



November 17, 2015

The Honorable Barbara Boxer
United States Senate
Washington DC, 20510

Dear Senator Boxer,

As representatives of the Consumer Federation of California and Consumer Watchdog, we are writing to express our deep concerns about H.R. 22, The Drive Act, now being considered by a House-Senate Conference Committee. For decades you have been a true champion of consumers and safety. However, this is the first highway bill in 25 years without a bipartisan agenda of safety improvements. As a major sponsor and advocate for The Drive Act, you have a responsibility to influence the direction taken by the Conference Committee to ensure the final highway legislation that emerges truly protects consumers and their safety. There is still time to remedy what *The New York Times* deemed, “The Bill That Would Make Roads Less Safe” in its recent editorial (Nov. 4, 2015).

Year after year, the trucking industry has been working to erode safety regulations with the result that truck driving is one of the most dangerous occupations in our country. It is no surprise that there is a truck driver shortage considering that drivers are being forced to drive and work up to 82 hours a week in sweatshops on wheels. Instead of fixing these issues to entice more workers to join the trucking workforce, this legislation seeks to secure a new pool of drivers, creating yet another serious problem. The legislation would allow teenagers as part of pilot projects to get behind the wheel of big rigs and large buses to drive in interstate commerce. We urge you to get this ill-advised provision stricken or the safety of these youthful Americans and all those with whom they will share the roads will be threatened.

Another anti-safety issue that made its way into the Senate and House bills is covering up Department of Transportation safety scores of motor carriers. Transparency and consumer knowledge are key tools to holding bad actors accountable. If changes should be made to the Compliance, Safety, Accountability (CSA) program, there is no reason they cannot be made while the program continues to do its job.

We are pleased to see that provisions to require repair of defective rental and loaner cars that we know you support are in the House and Senate bills. However, the House bill includes an exemption for auto dealers that is unnecessary and dangerous. In addition, neither the Senate nor the House bill requires repair of used cars subject to a

manufacturer safety recall before sale by any dealer. All vehicles subject to manufacturer safety recalls should be repaired before any dealer or rental car company allows the public to drive them.

Additionally, special interest exemptions from federal safety regulations for certain industries and states to allow giant trucks exceeding federal limits on certain roads are eroding the fabric of our nation's infrastructure. These are nothing more than earmarks being paid for by taxpayers. Congress and the Department of Transportation created truck and car safety laws and rules based on sound research and stakeholder input. High-powered truck and auto company pressure should not eviscerate reasoned, informed and vetted policy decisions. Attached is a three-page list of many of these special exemptions that should be deleted from the conference report.

Minimum insurance for large truck crashes remains at the out-of-date 1985 level of only \$750,000 no matter how many people are killed or injured in a crash. It is totally inadequate. Finally, a few years ago in response to consumer pleas the Secretary of Transportation began work on increasing this minimum. But the House bill now places all sorts of roadblocks in the path toward completion of a new rule by requiring unneeded information and data be gathered. This provision should be dropped to allow the DOT to assure that people horribly injured in devastating truck crashes can be adequately compensated.

The legislation also imposes paralysis by analysis by requiring time-consuming and wasteful studies, reports, analyses, evaluations, and duplicative data gathering by the Federal Motor Carrier Administration (FMCSA) and the National Highway Traffic Safety Administration (NHTSA). These are just an excuse to keep these agencies from doing their jobs to improve safety on the highway.

In the midst of a corporate crime wave among multinational auto manufacturers who sold killer defective vehicles and covered up the deficiencies, the House Drive Act does nothing and the Senate bill increases the NHTSA's civil penalty by \$70 million, hardly enough to change corporate misbehavior. There have been ten congressional hearings in the last two years revealing the horrible injuries and deaths to car users caused by reckless manufacturers. NHTSA has no criminal penalty authority for recklessly making or selling a defective vehicle or equipment that will kill or injure the public or for hiding information about serious dangers. Surely Congress can take action to punish companies like General Motors and Takata from needlessly killing or seriously injuring unsuspecting motorists. Over 200 people have been killed by companies who have delayed recalls, sometimes for years, and hidden the defects. The lack of any or very little remediation sends the message that cover-ups and business as usual are fine. This is frankly shameful to the memory of these victims.

The Drive Act inexplicably continues a starvation diet for both NHTSA and FMCSA. The Senate bill is better than the House bill that cuts \$90 million off of NHTSA's requested reauthorization. But this situation is an emergency. NHTSA has a total motor vehicle budget covering research and operations for the U.S. of a measly \$130 million. And FMCSA's total budget for operation and program is only \$271 million. These are

not even footnotes for the Department of Defense yet one third of our armed forces deaths occur on the highway. The Federal Aviation Administration's budget is \$3 million per fatality while NHTSA's is \$5,000. NHTSA and FMCSA need an infusion of serious money to get their very large and complex jobs accomplished. Why are these agencies being starved for funds? Please correct this unacceptable situation.

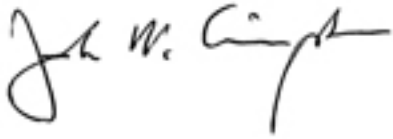
Lastly, several provisions in the House Commerce Committee discussion bill that were dropped out of the bill considered on the floor are of great concern because we understand they might be reinserted into the legislation in conference. Testimony and other comments raised serious questions about the viability of these provisions. We ask that you ensure the provisions are not included in the final legislation. The troublesome provisions would:

- (1) Require that new car equipment manufacturers must develop and implement within one year a data privacy policy listing manufacturer policies concerning use and sharing of vehicle generated/stored data. There are no specific policy requirements, but complying companies get safe harbor protection from charges of unfair and deceptive practices under the Federal Trade Commission Act.
- (2) Require that NHTSA must establish within one year an industry dominated Automotive Cyber Security Advisory Council to develop best practices. If original equipment manufacturers, comply they would be shielded from liability and protected from unfair and deceptive practices charges under the Federal Trade Commission Act.
- (3) Add an exemption from compliance with federal motor vehicle safety standards issued by NHTSA for vehicles used solely for testing and evaluation.
- (4) Exempt production or import of up to 500 replica motor vehicles that do not meet NHTSA federal safety standards by low-volume manufacturers or importers that produce less than 5,000 vehicles per year
- (5) Protect manufacturers from any liability or enforcement action for failure to abide or actions inconsistent with NHTSA guidelines, but permits companies to use evidence of compliance with such guidelines as evidence of compliance with motor vehicle safety or other standards.
- (6) Require DOT to establish within 1 year an Advanced Automotive Technology Advisory Committee (AATAC) to develop safety performance metrics and test procedures for advanced automotive technologies and connected vehicle technologies installed in 15% of new vehicles. NHTSA shall establish "New Car Assessment Rating" for each new technology.
- (7) Give automakers greenhouse gas "credits" if they install broadly defined vehicle technology that may or may not enhance safety and ensures that federal fuel economy requirements are changed to reflect these new weaker emission standards.
- (8) Eliminate the right of 21 states to establish rest breaks for drivers, which will have a tremendous negative impact on highway safety. The number one cause of truck-involved

accidents is fatigue and these amendments, if enacted, will significantly increase the number of tired truckers on our highways.

Unless new safety measures are enacted, it is estimated that nearly a million people will be killed and injured in crashes over the next six years. This is Congress's big opportunity to make a difference. Senator Boxer, this is your opportunity to put the safety of us all before corporate greed. We urge you to correct The Drive Act's many deficiencies in the provisions we have highlighted.

Sincerely,



John M. Simpson
Consumer Advocate
Consumer Watchdog



Richard E. Holoher
Executive Director
Consumer Federation of California

Attachment: Special Interest Exemptions in the Legislation

**Special Interest Exemptions from Safety Rules and Legal Standards
for Shippers/Brokers, Manufacturers of Replica Passenger Vehicles, and the
Concrete, Lumber, Towing, Construction, Trailer, Auto Transporter,
Motor Home/Recreational Vehicle & Agricultural Industries.**

Senate Bill Special Exemption Provisions:

Section 32201: Petitions for Regulatory Relief from Hours of Service Regulations

Driver fatigue remains a critical safety issue and this provision ensures it will make an ever increasing problem worse by mandating permanent HOS exemptions. Would permit 5-year exemptions from hours of service (HOS) requirements brought by any motor carrier on behalf of a class of motor carriers that could be made permanent. Also, grants permanent exemptions for motor carriers that transport weapons, munitions and classified cargo, radio-active materials, hazardous materials shipments subject to security plans, perishable construction products, commercial bee hives, livestock, loads that require special permits and change in the record of duty status (logs) for passenger bus drivers.

Section 32402: Allows Longer Combination Vehicles (LCVs) on More Roads

Violates 1991 LCV freeze by expanding the mileage on which LCVs can operate. States that are allowed to have LCVs operate on state and federal routes subject to federal weight limits may expand mileage by an additional 5 percent of the current mileage allowed for LCV operations.

House Bill Special Exemption Provisions:

Section 5224: Special Interest Shield for Shippers and Brokers

This misguided proposal would eviscerate the incentive for shippers and brokers to vet and hire the most competent and safe motor carriers putting the public at serious risk, and interferes with traditional civil justice operations in the federal and state courts. Shields shippers, brokers and consignees from liability for negligent hiring of a motor carrier so long as these entities verify that a hired motor carrier is registered to operate, has minimum insurance coverage, and a satisfactory safety rating. CSA scores or analysis may not be admitted into evidence in a case of negligent selection until the CSA corrective plan has been fully implemented.

Section 5513: Special Industry Exemption: Longer Automobile Transporters

Pre-empts state laws and restrictions on long tow vehicles and needlessly exempts these vehicles from federal length restrictions putting the public at risk. Prohibits states from regulating automobile carriers under 80 feet long, and by extending the limits on how far a transported vehicle can overhang off of the carrier. This exemption actually adds 8 feet to overall length of automobile carriers and their cargo.

Section 5514: Special Industry Exemption: Ready Mix Concrete Delivery Trucks

Driver fatigue remains a critical safety issue and this provision ensures it will make an ever increasing problem worse. Exempts ready mix concrete delivery vehicles from the federal hours of service regulations (HOS), minimum safety standards (FMCSRs), and record of duty status recordkeeping (logbooks) for drivers that operate within a 100 air-mile radius of their normal work reporting location.

Section 5306: Special Industry Exemption: Ready Mixed Concrete Trucks

Yet another special interest giveaway that will result in more tired truckers traveling the roads with American families. Exempts a driver of ready mix concrete truck from the HOS rest break requirement if the driver otherwise complies with the requirements for short-haul operations within a 100 air-mile radius of the normal work reporting location.

Section 5511: Special Industry Exemption: Electronic Logging Device Requirements

Another unnecessary provision that will harm highway safety. Motor carriers when transporting a motor home or RV trailer may comply with the HOS regulations by using a paper record of duty status (logbook) form or an electronic logging device (ELD).

Section 1425: Special Industry Exemption: Vehicle Weight Limitations—Interstate System

Yet another special interest exemption to federal weight restrictions that will downgrade safety and America's roads and bridges. Exempts "heavy-duty tow and recovery vehicles," that is, a vehicle that is transporting a disabled vehicle from the place where the vehicle became disabled to the nearest appropriate repair facility, from the current Interstate highway gross vehicle weight limit.

Section 1423: Special Industry Exemption: Milk Products

This special interest giveaway is totally unnecessary and will only serve to further destroy our nation's roads and bridges and defies logic since milk shipments are demonstrably divisible to meet highway safety load requirements. Establishes that a vehicle carrying fluid milk products shall be considered a load that is not readily divisible or divided so that the tanker truck can carry more than 80,000 pounds of milk by weight.

**Burgess Amendment #85: Special Interest Exemption for Replica Vehicles
Sponsored by Rep. Burgess (R-TX)**

Severely underfunds NHTSA at a time when the agency is in need of additional funding to carry out its mission to protect public safety, exempts thousands of cars from critical safety and environmental standards putting the public at risk, and provides a breathtaking double standard that will shield industry failures to abide by agency guidelines.

Exempts up to 500 replica motor vehicles from current federal motor vehicle safety standards and from clean air act provisions for replica motor vehicles produced or imported by low-volume motor vehicle manufacturers (with total annual production of not more than 5,000 vehicles) that are labeled to reflect which current safety standards the vehicle does not meet. Also exempts from federal safety regulations motor vehicles built and used for testing and evaluation so long as the vehicles are used by a manufacturer that has previously manufactured and distributed motor vehicles and the vehicle is not sold at the conclusion of the testing or evaluation period. Provides that manufacturers need not follow the approach set forth in the NHTSA guidelines, and that NHTSA may not bring an enforcement proceeding for a manufacturer's failure to comply with a guideline. Also prohibits the introduction of evidence that a manufacturer failed to comply with a NHTSA guideline in any legal action against the manufacturer, but permits a manufacturer to use compliance with a guideline as evidence of compliance with safety standards, regulations or statutory requirements under which the guideline was developed.

Amendment #40: Special Interest Provision Pre-empts State Labor Law Rest Protections
Sponsored by Reps. Denham (R-CA), Brown (D-FL), Costello (R-PA) and Ashford (D-NE)
Pre-empts state laws that protect workers by requiring lunch and rest breaks and exacerbates the dangerous problem of driver fatigue. Preempts state laws regarding driver off-duty time denying drivers meal and rest breaks as provided by such statutes.

Amendment #9: Special Interest Exemption: Logging Trucks
Sponsored by Reps. Duffy (R-WI) and Ribble (R-WI)
Special interest exemption to federal weight restrictions that will downgrade safety and inflict damage to America's roads and bridges. Increases weight limit restrictions for logging trucks on a 13-mile stretch of I-39 in the state of Wisconsin.

Amendment #3: Special Interest Exemption: Logging Trucks
Sponsored by Reps. Nolan (D-MN) and Crawford (R-AR)
Special interest exemption to federal weight restrictions that will downgrade safety and increase damage to America's roads and bridges. Permits logging vehicles carrying raw or unfinished forest products including logs, pulpwood, biomass, or wood chips that have a gross vehicle weight of up to 99,000 pounds and have no less than six axles to operate on a 24.152 mile segment of I-35 in the state of Minnesota.

Amendment #67: Special Interest Exemption: HazMat Fuel Transport
Sponsored by Reps. Neugebauer (R-TX) and Farenthold (R-TX)
This is a dangerous special interest exemption which puts the public and emergency responders at risk of death and injury in a crash. Provides an exemption for various drivers in the agriculture industry with Class A CDLs so that they would no longer need to pass a Hazardous Materials test to transport more than 118 gallons of fuel, up to 1,000 gallons.

Amendment #76: Special Interest Exemption: Weight Limits
Sponsored by Reps. Farenthold (R-TX), Babin (R-TX) and Green (D-TX)
Special interest exemption will accelerate road and bridge damage and jeopardize safety on portions of Texas highways. Exempts vehicles from federal weight limits on certain roads in Texas if those roads are designated as portions of Interstate highways.

Amendment #93: Special Interest Exemption: Trailer Towing
Sponsored by Reps. Crawford (R-AR), Jenkins (R-KS), Ryan (D-OH) and Johnson (D-TX)
Special interest exemption preempts state laws that prohibit such configurations to protect public safety. Permits two light- or medium-duty trailers to be towed together, when empty and as inventory property of a manufacturer, distributor or dealer of such trailers.

Amendment #113: Special Interest Exemption: Construction Drivers HOS
Sponsored by Reps. Ribble (R-WI), Hanna (R-NY) and Cramer (R-ND)
Special interest exemption extends range of HOS exemption even though driver fatigue is a major safety problem and this provision will only make it worse. Weakens Hours-of-Service (HOS) rule by increasing the existing exemption for air-mile radius from 50 to 75 air-miles for the transportation of construction materials and equipment, to satisfy the 24-hour off duty period.