Autonomous Vehicle Legislation Must Preserve a State’s Right to License and Regulate Vehicle Commerce

ISSUE

Last Congress, autonomous vehicle (AV) legislation, which would have preempted certain state laws that regulate vehicle commerce, was considered but not enacted. Historically, the federal government has only preempted state laws that impact vehicle design, construction and vehicle safety. NADA agrees that state laws related to vehicle design should be regulated at the federal level to ensure uniformity, while also strongly urging Congress to preserve the states’ traditional role to license and regulate vehicle commerce as applied to AVs. As AV legislation is considered, Congress must ensure that a state’s traditional role to provide consumer protections and license and regulate vehicle commerce within its borders is preserved.

BACKGROUND

In considering AV legislation, ensuring the correct federal/state relationship is critical. Based on the states’ desire to protect consumers and businesses that provide price competition, local jobs, and significant local and state tax revenue, states have traditionally had the right to license and regulate the distribution, sale and service of vehicles within their borders. These rights are reserved to states under the 10th Amendment to the Constitution.

For decades, state vehicle franchise laws have included important consumer protections and regulated the disparity in size and power between local dealers and multinational automakers to help level the economic playing field. Such protections for state residents are especially important, as there are new risks and opportunities associated with AV technologies, particularly regarding safety, and as new and less-established entrants from overseas seek to enter the U.S. auto market.

Traditionally, to ensure uniform rules across all 50 states, the federal government has only preempted state laws that impact vehicle design, construction and safety. Auto dealers support this defined and well-established federal role regarding AVs.

In 2017, the Senate Commerce, Science, and Transportation Committee approved AV legislation (S. 1885). While the bill clarified that state laws regarding the sale, distribution, repair or service of AVs were not preempted, the bill lacked a technical amendment to ensure that state vehicle licensing/franchise laws protecting the rights of dealers and consumers were not nullified. Had S. 1885 been considered by the full Senate, NADA expected this technical issue would have been favorably addressed. The House passed similar legislation, H.R. 3388, which included bipartisan language to clarify that state vehicle licensing/franchise laws as applied to AVs were not preempted. In 2020, similar bipartisan AV legislation was drafted by House and Senate committee staff but has not yet been introduced.

KEY POINTS

- Any AV legislation Congress considers should include federal preemption that enables states to continue exercising their right to license and regulate the distribution of vehicles within their borders as incorporated in AV legislation last Congress.

- A balanced preemption, which was agreed to last Congress on a bipartisan basis in H.R. 3388/S. 1885, does not hinder Congress from preempting any state law that interferes with the design and construction of AVs.

- Congress should ensure that AV legislation explicitly clarifies that state laws regarding the sale, distribution, repair or service of AVs are not preempted and preserves state vehicle franchise laws defending the rights of small-business dealers and providing important consumer protections.

STATUS

Legislation to advance AVs (H.R. 3388/S. 1885) was passed by the House of Representatives and the Senate Commerce, Transportation, and Science Committee in 2017, but was not enacted. On February 11, 2020, the Consumer Protection and Commerce Subcommittee of the House Energy and Commerce Committee held a hearing on AVs. NADA submitted testimony to the Subcommittee supporting the preservation of state vehicle licensing/franchise laws in any potential AV bill. Congress must ensure that AV legislation fully and explicitly preserves state vehicle licensing/franchise laws.

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