

## Bailey, Ted

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**From:** Eric Pierson <Eric.Pierson@co.chelan.wa.us>  
**Sent:** Monday, December 2, 2019 11:48 AM  
**To:** Bailey, Ted  
**Cc:** Parker, Paul  
**Subject:** RE: By COB, Dec 11th: Request for comments on behalf of Rep. Hudgins /  
Transportation Commission: Uniform Law Commission (ULC) AV Model Bill

**Follow Up Flag:** FollowUp  
**Flag Status:** Flagged

Ted,

I believe that the Uniform Automated Operation of Vehicles Act is a good step even if it will mainly be covering topics for other Subcommittees.

Some comments and requested additions:

While “Minimal risk condition” is included in the definitions, it is not used elsewhere. I would recommend it be included in the Equipment section requiring the automated vehicle to achieve a minimal risk condition response for a hardware failure, conditions outside of their registered uses, or another condition that requires discontinued use of automation for the safety of the occupant and/or other drivers.

Include within the automated driving providers section the requirement for the providers to list road types, required features, road conditions, etc that their vehicle can safely operate. The minimums may be covered in 6 (a)(2) but it should be documented with the State, part of the registration, and only allowed to be operated under those conditions listed under the registration.

Thanks for forwarding this on,

*Eric Pierson PE  
Director/County Engineer  
Chelan County*

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**From:** Bailey, Ted [mailto:BaileyTe@wsdot.wa.gov]  
**Sent:** Wednesday, November 27, 2019 1:29 PM  
**To:** Adiam.Emery@seattle.gov; adrian.pearmine@dksassociates.com; Ahmad Darrat <ahmad.darrat@transpogroup.com>; Camden, Allison <CamdenA@wsdot.wa.gov>; Buckley, Anthony <BuckleA@wsdot.wa.gov>; bmurray@gth-gov.com; Thompson, Brent <ThompBr@wsdot.wa.gov>; Lagerberg, Brian <LagerBB@wsdot.wa.gov>; brian.thomas@utc.wa.gov; bruce.haldors@transpogroup.com; See, Carl <SeeCarl@wstc.wa.gov>; knutson, Charles <Charles.knutson@gov.wa.gov>; cwolf@nwseaportalliance.com; claudiahirschey@comcast.net; dlai@bellevuewa.gov; Besser, Debi (WTSC) <dbesser@wtsc.wa.gov>; Key, Earl <KeyE@wsdot.wa.gov>; erica.bramlet@leg.wa.gov; Giulia@pugetsoundsage.org; hannah.mccarty@leg.wa.gov; hcocci@gth-gov.com; igaub@auburnwa.gov; jsweeting@auburnwa.gov; Jamal.Mahmoud@bothellwa.gov; Colyar, James (FHWA) <James.Colyar@dot.gov>; jwebb@auburnwa.gov; Biggs, Jason R. <BiggsJR@wsdot.wa.gov>; jennifer.harris@leg.wa.gov; jvanderwood@agcwa.com; john.corbin@dot.gov; john.flanagan@gov.wa.gov; Nisbet, John <NisbetJ@wsdot.wa.gov>; kzentz@wsu.edu; leah@urbanlogiq.com; LoganB@awcnet.org; majken.ryherd@gmail.com;

## Bailey, Ted

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**From:** Francesca Maier <ches@consultfaircape.com>  
**Sent:** Saturday, December 7, 2019 4:07 PM  
**To:** Bailey, Ted  
**Cc:** matt.boehnke@leg.wa.gov  
**Subject:** Re: By COB, Dec 11th: Request for comments on behalf of Rep. Hudgins / Transportation Commission: Uniform Law Commission (ULC) AV Model Bill  
**Attachments:** FM Comments on the draft Uniform Automated Operation of Vehicles Act.pdf; UAOVA\_Final Act\_2019.pdf

Hi Ted,

Thank you for the opportunity to provide comments on the Uniform Law Commission's AV Model Bill. I have attached my comments as well as a copy of the bill. I'm attaching the bill as a convenience for Rep. Matt Boehnke, my local 8th LD representative and a member of the AV Work Group, whom I have copied.

While my comments on the bill are rather lengthy, my main sentiment is that any Act intended to regulate only the deployment (beyond R&D) of Level 3-5 automated vehicles is premature and likely to cause more harm than good. In his testimony to the Senate Committee on Commerce, Science, and Transportation, the Chairman of the NTSB said: *"While there is often a desire to jump directly to the end of the technological spectrum—highly automated “self-driving” vehicles—it is imperative that regulators and policy makers do not ignore the risks associated with partial driving automation systems currently being operated on our highways."* This model bill does exactly that: it ignores the risks associated with ADAS systems which are widely available on newer vehicles today and the NHTSA and FMCSA are not fulfilling their obligation to test these systems to protect the public. I hope that the WA Leg will focus on actual risks to the traveling public and not future unknown risks.

Warm regards,  
Ches

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Francesca Maier, PE (KY, IN)  
ches@consultfaircape.com  
443-208-8386

<http://www.consultfaircape.com>

Fair Cape Consulting LLC is a certified DBE in Washington State (#D2F0025196) and Utah.

On Wed, Nov 27, 2019, at 1:29 PM, Bailey, Ted wrote:

Infrastructure and Systems Subcommittee,

Please review the request below from Rep. Hudgins and the Transportation Commission. The attached Uniform Law Commission(ULC) AV Model Bill would most directly affect other Subcommittees, but if you would like to provide written comments please send them to directly to me, [baileyte@wsdot.wa.gov](mailto:baileyte@wsdot.wa.gov), by **COB on December 11<sup>th</sup>**. I will forward whatever I receive to the Transportation Commission as requested during the week of December 16<sup>th</sup> for a consolidated response to Rep. Hudgins and the other Subcommittees.

## Comments on the draft Uniform Automated Operation of Vehicles Act

### General:

- The act specifically excludes testing of automated vehicles (AVs) for the purposes of research & development (R&D) and lower levels of automation (i.e. Advanced Driver Assistance Systems or ADAS). There is no urgency for enacting regulation of high-level AVs; the urgency is for the specifically-excluded categories, in particular: ADAS.
  - In testimony to the Senate, The Honorable Robert L. Sumwalt, III, Chairman of the National Transportation Safety Board (NTSB) said: *“While there is often a desire to jump directly to the end of the technological spectrum—highly automated “self-driving” vehicles—it is imperative that regulators and policy makers do not ignore the risks associated with partial driving automation systems currently being operated on our highways.”* This act neglects the risks associated with partial driving automation systems currently being operated on our highways.
  - Industry is yet to agree how to determine the criteria that validate the safety of AVs and until then, it is premature to regulate their operation beyond R&D.
  - At this time, it is impossible to deploy AVs privately or commercially in a way that ensures the safety of the traveling public. Deployment of AVs should not be allowed until such time as acceptable levels of safety are defined, verified, and regulated.
- It is a matter for contemplation whether AVs should be held to higher standards of safety than human-driven vehicles and human drivers. This act provides extremely lax (virtually non-existent) requirements upon automated driving providers (ADPs) to protect public safety. This act abdicates the responsibility of ADPs and the State to protect the public from AVs.
- The act is premature. The following are prerequisites to implementing an act for automated operation of vehicles:
  - Define “minimal risk condition” in greater detail.
  - Define license requirements for automated driving providers (ADPs).
  - Define the obligations of the ADP to the owner/registrant.
  - Incorporate Right to Repair provisions for the owner/registrant.
  - Incorporate a means by which the owner/registrant may change ADP.
  - Incorporate an obligation upon the ADP to maintain the automated driving system (ADS) software over the life of the vehicle.
- The act fails to protect the vehicle owner/registrant from the actions of the ADP. It is hard to conceive of a model of private ownership under this act that gives full agency to the owner/registrant to use the AV over the normal operational life of a motor vehicle. The only viable way to authorize the deployment (beyond R&D) of AVs is under the direct ownership of the ADP or under a lease from the ADP. If the State is recognizing ADPs, then the State should also implement requirements upon the ADP to act in good faith or offer remedies to owners/registrants who stand to lose the (substantial) value of their investment in an AV.
- There is no requirement under Section 6 for an ADP to maintain the software or hardware components of the ADS that they are responsible for, though Section 8 requires that these components be properly maintained. There is also no provision for the owner’s Right to Repair either the hardware or software components, nor any attempt to consider how responsibility

(i.e. association to an ADP) for an AV would change if either the owner/registrant or a third party were to exercise Right to Repair rights and modify the hardware and/or software components of an ADS.

- The act covers “Level 3” and “Level 4” automated vehicles<sup>1</sup> which are designed for both human and automated driving, where the responsibility and liability transfers between the licensed driver and the ADP. However, the act does not adequately define how liability transfers between the ADP and the licensed driver, both in general and in particular if the licensed driver resumes control in an attempt to avoid harm.
  - The fact that this “edge case” exists means that the human-machine interface of Level 3 (especially) and Level 4 automated operation is perilously under-developed and deployment beyond R&D is dangerous and unfeasible. It is not an “edge case,” it is a fundamental component of the definition of Level 3 ADSs and a predictable situation for Level 4 and Level 5 ADSs.

## Section 2: Definitions:

- (3) “Automated Driving System” definition does not include the requirement to design ADSs to achieve the “minimal risk condition.” This requirement is only in the definition for (6) “Completely automated trip.”
- (4) “Automated operation” should include the requirement to be “designed to achieve a minimal risk condition.”
  - The act covers both completely automated trips and trips where only part of the trip involves automated operation. The need to preserve safety during automated operation extends beyond only completely automated trips.
- (11) “Minimal risk condition” is insufficiently defined. This definition is the foundation of safety for AV operation.
  - The comment in lines 12-14 of page 8 indicates the open definition is deliberate and provides an example: “often illustrated by a vehicle parked on the shoulder with its hazard signals activated, but circumstances may demand more or less.”
  - The act fails to adequately define how AV operation protects the public. As such, legislating AV operation is premature.
- The comment on lines 31-43 of page 8 and lines 1-2 of page 9 states: “*a vehicle with an automated driving system that has stopped functioning—whether by or despite its design—can still be under automated operation for the purposes of this act even if it is not under automated operation in a technical sense.*” (lines 34-37), however, this comment is in conflict with the wording of (4) (lines 32-33 on page 5 and lines 1-2 of page 6), which clearly defines the moment that automated operation ceases: “*Automated operation... continues until **a human driver or human operator other than the automated driving provider terminates the automated operation.***” A subsequent comment is also in conflict: “*For example, if a human reasonably terminates automated operation to avoid a risk of imminent harm proximately caused by the automated driving system, then automated operation may be deemed to continue until the risk is avoided, realized, or enhanced.*” The act makes no attempt to define what constitutes “a risk of imminent harm” or how to identify the point at which the responsibility and liability does

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<sup>1</sup> [https://www.sae.org/standards/content/j3016\\_201806/](https://www.sae.org/standards/content/j3016_201806/)

transfer in the event that a human resumes operation to attempt to avoid such harm. If the human driver or operator assumes liability at the moment of taking over control (i.e. terminating the automated operation), that is a disincentive to attempt to avoid harm. It is a clear conflict of interest that puts the public at risk of harm.

### **Section 3: Application; Construction; Governing Law.**

- (c) on lines 15-16 of page 9: Use of the phrase “traffic safety” is problematic. “Traffic” is not defined, but a reasonable definition of “traffic” would exclude, e.g. diners at a sidewalk café or people inside a building. Crashes where vehicles mount the sidewalk and/or penetrate buildings are relatively common. The word “public” should be substituted for “traffic” on line 16.
- (c) on lines 15-16 of page 9: The word “must” is a strong requirement for a concept (public safety) that has not been defined, neither by the act nor by industry consensus. This provision is thus unenforceable and is effectively a platitude that does not meaningfully protect the public.

### **Section 4: Driver Licensing.**

- (b) on lines 22-23 of page 11 exempts the automated driving provider from holding a license. While the comment on line 31 states that the act does not change existing rules, it does by exempting the “driver” (i.e. ADP) from being licensed.
  - The requirements established in section 6 (pp 14-16) for an ADP exempt the ADP from **demonstrating** their ability to safely operate vehicles. This fundamentally undermines the public safety and the ability to hold individuals accountable through licensing.
  - The comment paragraph (lines 14-19 on page 12) describes ways Section 6 enables a State to revoke its recognition of an ADP. The process defined in Section 6 lacks the transparency of a formal licensing program. More on the shortcomings of this later.
  - While the requirements of commercial drivers licenses and private drivers licenses for individuals differ, with the requirements for commercial drivers being more stringent, the act fails to distinguish between requirements for ADPs for commercial vehicles and private vehicles.

### **Section 5: Vehicle Registration.**

- This section introduces troublesome consumer protection issues.
  - (d) on lines 29-31: an individual’s ability to register an AV is dependent upon the State’s recognition of the ADP and the ADP’s act of designating the individual’s AV. This leaves the individuals vulnerable to bad faith actions by the ADP. The only remedy offered by the act is a temporary one. Section 7 (more on this later) does not afford the owner any rights, e.g. to change ADPs in the event that their initial ADP dissociates their vehicle, becomes unrecognized, or the owner/registrant upgrades their equipment.
  - (h) on lines 12-13 of page 13: It is the prerogative of States to require vehicle safety inspections prior to registering vehicles and many States do have requirements for safety inspections either at transfer of ownership or periodically (e.g. annually or biannually). This section should be removed.
  - Comments on lines 14-18 of page 14: The optimistic nature of the comments--i.e. that the ADP designation requirement of registration provides an incentive to the ADPs to act in good faith—is a short-sighted view of the referenced provision. In fact, the

provision fails to protect owners/registrants from bad faith actions by ADPs, or even neutral actions such as an ADP going out of business. The State has an obligation to protect the interests of consumers, and an optimistic view of the provision creating an “incentive” is not consumer protection. Consumer protection law exists because commercial interests frequently incentivize bad faith actions. While vehicles typically have a service life of 10-20 years, software service life is much shorter, often less than 5 years. The primary responsibility of the ADP during the service life of the AV is to maintain the software that drives the vehicle during autonomous operation. The commercial interest for ADPs is to cut the costs of maintaining older software, for example, by disassociating the AV after the software reaches its end of life. Furthermore, ADPs do not benefit in any way from a private sale of an AV, so the notion of “A person is unlikely to buy an automated vehicle that they are not allowed to actually use.” has no influence upon ADPs.

### Section 6: Automated Driving Providers.

- (2) on lines 33-35 of page 14: ADPs currently have no Federal **requirement** to submit a safety self-assessment to the National Highway Traffic Safety Administration (NHTSA), it is merely voluntary. The act’s requirement to opt-in is a marginal improvement over the current Federal requirements. However, the NHTSA safety self-assessments are widely regarded as marketing fluff with no substance that meaningfully evaluates, documents, or demonstrates the safety of the AVs that the ADP is responsible for. Indeed, in a recent Senate hearing, the NTSB lambasted NHTSA for abdicating their responsibility to protect the safety of the public specifically through these safety self-assessments<sup>2</sup>. This provision of the act does not fulfill all of the recommendations that NTSB had for States. These are<sup>3</sup>:
  - Mandatory application for ADS testing
  - Establishment of task force to review applications
  - Examine tester’s plan for:
    - Mitigating safety risks associated with crashes and operator inattentiveness
    - Appropriateness of countermeasures for testing conditions

The act does not authorize any State Agency to obtain, review, or respond to any safety self-assessments, nor does it authorize any State Agency to establish minimum requirements for the content of the self-assessments or criteria by which the self-assessments are evaluated. Ideally, NHTSA and/or the FMCSA would fulfill their regulatory obligations to establish minimum safety standards for AVs and to verify that ADPs meet those requirements. However, the State also has an obligation and a right to implement and enforce safety standards.

In testimony to the Senate, Acting Under Secretary for Policy, US Department of Transportation said: *“we care deeply about safety outcomes and will require proof that a crash-prevention technology works in the most dynamic and complex of transportation scenarios that are most frequent cause of crashes.”*<sup>4</sup> Unfortunately, none of the agencies under the USDOT have yet

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<sup>2</sup> See: <https://www.commerce.senate.gov/2019/11/committee-announces-hearing-on-automated-vehicles>

<sup>3</sup> See: <https://www.nts.gov/news/events/Documents/2019-HWY18MH010-BMG-presentation5.pdf> slide 59

<sup>4</sup> See: <https://www.commerce.senate.gov/services/files/028AA27D-515D-4112-8338-A72DEADD546B>

acted to require any such proof. States should not authorize the deployment of AVs on public roads beyond R&D before the Federal government fulfills its regulatory obligations.

- (c) on lines 5-18 of page 15 defines a series of declarations that an ADP must make in order to be recognized as an ADP by the State. While human drivers are held to a standard of **demonstrating** their competency in order to be licensed as a driver, an ADP merely needs to attest as much and under Section 4 has no requirement to be licensed. At a minimum, ADPs should be held to the same standards as human drivers to **demonstrate** competency before they are allowed to operate vehicles in the state. Licensing is the best avenue to do so.

#### **Section 7: Associated Automated Vehicles.**

- (c) on lines 22-25 of page 17 provides no limits on why an ADP may disassociate an AV. This fails to adequately protect consumers from bad faith actions by the ADP. There should be defined, limited circumstances under which an ADP may disassociate an AV.
- (d) on lines 26-27 of page 17 requires an ADP to notify a State Agency in the event that the ADP disassociates from an AV. However, there is no provision to notify the registered owner of the AV. The act should identify whether the ADP or State Agency is responsible to notify the registered owner. What happens if an ADP ceases to exist?
- The act fails to give the owner/registrator of the AV any means of changing ADPs. If an AV owner upgrades the ADS for any reason, the owner has no way to alter the association. The act also does not clarify how changing ADPs would happen if the ADP for the new ADS initiated that change in ADP association.

#### **Section 8: Equipment.**

- (a) on lines 34-36 of page 18 is a near verbatim repeat of Section 3 (c) on lines 15-16 of page 9. Section 8 relates to the State's vehicle equipment requirements whereas Section 3 relates to the State's vehicle code in general. The same comments apply:
  - The use of the phrase "traffic safety" should be substituted with "public safety," in order to adequately protect all members of the public who may be negatively affected by AVs, e.g. diners at a sidewalk café, or people inside buildings.
  - The clause is so open-ended it offers no meaningful protections. Indeed, the rest of the act fails to adequately ensure that AVs operate in a safe manner.
- (b) on line 37 of page 18 and line 1 of page 19 requires that an AV be properly maintained. An AV is defined by (5) on line 3 of page 6 as a motor vehicle with an ADS, and an ADS is defined by (3) on lines 30-31 of page 5 as "the **hardware and software** collectively capable of performing the entire dynamic driving task on a sustained basis."
  - Properly maintaining an AV requires properly maintaining two components under the direct control of two different parties:
    - The motor vehicle equipment and the hardware component of the ADS are under the direct (physical) control of the owner/registrator. The hardware (e.g. sensors) is in the physical custody of the owner/registrator, but maintenance of the hardware may be under the control of the ADP, as the act does not guarantee Right to Repair of either the hardware or the software components.

- The software is presumed to be under the direct control of the ADP, though the act does not identify or reconcile how the responsibility/liability is assigned in the case of, e.g.:
  - An owner/registrant exercises their Right to Repair.
  - An owner/registrant fails to respond to a recall.
  - The ADP cannot access the AV to maintain the software.
  - The ADP ceases to exist.
  - The ADP withdraws support for the software.

### Section 9: Rules of the Road.

- (a) on lines 11-12 of page 20 is a near verbatim repeat of Section 3 (c) on lines 15-16 of page 9 and Section 8 (a) on lines 34-36 of page 18. Section 9 relates specifically to the State’s rules of the road whereas Section 8 relates specifically to the State’s vehicle equipment requirements and Section 3 relates to the State’s vehicle code in general. The same comments apply:
  - The use of the phrase “traffic safety” should be substituted with “public safety,” in order to adequately protect all members of the public who may be negatively affected by AVs, e.g. diners at a sidewalk café, or people inside buildings.
  - The clause is so open-ended it offers no meaningful protections. Indeed, the rest of the act fails to adequately ensure that AVs operate in a safe manner.
- References to “*a device used to evade law enforcement*” are problematic. If an ADP is fulfilling its obligations under (b) (lines 13-14 on page 20), then devices used to evade law enforcement would serve no purpose to the operator of the AV. The fact that the authors anticipate the use of such devices in an AV is indicative of their lack of consideration of the obligation to protect the safety of the public.
- The comments on lines 23-33 are further indicative of the authors’ lack of consideration of the obligation to protect the safety of the public. Comments such as “*momentarily exceeding a speed limit in the interest of safety.*” (lines 29-30 of page 21) display a subscription to the dangerous driving culture that is at the root of the large death toll on public roads today. If ADPs intend to deploy AVs that mimic and perpetuate these dangerous driving conventions and habits—most especially excessive speed, which is the #1 factor contributing to crash severity—then they will most certainly be in contravention of clause 9 (a) and will have failed in their mission to enhance the safety of the public through the very expensive task of automation.
- (c) on lines 15-16 of page 20 assigns responsibility for driving infractions, such as speeding tickets (lines 5-6 of Page 22), to the ADP. ADPs should have an obligation and a commercial interest in implementing ADSs that cannot be abused. However, the mechanism for implementing this clause needs careful consideration as it is open to abuse by the ADP. E.g.:
  - The ADP may pass on the cost of fines to the owner/registrant as a condition of continued association, protecting the ADP from the consequences of its actions.
  - The ADP may disassociate an entire fleet of AVs with a particular ADS that is vulnerable to misuse, as a lower cost remedy than updating the ADS to prevent misuse, and this action would harm owners/registrants of AVs who have not misused the ADS.



## Bailey, Ted

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**From:** Kelly Skahan <skahan@workerlaw.com>  
**Sent:** Wednesday, December 11, 2019 5:02 PM  
**To:** Bailey, Ted  
**Cc:** Majken; Shaunie.Wheeler@jc28.org; teresitactorres@gmail.com; Dmitri Iglitzin; Jennifer Woodward  
**Subject:** Comments on Uniform Law Commission AV Model Bill  
**Attachments:** 2019 12 11 Joint Council 28 Automated Vehicles Model Legislation Comment....pdf

Hello Mr. Bailey –

On behalf of Teamsters Joint Council 28, I've attached a letter containing comments on the Uniform Law Commission's Automated Vehicles Model Bill. We would appreciate your including it with the comments you forward to the Transportation Commission and Representative Hudgins next week. If you have any questions, please don't hesitate to ask.

Thank you,  
Kelly



**BARNARD  
IGLITZIN &  
LAVITT LLP**

**KELLY ANN SKAHAN** | *Associate Attorney*

**DIR:** 206.257.6009 | **FAX:** 206.378.4132

18 West Mercer Street, Suite 400, Seattle, WA 98119

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18 West Mercer Street, Suite 400  
Seattle WA, 98119  
TEL (800) 238.4231  
FAX (206) 378.4132

**DMITRI IGLITZIN**  
Senior Partner  
DIR (206) 257.6003  
iglitzin@workerlaw.com

December 11, 2018

Representative Zack Hudgins  
LEG 438A  
PO Box 40600  
Olympia, Washington 98504-0600

Re: Request for Comments on Uniform Automated Operation of Vehicles Act  
Our File No. 3315-999

Dear Rep. Hudgins:

We would like to thank your office for your request for comments on the National Conference of Commissioners on Uniform State Laws' (ULC) model legislation regarding operation of automated vehicles in Washington State. Teamsters Joint Council No. 28 (Joint Council 28) advocates for the many working people of Washington who are represented by its affiliated local unions, and has a strong interest in the State's cargo transportation system. Because of the impact automated vehicles would have on those workers, as well as on their families and communities, counsel for Joint Council 28 appreciates the opportunity to provide additional comments regarding the potential impact of legislation that mirrors the ULC's model legislation, as well as any complementary legislation covering insurance coverage for automated vehicles.

Respectfully, the ULC's model legislation inadequately addresses the particular challenges of incorporating automated vehicles into the existing cargo transportation system because it fails to take into account the distinction between commercial and noncommercial vehicles. Specifically, the ULC's proposed legislation fails to address safety standards, protection of already existing commercial driving jobs, and proactive workforce programs that take automated vehicle operation into account. Accordingly, Joint Council 28 recommends that any legislation based on the ULC's model law govern only personal vehicles driven in a noncommercial capacity by consumers.

Because an automated vehicle cannot perform many of the specialized problem-solving operations drivers currently perform every day, they present a safety risk to both other drivers and workers who must interact with the automated vehicle during the course of business. The ULC's model legislation fails to take those risks into account. Despite their advanced technology, automated vehicles cannot physically load or unload a truck, interact with customers in real time to solve problems, or adapt quickly to ongoing job or road conditions — all tasks local drivers routinely and regularly perform. Though variations in the weather, road conditions, elevation, and a truck's condition can compromise any vehicle's safe performance, human operators can adapt to changes in conditions in ways an automated vehicle cannot. Consequently, an automated vehicle's reaction to changes in conditions will not necessarily mimic what a human driver's reaction may have been, making it difficult for workers to safely predict how to interact with the vehicle during the loading and unloading process, during maintenance,

and while it is on the road. Separate legislation governing the role automated vehicles will play in the cargo transportation system in Washington would better address those safety issues.

The ULC's model legislation also fails to provide any protection for already-existing commercial driving jobs. Left unchecked, automated vehicles will almost certainly lead to widespread, long-term job losses throughout the state by flooding the local delivery market with alternatives to drivers like those Joint Council 28's affiliated local unions represent. Any bill governing automated vehicles must address that potential job loss, as well as the health and safety concerns drivers will inarguably face as they interact with automated vehicles on the job. By incorporating protections for those workers and their jobs — including more specific discussions of drivers' roles on specialized vehicles like refrigerated trucks and buses that transport children or disabled passengers — a separate bill would more adequately address issues automated vehicles present for commercial drivers and the cargo transportation industry.

Further, a separate bill governing automated vehicles as they relate to the cargo transportation industry could more effectively institute proactive workforce programs designed to more seamlessly incorporate automated vehicles into the already-existing structures governing professional drivers. For example, the ULC's model legislation lacks discussion of how commercial drivers' license requirements and endorsements would address operation of automated vehicles, as well as how the incorporation of automated vehicles into existing vehicle fleets will affect WARN Act notices for drivers whose jobs are eliminated. Likewise, the model law includes no discussion of how commercial fleets will track and document mileage, safe operation, impact on transit systems, and emissions from automated vehicles. By limiting the law's application to noncommercial vehicles, the legislature would have the opportunity to more adequately address those issues in a separate bill.

Thank you for your work on this matter and for taking the time to consider our comments regarding the updated task force report.

Sincerely,

Dmitri Iglitzin  
Counsel for Teamsters Joint Council 28

Kelly Ann Skahan  
Counsel for Teamsters Joint Council 28

**Bailey, Ted**

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**From:** Kim, Judy <JKim@Venable.com>  
**Sent:** Wednesday, December 11, 2019 8:56 PM  
**To:** Bailey, Ted  
**Cc:** Wolf, Ariel S.  
**Subject:** Self-Driving Coalition for Safer Streets Comment on ULC AV Model Bill  
**Attachments:** Self-Driving Coalition for Safer Streets Comment on ULC AV Model Bill.pdf

Dear Ted,

On behalf of the Self-Driving Coalition for Safer Streets, I write to provide a letter in response to Representative Hudgins and the Washington State Transportation Commission’s request for comments regarding the Uniform Law Commission (ULC) AV Model Bill. Please find attached the Coalition’s letter.

Sincerely,  
Judy Kim on behalf of Ariel S. Wolf, Counsel to the Self-Driving Coalition for Safer Streets

Judy Kim, Esq. | [Venable LLP](#)  
t 212.218.2278 | f 212.218.2200  
1290 Avenue of the Americas, 20th Floor, New York, NY 10104

[JKim@Venable.com](mailto:JKim@Venable.com) | [www.Venable.com](http://www.Venable.com)

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December 11, 2019

Representative Zack Hudgins  
438A Legislative Building  
PO Box 40600  
Olympia, WA 98504

Sen. Jamie Pedersen  
235 Cherberg Building  
PO Box 40443  
Olympia, WA 98504-0419

***Sent via email***

Dear Representative Hudgins, Senator Pedersen, and the Washington State Transportation Commission:

On behalf of the Self-Driving Coalition for Safer Streets (“Coalition”), we are writing to provide comments on potential introduction of the “Uniform Automated Operation of Vehicles Act” (“ULC Bill”) in Washington. While the Act provides some useful elements of a potential legislative framework, we do have significant concerns with aspects of the Act. Below we outline some of those concerns and urge the Legislature not to move forward with such complex legislation in the short-session. Instead, we encourage using 2020 as an opportunity for all stakeholders to engage in thoughtful conversations and build consensus toward a workable solution for autonomous vehicle (“AV”) deployment in Washington.

- ***The ULC Bill introduces confusing, untested concepts that do not align with existing statutory or industry frameworks.***

The introduction in the Bill of concepts such as “automated driving provider,” “associated automated vehicles,” and other novel categories that would have distinct legal status would confuse industry stakeholders and consumers alike. Creation of a new legal status is unnecessary, as evidenced by the fact that none of the many states that have enacted legislation authorizing testing and commercial operation of autonomous vehicles has incorporated these novel concepts or anything similar. Moreover, these terms may confuse consumers, limit how manufacturers and developers structure business relationships, and create administrative burdens for the state. Another example is the concept of a “completely automated trip,” which is not included in any automated vehicle legislation enacted across the country. In addition to being unnecessary, the definition is imprecise. For example, it is unclear what would constitute “departure” and “arrival.” This imprecision is concerning because the definition is used in a critical section for enabling driverless operation (Section 4 - Driver Licensing). The Coalition recommends replacing these concepts with those that align with existing statutory or industry frameworks to avoid confusion.

- ***Lack of clarity on what existing rules apply to AVs, creating confusion about the terms under which applications of AV technology may operate.***

Passenger services and goods delivery are two of the earliest and most promising use cases for AVs. Given that existing law did not contemplate vehicles without drivers providing these services, state AV legislation should clarify the applicable regulatory frameworks. The ULC Bill does not appear to address either of these issues.

In addition, the ULC Bill grants broad authority to state agencies that, as the ULC Bill legislative comments recognize, may not align with existing state law and practice (see, e.g., Sections 5(e), 5(h), 6(e)). The scope of authority should align with existing law governing conventional vehicles. There is no demonstrated need or justification for special treatment of AVs, such as creating AV-specific maintenance requirements (Sec. 8(b)). Existing state provisions regarding vehicle maintenance should apply to AVs. With this principle in mind, states that have enacted AV legislation (as well as NHTSA at the federal level) have generally refrained from establishing new or special agency authorities for AVs.

The current language of the ULC Bill gives broad rulemaking authority to “relevant state agency or agencies” to “[make rules, issue interpretations, and take other actions to] administer and enforce this [act].” An example of the breadth of this authority pertains to vehicle registration. Pursuant to the current bill language, the state agency would have the authority to decline, suspend, revoke, or decline to renew registration of an automated vehicle that is “otherwise not fit to be operated” in Sec. 5(e). The Coalition recommends limiting the authority of the state agency to declining registration for either failure to satisfy the associated autonomous vehicle requirements or other generally applicable registration requirements. The current language as drafted provides state agencies with absolute discretion to decline to register an autonomous vehicle without providing clear basis for doing so.

Lastly, facilitation of AV deployment will only be successful if the state’s vehicle codes are interpreted to apply accordingly to AV technology. Thus, the Coalition recommends clarifying that any provision of the vehicle code that reasonably applies only to a human driver would not apply to the operation of an automated vehicle with the automated driving system engaged in Sec. 3(c). In addition to state vehicle code, AVs should also be required to adhere to the state’s motor vehicle insurance code in Sec. 3(b).

- ***Include definition of “On-Demand Autonomous Vehicle Network”***

The Coalition recommends adding “On-Demand Autonomous Vehicle Network” to the definitions. An “On-Demand Autonomous Vehicle Network” is defined as a transportation service network that uses a software application or other digital means to dispatch or otherwise enable the pre-arrangement of transportation with associated automated vehicles for purposes of transporting persons or goods, including for-hire transportation and transportation for compensation. Addition of this definition would ensure inclusion of transportation service networks for on-demand autonomous vehicles.

Autonomous vehicle technology has the potential to usher in a new era of mobility, with incredible potential to make Washington’s transportation system safer, more efficient, and accessible. But, despite the Uniform Automated Operation of Vehicles Act’s genuine goal to provide a consistent model for state AV statutes, the

issues raised above could impede Washington's progress towards safe, thoughtful testing and deployment of AVs.

Our comments highlight the Coalition's primary concerns regarding the ULC Bill, but we would be happy to discuss our concerns with specific provisions of the ULC Bill at a later time. The Coalition appreciates the opportunity to provide feedback and looks forward to discussing our suggested edits and revisions further with you. Thank you for including us in your process.

Sincerely,

/Ariel S. Wolf/

Ariel S. Wolf

Counsel, Self-Driving Coalition for Safer Streets

## Bailey, Ted

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**From:** Forte, David (OIC) <DavidF@oic.wa.gov>  
**Sent:** Wednesday, December 11, 2019 9:12 AM  
**To:** Bailey, Ted  
**Cc:** Harris Clarke (Harris.Clarke@pemco.com); Johns-Brown, Lonnie (OIC)  
**Subject:** FW: By COB, Dec 11th: Request for comments on behalf of Rep. Hudgins /  
Transportation Commission: Uniform Law Commission (ULC) AV Model Bill  
**Attachments:** Scan from Transportation Commission Office.pdf  
**Importance:** High

Mr. Bailey,

The Liability Subcommittee held a conference call to discuss the ULC draft language. From our review, the Liability Subcommittee would like to provide the below comment:

The language in the ULC Bill Draft is sufficient for needs of liability coverage, however there appears to be vagueness to the citing of criminal and infraction traffic matters in relation to autonomous vehicles. We recommend gathering some impacted participants from the Administrative Office of the Courts, Washington State Patrol, Washington Associations of Sheriffs & Police Chiefs, Washington Association of Prosecuting Attorneys, and the Washington State Bar Association to discuss citing language that should be included in any bill draft proposed to the Legislature.

Please let us know if there are any questions.



### David Forte

Senior Policy Analyst, Property & Casualty  
CPCU, AIC  
Policy and Legislative Affairs Division  
Washington State Office of the Insurance Commissioner  
360-725-7042  
[davidf@oic.wa.gov](mailto:davidf@oic.wa.gov)

### Protecting Insurance Consumers

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**From:** Bailey, Ted [<mailto:BaileyTe@wsdot.wa.gov>]

**Sent:** Wednesday, November 27, 2019 1:29 PM

**To:** [Adiam.Emery@seattle.gov](mailto:Adiam.Emery@seattle.gov); [adrian.pearmine@dksassociates.com](mailto:adrian.pearmine@dksassociates.com); Ahmad Darrat <[ahmad.darrat@transpogroup.com](mailto:ahmad.darrat@transpogroup.com)>; Camden, Allison (DOT) <[camdena@wsdot.wa.gov](mailto:camdena@wsdot.wa.gov)>; Buckley, Anthony <[BuckleA@wsdot.wa.gov](mailto:BuckleA@wsdot.wa.gov)>; [bmurray@gth-gov.com](mailto:bmurray@gth-gov.com); Thompson, Brent <[ThompBr@wsdot.wa.gov](mailto:ThompBr@wsdot.wa.gov)>; LagerbB <[LagerbB@wsdot.wa.gov](mailto:LagerbB@wsdot.wa.gov)>; Thomas, Brian (UTC) <[brian.thomas@utc.wa.gov](mailto:brian.thomas@utc.wa.gov)>; [bruce.haldors@transpogroup.com](mailto:bruce.haldors@transpogroup.com); See, Carl <[seecarl@wstc.wa.gov](mailto:seecarl@wstc.wa.gov)>; Knutson, Charles (GOV) <[Charles.Knutson@gov.wa.gov](mailto:Charles.Knutson@gov.wa.gov)>; [cwolf@nwseaportalliance.com](mailto:cwolf@nwseaportalliance.com); [claudiahirschey@comcast.net](mailto:claudiahirschey@comcast.net); [dlai@bellevuewa.gov](mailto:dlai@bellevuewa.gov); Besser, Debi (WTSC) <[dbesser@wtsc.wa.gov](mailto:dbesser@wtsc.wa.gov)>; Key, Earl <[KeyE@wsdot.wa.gov](mailto:KeyE@wsdot.wa.gov)>; [erica.bramlet@leg.wa.gov](mailto:erica.bramlet@leg.wa.gov); [Giulia@pugetsoundsage.org](http://Giulia@pugetsoundsage.org); [hannah.mccarty@leg.wa.gov](mailto:hannah.mccarty@leg.wa.gov); [hcocci@gth-gov.com](mailto:hcocci@gth-gov.com); [igaub@auburnwa.gov](mailto:igaub@auburnwa.gov); [jsweeting@auburnwa.gov](mailto:jsweeting@auburnwa.gov); [Jamal.Mahmoud@bothellwa.gov](mailto:Jamal.Mahmoud@bothellwa.gov); Colyar, James (FHWA) <[James.Colyar@dot.gov](mailto:James.Colyar@dot.gov)>; [jwebb@auburnwa.gov](mailto:jwebb@auburnwa.gov); Biggs, Jason R. <[BiggsJR@wsdot.wa.gov](mailto:BiggsJR@wsdot.wa.gov)>; JenniferHarris <[Jennifer.Harris@leg.wa.gov](mailto:Jennifer.Harris@leg.wa.gov)>; Vanderwood, Jerry <[jvanderwood@agcwa.com](mailto:jvanderwood@agcwa.com)>; [john.corbin@dot.gov](mailto:john.corbin@dot.gov); Flanagan, John (GOV) <[john.flanagan@gov.wa.gov](mailto:john.flanagan@gov.wa.gov)>; John Nisbet <[nisbetj@wsdot.wa.gov](mailto:nisbetj@wsdot.wa.gov)>; [kzentz@wsu.edu](mailto:kzentz@wsu.edu); [leah@urbanlogiq.com](mailto:leah@urbanlogiq.com); Logan Bahr <[loganb@awcnet.org](mailto:loganb@awcnet.org)>; Ryherd, Majken <[majken.ryherd@gmail.com](mailto:majken.ryherd@gmail.com)>; [mamie@challengesattle.com](mailto:mamie@challengesattle.com); Hallenbeck, Mark <[TracMark@u.washington.edu](mailto:TracMark@u.washington.edu)>; [mark@urbanlogiq.com](mailto:mark@urbanlogiq.com); [mrussel@ci.olympia.wa.us](mailto:mrusssel@ci.olympia.wa.us); Elizer, Marshall





CompTIA



Internet Association

NetChoice



TECHNET  
THE VOICE OF THE  
INNOVATION ECONOMY

December 18<sup>th</sup>, 2019

The Honorable Jamie Pedersen  
Chair, Senate Law and Justice Committee

The Honorable Zack Hudgins  
Chair, House Innovation, Technology &  
Economic Development Committee

**Sent via Email**

Dear Chairman Pedersen and Chairman Hudgins,

The above organizations, ACES Northwest, CompTIA, Internet Association, NetChoice, and TechNet are partnering to provide comments on the potential introduction of the “Uniform Automated Operation of Vehicles Act” (ULC Bill) in Washington. While we would prefer to see policy to regulate autonomous vehicles at the federal level because of the consistency it provides for both industry and consumers, we believe that there is a role states can play in the formation of AV policy. The ULC Bill has some useful elements for a state framework but we have concerns that require more time to discuss than a short legislative session will likely allow. While we outline some of our concerns below, ultimately, we urge the Legislature to not move forward with this complex legislation during the 2020 session.

***Introduction of confusing, untested concepts that don’t align with existing statutory or industry frameworks:*** The ULC Bill introduces the novel legal status of identifying “automated driving provider” and “associated automated vehicles.” In addition to confusing the consumer, this also can limit how manufacturers and developers structure business relationships and create an administrative burden for the state. Additionally, no other state has incorporated this or any similar concept when enacting legislation to authorize testing and commercial operation of autonomous vehicles.

The ULC Bill adds a second novel concept of a “completely automated trip,” which is not included in any of the many pieces of automated vehicle legislation enacted across the country and may be unnecessary. The definition is imprecise, and it remains unclear what would constitute “departure” and

“arrival.” This lack of clarity is concerning because this definition is used in a critical section for enabling driverless operation (Section 4 - Driver Licensing).

***Lack of clarity on what existing rules apply to autonomous vehicles (AVs), creating confusion about the terms under which applications of AV technology may operate:*** Passenger services and goods delivery are two of the earliest and most promising use cases for AVs. Given that existing law did not contemplate vehicles without drivers providing these services, state AV legislation should clarify the applicable regulatory frameworks. The ULC Bill addresses neither of these issues.

***Scope of authority should align with existing law:*** The ULC Bill grants broad authority to state agencies that may not align with existing state law and practice (see, e.g., Sections 5(e), 5(h), 6(e)). The scope of authority should align with existing law governing conventional vehicles. States that have enacted AV legislation (as well as NHTSA at the federal level) have generally refrained from establishing new or special agency authorities for AVs.

***Traffic laws and preemption of other enforcement penalties:*** The ULC Bill states all penalties and remedies may not be contained in the code itself. We recommend any new legislation would preempt any other penalties or enforcement mechanisms.

Additionally, the draft states that the automated driving provider must "represent under penalty of perjury that sufficient evidence demonstrates that the automated driving system of each associated automated vehicle is capable of complying with [the state's rules of the road]." The "capable of complying" language remains consistent with other state AV laws, however, the "sufficient evidence" language is unique and we would caution against including language which differs from the standard adopted in other states.

Despite the Uniform Automated Operation of Vehicles Act's genuine goal to provide a consistent model for state AV statutes, the issues raised above could lead the ULC Bill to have an opposite result, thus impeding Washington's progress towards safe, thoughtful testing and deployment of AVs. The concerns we have raised will require thoughtful discussion and we look forward to working with you to find a workable solution in the months ahead.

Sincerely,

ACES Northwest  
CompTIA  
Internet Association  
NetChoice  
TechNet

## Bailey, Ted

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**From:** Bailey, Ted  
**Sent:** Thursday, December 19, 2019 10:16 AM  
**To:** Camden, Allison; Cummings, Alyson  
**Subject:** FW: Comments on ULC AV Model Bill?

FYI

Sent from my Verizon, Samsung Galaxy smartphone

----- Original message -----

**From:** "Knutson, Charles (GOV)" <Charles.Knutson@gov.wa.gov>  
**Date:** 12/19/19 9:57 AM (GMT-08:00)  
**To:** "Bailey, Ted" <BaileyTe@wsdot.wa.gov>  
**Subject:** FW: Comments on ULC AV Model Bill?

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**From:** Perschbacher, Beau (DOL)  
**Sent:** Thursday, December 19, 2019 9:05 AM  
**To:** 'Griffith, Reema' <[GriffiR@wstc.wa.gov](mailto:GriffiR@wstc.wa.gov)>  
**Cc:** 'Drew Wilder' <[drew@vlrmgmt.com](mailto:drew@vlrmgmt.com)>  
**Subject:** RE: Comments on ULC AV Model Bill?

Hi Reema,

Thanks for the chance to review this and provide feedback. The Licensing Sub-Committee won't have a chance to discuss this proposal until next year, but I did get a chance to discuss it with our co-chair Drew Wilder.

Here is some feedback representing DOL's administrative perspective:

- The model language contemplates that DOL would potentially determine whether certain autonomous vehicles are "not fit to be operated" on public roadways. DOL does not have the expertise to make this type of technical safety decision. Currently, if a vehicle passes federal motor vehicle safety standards (FMVSS) it can generally operate in Washington. It would be most consistent with current vehicle safety practices if the federal government would continue to make the determination on this issue rather than a piece-meal approach by the states. However, I recognize that we don't have comprehensive federal regulation yet in this area.
- If the expectation is that automated driving providers would be responsible for providing DOL a list of supported AVs and notifying DOL within a certain time frame if a particular model is no longer supported, DOL could ensure that the appropriate vehicle owners are notified of this change and potentially cancel the registration (if necessary). However, we would have concerns about any role that required us to make technical decisions about the safety of an AV system.

Drew may separately weigh-in with his own comments. Happy to discuss this feedback on the phone as well if helpful.

Thanks, -Beau

## Bailey, Ted

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**From:** Bailey, Ted  
**Sent:** Friday, July 26, 2019 2:38 PM  
**To:** Mariya Frost  
**Subject:** Re: Article by Scribner

Thank you for sharing. Are you planning to incorporate some of the ULC recommendations into the developing Washington State Draft CAT policy framework?

Sent from my Verizon, Samsung Galaxy smartphone

----- Original message -----

**From:** Mariya Frost <mfrost@washingtonpolicy.org>  
**Date:** 7/26/19 12:59 PM (GMT-08:00)  
**To:** "Bailey, Ted" <BaileyTe@wsdot.wa.gov>  
**Subject:** Article by Scribner

<https://cei.org/blog/uniform-law-commission-can-improve-uniform-automated-operation-vehicles-act>

New post that may interest you.

Mariya

# Uniform Law Commission Can Improve Uniform Automated Operation of Vehicles Act

Marc Scribner • July 26, 2019



After two years of work, last week the Uniform Law Commission (ULC) published its model state legislation on automated vehicles. By and large, ULC's Uniform Automated Operation of Vehicles Act is a very positive step in the right direction. It makes sensible recommendations to ensure national uniformity while providing states sufficient flexibility to make tweaks that best fit their residents.

Certainly, this model act is a major improvement to the ULC's initial effort, on which CEI submitted strong criticism in 2015 urging the ULC to hit the reset button, which it ultimately did.

That being said, I would caution states against adopting the ULC's latest model bill until two significant problems are addressed.

First, Section 6 on automated driving providers appears to unnecessarily limit fleet ownership and management. To qualify as an automated driving provider, a person would need to meet one of three requirements:

1. "have participated in a substantial manner in the development of an automated driving system"
2. "have submitted to the United States National Highway Traffic Safety Administration a safety self-assessment or equivalent report for the automated driving system as required or permitted by the United States National Highway Traffic Safety Administration," or

3. “be registered as a manufacturer of motor vehicles or motor vehicle equipment under the requirements of the United States National Highway Traffic Safety Administration”

While these would apply to most current players in the automated vehicle space, what of the potential business model whereby a fleet owner purchases or leases vehicles equipped with automated driving systems from a developer/manufacturer without being substantially involved in system/vehicle development?

This isn't some far-fetched hypothetical. Existing rental car companies aren't involved in the development or manufacturing of vehicles they purchase from automakers and many would like to continue their business models in a similar fleet-owning fashion once automated vehicles are available. This provision would effectively prohibit that from happening unless NHTSA was to develop regulations to explicitly grant permission to Avis or whomever. At best, this is the state policy tail wagging the federal policy dog and is likely to garner strong opposition.

The second problem is with what the ULC model act doesn't do: explicitly preempt localities from regulating AVs in a manner that discriminates against AVs vis-à-vis traditional autos to avoid a patchwork of regulations. Fortunately, a growing number of states are opting to preempt localities from getting beyond their depth in AV policy. Several states have included preemption provisions in their comprehensive AV laws and in May, Oklahoma enacted legislation solely focused on the preemption issue. Admittedly, the ULC most likely intentionally avoided this issue because it is somewhat contentious.

Overall, the Uniform Automated Operation of Vehicles Act is a step in the right direction and I commend the ULC Automated Operation of Vehicles Act Committee's hard and thoughtful work on this subject. Hopefully, ULC will continue to work to improve its AV policy recommendations and eventually arrive at uniform act that states should enact in its entirety.