

April 5, 2019

National Conference of Commissioners on Uniform State
Drafting Committee on Highly Automated Vehicles Act
Thomas J. Buiteweg, Chair
H. Clayton Walker, Vice Chair
Bryant Walker Smith, Reporter

Re: Automated Vehicles Act, Discussion Draft April 5-6, 2019 ("April Draft")

Gentlemen:

Allow me to first thank you for your diligence in this important effort and your patience and consideration in addressing the myriad views of the Committee Members and Observers. The National Association of Mutual Insurance Companies ("NAMIC") is an Observer to the Drafting Committee and appreciates the opportunity to provide comments regarding the April Draft.

NAMIC is the largest property/casualty insurance trade association in the country, with more than 1,400-member companies representing 40 percent of the total market. NAMIC supports regional and local mutual insurance companies on main streets across America and many of the country's largest national insurers. NAMIC member companies serve more than 170 million policyholders and write more than \$253 billion in annual premiums. Our members account for 54 percent of homeowners, 43 percent of automobile, and 35 percent of the business insurance markets. Through our advocacy programs we promote public policy solutions that benefit NAMIC member companies and the policyholders they serve and foster greater understanding and recognition of the unique alignment of interests between management and policyholders of mutual companies.

Overall, the April Draft represents important developments in the development of model state law and regulations for automated vehicles, but there are several sections remaining that should be addressed as follows.

I. Certification of "associated automated vehicle" and Declaration of "automated driving provider"

Clearly a great amount of thought and work that went into the development of the "automated driving provider" (ADP) and how that entity is designed to be the responsible party for traffic violations and potentially responsibility for crashes of associated automated vehicles. There may well be companies interested in and willing to accept the responsibilities and liabilities of being an



ADP, but there seems to be a gap in the draft that could allow for that entire process to be circumvented.

The specific registration requirements of Section 5 and ADP requirements of Section 6 only apply to an automated vehicle. An “automated vehicle” under Section 2(5) is a motor vehicle with an automated driving system. An automated driving system (ADS) under Section 2(3) is hardware and software “that is collectively capable of performing the entire dynamic driving task on a sustained basis.”

There may be vehicle providers that do not feel that they entirely fully understand the breadth and extent of “capable”, “entire dynamic driving task” and/or “on a sustained basis.” That provider may not want to legally certify that the vehicle meets these specific – but undefined – conditions. Instead, that provider could represent to clients that their vehicle is “designed and built to operate all of the driving operations required of a human driver” or something similar. There is no requirement that a vehicle provider specifically attested to Section 2(3) and no state authority that determines that a vehicle is or is not hardware and software “that is collectively capable of performing the entire dynamic driving task on a sustained basis.”

If the vehicle is not voluntarily attested by some entity that it meets the statutory requirements of an ADS, it is not an automated vehicle. An automated vehicle under Section 2(5) is a motor vehicle with an ADS, and without an ADS attestation by some entity, that vehicle is not an automated vehicle under Section 2(5). If that vehicle is not an automated vehicle, it need not be registered as an automated vehicle under Section 5, and there are no ADP requirements to be met under Section 6.

In short, the process seems to depend upon voluntary acceptance of definitions and conditions. While there may be commercial and marketing advantages to that voluntary acceptance, there is no requirements that anyone verify that the vehicle complies with the statutory definition of an automated driving system, so that the vehicle is not an automated vehicle and no registration or ADP protections are required. Among other problems, this could result in the operation in a state of almost identical vehicles where some are “automated vehicles” subject to the provisions of Sections 5 and 6, while identical vehicle not voluntarily attested to have an ADS are not subject to Sections 5 and 6.

There may be commercial/marketing/insurance factors which benefit a provider that chooses to be an “automated driving provider”, but there are compelling responsibility and liability factors that could convince that same provider to choose not to be an automated driving provider. In the April Draft, the certification of an “associated automated vehicle” by an entity that chooses to be an “automated driving provider” remains voluntary and could result in substantially the same vehicle being and not being an “automated vehicle” in the same state. Lines 31 and 32 on page two make clear that the designation is “by a willingness to self-identify and an ability to meet the technical and legal requirements specified in the act.”



II. Lack of Licensing Requirements for Vehicles in Which Humans Can Affect Driving Operations

At the last meeting of the Committee, I raised concerns about the lack of licensing requirements when a human may have the ability to effect driving operations, such as in a SAE Level 5 with emergency stop controls. On page 8 lines 13-15, the Comment offers the example of “a human driver or operator [who] reasonably terminates automated operation to avoid a risk of imminent harm proximately caused by the automated driving systems”.

If the vehicle operation can be terminated by a human in the proximity of imminent harm, it seems necessary to have a human occupant that has the requisite understanding of driving and vehicle harm that is required for an operator license. Enabling such a vehicle to operate without an occupant that reasonably could terminate the vehicle in the face of imminent harm endangers all of the occupants, other drivers, pedestrians, cyclists and property owners.

This may result in limiting the independent use of some automated vehicles by elderly, children, and disabled, if the vehicle does not preclude any driving operational control whatsoever, including vehicles in which fully automated driving may be disabled during use. While this admittedly diminishes the mobility value to such persons, it protects the far more important safety aspects to other drivers, pedestrians, cyclists and property owners.

Put simply, only vehicles without any operator ability to effect driving operations should not require any occupant to have an operator’s license. Vehicles that have any human operator ability to effect driving operations should require an occupant that has an operator’s license.

III. Section 9. Insurance

It was my understanding from the last meeting was that Section 9. Insurance was to be struck in its entirety. In the April Draft, there remains a provision that states on page 20, lines 26 and 27, “This [act] does not displace other insurance requirements, and the insurance required under this [act] does not satisfy other insurance requirements.” It is unclear why this sentence remains, as any act adopted by a state will determine whether that act does or does not displace other insurance requirements, and whether the insurance required under this [act] does or does not satisfy other insurance requirements. Similarly, the references to “insurance” on page 8, lines 28-29, and page 9, lines 5 and 10, should be struck.

Section 9 should be removed, but even if it remains, the extensive Comment on pages 21 and 22 to a single remaining vague sentence is completely unnecessary, confusing and needlessly opinionated.



A broad overview of insurance regulation and concerns of policy coverage have no place in “the narrow but foundational set of legal and policy issues” (page 1) which this Act addresses. Particularly unrelated opinions such as “Arbitration agreements could further limit options for recovery” are irrelevant and misplaced, and needlessly detract from this important work.

I again thank you for your diligence in this important effort and your patience and consideration in addressing the myriad views of the Committee Members and Observers.

Thomas Karol
General Counsel Federal
National Association of Mutual Insurance Companies (NAMIC)
202.580.6741