



KANSAS TRIAL LAWYERS ASSOCIATION

SENATE TRANSPORTATION COMMITTEE

TESTIMONY ON SB 546 (OPPOSITION)

MARCH 9, 2022

DANIEL HINKLE, ON BEHALF OF THE KANSAS TRIAL LAWYERS ASSOCIATION

Dear Chairman and members of the committee,

My name is Daniel Hinkle and I am the Senior State Affairs Counsel for the American Association for Justice. I have followed and testified on state and federal legislation regarding automated vehicles, and I have been invited by the Kansas Trial Lawyers Association (KTLA) to testify and answer your questions today. I am testifying on behalf of KTLA in opposition to SB 546.

To reiterate a key point from prior testimony: KTLA supports the deployment of AVs onto Kansas roads as long as it is done without compromising safety and accountability. Unfortunately, as drafted SB 546 needs improvement to achieve both of these goals, which is why KTLA cannot support the bill.

First, the bill remains extremely vague and circumspect regarding who is responsible for the safe operation of any automated vehicle.

Since the day the wheel was invented, drivers have been responsible for their vehicles. International law – the Geneva Convention on the Rules of the Road – requires that every vehicle shall have a *driver*. This is the most salient and pressing question when drafting any legislation regarding automated vehicles.

At best, it seems to imply that the automated driving system *itself* is the driver. If you look at Section 2(d), the bill states that the “automated driving system shall be deemed to fulfil any physical act required of a conventional human driver to perform the dynamic driving task.” What does that mean? What does it mean by “physical act?” Does that mean *driving*?

It appears so. The definition of a “driver” in Kansas is found at KS Stat § 8-1416. The definition defines a driver as every “person” who is in “actual physical control of a vehicle.” The implication here is not only that the “ADS” is now considered the “driver” – this bill implicitly defines an automated driving system to be a *person* under Kansas law. Does this bill really *endow* robots with personhood?

It isn’t clear, but that would seem to be the only way to make sense of Section 11(h) in the bill. Section 11(h) adds a provision allowing a law enforcement officer to deliver a traffic citation “**to a person charged with a traffic infraction**” to the owner of the driverless-capable vehicle operation without a conventional human driver by mailing to citation to the owner. In order for this section to make any sense at all, the “person charged with a citation” would be the automated driving system.

This framework doesn’t work. Setting aside the ethical and philosophical questions of robot personhood, the law doesn’t work because owners don’t have to pay traffic citations just because their car was involved. I don’t have to pay when my neighbor runs a redlight in my car. Similarly, the owner of

a driverless-capable vehicle does not have to pay when an automated driving system runs the redlight either. They may “get the ticket,” but they don’t have to pay it *because they weren’t driving the car*.

This bill appears to go to a lot of trouble to avoid stating the obvious – the manufacture of the automated driving system is responsible for the safe operation of that system. The bill acknowledges this in a couple places. In Section 2(a), the bill requires a driverless vehicle to be “capable” of achieving a minimal risk condition and complying with the rules of the road, which requires that it be designed and operated in a way to achieve these things. Section 2(c) rightfully states that an ADS must be *designed* to comply with the law as well.

Further, the National Highway Transportation and Safety Administration (“NHTSA”) has similarly stated that the manufacture of that system is responsible for the safe operation of a vehicle. Just yesterday—March 8th, 2022—[NHTSA announced](#) that an automated driving system manufacturer will issue a recall to address a defect in the automated driving system that caused it to crash. The *manufacturer* of the system is responsible for safety. Kansas law should follow this same framework as well.

The bill’s circuitous approach to avoid naming the manufacturer as the driver creates additional problems as well. Specifically, the Section 2(b) requirement that an owner submit a law enforcement interaction plan generates more questions than it answers. Section 2(b)(1) requires an owner to explain how law enforcement may communicate with a fleet support specialist, but does not require that there be a fleet support specialist at all nor explain why the owner is in the position to notify law enforcement of this specialist. Section 2(b)(2) and (3) are asking for vehicle design information, but from an owner who may not be able to answer these questions (or address them as software changes). Section 2(b)(4) acknowledges that the manufacturer may have critical information, but fails to ask the manufacture directly for it.

Further, because the owner may not have any of this information, the interaction report may be woefully short on critical details. This could put law enforcement officers at risk of being seriously injured. Why not ask the manufacturer—the party who will have these details—for the information instead?

There are other issues with this bill that deserve scrutiny. The requirement that a conventional human driver be in a vehicle for the first year appears to be both overly specific and easily gamed—what if a company simply parks each AV for a year after the vehicle is put “into service?” There is clearly inadequate insurance for addressing crashes involving these vehicles as others will testify to. The on-demand driverless network provisions appear to allow such a network to operate unregulated and outside of the confines of the Kansas Transportation Network Company legislative framework – calling into question what sort of protections or requirements are in place.

To conclude, this legislation has expanded significantly in scope and demands further scrutiny. We appreciate the committee’s invitation to participate in this conversation and hope to be of assistance in helping the committee create a bill that does not compromise safety and accountability.

On behalf of the Kansas Trial Lawyers Association, I respectfully request that the committee take no action on SB 546 this session and consider a plan to study the topic, and SB 546 in greater detail.