



Comments of the Competitive Enterprise Institute
on the
Revised Report of the Subcommittee on Issues, Study Committee on State Regulation of
Driverless Cars
of the
Uniform Law Commission

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Prepared by

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Pamela Winston Bertani, Chair

ULC Study Committee on State Regulation of Driverless Cars

CC: Garrett Heilman, ULC Legislative Counsel

Dear Chair Bertani,

On behalf of the Competitive Enterprise Institute (“CEI”), I respectfully submit these comments in response to the Revised Report of the Subcommittee on Issues, ULC Study Committee on State Regulation of Driverless Cars (“Revised Report”). CEI is a nonprofit, nonpartisan public interest organization that focuses on regulatory policy from a pro-market perspective. We have been actively involved in the development of legislative and regulatory policy related to road vehicle automation.¹ Our comments address points of agreement and disagreement with the Revised Report.

On the Subcommittee’s General Principles

CEI broadly agrees that a uniform act is far preferable to a patchwork of contradictory state statutes. Indeed, we strongly agree with several of the Subcommittee’s general principles contained in the Revised Report, including:

- A. To the Extent Feasible, the Uniform Act Should Avoid Including Provisions that Would Require Additional State Spending
- B. The Uniform Act Should, to the Extent Possible, Do Nothing that Would Dampen or Impede Innovation or Substantially Increase Costs to Industry and Small Entrepreneurs as They Advance Autonomous Vehicle Technology
- C. The Uniform Act Should Address Issues Relating to Deployment as Well As Testing

(Revised Report, pp. 2-3)

As the Revised Report notes, the subcommittee is divided on the question of whether the uniform act should address issues in great detail or to limit itself to broad principles (Revised Report, p. 3). CEI is firmly in the latter camp, as we fear a detailed uniform act would likely, albeit unintentionally, stifle innovation of road vehicle automation technologies and delay their availability to consumers. This would violate the Subcommittee’s General Principle B.

In recommending that the Drafting Committee consider separate regulatory schemes based on pre-defined automation levels, we are concerned that the Subcommittee is essentially proposing to dictate how automation technologies can or should function (Revised Report, p. 4). The National Highway Traffic Safety Administration’s (“NHTSA”) May 2013 Preliminary Statement of Policy Concerning Automated Vehicles also defines automation levels. And, just as a uniform act is preferable to a patchwork of contradictory state statutes, states should avoid potential conflicts with NHTSA standards where possible.

The problem with defined automation classes, at least as it relates to public policy, is that technologies in the future may permit a range of automated operations not currently envisioned, and software updates could enable higher levels of automation (*e.g.*, a NHTSA Level 2 combined-function automation vehicle could receive a wireless software update to enable NHTSA Level 3 limited self-driving functions). Given that automotive technologies are traditionally regulated at the manufacturer stage by NHTSA, we worry that a uniform act for states that bases its regulatory framework upon varying automation levels could conflict with NHTSA’s eventual promulgation

¹ For an overview of CEI’s positions on automated vehicle public policy, *see* Marc Scribner, “Self-Driving Regulation: Pro-Market Policies Key to Automated Vehicle Innovation,” *OnPoint*, No. 192, April 23, 2014, available at: <http://cei.org/sites/default/files/Marc%20Scribner%20-%20Self-Driving%20Regulation.pdf>.

of Federal Motor Vehicle Safety Standards related to road vehicle automation while complicating innovation and deployment, particularly with respect to smaller firms and entrepreneurs.

On the Subcommittee's Uniform Act Recommendations

We agree with several of the Subcommittee's uniform act recommendations to the Drafting Committee, including:

- A. Coverage of the Act
- C. Provision for Rulemaking
- D. Limited Rules Governing Liability Arising from the Operation of Autonomous Vehicles
- G. Testing Without a Driver On Board
- P. Distracted Driving Laws

On the others, CEI takes either an opposing view or is neutral at this time. We address the points of disagreement below.

With respect to Recommendations B, E, F, H, and N (Revised Report, pp. 5-12), we believe the Subcommittee should recommend that the Drafting Committee exercise extreme care in avoiding legislative language that would restrict testing and operations within a state to residents of that state. In the District of Columbia's autonomous vehicle statute, D.C. Code § 50-2351(2) (definition of "Driver") was interpreted by the Department of Motor Vehicles of the District of Columbia to require that a District of Columbia resident must receive a special automated driver license endorsement before operating an automated vehicle on the District of Columbia's public roads.²

The problem with this approach—while especially acute in the District, but by no means limited to it—is that D.C. proper contains just 11 percent of the metropolitan area's residents. In effect, this would require that developers wishing to test their vehicles in the District rely solely on District residents, which is a wholly unreasonable restriction of the potential automated vehicle test operator labor pool. The uniform act could either not address operator license requirements at all, as CEI prefers, or it could expressly allow cross-state automated operator license reciprocity.

With respect to Recommendation K (Revised Report, pp. 9-10), we disagree with existing state statutes that mandate specific automated vehicle safety technologies. Safety technology regulation should be the sole domain of NHTSA, as state motor vehicle authorities are wholly unequipped to make determinations related to motor vehicle design. To be sure, we appreciate that lack of action on the part of NHTSA has seemingly forced this issue upon state lawmakers and regulators, yet state legislative and regulatory action with respect to specific safety technologies will likely do more harm than good.

Instead, we would urge the Drafting Committee to *not* address vehicle safety technologies. This may complicate a licensing regime, as some may be tempted to define automated vehicles and their operations in part in terms of specific safety technologies. However, we believe doing so would be a mistake, and it risks retarding innovation. We maintain that any uniform act should be technology-neutral.

² See proposed amendments of 18 DCMR § 114, 61 DCR 15, Department of Motor Vehicles, *Notice of Proposed Rulemaking – Autonomous Vehicles*, April 4, 2014, available at: <http://www.dcregs.dc.gov/Notice/Download.aspx?NoticeID=4830520>.

COMMENTS OF THE COMPETITIVE ENTERPRISE INSTITUTE

Ultimately, however, CEI is concerned that the ULC is moving with excessive haste in developing a uniform automated vehicle act. We share the enthusiasm for this very promising technology, but believe that given the proprietary nature of many of the key technologies and the rapid pace of technology evolution, a uniform act on automated vehicles is premature and could retard innovation and delay consumer product deployment.

Thank you for the opportunity to comment on the Revised Report. CEI appreciates the excellent work of Study Committee members and looks forward to continued participation.

Sincerely,

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