

MEMORANDUM

June 25, 2017

From: Commissioner Tom Buiteweg
Chair, Drafting Committee on Highly Automated Vehicles
Professor Bryant Walker Smith
Reporter, Drafting Committee on Highly Automated Vehicles
To: Uniform Law Commission (ULC) Executive Committee
RE: Scope and Outline for a Uniform Act on Highly Automated Vehicles

Executive Summary

This report discusses preliminary recommendations from Drafting Committee on Highly Automated Vehicles (HAVs) regarding the scope of a uniform act, an outline for an act, and guiding principles to help focus drafting efforts.

The Drafting Committee also provides preliminary recommendations on areas that should be excluded from the scope of the act, including issues of data protection and privacy.

The Drafting Committee also recommends additional outreach efforts to expand the representation of various stakeholders. It asks for the flexibility to revisit the scope of an act after hearing the views of additional stakeholders on its preliminary recommendations.

Background

In January 2017, the ULC Executive Committee appointed a Drafting Committee on Highly Automated Vehicles with the direction that the committee prepare an outline of a proposed act on this topic, including scope, definitions, and registration/title issues to be addressed, to be delivered to the Executive Committee for consideration at the Annual Meeting in July 2017.

Spring 2017 Meeting

The ULC's Drafting Committee on Highly Automated Vehicles held its first meeting on June 9-10 in Chicago, IL. Attendees included Chair Tom Buiteweg, Vice-chair Clay Walker, Reporter Bryant Walker Smith, and members of the committee, including Commissioners Dale Higer, Michele Radosevich, Leonard Reese, and Jerod Tuft. President Rich Cassidy, Executive Committee Chair Anita Ramasastry, and Commissioner Steve Chow were also at the meeting. Executive Director Liza Karsai and Staff Liaison Lindsay Beaver attended portions of the meeting.

Representatives from the following institutions or organizations attended the meeting: American Association for Justice, American Bar Association – Tort, Trial and Insurance Practice Section, University of Washington School of Law Technology Law and Public Policy Clinic, American Association of Motor Vehicle Administrators, National Association of State Chief Information Officers, National Automotive Dealer Association, Environmental Law and Policy Center, Property Casualty Insurers Association of America, and NetChoice. A current copy of the full Drafting Committee roster is included as Attachment A.

This meeting followed a thorough report by a predecessor study committee. A copy of this report is included as Attachment B.

Guiding Policy Principles

The Drafting Committee discussed several broad policy aims that should guide drafting efforts. It agreed that an act should treat automated driving as a tool to advance broader policy goals such as safety, mobility, and accessibility.

With regard to preemption, an act should acknowledge and complement the federal government's role in regulating the safe design of motor vehicles, including automated driving systems. An act can accomplish this by focusing on state law issues that arise from differences between automated and conventional driving, emphasizing issues central to the deployment of automated driving, all without precluding future state laws to treat additional issues related to automated driving or vehicles generally.

An act should seek to preserve the traditional importance of state law with respect to the safety of individual vehicles already on the road, including regulating vehicle maintenance, repair, modification, and disposal. It should facilitate continued regulatory cooperation among states, including with respect to registration and titling. At the same time it should attempt to clarify the relationship between state and municipal government with respect to automated driving. An act should also reduce existing legal uncertainty around automated driving without introducing significant new uncertainty. And an act should seek to address the tension between absolute and reasonable compliance with relevant laws as they apply to automated driving, particularly with respect to the rules of the road.

The Drafting Committee recognizes that draft legislation being considered by Congress could, if enacted, serve to delineate areas of state vs. federal automated driving system regulation.

Scope of the Act

The Drafting Committee's discussions suggest that a uniform law on automated driving should clarify the application of existing state motor vehicle law—including licensing, registration, and rules of the road—to the various legal persons who may be implicated in the deployment and use on public roads of vehicles with automated driving systems. The act should cover automated driving systems classifiable as SAE/NHTSA level 4 (in which a human might be permitted, but is never expected, to actively drive during a trip), although the committee should invite arguments from additional stakeholders about why an act might also contemplate level 3 (in which a human is expected to actively drive when appropriately notified). It should focus on the deployment rather than the testing of automated driving systems, while recognizing the potential overlap involving system demonstration and evaluation initiatives.

The Drafting Committee recognizes that automated driving may encompass a diverse set of technologies, applications of those technologies, and business cases for those technologies. Automated driving also contemplates a wide range of potential actors, including vehicle manufacturers, sellers, and lessors, automated driving system developers and suppliers, automated driving service providers, automated trip facilitators, vehicle owners and lessees, automotive

insurers, automated vehicle passengers and other users, other road users, and the variety of relationships among these actors. An act should consider children (and other vulnerable individuals) as potential users of automated driving systems. The committee should also consider the potential for the use of automated driving systems by those who, under current state law, lack the capacity or qualification to operate a motor vehicle.

The Drafting Committee also believes that the act needs to be drafted in a manner that recognizes existing frameworks for civil liability, automotive insurance, and transportation services. The Act may need to clarify the application of such frameworks to automated driving systems in some instances, but it should do so without attempting to reinvent or standardize these frameworks.

Issues Potentially Outside the Scope of the Act

On issues of data protection and privacy, the Drafting Committee believes it should defer to other efforts, including the Federal Trade Commission, the National Highway Traffic Safety Administration, and the ULC Study Committee on Event Data Recorders. These issues are more properly addressed for all motor vehicles, including all “connected” vehicles, and for a broader range of emerging technologies than automated driving systems alone. However, the Drafting Committee recognizes that it may need to address data protection and privacy issues that are unique to automated driving as part of its goal to reduce legal uncertainty in the deployment of automated driving systems.

Stakeholder Involvement and Outreach

A uniform act on HAVs should reflect participation in the drafting process by a variety of stakeholders, including individual automated driving system developers and civil society advocates, many of whom were not involved in the Drafting Committee’s first meeting. Further identification of and outreach to additional stakeholder organizations would be helpful before the next meeting. The Drafting Committee asks for the flexibility to revisit the scope of an act after hearing the views of additional stakeholders on its preliminary recommendations, particularly as it relates to the treatment of level 3 automated driving systems and data protection and privacy issues.

Outline for a Uniform Law

The Committee’s discussions provided a foundation for structuring a uniform act. Broadly speaking, the committee envisions an act structured in a way that maps existing legal rules onto automated driving, rather than to redraft an entire vehicle code or create a new framework to wholly displace such a code. What follows is a suggested outline for a uniform act on HAVs.

- 1) Background: Provision of legislative findings and principles of interpretation.
- 2) Implementation: Delegation of appropriate powers to relevant state agencies.
- 3) Definitions: Identification and definition of key terms used within the uniform law plus clarification of certain key terms (such as drive, operate, driver, and operator) commonly used in existing vehicle codes.
- 4) Licensing: Clarification of the relationship between automated driving and driver/owner education and licensing.

- 5) Registration: Specification of conditions for the registration and titling of new and used vehicles with automated driving systems.
- 6) Equipment: Specification of vehicle equipment requirements in the context of federal law and policy on automated driving, and reflecting the need to periodically inspect and update automated driving system software.
- 7) Rules of the road: Clarify the application of common rules of the road in the context of automated driving.
- 8) Insurance: Application of automotive insurance requirements in the context of automated driving.
- 9) Penalties: Provision of penalties for violations of the uniform act.
- 10) Miscellaneous: Additional provisions.

Attachments:

Attachment A - Roster Drafting Committee on Highly Automated Vehicles

Attachment B - Final Report of the Study Committee on State Regulation of Driverless Cars