KANSAS TRIAL LAWYERS ASSOCIATION

**House Transportation Committee**
**Testimony On SB 546 As Amended by the Senate (Opposition)**
**March 29, 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, as amended by the Senate.

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, SB 546 as amended continues to need improvement to achieve both of these goals, which is why KTLA cannot support the bill.

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: Who is the driver?

The bill states that the "owner" of a driverless vehicle is responsible "for all applicable traffic law violations when the automated driving system is engaged." This framework doesn't work for two glaring reasons.

First, at a moral level, placing blame on the owner for something they may have absolutely no control over is fundamentally wrong. An automated driving system—the "eyes" and "brains" of an automated vehicle for lack of a better metaphor—is designed and built by a company to provide "driving as a service." The manufacturer of the automated driving system is not only responsible for designing and building the system, but they are also responsible for continuously monitoring, validating, and updating that system as well. To this end, the National Highway Transportation and Safety Administration ("NHTSA") requires the manufacturer of an automated driving system to issue a recall when their system poses an unreasonable risk to public safety.

The "owner" of the vehicle may be a shell company, with no employees, that is headquartered overseas. Or, the "owner" may be a Kansas resident who happens to own a vehicle equipped with one of these systems. Either way, the owner of a vehicle equipped with such a system may have no idea how that system operates. They may have no idea how to recognize if the system is malfunctioning. They may have no control over the ability to bring that system into compliance with Kansas rules of the road or the provisions you lay out in this bill.

When that automated driving system runs a redlight and kills a child crossing the road, the results demanded by this bill are ridiculous. Why would this bill target someone for merely *owning* the car? Why should a vehicle owner be called upon to atone for the sins of the manufacturer? Shouldn't the manufacturer—who designed, built, programmed, and has an ongoing responsibility for the operation of the automated driving system—be held responsible for their actions? This is a *glaring* and *obvious* loophole. It explicitly creates a "moral crumple zone" designed *solely* to protect the manufacturer by shifting liability onto a (potentially innocent) third party.

The second reason why this framework doesn't work is legal. Setting aside the ethical objections to holding the owner liable for the actions of the manufacturer of the ADS, federal law *prevents* states from seeking to hold an "owner" vicariously liable as long as they have a competent lawyer willing to teach them how. 49 USC § 30106 states that the "owner" of a motor vehicle cannot be liable under State law by reason of being the owner so long as the vehicle is being "leased or rented" at the time of the crash. The so called "Graves Amendment" creates a loophole that any mildly sophisticated company can hide behind. While it may not work for your average Kansas resident whose personally owned AV runs a redlight, it is obvious that any corporate "owner" of multiple automated vehicles would order themselves to take advantage of this loophole.

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.

Federal law requires the manufacture of an automated driving system to take responsibility for the safe operation of an automated vehicle when that system is engaged. The *manufacturer* of the system is responsible for safety. Kansas law should follow this same framework.

The bill's circuitous approach to avoid naming the manufacture as the driver creates additional problems as well. Specifically, Section 2(b) requirement than 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. 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 the automated driving system software changes). Section 2(b)(4) acknowledges that the manufacturer may have critical information but fails to require the manufacturer to actually *provide* this information.

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?

In addition, there are other issues with this bill that deserve scrutiny.

The latest amendment replaces the requirement that a human fallback ready user take over the vehicle "when prompted by the automated driving system" with a new requirement to take over when "it is

reasonably foreseeable that a human should respond." This is a terribly vague and hopelessly confusing demand that is guaranteed to increase the risks of using such a system, incentivize manufactures to "dump" control of a vehicle onto an unsuspecting user, and put the entire public at risk. Preliminary research on vehicles that rely on human fallback suggests that it is *crucial* for vehicle manufacturers to provide explicit information for when users need to regain control. Writing Kansas law to let manufacturers *avoid* this *safety critical responsibility* is dangerous and will get people killed. There is no legitimate reason to allow automakers to skirt this responsibility to tell system users when they will be expected to regain control of the system.

Further, the on-demand driverless network provisions in this bill are inconsistent with similar provisions found in other states. In other states, the driverless network is required to operate within the framework of other, regulated, transportation services like Taxi's or TNCs. The way this bill is framed, it allows a network to be set up unregulated and outside of the confines of any other legislative framework – calling into question whether such services will carry adequate insurance or provide other important protections to consumers.

Finally, the lack of any meaningful insurance requirements leaves the harms caused by an automated vehicle crash falling squarely on the backs of everyday Kansas residents. Adequate insurance—like the $2 million dollars in liability coverage required in Alabama and Louisiana—can help ensure that Kansas residents are not forced to subsidize the deployment of this experimental technology in the form of medical bills, and lost wages due to a crash caused by an automated vehicle.

The manufacturers developing this technology have promised that they will be safe. That "safety, safety, safety" is their first priority. The only question left is whether they will be held accountable for this promise. At the absolute bare minimum, these companies should be willing to accept responsibility for the safe operation of their automated driving systems and carry adequate insurance to pay for the harm that they cause.

To conclude, this legislation 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.