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January 30, 2012

To: NIADA
From: Federal Advocates (FA)
Subject: January 2012 Monthly Report

S.1449, the Motor Vehicle and Highway Safety Improvement Act

On December 14 the Senate Commerce Committee marked up a series of bills including S. 1449, the "Motor Vehicle and Highway Safety Improvement Act of 2011," and S.1950, the "Commercial Motor Vehicle Safety Enhancement Act of 2011." These are the bills we had reviewed in conjunction with the Association.

S.1449 is the bill that had the onerous recall provision/process included in an earlier version of the bill considered last Congress. We lobbied for its exclusion and the language was not part of the July 2011 introduced version of the bill. Working in conjunction with NADA, Committee Members were contacted on December 13 to guard against any attempts to reinstate the language. No effort materialized in markup. Senator Boxer did raise an amendment which she withdrew, after a commitment from the Committee leadership to work with her on it as the bill moves through the legislative process. Her amendment would prohibit rental car companies from renting vehicles on which there is a pending recall unless/until the recall defect has been corrected. Apparently, two 20+ year old sisters from Santa Cruz, California, rented a PT Cruiser from Enterprise which had a pending recall having to do with the power steering fluid. While driving the car, the fluid leaked and ignited, causing the driver to lose control of the vehicle which crashed into a semi-trailer, killing both women. The bill was adopted by the Committee by voice vote.

S.1950 was also adopted by the Committee but by a roll call vote of 13-11. Apparently, at a time fairly late in the bill drafting process, the Dems included language authorizing a National Freight Rail program. The Repubs objected and offered an amendment to strike the language. The amendment was defeated. Other Repub amendments were offered re cutting funding levels, etc. None prevailed. Again, per our earlier review, nothing in the bill directly impacts the automobile industry.

Floor timing of both bills is unclear. They may be held and joined with Congress' effort to pass a major highway bill targeted for the end of March 2012.

Status UPDATE: In the Senate, three committees have jurisdiction over the highway bill – Environment and Public Works (highways); Commerce (regulatory matters); and Banking (transit). On Nov. 9, 2011, EPW reported its portion of the bill; on Dec. 14, per the above, Commerce reported its version; and, to date, Banking has not acted on its portion. In the House, jurisdiction over the “S.1449 issue” is shared between the Transportation and Infrastructure Committee and the Energy and Commerce Committee. The T&I Committee has scheduled a markup for Feb. 2. No announced markup date for E&C.

Consumer Financial Protection Bureau

Here's the latest on Richard Cordray:

“GOP GRAPPLING WITH RECESS RESPONSE -- Manu Raju and I report for the hometown paper: "Republicans said it was unconstitutional. An overreach of executive power. A blatant slap at the Senate. But when it comes to waging war over a handful of obscure recess appointments, the Senate GOP is struggling with how to respond. They fear a knock-down, drag-out fight is exactly what the White House wants - and that President Barack Obama would use such a battle to ratchet up his campaign against a dysfunctional and gridlocked Congress. The internal debate highlights the party's challenges, with public opinion soured on Congress and Republicans still lacking a presidential nominee to rally behind. Ahead of a closed-door party retreat Wednesday at George Washington's Mount Vernon estate, Senate Republicans suggested that they might let their business allies fight the battle over recess appointments for the National Labor Relations Board and the Consumer Financial Protection Bureau. ... 'I would be surprised if you see mass reprisals,' Sen. Bob Corker (R-Tenn.) added. 'I don't think anybody is going to consider that to be a very astute or intelligent thing to do.' ...”

Federal Trade Commission Initial Regulatory Review

The newly-named Legislative/Regulatory/Compliance Counsel for the Association, Mac Murray, Petersen & Shuster LLP, will be leading the regulatory review effort on behalf of the Association. Federal entities of interest include, but not limited to, are the FTC, EPA, NHTSA, and SBA. Earlier this year the President issued Executive Orders 13563 and 13579, which call upon Federal agencies including independent agencies such as the FTC, to prepare plans for the periodic review of existing regulations in order to determine whether those regulations should be modified, streamlined, expanded, or repealed. In September, the FTC issued a 10-year review schedule and accelerated the review of a number of rules and guides in response to recent changes in technology and the marketplace. More than one-third of the FTC's 66 rules and guides will be under review by the end of 2011. NIADA, in conjunction with NADA, reviewed the first set of FTC rules/regulations of interest.

Other Legislation of Interest

S.474, the Small Business Regulatory Freedom Act of 2011

Senator Olympia Snowe (R-ME) introduced S.474 on March 3, 2011. To date, it has 12 cosponsors. The bill was referred to the Committee on Homeland Security and Government Affairs.

The “Small Business Regulatory Freedom Act of 2011” amends the Regulatory Flexibility Act to revise the rulemaking process with respect to small entities (i.e., small businesses, small organizations, and small governmental jurisdictions).

It defines "economic impact" with respect to a proposed or final rule to mean: (1) any direct economic effect of a rule on small entities; and, (2) any indirect economic effect on such entities, including potential job creation or job loss.

It expands review of agency rulemaking to permit small entities to seek judicial review of initial regulatory flexibility analyses and to obtain an injunction of a proposed rule that is noncompliant with RFA requirements.

It requires each agency to establish a plan for the periodic review (every eight years) of: (1) rules that have a significant adverse economic impact on small entities; and, (2) any small entity compliance guide required to be published by an agency. It sets forth criteria for review of a rule, including the continued need for the rule, the complexity of the rule, and the impact of the rule on small entities. It terminates any rule if the issuing agency has failed to complete a required periodic review.

In addition, it expands to all agencies the procedures for gathering comments on rules that will have a significant economic impact on small entities. Requires each agency to review on a periodic basis its policies or programs for imposing regulatory penalties on small entities; imposes certain additional requirements on agencies prior to the issuance of a final rule.

Status UPDATE: unchanged from the Dec. report.

S.330, the Consumer Recall Protection Act of 2011

Senator Charles Schumer (D-NY) introduced S. 330 on February 14, 2011. To date, it has no cosponsors. The bill was referred to the Committee on Commerce, Science, and Transportation.

The bill prohibits a person from selling to consumers any covered product that is subject to a recall. It defines a "covered product" to include a motor vehicle or replacement equipment, food, drugs, devices, cosmetics, a biological product, a consumer product, a meat or meat food product, a poultry or poultry product, and an egg or egg product. It defines "recall" with respect to a motor vehicle or replacement equipment when the

Secretary of Transportation makes a determination that a motor vehicle contains a defect related to safety or does not comply with specified motor vehicle standards.

The bill exempts from such prohibition the sale of a covered product that was subject to a recall because of a defect in such product if: (1) such defect was remedied prior to such sale; and (2) the seller of such product notifies such consumer of such recall, defect, and remedy. It treats a violation of such prohibition as a violation of a rule defining an unfair or deceptive act or practice described under the Federal Trade Commission Act, and requires the Consumer Product Safety Commission (CPSC) to establish, maintain, and make available to the public a searchable list of covered products that are subject to a recall.

Status UPDATE: unchanged from the Dec. report.

H.R.860 and S.110, “Promoting Charitable Donations of Qualified Vehicles Act of 2011”

Senator John Ensign (R-NV) introduced S. 110 on January 25, 2011. To date it has no cosponsors. It was referred to the Committee on Finance. Congressman John Larson (D-CT) introduced H.R. 860 (identical to S. 110) on March 1 with 183 (now 233) cosponsors. The bill was referred to the Committee on Ways and Means.

The bill amends the Internal Revenue Code with respect to the charitable tax deduction for contributions of qualified vehicles (i.e., motor vehicles, boats, or airplanes) to: (1) set forth revised acknowledgment requirements for vehicles valued at \$2,500 or less and vehicles valued at more than \$2,500; and (2) revise the penalty for submitting a fraudulent acknowledgment.

According to the Internal Revenue Service, as a result of Congress tightening the deductibility rules in 2005, the volume of used car donations reduced by approximately 67%. Specifically, under the 2005 rules, if the charity sells the automobile, the donor’s deduction is limited to the gross proceeds from the sale. This impacts the donor in two ways – (1) proceeds are normally less than the private sale value of the car; and, (2) a donor claiming a deduction of \$500 or more cannot claim the deduction until he or she received a written acknowledgement from the charity showing the gross sales proceeds. In addition, if the charity uses the automobile in its programs, the donor can deduct the private party sale value of the automobile, and only needs an acknowledgement from the charity of that use.

The major proposed changes in the legislation are as follows: (1) the charity won’t have to sell the automobile before it provides written acknowledgement to the donor; (2) the gross proceeds from the sale of the automobile by the charity will have no bearing; (3) for any car where the donor seeks a deduction of \$2,500 or less, the donor’s deduction will be based on the value of the car determined by the charity under rules set by the Internal Revenue Service (the existing rule suggests that this would be private sale value); (4) for a car where the donor seeks a donation greater than \$2,500, the deduction will be based on an appraisal provided by the charity; and, (5) the charity’s use of the automobile will

have no bearing (the advantage for donating to a charity that will use the automobile in its programs – rather than sell it – will reduce significantly. Under the proposed legislative changes, because charities will now be responsible for providing a statement of fair market value or an appraisal, they are more likely to use commercial dealers to handle their automobile donation programs.

Status UPDATE: additional cosponsors added on House bill since the Dec. report.

H.R.1449, the Motor Vehicle Owners Right to Repair Act of 2011

Congressmen Edolphus Towns (D-NY) and Todd Platts (R-PA) introduced H.R.1449 on April 8, 2011. To date it has 33 (now 44) cosponsors. It was referred to the Committee on Energy and Commerce.

The “Right to Repair Act” protects motoring consumers from vehicle repair costs by requiring that car manufacturers: (1) provide to the vehicle owner and service provider all information necessary to diagnose, service, maintain, or repair the vehicle; (2) offer for sale to the vehicle owner and service providers any related tool or equipment; and, (3) provide the information that enables tool companies to manufacture tools with the same functional characteristics. The legislation further provides car companies with protections for their trade secrets, only requiring them to make available the same non-proprietary diagnostic and repair information they provide their franchised dealers. Lastly, the bill authorizes enforcement by the Federal Trade Commission and civil actions by the states.

Status UPDATE: an additional cosponsor added since the Dec. report.

H.R.527, the Regulatory Flexibility Improvements Act of 2011

Congressman Lamar Smith (R-TX), Chairman of the House Judiciary Committee, introduced H.R. 527 on February 8, 2011. To date it has 26 cosponsors. It was reported by the Judiciary Committee on July 7, 2011, and reported by the Small Business Committee on November 16, 2011. Passed the House on Dec. 1 by recorded vote of 263-159.

In 1980, Congress passed the Regulatory Flexibility Act (RFA), which was aimed at relieving the stress of onerous regulation on small businesses. The RFA mandates that all Federal agencies examine the impact of their proposed rules on small businesses, and if those impacts are significant, the agency must consider less burdensome alternatives.

Generally, H.R. 527 would ensure that Federal agencies comply with the RFA and close loopholes used by agencies to avoid compliance with the RFA. This bill would also require a better assessment of the impacts that regulations will have on small businesses, forcing agencies to perform better periodic review of rules, and granting the Chief Counsel for Advocacy at the Small Business Administration greater powers for enforcement of the RFA.

Specifically, it amends the RFA to revise the definition of "rule" under such Act to exclude a rule of particular (and not general) applicability relating to rates, wages, and

other financial indicators and to define "economic impact" with respect to a proposed or final rule as any direct economic effect on small entities from such rule and any indirect economic effect on small entities that is reasonably foreseeable and that results from such rule. Includes tribal organizations within the definition of "small governmental jurisdictions" for purposes of such Act.

It requires initial and final regulatory flexibility analyses to: (1) describe alternatives to a proposed rule that minimize any adverse significant economic impact or maximize the beneficial significant economic impact on small entities, and (2) include revisions or amendments to a land management plan developed by the Secretary of Agriculture or the Secretary of the Interior under specified Acts.

It expands elements of initial and final regulatory flexibility analyses under RFA to include estimates and descriptions of the cumulative economic impact of a proposed rule on a small entity. It repeals provisions allowing a waiver or delay of the completion of an initial regulatory flexibility analysis.

It requires each agency to publish in the Federal Register a plan for the periodic review of existing and new rules that have a significant impact on a substantial number of small entities to determine whether such rules should be continued, changed, or rescinded; provides for judicial review of an agency final rule for compliance with RFA requirements after the publication of such rule; and, grants federal courts of appeal jurisdiction to review all final rules issued in accordance with RFA.

Status UPDATE: passed House on Dec. 1, 2011 by a vote of 263-159; on Dec. 5 referred to the Senate Committee on Homeland Security and Governmental Affairs.

H.R.229, the Michael Jon Newkirk Transportation Safety Enhancement Act of 2011
Congresswoman Sheila Jackson Lee (D-TX), Ranking Member of the House Subcommittee on Transportation Security of the House Committee on Homeland Security, introduced H.R. 229 on January 7, 2011. To date it has no cosponsors. It was referred to the Committee on Transportation and Infrastructure.

The legislation directs the Secretary of Transportation to withhold a graduated percentage of federal-aid highway funds of states for FY2014 and thereafter that do not enact or enforce a law that requires the annual inspection of registered motor vehicles so that they meet or exceed state motor vehicle standards (including the operability of vehicle seatbelts and speedometers).

The bill is named after Michael Jon Newkirk, an 18 year old who passed away after being involved in a head-on collision while a passenger in a friend's truck. The police report states that he was not wearing a seatbelt. However, on a visit to see where her son died, his mother, Suzanne, discovered why: it was broken. Upon closer investigation, she learned that the only kinds of seatbelts that require checks are lap belts and automatic seatbelts. But three-point harness seatbelts – the kind in most new cars – aren't specifically mentioned. Across the nation, nearly 20 states don't do any safety inspections

at all – a process that usually includes checking seatbelts. That’s when Suzanne began to work with Representative Lee to enact legislation to establish national inspection standards, including operable seatbelts, and require states to adhere to them.

Status UPDATE: unchanged from the Dec. report.

H.R.164, the Damaged Vehicle Information Act

Congressman Cliff Stearns (R-FL), Chairman of the House Energy and Commerce Committee's Subcommittee on Oversight and Investigations, introduced H.R. 164 on January 5, 2011. To date the bill has no cosponsors. The bill was referred to the Committee on Energy and Commerce.

The bill directs the U.S. Department of Transportation's National Highway Traffic Safety Administration (NHTSA) to issue a regulation to require greater disclosure of information relating to the market value and safety of damaged motor vehicles. Specifically, it requires all persons who terminate a contract related to a motor vehicle due to flood or water damage, collision, fire damage, theft and recovery, or any other circumstance that adversely affects the fair market value of such motor vehicle, to disclose to the public, in a commercially reasonable, electronically accessible manner, the following: the vehicle identification number of the motor vehicle; the date of the termination of the contract; the odometer reading of the motor vehicle on the date of the termination of the contract; whether, as a result of the incident that resulted in the termination of the contract, one or more airbags in the motor vehicle were deployed; and, the cause of the termination of the contract, including whether such cause was flood or water damage, collision, fire damage, theft and recovery, or another cause. The proposed legislation also states that the private sector will be responsible to collect, aggregate and disclose to the public the fair market value and safety information with respect to the damaged vehicle and all such information shall be accessible by vehicle identification number.

In January 2009, The National Motor Vehicle Title Information System was implemented, providing a national database of vehicles compiled from state, salvage and insurer reporting. It requires insurance companies and salvage yards to report vehicles that are severely damaged or totaled, giving consumers access to such information as odometer readings and theft records. The implementation stemmed from a 2008 court case in which Public Citizen Inc. filed the suit to fight for a used car database that was established by Congress in 1992 in the Anti-Car Theft Act. However, the U.S. Department of Justice had never made the system available to the public.

Status UPDATE: unchanged from the Dec. report.

White House Jobs Bill – “The American Jobs Act”

Congressional Democrats are still pushing for enactment of the President’s “American Jobs Act” by proposing that it be funded from the savings associated with the reduction of the Iraqi war.. The total size of the proposed package is \$447 billion, which includes

some \$50 billion for infrastructure funding, \$30 billion for school construction/renovation projects, \$35 billion for school teachers and first responders, etc.

At the same time the Senate Republicans are pursuing their version of a jobs bill. The majority of the bill involves cutting individual and corporate taxes along with repeals of major regulations, including the Dodd-Frank Act. As of the date of this report, the proposed bill has not received Senate Floor consideration and has been met by strong opposition by the Democratically- controlled Senate.

Status UPDATE: unchanged from the Dec. report.