H-2743.1

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**HOUSE BILL 2444**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**State of Washington 68th Legislature 2024 Regular Session**

**By** Representatives Kloba, Berry, and Pollet

AN ACT Relating to automated vehicles; and adding new sections to chapter 46.92 RCW.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

NEW SECTION. **Sec.**  A new section is added to chapter 46.92 RCW to read as follows:

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1)(a) "Automated vehicle" means a motor vehicle equipped with a computer driver. The presence or use of a driver assistance feature other than automated steering, and momentary control functions that do not provide sustained directional control of the vehicle are not relevant to determining whether a vehicle is an automated vehicle. A vehicle is considered automated regardless of whether the automated steering capability of the computer driver is active at any particular time. A vehicle equipped with a computer driver is considered automated regardless of any need or expectation for human driver supervision, whether in-vehicle or remote.

(b) Notwithstanding technical characteristics, any statement by a manufacturer, distributor, or dealer to the effect that a vehicle can drive itself or that it contains self-driving or automated-driving technology shall result in classification of that vehicle as an automated vehicle.

(2) "Computer driver" means a set of computer hardware, software, sensors, actuators, and other equipment that is collectively designed for the purpose of, and which is, capable of driving a motor vehicle including, but not limited to, the capability of steering the vehicle while underway on a sustained basis. A computer driver may be physically or remotely present in an automated vehicle that is functioning in any operating mode.

(3) "Demand-stop feature" means the capacity for an automated vehicle to accept and respond to an authorized request from a passenger, law enforcement, access control official, or remote operator for an expedited stop of the vehicle as soon as it is safe to do so.

(4) "Driver assistance feature" means a motor vehicle automation feature that does not automate steering on a sustained basis. Such features include, but are not limited to, electronic blind spot assistance; automated emergency braking systems; adaptive cruise control; lane keep assist; lane departure warning; traffic jam speed assist; electronic stability control; rear cross traffic warning; driver drowsiness, inebriation, or incapacity warning; or other similar systems that enhance safety or provide driver assistance, but are not capable, collectively or singularly, of sustained automated vehicle directional control.

(5) "Driver intervention" means an affirmative human driver action to take responsibility for at least sustained steering control of a vehicle.

(6) "Driving" and "drive" mean the comprehensive holistic task of operating a motor vehicle including, but not limited to, operating a motor vehicle's directional controls. Computer driver performance of sustained directional control of a vehicle is the threshold test for whether a computer driver is driving a vehicle.

(7) "Duty of care" means, with respect to a computer driver, the operation of an automated vehicle without undue risk to others. The duty of care required of a computer driver is the same as that expected of an attentive and unimpaired human driver in identical circumstances. The scope of a computer driver's required duty of care includes, but is not limited to, protection of vulnerable road users external to the autonomous vehicle.

(8) "Human driver" means a natural person who is driving an automated vehicle or who is responsible for supervising a computer driver's control over an automated vehicle and performing a driver intervention as needed. A human driver may be physically present in an automated vehicle or exercise control from a remote location.

(9) "Manufacturer" means the last entity in the development and supply chain that has substantive ability to prevent or mitigate the potential for computer driver negligence through technical means including, but not limited to, a developer, manufacturer, upfitter, programmer for, or any developer or supplier of, a computer driver or components of or for computer drivers. "Manufacturer" may include, but is not limited to, the legal entity who is (a) the vehicle manufacturer for a vehicle provided with a computer driver as factory equipment, (b) the system integrator of an aftermarket hardware device primarily intended to provide a computer driver, (c) the software provider for an aftermarket computer driver that does not involve use of an aftermarket hardware device primarily intended to provide a computer driver or create computer driver functionality, or (d) solely for a test vehicle, the supplier performing testing if not otherwise the manufacturer of a computer driver end product. Every computer driver has exactly one manufacturer for the purpose of asserting a case for liability by a claimant who has suffered harm from a negligent computer driver.

(10) "Operating mode" means the current operating parameters which determines the human driver's responsibility for controlling an automated vehicle. The four operating modes are:

(a) Conventional: A human driver is responsible for driving the vehicle at all times in this mode. The computer driver has no control over or responsibility for the vehicle unless the vehicle's operating mode changes.

(b) Supervisory: The computer driver is responsible for driving the vehicle, subject to a human driver's supervision and, when necessary for the safe operation of the vehicle, intervention. A human driver may intervene in the vehicle's control in their own discretion or at the computer driver's request.

(c)(i) Autonomous: The computer driver is responsible for driving the vehicle. Any human occupants of the vehicle are not responsible for driving the vehicle or supervising the computer driver. In some vehicles, the human occupants or a human driver may be able to optionally intervene in the vehicle's control at their own discretion. Occupant activation of demand-stop or demand-egress does not terminate autonomous mode.

(ii) Notwithstanding technical characteristics, any statement or indicator by an automated vehicle or computer driver, or their manufacturer, that the vehicle is presently automated, autonomous, or self-driving, or which would cause a reasonable person to conclude the vehicle is functioning in an autonomous operating mode, shall result in classification of that vehicle as functioning in an autonomous operating mode.

(d) Testing: The computer driver, human driver, or both are responsible for driving the vehicle, subject to the human driver's supervision. The human driver is tasked with mitigating risk from public road testing of a potentially defective or incompletely implemented computer driver that is not yet released for series production or public purchase or use including, but not limited to, so called test, beta, preproduction, or prototype versions of a computer driver.

(11) "Steering" and "steer" mean actively providing sustained directional control for a motor vehicle.

(12)(a) "Test automated vehicle" means an automated vehicle that:

(i) Has a nonseries production computer driver;

(ii) Is driven by a computer driver under the immediate supervision of, or at the direction of, a computer driver developer, manufacturer, upfitter, programmer, or any developer or supplier of components for computer drivers;

(iii) Is a prototype;

(iv) Is being operated for performance evaluation, engineering testing, or beta testing; or

(v) Is controlled by a computer driver that has been installed in fewer than 2,500 motor vehicles.

(b) Any statement by a manufacturer, dealer, or distributor that a vehicle is a test, beta, preproduction, or prototype vehicle, or the use of other terminology reasonably interpreted as describing a feature related to automated steering not ready for series production or public purchase or use, shall result in classification of that vehicle as a test vehicle.

(13) "Undue risk" means an overall risk of harm greater than that presented by attentive and unimpaired human drivers of vehicles equipped with comparable active and passive safety features, operating in similar environments and under otherwise similar conditions.

(14) "Urgent-egress feature" means the capacity for an automated vehicle to accept and respond to a passenger request, at the passenger's sole discretion, for an expedited stop of the vehicle as soon as it is safe to do so for the purpose of debarkation for any reason.

(15) "Vulnerable road users" means persons or animals external to the vehicle who are potentially endangered by the autonomous vehicle's operation including, but not limited to, other motorists, bystanders, cyclists, pedestrians, domestic animals, and any person who may reasonably be expected to be affected by the computer driver's operation of an automated vehicle.

NEW SECTION. **Sec.**  A new section is added to chapter 46.92 RCW to read as follows:

(1) A computer driver owes a duty of care to all automated vehicle occupants, vulnerable road users, and the property of any person who may reasonably be expected to be affected by the computer driver's operation of an automated vehicle.

(2) A computer driver breaches its duty of care when it is driving an automated vehicle and fails to match or exceed the level of care the law demands of an attentive and unimpaired human driver in similar circumstances. A breach of the computer driver's duty of care includes, but is not limited to:

(a) Operating in a deficient or unsafe manner which operation, if performed by a human driver, would constitute negligence;

(b) Failure to operate the vehicle in compliance with applicable motor vehicle laws, rules, and regulations including, but not limited to, prohibitions against speeding, running a red light, failure to yield to a pedestrian, and failure to respond to signals from a traffic officer, unless in exigent circumstances a deviation from compliance is reasonable;

(c) Failure to implement defensive driving maneuvers without undue risk that would reasonably be expected of an attentive and unimpaired human driver in similar circumstances; and

(d) Instances when a computer driver requests a human driver take control of an automated vehicle under circumstances in which it is unreasonable to expect the human driver to take over control of the vehicle, expeditiously and without creating an additional hazard, and commence to operate it in a safe manner without undue additional hazard.

(3) Ordinary or gross negligence may be attributed to a computer driver that breaches its duty of care, subject to allocation of comparative fault to any other party except as provided in this section.

(4) A human driver who has taken partial or complete control of an automated vehicle from a computer driver is not responsible for comparative negligence for any loss arising from the human driver's negligent acts or omissions during the first 10 seconds after vehicle control transfer from the computer driver to the human driver.

(5)(a) The manufacturer of a computer driver may be held financially responsible for any loss proximately caused by a computer driver's ordinary or gross negligence.

(b) The manufacturer of a computer driver must be named as a defendant in any suit alleging a loss arising from a computer driver's ordinary or gross negligence, and such manufacturer may raise defenses and counterclaims in the ordinary course.

(c) The courts shall enter and enforce judgments against a defendant manufacturer of a computer driver when the computer driver has been found to have proximately caused a loss arising from its ordinary or gross negligence.

(6)(a) It is a defense to liability under this section that a human driver of an automated vehicle functioning in a supervisory operating mode for more than 10 seconds had an opportunity to intervene in control of the vehicle immediately prior to a loss and failed to do so, but only if:

(i) The loss was caused by a readily apparent hazard;

(ii) The loss could have been avoided or mitigated through reasonable human driver intervention without unduly endangering the human driver or other individuals or property;

(iii) The human driver knew or should have known the computer driver would not adequately avoid or mitigate the hazard without human driver intervention; and

(iv) The human driver had a reasonable amount of time to perceive, react to, and avoid or mitigate the readily apparent hazard.

(b) Establishment of a defense under (a) of this subsection provides a basis for comparative fault in the event of a loss.

(c) For purposes of (a) of this subsection:

(i) Hazards may arise from both internal and external causes. External hazards include, but are not limited to, structures, vehicles, pedestrians, animate and inanimate objects, weather, and terrain outside the automated vehicle. Internal hazards include, but are not limited to, failures or malfunctions of automated vehicle software, hardware, embedded logic, data networks, and mechanical components or systems.

(ii) A hazard is readily apparent if a reasonably attentive human driver would both perceive the hazard and also understand that driver intervention is necessary to avoid or mitigate the hazard.

(iii) A reasonable amount of time to detect and react to a readily apparent hazard exists if, considering the perception, cognition, and reaction times of a reasonably competent human driver, and available human driver control devices such as a steering wheel, accelerator controls, windows, mirrors, and brakes, there was enough time for the human driver to effectively assume control of the vehicle to avoid or mitigate the hazard.

(d) It is not a defense to liability under this section that a human driver or occupant of an automated vehicle functioning in an autonomous or testing operating mode had an opportunity to intervene in control of the vehicle at the time of, or prior to, a loss and failed to do so.

(e) It is not a defense to liability under this section that a third party, whether by direct action, electronic means, cybersecurity breach, or any other means, was the cause, or a material contributing cause, of computer driver failure to control the vehicle.

(7) The computer driver of an automated vehicle may take measures to prompt human driver intervention or attentiveness if the implementation of such measures does not create undue risk to the human driver, vehicle occupants, or others.

(a) When an automated vehicle is in a supervisory operating mode, the human driver has a duty to respond to a computer driver's request to change the vehicle's operational mode or intervene in the vehicle's control within 10 seconds of the request, but only if it is reasonably safe and possible to do so under the circumstances. A human driver's breach of this duty provides a basis for comparative fault in the event of a loss.

(b) When an automated vehicle is in a supervisory operating mode, and if it is equipped with one or more features designed to monitor and prompt driver attentiveness, the human driver has a duty to resume supervision of the vehicle's operation within 10 seconds of an alert that directs them to resume supervision of the vehicle, but only if it is reasonably safe and possible to do so under the circumstances. A human driver's breach of this duty provides a basis for comparative fault in the event of a loss.

(c) When an automated vehicle is in an autonomous operating mode, the occupants of the vehicle have no duty to take any action in response to a request from a computer driver for a change in the vehicle's operational mode or driver intervention, or to supervise the computer driver, and the occupants' failure to do so does not provide a basis for comparative fault in the event of a loss.

(8) If the computer driver of an automated vehicle operating in a supervisory, autonomous, or testing mode determines it cannot safely continue operation of the vehicle without undue risk, and a human driver is unwilling or unable to intervene in the vehicle's controls or provide adequate supervision, then the computer driver must bring the vehicle to a stop at the first available location where stopping is safe and will not create undue risk to the vehicle's occupants and other individuals and property, and place the vehicle in a power-down, stand-by, or equivalent state until either the conditions making operation by the computer driver unsafe abate or a human driver intervenes in the vehicle's control or resumes providing adequate supervision of the computer driver.

(9) An automated vehicle may have urgent-egress or demand-stop features available for use by occupants. No occupant has any civil liability for initiating or failing to initiate an urgent-egress or demand-stop feature when a vehicle is in an autonomous operating mode.

(10) It is an affirmative defense to liability under this section that the claimant deliberately engaged in a malicious act intended to cause or result in harm including, but not limited to, malicious activation of an urgent-egress or demand-stop feature, or a malicious driver intervention in vehicle control performed in bad faith or which constitutes malfeasance; provided however, bad faith or malfeasance may not be shown based on the claimant's reasonable failure to comply with a traffic law, rule, regulation, or statute during exigent circumstances or as part of an effort to avoid an accident, collision, or other substantial loss.

(11) Nothing in this section is construed or implied to limit any other right, remedy, or cause of action.

NEW SECTION. **Sec.**  A new section is added to chapter 46.92 RCW to read as follows:

(1) A manufacturer incurs strict liability for any loss sustained by persons or property caused by a test automated vehicle, or automated vehicle operating in a testing mode, regardless of whether a computer driver or human driver was driving or otherwise controlling the vehicle at or immediately before the time of the loss. A claimant must establish physical causation and damages, but is not required to allege or prove negligence, recklessness, knowing or intentional misconduct, defective design or manufacture, breach of warranty, or any other form of culpability.

(2) It is an affirmative defense to strict liability under this section that the claimant deliberately engaged in a malicious act intended to cause or result in harm.

(3) It is not a defense to strict liability under this section that a human driver failed to properly perform the duties of a test vehicle safety driver, or that the human driver had an opportunity to intervene in control of the vehicle immediately prior to a loss and failed to do so.

(4) Nothing in this section is construed or implied to limit any other right, remedy, or cause of action.

NEW SECTION. **Sec.**  A new section is added to chapter 46.92 RCW to read as follows:

(1) Each manufacturer shall cause its identity to be physically marked on automated vehicle equipment or displayed during computer driver operation of an automated vehicle.

(2) Each manufacturer shall cause its automated vehicles to display appropriate and effective visual warnings to motorists and vulnerable road users external to the vehicle while the vehicle operates in testing mode.

(3) The legislature finds that the acts or practices covered by this section are matters vitally affecting the public interest for the purpose of applying the consumer protection act, chapter 19.86 RCW. A violation of this section is not reasonable in relation to the development and preservation of business and is an unfair or deceptive act in trade or commerce and an unfair method of competition for the purpose of applying the consumer protection act, chapter 19.86 RCW.

NEW SECTION. **Sec.**  A new section is added to chapter 46.92 RCW to read as follows:

Any agreements or terms of use that purport to waive, limit, modify, or abrogate any rights or remedies under section 2 or 3 of this act are contrary to public policy and void.

NEW SECTION. **Sec.**  If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

**--- END ---**