

AUTONOMOUS VEHICLE LEGISLATION REVIEW & CONSIDERATIONS

TRANSPORTATION INTERIM COMMITTEE
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PURPOSE

The purpose of this report is to provide the Transportation Interim Committee information and questions for consideration related to autonomous vehicle regulations, based on a review of Montana's autonomous vehicle legislation from the 2023 Legislative Session, HB 339, as well as South Dakota's recently passed legislation, HB 1095 (2024).

South Dakota's bill was selected for review and comparison because it is the most recent legislation of Montana's neighboring states to pass. North Dakota passed a related bill in 2019, and Wyoming considered but did not pass related legislation in 2022.

REVIEW OF LEGISLATION

LIABILITY

One element common to both bills is that of liability in the event of failure to comply with traffic and motor carrier laws.

MONTANA

In Montana's HB 339 (2023), sections 2-5 address the issue of liability. Section 2 sets the bar for "rebuttable presumption of liability"; a rebuttable presumption is a legal presumption that someone is liable for something, but that assumption can be challenged and disproved with evidence. The rebuttable presumption in this legislation can be overcome specifically by showing of failure to properly maintain an automated driving system or other admissible evidence.

Rebuttable presumption:
A legal presumption that someone is liable for something, but that assumption can be challenged and disproved with evidence.

Sections 3-5 of the bill identify which entity is presumed liable, which differs based on the level of autonomy of the vehicle. These levels are defined in section 1 of the bill, subsections 6-10. The following table outlines the levels and where the presumption of liability lies:

AUTONOMOUS VEHICLE LEGISLATION REVIEW & CONSIDERATIONS

Level of Automated Driving System	Example of What that Level of System Can Do/Provide, As Outlined in HB 339	Assignment of Rebuttable Presumption of Liability
1	Providing one of these to a human driver: braking & accelerating support; steering support	Human driver of the vehicle
2	Providing both of these to a human driver: braking & accelerating support; steering support	Human driver of the vehicle
3	Includes feature that has the capability to perform on a sustained basis the entire dynamic driving task within its operational design domain & requires a fallback-ready user to operate the vehicle after receiving a request to intervene	The developer or manufacturer of the vehicle in the case of a crash or traffic regulation violation prior to a request to intervene or a system failure or resulting immediately from a system failure
3	See above	Human driver or fallback-ready user for physical harm caused by the vehicle after a request to intervene or failing to respond timely to a system failure
4	Without any expectation of a human user to respond to a request to intervene, a system that has the capability to perform: <ul style="list-style-type: none"> • On a sustained basis the entire dynamic driving task within its operational design function; and • Any maneuvers necessary to achieve a minimal risk condition in response to an exit from the operation design domain of the system or a system failure 	The developer or manufacturer of the vehicle
5	Without any expectation a human user will respond to a request to intervene, a system that has the capability to perform: <ul style="list-style-type: none"> • On a sustained basis the entire dynamic driving task under all conditions that can reasonably be managed by a human driver; and • Any maneuvers necessary to respond to a system failure 	The developer or manufacturer of the vehicle

Liability is presumed for damages to persons or property caused by the operation of the vehicle and for penalties associated with traffic regulations violated by the operation of the vehicle.

SOUTH DAKOTA

Under South Dakota's legislation, section 3, subsection 3 states that the vehicle's failure to comply with applicable traffic and motor carrier laws must be imputed to the owner of the vehicle, who may be charged of a violation.

STATUTORY ALLOWANCE VS. RULEMAKING

Both bills provide rulemaking authority; however, there is a difference in that South Dakota's bill, fully autonomous vehicles are allowed, whereas in Montana's legislation, higher levels of autonomous vehicles are prohibited, except as provided by rulemaking.

MONTANA

In section 6 of HB 339, level 4 and level 5 automated driving systems would be prohibited except as provided by department of transportation rulemaking.

Section 6 goes on to outline specific considerations for the department to include in its rulemaking process: including prohibiting these systems during certain weather or road conditions; conditions on their usage in high pedestrian areas, certification from developers or manufacturers that atmospheric, demographic, geographic, pedestrian, road, vehicle, and zoological conditions common in the state have been considered in the development of the system; conditions to impose testing level 4 and 5 system on the state's public highways; and conditions to generally impose.

SOUTH DAKOTA

In Section 12, South Dakota's legislation provides their transportation commission with rulemaking authority. However, section 2 provides that a fully autonomous vehicle may operate on public roads without a human driver, provided that the automated driving system is engaged and that other conditions of the vehicle are met.

Section 6 additionally allows for operation of an on-demand autonomous vehicle network. Section 1 of the bill provides the definition of this type of network as: "a transportation service network that uses a software application or other digital means to dispatch or otherwise enable the pre-arrangement of transportation with fully autonomous vehicles for purposes of transporting passengers or goods."

VEHICLE PLATOONING

Montana's legislation addresses vehicle platooning, whereas South Dakota's legislation does not. In 2019, North Dakota passed legislation concerning motor vehicle platooning. That legislation is reviewed below for consideration.

MONTANA

Vehicle platooning, as defined in section 1, means operating partially or fully autonomous motor vehicles such as trailers, trucks, or truck tractors, to travel on highways at electronically coordinated speeds in a unified manner at a following distance that is closer than would be reasonable and prudent without the use of technology.

Section 7 of HB 339 prohibits vehicle platooning on public highways except under circumstances allowed by department of transportation rulemaking. This section outlines a number of considerations, similar to those considerations for allowing level 4 and 5 autonomous vehicles, that the department must include in rulemaking.

NORTH DAKOTA

HB 1199 (2019) revised statute concerning following distance to exclude truck platoons from the restriction following too closely. The bill requires the department of transportation, in coordination with state highway patrol, to develop an operational plan that provides guidelines for operating a platoon. The bill allows the department to restrict platooning operations.

For operation to be allowed in North Dakota, the platoon technology provider or commercial motor vehicle operator must file an operational plan with the department of transportation, and that plan must be approved in order to operate. If the department of transportation does not approve the plan, the department will provide a reason for the disapproval and provide guidance on how to resubmit the plan for approval. If a person operates a motor vehicle in a platoon without an approved plan or does not follow the guidelines in the plan, that person will be assessed a fee of \$100.

REGISTRATION & TITLING - REPORTING OF FULLY AUTONOMOUS VEHICLE LEVELS

Montana's HB 339 did not explicitly address or require reporting of autonomous vehicle levels. South Dakota's legislation requires that fully autonomous vehicles must be titled and registered, and the vehicle's autonomy level must be submitted to the Department of Revenue at the time, along with documentation showing the levels of autonomy.

DRIVING UNDER THE INFLUENCE

South Dakota's legislation does not explicitly address driving under the influence in relation to autonomous vehicles. Montana's legislation does so by revising statute in sections 8 through 11 of HB 339 to add the definition and term "conducting" to driving under the influence related statute. Conducting means: engaging or disengaging a platooning vehicle or an automated driving system, other than a level 5 automated driving system or performing or failing to perform any function that moves or stops a platooning vehicle or a vehicle with an automated driving system, other than a level 5 automated driving system.

FINANCIAL PROOF OF RESPONSIBILITY

In section 4 of South Dakota's legislation, a fully autonomous vehicle operating on public roads must be covered by proof of financial responsibility that meets the requirements outlined in South Dakota's existing statute. Montana's HB 339 does not explicitly address financial proof of responsibility; current statute, under Title 61, Chapter 6, outlines requirements for motor vehicle insurance. This statute concerns a person who owns or operates a motor vehicle. Operation of the vehicle may not apply in the case of fully autonomous vehicles; however, ownership of the vehicle would likely still apply for requirements of financial proof of responsibility.

IN THE EVENT OF A CRASH

Montana's legislation does not explicitly address this. Both South Dakota's bill and the legislation considered but not passed by Wyoming's legislature, SF0016 (2022), include explicit requirements for a motor vehicle equipped with an automated driving system in the event of a crash. These include:

- The vehicle must remain on the scene
- The crash must be promptly reported to law enforcement

- For Wyoming – there was also the requirement that the dispatching entity or human driver if applicable shall provide all requested operating data from before and during the accident to Wyoming law enforcement and any victim or victim’s representative

WYOMING’S LEGISLATION - ADDITIONAL POINTS FOR CONSIDERATION

There were three elements in the legislation considered by Wyoming’s legislature, SF0016 (2022)¹, that were not explicit in Montana’s legislation nor in South Dakota’s. These include:

- The requirement of clearly marked signage for commercial vehicles equipped with automated driving systems on the front, back, and each side of the vehicle
- Allowance for assessing additional fees to recover a share of the department of transportation’s infrastructure and administrative expenses
- The requirement of annual reporting to the joint transportation, highways, and military affairs interim committee for vehicles with automated driving systems, as well as commercial vehicles equipped with those systems, regarding:
 - A summary of operations in the state
 - The number of vehicles
 - Miles driven in the past year and projected for the next year
 - Collision statistics
 - A brief description of all moving violations and registration, title, or permit violations
 - Recommendations for safety-related legislation or legislation concerning other aspects of automated driving system equipped vehicles
 - Any other data necessary to summarize fairly and accurately the annual operations of automated driving system equipped vehicles in the state

QUESTIONS FOR COMMITTEE CONSIDERATION

- For areas where other states’ legislation is explicit, and Montana’s is not – such as requirement of reporting of autonomy levels and financial proof of responsibility – are there elements for which there might be interest in incorporating for possible legislation?
- Are there any elements missing that the committee would want to address?
- For vehicle platooning, would the committee want reporting of activity from the department?
- In what additional reporting/data collection would the committee be interested?
- How much rulemaking authority should be provided to the department of transportation?
- Are there any elements that the committee would not want to include?
- Additional questions or thoughts?

¹ <https://wyoleg.gov/2022/Introduced/SF0016.pdf>



2024 South Dakota Legislature
House Bill 1095
ENROLLED

AN ACT

ENTITLED An Act to establish provisions for the operation of automated motor vehicles.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

Section 1. That a NEW SECTION be added to title 32:

The terms used in this chapter mean:

- (1) "Automated driving system," the hardware and software that are collectively capable of performing the entire dynamic driving task on a sustained basis;
- (2) "Dynamic driving task," all of the real-time operational and tactical functions required to operate a vehicle in on-road traffic within an automated driving system's operational design domain, excluding strategic functions such as trip scheduling and selection of destinations and waypoints, including without limitation:
 - (a) Lateral vehicle motion control via steering;
 - (b) Longitudinal motion control via acceleration and deceleration;
 - (c) Monitoring the driving environment via object and event detection, recognition, classification, and response preparation;
 - (d) Object and event response execution;
 - (e) Maneuver planning; and
 - (f) Enhancing conspicuity via lighting, signaling, and gesturing;
- (3) "Dynamic driving task fallback," the response by the person or human driver to either perform the dynamic driving task or achieve a minimal risk condition after the occurrence of a dynamic driving task performance-relevant system failure or upon operational design domain exit, or the response by an automated driving system to achieve minimal risk condition, under the same circumstances;

- (4) "Fully autonomous vehicle," a motor vehicle equipped with an automated driving system designed to function without a human driver as a level 4 or 5 system under SAE J3016B;
- (5) "Human driver," a natural person with a valid license to operate a motor vehicle who controls all or part of the dynamic driving task;
- (6) "Minimal risk condition," a reasonably safe condition to which a person, human driver, or an automated driving system may bring a vehicle after performing the dynamic driving task fallback to reduce the risk of a crash when a given trip cannot or should not be completed;
- (7) "Motor vehicle," all vehicles or machines, trailers, semitrailers, recreational vehicles, truck tractors, and road tractors propelled by any power other than muscular and used upon the public highways for the transportation of persons or property, or both;
- (8) "On-demand autonomous vehicle network," a transportation service network that uses a software application or other digital means to dispatch or otherwise enable the pre-arrangement of transportation with fully autonomous vehicles for purposes of transporting passengers or goods;
- (9) "Operational design domain," the operating conditions under which a given automated driving system is designed to function, including environmental, geographical, and time-of-day restrictions, or the presence or absence of certain traffic or roadway characteristics;
- (10) "Request to intervene," notification by an automated driving system to a human driver that the human driver should promptly begin or resume part or all of the dynamic driving task; and
- (11) "SAE J3016B," the Taxonomy and Definitions for Terms Related to Driving Automation Systems for On-Road Motor Vehicles published by SAE International in April 2021.

Section 2. That a NEW SECTION be added to title 32:

A fully autonomous vehicle may operate on public roads of this state without a human driver, provided that the automated driving system is engaged, and the vehicle:

- (1) Achieves a minimal risk condition if the vehicle exits the operational design domain of its automated driving system;

- (2) Achieves a minimal risk condition if a failure renders the vehicle's automated driving system unable to perform the entire dynamic driving task relevant to its operational design domain;
- (3) Is capable of operating in compliance with the applicable traffic and motor vehicle safety laws and regulations of this state; and
- (4) When required by federal law, bears the required manufacturer's certification label indicating that at the time of the vehicle's manufacture, it complied with all applicable federal motor vehicle safety standards and any exemption granted by the National Highway Traffic Safety Administration.

Section 3. That a NEW SECTION be added to title 32:

When an automated driving system installed on a motor vehicle is engaged:

- (1) The automated driving system is the driver and operator, for the purpose of assessing compliance with applicable traffic or motor vehicle laws, and shall satisfy electronically all physical acts required by a driver or operator of the vehicle;
- (2) The automated driving system is licensed to operate the vehicle; and
- (3) The vehicle's failure to comply with applicable traffic and motor carrier laws must be imputed to the owner of the vehicle, who may be charged and convicted of a violation.

Section 4. That a NEW SECTION be added to title 32:

A fully autonomous vehicle operating on public roads must be covered by proof of financial responsibility that satisfies the requirements of chapter 32-35.

Section 5. That a NEW SECTION be added to title 32:

In the event of an accident involving a fully autonomous vehicle:

- (1) The fully autonomous vehicle must remain on the scene of the crash as required by chapter 32-34;
- (2) The owner of the fully autonomous vehicle, or a person on behalf of the vehicle owner, shall report any crashes or collisions consistent with chapter 32-34; and
- (3) The vehicle's failure to remain at the scene of the accident or to otherwise operate in compliance with the requirements of chapter 32-34 must be imputed to the owner of the vehicle, who may be charged and convicted of a violation of chapter 32-34.

Section 6. That a NEW SECTION be added to title 32:

An on-demand autonomous vehicle network is permitted to operate pursuant to chapter 32-40, with the exception that any provision of chapters 32-12 or 32-12A that reasonably applies only to a human driver would not apply to the operation of a fully autonomous vehicle with the automated driving system engaged on an on-demand autonomous vehicle network.

Section 7. That a NEW SECTION be added to title 32:

A fully autonomous vehicle must be titled in accordance with chapter 32-3. The vehicle's autonomy level as defined under SAE J3016B must be submitted to the Department of Revenue and the applicant shall submit documentation that attests to its autonomy level.

A fully autonomous vehicle must be registered in accordance with chapter 32-5. The vehicle's autonomy level as defined under SAE J3016B must be submitted to the Department of Revenue and the applicant shall submit documentation that attests to its autonomy level.

Section 8. That a NEW SECTION be added to title 32:

A person may operate a motor vehicle equipped with an automated driving system capable of performing the dynamic driving task if:

- (1) Whenever the automated driving system is not capable of performing the entire dynamic driving task, the automated driving system will achieve a minimal risk condition or issue a request to intervene to the person;
- (2) The person will respond to the request to intervene from the automated driving system; and
- (3) The automated driving system is capable of being operated in compliance with all applicable traffic and motor vehicle safety laws and regulations of this state.

Nothing in this chapter prohibits a human driver from operating a fully autonomous vehicle equipped with controls that allow the human driver to control all or part of the dynamic driving task.

Section 9. That a NEW SECTION be added to title 32:

A fully autonomous vehicle that is also a commercial motor vehicle as defined in § 32-9-1 may operate pursuant to state laws governing the operation of commercial motor

vehicles, except that any provision that reasonably applies only to a human driver does not apply to a vehicle operating with the automated driving system engaged.

Section 10. That a NEW SECTION be added to title 32:

A fully autonomous vehicle that is designed to be operated exclusively by the automated driving system for all trips is not subject to motor vehicle equipment laws or regulations of this state that:

- (1) Relate to motor vehicle operation by a human driver seated in the vehicle; and
- (2) Are not relevant to an automated driving system.

Section 11. That a NEW SECTION be added to title 32:

Except as provided in section 12, no state agency, or political subdivision may prohibit the operation of fully autonomous vehicles, automated driving systems, or on-demand autonomous vehicle networks, or otherwise enact or keep in force rules or ordinances that would impose taxes, fees, or other requirements specific to the operation of fully autonomous vehicles, automated driving systems, or on-demand autonomous vehicle networks, in addition to the requirements of this chapter.

Section 12. That a NEW SECTION be added to title 32:

The Transportation Commission shall promulgate rules pursuant to chapter 1-26 to implement the provisions of this chapter.

Section 13. That a NEW SECTION be added to title 32:

Nothing in section 11 of this Act may be interpreted or construed to prohibit a political subdivision of the state from exercising the powers and authorities provided by law to govern the public streets and roadways within their respective jurisdictions, provided it does not impose additional requirements in conflict with this Act or otherwise differentiate the treatment of fully autonomous vehicles, automated driving systems, or on-demand autonomous vehicle networks from non-autonomous vehicles.

An Act to establish provisions for the operation of automated motor vehicles.

I certify that the attached Act originated in the:
House as Bill No. 1095

Received at this Executive Office this ____ day of _____, 2024 at _____ M.

Chief Clerk

By _____ for the Governor

Speaker of the House

The attached Act is hereby approved this _____ day of _____, A.D., 2024

Attest:

Chief Clerk

Governor

STATE OF SOUTH DAKOTA,

ss.

Office of the Secretary of State

President of the Senate

Attest:

Filed _____, 2024 at _____ o'clock __ M.

Secretary of the Senate

Secretary of State

House Bill No. 1095
File No. _____
Chapter No. _____

By _____
Asst. Secretary of State

HOUSE BILL NO. 339

INTRODUCED BY D. LOGE, D. FERN, R. FITZGERALD, N. DURAM

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING MOTOR VEHICLE LAWS TO REGULATE VEHICLES WITH AUTOMATED DRIVING SYSTEMS; PROVIDING FOR PRESUMPTIONS OF LIABILITY; PROVIDING THAT DUI LAWS APPLY TO OPERATING AN AUTONOMOUS VEHICLE; PROHIBITING USE OF FULLY AUTONOMOUS VEHICLES ON HIGHWAYS UNTIL RULEMAKING IS COMPLETE; PROHIBITING PLATOONING ON HIGHWAYS UNTIL RULEMAKING IS COMPLETE; DEFINING TERMS; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTIONS 61-8-1001, 61-8-1002, 61-8-1016, AND 61-8-1018, MCA; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE."

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

these definitions apply to the sections of the bill that don't deal with DUI

NEW SECTION. Section 1. Definitions. As used in [sections 1 through 7], the following definitions

apply: Most of these definitions are based on definitions from the National Highway Traffic Safety Administration

(1) "Automated driving system" means, unless the context clearly indicates otherwise, the hardware and software that are collectively capable of performing the entire dynamic driving task on a sustained basis, regardless of whether the automated driving system is limited to a specific operational design domain.

(2) "Developer or manufacturer" means any entity in the chain of manufacture of a vehicle with an automated driving system, including entities in the chain of manufacture of the automated driving system.

(3) (a) "Dynamic driving task" means all of the real-time operational and tactical functions required to operate a motor vehicle in highway traffic, including:

- (i) lateral vehicle motion control through steering;
- (ii) longitudinal motion control through acceleration and deceleration;
- (iii) monitoring the driving environment through object and event detection, recognition, classification, and response preparation;
- (iv) object and event response execution;

1 (v) maneuver planning; and

2 (vi) enhancing the conspicuousness of the vehicle with lights, signals, and gestures.

3 (b) The term does not include strategic functions such as trip scheduling and selection of
4 destinations and waypoints.

5 (4) "Fallback-ready user" means the user of a vehicle equipped with an engaged level 3 automated
6 driving system who is a human driver who is responsible to operate the vehicle if a system failure occurs or the
7 automated driving system issues a request to intervene.

8 (5) "Human driver" means a natural person with a valid driver's license to operate a motor vehicle
9 of the proper class for the motor vehicle being operated and who performs in real time all or part of the dynamic
10 driving task.

11 (6) "Level 1 automated driving system" means a system that provides to a driver one of the
12 following:

13 (a) braking and accelerating support; or

14 (b) steering support.

15 (7) "Level 2 automated driving system" means a system that provides to a driver both of the
16 following:

17 (a) braking and accelerating support; and

18 (b) steering support.

19 (8) "Level 3 automated driving system" means an automated driving system feature that:

20 (a) has the capability to perform on a sustained basis the entire dynamic driving task within its
21 operational design domain; and

22 (b) requires a fallback-ready user to operate the vehicle after receiving a request to intervene or in
23 response to a system failure.

24 (9) "Level 4 automated driving system" means an automated driving system feature that, without
25 any expectation a human user will respond to a request to intervene, has the capability to perform:

26 (a) on a sustained basis the entire dynamic driving task within its operational design domain; and

27 (b) any maneuvers necessary to achieve a minimal risk condition in response to:

28 (i) an exit from the operational design domain of the automated driving system; or

1 (ii) a system failure.

2 (10) "Level 5 automated driving system" means an automated driving system feature that, without
3 any expectation a human user will respond to a request to intervene, has the capability to perform:

4 (a) on a sustained basis the entire dynamic driving task under all conditions that can reasonably
5 be managed by a human driver; and

6 (b) any maneuvers necessary to respond to a system failure.

7 (11) "Minimal risk condition" means a condition to which a user or an automated driving system
8 brings a motor vehicle to reduce the risk of a crash when a trip cannot or should not be completed.

9 (12) "Object and event detection" and "object and event response" mean the subtasks of the
10 dynamic driving tasks that include:

11 (a) monitoring the driving environment; and

12 (b) executing an appropriate response to perform the dynamic driving task.

13 (13) "Operate" means the activities performed in order to perform the entire dynamic driving task for
14 a motor vehicle, including testing of an automated driving system, by:

15 (a) a human driver; or

16 (b) an engaged automated driving system.

17 (14) "Operational design domain" means the operating conditions under which an automated driving
18 system or a feature of an automated driving system is specifically designed to function, including:

19 (a) speed range, environmental, geographical, and time-of-day restrictions; or

20 (b) the requisite presence or absence of certain traffic or roadway characteristics.

21 (15) "Operator" means:

22 (a) a human driver who operates a vehicle; or

23 (b) an automated driving system that operates a vehicle.

24 (16) "Platooning" means operating partially or fully autonomous motor vehicles that are trailers,
25 trucks, or truck tractors, as defined in 61-1-101, to travel on a highway at electronically coordinated speeds in a
26 unified manner at a following distance that is closer than would be reasonable and prudent without the use of
27 the technology.

28 (17) "Public highways of this state" has the meaning provided in 60-1-201.

1 (18) "Request to intervene" means the notification by an automated driving system to a fallback-
2 ready user indicating that the fallback-ready user should promptly begin or resume operation of the vehicle.

3 (19) "System failure" means a malfunction in a vehicle system that prevents the automated driving
4 system from reliably performing the portion of the dynamic driving task on a sustained basis, including the
5 complete dynamic driving task, that the automated driving system would otherwise perform.

6 (20) "User" means:

- 7 (a) a human driver;
- 8 (b) a passenger; or
- 9 (c) a fallback-ready user.

10

11 **NEW SECTION. Section 2. Autonomous vehicles and liability.** (1) Except for providing rebuttable
12 presumptions of liability in [sections 3 through 5], nothing in [sections 1 through 7] may be construed to alter
13 generally applicable laws regarding liability, including but not limited to the provisions of Title 27. *Civil Liability, Remedies, and Limitations*

14 (2) Nothing in [sections 1 through 7] may be construed to limit the ability of a person or entity in the
15 chain of manufacture or sale to seek indemnification or allocation of liability through contract. *This preserves products liability laws*

16 (3) The rebuttable presumptions established in [sections 3 through 5] may be overcome on a
17 showing of:

- 18 (a) failure to properly maintain an automated driving system; or *a specific defense*
- 19 (b) other admissible evidence. *a disclaimer that the specific defense doesn't limit additional defenses*

20

21 **NEW SECTION. Section 3. Presumption of liability -- level 1 and level 2 systems.** There is a
22 rebuttable presumption that the human driver of a vehicle equipped with a level 1 or level 2 automated driving
23 system is liable for damages to persons or property caused by the operation of the vehicle and for penalties
24 associated with traffic regulations violated by the operation of the vehicle. *Level 1 and level 2 drivers are presumed liable. They can rebut the presumption under Section 2(3).*

25

26 **NEW SECTION. Section 4. Presumptions of liability -- level 3 system.** (1) There is a rebuttable
27 presumption that the developer or manufacturer of a vehicle using a level 3 automated driving system is liable
28 for damages to persons or property caused by the operation of the vehicle and for penalties associated with

1 traffic regulations violated by the operation of the vehicle: sometimes the vehicle manufacturer of a level 3 system is presumed liable

2 (a) prior to a request to intervene or a system failure; or

3 (b) resulting immediately from a system failure.

4 (2) There is a rebuttable presumption that the human driver or fallback-ready user of a vehicle

5 using a level 3 automated driving system is liable for physical harm caused by the vehicle after: sometimes the user of a level 3 is presumed liable

6 (a) a request to intervene; or

7 (b) failing to respond timely to a system failure.

8

9 **NEW SECTION. Section 5. Presumption of liability -- level 4 and level 5 systems.** There is a

10 rebuttable presumption that the developer or manufacturer of a vehicle using a level 4 or level 5 automated

11 driving system is liable for damages to persons or property caused by the operation of the vehicle and for

12 penalties associated with traffic regulations violated by the operation of the vehicle. developer or manufacturer of a level 4 or level 5 system is presumed liable

13

section 6 would terminate in 2027 -- rulemaking authority would terminate -- rules would terminate

14 **NEW SECTION. Section 6. Level 4 and level 5 automated driving systems prohibited except as**

15 **regulated -- rulemaking authority.** (1) Level 4 and level 5 automated driving systems may not be used on

16 public highways of this state except as provided by department of transportation rulemaking. limits on level 4 and 5 use until MDT makes administrative rules

17 (2) The department of transportation shall adopt rules regarding the use of level 4 and level 5

18 automated driving systems on public highways of this state. During the rulemaking process, the department

19 shall consider:

20 (a) prohibiting the use of level 4 and level 5 automated driving systems on public highways of this

21 state during unsafe atmospheric or road conditions; MDT should consider snow and ice

22 (b) imposing conditions on the use of level 4 and level 5 automated driving systems on public

23 highways of this state with high pedestrian use; MDT should consider places with high pedestrian use like Highway 212

24 (c) requiring developers or manufacturers of level 4 and level 5 automated driving systems to

25 certify that atmospheric, demographic, geographic, pedestrian, road, vehicle, and zoological conditions

26 common in the state have been considered in the development of the system as a condition of use of the public

27 highways of this state; MDT should consider whether the ADS is programmed to recognize drifting snow, game animals, the open range, and other Montana specific conditions

28 (d) conditions to impose on testing level 4 and level 5 automated driving systems on the public

1 highways of this state; and MDT should consider whether it wants to be informed of testing, and have any role in regulating it

2 (e) conditions to impose generally on the use of level 4 and level 5 automated driving systems on
3 the public highways of this state. MDT should consider whether it wants additional regulations of level 4 and level 5 systems

4 section 7 would terminate in 2027 -- rulemaking authority would terminate -- rules would terminate

5 **NEW SECTION. Section 7. Vehicle platooning prohibited except as regulated -- rulemaking**

6 **authority.** (1) Vehicle platooning on public highways of this state is prohibited except under the circumstances
7 allowed by department of transportation rulemaking. Prohibits platooning until MDT makes rules

8 (2) The department of transportation shall adopt rules regarding vehicle platooning on public
9 highways of this state. During the rulemaking process, the department shall consider:

10 (a) prohibiting platooning on public highways of this state during unsafe atmospheric or road
11 conditions; MDT should consider whether platooning can occur in snow and ice conditions

12 (b) conditions to impose on platooning on public highways of this state with high pedestrian use;

MDT should consider if platooning can occur in high pedestrian areas like Highway 212 or urban centers or school zones

13 (c) requiring developers or manufacturers of platooning vehicles to certify that atmospheric,
14 demographic, geographic, pedestrian, road, vehicle, and zoological conditions common in the state have been
15 considered in the development of the platooning vehicles as a condition of use of the public highways of this
16 state; MDT should consider if the platooning vehicles can recognize drifting snow, game animals, the open range, and other Montana specific conditions

17 (d) conditions to impose on testing platooning vehicles on the public highways of this state; and
MDT should consider if it wants to be informed of testing, and whether it wants to regulate testing

18 (e) conditions to impose generally on platooning vehicles on public highways of this state,
19 including limiting the number of vehicles that may platoon together.

MDT should consider whether it wants additional regulations of platooning

21 **Section 8.** Section 61-8-1001, MCA, is amended to read: The next sections are all about DUI

22 **"61-8-1001. Definitions.** As used in this part, unless the context requires otherwise and unless a
23 different meaning plainly is required, the following definitions apply:

24 (1) "Aggravated driving under the influence" means a person is in violation of 61-8-1002(1)(a),
25 (1)(b), (1)(c), or (1)(d) and:

26 (a) the person's alcohol concentration, as shown by analysis of the person's blood, breath, or other
27 bodily substance, is 0.16 or more;

28 (b) the person is under the order of a court or the department to equip any motor vehicle the

1 person operates with an approved ignition interlock device;

2 (c) the person's driver's license or privilege to drive is suspended, cancelled, or revoked as a result
3 of a prior violation of driving under the influence, including a violation of 61-8-1002(1)(a), (1)(b), (1)(c), or (1)(d),
4 an offense that meets the definition of aggravated driving under the influence, or a similar offense under
5 previous laws of this state or the laws of another state; or

6 (d) the person refuses to give a breath sample as required in 61-8-1016 and the person's driver's
7 license or privilege to drive was suspended, cancelled, or revoked under the provisions of an implied consent
8 statute.

9 (2) "Alcoholic beverage" means a compound produced for human consumption as a drink that
10 contains 0.5% or more of alcohol by volume.

11 (3) "Alcohol concentration" means either grams of alcohol per 100 milliliters of blood or grams of
12 alcohol per 210 liters of breath, including as used in 16-6-305, 23-2-535, 45-5-207, 67-1-211, and this title.

13 (4) "Bus" means a motor vehicle with a manufacturer's rated seating capacity of 11 or more
14 passengers, including the driver.

15 (5) "Camper" has the meaning provided in 61-1-101.

16 (6) "Commercial motor vehicle" has the meaning provided in 61-1-101.

17 (7) (a) "Conducting" means: we chose to use "conducting" because "operator"/"operating" already has an important meaning in DUI law

18 (i) engaging or disengaging a platooning vehicle or an automated driving system, other than a
19 level 5 automated driving system; or

20 (ii) performing or failing to perform any function that moves or stops a platooning vehicle or a
21 vehicle with an automated driving system, other than a level 5 automated driving system;

22 (b) As used in this subsection (7), "automated driving system", "level 5 automated driving system",
23 and "platooning" have the meanings provided in [section 1].

24 ~~(7)(8)~~ "Drug" means any substance that when taken into the human body can impair a person's ability
25 to operate a vehicle safely. The term includes the meanings provided in 50-32-101(6), (7), and (14).

26 ~~(8)(9)~~ "DUI court" means any court that has established a special docket for handling cases involving
27 persons convicted under 61-8-1007 or 61-8-1008 and that implements a program of incentives and sanctions
28 intended to assist a participant to complete treatment ordered pursuant to 61-8-1009 and to end the

1 participant's criminal behavior associated with the use of alcohol or drugs.

2 ~~(9)~~(10) "Highway" has the meaning provided in 61-1-101, including the shoulders of the highway.

3 ~~(10)~~(11) "Motor home" has the meaning provided in 61-1-101.

4 ~~(11)~~(12) "Motor vehicle" has the meaning provided in 61-1-101.

5 ~~(12)~~(13) "Open alcoholic beverage container" means a bottle, can, jar, or other receptacle that
6 contains any amount of an alcoholic beverage and that is open or has a broken seal or the contents of which
7 are partially removed.

8 ~~(13)~~(14) "Passenger area" means the area designed to seat the driver and passengers while a motor
9 vehicle is in operation and any area that is readily accessible to the driver or a passenger while the driver or a
10 passenger is seated in the vehicle, including an unlocked glove compartment.

11 ~~(14)~~(15) "Under the influence" means that as a result of taking into the body alcohol, drugs, or any
12 combination of alcohol and drugs, a person's ability to safely operate a vehicle has been diminished.

13 ~~(15)~~(16) "Vehicle" has the meaning provided in 61-1-101, except that the term does not include a
14 bicycle."

15

16 **Section 9.** Section 61-8-1002, MCA, is amended to read:

17 **"61-8-1002. Driving under influence.** (1) A person commits the offense of driving under the influence
18 if the person drives, is conducting, or is in actual physical control of:

19 (a) a vehicle or a commercial motor vehicle upon the ways of this state open to the public while
20 under the influence of alcohol, any drug, or a combination of alcohol and any drug;

21 (b) a noncommercial vehicle upon the ways of this state open to the public while the person's
22 alcohol concentration, as shown by analysis of the person's blood, breath, or other bodily substance, is 0.08 or
23 more;

24 (c) a commercial motor vehicle within this state while the person's alcohol concentration, as shown
25 by analysis of the person's blood, breath, or other bodily substance, is 0.04 or more;

26 (d) a noncommercial vehicle or commercial motor vehicle within this state while the person's delta-
27 9-tetrahydrocannabinol level, excluding inactive metabolites, as shown by analysis of the person's blood or
28 other bodily substance, is 5 ng/ml or more; or

1 (e) a vehicle within this state when the person is under 21 years of age at the time of the offense
2 while the person's alcohol concentration, as shown by analysis of the person's blood, breath, or other bodily
3 substance, is 0.02 or more.

4 (2) Upon the trial of any civil or criminal action or proceeding arising out of acts alleged to have
5 been committed by any person driving, conducting, or in actual physical control of a vehicle while under the
6 influence of alcohol, the concentration of alcohol in the person at the time of a test, as shown by analysis of a
7 sample of the person's blood, breath, or other bodily substance drawn or taken within a reasonable time after
8 the alleged act, gives rise to the following inferences:

9 (a) if there was at that time an alcohol concentration of 0.04 or less, it may be inferred that the
10 person was not under the influence of alcohol;

11 (b) if there was at that time an alcohol concentration in excess of 0.04 but less than 0.08, that fact
12 may not give rise to any inference that the person was or was not under the influence of alcohol, but the fact
13 may be considered with other competent evidence in determining the guilt or innocence of the person; and

14 (c) if there was at that time an alcohol concentration of 0.08 or more, it may be inferred that the
15 person was under the influence of alcohol. The inference is rebuttable.

16 (3) The provisions of subsection (2) do not limit the introduction of any other competent evidence
17 bearing on the issue of whether the person was under the influence of alcohol, drugs, or a combination of
18 alcohol and drugs.

19 (4) Each municipality in this state is given authority to enact this section, with the word "state"
20 changed to read "municipality", as an ordinance and is given jurisdiction of the enforcement of the ordinance
21 and the imposition of the fines and penalties provided in the ordinance.

22 (5) Absolute liability, as provided in 45-2-104, is imposed for a violation of this section.

23 (6) When the same acts may establish the commission of an offense under subsection (1), a
24 person charged with the conduct may be prosecuted for a violation of another relevant subsection under
25 subsection (1). However, the person may be convicted of only one offense under this section or of a similar
26 offense under previous laws of this state."

27

28 **Section 10.** Section 61-8-1016, MCA, is amended to read:

1 **"61-8-1016. Implied consent -- blood or breath tests for alcohol, drugs, or both -- refusal to**
2 **submit to test -- administrative license suspension.** (1) (a) A person who operates or is in actual physical
3 control of a vehicle or commercial motor vehicle upon the ways of this state open to the public is considered to
4 have given consent to a test or tests of the person's blood or breath for the purpose of determining any
5 measured amount or detected presence of alcohol or drugs in the person's body.

6 (b) The tests in subsection (1)(a) include but are not limited to a preliminary alcohol screening test
7 of the person's breath for the purpose of estimating the person's alcohol concentration.

8 (c) A preliminary alcohol screening test may not be conducted or requested under this section
9 unless both the peace officer and the instrument used to conduct the test have been certified by the department
10 pursuant to rules adopted under the authority of 61-8-1019(5).

11 (d) The person's obligation to submit to a test in subsection (1)(a) is not satisfied by the person
12 submitting to a preliminary alcohol screening test pursuant to this section.

13 (2) (a) The test or tests must be administered at the direction of a peace officer when:

14 (i) the peace officer has particularized suspicion to believe that the person has been driving,
15 conducting, or has been in actual physical control of a vehicle upon ways of this state open to the public while
16 under the influence of alcohol, drugs, or a combination of the two and the person has been detained for a
17 violation of driving under the influence as provided in 61-8-1002 or an offense that meets the definition of
18 aggravated driving under the influence in 61-8-1001;

19 (ii) the person is under the age of 21 and the peace officer has particularized suspicion to believe
20 that the person has been driving, conducting, or in actual physical control of a vehicle in violation of 61-8-
21 1002(1)(e); or

22 (iii) the peace officer has probable cause to believe that the person was driving, conducting, or in
23 actual physical control of a vehicle or commercial motor vehicle:

24 (A) in violation of driving under the influence, as provided in 61-8-1002, and the person has been
25 placed under arrest;

26 (B) in violation of driving under the influence as provided in 61-8-1002, and the person has been
27 involved in a motor vehicle crash or collision resulting in property damage;

28 (C) and the person has been involved in a motor vehicle accident or collision resulting in serious

1 bodily injury, as defined in 45-2-101, or death; or

2 (D) in violation of driving under the influence as provided in 61-8-1002 and meets the definition of
3 aggravated driving under the influence in 61-8-1001.

4 (b) A peace officer may designate which test or tests are administered.

5 (c) The peace officer shall inform the person of the right to refuse the test and that the refusal to
6 submit to the test will result in the suspension for up to 1 year of that person's driver's license.

7 (d) A hearing as provided for in 61-8-1017 must be available. The issues in the hearing must be
8 limited to determining whether a peace officer had a particularized suspicion that the person was in violation of
9 61-8-1002 or an offense meeting the definition of aggravated driving under the influence in 61-8-1001, and
10 whether the person refused to submit to the test.

11 (e) If a person refuses a preliminary alcohol screening test and another test during the same
12 incident, the department may not consider each a separate refusal for purposes of suspension of the person's
13 driver's license.

14 (3) A person who is unconscious or who is otherwise in a condition rendering the person incapable
15 of refusal is considered not to have withdrawn the consent requested in subsection (1).

16 (4) (a) If an arrested person refuses to submit to one or more tests requested and designated by
17 the peace officer, the refused test or tests may not be given unless the person has refused to provide a breath,
18 blood, urine, or other bodily substance in a prior investigation in this state or under a substantially similar statute
19 in another jurisdiction or the arrested person has a prior conviction or pending offense for a violation of 45-5-
20 104, 45-5-106, 45-5-205, or driving under the influence, including 61-8-1002, an offense that meets the
21 definition of aggravated driving under the influence in 61-8-1001, or a similar offense under previous laws of
22 this state or a similar statute in another jurisdiction.

23 (b) Upon the person's refusal to provide the breath, blood, urine, or other bodily substance
24 requested by the peace officer pursuant to subsection (1) and this subsection (4) may apply for a search
25 warrant to be issued pursuant to 46-5-224 to collect a sample of the person's blood for testing.

26 (c) (i) Upon the person's refusal to provide a breath, blood, urine, or other bodily substance, the
27 peace officer shall, on behalf of the department, immediately seize the person's driver's license. The peace
28 officer shall immediately forward the license to the department, along with a report certified under penalty of law

1 stating which of the conditions set forth in subsection (2)(a) provides the basis for the testing request and
 2 confirming that the person refused to submit to one or more tests requested and designated by the peace
 3 officer. Upon receipt of the report, the department shall suspend the license for the period provided in 61-8-
 4 1032.

5 (ii) Upon seizure of a driver's license, the peace officer shall issue, on behalf of the department, a
 6 temporary driving permit, which is effective 12 hours after issuance and is valid for 5 days following the date of
 7 issuance, and shall provide the driver with written notice of the license suspension and the right to a hearing as
 8 provided in 61-8-1017.

9 (iii) A nonresident driver's license seized under this section must be sent by the department to the
 10 licensing authority of the nonresident's home state with a report of the nonresident's refusal to submit to one or
 11 more tests.

12 (5) This section does not apply to tests, samples, and analyses of blood or breath used for
 13 purposes of medical treatment or care of an injured motorist, related to a lawful seizure for a suspected
 14 violation of an offense not in this part, or performed pursuant to a search warrant.

15 (6) This section does not prohibit the release of information obtained from tests, samples, and
 16 analyses of blood or breath for law enforcement purposes as provided in 46-4-301 and 61-8-1019(6)."

17

18 **Section 11.** Section 61-8-1018, MCA, is amended to read:

19 **"61-8-1018. Evidence admissible -- conditions of admissibility.** (1) Upon the trial of a criminal
 20 action or other proceeding arising out of acts alleged to have been committed by a person in violation of driving
 21 under the influence, including 61-8-1002, an offense that meets the definition of aggravated driving under the
 22 influence in 61-8-1001, a similar offense under previous laws of this state or the laws of another state, or 61-8-
 23 805:

24 (a) evidence of any measured amount or detected presence of alcohol, drugs, or a combination of
 25 alcohol and drugs in the person at the time of a test, as shown by an analysis of the person's blood or breath, is
 26 admissible. A positive test result does not, in itself, prove that the person was under the influence of a drug or
 27 drugs at the time the person was in control of a vehicle. A person may not be convicted of a violation of 61-8-
 28 1002(1)(a) based on the presence of a drug or drugs in the person unless some other competent evidence

1 exists that tends to establish that the person was under the influence of a drug or drugs while driving,
2 conducting, or in actual physical control of a motor vehicle within this state.

3 (b) a report of the facts and results of one or more tests of a person's blood or breath is admissible
4 in evidence if:

5 (i) a breath test or preliminary alcohol screening test was performed by a person certified by the
6 forensic sciences division of the department to administer the test; or

7 (ii) a blood sample was analyzed in a laboratory operated or certified by the department or in a
8 laboratory exempt from certification under the rules of the department and the blood was withdrawn from the
9 person by a person competent to do so under 61-8-1019(1); and

10 (c) a report of the facts and results of a physical, psychomotor, or physiological assessment of a
11 person is admissible in evidence if it was made by a person trained by the department or by a person who has
12 received training recognized by the department.

13 (2) If the person under arrest refused to submit to one or more tests under 61-8-1016, whether or
14 not a sample was subsequently collected for any purpose, proof of refusal is admissible in any criminal action
15 or proceeding arising out of acts alleged to have been committed while the person was driving, conducting, or
16 in actual physical control of a vehicle upon the ways of this state open to the public while under the influence of
17 alcohol, drugs, or a combination of alcohol and drugs. The trier of fact may infer from the refusal that the person
18 was under the influence. The inference is rebuttable.

19 (3) The provisions of this part do not limit the introduction of any other competent evidence bearing
20 on the question of whether the person was under the influence of alcohol, drugs, or a combination of alcohol
21 and drugs."
22

23 NEW SECTION. Section 12. Codification instruction. [Sections 1 through 7] are intended to be
24 codified as an integral part of Title 61, chapter 8, and the provisions of Title 61, chapter 8, apply to [sections 1
25 through 7].
26

27 NEW SECTION. Section 13. Effective date. [This act] is effective July 1, 2023.
28

MDT's rulemaking authority terminates after two bienniums, giving TIC and the legislature time to review and take further action

1 NEW SECTION. **Section 14. Termination.** [Sections 6 and 7] terminate June 30, 2027.

2 - END -

**Sixty-sixth Legislative Assembly of North Dakota
In Regular Session Commencing Thursday, January 3, 2019**

HOUSE BILL NO. 1199
(Representatives D. Ruby, Becker, Jones, Kasper, Keiser, Lefor, Louser)
(Senators Burckhard, Kreun, Oban)

AN ACT to create and enact a new section to chapter 39-10 of the North Dakota Century Code, relating to platoons; to amend and reenact section 39-10-18 of the North Dakota Century Code, relating to following a motor vehicle too closely; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 39-10-18 of the North Dakota Century Code is amended and reenacted as follows:

39-10-18. Following too closely.

1. The driver of a motor vehicle may not follow another vehicle more closely than is reasonable and prudent, having due regard for the speed of such vehicles and the traffic upon and the condition of the highway.
2. The driver of any truck or motor vehicle drawing another vehicle when traveling upon a roadway outside of a business or residence district and which is following another truck or motor vehicle drawing another vehicle shall, whenever conditions permit, leave sufficient space so that an overtaking vehicle may enter and occupy such space without danger, except that this does not prevent a truck or motor vehicle drawing another vehicle from overtaking and passing any vehicle or combination of vehicles.
3. Motor vehicles being driven upon any roadway outside of a business or residence district in a caravan or motorcade whether or not towing other vehicles must be so operated as to allow sufficient space between each such vehicle or combination of vehicles so as to enable any other vehicle to enter and occupy such space without danger. This provision does not apply to funeral processions.
4. This section does not apply to the operation of a non-lead vehicle in a platoon.
5. As used in this section and section 2 of this Act, "platoon" means a group of motor vehicles using vehicle-to-vehicle communications to travel in a unified manner at close following distances on a multilane, limited-access, divided highway.

SECTION 2. A new section to chapter 39-10 of the North Dakota Century Code is created and enacted as follows:

Motor vehicle platoons.

1. The department, in coordination with the state highway patrol superintendent, shall develop an operational plan that provides guidelines for operating a platoon. The plan must include operational information that must be provided by a platoon technology provider or commercial motor vehicle operator. The department may restrict platooning operations in accordance with the guidelines or the operational information provided in the plan.
2. A platoon may not operate unless the platoon technology provider or the commercial motor vehicle operator files an operational plan with the department and the plan is approved for general platoon operations. If the department does not approve the plan, the department shall inform the platoon technology provider or commercial motor vehicle operator of the reason for the disapproval and provide guidance on how to resubmit the plan to obtain approval.

3. A person operating a motor vehicle in a platoon without an approved plan must be assessed a fee of one hundred dollars.
4. A person operating a motor vehicle in violation of the guidelines in an operational plan must be assessed a fee of one hundred dollars.

Speaker of the House

President of the Senate

Chief Clerk of the House

Secretary of the Senate

This certifies that the within bill originated in the House of Representatives of the Sixty-sixth Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1199.

House Vote: Yeas 85 Nays 2 Absent 7

Senate Vote: Yeas 42 Nays 3 Absent 1

Chief Clerk of the House

Received by the Governor at _____ M. on _____, 2019.

Approved at _____ M. on _____, 2019.

Governor

Filed in this office this _____ day of _____, 2019,

at _____ o'clock _____ M.

Secretary of State