



ADVOCATES
FOR HIGHWAY
& AUTO SAFETY

Revised Staff Draft of AV START Act:
No Major Safety Improvements, No Serious Solutions
December 4, 2018

The revised staff draft of the AV START Act (S. 1885) is deeply-flawed, does not address significant safety concerns and allows widespread deployment of experimental technology that poses many dangers to the American public. If enacted, this bill would turn public roads and streets into industry proving grounds for driverless vehicles while not subjecting them to important standards and protections for all road users. While the new version of the AV START Act includes language that seeks to protect a consumer's right to access courts, it does little, if anything, to ensure the safety of vehicles that will be available for public sale. We should be working to prevent consumers from having to sue in the first place by making sure these new technologies meet minimum performance requirements. Unfortunately, this version lacks needed, commonsense standards.

We oppose this staff draft and object to this bill "taking a ride" on the end-of-year must-pass funding bill.

What the Bill Still Lacks:

The legislation should direct the National Highway Traffic Safety Administration (NHTSA) to immediately set minimum performance standards for:

- Ensuring AVs can properly detect and respond to its surroundings and vulnerable road users ("vision test" for driverless cars);
- Cybersecurity and vehicle electronics; and,
- Driver engagement in Level 2 and Level 3 vehicles which require a human operator to take control.

Safeguards are Vital for Partially-Automated Vehicles (Level 2):

Level 2 AVs should be subject to all safety critical provisions, including at a minimum, Highly automated vehicles rulemaking (Sec. 10), Highly Automated Vehicles Advisory Council (Sec. 11), Cybersecurity (Secs. 14, 16 and 24), Highly automated vehicle study (Sec. 18), and the Highly automated vehicle adoption and safety impacts (Sec. 23).

Comprehensive AV Crash Data Must be Collected

There is no requirement in the bill that vehicles capture comprehensive crash data. The National Transportation Safety Board (NTSB) has highlighted the need for robust data during its investigatory process. This information is essential for analysis when AV systems are involved in a crash. The AV START Act should require crash data recording in a standardized format that will aid investigators such as the NTSB and NHTSA. The bill also fails to require that manufacturers report known crashes involving AVs to NHTSA.

A Sound and Prepared Infrastructure is Needed to Pave a Safe Way for AVs

Ensuring that our Nation's infrastructure can accommodate the safe and successful deployment of these vehicles is essential. Yet, the bill fails to adequately address the upgrades that will be needed to our roads due to the mass deployment of driverless vehicles.

Access and Safety for Disability Communities is Critical

While autonomous technology has the potential to increase access to mobility, the AV START Act does not adequately address the varying needs of diverse disability communities, such as wheelchair users, or ensure their safety. The bill should ensure access and safety for all individuals with disabilities including people using wheelchairs.

NHTSA Needs Stronger Enforcement Authorities

NHTSA lacks important legal tools to regulate AVs. The agency should have imminent hazard authority to immediately intervene against highly-dangerous safety defects. It also needs enhanced penalty authority to deter manufacturers from willfully putting defective AVs into the marketplace.

Regulators Must Have Sufficient Tools to be an Effective “Cop on the Beat”

Today, 94 percent of transportation-related fatalities and 99 percent of transportation injuries involve motor vehicles on our streets and highways. Yet, NHTSA receives only one percent of the overall U.S. DOT budget. The NHTSA’s current budget is insufficient given the multitude of new responsibilities and duties the agency will have as more AVs are deployed. Congress should authorize and appropriate, at a minimum, \$200 million to NHTSA in order for the agency to effectively carry out its safety mission. Moreover, an office dedicated to AV safety should be created within the U.S. Department of Transportation (DOT).

What Is Woefully Inadequate about the Bill:

Section 3: Relationship to Other Laws

OBJECT – Preemption Handcuffs States’ Ability to Protect their Citizens.

The NHTSA’s statutory mission is to regulate the safety performance of motor vehicles by issuing federal motor vehicle safety standards (FMVSS). Until NHTSA issues comprehensive standards, states must retain their ability to ensure public safety. Under this legislation, state laws and regulations already in place would be nullified and no adequate federal regulation is being put into place. Additionally, a number of states have established advisory committees and working groups to identify relevant issues with the operation of AVs – findings and recommendations of which could be preempted if this legislation was enacted.

Section 4: Expedited Resolution of Highly Automated Vehicles Conflicts with Standards

OBJECT – Truncated Process for Revising Standards Risks Undermining Safety.

The bill requires a report on revising FMVSS which reference “human” drivers. The recommendations from the report should be subject to the traditional rulemaking process including public notice and comment, and should not be incorporated by reference based on an arbitrary deadline.

Section 6: Highly Automated Vehicles Exemptions

OBJECT – This Provision is a Critical Deficiency in the Bill. It Still Allows Potentially Millions of Vehicles Exempt from Safety Standards to be Sold to the Public without Enough Time for Essential Agency Review and Analysis of Safety Impacts.

Major problems exist with the criteria for and massive volume of exemptions, as well as the process by which exemptions will be granted.

The proposed numbers of exemptions are excessive and endanger public safety. No demonstrable evidence has been put forth to justify increasing the number of exemptions for sale beyond the current limit of 2,500. The initial number of exemptions should be no more than 2,500 vehicles per manufacturer.

The legislation establishes a “tiered” system by which the number of exempt vehicles per manufacturer is increased annually the first three years after enactment of the bill. It will be vital that subsequent expansions of

exemptions be predicated on a thorough safety performance determination by the agency. The 12-month time period allotted between exemption tiers is insufficient for adequate data collection and review before “graduating” to the next exemption tier and should be extended. Without such oversight, manufacturers could be granted increasing numbers of exemptions for inherently dangerous products whose hazard has not yet been identified.

Additionally, manufacturers could foreseeably wait two years and seek exemptions from crashworthiness and occupant protection standards for a fleet of 80,000 vehicles with a review conducted in only 180 days. In this scenario, the manufacturer would not be subject to the “lookback” safety evaluation of previously exempted vehicles. This highlights the potential for evading the purpose of the stair-step approach and underscores why the time period for the exemption should commence upon the granting of the initial exemption and not be tied to the date of enactment. These concerns are exacerbated by the fact that NHTSA has not, on a large scale basis, had to make a determination of safety equivalency for exemptions applications for standards that provide occupant protection and/or crashworthiness as would be required under the bill.

Further, the total number of vehicles that may be granted an exemption should be capped after the tiered system has expired. Otherwise, the exemption process becomes the de facto regulatory process (i.e. regulating through exemptions).

Responding to an exponentially larger number of exemption applications will increase the burden on already scarce agency resources. Determinations of this magnitude should be made based on sound review and evaluation, not rubberstamped because of a lack of staff capacity or resources to meet the deadlines stipulated in the legislation.

Section 7: Dual Use Vehicle Safety

OBJECT – AV Manufacturers Should Not be Granted Unilateral Authority to Disable Systems Related to the Dynamic Driving Task.

Manufacturers are currently required by law to have government approval before rendering safety systems inoperable. This section would allow manufacturers to temporarily shut down systems related to the dynamic driving task (such as a steering wheel, pedals and gear shift) during autonomous operation of the vehicle *without* government approval. This could unnecessarily jeopardize safety at the discretion of the manufacturer and sets a precedent of Congress allowing manufacturers to circumvent many of the existing safety standards with no justification. Subsection (b) does not require a rulemaking. The legislation states that the operative language would become moot only *if* the Secretary issues an applicable standard.

Section 9: Safety Evaluation Report (SER)

OBJECT – AV Manufacturers Should be Required to Submit Data, Not Just “Descriptions”. A Vision Test Standard is Needed, Not Simply Having Manufacturers Describe How They are Addressing this Critical Safety Issue.

The legislation should require manufacturers to include sufficient data and documentation necessary to adequately detail the subject areas in the SER. On page 28 line 23, the action verb is still “describe” which allows manufacturers to submit narrative-form self-assessments, rather than data.

Inclusion of language under “System Safety” regarding “detection, classification and response” does not mandate the issuance of a federal safety standard or ensure a minimum level of performance of “vision” and response which is essential for experimental driverless vehicles.

Additionally, partially-automated vehicles (Level 2) should be subject to this section, at a minimum.

Section 10: Highly Automated Vehicles Rulemaking

OBJECT – A “Plan” is not a “Rule” and Won’t Require Basic Protections for Motorists, Pedestrians, Bicyclists and People with Disabilities.

The bill discourages, rather than encourages, the timely issuance of effective safety standards to protect the public by placing roadblocks and obstacles for regulation. Developing a rulemaking plan is not an acceptable substitute for requiring NHTSA to issue safety standards to address known shortcomings of AVs and partially-automated driving systems already identified by the NTSB and other safety experts. The six-year timeframe to initiate rulemakings (five-year time period enumerated in section 11(f)(1)(E) plus the one-year period in 10(b)(1)) is egregiously long and no final rule is directed.

Section 11: Highly Automated Vehicles Advisory Council

OBJECT – Advisory Committees and Voluntary Standards Do NOT Equate to Federal Agencies Fulfilling their Statutory Mission of Protecting the Public.

Advisory committees are an unacceptable substitute for the agency fulfilling its statutory mission by issuing safety standards through a public rulemaking. Additionally, voluntary standards are weak, unenforceable and have no mechanism to ensure compliance. As the Senate noted in the report accompanying the National Traffic and Motor Vehicle Safety Act of 1966, “[t]he promotion of motor vehicle safety through voluntary standards has largely failed. The unconditional imposition of mandatory standards at the earliest practicable date is the only course commensurate with the highway death and injury toll.”

Agency action should not be hamstrung by a moratorium on rulemaking, as stipulated in the subsection pertaining to the HAV Data Access Advisory Subcommittee.

Instead of creating numerous advisory committees, which necessitates the expenditure of limited agency resources, NHTSA should be given adequate funding and staff. In addition, the AV START Act should require the creation of an office devoted to AV safety within the U.S. DOT.

Section 12: Consumer Education Safety Rulemaking for Highly Automated Vehicles and Partially Automated Vehicles

OBJECT – Consumers are Left in the Dark about AV Capabilities.

This does not require the issuance of a final rule to provide consumers with information about the limitations and capabilities of an AV, in a clear and concise format, at the point of sale and in the owner’s manual as required by the version of the bill reported out of the Commerce Committee. Consumers should immediately have appropriate vehicle information at the point of sale and in the owner’s manual. Further, it is essential that NHTSA be required to establish a publicly-available AV database with basic safety information for consumers and for safety research. Moreover, consumer complaints about AVs received by U.S. DOT should be made publicly available.

Section 14: Cybersecurity

OBJECT – No Cybersecurity Minimum Standard Leaves the Public Unnecessarily at Risk of Hacking and Terrorism Attacks.

The NHTSA should be required to issue a minimum performance standard for cybersecurity, through public rulemaking, within three years of enactment.

Section 18: Highly Automated Vehicle Study

OBJECT – Panel Discussion and Analysis Should be Accessible to the Public.

The panel convened should be subject to the requirements of the Federal Advisory Committee Act (FACA).

Section 22: Partially Automated Vehicle Safety Evaluation Report

OBJECT – At a Minimum, Level 2 Vehicles Should be Subject to the SER.

The reporting requirement for partially automated vehicles is not an adequate substitute for submission of the SER (which also remains significantly flawed), as the information required by Sec. 22 is far less comprehensive. At a minimum, this report should have the same requirements as the SER including the nine issue areas that must be addressed.

This section fails to require that any information about partially-automated vehicles be provided *before* they are offered for public sale. Instead, information can be provided *after* a vehicle is already in the marketplace. Essential information about systems already on the road should be provided immediately to consumers, and information about systems coming into the fleet should be made available *before* they are introduced into commerce (as required for the SER).

Additionally, it fails to address the significant safety problems experienced by Level 2s that have already been identified by experts including NTSB, the Insurance Institute for Highway Safety (IIHS) and Consumer Reports.