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**HOUSE BILL 2444**

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**State of Washington**

**68th Legislature**

**2024 Regular Session**

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

Read first time 01/22/24. Referred to Committee on Civil Rights & Judiciary.

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

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

4 NEW SECTION. **Sec. 1.** A new section is added to chapter 46.92  
5 RCW to read as follows:

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

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

18 (b) Notwithstanding technical characteristics, any statement by a  
19 manufacturer, distributor, or dealer to the effect that a vehicle can  
20 drive itself or that it contains self-driving or automated-driving

1 technology shall result in classification of that vehicle as an  
2 automated vehicle.

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

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

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

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

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

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

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

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

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

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

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

36 (c) (i) Autonomous: The computer driver is responsible for driving  
37 the vehicle. Any human occupants of the vehicle are not responsible  
38 for driving the vehicle or supervising the computer driver. In some  
39 vehicles, the human occupants or a human driver may be able to  
40 optionally intervene in the vehicle's control at their own

1 discretion. Occupant activation of demand-stop or demand-egress does  
2 not terminate autonomous mode.

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

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

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

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

21 (i) Has a nonseries production computer driver;

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

26 (iii) Is a prototype;

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

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

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

37 (13) "Undue risk" means an overall risk of harm greater than that  
38 presented by attentive and unimpaired human drivers of vehicles  
39 equipped with comparable active and passive safety features,

1 operating in similar environments and under otherwise similar  
2 conditions.

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

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

14 NEW SECTION. **Sec. 2.** A new section is added to chapter 46.92  
15 RCW to read as follows:

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

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

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

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

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

36 (d) Instances when a computer driver requests a human driver take  
37 control of an automated vehicle under circumstances in which it is  
38 unreasonable to expect the human driver to take over control of the  
39 vehicle, expeditiously and without creating an additional hazard, and

1 commence to operate it in a safe manner without undue additional  
2 hazard.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

39 (b) When an automated vehicle is in a supervisory operating mode,  
40 and if it is equipped with one or more features designed to monitor

1 and prompt driver attentiveness, the human driver has a duty to  
2 resume supervision of the vehicle's operation within 10 seconds of an  
3 alert that directs them to resume supervision of the vehicle, but  
4 only if it is reasonably safe and possible to do so under the  
5 circumstances. A human driver's breach of this duty provides a basis  
6 for comparative fault in the event of a loss.

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

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

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

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



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

3 NEW SECTION. **Sec. 3.** A new section is added to chapter 46.92  
4 RCW to read as follows:

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

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

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

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

24 NEW SECTION. **Sec. 4.** A new section is added to chapter 46.92  
25 RCW to read as follows:

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

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

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

1 competition for the purpose of applying the consumer protection act,  
2 chapter 19.86 RCW.

3 NEW SECTION. **Sec. 5.** A new section is added to chapter 46.92  
4 RCW to read as follows:

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

8 NEW SECTION. **Sec. 6.** If any provision of this act or its  
9 application to any person or circumstance is held invalid, the  
10 remainder of the act or the application of the provision to other  
11 persons or circumstances is not affected.

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