

Autonomous Vehicles and Current State Liability Legislation

By Seth Quidachay-Swan

This article provides an overview of state legislation currently governing tort liability for autonomous vehicles (AVs) involved in accidents. This legislation has major implications for attorneys because it will influence development of both the technology and applicable insurance and liability regimes for consumers and producers of AVs. The article also provides a brief introduction to the various stages of AV technology and explores whether any state's current legislation addresses apportionment of liability for consumers' operation of AVs as well as possible future tort liability regimes.

In 2013, the National Highway Traffic Safety Administration defined different stages of AVs based on standards promulgated by the Society of Automotive Engineers.¹ The society's standards are classed using the numbers 0–5 and were updated in June 2018.² Stage 0 vehicles include no autonomous features; the driver controls steering, breaking, speed, and power. Stage 1 encompasses vehicles that could assist the driver with a single specific function, such as steering or accelerating. Stage 2 defines vehicles that allow the driver to be physically disengaged from both steering and speed controls simultaneously, but require the driver to monitor safety conditions and take control of the vehicle at any given time. An example of this level of automation is Tesla's Model S with autopilot feature.³

Stage 3 vehicles would perform all “dynamic driving tasks”—which the Society of Automotive Engineers defines as all of the real-time operational and tactical functions required to operate a vehicle in on-road traffic—when engaged, but could only be activated under specific driving conditions and require a human driver.⁴ As of October 2018, no commercial vehicles for sale meet Stage 3

automation.⁵ Stage 4 and 5 vehicles are considered fully autonomous; they are engineered to operate under any driving condition and will safely stop without human intervention if autonomous systems fail.⁶

Vehicles with up to Stage 2 autonomous capabilities do not require major changes to current state liability schemes, as a human driver is essential to the vehicle's operation and safety at all times.⁷ Because vehicles rated Stage 3 and higher remove the human driver from controlling some or all aspects of the vehicle's operation, accidents involving these vehicles may not fit easily into existing state liability schemes designed to apportion liability based on driver fault.⁸

Although no stage 3–5 AVs are currently available to consumers,⁹ the amount of money and research being invested in their development makes the possibility likely in the near future. Automakers have set commercial introduction dates that vary from 2020 to 2030,¹⁰ forcing insurance companies, manufacturers, and states to ponder the issues their introduction will create and the best liability and insurance regimes to address them. Should liability be placed on the manufacturer, the consumer, or some hybrid system? Will traditional insurance be required for AV users or will manufacturers, in essence, become the insurer? Will liability costs be built into the vehicle's purchase or

subscription service price? Should insurance ratings systems focus on vehicle usage or driver characteristics? Should regulation be state or national? What are the ethical implications when AVs must choose between bad or potentially fatal outcomes in responding to hazards, and who should decide?

All these questions and more must be answered as AVs are introduced to the public. The scope of these problems can often be downplayed because of the belief that AVs will be much safer than human drivers. Experts often refer to the National Highway Traffic Safety Administration study's finding that human error is a factor in 94 percent of all accidents¹¹ and removing the human component will drastically lower the number of accidents, thus reducing any necessary insurance or liability costs. However, this number was never meant to apply to AVs. And surveys suggest that consumers may not trust self-driving cars, leading to slow adoption rates,¹² especially if insurance and liability costs price consumers out of the marketplace, thus slowing the safety benefits envisioned. How manufacturers, insurers, and states answer these questions is of great importance to both the future of AVs and the functioning of state liability schemes.

Early adoption of AV liability legislation by states demonstrates the benefits and pitfalls of different approaches. According to

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the National Conference of State Legislatures, 29 states have enacted legislation related to AVs as of November 2018. Of the states that have enacted legislation, it appears that only Michigan, Nevada, Tennessee, and the District of Columbia have addressed some aspects of liability associated with AVs.¹³ And only Michigan and Tennessee appear to touch on apportioning responsibility for accidents caused by AVs.

In 2016, Michigan enacted Public Acts 332–335 (often collectively referred to as the SAVE Act) to put the state at the forefront of AV testing and development. These acts allow vehicle manufacturers meeting certain criteria to participate in SAVE projects and make available to the public “on-demand automated motor vehicle networks,”¹⁴ such as a network of autonomous taxis in defined geographic areas.¹⁵ Michigan Public Act 333 holds manufacturers of SAVE project vehicles liable “for each incident in which the automated driving system (ADS) is at fault.”¹⁶ Tennessee passed a similar provision in 2017, though it did not expressly hold manufacturers liable for accidents. It specifies that in vehicles with an ADS—technology capable of driving a vehicle without any human supervision—the ADS will be considered the driver when it controls the vehicle, and that liability for accidents will be “determined in accordance with product liability law, common law, or other applicable federal or a state law.”¹⁷

The laws in Michigan and Tennessee hold manufacturers liable for accidents caused by defects in the design or construction of AVs operated by the ADS at the time of an accident. Michigan appears to envision an AV future in which car manufacturers become mobility companies—not just designing and building vehicles, but providing taxi services with their AV fleets to consumers. However, the Michigan act does not appear to address privately owned and operated AVs; the liability language is limited to vehicles that are part of SAVE projects. Tennessee’s law includes a method to determine liability for privately owned AVs, but relies on the state’s existing legal framework to apportion liability, leaving open the question of whether that framework is sufficient to address liability in cases involving ADS technology.¹⁸

While liability regimes created in Michigan and Tennessee are untested, both have pros and cons for consumers and manufacturers. Michigan’s law protects consumers by holding manufacturers responsible for crashes when an ADS is operating; however, it creates a more rigid framework for making vehicles available to consumers. Tennessee’s legislation allows more flexibility for manufacturers to deliver vehicles to consumers, but provides less clarity regarding consumer liability if an AV is involved in an accident, which could slow introduction and adoption of societal safety benefits. Trends in federal or state legislation that apportions liability in AV accidents have major implications for the development and adoption of AVs and should be carefully monitored. ■

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ENDNOTES

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14. 2016 PA 332 and MCL 257.606b.
15. Korosec, *Michigan Just Passed the Most Permissive Self-Driving Car Laws in the Country*, Fortune (December 9, 2016) <<http://fortune.com/2016/12/09/michigan-self-driving-cars/>> [https://perma.cc/J3XY-LD9H].
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17. 2017 Tenn Pub Acts 1695 and Tenn Code Ann 55-30-106.
18. *Id.*, 2016 PA 333 and MCL 257.665b(4).



MONEY JUDGMENT INTEREST RATE

MCL 600.6013 governs how to calculate the interest on a money judgment in a Michigan state court. Interest is calculated at six-month intervals in January and July of each year, from when the complaint was filed, and is compounded annually.

For a complaint filed after December 31, 1986, the rate as of January 1, 2019 is 3.848 percent. This rate includes the statutory 1 percent.

But a different rule applies for a complaint filed after June 30, 2002 that is based on a written instrument with its own specified interest rate. The rate is the lesser of:

- (1) 13 percent a year, compounded annually; or
- (2) the specified rate, if it is fixed—or if it is variable, the variable rate when the complaint was filed if that rate was legal.

For past rates, see <http://courts.mi.gov/Administration/SCAO/Resources/Documents/other/interest.pdf>.

As the application of MCL 600.6013 varies depending on the circumstances, you should review the statute carefully.