

Daily Journal

www.dailyjournal.com

WEDNESDAY, OCTOBER 12, 2016

PERSPECTIVE

AVs speed past state and federal law

By Patice Gore

Autonomous Vehicles (AVs) are coming sooner than anyone could have predicted. They are already being tested and operated on public streets in some states, and the legal ramifications of AVs cannot be ignored. However, the development of autonomous technology is outpacing the law. To that end, this is the first installment of a new monthly column, "Autonomous Arriving," devoted to covering ongoing developments in the law related to AVs at both the state and national level.

The National Highway Traffic Safety Administration (NHTSA) only recently published "guidelines" which govern AV technology, but the guidelines are far short from firm federal regulation of AVs. Lawmakers in some states have enacted laws to regulate the testing and operation of AVs on their public roads, streets and highways. Nearly all state legislation dealing with AVs explicitly define what constitutes an AV and limit the scope of the legislation to vehicles that are significantly automated — Level 3 or Level 4 vehicles on the NHTSA classification system (vehicles with only a few automated features do not fall within the legislation).

Despite consensus that a patchwork of state laws should be avoided with respect to AVs, state laws are progressing in different ways. Current state AV laws fall into three categories of regulation: passive regulation, permissible testing regulation, and operational regulation.

Passive Regulation

Some states have enacted laws authorizing certain state agencies to conduct research into the safety and efficiency of AVs or studies to determine which currently enacted laws need to be amended to address AVs. For example, under Utah Code Section 41-26-102, certain agencies "shall study, prepare a report, and make recommendations regarding the best practices for regulation of autonomous vehicle technology on Utah



New York Times

A site of a former GM plant in Ypsilanti, Michigan, to be developed for testing autonomous vehicles.

highways." Utah law does not prohibit nor permit the use of AVs, it only authorizes AV research.

Many states which already regulate AV testing also allow certain state agencies to study the impact AVs will have on their constituencies. North Dakota authorizes the review of the current laws that "need to be changed to accommodate the introduction or testing of automated motor vehicles in North Dakota and any automated corridors affecting North Dakota."

These types of laws allow public funds to be used to research autonomous technology, ostensibly for the purpose of developing effective regulations in the future. While only the first steps in to the world of regulating autonomous technology, the laws show that state legislators recognize that AVs involve complicated issues which need to be addressed quickly and meaningfully.

Permissible Testing Regulation

North Dakota, Tennessee, Florida, California, Nevada and Michigan specifically authorize AV testing on public roadways. AV testing is permissible under certain conditions, but the states vary on the type of conditions which must be satisfied before testing can begin. All of the laws require proof of financial responsibility. In order to test an autonomous vehicle in these states, the manufacturer or individual must carry proof of insurance or bond, generally in the amount of \$5 million. Additionally, AV testing laws impose requirements

regarding the human operation of the AV. In order for an entity or individual to test an AV: (1) a human operator must be seated in the AV in a manner which allows the operator to take immediate control of the AV; (2) the operator must be monitoring the operation of the AV; (3) the operator must be capable of taking control if the autonomous technology fails; and (4), the AV must comply with federal safety standards and regulations applicable to vehicles.

Unlike other states, California requires manufacturers to file "disengagement" reports, which notify state regulators of the number of times an AV testing on California roadways disengages the autonomous technology during its use. California law also requires manufacturers to report collisions involving AVs. These incident and disengagement reports are made available to the public through the California DMV website.

Operational Regulation

AV laws of some states, such as Nevada, Tennessee and California, include provisions governing the operation of AVs in addition to those pertaining to the testing of AVs. The laws of these states generally require registration of AVs with a designated state agency. The AV must meet certain safety conditions regarding the engagement and disengagement of the autonomous technology. Specifically, the AV must have an alert, visible from the cabin, which indicates that the autonomous technology

is engaged. The AV must also notify the AV operator of a failure of the autonomous technology and allow the operator to take control (or stop) the AV. The AV must also be capable of allowing the driver to disengage the autonomous system, in a number of manners, readily accessible to the human operator.

Most of the states with operational regulations expressly immunize an AV manufacturer from liability arising from damage or injury involving vehicles with autonomous technology installed which are not originally intended to be an AV. California and other states have also required AVs to record and store data for a certain period of time prior to a collision. The AV manufacturer must disclose to an AV operator that the AV records this data.

Some states such as Nevada and Tennessee have laws providing for a driver's license endorsement pertaining to individuals who test or operate AVs. Moreover, Nevada is already moving towards regulation which does not contemplate a human driver. Under Nevada law, cellphone use and text messaging is permitted for users legally operating AVs within the state.

States Will Guide AV Law & Development

Although many have focused on the development of federal regulation with respect to AVs, state law is developing at a much quicker pace than federal law. State legislators will necessarily play a major role in the development in AV technology and its use in the United States.

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