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Full House of Representatives Quickly Advances Highly Automated Vehicle (HAV) Legislation

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It took the U.S. House of Representatives less than two days after returning from its August recess to approve on Wednesday by voice vote landmark legislation to clarify and enhance regulation of highly automated vehicles (HAVs).

The bipartisan measure, which passed unanimously out of the House Committee on Energy & Commerce in July (7/20/17 Client Alert), clarifies congressional intent in several areas crucial to the future of autonomous and connected vehicles. The most significant of these HAV policies are: preemption of state law that is inconsistent with federal HAV opportunities and requirements, cybersecurity, privacy, vehicle testing, and safety standards and certification. See the Committee Report which includes the text of the legislation as approved by the House.

H.R. 3388, the “Safely Ensuring Lives Future Deployment and Research In Vehicle Evolution Act” or the “SELF DRIVE Act,” preserves traditional federal and state roles, whereby the federal government regulates motor vehicle equipment, including its driverless systems, and the states maintain their domain over the regulation of vehicle usage, vehicle inspection, driver certification, insurance, and liability.

Preemption

Seeking to avoid the patchwork of state laws, the bill solidifies the federal preemption of key areas in the development of HAVs. Under the legislation, states would not be allowed to enact any law or regulation regarding the design, construction, or performance requirement that is not identical to those promulgated by NHTSA or federal agencies.

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Required Cybersecurity and Privacy Plans

The bill requires any manufacturer seeking to sell an HAV, whether fully or partially automated, to develop a cybersecurity policy that focuses on identifying and counteracting cyber vulnerabilities, preventing future threats, and limiting access to automated driving systems. Companies must also appoint a person to serve as the key point of contact responsible for managing cybersecurity and lay out a process for employee training and supervision to support such a policy.

Under the legislation, manufacturers must develop a privacy plan covering how the company collects, uses, shares, and stores information about vehicle owners and occupants. Manufacturers must spell out the choices they offer consumers regarding such information, how the company plans to minimize or de-identify vehicle owner and occupant data, and its policy for extending its privacy plan to entities with whom it shares such data. In addition, manufacturers must provide notice to vehicle owners or occupants about the policy.

Vehicle Testing, Safety Standards, and Certification

Other key features of the legislation include a phased-in expansion of the number of test vehicles that will be exempt from current Federal Motor Vehicle Safety Standards (FMVSS) and a direction to the National Highway Traffic Safety Administration (NHTSA) to develop updated FMVSS, requirements for safety certification, and minimum HAV performance standards. Importantly, the bill grants non-OEMs, including auto suppliers and tech companies, explicit rights to secure exemptions for testing autonomous and connected vehicle technologies. The legislation also mandates a review and update to the rulemaking and safety priority plan at least every two years, to accommodate the development, safety and security of HAVs and others on the road.

Product Liability

H.R. 3388 declares that common law liability will be preserved but the measure does not delve into the traditional state area of defining circumstances where liability would be limited.

The bill also sets the stage for future federal regulatory activity by specifying deadlines for various reports to Congress and regulations from NHTSA, and establishing an advisory council directed with studying a host of issues surrounding HAVs.

The legislation now moves onto the Senate, which is engaged with its own effort to develop legislation in this area (6/16/17 Client Alert), and will hold a hearing in Washington, D.C. on self-driving trucks on September 13, 2017.

Contact your Butzel attorney for updates on legislative and regulatory developments in this rapidly evolving area of the law.

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