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PERSPECTIVE

Getting It Right

By Jonathan Michaels

Last week, a senate committee passed legislation that promises to revolutionize automotive safety. The bill gives whistleblowers who report automotive safety issues to the federal government 30 percent of all fines paid by the automaker that exceed \$1 million.

The Motor Vehicle Safety Whistleblower Act (S.304) was introduced by U.S. Sens. John Thune, R-S.D., and Bill Nelson, D-Fla., late last year in response to the General Motors ignition switch scandal that shocked the nation. In February 2014, GM admitted that it had been concealing a safety defect in its cars for 13 years, knowing that the defect was killing consumers. Under federal law, manufacturers have just five days to report safety defects to the National Highway Traffic Safety Administration (NHTSA) or face a fine of up to \$35 million.

In response to public backlash, GM set up a victim compensation fund with Kenneth Feinberg, best known for administering claims in the 9/11 terrorists attacks and the BP gulf oil spill. While GM claimed that only 12 deaths were linked to the ignition switch defect, Feinberg has pinned 57 deaths on the manufacturer, with many more still under consideration. A total of 479 death claims have been submitted.

The GM scandal revealed that the company fostered a culture of cover-up, where low-ranking and high-ranking officials alike were complicit in concealing the safety defect. The Motor Vehicle Safety Whistleblower Act is designed to disrupt corporate culture, and incentivize employees to come forward with information that could prevent death or serious injury.

As Thune stated, "By encouraging employees in the auto sector to speak up about auto safety problems, we can help prevent injuries and even deaths for American drivers." "This

legislation will be a powerful tool to help ensure that problems regarding known safety defects are promptly reported."

The bill grants whistleblower status to employees and contractors of motor vehicle manufacturers, parts suppliers and dealerships who report the issue. The whistleblowers are also given anonymity when coming forward. If the report results in monetary penalties imposed by the U.S. Department of Transportation or Department of Justice that exceed \$1 million, the whistleblower receives 30 percent of the penalty.

There has never been a greater need for automotive safety reform; the last five years have been atrocious for the industry. The current decade began with Toyota failing to recall its cars that had sticky gas pedals, and has become increasingly worse. In 2014 alone, NHTSA imposed more fines on automakers than during its entire 43-year history combined.

The issue seems to come down to defiance and complete disregard for consumer safety. In January 2015, for instance, NHTSA imposed two \$35 million fines on Honda for failing to report deaths and injuries to federal regulators — a flagrant violation of the laws well known to every vehicle manufacturer.

Now NHTSA is investigating claims that Japanese airbag manufacturer Takata did not recall 15 million airbags, where the inflators have been shown to shoot shrapnel throughout the interior of the vehicle upon deployment. On Feb. 20, NHTSA issued a fine of \$14,000 per day against Takata for failing to cooperate in the agency's investigation. When NHTSA requested documents related to the defect, Takata dumped 2.4 million pages of documents on the agency without any guide to or explanation of the content. The faulty airbags have been linked to six deaths.

With its anonymity and high financial incentives, the Motor Vehicle Safety Whistleblower Act could seriously change the way the manufacturers hold back information. The maximum fine that NHTSA can issue is currently \$35 million, but there is talk of this increasing substantially. Transportation Secretary Anthony Foxx has requested that

the maximum penalty be increased to \$300 million.

Penalties can also get stiffer when the Department of Justice files criminal charges against an automaker. In March 2014, the DOJ settled its criminal case with Toyota, which was born out of the 2010 unintended acceleration cover-up, for an astonishing \$1.2 billion. Had the case been reported under the Motor Vehicle Safety Whistleblower Act, the tipster would have anonymously walked away with \$360 million. Many pundits expect the DOJ to similarly file criminal charges against GM for the ignition switch cover-up.

History shows that few manufacturers are immune from wrongdoing. Since 1999, when NHTSA began making notice of the fines public, penalties for failure to issue recalls have been assessed against Hyundai, GM (four times), Volvo, Ford (three times), BMW, Honda, Isuzu, Toyota (four times) and Chrysler.

The legislation passed the Senate Commerce, Science and Transportation Committee with bipartisan support, and is now being sent to the full Senate for a vote. If the bill passes the Senate and the House, it will be presented to President Barack Obama to be signed into law.

Sadly, the odds of the bill's passage are placed at 36 percent. If the bill fails to become law, it will be because of competing egos — not because of a lack of genuine merit. The industry's safety problems have motivated many a politician to craft legislation that addresses the issue, while at the same time elevating themselves to legendary status. Politicians are looking to revamp the automotive industry in the way that the Sarbanes-Oxley Act revolutionized public finance — all while giving themselves the same type of fame that came to U.S. Sen. Paul Sarbanes, D-Md., and U.S. Rep. Michael G. Oxley, R-Ohio.

Our elected leaders must deliver on their campaign promises of being the voice of the people, and forget being credited with the one responsible for drafting the legislation. The Motor Vehicle Safety Whistleblower Act must pass. It is simple and straightforward, and it provides the right incentive to expose a cancer that has been eating away at the ethics of an industry.



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