

# Michigan Ownership Liability and No-Fault Act: *Ramifications with Self-Driving Vehicles*

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Self-driving vehicles, also known as autonomous vehicles, are the subject of Michigan legislation amended in late 2016, specifically MCL 257.665, 665a and 665b. This analysis, among other things, makes observations on this legislation and potential interplay with the Michigan No-Fault Act, MCL 500.3101 et seq.

Under MCL 257.401, a person may bring a civil action against an owner or operator of a motor vehicle, or his or her agent or servant, to recover damages for injuries or death. The owner of a motor vehicle remains liable for the injury caused by the negligent operation of the motor vehicle when the vehicle is driven by another with the owner's consent. Thus, the owner of a self-driving vehicle would remain liable under this statute in the context of self-driving vehicle operations.

*Or not?*

Setting aside the issue of long-term lease holders, one could argue that a self-driving vehicle owner is not embraced by the statute because liability under MCL 257.401(1) only attaches if the vehicle "is being driven" with the owner's express or implied consent; consent is presumed if it is being driven by a spouse or various family members. The statute was enacted well before autonomous vehicles entered the picture. The language contemplates an assigned or consented to human being doing the driving.

The No-Fault Act includes provisions that prioritize insurance coverage for first party PIP benefits. For example, MCL 500.3114 establishes insurers' coverage priorities for occupants of motor vehicles involved in an accident causing accidental bodily injury. The first priority is the insurer of the owner or registrant of the vehicle and the next priority is the insurer of the operator of the vehicle. Can the "system" employed in a self-driving vehicle be deemed the "operator" of the motor vehicle under this analysis? Must this system operator be insured? A similar issue arises with MCL 500.3115, which establishes the insurance priorities for injured persons who are not occupants of a vehicle, such as pedestrians. As is the case with MCL 500.3114, the first priority is the insurer of the owner or registrant of the motor vehicle and the operator is next in priority.

Is a person behind the wheel in an autonomous vehicle an "operator?" Inasmuch as the "operator" of a self-driving vehicle may not be a human being as contemplated by the Michigan No-Fault Act, one issue is how insurance rates will be affected if there is one less insurer within the hierarchy of priority under the Michigan No-Fault Act.

The development integration of autonomous vehicles would conceivably result in additional insurance lines (and subsequent liability claims) relating to the upfitting, manufacture, or development of software.

We can expect that claims relating to the revising or upfitting of a “traditional vehicle” will give rise to an additional cause of action based on product liability. Issues with noneconomic damages caps that would not otherwise be applicable if the vehicle was not being self-driven will arise. See MCL 600.2946a. There are no caps on noneconomic damages if the defendant is found to be grossly negligent.

Issues involving a potential responsible nonparty under MCL 600.2957 might also arise when the claim involves a self-driving vehicle modification. Potentially, the company that prepared or developed the software could be a target, creating issues of jurisdiction.

Another potentially contested issue is whether a claim involving negligence associated with an autonomous vehicle will be governed by the “serious impairment” standard under MCL 500.3135. If the basis of the claim against the manufacturer or upfitter of the vehicle is based on product liability, may the plaintiff argue that the standard for recovery in a tort claim is something less than serious impairment of an important body function? Will there be different threshold standards of the defendant also includes a human being behind the wheel.

Passengers could be challenged or even named as defendants or responsible non parties for not appreciating potential malfunctions in the automated self-driving vehicle that might be within a lay person’s expertise. There might also be questions as to whether the passenger would have a direct claim of liability or whether a passenger not actively driving a vehicle might be deemed to owe a duty to another driver or a pedestrian.

And query whether an autonomous vehicle manufacture or upfitter might seek to assert a third party claim, non party fault claim (MCL 600.2957 and 6304) or defense that the computer was hacked into or compromised, which would lead to further questions as to whether the vehicles had adequate cyber security protections.



MCL 257.665 (effective December 9, 2016) outlines procedures for research or testing of automated motor vehicles but does not provide any framework for a civil action.

MCLA 257.665a creates immunizes an automobile manufacturer from liability that arises out of any modification to a motor vehicle where the modification is made without the manufacturer's consent. MCLA 257.665b allows a manufacturer to participate in any SAVE project. SAVE is an acronym for Safe Automated Vehicle Act, which is state modeled legislation not enacted in all states. The statute only applies to manufacturers and does not apply to taxi services such as Uber.

MCL 257.665(2) does appear to impose a duty on a manufacturer of an automated driving system or upfitter to ensure that operation without a human operator is safe.

Commentators have criticized the SAVE Act, claiming that it is anticompetitive and protectionist because it protects traditional manufacturers over high technology and other companies. See *the SAVE Act: a roadblock to automated vehicle innovation*, Lange, Licht, Chanduja and Desmond [www.wilmerhale.com/perry\\_lange/#!3](http://www.wilmerhale.com/perry_lange/#!3)

Through tort legislation and tort reform, legislatures have made attempts to limit liability for particular industries or practice areas and those efforts could be replicated in the area of autonomous vehicles.

There is at least one known case where an individual was killed while in a self-driving Tesla Model S electric car. The decedent, Joshua Brown, was killed when a tractor trailer crossed the center line while Brown was watching a Harry Potter movie at the time of the crash. Tesla responded by stating that the autopilot includes an acknowledgment box that says this is an assist feature that requires hands on the steering wheel at all times.

The American Center for Mobility (ACM) has opened a testing facility at the Willow Run west of Detroit. The facility was identified in an article that appeared in the *Detroit Free Press Business* section on April 1, 2018.

This analysis is not designed to provide answers to all of these questions but merely to alert the reader to some of the potential challenges, changes, and ramifications as autonomous or self-driving vehicles began to take a foothold in Michigan.



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