

New Autonomous Vehicle Legislation Proposed— What You Should Know

November 22, 2019

Key Points

- In October, the House Energy and Commerce Committee and the Senate Commerce, Science and Transportation Committee unveiled a partial discussion draft of autonomous vehicle (AV) legislation. The draft text addresses safety standard exemptions for highly automated vehicles (HAV), motor vehicle testing and evaluation and the establishment of a HAV advisory council.
- During a recent Senate Commerce Committee hearing on the safe deployment of AV technology, lead Senate author John Thune unveiled guiding principles for future AV legislation. Those principles did not resolve concerns raised by Democrats regarding cybersecurity, liability and safety that stymied past efforts to pass legislation.
- The release of the draft text and the recent hearing indicate that lawmakers may be making bipartisan and bicameral progress toward an overarching bill.

Introduction

Recent activity on Capitol Hill suggests we may see movement with regard to AV legislation next year. This activity combined with recent regulatory action by the National Highway Traffic Safety Administration (NHTSA) and other relevant regulatory entities suggests this may be the time to influence developments.

On October 28, the two committees with jurisdiction over AV policy, the House Energy and Commerce Committee and the Senate Commerce, Science and Transportation Committee (the “Committees”), unveiled three draft sections of a pending federal AV bill. Staff of the Committees indicated they have also made progress on another section pertaining to rulemaking. They have yet to release the text of that section.

On November 20, the Senate Commerce Committee held a hearing regarding the deployment of safety technology for AVs. During the hearing, the Committee solicited input from officials with the Department of Transportation (DOT) and the National Transportation Safety Board (NTSB) to help inform the legislation. The next day, NHTSA **issued a request** for public comment, regarding nine draft research test procedures for assessing the performance of advanced driver assistance systems.

If you have any questions concerning this alert, please contact:

Susan H. Lent
Partner
slent@akingump.com
Washington, D.C.
+1 202.887.4558

Natasha G. Kohne
Partner
nkohne@akingump.com
San Francisco
+1 415.765.9505

Anthony T. Pierce
Partner
apierce@akingump.com
Washington, D.C.
+1 202.887.4411

Diana E. Schaffner
Counsel
dschaffner@akingump.com
San Francisco
+1 415.765.9507

Sidharth Sharma
Transportation Policy &
Regulatory Specialist
ssharma@akingump.com
Washington, D.C.
+1 202.416.5162

Together, these developments may indicate a desire at the federal level to develop the laws, regulations and policies needed to spur the wider-scale testing and deployment of AVs.

Analysis

Below, we provide a high-level overview of key developments related to federal AV policy.

Earlier Efforts

The most recent legislative progress builds off prior, unsuccessful efforts to pass federal AV legislation. As we discussed in [prior alerts](#), the Senate Commerce Committee advanced the American Vision for Safer Transportation through Advancement of Revolutionary Technologies (**AV START**) Act in 2017, but the bill died in December 2018. Another bill, the Safely Ensuring Lives Future Deployment and Research in Vehicle Evolution (**SELF DRIVE**) Act, passed the House without opposition, but similarly died in the Senate in December 2018. These bills failed to gain enough traction due to concerns from Democratic Senators that the legislation did not require the AV technologies to include sufficient cybersecurity and privacy protections. Disagreements over liability in the event of an accident or a crash also prevented the bills from receiving enough support in the Senate.

Overview of Discussion Draft of Proposed AV Legislation

Highly Automated Vehicles Exemptions

The House and Senate Committees' recently released draft text would permit the Secretary of Transportation to temporarily exempt HAVs from federal motor vehicle safety standards. Current federal safety standards are often incompatible with AVs because they contemplate a human driver (e.g., requirement for a steering wheel, brake pedal or side mirrors). By creating exemptions that do not compromise safety, the bill would remove regulatory barriers to the testing and deployment of AVs.

HAV applicants would have to provide information regarding the development, testing and other data necessary to demonstrate that the vehicle is highly automated. They would also have to provide a detailed analysis that includes supporting test data, including on-road data, validation data and testing data that demonstrates the vehicle's safety level.

The Secretary would be required to deny or approve exemption applications for HAVs within 180 days of receiving an application from the manufacturer. The bill would require the Secretary to evaluate whether the requested exemption meets the safety purpose and intent of the standard for which the exemption is sought, or whether the HAV would operate at an overall safety level at least equal to the overall safety level of non-exempt vehicles. The Secretary would also be authorized to grant exemptions if they would promote transportation access for individuals with disabilities.

Manufacturers would be eligible for an exemption for HAVs if the exemption would result in the introduction of less than 25,000 vehicles within the first year of the bill's enactment; less than 50,000 vehicles in the second year after enactment; and less than 100,000 in any following year. The draft indicates that these numbers, as well as the exemption sunset, are still under discussion. Similar exemption language was included in the unsuccessful AV START Act.

Motor Vehicle Testing and Evaluation

The draft bill would also exempt vehicles from federal prohibitions on manufacturing, selling and importing noncompliant motor vehicles and equipment if the purpose is for testing, evaluating or demonstrating a HAV, Automated Driving System (ADS) or ADS component. All testing must be conducted by individuals affiliated with the manufacturer or research institutions. The manufacturer must agree not to sell or lease the automated vehicle or system, and all testers must agree not to transport goods or passengers for compensation during testing. Similar language was included in the SELF DRIVE Act.

Highly Automated Vehicle Advisory Council

The discussion draft would also create within NHTSA, a Highly Automated Vehicle Advisory Council comprised of representatives from business, academia, local and state governments, consumer, organized labor, engineers, disability organizations and others. The Council would be responsible for studying issues related to HAVs, including the advancement of mobility access, cybersecurity, information sharing, labor and employment, and others. The Council would provide technical advice, best practices and recommendations to the Secretary. Similar language was included in the SELF DRIVE Act.

Senate Commerce Committee Hearing—Nov. 20, 2019

On November 20, the Senate Commerce Committee held a **hearing** entitled “Highly Automated Vehicles: Federal Perspectives on the Deployment of Safety Technology.” Robert Sumwalt, Chairman of the NTSB, Joel Szabat, Acting Under Secretary of Transportation for Policy and James Owens, Acting Administrator of NHTSA, testified about the safe testing and deployment of HAVs. The hearing came one day after NTSB issued its probable cause report on the March 2018 accident involving an Uber AV wherein NTSB concluded that DOT should require AV manufacturers and testers to submit safety self-assessments and create an ongoing review process to evaluate the self-assessment reports before allowing the testing and deployment of AVs on public roads.

Sen. John Thune (R-SD), senior Committee member and lead Republican author of the AV START Act, noted during the hearing that he and Sen. Gary Peters (D-MI), lead Democratic author, will introduce AV legislation that preserves the traditional roles of federal and state regulators, builds on NHTSA’s current efforts to address incompatible regulatory requirements that were not written with AVs in mind and enhances NHTSA’s ability to expand testing and grant exemptions where requirements may inhibit innovation.

Committee leadership and the witnesses agreed that safety should be the focus of AV legislation. Senate Democrats and NTSB Chairman Robert Sumwalt expressed the view that DOT’s voluntary self-assessments for AV manufactures should be compulsory. Sumwalt also told the Committee that NHTSA provides “insufficient instructions” on how ADS developers should accomplish safety goals. Acting NHTSA administrator James Owens disagreed and cautioned that adding too many restrictions while AV technology is still developing could stunt innovation. He said that Department policy and guidance will evolve as the technology does. Owens pledged to continue modernizing regulations, such as Federal Motor Vehicle Safety Standards and exemption processes, to assist with the testing and deployment of AVs.

Committee members and witnesses agreed that a national AV framework is needed, but Republican Senators and DOT officials called for splitting responsibilities so that states and localities would be responsible for regulating traffic laws, licensing and insurance and liability, while the federal government would regulate safety. Sumwalt cautioned that this division of oversight may not be easily transferrable to developmental test vehicles, given questions over who is controlling the vehicle.

During the hearing, several Democratic Senators expressed concern that automakers may make misleading claims regarding the capabilities of their AVs. Owens noted that the NHTSA is working to create a common nomenclature. On November 20, various groups issued a [joint statement](#) calling for the adoption of common naming for advanced driver assistance technology.

Despite DOT officials' assurances that the Department is working on cybersecurity issues, Senate Democrats repeatedly raised concerns that AVs can be hacked or otherwise compromised. Senate Democrats, led by ranking member Cantwell, asked NHTSA to address issues of driver engagement. Cybersecurity and safety issues stalled AV legislation in previous years.

Conclusion

The fact that the House and Senate committees of jurisdiction have reached consensus on even a draft of a partial bill along with recent action by DOT and NHTSA to implement policies and regulations to allow for exemptions and broader testing and deployment of AVs suggest that there may be growing momentum for federal AV legislation that will provide some certainty for the industry. Given that the committees have yet to release sections of the bill that address more contentious provisions, including preemption, liability, privacy and cybersecurity, and the fact that DOT continues to seek public input on how to address AV issues, industry stakeholders should continue to weigh in regarding common-sense laws and regulations that give businesses certainty around continued investment in this technology.

akingump.com