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## **AUTONOMOUS VEHICLES**

*Legislation in the House and Senate would create a regulatory framework for self-driving car technology. But even if legislation passes, companies should consider existing legal frameworks that may also be applicable to the use of these vehicles, Tara J. Cyr of Polsinelli writes.*

### **Emerging Technology**

## **Start Your (Autonomous!) Engines—but Check for Compliance Obligations First!**



### **By Tara J. Cyr**

*Tara J. Cyr is an associate at Am Law 100 firm Polsinelli in Kansas City, Mo. She specializes in rental car and technology-enabled transportation regulation, compliance, and contracting, providing cutting-edge representation to clients in those industries. She can be reached at [tcyr@polsinelli.com](mailto:tcyr@polsinelli.com).*

Autonomous vehicle technology is no longer science fiction—vehicles with various types of autonomous technology have navigated fast-food drive-thrus, driven in snowy and dark conditions, and transported passengers who send ride requests through mobile phones. The technology is arriving at a rapid pace, so we (and the law!) better get ready.

### **Terminology**

Autonomous vehicle technology is outpacing the law and consensus on terminology. For example, readers may have different understandings of what is an “autonomous vehicle.” There are numerous types and scopes of vehicle automation (see SAE International Standard J3016). In this article, the acronym “HAV” is used to refer to SAE Level 4 and SAE Level 5 vehicles which, in short, are vehicles for which an automated driving system performs all aspects of the dynamic driving task without the expectation a human will intervene (note there are differences between SAE Level 4 and 5 vehicles—for example, whether the performance is full-time or driving mode specific). While this article focuses on HAVs, many of the considerations discussed may also be applicable to other types of autonomous vehicles.

### **Federal and State AV-Specific Laws**

In September, the U.S. Department of Transportation and the National Highway Traffic Safety Administration released updated voluntary guidance regarding automated driving systems in a policy document called “A Vision for Safety 2.0”.

In addition to this voluntary guidance, federal lawmakers are working on binding federal policy. For example, the SELF DRIVE Act, as of the drafting of this article, has passed in the House and has been referred to the Senate’s Committee on Commerce, Science, and Transportation. In addition, the Senate is currently working on its own autonomous vehicle legislation, the AV START Act. This article discusses and references the AV START Act; however, it is important to note that the SELF DRIVE Act and AV START Act share a great number of similarities, and the concepts discussed in this article could likely apply to other substantively similar legislation as well.

If the AV START Act is passed by Congress, “no State or political subdivision of a State may maintain, enforce, prescribe, or continue in effect any law or regulation regarding the design, construction, or performance of highly automated vehicles, automated driving systems, or components of automated driving systems unless such law or regulation is identical” to a standard prescribed by the federal act itself. If the AV START Act is passed it will create a more certain and predictable landscape for companies to continue to develop and innovate autonomous

vehicle technology, as it will preempt a potential patchwork of state laws concerning autonomous vehicle design, construction, and performance.

The AV START Act would also help to address the fact that the widespread deployment of HAVs in the U.S. is limited by certain Federal Motor Vehicle Safety Standards (FMVSS) that, as currently drafted, aren't easily reconciled with HAVs. The AV START Act also addresses other items, such as cybersecurity and best practices concerning the physical accessibility of automated vehicles.

On the state level, the National Conference of State Legislatures reports on its website that 21 states have passed legislation and five governors have issued executive orders related to autonomous vehicles. The scope and purpose of the state autonomous vehicle laws are quite varied. For example, some relate to autonomous vehicle testing and deployment requirements, some relate to following distances (or "platooning"), and some relate to liability issues.

### **Legal Considerations Relating to HAV Uses and Applications**

While the law regarding the "design, construction, or performance" of HAVs will be more settled if the AV START Act passes, the legislation won't necessarily change or nullify a company's obligations under other regulatory regimes when it comes to *using* such vehicles in its mobility services and programs.

There are many potential applications for automated driving systems, especially HAVs, in the U.S. For example, there will likely be HAVs that are individually owned and used as single occupancy vehicles. In addition, HAVs will likely be used in fleets (such as in taxi, car sharing, and rental car fleets) as well as e-hailing (think Uber or Lyft) applications. Many of these programs are subject to various types of federal, state, and local statutes, regulations, and rules. They may continue to be subject to these legal frameworks even if the AV START Act passes.

Companies should carefully consider the factual circumstances of their mobility programs and consider engaging internal or external counsel to assess specific compliance obligations, which may involve insurance requirements, specific disclosures in user agreements, operational permits and licenses, and other obligations. For example, two HAV ride-hailing companies—even if operating in the same state—could have differing compliance obligations based on the particular factual circumstances of their programs.

Below is a short list of a few legal considerations (which may relate to federal, state, and/or local level law) that companies may need to consider prior to incorporating HAVs into their mobility programs—even if the AV START Act is passed. This list is not all-encompassing—there are other legal considerations (such as obligations related to vehicles of certain weights, or obligations pursuant to the Americans With Disabilities Act) that also may apply. In addition, the state autonomous vehicle-specific laws discussed above may also affect compliance obligations for mobility programs involving HAVs.

- **Legal Requirements Applicable to Vehicle Rentals:** HAVs may still fall under the definition of "rental vehicle" or "vehicle" in many states for purposes of state vehicle rental laws. Therefore, a rental company transitioning to an HAV fleet may still need to consider vehicle rental laws applicable to their operations. Vehicle rental laws can include rental agreement disclosure requirements as well as restrictions on electronic surveillance, the sale of certain counter-based insurance products, fees, and damage recovery.

- **Legal Requirements Regarding For-Hire Vehicles and Passenger Carriage:** A company considering using HAVs to provide rides to passengers may need to consider motor carrier or for-hire vehicle laws, regulations, and rules at the federal, state, and local level. For example, "A Vision for Safety 2.0" provides that interstate motor carrier operations under the jurisdiction of FMCSA aren't within the scope of the federal voluntary guidance and (unless a waiver has been granted) a trained commercial driver must be behind the wheel at all times in such vehicles.

- **Legal Gaps and Mode-Convergence:** While the current legal landscape applicable to certain uses of HAVs may require drivers, the *absence* of a driver in an HAV may create interesting questions regarding which regulatory schemes are applicable. For example, it is possible that (unlike the applicability of the FMCSA rules as interpreted by DOT/NHTSA) some for-hire vehicle or motor carrier laws may not apply if there is no one driving a customer in a vehicle for payment. Conversely, a transaction is likely not a "rental car" transaction if no right to possession or right to operate a vehicle is passed to a customer (which is the case in most taxi rides). Considering those two premises, if a customer uses an app to order an HAV for an hour to do errands, and the customer directs the operation of the vehicle by telling it where to go, is it a for-hire vehicle? Or a rental car? The answers to these questions will likely vary by jurisdiction and should be considered carefully in the context of potentially applicable laws, regulations, and rules.

- **Changes to Existing Legal Requirements; New Rulemakings:** Companies should be prepared for changes in certain laws that may affect their business. For example, some transportation network company (TNC) laws define TNCs as companies that, via a digital platform or application, connect

passengers to *drivers*. Some of these definitions may be updated as mobility trends change. In addition, Companies should be prepared for new rulemakings that may be promulgated, such as the rulemakings contemplated by the AV START Act.

## Conclusion

It will be exciting to see HAVs increasingly used in transportation and mobility programs. Binding federal legislation regarding design and performance standards will likely help to speed up this process. However, it will be important for companies to consider other legal frameworks (federal, state, and local) that may apply to their operations based on the ways they use HAVs to offer increased mobility options to their customers.

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