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**AUTONOMOUS VEHICLES****REGULATIONS**

Until NHTSA adopts federal standards, regulation of autonomous vehicles falls entirely to state or local authorities, attorneys Michael W. Reynolds and Jason A. Orr say. However, in the vast majority of states, the legality of a fully autonomous fleet of taxis is uncertain, the authors say.

**Don't Leave That Driverless Taxi Unattended: Navigating the Federal And State Regulatory Gridlock That Could Curb the Driverless Taxi Fleet**

By MICHAEL W. REYNOLDS AND JASON A. ORR

It is easy to imagine a future where humans no longer drive. The advent of autonomous vehicles—cars that can navigate themselves without any input from a human driver—promises a new paradigm in personal transit, one in which people can choose to give up individual car ownership in favor of on-demand services that provide affordable point-to-point driverless taxi

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rides. This vision of a driverless future brings numerous societal benefits—fewer accidents caused by driver distraction and human error; greater mobility for people with disabilities; less traffic and fewer vehicle emissions; and less need for parking in already crowded city centers. The technology that fuels this future vision may arrive sooner than you think.

But is a driverless taxi fleet legal? The answer currently depends on where you are. To date, autonomous vehicle regulations have been left to the states, whose regulatory schemes continue to lag behind as companies race ahead to make autonomous taxi fleets a reality. In fact, regulators in most states have not even crossed the starting line.

At the federal level, regulators have so far declined to promulgate rules that might bring some nationwide order. Federal regulators have issued only guidance statements that promise further research while providing some recommendations for states that wish to regulate autonomous vehicles. Until a uniform set of rules is applied nationwide, companies that deploy autonomous vehicle fleets will need to evaluate where those fleets can operate legally on a state-by-state, or even a city-by-city, basis.

Just a handful of states and the District of Columbia have implemented statutes or regulations specifically governing autonomous vehicles. Most of these states allow the operation of autonomous vehicles only for testing purposes and require the presence of a back-up human driver behind the wheel. Only Florida has opened the door to a truly driverless fleet and then only under the condition that a remote operator is available to take

control. The remaining states are completely silent on the issue—they do not expressly permit, but also do not prohibit, autonomous vehicles.

In these silent states, the legality of driverless fleets is uncertain. The current vehicle codes and regulations in those states were written with a human driver in mind. For example, statutes prohibiting owners from leaving idling cars unattended, requiring “drivers” or “operators” to wear seatbelts, or requiring drivers to keep a hand on the steering wheel are not easily applied to a car that has no driver and roams the streets “unattended.” Given the absence of any precedent, many of these statutes *could* be interpreted to allow a driverless vehicle—if there is no driver, after all, there is no need for the driver to wear a seatbelt. But such outcomes are far from certain, and unlikely to be uniform among the various states. Without statutory reform, the uncertainty surrounding autonomous vehicles could slow the deployment of driverless taxi fleets in many of these states.

### **Federal Gov’t Recommends States Allow Autonomous Vehicles Only for Testing**

To date, there is no federal statute that sets standards for the operation of autonomous vehicles on public roads. The National Highway Traffic Safety Administration (“NHTSA”)—the federal agency charged with creating and enforcing motor vehicle safety standards—has been following developments in autonomous vehicle technology for years, but so far it has avoided formal rulemaking. At the Autonomous Car Detroit conference in March 2016, NHTSA Administrator Mark Rosekind remarked that “the careful, complex, far-from-rapid processes of formal regulation aren’t necessarily a great match for fast-moving technology advances.”

Though NHTSA has not issued any binding rules, the agency has not been silent. Indeed, NHTSA has taken several steps to ostensibly promote the testing and deployment of autonomous vehicles.

In 2013, NHTSA issued a policy statement containing recommendations for states issuing regulations governing autonomous vehicles. The recommendations are important, as they are the current model for states seeking to issue autonomous vehicle regulations. In the 2013 statement, NHTSA was clear that it did “not recommend at this time that states permit operation of self-driving vehicle for purposes other than testing.” NHTSA recommended certain requirements for testing, including that:

- a driver be seated in the driver’s seat, ready to take control of the vehicle;
- the vehicle alert the driver when the driver should take control;
- drivers meet specific certification, training, and licensing for autonomous vehicles;
- vehicles collect testing data, such as a record of malfunctions, failures, or circumstances leading to crashes; or
- autonomous vehicles be limited to certain public roads or areas.

Earlier this year, NHTSA issued an update to its 2013 policy statement, noting that advances in technology meant autonomous vehicles were “nearing the point at which widespread deployment is feasible.” But NHTSA did not reverse from its “testing-only” recommendation, stating that “a rigorous testing regime” was “[e]ssential to the safe deployment of such vehicles” and would help policymakers “make informed decisions about deployment.” While NHTSA has vowed to propose new model policy guidance this year to allow for both testing and wider deployment, that guidance has yet to be issued.

In the meantime, NHTSA has encouraged manufacturers to request official interpretations of or special exemptions from existing regulations. For example, NHTSA recently confirmed that a manufacturer’s remote self-parking system met federal safety standards, and it told another company that it would interpret the word “driver” in various federal regulations to include that company’s self-driving system, an on-board artificial intelligence that controls the vehicle’s movements. (Interpretation Letter from Paul A. Hemmersbaugh, Chief Counsel, NHTSA, to Samuel Campbell, III, BMW of North America (Jan. 4, 2016); Interpretation Letter from Paul A. Hemmersbaugh, Chief Counsel, NHTSA, to Chris Urmson, Director, Self-Driving Car Project, Google, Inc. (Feb. 4, 2016).)

And in March 2016, the Department of Transportation published a preliminary report that interpreted many federal safety standards to permit the certification of autonomous vehicles, so long as the physical components of the vehicles (e.g., steering wheel and hand brake) remained functional and available to occupants. (U.S. Dep’t of Transp., Review of Federal Motor Vehicle Safety Standards (FMVSS) for Automated Vehicles (March 2016).)

Putting aside NHTSA’s hesitancy to promulgate regulations that might be obsolete by the time they went into effect, it is not clear NHTSA’s existing statutory authority permits it to directly regulate autonomous technology. The National Traffic and Motor Vehicle Safety Act authorizes NHTSA to regulate vehicle performance and safety standards, leaving *driver* performance standards to the state authorities. As noted above, NHTSA has indicated that software can be understood to be the “driver” of a vehicle. Whether that precludes NHTSA’s regulation of autonomous vehicle technology has yet to be determined. In its 2016 policy statement, NHTSA said only that “existing NHTSA authority is likely insufficient to meet the needs of the time and reap the full safety benefits of automation technology.” However, in NHTSA’s view, “states are well suited to address issues such as licensing, driver training, and conditions for operation related to specific types of vehicles.”

If NHTSA eventually decides to issue binding rules governing autonomous vehicles, those regulations would likely have preemptive force over corresponding state laws. Under 49 U.S.C. § 30103, a state can prescribe vehicle safety standards only if they do not conflict with federal law. In *Geier v. American Honda Motor Co.*, 529 U.S. 861 (2000), the Supreme Court made clear that state vehicle safety standards cannot conflict with or undermine the objectives of federal regulations. But where there are no federal standards for a particular component or aspect of vehicle performance, states are free to promulgate regulations of their own. Therefore, until NHTSA adopts federal standards, regulation

of autonomous vehicles falls entirely to state or local authorities.

## States with Autonomous Vehicle Laws

At present, only nine states and the District of Columbia have passed legislation directly addressing autonomous vehicles. These laws range widely in scope, from mere legislative studies into “what, if any, current laws need to be changed to accommodate the introduction and testing” of autonomous vehicles (North Dakota H.B. 1065 (2015)) or simply defining “autonomous technology” for future applications (Louisiana H.B. No. 1143 (2016)) to detailed regulatory schemes governing the public deployment of autonomous vehicles (California).

### Full Deployment States

Of the states with laws on the books, only Florida would allow a true driverless taxi fleet to currently operate. Florida Statutes section 316.85 allows for the operation of autonomous vehicles on public roads by anyone with a valid driver’s license without an “operator” physically in the vehicle. Florida had previously allowed autonomous vehicles only for testing purposes, but removed that limitation in 2016, along with the requirement that the vehicle “operator” be present in the vehicle. (See Florida H.B. 7027; Fla. Stat. § 316.85.) Autonomous vehicles must still have a means to engage or disengage the autonomous technology and a mechanism to alert the operator of a technology failure. (Fla. Stat. § 319.145.) If there is a failure, the operator must be able to take control, or if the operator “does not, or is not able to, take control of the autonomous vehicle,” the vehicle’s autonomous systems must “be capable of bringing the vehicle to a complete stop.” (Fla. Stat. § 319.145.) That is, in Florida, a company could arguably operate a fleet of driverless taxis so long as least one remote operator is available to receive alerts about autonomous technology failures, and on-board vehicle software is capable of safely bringing the vehicle to a stop if it or the operator is unable to effectively navigate the vehicle.

And, perhaps foreseeing how humans are likely to react to self-driving cars and taxis, the Florida legislature has even allowed drivers in an autonomous vehicle to use their mobile phones or watch television while driving their cars in autonomous mode. (Fla. Stat. § § 316.303, 316.305.)

District of Columbia law also presently allows vehicles to be operated on the road in autonomous mode and is not limited to testing. However, autonomous vehicles in D.C. are not allowed to be truly driverless. Under D.C. Code section 50-2352, a human driver must be present in the “control seat of the vehicle” at all times, and must be able to assume control of the car. Thus, D.C. law would only permit a fleet of autonomous taxis if a human driver were present in each vehicle as a back-up.

### Testing-Only States

Three states—California, Michigan, and Nevada—have passed legislation addressing the operation of autonomous vehicles, but currently allow them on public roads for testing purposes only.

California, home to many of the companies at the wheel of the autonomous vehicle movement, currently

allows only testing of driverless vehicles on public roads. (Cal. Veh. Code § 38750(b).) This would seem to preclude a commercial use like a driverless taxi fleet. For testing purposes, California law requires a driver in the driver’s seat, ready to take control. (Cal. Veh. Code § 38750(b).) And while the statute calls for the California Department of Motor Vehicles to issue regulations governing more widespread deployment of autonomous vehicles beyond testing, the regulations proposed by the Department of Motor Vehicles in December 2015 would require a driver to be present in the vehicle who is capable of taking control.

Michigan also allows for testing of autonomous vehicles and expressly prohibits the operation of autonomous vehicles for any other purpose. (Mich. Comp. Laws Ann. § § 257.663, 257.665.) Like California, Michigan requires that a driver be present in the vehicle and be able to immediately take control of the vehicle. However, the Michigan legislature is currently considering several bills that would allow the more widespread deployment of autonomous vehicles, including provisions that specifically contemplate “on-demand automated vehicle networks.” While a driverless taxi fleet is not feasible in Michigan now, it is a state to watch for the future.

Nevada, the first state to pass legislation addressing autonomous vehicles, currently only allows testing of such vehicles on public roads. (See Nev. Rev. Stat. § § 482A.100, 482A.200; Nev. Admin. Code § 482A.110 (permitting autonomous vehicle licenses only for testing).) Moreover, Nevada regulations currently require two people to be physically present in a vehicle that is being tested (absent a special exemption), and the testing may only be performed in certain geographic areas pre-approved by the Nevada Department of Motor Vehicles. (Nev. Admin. Code § 482A.130.)

Nevertheless, Nevada regulators have already implemented regulations that would permit the use of remotely operated vehicles (i.e., no driver physically present) for non-testing, commercial or personal use, along similar lines as Florida’s current requirements: (a) a system to record and report accident data; (b) a switch to engage or disengage autonomous mode; (c) a visual alert that the car is in autonomous mode; (d) a system to alert the operator of a failure; (e) if there is a failure, either a requirement that the operator take control of the vehicle or, if the operator is not physically present or unable to take control, that the car be able to bring itself to a complete stop. (Nev. Admin. Code § 482A.190.) And unlike the testing regulations, there are no geographic limitations on where remotely operated vehicles could roam.

Thus, while Nevada regulators are currently only licensing autonomous vehicles for testing purposes, they have laid the groundwork for a potential remotely operated driverless taxi fleet, once they have deemed autonomous vehicles safe enough to move beyond the testing phase.

### Other States

Several other states have taken the first steps towards an autonomous vehicle regulatory scheme, but have not yet issued rules governing the operation, testing, or deployment of autonomous vehicles. For example, in Arizona, Governor Doug Ducey issued an executive order directing state agencies to “undertake any necessary steps to support the testing and operation” of

autonomous vehicles, establishing a “Self-Driving Vehicle Oversight Committee,” and promoting the use of pilot programs on university campuses.

Similarly, the Utah legislature enacted a law directing state agencies to study best practices on regulating autonomous vehicles and “facilitate and encourage the responsible testing and operation of” autonomous vehicles. And the North Dakota legislature commissioned a legislative study to determine “what, if any, current laws need to be changed to accommodate the introduction or testing of motor vehicles in” the state.

Very recently, legislatures in two southern states have passed laws defining “autonomous technology” for use in future statutes and regulations. Tennessee passed a law, effective July 1, 2016, and Louisiana passed a law, effective August 1, 2016, using very similar language to define “autonomous technology.” (See Tenn. Code Ann. § 55-8-202; La. H.B. No. 1143.) Tennessee also has legislation prohibiting cities or municipalities from curtailing the operation of autonomous vehicles. (Tenn. Code Ann. § 55-8-202.)

### States Without Autonomous Vehicle Regulations

The remaining forty-one states are silent on autonomous vehicles, leaving them subject to regular traffic and motor vehicle laws. Whether a fleet of driverless taxis could lawfully operate in these states depends on how those laws—drafted with human drivers in mind—would apply to a car that has no human driver.

On one hand, those states do not expressly *prohibit* the operation of autonomous vehicles. Indeed, states adopting autonomous vehicle regulations have expressly noted that such vehicles were not previously prohibited. (See, e.g., Cal. S.B. No. 1298 § 1(b), (c); Fla. C.S./H.B. No. 1207 § 1(2).) Thus, from one perspective, an autonomous taxi fleet could operate lawfully because there is nothing prohibiting such a thing.

On the other hand, many state traffic and motor vehicle laws contemplate, and may even require, a human driver having some physical presence in the vehicle. It may be difficult to square such laws with a driverless taxi. Scholars such as Bryant Walker Smith have taken a sanguine view of such state regulations, positing that states might follow NHTSA’s lead and adopt broad views of statutory terms like “driver” to encompass non-natural persons, such as the AI that actually controls a vehicle. But without express guidance from those states, the answer is uncertain.

Whether the regular motor vehicle laws of any specific state effectively prohibit autonomous vehicles would depend on the exact wording of the statute and how a court might perceive the statute’s legislative purposes. For now, it is unclear how many of the following laws would be applied to an autonomous vehicle:

1. *Unattended Vehicle Laws.* — Many states prohibit drivers or “person[s] in charge of a motor vehicle” from allowing a vehicle to idle unattended. (See, e.g., N.Y. Veh. & Traf. § 1210 (“No person driving or in charge of a motor vehicle shall permit it to stand unattended without first stopping the engine, locking the ignition, removing the key from the vehicle . . .”).) Arguably, this would require someone to “attend to” a driverless vehicle at all times! But it is possible that a remote operator could “attend to” the vehicle within the meaning

and spirit of such laws, or that the vehicle software itself could be “attending to” the vehicle.

2. *Hand on Steering Wheel.* — New York Vehicle and Traffic Law section 1226 provides that “no person shall operate a motor vehicle without having at least one hand . . . on the steering mechanism at all times.” This would seem to present an obstacle to a person wanting to “operate” an autonomous vehicle in New York. Indeed, the statute arguably would prevent auto-park features currently available on the market. However, if “operate” is interpreted not to apply to the person turning on the autonomous vehicle (and not physically present), it is possible that an autonomous taxi could be deployed in New York. And the purpose of this law arguably would not be undermined if it is interpreted not to apply to autonomous vehicles. Otherwise, a driverless taxi fleet would currently require drivers with their hands on the wheel at all times.

3. *Seatbelt Laws.* — Some states expressly require the “driver” of a car to wear a seatbelt while operating a vehicle. If software can be considered a “driver” of an autonomous vehicle, that software clearly cannot “wear a properly adjusted and fastened seat safety belt.” (Ill. Comp. Stat. § 12-601.1(a).) Other states provide that no “person” can “operate” a vehicle without wearing a seatbelt. (E.g., Mass. Gen. Laws ch. 90 § 13A.) While it is less likely that “person” would be interpreted to include the autonomous vehicle software, a potentially absurd result, at least on their face such statutes would require remote human operators to wear a seatbelt in their remote location! The more sensible interpretation of “driver” or “person” in this context would limit the terms to human drivers capable of wearing a seatbelt while physically in the vehicle. The purpose of a mandatory seatbelt law—protecting human lives—is in no way undermined if software or remote operators fall outside the scope of the statute.

4. *Driver’s License Requirements.* — Similar to seatbelt laws, many states prohibit any “person” from driving a vehicle on public roads without a driver’s license. (E.g., Tenn. Code § 55-50-301(a)(1).) Consequently, driver’s license requirements should not prevent the operation of driverless fleets because there is no “person” driving. Indeed, one of the most crucial benefits of driverless vehicles is to allow people with disabilities, who might be unable to get a driver’s license, to travel point-to-point by car. However, the analysis may not be that simple, given the legislative purposes of driver licensing. Drivers are licensed to ensure proper training in safety and traffic laws, and to provide a system of accountability by which a driver’s license is revoked for improper driving. And, arguably, the person operating an autonomous vehicle can be said to be “driving” it even if he or she is not physically present, and would need a driver’s license. In the absence of a certification program or other requirements specific to autonomous vehicles, a court may be hesitant to interpret driver’s license requirements to exempt autonomous vehicles entirely if it finds such an interpretation to be inconsistent with the precautionary principle animating the overall statutory scheme.

5. *Taxi Regulations.* — Finally, any company wanting to operate a fleet of driverless taxis may fall into the scope of local taxi regulations, which vary between cities. For example, as defined in the New York City Administrative Code, a “for-hire vehicle” subject to city taxi regulations does not expressly require a driver.

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(N.Y.C. Admin. Code §§ 19-502, 503.1.) Such vehicles must be licensed, regularly inspected, and meet specific insurance requirements, among other conditions. A company seeking to operate its own fleet of driverless taxis should look closely at local taxi and livery regulations to comply with such requirements, if applicable.

The above is not an exhaustive list, but is meant to illustrate the complexity and uncertainty of interpreting existing state laws, which presume human drivers, to permit the operation of driverless fleets. Courts generally interpret statutes holistically and harmoniously within a broader statutory scheme. Whether a court would adopt an interpretation that is favorable to driverless fleets would, therefore, depend not only on the text of individual statutes, but the context of that stat-

ute within a broader constellation of motor vehicle regulation.

## **Conclusion**

In the vast majority of states, the legality of a fully autonomous fleet of taxis is uncertain. No state expressly allows a vehicle to be truly autonomous, with no human input or oversight, but most states do not expressly prohibit it either. Only Florida expressly allows autonomous vehicles with remote operators. Where autonomous vehicles are expressly permitted in other jurisdictions, the law requires a human operator behind the wheel at all times. In the more than forty states without any specific legislation, whether an autonomous fleet is permitted under the law may depend on uncertain statutory interpretations.