



KANSAS TRIAL LAWYERS ASSOCIATION

SENATE TRANSPORTATION COMMITTEE

TESTIMONY ON SB 379 (OPPOSITION)

FEBRUARY 2, 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 379.

To be clear: KTLA supports the deployment of AVs onto Kansas roads as long as it is done without compromising safety and accountability. Unfortunately, as drafted SB 379 needs improvement to achieve both of these goals, which is why KTLA cannot support the bill.

The primary state law question when dealing with automated vehicle is who will take responsibility for the rules of the road? Kansas, like everywhere else in the country, has rules of the road. These range from the very specific—e.g., [Kansas Code Chapter 8, Article 15, Section 14](#) requires drivers to drive vehicles on the right side of the road (with limited exceptions)—to the broad and safety oriented—e.g., [Kansas Code Chapter 8, Article 15, Section 35](#) requires that every driver of a vehicle to exercise due care to avoid colliding with any pedestrian. These rules are specifically targeted at *driving*. It is a *driver's* responsibility to abide by the rules of the road.

Under this bill, it is unclear who is responsible for safely complying with the rules of the road. Who is the driver of an automated vehicle? Unfortunately, SB 379 is very vague.

SB 379 says that the *owner* “of the automated driving system” is considered the driver “solely” for the purpose of assessing compliance with applicable traffic laws. An automated driving system is (correctly) defined as the hardware and software collectively capable of performing the driving task. But the definition of an “owner” is specific to the person with legal title, possession, or “right of control” over the vehicle. What if the person with legal title to the *vehicle* is different than the person with a right of control over the *automated driving system*? What if the person with legal title to the vehicle is a shell corporation? What if the legal right of possession is with a rental car agency who has *no idea* how the system operates?

The bigger question may be whether it makes sense to tie compliance with *ownership*, which is what SB 379 does. We have rules of the road to provide a safe roadway for everyone. When people violate these rules, they get a ticket. Why? Because we assume, through enforcement, people's behavior will get better. *You* run a red light, *you* get a ticket, and now *you* are less likely to run a redlight. But if you ran a redlight and the ticket was given to some shell corporation in China gets the ticket—what deterrent value does that have?

We believe the people who tell the automated driving system what to do—the *manufacturer* of that system—are the people who *control* whether the car follows the rules of the road (or not). If the goal of automated vehicles is to make driving safer—i.e., to make drivers *follow the rules*—the people with *control* must be *accountable* when they break the rules. Automated vehicles are robots—computers on wheels. The automated driving system will do *exactly* what it is programmed to do. If you make the company who manufactures these systems *accountable* for following the rules of the road, as a driver, then automated driving *can be safer*.

More importantly, by holding the manufacturer *accountable*—they self-regulate. If they know they will be responsible for every violation of the rules of the road, then they take steps to avoid breaking them. If they must pay the cost whenever they run into a tractor or hit someone crossing the road, then they will take steps to avoid doing that. They will move at a safe pace. They will test first and verify that their systems work before deploying them broadly. If they see a problem, they will pull *back* before it causes a crash.

The stakes here are not small. We recognize that this bill is specifically targeted at middle mile intrastate commercial movement of goods. However, scope of this bill is hardly narrow. This bill allows the full deployment of an automated system *without a human in the vehicle*, on the same highways driven every day by Kansas citizens. High speed driving by large trucks in a mixed vehicle environment is one of the most dangerous environments for *any* driver. Any crash involving these vehicles is *highly likely* to result in death or serious injury. Every year, over 130,000 serious injuries and close to 4,000 deaths are caused by large truck crashes.

Our members see this terrible death toll every day. We support *any technology* that will make our highways safer – often to the annoyance of large business interests who don't want to take responsibility for the harms they cause. We have a chance to get this right from the beginning. Shouldn't the company who develops these systems, the company who *controls* the way the automated driving system drives the vehicle, take responsibility for the safety of these systems?

In addition, there are other parts of this bill that need work and clarification. The municipal preemption section appears to apply to generally applicable regulations – does this mean a rule that would apply to *all drivers* would not apply to an automated vehicle? What does it mean for an automated vehicle to be “capable” of complying with the rules of the road—how does this work if an automated vehicle blows a redlight if it was “capable” of stopping? What if it was a railroad stop? What constitutes a “minimal risk condition”? What if the minimal risk condition violates a rule of the road and causes a crash?

Further, the casual inclusion of remote operation of a commercial motor vehicle demands deeper scrutiny. If a vehicle is under “remote operation” and loses connection to the remote operator, then is the vehicle now automated or is it abandoned? How is law enforcement going to know if a vehicle is automated or under remote operation? There is a company that [remotely pilots scooters from Mexico](#)—

if the remote operator of a commercial truck is based in Mexico, then how will Kansas law enforcement verify their identity or revoke their license?

Finally, this bill lacks a number of provisions that other AV bills have. What are the rules when an automated vehicle is involved in a crash—does it need to stay at the scene? How are the victims of a crash provided insurance information? How do Kansas first responders know that the vehicle is not going to try to drive away if they approach it after a crash?

There is a lot to be worked out here and we are very willing to become participants in improving this bill to get it ready for Kansas. This is a big development and a big opportunity to improve the lives of Kansas residents and make our roads safer, *if we do it right*.

We look forward to working collectively with the sponsor and the committee to address some of these unanswered questions to make sure legislation is safe and it works for everyone in Kansas.

SB 379 needs much more thought and consideration. As it is currently drafted, SB 379 must not advance because it will do more harm than good. I respectfully request that the Senate Transportation Committee take no action on SB 379.

Sincerely,
Daniel Hinkle
Senior State Affairs Counsel
American Association for Justice.