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POLICY & ACTION FROM CONSUMER REPORTS

October 3, 2017

The Honorable John Thune, Chairman
The Honorable Bill Nelson, Ranking Member
U.S. Senate Committee on Commerce, Science and Transportation
512 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Chairman Thune, Ranking Member Nelson, and Members of the Committee:

Consumers Union, the policy and mobilization division of Consumer Reports, writes regarding S. 1885, the AV START Act, which the Senate Commerce Committee is expected to consider at a markup tomorrow. This legislation, introduced by Senator Thune and Senator Peters, would make major changes to critical auto safety laws and procedures in the interest of speeding up the rollout of highly automated vehicles (HAVs), including self-driving cars.

As introduced, S. 1885 would set up a separate legal framework for these vehicles that would be significantly weaker than the safeguards for cars on the road today. It would not adequately protect consumers or ensure that the self-driving cars of the future will be safe. Accordingly, we urge you to **vote no** on the AV START Act unless the bill is amended to put safety first, regardless of whether a human or computer is doing the driving.

Self-driving cars and their component automated driving systems (ADS) have enormous potential to make our roads safer by significantly reducing crashes attributable to driver error, and to improve mobility for millions of older Americans, individuals with disabilities, and other consumers nationwide. As it pursues the promise of self-driving cars, we have urged Congress to embrace innovation—but also accountability, by requiring sensible, enforceable, evidence-based measures to protect consumers against new hazards that may emerge.

The current version of S. 1885 includes certain provisions consistent with this vision, such as the requirement for manufacturers of HAVs and ADSs to submit safety evaluation reports to the National Highway Traffic Safety Administration (NHTSA) and develop cybersecurity plans to safeguard occupants and their data from unauthorized intrusions. However, we are very concerned about other provisions in the bill that would undermine safety. As introduced, the AV START Act would:

- Allow hundreds of thousands, possibly millions, of cars on the market that are exempt from federal safety standards and do not adequately protect occupants in a crash.
- Invalidate state and local highway safety laws and undermine traditional state and local roles, including supervision of the safe operation of vehicles on public roads.

- Ignore critical recommendations by the National Transportation Safety Board (NTSB) to help ensure the safety of the partially automated, Level 2 vehicles that already are on the market, which are based on the NTSB’s findings that Tesla’s “Autopilot” driver-assist system played a major role in the May 2016 fatal crash of a Model S in Florida.

Before being approved by the Senate Commerce Committee, S. 1885 needs critical improvements to ensure that it enhances the safety and security of Americans on our roads. As demonstrated by a recent media report stating that 65 first-degree amendments were filed, the problem with the AV START Act is not a lack of ideas for how to improve the bill.¹ We make several recommendations in particular on ways the bill should be strengthened, including:

- First and foremost, cars must protect occupants in the event of a crash, regardless of whether vehicles are self-driving or not. No exemptions from motor vehicle safety standards should be granted that would undermine impact protection for occupants.
- Exemptions from federal safety standards for HAVs should be limited to equipment required exclusively for the driving task that may be fully replaced by automation, and granted only if backed by evidence that a new feature enhances safety.
- The overall number of vehicles that can receive safety exemptions should be significantly reduced and an overall cap on the number allowed for each automaker should be included. Neither the number of exempted vehicles nor the duration of exemptions should be increased without specific safety-related justifications as part of an official, public notice-and-comment process.
- Vehicles with partial driving automation, also known as Level 2 vehicles, should be covered under the mandatory submission of a safety evaluation report.
- NHTSA should develop and issue a rule to help ensure driver engagement, as outlined by the NTSB, in order to prevent foreseeable crashes in Level 2 vehicles and HAVs.
- NHTSA should have access to crash data for all automated vehicles. Cars today already have the ability to quickly send crash data to automakers, and accordingly, there should be an appropriately short time frame for reporting to NHTSA, such as 15 days.
- NHTSA should be given imminent hazard authority, so that the agency can more readily take quick action when dangerous and defective vehicles are on the road.
- Manufacturers should be required to provide clear and concise information by make and model about the capabilities and limitations of an ADS or HAV which will be provided by the dealer to a consumer at the point of sale.
- A publicly available database of all vehicles with driving automation, including Level 2 vehicles, should be created that is searchable by full VIN as well as manufacturer, model, model year, and trim.
- The recommendations of the Volpe Center or a “designated entity” under section 4 should not be incorporated by reference into CFR automatically if the Secretary does nothing. Public notice-and-comment must be required.
- The transparency, balance, and accountability of the proposed technical committee should be improved, such as by requiring the committee to comply with the Federal Advisory Committee Act.

¹ “Morning Transportation: The race to amend the Senate's self-driving car bill,” Politico (Oct. 3, 2017) (online at www.politico.com/tipsheets/morning-transportation).

With regard to the legal authority of states and localities, the preemption language in S. 1885, as introduced, could lead to a regulatory vacuum that would put consumers at risk. Where strong federal safety standards are absent, Congress should not limit states and localities' ability to keep roads safe or to close gaps in protection that exist. The Committee should not approve a bill that would undermine traditional state and local roles, including over consumer data privacy and the safe operation of vehicles on public roads.

Additionally, while we appreciate efforts to include cybersecurity considerations in the AV START Act, the bill's data protection provisions should be significantly stronger. Despite requiring companies to develop a cybersecurity plan, the bill does not require manufacturers to notify consumers of system breaches. In addition, the bill affords consumers no insight into or control over the data generated by their vehicles, and provides no protections regarding the commercial use or sale of drivers' personal information.


Finally, the Committee should authorize significantly increased funding in this bill. These resources would be critical for NHTSA—a chronically underfunded agency—to be able to more effectively fulfill its existing efforts to address persistent driving hazards as well as the requirements in the bill.

In considering S. 1885 in the Senate Commerce Committee, improving the safety and security of Americans should be senators' top priority. We urge you to ensure that any accelerated deployment of automated vehicles is evidence-based—requiring manufacturers to demonstrate how automated systems improve safety—and includes sensible, binding measures to protect consumers against new hazards that may emerge. Taking these steps would help companies and the government take a smart, safe path to automated vehicles that would save lives, promote consumer trust in the technology, and help to realize the promise of self-driving cars. Thank you for your time and attention to this important subject.

Sincerely,



David Friedman
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