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Automotive Legislation And Regulation To Watch In 2015

By **Lisa Ryan**

Law360, New York (January 02, 2015, 1:14 PM ET) -- Automotive attorneys in 2015 will be keeping an eye on safety legislation and regulation stemming from the massive number of recalls that have rocked the industry, while also watching out for upcoming rules for auto loans and vehicle-to-vehicle technology.

Here are some key automotive legislation and regulatory developments to watch this year:

Recall-Related Regulation

Last year saw two of the biggest corporations in the industry — General Motors LLC and Takata Corp. — in hot water over their handling of respective ignition switch and air bag defects that led to consumer deaths and large-scale recalls. The controversy surrounding these recalls has top lawmakers calling for reform.

On Dec. 10, the Senate Commerce Committee approved President Obama's nominee Mark R. Rosekind to act as head of the National Highway Traffic Safety Administration. Rosekind has vowed to boost efforts to catch automakers that don't report safety defects and to enforce recalls, placating several Democratic senators who, in November, told the White House that the new agency head needed to improve transparency.

"If there's any legislation that needs to happen in 2015, it's a complete revamping of the way recall legislation works," said Jonathan Michaels, a founding member of plaintiffs' law firm JLG Automotive Law.

Michaels, who says his firm was one of the first to file a consumer class action against GM over its delayed recall efforts, says he anticipates the agency will increase its penalties for automakers and parts suppliers that conceal defects and delay recalls.

"We'll see a significant increase in the monetary amount, and I think you're going to see criminal penalties for people who are in control of this and willfully fail to have recalls," Michaels said.

Fuel Economy Regulations

The U.S. Environmental Protection Agency in August said it was considering a new regulatory program to require in-use gas mileage auditing for all automakers after a number of complaints over misleading fuel economy estimates, and legal experts expect the agency to implement that initiative in the coming year.

Attorneys point to a recent landmark settlement that shows the government isn't kidding around about automotive fuel economy standards.

Hyundai Motor Co and Kia Motors Corp in November agreed to fork over $100 million — the largest penalty ever levied under the Clean Air Act — to settle claims with theU.S. Department of Justice that the automaker sold more than 1 million vehicles that emit greater quantities of greenhouse gases than they had certified to the EPA.

The automakers misled the agency about their vehicles' greenhouse gas emissions and fuel economy by installing special equipment on test cars and submitting the most favorable test results to the government. And Robert Meyers, senior counsel in Crowell & Moring LLP's environment and natural resources group, says that after such a hefty fine, that sort of behavior won't fly in 2015.

"The way standards work, you have more stringency coming," Meyers said. "In broad brush, I think this is a signal of increasing scrutiny, and I would attribute some of it to the fact of the suggested rulemaking.

Vehicle-to-Vehicle Communication Legislation

In 2014, lawmakers voiced their support of vehicle-to-vehicle communications technology, specifically for regulations that protect the privacy and security of consumer data collected by the systems.

First, President Barack Obama in July said the federal government needed to invest more in technologies that make driving "smarter" by preventing traffic accidents, depleting time spent in traffic and reducing repair costs. The commander in chief's speech prompted the NHTSA in August to tout proposed regulations for the technology, which it said could prevent up to 592,000 crashes and save 1,083 lives per year.

The Federal Trade Commission in October commended the agency for addressing privacy and security concerns in its proposed regulations by designing a system that only collects and stores data that serves safety purposes.

Soon after, 19 car companies wrote a letter to the agency saying they will incorporate a series of "privacy principles" in their vehicles no later than model year 2017 that would limit how personal information collected from vehicles is used and transmitted to third parties.

Additional privacy regulations, in addition to the finalization of the NHTSA's proposed vehicle-to-vehicle rules, will likely be implemented in 2015, attorneys say.

"It's really a very interesting, because it starts to get into the question of who owns the data," Michaels said. "Does the car manufacturer or car driver own it? That's going to be a difficult issue for any legislature to decide."

Auto Financing Reform

This year, the CFPB will be putting the finishing touches on a proposed rule that would let the federal government regulate approximately 38 nonbank auto loan companies for the first time.

The consumer watchdog first floated the high-profile rule in September, saying it would allow the CFPB to supervise unspecified auto company lending units that account for roughly 90 percent of nonbank auto loans and leases, make or refinance at least 10,000 loans or leases annually, and provided financing to nearly 6.8 million consumers in 2013. It also issued a report detailing $56 million in penalties that banks had been hit with for discriminatory auto loan practices.

Since announcing the proposed regulation, the watchdog has already gone into action, with both Toyota Motor Credit Corp. and American Honda Finance Corp. saying in December that they face potential fines from the CFPB and DOJ for allegedly engaging in discriminatory pricing of auto loans.

Peter N. Cubita, who serves as of counsel in Ballard Spahr LLP's consumer financial services group, said the proposed rule’s comment period recently wrapped and that the final incarnation of the rule should be adopted by the second or third quarter of the year.

“This will have the effect of subjecting non-bank ‘larger participants’ in the auto financing market to supervisory examinations by the CFPB. While it remains to be seen whether the CFPB will modify its proposed test for determining who is a larger participant, the large manufacturer captive sales finance companies will be among the nonbank auto finance companies affected by the rule,” Cubita said.

Ride-Sharing Rules

Popular ride-sharing companies Uber Technologies Inc. and Lyft Inc. spent the past year facing backlash for their driver screening processes, and the wrath of a number of states and cities that fought to keep the services off their streets.

Attorneys expect local legislation to roll out following the companies’ tough legal year, finally formally addressing the ride-sharing concept and defining what exactly the companies’ services entail.

“Consumers love the app, but some of the glow is fading due to various politically incorrect comments by Uber execs and due to the losses incurred by heavily regulated taxi and limo services,” said Aaron Jacoby, chairman of Arent Fox’s automotive industry practice group. “The question is why do such regulations not apply to Uber, Lyft and other for-hire apps.”

Uber most recently lost its bid to operate in Nevada in late November. A state judge rejected the company’s attempt to operate without a license while the state’s transportation regulator pursued claims that the ride-sharing company is actually a taxi carrier and would need to be licensed by the state’s taxi authority.

Similarly, authorities in Portland, Oregon, sued Uber for allegedly operating illegal and unregulated services, with the city’s transportation director in December issuing a cease and desist order telling the company to immediately stop operating in the city until it obtains the proper permits.

Los Angeles and San Francisco district attorneys also slapped the company with a suit for allegedly misleading consumers over how it screens drivers, while Lyft paid $500,000 to settle similar claims.

--Additional reporting by Sindhu Sundar, Kurt Orzeck, Michael Lipkin, Juan Carlos Rodriguez and Caroline Simson. Editing by Rebecca Flanagan.
