

Federal autonomous vehicle bill moves closer to passage

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Federal autonomous vehicle legislation, previously stalled in the Senate, is revving its engine after Republican senators struck a deal with the American Association for Justice (AAJ) in an effort to secure outstanding Democratic votes.

Last September, the SELF Drive Act unanimously passed the US House of Representatives. Subsequently, the Senate Committee on Commerce, Science and Transportation approved the Senate's sister bill, the AV START Act. Senate action on the AV START Act, however, stalled due to concerns from several Democratic senators regarding federal preemption, forced arbitration, safety and cybersecurity.

If passed, the bill would increase the number of National Highway Traffic Safety Administration (NHTSA) safety exemptions, spur an autonomous-directed update to the Federal Motor Vehicle Safety Standards (FMVSS), require cybersecurity protections and preempt state laws regulating vehicle safety.

The support of the American Association for Justice, an influential trial lawyer advocacy group, is a welcome sign for the bill. The new-look legislation, circulated Monday night, was altered to reaffirm state and local authority over motor vehicle operation, mitigate concerns about the effect of federal preemption on state common law and statutory liability and constrain the use of pre-dispute arbitration clauses related to death or bodily injury.

In a message to the Senate the AAJ said, "our understanding is that the Senate proffer includes language which adequately preserves the right to bring a claim under state law, and sufficiently decreases the likelihood that the driverless car industry will be able to force Americans into arbitration."

The support of trial lawyers could address the Senate Democrats' concerns regarding preemption of state law. However, several senators also opposed the original bill on safety, privacy and cybersecurity grounds.

In an attempt to address their concerns, the new draft clarifies that NHTSA-exempt vehicles must maintain a level of overall safety, occupant protection and crash avoidance equal to or greater than traditionally compliant vehicles. Additionally, the draft requires a vehicle vision test and publicly available safety reports. It also clarifies that the "inoperative controls" section of the FMVSS does not allow manufacturers to bypass the exemption process, a clause many viewed as a potential loophole.

On December 4, Sen. Dianne Feinstein (D-CA) and Sen. Ed Markey (D-MA) released statements in opposition to the reworked bill, though both left the door open to supporting it upon further revisions. At present, if Sen. Markey does not remove the hold he has placed on the new version of the bill, it is unlikely to be brought to the floor as a standalone piece of legislation. In response, Republicans are considering attaching the measure to the must-pass spending bill.

If there is no agreement by the end of the year, the bill will die and the process must begin again with a new Democratic House majority. If further revisions convince Sen. Markey and Sen. Feinstein to drop their opposition, the

bill must still be reconciled with the House's autonomous vehicle legislation. However, many of the changes to the Senate bill mirror provisions in the House bill, which could expedite negotiations between the two chambers on a compromise measure. Should the process move forward, the House could vote on a pre-conferenced bill in mid-December, allowing the Senate to approve by Christmas.

If the AV START Act defies the odds and passes into law, the NHTSA would begin the process of updating the Federal Motor Vehicle Safety Standards to accommodate highly automated vehicles.

The current standards address everything from the position of rearview mirrors to the need for power-operated windows. A significant number of the standards assume the presence of a human operator in the vehicle and are increasingly outdated and burdensome. It is clear that achieving the full long-term benefits of autonomy requires an update to the FMVSS.

In sum, an increase in available NHTSA exemptions, clearer cybersecurity requirements and a timetable for an FMVSS update are all beneficial to continued innovation. Recent developments bolster the bill's chances of passing this year, though obstacles remain. Nevertheless, even if the AV START Act becomes law, it will be just the beginning of federal policy on AVs, since the development of new standards for the industry could take anywhere from seven to 20 years.

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