor vehicle that is certified as compliant with applicable motor vehicle safety standards pursuant to section 30115.

“(c) DEPOSIT.—The Secretary shall deposit any fees collected pursuant to subsection (b) into the Vehicle Safety Fund established by subsection (a).

“(d) USE.—Amounts in the Vehicle Safety Fund shall be available to the Secretary, as provided in subsection (i), for making expenditures to meet the obligations of the United States to carry out vehicle safety programs of the National Highway Traffic Safety Administration.

“(e) VEHICLE SAFETY USER FEE.—

“(1) FIRST, SECOND, AND THIRD YEAR FEES.—The fee assessed under this section for the first three years shall be as follows:

“(A) \$3 for each vehicle certified during the first year in which such fees are assessed.

“(B) \$6 for each vehicle certified during the second year in which such fees are assessed.

“(C) \$9 for each vehicle certified during the third year in which such fees are assessed.

“(2) SUBSEQUENT YEARS.—The fee assessed under this section for each vehicle certified after the third year in which such fees are assessed shall be adjusted by the Secretary by notice published in the Federal Register to reflect the total percentage change that occurred in the Consumer Price Index for all Urban Consumers for the 12 month period ending June 30 preceding the fiscal year for which fees are being established.

“(3) PAYMENT.—The Secretary shall require payment of fees under this section on a quarterly basis and not later than one quarter after the date on which the fee was assessed.

“(f) RULEMAKING.—Not later than 9 months after the date of enactment of the Motor Vehicle Safety Act of 2010, the Secretary shall promulgate rules governing the collection and payment of fees pursuant to this section.

“(g) LIMITATIONS.—

“(1) IN GENERAL.—Fees under this section shall not be collected for a fiscal year unless appropriations for vehicle safety programs of the National Highway Traffic Safety Administration for such fiscal year (excluding the amount of fees appropriated for such fiscal year) are equal to or greater than the amount of appropriations for vehicle safety programs of the National Highway Traffic Safety Administration for fiscal year 2010.

“(2) AUTHORITY.—If the Secretary does not assess fees under this section during any portion of a fiscal year because of paragraph (1), the Secretary may assess and collect such fees, without any modification in the rate, at a later date in such fiscal year notwithstanding the provisions of subsection (e)(3) relating to the date fees are to be paid.

“(h) COLLECTION OF UNPAID FEES.—In any case where the Secretary does not receive payment of a fee assessed under this section within 30 days after it is due, such fee shall be treated as a claim of the United States Government subject to subchapter II of chapter 37 of title 31.

“(i) AUTHORIZATION OF APPROPRIATIONS.—In addition to funds appropriated under section 30104, there is authorized to be appropriated from the Vehicle Safety Fund to the Secretary for the National Highway Traffic Safety Administration for each fiscal year in which fees are collected under subsection (b) an amount equal to the total amount collected during the previous fiscal year from fees assessed pursuant to this section. Such amounts are authorized to remain available until expended.

“(j) CREDITING AND AVAILABILITY OF FEES.—Fees authorized under subsection (b) shall be collected and available for obligation only to the extent and in the amount provided in advance in appropriations Acts.”.

(b) CLERICAL AMENDMENT.—The analysis for such chapter is amended by inserting after the item relating to section 30106 the following:

“30108. Vehicle safety user fee.”.

SEC. 302. AUTHORIZATION OF APPROPRIATIONS.

Section 30104 of title 49, United States Code, is amended—

(1) by striking “\$98,313,500”; and

(2) by striking “in each fiscal year beginning” and all that follows and inserting “and to carry out the Motor Vehicle Safety Act of 2010—

“(1) \$200,000,000 for fiscal year 2011;

“(2) \$240,000,000 for fiscal year 2012; and

“(3) \$280,000,000 for fiscal year 2013.”.

TITLE IV—ENHANCED SAFETY AUTHORITIES

SEC. 401. CIVIL PENALTIES.

(a) IN GENERAL.—Section 30165 of title 49, United States Code, is amended—

(1) in subsection (a)(1)—

(A) in the first sentence by striking “\$5,000” and inserting “\$25,000”; and

(B) in the third sentence, by striking “\$15,000,000” and inserting “\$200,000,000”;

(2) in subsection (a)(3)—

(A) in the second sentence by striking “\$5,000” and inserting “\$25,000” ; and

(B) in the third sentence, by striking “\$15,000,000” and inserting “\$200,000,000”; and

(3) by striking subsection (c) and inserting the following:

“(c) RELEVANT FACTORS IN DETERMINING AMOUNT OF PENALTY OR COMPROMISE.—In determining the amount of a civil penalty or compromise, the nature, circumstances, extent, and gravity of the violation shall be considered. This shall include, where appropriate, the nature of the defect or noncompliance, the severity of the risk of injury, the occurrence or absence of injury, the number of motor vehicles or items of motor vehicle equipment distributed with the defect or noncompliance, the existence of an imminent hazard, the appropriateness of such penalty in relation to the size of the business of the person charged, recognizing the potential for undue adverse economic impacts on small businesses, and such other factors as appropriate.”.

(b) CIVIL PENALTY CRITERIA.—Not later than 1 year after the date of enactment of this Act, and in accordance with the procedures of section 553 of title 5, United States Code, the Secretary shall issue a final regulation providing its interpretation of the penalty factors described in section 30165(c) of title 49, United States Code, as added by subsection (a).

(c) CONSTRUCTION.—Nothing in this section shall be construed as preventing the imposition of penalties under section 30165 of title 49, United States Code, prior to the issuance of a final rule pursuant to subsection (b).

SEC. 402. IMMINENT HAZARD AUTHORITY.

(a) IN GENERAL.—Section 30118(b) of title 49, United States Code, is amended by adding at the end the following:

“(3) IMMINENT HAZARD ORDERS.—If the Secretary of Transportation in making a decision under subsection (a) also initially decides that such defect or non-compliance presents a substantial likelihood of death or serious injury to the public, the Secretary shall notify such manufacturer. The opportunity for the manufacturer to present information, views, and arguments in accordance with paragraph (1) shall be provided as soon as practicable but not later than 10 calendar days after the initial decision. The Secretary shall expedite proceedings for a decision and order under paragraph (1) and shall, as appropriate, issue an imminent hazard order.”

(b) PROCEDURES.—Not later than 2 years after the date of enactment of this Act, the Secretary shall issue procedures for the issuance and enforcement of imminent hazard orders under section 30118(b)(3) of title 49, United States Code (as added by subsection (a)), consistent with the provisions of chapter 301 of such title and the Administrative Procedures Act.

TITLE V—ADDITIONAL PROVISIONS

SEC. 501. PREEMPTION OF STATE LAW.

(a) CONGRESSIONAL AUTHORIZATION REQUIRED.—Notwithstanding any other provision of law, the Secretary shall not publish a rule pursuant to section 30111 of title 49, United States Code, that addresses the issue of preemption of State law seeking damages for personal injury, death, or property damage unless Congress expressly authorizes the Secretary to address such preemption.

(b) PREEMPTION LANGUAGE.—Any language addressing the issue of preemption contained within regulations issued by the Secretary pursuant to section 30111 of title 49, United States Code, during the years 2005 through 2008 shall not be considered in determining whether any such rule preempts any action under State law seeking damages for personal injury, death, or property damage unless Congress expressly authorizes the Secretary to address such preemption.

PURPOSE AND SUMMARY

H.R. 5381, the “Motor Vehicle Safety Act of 2010”, was introduced on May 25, 2010, by Reps. Henry A. Waxman (D-CA), Bobby L. Rush (D-IL), John D. Dingell (D-MI), Bart Stupak (D-MI), and Bruce Braley (D-IA), and referred to the Committee on Energy and Commerce.

The goal of H.R. 5381 is to improve auto safety and strengthen the vehicle safety programs at the National Highway Traffic Safety Administration (NHTSA). The bill has four key objectives: (1) improve electronics expertise at NHTSA and develop new vehicle safety standards; (2) increase transparency and accountability in auto safety; (3) provide additional resources to NHTSA; and (4) improve the enforcement authorities of NHTSA.

BACKGROUND AND NEED FOR LEGISLATION

NHTSA has broad jurisdiction relating to motor vehicles. The agency was established in 1970 with a mission to save lives, prevent injuries, and reduce the economic cost of crashes through education, research, safety standards, and enforcement of laws, regulations, and standards. NHTSA conducts crash data analysis, re-

search, and rulemaking for vehicle safety, and is responsible for overseeing issues related to fuel economy, child car seat performance, and tire safety. NHTSA is also responsible for collecting consumer complaint data, investigating potential vehicle defects, and overseeing recalls of vehicles with safety defects. In addition, the agency administers grants to states to enforce laws requiring seat belts and prohibiting drunk driving.

During the first half of 2010, increased public attention has focused on NHTSA's enforcement role. Following several recalls of Toyota vehicles due to concerns about unintended acceleration, the Committee on Energy and Commerce's Subcommittee on Oversight and Investigations and Subcommittee on Commerce, Trade, and Consumer Protection held hearings.¹ During these hearings, concerns were raised about whether NHTSA has the resources and the capability to conduct in-depth investigations into new and complex systems in vehicles, and to evaluate manufacturers' claims about the operations of their vehicles. The Motor Vehicle Safety Act of 2010 was drafted to address these and other concerns about the ability of NHTSA to ensure the safety of vehicles on the road.

COMMITTEE CONSIDERATION

On April 29, 2010, Reps. Waxman and Rush released a discussion draft of the Motor Vehicle Safety Act of 2010. A hearing on the discussion draft was held by the Subcommittee on Commerce, Trade, and Consumer Protection on May 6, 2010. On May 20, 2010, the Subcommittee on Commerce, Trade, and Consumer Protection met in open markup session to consider a Committee print of the Motor Vehicle Safety Act of 2010. The Committee print was approved and forwarded favorably to the full Committee by a voice vote.

On May 25, 2010, H.R. 5381, the "Motor Vehicle Safety Act of 2010", was introduced in the House by Reps. Waxman, Rush, Dingell, Stupak, and Braley of Iowa. The full Committee met in open markup session on May 25, 2010, to consider the legislation. Subsequently, the Committee agreed to order H.R. 5381 favorably reported to the House, amended, by a roll call vote of 31 yeas and 21 nays.

COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list each record vote on the motion to report legislation and amendments thereto. A motion by Mr. Waxman ordering H.R. 5381 reported to the House, amended, was approved by a record vote of 31 yeas and 21 nays. The following

¹Hearings held by the Committee on Energy and Commerce since the Toyota recalls began include: Subcommittee on Oversight and Investigations, Hearing on Response by Toyota and NHTSA to Incidents of Sudden Unintended Acceleration (Feb. 23, 2010); Subcommittee on Commerce, Trade, and Consumer Protection, Hearing on NHTSA Oversight: The Road Ahead (Mar. 11, 2010); Subcommittee on Commerce, Trade, and Consumer Protection, Legislative Hearing on H.R. _____, the Motor Vehicle Safety Act (May 6, 2010); Subcommittee on Oversight and Investigations, Hearing on Update on Toyota and NHTSA's Response to the Problem of Sudden Unintended Acceleration (May 20, 2010). In addition, the Subcommittee on Commerce, Trade, and Consumer Protection held a hearing on auto safety in 2009. Subcommittee on Commerce, Trade, and Consumer Protection, Auto Safety: Existing Mandates and Emerging Issues (May 18, 2009).

are the recorded votes taken during Committee consideration, including the names of those members voting for and against:

COMMITTEE ON ENERGY AND COMMERCE – 111TH CONGRESS
ROLL CALL VOTE # 171

BILL: H.R. 5381, the "Motor Vehicle Safety Act of 2010".

AMENDMENT: An amendment by Mr. Gingrey, #6, to, on page 26, beginning on line 10, strike "2010—" and all that follows through line 13 and insert "2010, 136,800,000" for fiscal year 2011.

DISPOSITION: NOT AGREED TO by a roll call vote of 15 yeas to 18 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Waxman		X		Mr. Barton			
Mr. Dingell		X		Mr. Hall			
Mr. Markey		X		Mr. Upton	X		
Mr. Boucher		X		Mr. Stearns			
Mr. Pallone				Mr. Whitfield	X		
Mr. Gordon				Mr. Shimkus	X		
Mr. Rush				Mr. Shadegg			
Ms. Eshoo				Mr. Blunt	X		
Mr. Stupak		X		Mr. Buyer			
Mr. Engel				Mr. Radanovich	X		
Mr. Green		X		Mr. Pitts			
Ms. DeGette				Ms. Bono Mack	X		
Mrs. Capps		X		Mr. Terry	X		
Mr. Doyle				Mr. Rogers	X		
Ms. Harman ¹				Mrs. Myrick	X		
Ms. Schakowsky				Mr. Sullivan	X		
Mr. Gonzalez				Mr. Murphy of PA			
Mr. Inslee				Mr. Burgess	X		
Ms. Baldwin		X		Ms. Blackburn			
Mr. Ross				Mr. Gingrey	X		
Mr. Weiner				Mr. Scalise	X		
Mr. Matheson		X		Mr. Griffith	X		
Mr. Butterfield				Mr. Latta	X		
Mr. Melancon							
Mr. Barrow		X					
Mr. Hill		X					
Ms. Matsui		X					
Mrs. Christensen							
Ms. Castor							
Mr. Sarbanes		X					
Mr. Murphy of CT		X					
Mr. Space		X					
Mr. McNerney		X					
Ms. Sutton		X					
Mr. Braley		X					
Mr. Welch							

05/26/2010

¹ Rep. Harman, in a letter dated May 25, 2010, informed the Committee that it was her intention to recuse herself from consideration of H.R. 5381, based upon her earlier letter to the Committee of February 22, 2010.

**COMMITTEE ON ENERGY AND COMMERCE – 111TH CONGRESS
ROLL CALL VOTE # 172**

BILL: H.R. 5381, the "Motor Vehicle Safety Act of 2010".

AMENDMENT: An amendment to the Waxman amendment # 1, by Mr. Blunt, # 1a, to strike section 501, Preemption of State Law.

DISPOSITION: NOT AGREED TO by a roll call vote of 18 yeas to 28 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Waxman		X		Mr. Barton	X		
Mr. Dingell		X		Mr. Hall			
Mr. Markey		X		Mr. Upton	X		
Mr. Boucher	X			Mr. Stearns			
Mr. Pallone				Mr. Whitfield	X		
Mr. Gordon				Mr. Shimkus	X		
Mr. Rush		X		Mr. Shadegg			
Ms. Eshoo		X		Mr. Blunt	X		
Mr. Stupak		X		Mr. Buyer			
Mr. Engel		X		Mr. Radanovich	X		
Mr. Green		X		Mr. Pitts	X		
Ms. DeGette		X		Ms. Bono Mack	X		
Mrs. Capps		X		Mr. Terry	X		
Mr. Doyle		X		Mr. Rogers	X		
Ms. Harman ¹				Mrs. Myrick	X		
Ms. Schakowsky		X		Mr. Sullivan	X		
Mr. Gonzalez		X		Mr. Murphy of PA			
Mr. Inslee		X		Mr. Burgess	X		
Ms. Baldwin		X		Ms. Blackburn			
Mr. Ross				Mr. Gingrey	X		
Mr. Weiner				Mr. Scalise	X		
Mr. Matheson		X		Mr. Griffith	X		
Mr. Butterfield		X		Mr. Latta	X		
Mr. Melancon		X					
Mr. Barrow		X					
Mr. Hill		X					
Ms. Matsui		X					
Mrs. Christensen							
Ms. Castor							
Mr. Sarbanes		X					
Mr. Murphy of CT		X					
Mr. Space		X					
Mr. McNerney		X					
Ms. Sutton		X					
Mr. Braley		X					
Mr. Welch		X					

05/26/2010

¹ Rep. Harman, in a letter dated May 25, 2010, informed the Committee that it was her intention to recuse herself from consideration of H.R. 5381, based upon her earlier letter to the Committee of February 22, 2010.

COMMITTEE ON ENERGY AND COMMERCE – 111TH CONGRESS
ROLL CALL VOTE # 173

BILL: H.R. 5381, the "Motor Vehicle Safety Act of 2010".

AMENDMENT: An amendment by Mr. Rogers, # 7, to insert at the end of title II, a new section 20_,
 Effect of Federal Ownership Interest.

DISPOSITION: NOT AGREED TO by a roll call vote of 17 yeas to 23 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Waxman		X		Mr. Barton	X		
Mr. Dingell		X		Mr. Hall			
Mr. Markey		X		Mr. Upton	X		
Mr. Boucher				Mr. Stearns			
Mr. Pallone				Mr. Whitfield	X		
Mr. Gordon				Mr. Shimkus			
Mr. Rush				Mr. Shadegg			
Ms. Eshoo		X		Mr. Blunt	X		
Mr. Stupak		X		Mr. Buyer			
Mr. Engel		X		Mr. Radanovich	X		
Mr. Green				Mr. Pitts	X		
Ms. DeGette		X		Ms. Bono Mack	X		
Mrs. Capps		X		Mr. Terry	X		
Mr. Doyle		X		Mr. Rogers	X		
Ms. Harman ¹				Mrs. Myrick	X		
Ms. Schakowsky		X		Mr. Sullivan			
Mr. Gonzalez				Mr. Murphy of PA			
Mr. Inslee		X		Mr. Burgess	X		
Ms. Baldwin		X		Ms. Blackburn	X		
Mr. Ross				Mr. Gingrey	X		
Mr. Weiner		X		Mr. Scalise	X		
Mr. Matheson				Mr. Griffith	X		
Mr. Butterfield		X		Mr. Latta	X		
Mr. Melancon		X					
Mr. Barrow	X						
Mr. Hill							
Ms. Matsui		X					
Mrs. Christensen							
Ms. Castor							
Mr. Sarbanes		X					
Mr. Murphy of CT		X					
Mr. Space		X					
Mr. McNerney		X					
Ms. Sutton		X					
Mr. Braley		X					
Mr. Welch		X					

05/26/2010

¹ Rep. Harman, in a letter dated May 25, 2010, informed the Committee that it was her intention to recuse herself from consideration of H.R. 5381, based upon her earlier letter to the Committee of February 22, 2010.

**COMMITTEE ON ENERGY AND COMMERCE – 111TH CONGRESS
ROLL CALL VOTE # 174**

BILL: H.R. 5381, the "Motor Vehicle Safety Act of 2010".

AMENDMENT: An amendment by Mr. Scalise, # 10, to strike section 301, Vehicle Safety User Fee.

DISPOSITION: NOT AGREED TO by a roll call vote of 20 yeas to 29 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Waxman		X		Mr. Barton	X		
Mr. Dingell		X		Mr. Hall			
Mr. Markey		X		Mr. Upton	X		
Mr. Boucher		X		Mr. Stearns			
Mr. Pallone				Mr. Whitfield	X		
Mr. Gordon				Mr. Shimkus	X		
Mr. Rush		X		Mr. Shadegg	X		
Ms. Eshoo		X		Mr. Blunt			
Mr. Stupak		X		Mr. Buyer			
Mr. Engel		X		Mr. Radanovich	X		
Mr. Green		X		Mr. Pitts	X		
Ms. DeGette		X		Ms. Bono Mack	X		
Mrs. Capps		X		Mr. Terry	X		
Mr. Doyle		X		Mr. Rogers	X		
Ms. Harman ¹				Mrs. Myrick	X		
Ms. Schakowsky		X		Mr. Sullivan	X		
Mr. Gonzalez		X		Mr. Murphy of PA			
Mr. Inslee		X		Mr. Burgess	X		
Ms. Baldwin		X		Ms. Blackburn	X		
Mr. Ross				Mr. Gingrey	X		
Mr. Weiner		X		Mr. Scalise	X		
Mr. Matheson		X		Mr. Griffith	X		
Mr. Butterfield		X		Mr. Latta	X		
Mr. Melancon		X					
Mr. Barrow		X					
Mr. Hill		X					
Ms. Matsui		X					
Mrs. Christensen		X					
Ms. Castor		X					
Mr. Sarbanes		X					
Mr. Murphy of CT		X					
Mr. Space	X						
Mr. McNemey	X						
Ms. Sutton		X					
Mr. Braley		X					
Mr. Welch							

05/26/2010

¹ Rep. Harman, in a letter dated May 25, 2010, informed the Committee that it was her intention to recuse herself from consideration of H.R. 5381, based upon her earlier letter to the Committee of February 22, 2010.

COMMITTEE ON ENERGY AND COMMERCE – 111TH CONGRESS
ROLL CALL VOTE # 175

BILL: H.R. 5381, the "Motor Vehicle Safety Act of 2010".

MOTION: A motion by Mr. Waxman to order H.R. 5381 favorably reported to the House, amended.
(Final Passage)

DISPOSITION: AGREED TO by a roll call vote of 31 yeas to 21 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Waxman	X			Mr. Barton		X	
Mr. Dingell	X			Mr. Hall			
Mr. Markey	X			Mr. Upton		X	
Mr. Boucher	X			Mr. Stearns		X	
Mr. Pallone				Mr. Whitfield		X	
Mr. Gordon				Mr. Shimkus		X	
Mr. Rush	X			Mr. Shadegg		X	
Ms. Eshoo	X			Mr. Blunt		X	
Mr. Stupak	X			Mr. Buyer		X	
Mr. Engel	X			Mr. Radanovich			
Mr. Green	X			Mr. Pitts		X	
Ms. DeGette	X			Ms. Bono Mack		X	
Mrs. Capps	X			Mr. Terry		X	
Mr. Doyle	X			Mr. Rogers		X	
Ms. Harman ¹				Mrs. Myrick		X	
Ms. Schakowsky	X			Mr. Sullivan		X	
Mr. Gonzalez	X			Mr. Murphy of PA		X	
Mr. Inslee				Mr. Burgess		X	
Ms. Baldwin	X			Ms. Blackburn		X	
Mr. Ross				Mr. Gingrey		X	
Mr. Weiner	X			Mr. Scalise		X	
Mr. Matheson	X			Mr. Griffith		X	
Mr. Butterfield	X			Mr. Latta		X	
Mr. Melancon	X						
Mr. Barrow	X						
Mr. Hill	X						
Ms. Matsui	X						
Mrs. Christensen	X						
Ms. Castor	X						
Mr. Sarbanes	X						
Mr. Murphy of CT	X						
Mr. Space	X						
Mr. McNerney	X						
Ms. Sutton	X						
Mr. Braley	X						
Mr. Welch	X						

05/26/2010

¹ Rep. Harman, in a letter dated May 25, 2010, informed the Committee that it was her intention to recuse herself from consideration of H.R. 5381, based upon her earlier letter to the Committee of February 22, 2010.

COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

In compliance with clause 3(c)(1) of rule XIII and clause (2)(b)(1) of rule X of the Rules of the House of Representatives, the oversight findings and recommendations of the Committee are reflected in the descriptive portions of this report, including the need to improve auto safety and strengthen vehicle safety programs.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

Regarding compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee adopts as its own the estimate on H.R. 5381 prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

In accordance with clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the performance goals and objectives of H.R. 5381 are reflected in the descriptive portions of this report, including to improve auto safety and strengthen vehicle safety programs.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee must include a statement citing the specific powers granted to Congress to enact the law proposed by H.R. 5381. Article I, section 8, clauses 3 and 18 of the Constitution of the United States grants the Congress the power to enact this law.

EARMARKS AND TAX AND TARIFF BENEFITS

H.R. 5381 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9 of rule XXI of the Rules of the House of Representatives.

FEDERAL ADVISORY COMMITTEE STATEMENT

The Committee finds that the legislation does not establish or authorize the establishment of an advisory committee within the definition of 5 U.S.C. App., section 5(b) of the Federal Advisory Committee Act.

APPLICABILITY OF LAW TO THE LEGISLATIVE BRANCH

Section 102(b)(3) of Public Law 104-1 requires a description of the application of this bill to the legislative branch where the bill relates to terms and conditions of employment or access to public services and accommodations. H.R. 5381 contains no such provisions.

FEDERAL MANDATES STATEMENT

Section 423 of the Congressional Budget and Impoundment Control Act of 1974 (as amended by section 101(a)(2) of the Unfunded Mandates Reform Act, P.L. 104-4) requires a statement on whether

the provisions of the report include unfunded mandates. In compliance with this requirement the Committee adopts as its own the estimates of federal mandates prepared by the Director of the Congressional Budget Office.

COMMITTEE COST ESTIMATE

Pursuant to clause 3(d)(2) of rule XIII of the Rules of the House of Representatives, the Committee adopts as its own the cost estimate of H.R. 5381 prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

With respect to the requirements of clause (3)(c)(3) of rule XIII of the Rules of the House of Representatives and section 402 of the Congressional Budget Act of 1974, the Committee has received the following cost estimate for H.R. 5381 from the Director of the Congressional Budget Office:

JUNE 25, 2010.

Hon. HENRY A. WAXMAN,
*Chairman, Committee on Energy and Commerce,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 5381, the Motor Vehicle Safety Act of 2010.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Sarah Puro.

Sincerely,

DOUGLAS W. ELMENDORF.

Enclosure.

H.R. 5381—Motor Vehicle Safety Act of 2010

Summary: CBO estimates that H.R. 5381 would authorize net appropriations of \$1.1 billion over the 2011–2015 period for the National Highway Traffic Safety Administration (NHTSA) to establish new safety standards for certain vehicles, to complete safety research, and to make certain information more readily available to the public. The bill would authorize fees to be levied on new vehicles offered for sale in the United States. Under the bill, those fees would be collected only if provided for in appropriation acts, and any collections would be credited to those appropriation acts. On balance, CBO estimates that implementing the bill would cost \$876 million over the 2010–2015 period, assuming appropriation of the necessary amounts.

Pay-as-you-go procedures apply because enacting the legislation could affect revenues. The bill would increase certain civil penalties paid by vehicle manufacturers; such collections are classified as revenues in the budget. Based on information from NHTSA about historical penalty collections, CBO estimates that the expanded penalties would increase revenues by \$1 million per year over the 2011–2020 period.

H.R. 5381 contains an intergovernmental mandate as defined in the Unfunded Mandates Reform Act (UMRA) because it would pre-

empt state laws relating to the safety standards for motor vehicles established in the bill. While that preemption would limit the application of state law, CBO estimates that it would impose no duty on state, local, or tribal governments that would result in additional spending.

By placing new requirements on manufacturers of motor vehicles, H.R. 5381 would impose private-sector mandates as defined in UMRA. Based on information from NHTSA and industry sources, CBO estimates that the aggregate cost of the mandates on private-sector entities would exceed the annual threshold established in UMRA for such mandates (\$141 million in 2010, adjusted annually for inflation).

Estimated cost to the Federal Government: The estimated budgetary impact of H.R. 5381 is shown in the following table. The costs of this legislation fall within budget function 400 (transportation).

	By fiscal year, in millions of dollars—					
	2011	2012	2013	2014	2015	2011–2015
CHANGES IN SPENDING SUBJECT TO APPROPRIATION ¹						
NHTSA Motor Safety Operations:						
Estimated Authorization Level	200	240	280	285	291	1,296
Estimated Outlays	116	193	247	275	286	1,117
Vehicle Safety Fees (Offsetting Collections):						
Estimated Authorization Level	–21	–81	–134	–149	–153	–538
Estimated Outlays	–21	–81	–134	–149	–153	–538
Vehicle Safety Fees (Spending):						
Estimated Authorization Level	0	21	81	134	149	385
Estimated Outlays	0	12	52	101	132	297
Total Changes:						
Estimated Authorization Level	179	180	227	270	287	1,143
Estimated Outlays	95	124	165	227	265	876

Note: NHTSA = National Highway Traffic Safety Administration.

¹ CBO estimates that enacting H.R. 5381 also would increase revenues by \$1 million a year over the 2011–2020 period.

Basis of estimate: For this estimate, CBO assumes that H.R. 5381 will be enacted in 2010 and that the authorized and estimated amounts will be appropriated each year. Estimates of spending are based on historical spending patterns for similar programs.

Spending subject to appropriation

CBO estimates that H.R. 5381 would authorize appropriations of about \$1.1 billion over the 2011–2015 period for certain NHTSA operations. The bill also would establish fees levied on new vehicles offered for sale in the United States. Those fees would be credited against appropriations. As a result, assuming appropriation of the specified and estimated amounts, CBO estimates that implementing the bill would cost \$876 million over the 2010–2015 period.

NHTSA Motor Safety Operations. H.R. 5381 would require NHTSA to create new and update existing safety regulations that apply to motor vehicles. The agency would be required to complete new research or speed up other research on several topics related to the safety of motor vehicles. NHTSA would also be required to make certain information more readily available to the public, expand the capabilities of its existing telephone call center, and submit several new reports to the Congress. The bill would specifically authorize the appropriation of \$720 million over the 2011–2013 pe-

riod. Because the legislation would authorize appropriation of amounts collected from the vehicle safety user fees over the 2012–2015 period, CBO assumes that NHTSA’s motor safety operations would continue after 2013. Based on information from NHTSA and assuming appropriation of the specified amounts and the amounts estimated to be necessary, CBO estimates that those operations would cost about \$1.1 billion over the 2010–2015 period.

Vehicle Safety User Fee. The bill would establish a “vehicle safety user fee” that would be imposed on manufacturers of new vehicles certified to meet safety standards for sale in the United States. The bill specifies that the fee would be \$3 per vehicle in 2011, increasing to \$9 per vehicle in 2013. After 2013, the amount of the fee would be determined by the Department of Transportation. Because the fee would be collected and available for obligation only to the extent and in the amount provided in advance in appropriation acts, these fees would be treated as offsetting collections (a credit against discretionary spending).

Starting in 2012, the bill would authorize the appropriation of the amounts collected from fees in the prior fiscal year. Based on industry forecasts, CBO estimates that the number of vehicles offered for sale in the United States will be about 12 million in 2010 and grow to about 17 million by 2015. Based on this information and assuming appropriation of the estimated amounts, CBO estimates that the fee collections would total \$538 million over the 2011–2015 period. Of those amounts, we estimate that \$385 million would be authorized to be appropriated over the 2012–2015 period. Based on the historical spending pattern for NHTSA programs, CBO estimates that implementing those provisions would result in net discretionary savings of \$241 million over the 2010–2015 period because spending would lag behind the expected fee collections (as shown in the table above).

Revenues

H.R. 5381 would increase civil penalties paid by vehicle manufacturers who violate certain regulations governing motor vehicle safety. Collections of civil fines are recorded as revenues and deposited in the Treasury. Based on information from NHTSA about historical penalty collections and the number and type of violations of safety regulations, CBO estimates that the expanded penalties would increase revenues by \$1 million per year over the 2011–2020 period.

Pay-as-you-go considerations: The Statutory Pay-As-You-Go Act of 2010 establishes budget reporting and enforcement procedures for legislation affecting direct spending or revenues. The net changes in revenues that are subject to those pay-as-you-go procedures are shown in the following table.

CBO ESTIMATE OF PAY-AS-YOU-GO EFFECTS FOR H.R. 5381 AS ORDERED REPORTED BY THE
HOUSE COMMITTEE ON ENERGY AND COMMERCE ON MAY 25, 2010

	By fiscal year, in millions of dollars—												
	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2010– 2015	2010– 2020
NET DECREASE (–) IN THE DEFICIT													
Statutory Pay-As- You-Go Impact	0	–1	–1	–1	–1	–1	–1	–1	–1	–1	–1	–5	–10

Estimated impact on state, local, and tribal governments: H.R. 5381 contains an intergovernmental mandate as defined in UMRA because it would preempt state laws relating to the safety standards for motor vehicles established in the bill. While that preemption would limit the application of state law, CBO estimates that it would impose no duty on state, local, or tribal governments that would result in additional spending.

Estimated impact on the private sector: By placing new requirements on manufacturers of motor vehicles, H.R. 5381 would impose private-sector mandates as defined in UMRA. CBO estimates that the aggregate cost of the mandates on private-sector entities would exceed the annual threshold established in UMRA for such mandates (\$141 million in 2010, adjusted annually for inflation) in at least one of the first five years after the bill is enacted.

Safety user fees

The bill would require manufacturers to pay a user fee for each motor vehicle certified and delivered for sale in the United States. The user fee would be set at \$3 per vehicle in 2011, increasing to \$9 per vehicle in 2013, and subsequently would be adjusted for inflation as determined by the Department of Transportation. CBO estimates that the fees paid by manufacturers would amount to \$538 million over the first five years the mandate is in effect.

Stability control systems

H.R. 5381 would require manufacturers of large commercial motor vehicles to comply with new performance standards that are consistent with stability-enhancing technologies that address roll-overs and loss-of-control crashes. Based on information from NHTSA, CBO expects that manufacturers would probably have to install stability control systems in new tractor trailers and motorcoaches to comply with the new standard.

Based on information from NHTSA and industry sources on the number of tractor trailers produced per year, the costs of stability-enhancing technology, and the proportion of vehicles that already include such technology, CBO estimates that the cost of the mandate for manufacturers of tractor-trailers could amount to at least \$100 million per year.

According to information from industry sources, all new motorcoaches already include stability-enhancing technology. Thus, CBO expects that the incremental cost to motorcoach manufacturers would be minimal, if any.

Passenger motor vehicle safety standards

The bill would direct NHTSA to establish safety standards for such things as configuring and labeling gear-shift controls, control-

ling vehicles with push-button ignition systems, and fail-safe systems for accelerator control systems. NHTSA estimates that 12 million to 17 million passenger motor vehicles will be offered for sale annually over the next five years. Based on information from NHTSA and industry sources about the cost of potential requirements, CBO estimates that the cost to the industry to comply with the new standards could be significant. Because the types of safety requirements implemented would be determined by future regulations, CBO cannot estimate the cost of the mandates.

Event data recorders

The bill would require manufacturers to install event data recorders (EDRs) in all passenger vehicles sold in the United States beginning in model year 2015. EDRs record information from a vehicle before, during, and after a safety event such as when an air bag is deployed. Information from industry sources indicates that it would cost each manufacturer \$6 million in development costs and \$5.50 per car to install EDRs that meet existing standards. However, EDRs would have to meet standards to be established by NHTSA related to the types of events recorded, the length of the recording for each event, and the types of data stored. Because such standards would be determined by future regulations, CBO cannot estimate the cost of this mandate.

Hybrid or electric vehicle sounds

H.R. 5381 would require hybrid and electric vehicles to generate sounds that alert blind pedestrians when such a vehicle is operating nearby. Based on information from NHTSA and industry sources on the number of vehicles that could be affected and the potential cost of installing such devices, CBO estimates that the cost of this mandate would be small relative to the annual threshold.

Other mandates

CBO estimates that the costs of several private-sector mandates imposed by the bill would be minimal. For example, the legislation would require manufacturers of motor vehicles to:

- Make information about recalls available to customers on the internet;
- Place information about submitting a safety-related complaint to NHTSA in each automobile; and
- Have a senior official responsible for safety residing in the United States who would certify certain information submitted to the Department of Transportation.

Estimate prepared by: Federal Spending: Sarah Puro; Federal Revenues: Zachary Epstein; Impact on State, Local, and Tribal Governments: Ryan Miller; Impact on the Private Sector: Samuel Wice.

Estimate approved by: Theresa Gullo, Deputy Assistant Director for Budget Analysis.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short title; table of contents

Section 1 designates that the short title may be cited as the “Motor Vehicle Safety Act of 2010”. The section also provides the table of contents for the Act.

Section 2. Definitions

Section 2 defines “passenger motor vehicle” for purposes of the bill. The term is defined to mean a motor vehicle that is less than 10,000 pounds gross vehicular weight, and specifically excludes motorcycles, trailers, and low speed vehicles. The term “Secretary” means the Secretary of Transportation, acting through the Administrator of the National Highway Traffic Safety Administration (NHTSA).

TITLE I—VEHICLE ELECTRONICS AND SAFETY STANDARDS

Section 101. Electronics and engineering expertise

Section 101 establishes a new Center for Vehicle Electronics and Emerging Technologies within NHTSA to strengthen expertise in new technologies across all of the agency’s vehicle safety components, and to study the use of lightweight materials in vehicles. In addition, the section creates an honors recruitment program at NHTSA for engineers with an interest in vehicle safety. The Secretary is authorized to provide stipends for fellowships, and is directed to develop a plan to target recruitment at colleges and universities that have historically served minority populations.

Section 102. Brake override standard

Section 102 requires NHTSA to issue a federal motor vehicle safety standard to mitigate unintended acceleration by requiring that all vehicles be equipped with a technology that would allow a vehicle to come to a full stop with normal braking pressure even if the accelerator is in operation.

Section 103. Accelerator control systems

Section 103 requires NHTSA to update its federal motor vehicle safety standard governing accelerator control systems to require that redundancies be built into electronic throttle control systems to enable a driver to maintain control in the event that there is a failure or malfunction in the system.

Section 104. Pedal placement standard

Section 104 directs NHTSA to consider issuing a federal motor vehicle safety standard to prevent pedal entrapment as a source of unintended acceleration by establishing minimum clearances for foot pedals with respect to other pedals, the vehicle floor, and any other potential obstructions. If NHTSA determines that a new rule would not be reasonable, practical, or appropriate, the agency must submit a report to the appropriate congressional committees.

Section 105. Electronic systems performance standard

Section 105 directs NHTSA to consider issuing a federal motor vehicle safety standard establishing minimum performance stand-

ards for electronic systems in passenger vehicles. The section directs NHTSA to consider the findings of a study of electronic vehicle controls currently being undertaken by the National Academy of Sciences at the request of NHTSA. The section gives NHTSA discretion to consider rules relating to electronic components, the interaction of electronic components, or the effects of the surrounding environment on electronic systems. If NHTSA determines that a new rule would not be reasonable, practical, or appropriate, the agency must submit a report to the appropriate congressional committees.

Section 106. Push-button ignition systems standard

Section 106 requires NHTSA to issue a federal motor vehicle safety standard to establish the standard operation and performance of push-button ignition systems when used by drivers in an emergency situation when the vehicle is in motion.

Section 107. Transmission configuration standard

Section 107 requires NHTSA to update its federal motor vehicle safety standard for transmission configuration to improve the recognition of the gear selector position for drivers, including drivers unfamiliar with the vehicle.

Section 108. Vehicle event data recorders

Subsection 108(a) requires NHTSA issue a rule requiring that all vehicles be equipped with an event data recorder by model year 2015 that meets the requirements of the existing voluntary standard issued by NHTSA. Subsection (b) requires that NHTSA issue a federal motor vehicle safety standard for the performance of event data recorders required to be installed in new vehicles. Subsection (c) establishes specifications for the rule to be issued under (b), including a requirement that the event data recorders store information for a sufficient period to cover an entire crash, including vehicle rollovers, a requirement that the data be accessible with commercially available equipment in a specified format and available through a standardized data access port; and a direction that NHTSA consider requiring such event data recorders to store additional data elements beyond those required under its existing voluntary standard. Subsection (d) establishes limitations on the retrieval of data collected by event data recorders with regard to ownership, privacy, and tamper resistance. The subsection provides that the data in a data recorder is the property of the owner or lessee of the motor vehicle. Subsection (e) calls on NHTSA to require that manufacturers disclose to the first purchaser of a vehicle, the existence and purpose of the event data recorder. Subsection (f) ensures that NHTSA has access to data contained in vehicle diagnostic systems and event data recorders in the course of an inspection conducted during an investigation pursuant to section 30166(c) of Title 49, United States Code.

Section 109. Commercial motor vehicle rollover prevention and crash mitigation

Section 109 directs NHTSA to initiate a rulemaking, within six months of enactment of the bill, to establish a federal motor vehicle safety standard for rollover prevention in heavy vehicles.

Section 110. Minimum sound requirements

Section 110 directs NHTSA to issue a federal motor vehicle safety standard establishing a minimum sound that hybrid and electric vehicles must emit in order to enable blind and other pedestrians to detect a moving vehicle.

Section 111. Driver alcohol detection system research

Section 111 authorizes \$8 million per year for five years to support research on advanced alcohol detection technology as part of the Driver Alcohol Detection System for Safety (DADSS), a program that is currently being run by NHTSA in collaboration with outside organizations. The Committee recognizes the lifesaving potential of equipping vehicles with technology to detect whether a driver is at or above the legal limit of .08 Blood Alcohol Content (BAC), and, if so, prevent the car from starting. The legislation only relates to the research and development of this technology. It is the Committee's intent that such technology must be developed to accurately detect the statutory .08 BAC limit and must be non-intrusive, fast, reliable, repeatable, and cost effective before its voluntary deployment can be considered for the general public. The Committee believes this research will determine whether or not such technology is feasible.

TITLE II—TRANSPARENCY AND ACCOUNTABILITY

Section 201. Public availability of early warning data

Section 201 changes the presumption of disclosure under the TREAD Act² to require that information submitted to NHTSA by manufacturers through the Early Warning Reporting system be disclosed unless it is exempt from disclosure under the Freedom of Information Act. The provision further requires NHTSA to rewrite the agency's rule on "Confidential Business Information" with a presumption in favor of maximum public availability of Early Warning Reporting information. It is the Committee's intent to increase public access to information that NHTSA has improperly designated as confidential business information pursuant to section 553(b)(4) of title 5, U.S. Code in the past. Information that meets the definition of confidential business information under that section would continue to be eligible for withholding.

Section 202. Improved NHTSA vehicle safety database

Section 202(a) requires NHTSA to improve public accessibility of information posted to its website, including by ensuring that all data is searchable and can be aggregated and downloaded. Section 202(b) calls on NHTSA to require that vehicle recall information be made available to consumers on the Internet, searchable by vehicle identification number in a format that preserves consumer privacy. The subsection allows NHTSA to require that this information be posted on manufacturer websites or through other reasonable means. Recognizing the legitimate use of a complete Vehicle Identification Number (VIN) for vehicle history research, it is the Committee's intent that the format ensures consumer privacy by not

²The Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act of 2000, Pub. L. 106-414.

posting complete VIN numbers on a public website. Section 202(c) requires that manufacturers make available to the public the copies of communications about defects and noncompliance that they provide to NHTSA pursuant to section 30166(f) of title 49, U.S. Code.

Section 203. Promotion of vehicle defect reporting

Section 203 requires that all manufacturers affix, in the glove compartment or in another readily accessible location in the car, a sticker or other means that provides information about how to submit a safety-related complaint to NHTSA.

Section 204. NHTSA hotline for manufacturer, dealer, and mechanic personnel

Section 204 requires that NHTSA establish a hotline by which manufacturer, dealer, and mechanic personnel can directly report potential safety defects on a confidential basis.

Section 205. Corporate responsibility for NHTSA reports

Section 205 requires that a manufacturer have a senior official in the United States who is responsible for safety certify the accuracy and completeness of all responses to NHTSA's requests for information relating to safety investigations. This section augments the existing criminal penalties for making false statements by establishing civil penalties for knowingly providing false, misleading, or incomplete reports.

Section 206. Appeal of defect petition rejection

Section 206 allows an individual whose petition for an investigation into a potential defect is denied to obtain judicial review of that decision in the appropriate court of appeals.

Section 207. Deadlines for rulemaking

Section 207 establishes procedures for NHTSA to notify Congress if any deadline for a rulemaking provided in the bill cannot be met.

Section 208. Reports to Congress

Section 208 directs the Secretary to prepare reports to Congress regarding the use of Early Warning Reporting data and regarding the quality and quantity of data collected through the National Automotive Sampling System. The section further directs the Inspector General to report to Congress on the operations of the Center for Vehicle Electronics and Emerging Technologies.

Section 209. Restriction on covered vehicle safety officials

Section 209 limits the revolving door between NHTSA and the auto industry by restricting certain post-employment activities of NHTSA employees responsible for vehicle safety. The section defines "covered vehicle safety official" to mean any officer or employee of NHTSA who, within the final 12 months of his or her service or employment with the agency, serves or served in a technical or legal capacity, and whose job responsibilities include or included vehicle safety defect investigation, vehicle safety compliance, vehicle safety rulemaking, or vehicle safety research, and any officer or employee of NHTSA serving in a supervisory or manage-

ment capacity over such officers or employees. Such officials are prevented from making, for one year following the end of their employment, any communication to or appearance before NHTSA on behalf of a manufacturer subject to regulation by NHTSA in connection with any matter involving vehicle safety on which such person seeks official action by any officer or employee of NHTSA.

TITLE III—FUNDING

Section 301. Vehicle safety user fee

Section 301 establishes a vehicle safety user fee paid by the vehicle manufacturer for each vehicle certified to meet the federal motor vehicle safety standards for sale in the United States. This fee begins at \$3 per vehicle and increases to \$9 per vehicle after three years. The fee would supplement existing appropriations and support NHTSA's vehicle safety programs.

Section 302. Authorization of appropriations

Section 302 authorizes appropriations for NHTSA's vehicle safety programs. The authorization would provide \$200 million in FY2011, \$240 million in FY2012, and \$280 million in FY2013.

TITLE IV—ENHANCED SAFETY AUTHORITIES

Section 401. Civil penalties

Section 401 increases the civil penalty NHTSA can seek per violation from the current \$5,000 to \$25,000, and sets a maximum civil penalty of \$200 million.

Section 402. Imminent hazard authority

Section 402 provides NHTSA with the authority to expedite a recall order in the case of an imminent hazard of death or serious injury. Independent experts consulted by the Committee have expressed the view that judicial review of an order under 49 U.S.C. § 30118(b), including an imminent hazard order under new paragraph (3), would occur under 5 U.S.C. § 706 of the Administrative Procedure Act, which has an arbitrary and capricious standard of review. In litigation that occurred more than 35 years ago, *U.S. v. General Motors Corp.*, 518 F.2d 420 (D.C. Cir. 1975), the D.C. Circuit appears to have taken the position that enforcement of section 30118 orders under 49 U.S.C. § 30163 would be in a de novo enforcement proceeding, rather than in a challenge to the agency's order based upon a review of the agency's administrative record underlying the order. The agency, for reasons that are not stated, did not challenge the Court's approach. Given developments in administrative law since that decision, there is uncertainty about the appropriate procedures the agency should follow in issuing imminent hazard orders and the standard of review that courts should apply in enforcement actions. New subparagraph (B) of section 30118(b)(3) is intended to provide the agency an opportunity to take a fresh look at this issue. The procedures that the agency promulgates must be consistent with both the requirements of the bill and the Administrative Procedure Act.

TITLE V—ADDITIONAL PROVISIONS

Section 501. Preemption of State law

Section 501 overturns preemption provisions in NHTSA regulations promulgated during the years 2005 through 2008 and prevents NHTSA from explicitly preempting state tort law without congressional direction.

EXPLANATION OF AMENDMENTS

The following amendments were adopted by the full Committee during consideration of H.R. 5381 and are also described in the section-by-section analysis of the legislation. Each amendment was approved by a voice vote of the Committee:

Mr. Waxman offered an amendment that contained four provisions. The amendment directs the newly established Center for Electronics and Emerging Technologies to study lightweight materials, including by implementing the Plastic and Composite Intensive Vehicle Safety Roadmap. The amendment limits the Center to spending 20% or less of its budget on this aspect of its work. The amendment inserts a new section 109 into the bill that directs NHTSA to issue safety standards for rollover prevention in heavy vehicles in a timely manner. The amendment inserts a new section 209 into the bill that limits the revolving door between NHTSA and the auto industry by restricting certain post-employment activities of NHTSA employees responsible for vehicle safety. And the amendment inserts a new section 501 into the bill that overturns preemption provisions in NHTSA regulations during the years 2005–2008 and prevents NHTSA from explicitly preempting state tort law without congressional direction.

Mr. Stearns offered an amendment that directs the Secretary to issue a standard establishing a minimum sound that hybrid and electric vehicles must emit in order to enable blind and other pedestrians to detect a moving vehicle.

Mr. Sarbanes offered an amendment to fund research into the feasibility and potential benefits of in-vehicle technology to prevent alcohol impaired driving.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

TITLE 49, UNITED STATES CODE

* * * * *

SUBTITLE VI—MOTOR VEHICLE and DRIVER PROGRAMS

* * * * *

PART A—GENERAL

* * * * *

CHAPTER 301—MOTOR VEHICLE SAFETY

SUBCHAPTER I—GENERAL

Sec.

30101. Purpose and policy.

* * * * *

30107. *Restriction on covered vehicle safety officials.*

30108. *Vehicle safety user fee.*

* * * * *

SUBCHAPTER I—GENERAL

* * * * *

§ 30104. Authorization of appropriations

There is authorized to be appropriated to the Secretary **[\$98,313,500]** for the National Highway Traffic Safety Administration to carry out this part **[in each fiscal year beginning in fiscal year 1999 and ending in fiscal year 2001.]** and to carry out the *Motor Vehicle Safety Act of 2010*—

- (1) \$200,000,000 for fiscal year 2011;
- (2) \$240,000,000 for fiscal year 2012; and
- (3) \$280,000,000 for fiscal year 2013.

* * * * *

§ 30107. Restriction on covered vehicle safety officials

(a) *IN GENERAL.*—For a period of 1 year after the termination of his or her service or employment, a covered vehicle safety official shall not knowingly make, with the intent to influence, any communication to or appearance before any officer or employee of the National Highway Transportation Safety Administration on behalf of any manufacturer subject to regulation under this chapter in connection with any matter involving vehicle safety on which such person seeks official action by any officer or employee of the National Highway Transportation Safety Administration.

(b) *NO EFFECT ON SECTION 207.*—This section does not expand, contract, or otherwise affect the application of any waiver or criminal penalties under section 207 of title 18, United States Code.

(c) *EFFECTIVE DATE.*—This section shall apply to covered vehicle safety officials who terminate service or employment with the National Highway Transportation Safety Administration after the date of enactment of the Motor Vehicle Safety Act of 2010.

(d) *DEFINITION.*—In this section, the term “covered vehicle safety official” means any officer or employee of the National Highway Transportation Safety Administration who, within the final 12 months of his or her service or employment with the agency, serves or served in a technical or legal capacity, and whose job responsibilities include or included vehicle safety defect investigation, vehicle safety compliance, vehicle safety rulemaking, or vehicle safety research, and any officer or employee of the National Highway Trans-

portation Safety Administration serving in a supervisory or management capacity over such officers or employees.

(e) *SPECIAL RULE FOR DETAILEES.*—For purposes of this section, a person who is detailed from one department, agency, or other entity to another department, agency, or other entity shall, during the period such person is detailed, be deemed to be an officer or employee of both departments, agencies, or such entities.

(f) *EXCEPTION FOR TESTIMONY.*—Nothing in this section shall prevent an individual from giving testimony under oath, or from making statements required to be made under penalty of perjury.

§ 30108. Vehicle safety user fee

(a) *ESTABLISHMENT OF FUND.*—There is established in the Treasury of the United States a separate account for the deposit of fees under this section to be known as the Vehicle Safety Fund.

(b) *ASSESSMENT AND COLLECTION OF VEHICLE SAFETY FEES.*—Beginning 1 year after the date of enactment of the Motor Vehicle Safety Act of 2010, the Secretary shall assess and collect, in accordance with this section, a vehicle safety user fee from the manufacturer for each motor vehicle that is certified as compliant with applicable motor vehicle safety standards pursuant to section 30115.

(c) *DEPOSIT.*—The Secretary shall deposit any fees collected pursuant to subsection (b) into the Vehicle Safety Fund established by subsection (a).

(d) *USE.*—Amounts in the Vehicle Safety Fund shall be available to the Secretary, as provided in subsection (i), for making expenditures to meet the obligations of the United States to carry out vehicle safety programs of the National Highway Traffic Safety Administration.

(e) *VEHICLE SAFETY USER FEE.*—

(1) *FIRST, SECOND, AND THIRD YEAR FEES.*—The fee assessed under this section for the first three years shall be as follows:

(A) \$3 for each vehicle certified during the first year in which such fees are assessed.

(B) \$6 for each vehicle certified during the second year in which such fees are assessed.

(C) \$9 for each vehicle certified during the third year in which such fees are assessed.

(2) *SUBSEQUENT YEARS.*—The fee assessed under this section for each vehicle certified after the third year in which such fees are assessed shall be adjusted by the Secretary by notice published in the Federal Register to reflect the total percentage change that occurred in the Consumer Price Index for all Urban Consumers for the 12 month period ending June 30 preceding the fiscal year for which fees are being established.

(3) *PAYMENT.*—The Secretary shall require payment of fees under this section on a quarterly basis and not later than one quarter after the date on which the fee was assessed.

(f) *RULEMAKING.*—Not later than 9 months after the date of enactment of the Motor Vehicle Safety Act of 2010, the Secretary shall promulgate rules governing the collection and payment of fees pursuant to this section.

(g) *LIMITATIONS.*—

(1) *IN GENERAL.*—Fees under this section shall not be collected for a fiscal year unless appropriations for vehicle safety

programs of the National Highway Traffic Safety Administration for such fiscal year (excluding the amount of fees appropriated for such fiscal year) are equal to or greater than the amount of appropriations for vehicle safety programs of the National Highway Traffic Safety Administration for fiscal year 2010.

(2) AUTHORITY.—If the Secretary does not assess fees under this section during any portion of a fiscal year because of paragraph (1), the Secretary may assess and collect such fees, without any modification in the rate, at a later date in such fiscal year notwithstanding the provisions of subsection (e)(3) relating to the date fees are to be paid.

(h) COLLECTION OF UNPAID FEES.—In any case where the Secretary does not receive payment of a fee assessed under this section within 30 days after it is due, such fee shall be treated as a claim of the United States Government subject to subchapter II of chapter 37 of title 31.

(i) AUTHORIZATION OF APPROPRIATIONS.—In addition to funds appropriated under section 30104, there is authorized to be appropriated from the Vehicle Safety Fund to the Secretary for the National Highway Traffic Safety Administration for each fiscal year in which fees are collected under subsection (b) an amount equal to the total amount collected during the previous fiscal year from fees assessed pursuant to this section. Such amounts are authorized to remain available until expended.

(j) CREDITING AND AVAILABILITY OF FEES.—Fees authorized under subsection (b) shall be collected and available for obligation only to the extent and in the amount provided in advance in appropriations Acts.

SUBCHAPTER II—STANDARDS AND COMPLIANCE

* * * * *

§ 30118. Notification of defects and noncompliance

(a) * * *

(b) DEFECT AND NONCOMPLIANCE PROCEEDINGS AND ORDERS.—(1)
* * *

* * * * *

(3) IMMINENT HAZARD ORDERS.—If the Secretary of Transportation in making a decision under subsection (a) also initially decides that such defect or noncompliance presents a substantial likelihood of death or serious injury to the public, the Secretary shall notify such manufacturer. The opportunity for the manufacturer to present information, views, and arguments in accordance with paragraph (1) shall be provided as soon as practicable but not later than 10 calendar days after the initial decision. The Secretary shall expedite proceedings for a decision and order under paragraph (1) and shall, as appropriate, issue an imminent hazard order.

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SUBCHAPTER IV—ENFORCEMENT AND ADMINISTRATIVE

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§ 30162. Petitions by interested persons for standards and enforcement

(a) * * *

* * * * *

(f) JUDICIAL REVIEW.—A decision of the Secretary to deny a petition filed under subsection (a)(2) of this section is agency action subject to judicial review under chapter 7 of title 5, and such action shall not be considered committed to agency discretion within the meaning of section 701(a)(2) of such title. A person aggrieved by the denial of a petition may obtain judicial review by filing an action in the court of appeals of the United States for the circuit in which the person resides or has its principal place of business or the United States Court of Appeals for the District of Columbia Circuit not more than 180 days after notice of the denial of the petition is published in the Federal Register.

* * * * *

§ 30165. Civil penalty

(a) CIVIL PENALTIES.—

(1) IN GENERAL.—A person that violates any of section 30112, 30115, 30117 through 30122, 30123(d), 30125(c), 30127, or 30141 through 30147, or a regulation prescribed thereunder, is liable to the United States Government for a civil penalty of not more than **[\$5,000]** \$25,000 for each violation. A separate violation occurs for each motor vehicle or item of motor vehicle equipment and for each failure or refusal to allow or perform an act required by any of those sections. The maximum penalty under this subsection for a related series of violations is **[\$15,000,000]** \$200,000,000.

* * * * *

(3) SECTION 30166.—**[A person]** *Except as provided in paragraph (4), a person* who violates section 30166 or a regulation prescribed under that section is liable to the United States Government for a civil penalty for failing or refusing to allow or perform an act required under that section or regulation. The maximum penalty under this paragraph is **[\$5,000]** \$25,000 per violation per day. The maximum penalty under this paragraph for a related series of daily violations is **[\$15,000,000]** \$200,000,000.

(4) FALSE, MISLEADING, OR INCOMPLETE REPORTS.—*A person who knowingly and willfully submits materially false, misleading, or incomplete information to the Secretary, after certifying the same information as accurate and complete under the certification process established pursuant to section 30166(o), shall be subject to a civil penalty of not more than \$5,000 per day. The maximum penalty under this paragraph for a related series of daily violations is \$5,000,000.*

(5) SECTION 30107.—*A person who violates section 30107 shall be subject to a civil penalty of not more than \$55,000.*

* * * * *

[(c) CONSIDERATIONS.—In determining the amount of a civil penalty or compromise, the appropriateness of the penalty or com-

promise to the size of the business of the person charged and the gravity of the violation shall be considered.】

(c) *RELEVANT FACTORS IN DETERMINING AMOUNT OF PENALTY OR COMPROMISE.*—*In determining the amount of a civil penalty or compromise, the nature, circumstances, extent, and gravity of the violation shall be considered. This shall include, where appropriate, the nature of the defect or noncompliance, the severity of the risk of injury, the occurrence or absence of injury, the number of motor vehicles or items of motor vehicle equipment distributed with the defect or noncompliance, the existence of an imminent hazard, the appropriateness of such penalty in relation to the size of the business of the person charged, recognizing the potential for undue adverse economic impacts on small businesses, and such other factors as appropriate.*

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§ 30166. Inspections, investigations, and records

(a) * * *

* * * * *

(c) **MATTERS THAT CAN BE INSPECTED AND IMPOUNDMENT.**—In carrying out this chapter, an officer or employee designated by the Secretary of Transportation—

(1) * * *

* * * * *

(3) at reasonable times, in a reasonable way, and on display of proper credentials and written notice to an owner, operator, or agent in charge, may—

(A) * * *

* * * * *

(C) inspect with reasonable promptness that vehicle or equipment, *including any electronic data contained within the vehicle's diagnostic system or event data recorder*; and

* * * * *

(f) **PROVIDING COPIES OF COMMUNICATIONS ABOUT DEFECTS AND NONCOMPLIANCE.**—A manufacturer shall give the Secretary of Transportation, *and make available on a publicly accessible Internet website*, a true or representative copy of each communication to the manufacturer's dealers or to owners or purchasers of a motor vehicle or replacement equipment produced by the manufacturer about a defect or noncompliance with a motor vehicle safety standard prescribed under this chapter in a vehicle or equipment that is sold or serviced.

* * * * *

(m) **EARLY WARNING REPORTING REQUIREMENTS.**—

(1) * * *

* * * * *

(4) **HANDLING AND UTILIZATION OF REPORTING ELEMENTS.**—

(A) * * *

* * * * *

【(C) **DISCLOSURE.**—None of the information collected pursuant to the final rule promulgated under paragraph

(1) shall be disclosed pursuant to section 30167(b) unless the Secretary determines the disclosure of such information will assist in carrying out sections 30117(b) and 30118 through 30121.】

(C) *DISCLOSURE.*—*The information provided to the Secretary pursuant to this subsection shall be disclosed publicly unless exempt from disclosure under section 552(b) of title 5.*

* * * * *
(o) *CORPORATE RESPONSIBILITY FOR REPORTS.*—*The Secretary shall require, for each company submitting information to the Secretary in response to a request for information in a safety or compliance investigation under this chapter, that a senior official responsible for safety residing in the United States certify that—*

(1) the signing official has reviewed the submission; and

(2) based on the official’s knowledge, the submission does not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which such statements were made, not misleading.

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PART C—INFORMATION, STANDARDS, AND REQUIREMENTS

* * * * *
CHAPTER 323—CONSUMER INFORMATION

* * * * *
§ 32302. Passenger motor vehicle information

(a) * * *

* * * * *
(d) *MOTOR VEHICLE DEFECT REPORTING INFORMATION.*—

(1) RULEMAKING REQUIRED.—*Within 1 year after the date of enactment of the Motor Vehicle Safety Act of 2010 the Secretary shall prescribe regulations that require passenger motor vehicle manufacturers to affix, in the glove compartment or in another readily accessible location on the vehicle, a sticker, decal, or other device that provides, in simple and understandable language, information about how to submit a safety-related motor vehicle defect complaint with the National Highway Traffic Safety Administration. The information may not be placed on the label required by section 3 of the Automobile Information Disclosure Act (15 U.S.C. 1232).*

(2) APPLICATION.—*The requirements established under paragraph (1) shall apply to passenger motor vehicles manufactured in model years beginning more than 1 year after the date on which a final rule is published under that paragraph.*

* * * * *

DISSENTING VIEWS

SUMMARY

We, the undersigned Members of the Committee on Energy and Commerce, offer the following comments on H.R. 5381, the Motor Vehicle Safety Act of 2010. The version adopted by the Committee is an improvement over the original draft and there are several provisions we support. We nonetheless oppose H.R. 5381 first, on process grounds, and second, based on insurmountable policy differences on key provisions. These disagreements stem from our philosophically different approaches on how to improve automobile safety that will result in significant savings of lives as well as our difference of opinion regarding the appropriate size and scope of the Federal government.

The process was less than ideal. The original draft of this legislation was written without Republican input, nor were Republicans invited to participate in any stakeholder meetings as the legislation was drafted. We are confident that, had our participation been sought from the onset, some of the improvements included in the final draft would have been resolved earlier and we could have focused solely on our policy differences.

In the end, we did not receive final text of H.R. 5381 until 12 hours prior to Committee consideration. We also received neither notice nor text of the “manager’s amendment” until less than 10 hours before the markup. Moreover, the manager’s amendment contained controversial provisions the Committee never examined or debated, and the Committee was not provided the benefit of technical analysis.

Among the unvetted provisions is a prohibition on NHTSA employees working for an automobile manufacturer after leaving the Agency’s employment. This provision, as drafted, is a much broader prohibition than current NHTSA policy and will potentially apply to all employees—even the most clerical of positions. While we disagree on the policy of limiting free choice in employment, if the provision is meant to preemptively avoid undue influence by former employees on NHTSA, it is not clear why the prohibition should not also apply to post-NHTSA employment with any entity involving the automobile industry, including the plaintiff’s bar or automobile advocacy groups. Another unvetted provision requires electronic stability control for commercial vehicles, a requirement that may not be feasible. Finally, the manager’s amendment inserted a provision repealing preambles issued by the Agency (pursuant to Executive Order) under the previous Administration regarding the Agency’s view on the preemptive effect of its regulations on State tort claims. This provision is discussed in more detail below.

The Majority’s desire to expedite the legislation through Committee precluded Committee Members receiving the Administra-

tion's views, technical comments, or analysis of the legislation. With only one legislative hearing, many provisions were never discussed, including provisions that fundamentally change or reverse existing rules and regulations.

TITLE BY TITLE

Our primary policy differences and objections concern three issues: (1) eliminating agency discretion to determine the most appropriate motor vehicle safety standards and replacing it with Congressional mandates, (2) funding authorization levels and associated revenue-raising taxes, and (3) fundamentally changing the manner in which the Freedom of Information Act (FOIA) operates with respect to the automobile industry.

TITLE I

We support the creation of the Center for Vehicle Electronics and Emerging Technologies to coordinate and further develop the Agency's internal expertise in these areas. However, the Honors Recruitment Program includes an objectionable provision directing NHTSA to recruit based on preferred educational institutions. The Federal government should seek the best qualified candidates, regardless of the candidate's alma mater.

Additionally, we support the mandate for research into the use of lightweight materials in vehicles including plastics and composites. However, we note the Subcommittee on Commerce, Trade, and Consumer Protection—the same subcommittee that considered the discussion draft preceding H.R. 5381—distributed for consideration a discussion draft of legislation that would rewrite Federal chemical regulation under the Toxic Substances Control Act (TSCA). Under that draft, it is unclear whether the end uses of the chemicals used in lightweight materials for vehicles would be permissible without EPA approval. If such changes to TSCA are enacted, the authorization and any appropriation for the program mandated by H.R. 5381 should be evaluated in that context. Taxpayers should not fund research for vehicle products that may not be permissible for use in vehicles.

As a general matter, the mandated rulemakings and reviews in Title I raise serious concerns about Congress substituting its judgment and priorities for those of the Federal automobile safety agency—NHTSA—on how best to improve vehicle safety. NHTSA has proven its ability to prioritize and issue vehicle safety rules that save the most lives. Our primary concern is that burdening the Agency with Congressional priorities to issue rules and standards that will result in limited or no safety improvement will likely result in the delay of NHTSA's own priorities to issue rules and standards that would save more lives. That is not an improvement in safety.

Given that the Committee has not received any analysis from NHTSA on the probable cost of the legislative mandates and any related calculations of future lives saved, any notion that the mandates of H.R. 5381 are good policy rests on the belief these mandates will have greater proven safety benefits than any rules and changes NHTSA and the industry would adopt on their own. That

may not be the case. As the law of economics dictate, if these mandates increase the cost of cars substantially—as many experts believe they will—cars will be less affordable and consumers will delay their purchase of new vehicles. When consumers delay purchases of new cars and newer used cars, they forego the benefit of the safety features available in newer model cars. Consequently they drive older, less safe cars. Ensuring safer cars are affordable will reduce deaths and should be the policy goal.

Regarding the mandates to promulgate specific standards, we note that vehicle safety defects account for less than five percent of all vehicular fatalities. Driver behavior and driver error are the overwhelming causes of all highway deaths and should be addressed accordingly. That is not to say we object to improving vehicle safety, but as noted above, mandates should be commensurate with the costs and benefits of adopting them, and public resources should be directed to the most effective methods to reduce fatalities. The Administration understands this and has proposed to redirect \$50 million from the State seatbelt grants program towards a new program combating distracted driving, which causes an estimated 6,000 unnecessary deaths per year. This will undoubtedly be more effective at saving lives than the mandated standards this legislation requires.

Of the particular mandates, Section 108 is most troublesome. Aside from the fact that mandating installation of event data recorders (EDRs) is unnecessary because of the widespread adoption by automobile manufacturers, the requirement raises serious privacy concerns, particularly in combination with the government access rights also mandated herein.

The initial question is whether a need for this requirement exists. Approximately 80 to 85 percent of all passenger vehicles in the U.S. market have these devices already installed (more than a statistically relevant portion) and manufacturers have indicated they will continue to expand their deployment of EDR technology.

There is a rational argument that the data, in order to be meaningful, should be consistent with regard to the type of information collected, and that the information should be easily retrievable. NHTSA in fact has addressed these issues. In 2006, NHTSA promulgated a final rule specifying “uniform requirements for the accuracy, collection, storage, survivability, and retrievability” of EDR data for manufacturers that voluntarily choose to adopt the use of EDRs. The purpose of these standards was to enhance the analytical properties of EDR data and thus “contribute to safer vehicle designs and a better understanding of the circumstances and causation of crashes and injuries.” Given that NHTSA is both capable of identifying what data collection elements should be included in EDR designs as well as promulgating mandatory safety standards, we believe NHTSA—the relevant safety experts—are fully capable of making such EDR elements mandatory if a need exists. There is no legitimate reason we see that Congress should overrule the judgment of the relevant safety experts and mandate these devices on all vehicles.

Coupled with a mandatory government access provision, this mandate is yet another intrusion into the lives of private citizens. While the bill specifically states the information recorded on an

EDR is the property of the consumer, that ownership is rendered meaningless by the provisions granting NHTSA access to redacted information in the vague case of “improving motor vehicle safety,” or full access to all data (including personally identifiable information) if retrieved in connection with a defect investigation—without the owner’s consent in either case. Making this more worrisome is that such information may be released under a FOIA request. Consequently, the proponents of this bill make all citizens subjects of Federal government data collection regardless of whether they consent or not. Citizens will have no choice under this government edict but to purchase a vehicle with a compulsory recording device.

Compounding these privacy concerns is the open-ended nature of the directed rulemaking. In particular, we are concerned the legislative language permits NHTSA to require the capturing of location information on EDRs.

There are certainly safety benefits to be derived from EDRs, but it is our strong belief that it is not the Federal government’s place to mandate both the installation and, more importantly, unfettered access to information “owned” by the consumer.

In a similar privacy concern, the mandate of section 109 nudges closely to the Big Brother style of government. The provision would transfer \$40 million over 5 years from NHTSA’s general budget to fund research into the “more widespread deployment of in-vehicle technology to prevent alcohol-impaired driving.” While the purpose of the program is a noble goal—reducing the occurrence of drunk driving, it raises a number of broader public policy concerns.

The most prevalent in-vehicle anti-drunk-driving technology is the breathalyzer ignition lock. These devices prevent individuals from operating a vehicle if their blood alcohol content (BAC) exceeds 0.08 percent. Mandating such a technology in the vehicle of every citizen may reduce both accidents related to and the incidence of drunk-driving behavior, but it would also be a significant step toward an Orwellian government. Additionally, furthering such a policy would be an infringement on States’ rights. At this time there is not a Federal standard on legal blood alcohol content. Each State is rightfully empowered to determine such limits, and most States have adopted the Federal recommendation tied to Highway Trust Fund grants. Allocating \$40 million dollars to researching federally-mandated breathalyzer ignition locks or similar technology would be a move toward a de facto Federal standard aimed at driver behavior but disguised as a safety mandate. The possibility of requiring every American to blow into a device every time they start their cars is a policy debate that should be settled by the States.

TITLE II

Section 201 of the Motor Vehicle Safety Act of 2010 imposes unprecedented new disclosure requirements on private automobile companies while eliminating the functioning reporting system already in place. This section is a cause for concern because of the massive potential for waste it will create. Current regulatory protections for confidential business information (CBI) are well established and have been thoroughly litigated. This legislation statutorily nullifies these protections because certain petitioners were

denied changes during the previous Administration and in court. Requiring NHTSA to issue new regulations regarding CBI—in accordance with the views of those previously denied litigants—is an abuse of legislative power and creates a waste of taxpayer resources in rulemakings and legal proceedings.

Under current regulations, confidential information sent to NHTSA by manufacturers can only be revealed to the public if the confidentiality of that information is preserved, or if it is necessary to carry out needed safety research and development. Section 201 eliminates these basic protections of proprietary information, stating that all information currently sent to NHTSA must be publicly disclosed. This includes items such as aggregated warranty claims data, field reports, and production information. The NHTSA Chief Counsel previously stated in regulation that disclosing such proprietary information “is likely to cause substantial harm to the competitive position of the manufacturer . . . [and] likely to impair the government’s ability to obtain necessary information in the future” (49 C.F.R. 512 Appendix C)(2009).

If publicly disclosed, this data can be used to discern proprietary information such as a company’s corporate structure, product operability, products lines, or product marketability. Publicly disclosing such proprietary information could easily place a company at a competitive disadvantage, misrepresent a product’s risk, or generate frivolous and wasteful lawsuits.

Section 201 further strips away CBI protections in subsection (d), where the bill specifically restricts production information from the FOIA common sense protections for CBI. Nothing in FOIA authorizes an Agency to create a category of information that must be disclosed to the public; in other words, a category of information that is exempt from the FOIA disclosure exemptions. This is a fundamental change to the manner in which FOIA operates and should not be rewritten on an ad hoc basis. We believe that this conflict in statutes will breed wasteful litigation and further limit fair competition in the U.S. automobile industry.

It should also be noted that these provisions will damage automobile safety. Now that NHTSA is directed to abolish most of its protections on CBI, companies will show far less initiative in providing NHTSA data that may not be required if such information will be disclosed publicly. These provisions could deprive NHTSA of information once shared freely and confidentially with it by the private sector.

In a time when two out of the three U.S. automobile manufacturers had to be “bailed out” by the Government, legislation should focus on enhancing the competitiveness of these industries while enhancing their safety. Section 201 fulfills neither goal, and instead will result in the opposite.

Section 202 of the bill requires NHTSA to update the functionality of its publicly-accessible database for vehicle safety complaints. While we support an increase in functionality to the database, the effectiveness of the database could be further improved by adding provisions that increase both coordination with industry and database accuracy. Notifying manufacturers when a defect is reported would enhance a manufacturer’s ability to respond swiftly to potential safety hazards if they have not already

been alerted to the potential problem. However, information is only an asset to consumers when it is accurate and legitimate; including knowingly false or incorrect information in the database undermines the goal of improving consumer knowledge. Allowing manufacturers the ability to seek correction or elimination of inaccurate reports would increase the reliability and usefulness of the database, as well as discourage use of the public database as an anti-competitive tool. NHTSA should be required to establish a process for the removal of claims proven to be erroneous or fraudulent. This is not a novel approach as the Subcommittee, the Committee, and the House and Senate approved a similar function in the Consumer Product Safety Commission's consumer complaint database in the Consumer Product Safety Improvement Act of 2008.

Section 202(b) also raises a number of concerns. The provision requires NHTSA to make vehicle recall information available to the public on the Internet and searchable by vehicle identification number (VIN). While this could be a useful tool to consumers, there is little consideration given to the cost-benefit of the broad approach used in H.R. 5381. There are no boundaries on the length of time manufacturers must store recall data, potentially requiring manufacturers to store recall data indefinitely. This could result in an unwieldy and less useful database while simply wasting resources—costs that will inevitably be passed along to consumers. This type of broad data retention will not improve safety. Similarly, as the broader goal of this legislation is purportedly improved safety, storing and publishing recall data for non-safety-related defects adds no safety value. Just as storing antiquated safety recall data will muddle the database's functional purpose, so too will the inclusion of non-safety-related recall data.

TITLE III

While our objections to provisions in Titles I and II are strong, our strongest objections to H.R. 5381 are based in Title III.

H.R. 5381 imposes a new tax (misleadingly labeled as a "user fee") on manufacturers for each vehicle certified for sale in America—a tax that will undoubtedly be passed on to the consumer. Although misleadingly labeled a "user fee," this assessment of \$3 per vehicle (rising to \$9 per vehicle in three years and adjusted to inflation thereafter) is a tax because manufacturers do not receive any services from NHTSA in return for this payment. While this user tax may appear modest, it increases the tax burden in a manner that would not help the automobile industry or consumers. Consumers and shareholders will end up paying the tax, and together with the bill's other costly mandates, will unnecessarily increase the cost of vehicles. This would likely diminish sales, thereby depriving some consumers of newer, safer vehicles and dampen the prospects that GM and Chrysler will repay the funds used to bail them out. Further, once imposed, the government can easily increase the per car tax to the detriment of industry and consumers alike. History indicates that Congress never decreases "user fees" but instead treats them as a new funding mechanism to offset increased spending.

If Congress insists on paying for the excessive new funding levels in this legislation with a user fee, a more appropriate "user fee"

would be assessed on public access to the consumer database. This type of fee would more appropriately align costs with benefit derived from access to the information.

In addition to imposing an unjustified tax, H.R. 5381 dramatically increases NHTSA's funding level by \$150 million over 3 years to a total of \$280 million without any explanation or direction regarding how the Agency should spend the additional funding. We cannot support this wasteful and bloated spending, especially given that the bill increases the Agency's funding far beyond what even the Administration has requested. The Secretary of Transportation and the Administrator of NHTSA testified that under the President's budget NHTSA would have the resources necessary to fulfill its mission. NHTSA seeks authorization to hire 66 additional employees, a 10 percent increase in the employment level at the Agency, including 22 new employees for vehicle safety. Not only will it be difficult to grow the staff by 22 additional employees in one year, but the Administration has yet to determine how these 22 new vehicle safety employees will be utilized. We see no evidence that NHTSA needs more staff, or that it would wisely and effectively spend the massive increase in funding this bill provides.¹

We see no justification for the new tax or the excessive funding levels mandated by this bill, particularly given the high tax burden on the American people and the government's massive spending binge and enormous deficits. We find ironic the arguments justifying this giant leap in NHTSA funding. We frequently heard our counterparts describe NHTSA as lacking resources because it is overburdened and is therefore often unable to finish rulemakings in a timely fashion, yet this legislation—similar to previous Congressional mandates—will force NHTSA to set aside its priorities in favor of Congressional projects. This legislation will consume NHTSA resources for the next 3 years as it requires no less than 10 rulemakings, reports, and studies—several of which are rewrites of existing law. We question the wisdom of devoting a disproportionate amount of resources to issue new or amend existing standards for acceleration-related problems that are extremely rare and are addressed by voluntary initiatives.

TITLE IV

We oppose the bill's excessive increase in civil penalty liability. It would increase the maximum penalty per violation from \$5,000 to \$25,000 and the overall penalty cap from \$16.4 million to \$200 million. Although we would support modest increases in both the maximum per-violation penalty and the cap, the bill increases these amounts far more than necessary to deter violations. Like other components of this bill, the penalty increases seem designed to punish the industry rather than to ensure compliance with the law.

The new penalty amount seems disproportionate given the average cost of a vehicle and the profit margin per vehicle. When TREAD became law in 2000, it provided for a maximum penalty

¹The one potential budgetary savings could come from the mandated EDR provision we oppose. With unfettered government access to EDR data, it is reasonable to question the ongoing need to fund the National Automotive Sampling Survey (NASS) NHTSA uses to analyze crash data.

per violation of \$5,000. The average cost of a new car at the time was just under \$25,000, making the maximum penalty about one-fifth the cost of a new car. Today the average cost of a new car is about \$30,000, making the new maximum penalty nearly as high as the cost of a new car. This five-fold increase in the maximum penalty is excessive, especially given that the profit margin on the average vehicle is significantly lower than the current maximum penalty of \$5,000.

The bill increases the penalty cap even more dramatically than it increases the maximum penalty per violation. We do not see any justification for a more than twelve-fold increase in the cap. The bill would provide for adequate deterrence with a significantly lower cap, especially in light of the damage to a manufacturer's reputation, market share, profitability, and stock price that would surely accompany any violation arguably warranting such a severe total penalty.

We also note that the cap applies to all businesses, regardless of size. Many small businesses would find a \$200 million penalty impossible to pay, and would face the prospect of closing or filing for bankruptcy if required to pay. Although the bill's new provision setting forth relevant factors in determining the penalty helps to alleviate some of our concerns regarding the size of the cap, the cap as proposed is punitive and potentially crippling to small businesses.

Finally, the new maximum penalty amounts and cap are particularly harsh for reporting violations. Reporting violations that do not involve defects warranting a recall and clearly do not call for such high penalties. We are not aware of any evidence that untimely reporting is a widespread problem warranting a massive increase in the maximum penalty per reporting violation or the cap applicable to such penalties.

TITLE V

Perhaps the single most objectionable provision added to this legislation at markup was inserted in the manager's amendment. Section 501 can be characterized as nothing other than a gift to trial lawyers across America. It negates all preambles stating an intent to preempt State tort law issued by NHTSA under the Bush Administration pursuant to Executive Order. It further bars NHTSA from issuing future statements of preemptive intent unless specifically authorized by Congress. In sum, it eliminates defenses based on conflict preemption—a principle of the Supremacy Clause of the U.S. Constitution (Article VI, Clause 2). As such, it is effectively an end-run around both prior regulations and, more importantly, around the Constitution.

Placing aside any discussion of whether this is an appropriate use of Congressional authority, this provision creates a mind-boggling litigation scenario. For instance, under 49 C.F.R. §571.202 (FMVSS 202), a head restraint must be installed at a minimum height of 700mm from the seat. As a result of this amendment, a plaintiff could file suit against a manufacturer for installing the head restraint too high. Without State tort preemption, such a suit would be permitted to move forward even though it is impossible to comply with both the Federal mandatory safety standard (head

restraint installed at 700mm) and the plaintiff's tort theory of liability (head restraint too high).

In an ironic twist, the amendment may actually clash with the safety requirements legislated elsewhere in this bill. If NHTSA mandates brake override, and that mandatory safety standard is not declared preemptive of State tort laws, auto manufacturers may be sued for personal injury if the vehicle abruptly stops because the driver accidentally hit both pedals at the same time (the exact need stated for the brake override).

This is both fundamentally unfair and a waste of judicial resources in requiring a court to spend time hearing a case based on such a theory. Manufacturers that are required to comply with Federal safety standards must be shielded from liability for such compliance.

For the reasons discussed herein, we, the undersigned, do not support H.R. 5381, the Motor Vehicle Safety Act, as amended.

JOE BARTON, *Ranking Member.*

JOHN SHIMKUS.

CLIFF STEARNS.

GEORGE RADANOVICH.

STEVE BUYER.

ROY BLUNT.

ROBERT E. LATTA.

PHIL GINGREY.

MARSHA BLACKBURN.

STEVE SCALISE.

SUE MYRICK.

JOSEPH R. PITTS.

JOHN SULLIVAN.

ED WHITFIELD.

LEE TERRY.

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