

## Resources

### The Proposed Motor Vehicle Safety Act of 2010—Current Status

June 23, 2010

The recent, highly publicized Toyota recalls prompted both the U.S. Senate and House of Representatives to conduct public hearings and to introduce companion bills entitled the Motor Vehicle Safety Act of 2010. Both bills propose to a) strengthen vehicle electronics and safety standards; b) increase accessibility to vehicle safety information; c) hold manufacturers more accountable for misleading or incomplete disclosures; and d) provide NHTSA with considerably more funding and authority.

On May 26, 2010, the House Energy and Commerce Committee reported out H.R. 5381. On June 9, 2010, the Senate Commerce Committee reported out S. 3302. This proposed legislation will likely affect all manufacturers in the industry. Dykema continues to monitor these legislative developments closely. For that reason, we forward this report on the current status of this potentially important legislation. It is not intended to be an exhaustive discussion of each bill. Rather, it generally highlights key common provisions, sets forth major differences between the bills and then briefly sets forth the procedural process that lies ahead. For your convenience, the bills are linked above, should you wish to read them in their entirety.

#### 1. Commonalities Between the Bills

Currently, the bills contain a number of common, though not necessarily identical, provisions. The proposed legislation aims to strengthen vehicle electronics and safety standards by establishing requirements for:

1. stopping distance and brake override;
2. electronic systems performance
3. keyless ignition systems;
4. transmission configurations;
5. vehicle event data recorders;
6. pedal placement;
7. accelerator control systems; and
8. minimum sound requirements for electric and hybrid vehicles.

The proposed legislation further aims to enhance transparency and accountability for safety-related information by, among other things:

1. refining TREAD Act and other safety-related reporting requirements;
2. facilitating public access to safety-related information and promoting safety defect reporting;
3. enhancing corporate accountability for NHTSA reporting; and
4. placing restrictions on NHTSA employees from working for the automotive industry for a period of time.

The proposed legislation would also grant NHTSA the authority to expedite safety recalls upon a finding of “imminent hazard” and would substantially increase potential civil penalties and NHTSA’s annual budget.

#### 2. Significant Differences

The following table lists some of the most significant differences between the bills. As discussed in section 3 below, these and other differences will need to be resolved before any final bill can be enacted.

**Subject**

**H.R. 5381 [House Bill]<sup>1</sup>**

**S. 3302 [Senate Bill]<sup>2</sup>**

Civil Penalties

Increases the civil penalty NHTSA can seek per violation and sets a maximum civil penalty of \$250 million

Increases the civil penalty NHTSA can seek per violation and sets a maximum civil penalty of \$300 million

Corporate Responsibility for NHTSA Reports      Maximum civil penalty of \$5,000 per day, with a cap of \$5 million for knowingly providing false, misleading or incomplete reports

No additional criminal penalty      Maximum civil penalty of \$50,000 per day, with a cap of \$10 million for knowingly providing false, misleading or incomplete reports

Increases criminal penalties imposed by Title 18 by up to 12 months

Whistle-blower Protections      No provision

Auto manufacturers, dealers and suppliers may not discharge or otherwise discriminate against an employee who has acted as a whistle-blower.

Consumer Notice of Software Updates      No provision

Manufacturer must publish all notices of software upgrades, even non-safety-related upgrades, on manufacturer’s website.

Public Availability of Early Warning Data

Adds consumer complaints, warranty claims, field reports and dealer communications to the range of early warning data

Used-Vehicle Consumer Protection      No provision

Dealer may not sell or lease a used vehicle until the dealer notifies the purchaser or lessee in writing of any notifications of a defect or noncompliance that has not been remedied.

Anti-Revolving Door

Former employees of NHTSA cannot make any communication to or appearance before NHTSA on behalf of a manufacturer for one year after employment with NHTSA.

Former employees of NHTSA cannot work for employers subject to this regulation for 36 months after employment with NHTSA.

Preemption of State Law

Directs the secretary of transportation not to publish any rule addressing the issue of preemption of state law unless expressly authorized by Congress to do so      No provision

Rollover Prevention and Crash Mitigation

Directs the secretary to issue safety standards to reduce rollover events in air-braked motor vehicles with a gross vehicle weight rating over 26,000 pounds No provision

### 3. What Lies Ahead Procedurally

When these bills will be considered by the full House and Senate is uncertain. According to the House Majority Leader's office, House Energy and Commerce Committee Chairman Waxman's promise to take up its bill before the upcoming July 4th recess is likely to slip, but the bill could be considered in the next work period, before the August recess. The Senate Majority Leader has not indicated when the Senate would take up the bill, but there are many other high-priority items on the Senate's to-do list this summer, and it seems unlikely that the Senate will act before the House. Thus, even if the House were to pass its bill before July 4, further action would have to await the Senate. Assuming both chambers passed their respective bills, differences between the two versions would then have to be resolved, and both House and Senate would have to approve the changes before the final legislation could be sent to the President for his signature. Final enactment is not likely before the fall.

### 4. Conclusion

The timing of this legislation and its eventual scope, among other things, remain unclear. Given its potential impact on the industry, however, we trust that you will find this status update helpful. Dykema will continue to monitor developments closely. Meantime, should you have any questions about this proposed legislation or any regulatory matter, please contact **Paul Laurenza** at 202-906-8646, or your Dykema relationship attorney.

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