

Options for Automated Operation Insurance in the Highly Automated Vehicles Act

Prepared by Hilary Rowen in cooperation with the reporters

This document provides three drafting options for provisions related to the automated operation insurance that the current draft act requires an automated driving provider (ADP) to maintain. (These options do not address the automation continuation guarantee, which will be discussed separately.) For further analysis of this sample language and insurance issues more generally, please see Hilary Rowen's *Note to Committee Members and Observers on Insurance Provisions*.

OPTION 1: ADP Low Limits No-Fault Insurance

SECTION 2. DEFINITIONS.

(5) "Automated operation insurance" means an insurance policy that covers damages to the person or property of another arising from the automated operation of an automated vehicle without regard to fault.

SECTION 8. INSURANCE.

(a) An automated driving provider must maintain automated operation insurance for each associated automated vehicle in an amount not less than the amount of third-party liability insurance specified in the financial responsibility law of this State.

(b) An automated driving provider must maintain an automation continuation guarantee for each associated automated vehicle in an amount not less than \$10,000 for three years from the date of the first registration of the vehicle, except that this requirement does not apply if the automated driving provider is also the registrant of the automated vehicle.

~~(c) An automated driving provider shall be considered a permissive driver under an insurance policy applicable to an associated automated vehicle.~~

[Rowen Note: This provision is more logically viewed as an alternative to the no-fault approach, than an additional element of the ADP no-fault requirement.]

(d) This [section] does not modify or limit the liability of an automated driving provider under statutory or common law.

(e) This [act] does not displace other insurance requirements, and the insurance required under this act does not satisfy other insurance requirements.

OPTION 2: ADP Low Limits Hybrid Assumed Liability / Liability Insurance

SECTION 2. DEFINITIONS.

(5) “Automated operation insurance” means an insurance policy that covers damages to the person or property of another ~~arising from~~ caused by the automated operation of an automated vehicle, but does not cover damages to the person or property of another caused by the intentional, reckless or negligent conduct of the [owner] of the automated vehicle.

[**Rowen Note:** Additional language may be needed for contributory negligence states and to clarify the meaning or scope of “owner.”]

SECTION 8. INSURANCE.

(a) An automated driving provider must maintain automated operation insurance for each associated automated vehicle in an amount not less than the amount of third-party liability insurance specified in the financial responsibility law of this State. The automated driving provider shall be liable for damages up to the amount specified in the financial responsibility law of this State and the automated operation insurance shall provide coverage for damages irrespective of whether the automated driving provider would otherwise be liable under statutory or common law.

[**Rowen Note:** This section together with the definition of automated operation insurance, imposes assumed liability on the ADP up to the minimum financial responsibility law limits whether or not the ADP is responsible for the components, software or placing the HAV in the stream of commerce. It also provides a low layer of liability coverage where the ADP would be liable.

(b) An automated driving provider must maintain an automation continuation guarantee for each associated automated vehicle in an amount not less than \$10,000 for three years from the date of the first registration of the vehicle, except that this requirement does not apply if the automated driving provider is also the registrant of the automated vehicle.

~~(c) An automated driving provider shall be considered a permissive driver under an insurance policy applicable to an associated automated vehicle.~~

[**Rowen Note:** This provision is more logically viewed as an alternative to the no-fault approach, than an additional element of the ADP no-fault requirement.]

(d) This [section] does not modify or limit the liability of an automated driving provider under statutory or common law.

(e) This [act] does not displace other insurance requirements, and the insurance required under this act does not satisfy other insurance requirements.

OPTION 3: Coverage Under Private Passenger Auto Policy

SECTION 2. DEFINITIONS.

~~(5) “Automated operation insurance” means an insurance policy that covers damages to the person or property of another arising from the automated operation of an automated vehicle without regard to fault.~~

SECTION 8. INSURANCE.

~~(a) An automated driving provider must maintain automated operation insurance for each associated automated vehicle in an amount not less than the amount of third-party liability insurance specified in the financial responsibility law of this State.~~

(b) An automated driving provider must maintain an automation continuation guarantee for each associated automated vehicle in an amount not less than \$10,000 for three years from the date of the first registration of the vehicle, except that this requirement does not apply if the automated driving provider is also the registrant of the automated vehicle.

(c) An automated driving provider shall be considered a permissive driver under an insurance policy applicable to an associated automated vehicle. The coverage limits applicable to the automated driving provider as a permissive driver shall be the bodily injury limit and the property damage liability limit under the policy unless the policy, or an endorsement thereto, specifies coverable limits applicable to the automated driving provider as a permissive driver other than the bodily injury limit and the property damage liability limit under the policy. The bodily injury limit and the property damage liability applicable to the automated driving provider shall not be less than the amounts set forth in [Financial Responsibility Law]. The automated driving provider shall be liable for damages up to the amount specified in the insurance policy applicable to an associated automated vehicle which respect to automated operation of the vehicle and the automated operation insurance shall provide coverage for damages irrespective of whether the automated driving provider would otherwise be liable under statutory or common law

[**Rowen Note:** This provision makes the ADP an insured under the auto policy. It provides that the limits will be those specified in the auto policy, which might or might not be the state's minimum financial responsibility amount. In addition, the ADP limits specified in the policy might or might not be the same as the bodily injury/property damage liability limits in the auto policy.]

(d) This [section] does not modify or limit the liability of an automated driving provider under statutory or common law.

(e) This [act] does not displace other insurance requirements, and the insurance required under this act does not satisfy other insurance requirements.