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To: NAAA
From: Federal Advocates
Subject: August Monthly Report

Note: Congress recessed from August 1 until September 8.

Rental Cars/Used Cars Recall

Three pieces of legislation are at issue: S.921, the “Raechel and Jacqueline Houck Safe Rental Car Act of 2013;” S. 2559, the “Motor Vehicle Safety Act of 2014;” and, the “GROW AMERICA Act.” NAAA is monitoring but has not taken a formal position on the first bill; no issues of concern have been identified in the third bill; and the second bill is under review given the issue noted below.

While there has been no action for some time on S.921 that may be changing as the Senate Commerce Committee is expected to release soon its title of the MAP-21 reauthorization bill, the Senate Environment and Public Works Committee already having reported out its title on highway issues. Senate Commerce’s jurisdiction in the bill includes motor vehicle safety and rail issues. We have been told that the Commerce Committee’s MAP-21 title will include “something” on the rental car recall issue probably much from S.921. Senator McCaskill, who is the Chair of the Commerce Subcommittee on Consumer Affairs, is also a cosponsor of S.921 and a close ally of Senator Boxer, the leading proponent on S.921. It was the death of the Houck sisters, California constituents of Senator Boxer, which was the impetus for S. 921. In its reported form, S. 921 is opposed by both NIADA and NADA. Again, NAAA has taken no position on the legislation but continues to monitor it.

Coupled with S.921 is S.2559 introduced on June 27 by Senator Rockefeller, Chair of the Senate Commerce Full Committee. That bill includes a prohibition against used car dealers selling, leasing or renting a vehicle subject to a recall unless and until the defect is remedied or the consumer is provided notification of it. Rockefeller is taking action after a series of deaths resulted from faulty ignition switches in GM vehicles, and a wave of recent recalls from various automakers, which have highlighted gaps in NHTSA’s ability to meet its mission of saving lives,

preventing injuries, and reducing crashes on roads. Section 303 of the bill appears to include in the definition of “dealer” the “auctioning of a used passenger motor vehicle,” thereby subjecting auction houses to the same prohibition against the sale, lease or rental of a motor vehicle subject to recall as used car dealers. NAAA is currently working on a letter to Congress stating its opposition/concerns on the bill. CRS published a recent report on recalls and used car dealers (see attached). As with S.921, NIADA is also working with NADA in opposition to the bill. To summarize the political situation in the Congress, House Republicans oppose both S.921 and S.2559; Senate and House Democrats support both; and, Senate Republicans are in a “wait and see” mode.

Lastly, as previously reported, included in the President’s proposed MAP-21 reauthorization bill, the “Generating Renewal, Opportunity, and Work with Accelerated Mobility, Efficiency, and Rebuilding of Infrastructure and Communities throughout American Act” or the GROW AMERICA Act,” is Section 4109, recall authority over rental car companies and used car dealers. This provision does not impact auction houses.

Auction Sales

We continue to report on this issue in recognition of its importance and the possibility of congressional action at some point. However, to date there have been no further developments either from the Hill or between the industry and law enforcement.

MAP-21 Reauthorization

On August 8, President Obama signed into law (Public Law 113-159) the "Highway and Transportation Funding Act of 2014." The law would transfer approximately \$10.8B from the General Fund into the Highway Trust Fund (HTF) - \$8.8B into the Highway Account and \$2.0B into the Mass Transit Account - to keep the HTF solvent and provide funding for highway and transit programs at current levels through May 31, 2015.

The cost to the General Fund would be offset by various "pay-fors", all of which are unrelated to transportation and most of which extend over 10 years. They include "pension smoothing", an extension of custom duties, and a transfer of \$1B from the Leaking Underground Storage Tank Trust Fund (LUST). The bill also includes an extension of the MAP-21 authorization through May 31, 2015 at current funding levels, pro-rated for the eight-month length of the extension - October 1, 2014 to May 31, 2015.

Given this action, there is little likelihood of legislative action on reauthorization for the balance of this year.

Legislation of Interest

Annual Privacy Notice Requirement

The bills referenced are H.R. 749, the “Eliminate Privacy Notice Confusion Act” by Congressman Luekemeyer, passed the House, and Senate introduced S. 635, the “Privacy Notice

Modernization Act of 2013” by Senator Brown. Both bills would remove the annual privacy notice requirement if an institution has not, in any way, changed its privacy policies or procedures. The bills do not exempt any institution from an initial privacy notice, nor do they allow a loophole for an institution to avoid issuing an updated notice. Notwithstanding this, the Senate bill adds another qualifying condition for exemption - that customers be provided “access to such most recent disclosure in electronic or other form permitted by regulations prescribed under section 504.” By this addition, the Senate bill envisions that financial institutions would post their privacy policy on their website or transmit it via email.

Status Update: No change since the last report.

H.R. 4811, the “Bureau Guidance Transparency Act”

Introduced by Representative Stutzman, the bill would require that the CFPB, in issuing any guidance, provide a public notice and comment period before issuing the guidance in final form, and must make public any studies, data, and other analysis it relied on in preparing and issuing its guidance. That bill was reported by the House Financial Services Committee and is not supported by the Democrats because they don’t believe that it is necessary given the fact that the CFPB has issued 56 guidelines and only 2 have raised concerns. However, one of the guidelines of concern is the CFPB March 21, 2013 announcement with respect to indirect auto lending. Various stakeholders took issue not only with CFPB’s findings on this issue but also the underlying process and data supporting it, both of which were regarded as highly speculative and secretive. Nullifying that guidance and providing for a more transparent and accountable process are something that the Democrats could support. Therefore, there is an effort underway in the House to see if the Democrats position could be married somehow with the Republican bill to advance the position and concerns of the auto industry regarding this issue.

Status Update: No change since the last report.

H.R. 4383, the Bureau of Consumer Financial Protection Small Business Advisory Board Act

Introduced by Representative Pittenger, the bill, as reported, would direct the CFPB to establish a Small Business Advisory Board. The bill has 23 (now 37) cosponsors. Introduced by Representative Pittenger, the bill, as reported, would direct the Director of the CFPB to establish a 12 member Small Business Advisory Board to: (1) advise and consult with the Bureau in the exercise of the Bureau's functions under the federal consumer financial laws applicable to eligible financial products or services; and (2) provide information on emerging practices of small businesses that provide eligible financial products or services, including regional trends, concerns, and other relevant information.

Status Update: Fourteen additional cosponsors added since the last report.

H.R. 4684, the Bureau Guidance Transparency Act

Introduced by Representative Stutzman with no cosponsors, the bill would require that the CFPB, in issuing any guidance, provide a public notice and comment period before issuing the guidance in final form, and must make public any studies, data, and other analysis it relied on in preparing and issuing its guidance.

Status Update: No change since the last report.

H.R. 4662, the Bureau Advisory Opinion Act

The bill, introduced by Congressman Posey with one cosponsor, would require the Director of the Consumer Financial Protection Bureau to: (1) establish a procedure to respond to specific inquiries by a covered person concerning conformance of prospective conduct with federal consumer financial law, and (2) issue an opinion in response to the inquiry within 90 days (with a single allowable extension of another 45 days). A "covered person" under the Act is: (1) any person that engages in offering or providing a consumer financial product or service; and (2) any affiliate of that person if the affiliate acts as a service provider to the person. The bill, as reported, creates a rebuttable presumption in any action brought under federal consumer financial law that any conduct for which the Director has issued an opinion that it is in conformity with the opinion is indeed in compliance with federal consumer financial law. It exempts such inquiries and advisory opinions from disclosure under the Freedom of Information Act.

Status Update: No change since the last report.

H.R. 3193, Consumer Financial Protection Safety and Soundness Improvement Act of 2013

Introduced by Congressman Duffy on September 26, 2013, passed the House on Feb. 27, 2014, received in the Senate on March 4, 2014, and amends the Consumer Financial Protection Act to authorize the Chairperson of the Financial Stability Oversight Council to issue a stay of, or set aside, any regulation issued by the Consumer Financial Protection Bureau (CFPB) upon the affirmative vote of the majority of Council members (currently, two-thirds), excluding the Director of the Bureau.

Requires the Council, upon the petition of a member agency of the Council, to set aside a final regulation prescribed by the CFPB if the Council decides that such regulation is inconsistent with the safe and sound operations of U.S. financial institutions. (Currently the Council is merely authorized, upon petition, to set aside a final regulation if it would put the safety and soundness of the U.S. banking system or the stability of the U.S. financial system at risk). Repeals the prohibition against Council set-aside of a regulation after expiration of a specified time period, and mandatory dismissal of a petition if the Council has not issued a decision within such time period. Requires the CFPB Director, when prescribing a rule under federal consumer financial laws, to consider its impact upon the financial safety or soundness of an insured depository institution.

Status Update: No change since the last report.

S. 2171, Location Privacy Protection Act

Introduced on March 27 by Senator Franken. The bill has 5 cosponsors and on June 4 a hearing was held on it by the Subcommittee on Privacy, Technology and the Law of the Judiciary Committee. The bill amends the federal criminal code to prohibit a covered entity (nongovernmental individual or entity) from knowingly collecting or disclosing to another covered entity geolocation information from an electronic communications device without the consent of the individual using the device. Specifies exceptions, including for collection or disclosure: (1) for the provision of fire, medical, public safety, or other emergency services; or (2) pursuant to a court order or a request by a law enforcement agency.

Defines "geolocation information" as specified information that is not the contents of a communication, is generated by or derived from the operation or use of such a device, is sufficient to identify the street and city or town in which the device is **located**, and does not include the Internet protocol address or the home, business, or billing address of the individual. Defines "consent" as affirmative express consent after receiving clear, prominent, and accurate notice that: (1) informs the individual that his or her geolocation information will be collected, (2) identifies the categories of covered entities to which the information may be disclosed, and (3) provides the individual easy access to the collecting agency's geolocation information website.

Requires a covered entity that initially collects geolocation information from such a device in a manner that it has reason to believe is imperceptible to the individual using the device, in addition to obtaining consent, to provide clear, prominent, and accurate notice to the individual, not earlier than 24 hours nor later than 7 days after the initial collection, that geolocation information is being collected

Requires a covered entity that collects the geolocation information of more than 1,000 electronic communications devices in a year to maintain a publicly accessible Internet website that includes: (1) the nature of the information collected; (2) the purposes for which the covered entity collects, uses, and discloses the information; (3) the specific covered entities to which the collecting entity discloses geolocation information; and (4) how an individual may electronically revoke consent for the collection and disclosure of such information. Requires the Attorney General to issue regulations to implement such requirements. Authorizes civil actions by the Attorney General and aggrieved individuals for violations of this **Act**, subject to specified limitations.

Prohibits: (1) the unauthorized disclosure of geolocation information in aid of interstate domestic violence or stalking; (2) the fraudulent collection of geolocation records information obtained by a geolocation information service; and (3) the manufacture, distribution, possession, and advertising of geolocation information intercepting devices. Provides for the forfeiture of such devices. Establishes in the Treasury an Anti-Stalking Fund: (1) into which shall be deposited an amount equal to the value of any such device and related proceeds forfeited, and (2) which the Attorney General shall use for training on investigating and prosecuting stalking crimes and for support of help line and emergency response efforts for such crimes.

Directs the Attorney General to include as part of each National Crime Victimization Survey, and the Director of the Center for Disease Control and Prevention (CDC) to include as part of each National Intimate Partner and Sexual Violence Survey, questions examining the role that various new technologies that use geolocation information may have in the facilitation of domestic violence, dating violence, sexual assault, or stalking.

Requires the Attorney General to direct the Internet Crime Complaint Center to provide education and awareness information to the public and law enforcement and register complaints regarding the abuse of geolocation information to commit domestic violence, dating violence, sexual assault, stalking, or other related crimes. Authorizes the Director of the Office on Violence Against Women to make grants to develop and provide training relating to investigating and prosecuting the misuse of geolocation information in the commission of such crimes.

Status Update: No change since the last report.

H.R. 2543, End Discriminatory State Taxes for Automobile Renters Act of 2013

Introduced on June 27 by Congressman Cohen with 6 (now 13) cosponsors. On September 13 the bill was referred to the Subcommittee on Regulatory Reform, Commercial and Antitrust Law of the Judiciary Committee. The bill prohibits states or local governments from levying or collecting a discriminatory tax (generally, a tax or tax assessment that is applicable to the rental of motor vehicles or motor vehicle businesses or property, but not to the majority of other rentals of tangible personal property within a state or locality) on the rental of motor vehicles, motor vehicle rental businesses, or motor vehicle rental property.

Status Update: No change since the last report.

S. 1585, Providing Replacement Automobiles for Certain Disabled Veterans and Members of the Armed Forces

Introduced on October 28 by Senator Sanders with no cosponsors. Hearing held by the Committee on Veterans Affairs on October 30. The bill would increase the amount of government assistance from \$18,900 to \$30,000 for military members to acquire a replacement vehicle for vehicles destroyed in disasters, provided that the eligible member does not receive property insurance compensation for the loss.

Status Update: No change since the last report.

S.1029, the Regulatory Accountability Act of 2013

Introduced on May 23 by Senator Portman with 8 cosponsors (now 12) and referred to the Committee on Homeland Security and Governmental Affairs. A Subcommittee hearing was held on the bill on March 11, 2014. The bill amends the Federal regulatory process by specifying issues agency must consider in a rulemaking; various notice requirements for major and high-impact rules; public comment and hearing procedures; judicial review; and, final rulemaking.

Status Update: No change since the last report.

H.R. 1663, Promoting Automotive Repair, Trade and Sales Act of 2013 (PARTS Act)

Introduced on April 23 by Congressman Issa on a bipartisan basis with 7 (now 8) cosponsors and referred on June 14 to the Judiciary Subcommittee of jurisdiction. The bill makes it not an act of infringement, with respect to a design patent that claims a component part of a motor vehicle as originally manufactured, to: (1) make, test, or offer to sell within the United States, or import into the United States, any article of manufacture that is similar or the same in appearance to the component part claimed in such design patent if the purpose of such article is for the repair of a motor vehicle to restore its appearance to as originally manufactured; and (2) use or sell within the United States any such same or similar articles for such restorations more than 30 months after the claimed component part is first offered for public sale as part of a motor vehicle in any country. Defines "component part" as a component part of the exterior of a motor vehicle only (such as a hood, fender, tail light, side mirror, or quarter panel), excluding an inflatable restraint system or other component part located in the interior of a motor vehicle. Specifies that an offer to sell include any marketing of an article of manufacture to prospective purchasers or users and any pre-sale distribution. Applies this Act to any patent issued, or application filed, before, on, or after the effective date of this Act. Also on April 23 Senator Whitehouse (RI) introduced on a bipartisan basis the identical bill (S.780) with 2 cosponsors. The bill was referred the same day to the Judiciary Committee. NIADA reviewed the legislation and determined at this point not to lend its name in support. We will continue to monitor further developments.

Status Update: One additional cosponsor added since the last report..

H.R.2414, the Black Box Privacy Protection Act

On June 18, Congressman Capuano introduced H.R.2414, the Black Box Privacy protection Act with 10 (17) cosponsors. On July 15, the bill was referred to the Homeland Security Committee Subcommittee. The bill amends the Automobile Information Disclosure Act to require manufacturers of new automobiles to disclose on the information label affixed to the window of the automobile: (1) the presence and location of an event data recorder (commonly referred to as a "black box"), (2) the type of information recorded and how such information is recorded, and (3) that the recording may be used in a law enforcement proceeding. Sets forth similar requirements for motorcycle manufacturers. Defines "event data recorder" as any device or means of technology installed in an automobile that records information such as automobile or motorcycle speed, seatbelt use, application of brakes, or other information pertinent to the operation of the automobile or motorcycle. Prohibits the manufacture, sale, offering for sale, or import into the United States of an automobile manufactured after 2015 (bearing a model year of 2016 or later) that is equipped with an event data recorder, unless the consumer can control the recording of information. Requires the event data recorder in an automobile or motorcycle, and any data recorded, be considered the property of the owner of the automobile or motorcycle. Makes the retrieval or downloading of recorded data by any other person unlawful, except: (1) with the owner's consent, (2) in response to a court order, or (3) by a dealer or automotive

technician to service the vehicle. Requires certain violations to be treated as unfair or deceptive acts or practices under the Federal Trade Commission Act.

Status Update: No change since