



## MEMORANDUM

**Date:** February 12, 2018  
**From:** Tom Karol, NAMIC General Counsel  
NAMIC Member Task Force on Autonomous Vehicle State Law  
**To:** Drafting Committee on Highly Automated Vehicles Act, National Conference of Commissioners on Uniform State Laws

Pursuant to earlier discussions, the National Association of Mutual Insurance Companies' Member Task Force on Autonomous Vehicle State Law (the "NAMIC Task Force") is offering input to the National Conference of Commissioners on Uniform State Laws Drafting Committee on Highly Automated Vehicles (the "Drafting Committee") with respect to specific proposed insurance and liability related provisions for that Draft Law version of January 2018. NAMIC is an Observer to the Drafting Committee and the NAMIC Task Force is composed of many legal and operational experts from leading NAMIC member insurance companies.

NAMIC is the largest property/casualty insurance trade association in the country, serving regional and local mutual insurance companies on main streets across America as well as many of the country's largest national insurers. The 1,400 NAMIC member companies serve more than 135 million auto, home and business policyholders and write more than \$196 billion in annual premiums, accounting for 50 percent of the automobile/homeowners' market and 31 percent of the business insurance market. Through our advocacy programs, we promote public policy solutions that benefit NAMIC companies and the consumers we serve.

The NAMIC Task Force has spent a great amount of time and effort in considering the good work of the Drafting Committee to date and the NAMIC Task Force is most appreciative of the Drafting Committee accepting the findings and suggestion of the NAMIC Task Force. We regret being unable to attend the February working session in person, but provide our observations for your consideration and look forward to attending the next Drafting Committee working session in person.

### **The Notes to Committee Members and Observers on Insurance Provision**

The NAMIC Task Force was most appreciative of the Notes and proposed legislative language offered by Hillary Rowen. The background provided by Ms. Rowen was insightful and complete and will be most helpful as a platform for insurance related considerations by the Drafting Committee. The NAMIC Task Force found the options presented in the notes to be very interesting with many positive aspects.

These options are an excellent starting point for continued discussion of very complex matters and each option deserves significant further analysis and exploration.

With respect to Option 1, no fault coverage currently varies by state and so could apply in disparate ways in accordance with the language and application of specific, existing State no fault provisions. The nuances of the application of no fault law and practice in some States could result in problems for the application of different Options and could require further consideration and possible customization.

### **The January Version of the Draft Highly Automated Vehicles Act**

Overall, the January draft updating the December draft is typical of the exceptional analysis and drafting of Professor Smith. The approach is well crafted, yet flexible enough to address the multiple development and deployment scenarios for automated vehicles that are still emerging.

The NAMIC Task Force respectfully offers its observations on the January draft for consideration by the Drafting Committee and looks forward in further developing these provisions with the Committee.

- Page 2, Line 7: With respect to the adoption of the “Automated driving provider,” we understand the thought process and logic behind this term, and appreciate the value that the term can provide, particularly with respect to ADS fleets and service providers. We are concerned however about the application of this term and concept to individual ADS owners, such as Tesla owners today. Perhaps there could be separate sections for individual owners that reflect the differences that are detailed further below.
  
- Page 3. Footnote 14. We appreciate the consideration of insurance and the important continuing role of insurance in many aspects of ADS regulations. We are concerned however that the reference to insurers “supervising” safety may lead to the misconception that insurers are empowered with supervisory or regulatory responsibilities. We suggest that the phrase “enlist insurers in supervising the safety of automated driving systems” perhaps be replaced with “facilitate and foster the access to and use of automated driving system data to assess and promote safety” or similar language.
  - Insurers are critical to the development and deployment of ADS, and access to ADS data is critical to insurers. As ADS assumes more and greater roles in driving operations, insurers will need to have and analyze technical and operational data to gauge relevant risk in various ADS makes and models.
  - Insurance regulators will require insurers to provide data and analysis in considering policy rates and coverage for ADS.
  - In determining coverage for ADS crashes, data from event data recorders and other sources in the ADS will be critical in assessing relative liability.

- We strongly support the Committee continuing to retain insurance in its scope of work. Insurance will be a critical factor in the development and deployment of ADS. Incorporating the expertise and experience of insurers in promoting auto safety and managing risk will facilitate the development and deployment of safe ADS.
- Page 4, *Line 5*. It should be made explicit that the new concept of the “automation continuation guarantee” is not insurance, will not be subject to insurance contract provisions and will not be regulated or enforced by insurance regulators. We suggest that this section define who will provide the guarantee and suggest that perhaps such a guarantee be a voluntary feature that a commercial entity could provide contractually.
- Page 4, *Line 9*, and Footnote 20. The cross reference to the SAE definition refers to the provision in J3016 that provides that “ Some *vehicles* equipped with level 4 or 5 *driving automation features* may not be designed to allow for *driver operation* (i.e. *ADS-DV*). In these types of *vehicles*, *passengers* may be able to demand a *vehicle* stop by, for example, pulling an emergency stop lever, and in response, the *ADS* would achieve a *minimal risk condition*. “
  - The existence of emergency stop controls in an ADS-DV would create many questions that do not exist in an ADS with no controls at all. Surveys indicate significant public discomfort with ADS with no emergency control.
  - Would the existence of an emergency stop control require any or all passengers to exercise reasonable care to protect people or property? Would that duty require the ADS to provide external information (rear view mirrors) or vehicle information (malfunction telltales)?
  - Should other provisions be amended to reflect the difference between an ADS\_DV with no controls and an ADS-DV with emergency stop controls.
- Page 5, *Line 11*. The term “vehicle user” should be defined; it is not clear if it is a driver, operator, customer of a ride service, or other status.
- Page 7, *Line 14*. Should this be “automated vehicle” or “designated automated vehicle”? The Drafting Committee should also consider whether there should be any/limited licensing requirement for users of the above referenced ADS-DVs with emergency stop controls. The safety of the occupants, other vehicles and the general public can depend on the ability of the user of these ADS-DVs to reasonably understand driving operations sufficiently to recognize an emergency, and to understand how to engage the emergency controls.
- Page 8, *Line 6*. “remote” should be “Remote”. It should be made explicit that a human is involved at this stage.

- Page 9, Line 10. We assume that the consideration of the use of “belief” and “reasonably safe” has been considered by the Drafting Committee and the NAMIC Task Force is reluctant to relitigate an issue already examined, but we maintain that both terms may not be adequate in this context.
  - Given the critical need for safety with ADS, “belief” – at the very least – must be based on factual evidence that provides a reasonable basis for a belief. This evidence requirement is included in footnote 40.
  - Similarly, “reasonably safe” seems far too low a standard in this context. The predicate for any development and deployment of ADS is to reduce fatalities and injuries. “Reasonably safe” arguably would not even require that ADS be as safe as an average human driver.
  
- Page 9, line 5 and Footnote 36. While this indicates that the capabilities and limitations of ADS would likely be in the NHTSA Safety Assessment Letters, NHTSA’s [Automated Driving System 2.0](#) provides that Safety Assessments are not required and there is no mechanism to compel entities to file. If they are filed, they “should not serve as an exhaustive recount” and NHTSA instructs that entities should ensure that Voluntary Safety Self-Assessments do not contain confidential business information. Given the voluntary and restrictive nature of these assessments, it is not clear how providers will have access to these capabilities and limitations.
  
- As referenced earlier, it is not clear how if private owners of ADS will be providers and if they are not, how private owners will be required and able to register ADS. Would a private owner of an ADS be required to warrant safety and regulatory compliance to register an ADS?
  
- Page 13, Line 5, subsection (d). This seems to set the liability standard for an ADS at the same level as a human driver. Does this mean or imply that the level of care for an ADS is that of a reasonable person? The entire reason for ADS is that they will perform driving operations in a manner that is safer than human drivers. Applying the existing standard would enable/promote the development and deployment of ADS no better than existing human drivers.
  
- Page 14, Line 14, and Footnote 57. This seems to make knowingly continuing the operation of an unsafe ADS constitute reckless driving. Would this place any duty on a customer of a ride service to make a reasonable assessment of the ADS’ safety. Would a passenger in an ADS with the above-referenced emergency stop control be guilty of criminal reckless driving (or civilly negligent) for “deliberately declining to prevent an obvious crash”?



- Page 15. The Insurance section seems mostly oriented to fleet and ride sharing services. As previously mentioned, separate sections for these entities and private ADS owners may be preferable.
  - For instance, to the extent the minimum no fault or financial responsibility limits for liability coverage are not sufficient to compensate injured parties involved in an accident, injured parties may still need to pursue a potential products liability action against the provider.
  - Some Transportation Network Company insurance laws specify an order of priority of coverage. Will the provider insurance be expressly made primary? This could result in inconsistencies in terms of primary coverage and the need for subrogation.
  - There is no requirement to have products liability coverage from a financial responsibility perspective for providers, and there are no mandatory coverage provisions, like auto insurance policies, that would guarantee coverage for the property damage to the automated vehicle, itself, as well as for bodily injuries, depending upon the nature of the coverages in force.
  - We should also consider the need for excess (or uninsured coverage) for the passenger and operator where the provider fails to cover a loss.

These observations and suggestions are respectfully offered to the Drafting Committee for consideration during its February 2018 meeting. We regret that other obligations have precluded our attendance at the February meeting and any impediments to Drafting Committee's considerations that our absence may cause. We will make every effort to attend the next meeting in person and thank you in advance for your time and consideration.