



September 22, 2015

To: Members, Subcommittee on Commerce, Manufacturing, and Trade

From: Committee Majority Staff

Re: Hearing entitled “Legislative Hearing on VIN Database and Auto Whistleblower Bills”

I. INTRODUCTION

On Friday, September 25, 2015, at 9:15 a.m. in 2322 Rayburn House Office Building, the Subcommittee on Commerce, Manufacturing, and Trade will hold a hearing entitled “Legislative Hearing on VIN Database and Auto Whistleblower Bills,” and will review H.R.____, “Motor Vehicle Safety Whistleblower Act” and H.R.____, “Improving Recall Tracking Act.”

II. WITNESSES

- Shane Karr, Vice President, Federal Affairs, Alliance of Automobile Manufacturers;
- John Bozzella, President and CEO, Association of Global Automakers;
- Joe LaFeir, SVP, IHS Automotive IS&S, IHS, Inc.;
- William Wallace, Policy Analyst, Consumers Union; and
- Cleveland Lawrence III, Co-Director, Taxpayers Against Fraud.

III. BACKGROUND

A. Motor Vehicle Safety Whistleblower Act

1. Overview

Whistleblowers are individuals who expose or speak out against wrongdoing, or fraudulent and illegal activity taking place in business, government, or other organizations.¹ Whistleblowers often are valued because they can help uncover and stop practices that may substantially harm or jeopardize public health and safety.²

¹ Indig, Benjamin C. The Rights of Probationary Federal Employee Whistleblowers Since the Enactment of the Civil Service Reform Act of 1978. Volume 11, Issue 3, Article 5. 1982. Available at:

<http://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=1205&context=ulj>

² *Id.*

Congress has encouraged whistleblowing and the disclosure of misconduct by adopting whistleblower protection laws for Federal employees. These laws allow Federal employees to “stop, report, or testify about employer actions that are illegal, unhealthy, or violate specific public policies,” without fear of reprisal or retaliation from their employer.³ Congress also has established protections for whistleblowers in private-sector employment.⁴ Currently, there are at least 18 industry-specific Federal statutes that contain whistleblower provisions and protect employees from retaliatory action if they report a violation.⁵

To further encourage individuals to disclose illegal activities and report wrongdoing, Congress has passed laws that provide financial incentives and authorize monetary awards to whistleblowers.⁶ For instance, under the Tax Relief and Health Care Act of 2006, Congress established a Whistleblower Office within the Internal Revenue Service (IRS).⁷ The IRS Whistleblower Office is authorized to pay an informant award to individuals who blow the whistle on persons who fail to pay their taxes.⁸ Similarly, the Dodd-Frank Wall Street Reform and Consumer Protection Act created a whistleblower office at the Security Exchange Commission.⁹

2. Section-by-Section

The Motor Vehicle Safety Whistleblower Act would improve motor vehicle safety by encouraging automotive employees and contractors to disclose information about possible safety violations if they are concealed or go unreported. The draft legislation is identical to S. 304, which was introduced by Senator John Thune and Senator Bill Nelson on January 25, 2015, and passed the Senate by Unanimous Consent on April 28, 2015.

Section 1. Short Title.

Section 1 provides that the Act may be cited as the “Motor Vehicle Safety Whistleblower Act.”

Section 2. Motor Vehicle Safety Whistleblower Incentives and Protections.

Section 2 sets forth definitions for terms contained within the Act. It also sets forth the terms and conditions under which monetary awards will be paid to whistleblowers for disclosing original information relating to motor vehicle defects, noncompliance, or other violations. It provides that if any administrative or judicial action brought by the Secretary or Attorney General results in a monetary sanction exceeding \$1 million due to information provided by the whistleblower, the whistleblower could be eligible for up to 30 percent of the total collected monetary sanction.

³ See: National Whistleblowers Center

http://www.whistleblowers.org/index.php?option=com_content&task=view&id=34&Itemid=63

⁴ Shimabukuro, Jon O. and Whitaker, L. Paige. Congressional Research Service. Whistleblower Protections Under Federal Law: An Overview. September 13, 2012. Available at: <https://www.fas.org/sgp/crs/misc/R42727.pdf>

⁵ *Id.*

⁶ *Id.*

⁷ See: <http://www.irs.gov/uac/Whistleblower-Informant-Award>

⁸ *Id.*

⁹ See: <https://www.sec.gov/whistleblower>

Section 2 also establishes criteria that the Secretary must consider in the determination or denial of an award to a whistleblower, including whether a whistleblower reported or attempted to report the information internally; the significance of the information provided by the whistleblower in leading to a successful resolution of the covered action; the degree of assistance provided by the whistleblower and any legal representative of the whistleblower in the covered action; and any other additional factors the Secretary considers relevant.

In addition, this section establishes protections for whistleblowers and prohibits awards from being given to individuals who knowingly provide false information. It also allows any determination made by the Secretary to be appealed by the whistleblower. Lastly, it directs the Secretary to issue regulations on the requirements of this section.

B. Improving Recall Tracking Act

1. Overview

There have been several major recalls in recent years that highlight the challenges manufacturers' face in their effort to notify the current owner of a recalled vehicle about the recall.

In the ongoing Takata recall, affected vehicles include a large proportion of vehicles that are between five and 10 years old. The age of the fleets included in recent recalls pose a unique challenge for manufacturers in a variety of circumstances, including identifying and contacting owners that may not be the original, or even second, owner.

Currently, two of the largest providers of recall services to automobile manufacturers to help with the location of recalled cars and owners are IHS and Experian.¹⁰ These service providers work with States to obtain registration and title information in compliance with Federal law. These companies also partner with other service providers to determine how many recalled cars remain on the road and the best contact information for current owners to notify them about a recall.

Since 2013, National Highway Traffic Safety Administration (NHTSA) has operated a vehicle identification number (VIN) lookup search tool at SaferCar.gov for the public to find recall information about individual vehicles.¹¹ The VIN lookup tool links the search interface on SaferCar.gov with each automobile manufacturer's database of recalled VINs to inform consumers if there is an outstanding recall on that particular vehicle. However, NHTSA declined to incorporate multiple VIN, or batch, searches in the tool's functionality. Given the scope of recent recalls, the limitation of the VIN look up tool has been highlighted in the case where owners of multiple vehicles, including larger fleets, may spend a significant amount of time searching for recall information.

¹⁰ See: <https://www.ihs.com/products/automotive-vehicle-recall-services.html>;
<http://www.experian.com/automotive/auto-dealer-services.html>

¹¹ <http://www.nhtsa.gov/About+NHTSA/Press+Releases/NHTSA+to+Provide+Free+VIN+Searches+to+Help+Consumers+Check+Cars,+Light+Trucks+and+Motorcycles+for+Uncompleted+Recalls>

2. Section-by-Section

Section 1. Short Title.

Section 1 provides that the Act may be cited as the “Improving Recall Tracking Act.”

Section 2. National Vehicle Identification Number Database.

Section 2 requires the Secretary of Transportation to establish a national database of vehicle identification numbers and registration information. This section requires the States to provide the motor vehicle information to the Secretary and requires that the Secretary process requests from manufacturers with recall obligation in order to facilitate notification to individuals after a safety recall. This section requires that the existing consumer-facing recall search tool be updated to allow for searching and processing multiple vehicle identification numbers in a single search request. This section allows the Secretary to contract for the establishment and maintenance of the database and exempts the information in the database from Freedom of Information Act requests.

IV. ISSUES

The following issues may be examined at the hearing:

- The effectiveness of whistleblower protection laws and informant award programs in exposing misconduct or illegal activity.
- How auto manufacturers currently educate and work with employees to report alleged wrongdoing or misconduct.
- How a national VIN database would facilitate the consumer notification process in the event of a motor vehicle safety recall.
- Why it has been difficult to locate owners of vehicles under the recent recalls.

V. STAFF CONTACTS

If you have any questions regarding this hearing, please contact Paul Nagle, Olivia Trusty, and Melissa Froelich of the Committee staff at (202) 225-2927.