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SOLVING THE UNCERTAINTY IN DEVELOPMENT, TESTING, AND MARKETING OF DRIVERLESS VEHICLES – THE HOUSE OF REPRESENTATIVES DRAFTS LEGISLATION TO END THE “PATCHWORK” OF LAWS

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SOLVING THE UNCERTAINTY IN DEVELOPMENT, TESTING, AND MARKETING OF DRIVERLESS VEHICLES – THE HOUSE OF REPRESENTATIVES DRAFTS LEGISLATION TO END THE “PATCHWORK” OF LAWS

A key subcommittee of the powerful House Energy and Commerce Committee held a hearing on Tuesday, June 27, 2017, to discuss legislation to respond to the rapid technological innovations that promise to redefine mobility in the US and beyond.

Like its Senate counterpart (June 16, 2017 Client Alert), the House Subcommittee on Digital Commerce and Consumer Protection, chaired by Bob Latta (R-OH), took testimony from industry representatives and consumer advocates on the broad themes of ensuring public safety and balancing federal and state roles in regulating transportation. Unlike the Senate panel, however, the House subcommittee delved into the specifics of a package of 14 draft bills released prior to the hearing.

Bill Package Triggers Debate over Priorities

With specific proposals on the table, Republicans and Democrats on the panel divided over whether the bills, which were drafted by Republican staff, give the National Highway Traffic Safety Administration (NHTSA) the necessary authority and resources to regulate highly automated vehicles (HAVs). Republicans on the panel urged quick action on legislation to allow NHTSA to exempt up to 100,000 vehicles per year from federal motor vehicle safety rules, which currently prevent the sale of self-driving vehicles without human controls. The package would also bar states from setting self-driving rules and prevent NHTSA from pre-approving self-driving car technologies.

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GOP lawmakers and industry advocates testifying at the hearing warned about the effect of a “patchwork” of state regulations on America’s ability to maintain its leadership in developing autonomous and connected vehicles. Democrats expressed concern that the Trump administration has not yet appointed a NHTSA administrator and urged the adoption of legislation to direct NHTSA to develop mandatory standards for autonomous and connected vehicles. In the absence of such requirements, Democrats expressed concern about legislation that would preempt states from regulating the testing and deployment of highly automated vehicles.

Subcommittee Chairman Latta hopes to win committee approval of a bipartisan legislative package by the end of July. The 14-bill package includes provisions that are of particular interest to automotive suppliers and others developing new technology in the mobility space, such as:

- Expanding NHTSA’s authority to grant for up to five years FMVSS exemptions to 100,000 vehicles per year;
- Requiring NHTSA and the Federal Trade Commission (FTC) to negotiate a memorandum of understanding governing privacy and cybersecurity;
- Mandating that information submitted to NHTSA by a manufacturer be treated as confidential business information;
- Prohibiting the USDOT from instituting a pre-market approval or pre-certification process for HAVs; and
- Creating several advisory committees that would deal with important issues such as access for underserved populations, information sharing and cybersecurity.

Suppliers and Others Would Gain Access to NHTSA Exemptions

Importantly, the package authorizes NHTSA to approve exemptions for entities other than OEMs, including automotive suppliers and new entrants to the industry such as technology companies.

Next Steps

As both the House and Senate legislation move through the process, turn to your Butzel Long attorney to understand the impact to your business. Whether you’re seeking a testing permit or preparing to enter into a Joint Development Agreement with a technology OEM, we will continue to monitor the evolving legal and regulatory framework and how it impacts your business and operations.

Summary of House Republicans’ Staff Draft Bill Package on Driverless Cars

1. H.R. ___, Let NHTSA Enforce Autonomous Vehicle Driving Regulations (LEAD’R) Act

Establishes federal and state roles regarding autonomous motor vehicles. The federal government is responsible for the oversight of design, construction, mechanical systems, software systems, and communications systems of HAVs and HAV equipment. States will continue to regulate registration, licensing, liability, driving education and training, insurance, and instate traffic laws unless the law or

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regulation infringes upon an area of federal oversight. A state or political subdivision may prescribe safety standards for an HAV or automated driving system equipment obtained for use by the state or political subdivision. The bill also defines automated driving system and highly automated vehicle.

2. H.R. ___, Practical Automated Vehicle Exemptions Act

Expands the authority of the Secretary to grant federal motor vehicle safety standard exemptions for not more than 100,000 vehicles sold in the United States.

3. H.R. ___, Renewing Opportunities for Automated Vehicle Development Act

Establishes that renewals for FMVSS exemptions may be granted for not more than 5 years.

4. H.R. ___, Expanding Exemptions to Enable More Public Trust Act

Expands the Secretary of Transportation's authority to exempt motor vehicles from FMVSS if:

(1) the exemption would promote the public adoption and acceptance or facilitate the meaningful commercial deployment of a new motor vehicle safety feature or system and provide an overall safety level at least equal to the overall safety level of nonexempt vehicles; or

(2) the exemption would promote transportation access to individuals with disabilities (as defined in the Americans with Disabilities Act of 1990) and would provide an overall safety level at least equal to the overall safety level of nonexempt vehicles.

5. H.R. ___, Maximizing Opportunities for Research and the Enhancement of Automated Vehicles Act

Extends the authority in section Sec. 30112(b)(10) of Title 49 to test motor vehicles that are not in compliance with FMVSS to manufacturers and distributors of motor vehicle equipment in the United States that are certified to comply with all applicable FMVSS and to manufacturers of HAVs or automated driving system equipment.

The bill requires manufacturers of HAVs or automated driving system equipment to submit to the Secretary: (i) the name of and a point of contact for the individual, partnership, corporation, or institution of higher education; (ii) the residence address of the individual, partnership, corporation, or institution of higher education and State of incorporation if applicable; (iii) a description of each type of HAV or automated driving system equipment manufactured by the individual, partnership, corporation, or institution of higher education; and (iv) proof of insurance for any state in which the individual, partnership, corporation, or institution of higher education intends to test or evaluate HAVs. The bill also defines highly automated vehicle and automated driving systems.

6. H.R. ___, Increasing Information and Notification to Foster Openness Regarding Automated Vehicle Matters to States Act

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Directs NHTSA to notify the appropriate state authority when an HAV is exempted from FMVSS.

7. H.R. ___, Disability Mobility Advisory Council Act

Directs the Secretary of Transportation to establish a Disability Mobility Advisory Council that will undertake information gathering activities, develop technical advice, and present recommendations to the Secretary and Congress regarding advancing mobility access for the disabled community with respect to the deployment of automated driving systems to ensure an awareness of the needs of the disability community as HAVs are being designed for distribution in commerce. The bill also requires that the members of the Council be generally representative of several stakeholder communities.

8. H.R. ___, Improving Mobility Access for Underserved Populations and Senior Citizens Advisory Council Act

Directs the Secretary to establish an advisory council to advise the Secretary and make recommendations regarding advancing mobility access for populations underserved by traditional public transportation services and senior citizens with respect to the testing and deployment of HAVs. The bill also requires the recommendations also be reported to Congress and that the members of the Council be generally representative of several stakeholder communities.

9. H.R. ___, Automated Driving System Cybersecurity Advisory Council

Directs the Secretary to establish an advisory council to undertake information gathering activities, develop technical advice, and present recommendations to the Secretary regarding cybersecurity for the testing, deployment, and updating of automated driving systems, including supply chain risk management, interactions with Information Sharing and Analysis Centers (ISACs) and Information Sharing and Analysis Organizations (ISAOs), and a framework for identifying and implementing recalls of motor vehicles or motor vehicle parts. The bill also requires that the recommendations be reported to Congress and that the members of the Council be generally representative of several stakeholder communities.

10. H.R. ___, Sharing Automated Vehicle Records with Everyone for Safety Act

Establishes a committee within NHTSA for a two-year period to develop a framework that allows manufacturers of HAVs to share relevant, situational information related to any testing event on public streets that results in damage to the test vehicle or any occupant thereof and validation of such vehicles in a manner that does not risk public disclosure of such information or disclosure of confidential business information. The bill also directs the Committee to undertake information-gathering activities, develop technical advice, and present recommendations on the framework to the Secretary and Congress at the end of the two-year period. The bill also requires that the members of the Council be generally representative of several stakeholder communities.

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11. H.R. ___, Highly Automated Vehicle Pre-Market Approval Reduces Opportunities for More People to Travel Safely Act

Clarifies that the Secretary shall not institute a pre-market approval or precertification process that prevents a vehicle manufacturer from manufacturing or selling a HAV before the Secretary has the assessed the safety of the vehicle.

12. H.R. ___, Guarding Automakers Against Unfair Advantages Reported in Public Documents Act

Requires that information submitted to NHTSA by a manufacturer of an HAV or HAV equipment that pertains to the testing and validation of a test vehicle or test part or system related to an event, incident, and crash data; the design or validation processes of electrical, electronic, or mechanical functions; the testing and validation of cybersecurity; the assessment, testing, and validation of human-machine interfaces; the testing and validation of the fall back condition; or the testing and validation of the object and event detection response capabilities of a highly autonomous vehicle or highly autonomous vehicle equipment shall be treated as confidential business information by NHTSA. The bill also defines automated driving system, fallback, object and event detection and response, confidential business information, and HAV.

13. H.R. ___, Managing Government Efforts to Minimize Autonomous Vehicle Obstruction Act

Directs the Federal Trade Commission (FTC) and NHTSA to develop a memorandum of understanding regarding the oversight of vehicles pertaining to privacy and cybersecurity considerations. The memorandum of understanding shall include a commitment from the FTC and NHTSA to limit overlap and duplication between the agencies' oversight responsibilities that pertain to the privacy and cybersecurity of vehicles.

14. H.R. ___, Designating Each Car's Automation Level Act

Directs manufacturers of HAVs to post on the Monroney label placed on a vehicle for sale, information regarding the vehicle's automation level.

Jennifer Dukarski

734.213.3427

dukarski@butzel.com