

CLIENT ALERT

Lawmakers Respond to Record-Breaking Auto Recalls with Proposals for Stricter Regulation

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2014 was a record-breaking year for automobile recalls. Manufacturers recalled nearly 65 million vehicles in 2014, more than twice the previous record. In the wake of these record numbers, and the high profile nature of some of the recalls, Congress appears eager to enhance the automobile defect reporting system and increase the recall completion rate. By the second day of March, lawmakers had introduced two bills that seek to strengthen the authority and funding of the National Highway Traffic Safety Administration (NHTSA), increase transparency to the public of both NHTSA data and auto makers' communications regarding vehicle issues, and compel consumers to participate in recalls. Whether these proposed pieces of legislation pass, and whether they mark the beginning of a trend of stricter regulation, remain to be seen.

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In the Senate, Senators Markey (D-Ma.) and Blumenthal (D-Mi.) introduced the Repairing Every Car to Avoid Lost Lives Act (RECALL). This bill, aimed at automobile owners, seeks 100 percent recall compliance by prohibiting states from issuing or renewing a vehicle registration for any vehicle that is subject to an outstanding recall. MDM 15344, 114th Cong. § 2(b) (2015). The proposed legislation is similar to existing law in Germany, where the Federal Motor Transport Authority has the authority to revoke the registration of any vehicle with an outstanding safety recall.

In the House, Representatives Schakowsky (D-Ill.) and Pallone (D-NJ) reintroduced the Vehicle Safety Improvement Act of 2015 (formerly 2014) (VSIA). This broad bill, initially introduced in September 2014,¹ would among other changes, expand reporting and recall requirements and records retention obligations, enhance NHTSA authority, increase transparency to the public, and impose tougher penalties for those who violate safety laws. If passed, the VSIA would:

- **Expand reporting requirements and recall obligations:** The VSIA would broaden the scope of reporting for fatalities and serious injuries, by requiring manufacturers to report all incidents where the manufacturer receives “actual notice which involves fatalities or serious injuries which are alleged or proven to have been caused by a possible defect in such manufacturer's motor vehicle or motor vehicle equipment.” HR 1181, 114th Cong. § 202(b)(C) (2015). Furthermore, this provision compels manufacturers to report whether the incident occurs in the U.S. or a foreign country and would not limit the reports by model year—invalidating 49 C.F.R. § 579.21. In addition, the law would require nationwide recalls, even for environmentally-related defects, such as defects that may arise only in cold-weather states. § 207.
- **Increase NHTSA analysis of recall completion rates:** The VSIA would require the Secretary of Transportation to assess auto recall rates twice a year, based on manufacturers' quarterly recall reporting and submit a report of the analysis to the House Committee on Energy and Commerce and the Senate Committee on Commerce, Science, and Transportation § 208 (d).
- **Lengthen records retention obligations:** The VSIA would require manufacturers to retain records related to safety recalls for twenty years. § 204(a).
- **Increase transparency:** The VSIA aims to create a more transparent and user-friendly method of relaying complaint and recall information to the public. First, the law seeks to expand the types of communications automakers must disclose to NHTSA. In addition to the disclosures required under 49 CFR § 573.6, manufacturers will have to disclose

communications relating to “a customer satisfaction campaign, safety improvement campaign, consumer advisory, recall, or other safety activity involving the repair or replacement of motor vehicle equipment.” § 101(a)(2)(B). Second, NHTSA must create a more searchable and streamlined database system, including by providing users with the ability to search across NHTSA databases and to craft uniform categories in both the consumer complaint and recall databases. § 202 (c)(1)(A)-(C), *id.* § 102 (1)-(4). In its current form, VSIA also would require the Secretary of Transportation to evaluate the extent to which differing reporting practices hinder NHTSA's ability to compare differences among manufacturers' data and create a rule standardizing reporting practices accordingly. § 202(d).

- **Toughen penalties:** The VSIA would impose tougher penalties on persons who violate vehicle safety laws. It increases the civil penalty for safety violations from \$5,000 to \$25,000 per occurrence and removes a statutory maximum for multiple offenses. § 201(a).
- **Increase NHTSA's budget:** To pay for these new requirements, Representative Schakowsky proposes increasing NHTSA's annual budget from \$98,313,500 to \$200 million by 2016. §402(a). Under the VSIA, manufacturers would pay a \$3.00, \$6.00, or \$9.00 fee per vehicle sold to help finance this increase. §401(e).

On the heels of a record-breaking year for automobile recalls, there is no doubt that Congress is ready and willing to legislate in the arena of vehicle safety. And while the proposed change most likely to be controversial is directed at vehicle owners, auto manufacturers should closely follow the progress of these bills, and anything still to come from the 114th Congress. Regardless of what becomes of the legislation proposed so far, one thing that is sure is that recall and reporting obligations will be changing.

¹ The bill was introduced by Representatives Schakowsky (D-III) and Waxman (D-CA) in September 2014. It was referred to the House Subcommittee on Commerce, Manufacturing, and Trade and never left that committee.

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