

Michigan's New Automated Vehicle Legislation: Great Leap Forward, But Ambiguities Need Clarification

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A package of recently signed Michigan laws will solidify the state's position as the leader in automated vehicle development. However the four bills, which were signed into law by Gov. Rick Snyder on Dec. 9, 2016, contain some ambiguities in areas such as safety on public roadways, and traffic enforcement where there is no human driver, requiring further rulemaking and clarification. Michigan should act swiftly to address these issues to remain at the cutting edge of the automated vehicle industry.

- Automated Vehicles May Be Operated on Public Roadways. The new legislation authorizes automated vehicles on Michigan streets and highways. In contrast to other states that permit automated vehicles on public roadways, Michigan's legislation expressly allows automated vehicles without a requirement for there to be a human driver present in the vehicle, provided that the automated driving system is capable of completely operating the vehicle without any supervision by a human operator.
- For Further Consideration: *The legislation defines "automated motor vehicle" as a vehicle in which an automated driving system is "installed" by a manufacturer or upfitter of automated driving systems. However, there seems to be no requirement that, once "installed," the system needs to continue to be fully functional or operational. Indeed, in other contexts, the legislation seems to recognize that automated driving systems could be tampered with or modified, so it provides immunity from liability for manufacturers of such systems in cases where modifications are made to the system but not authorized by the manufacturer. But vehicles with automated driving systems that have been modified or tampered with after installation could still be considered "automated motor vehicles" under the legislation, and therefore allowed on the public roadways.*
- Impact on State Traffic Laws. In a letter to Google asking for clarification as to how NHTSA would interpret the application of certain Federal Motor Vehicle Safety Standards to a driverless vehicle system, NHTSA opined that, for purposes of self-certifying compliance with certain FMVSS, an automated driving system could be considered to be the "driver." Analogously, the Michigan legislation seeks to apply that same concept, in a broad brush, by providing that an automated driving system shall be considered the "driver or operator" of a vehicle for purposes of traffic or motor vehicle laws.
- For Further Consideration: *In Michigan's Motor Vehicle Code, "driver" is defined as any "person who drives or is in actual physical control of a vehicle." The term "person" is defined as a "natural person, firm, co-partnership, association, or corporation." And the term "operate" means a "person ... who ... operates an automated motor vehicle upon a highway or street." So, except in the context of an operator of an "on-demand automated motor vehicle network" (which is explained further below), if an automated vehicle exceeds the speed limit or violates another traffic law, it doesn't seem that anyone would be liable. Surely, the passengers in the vehicle are not "operating" the system, so they are not liable. Since the legislation deems the "automated driving system" to be considered the "driver" or "operator," then the "automated driving system" is literally liable. But that doesn't make much sense. Could it be that the manufacturer, which*

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programmed the software, is to be deemed to be “operating” the system, and therefore liable? If not, then would anybody be held liable in cases when the automated vehicle violates traffic laws?

- Vehicle Platooning. The legislation authorizes platooning of autonomous vehicles upon filing “a plan for general platoon operations” and approval from the Michigan State Police and the Michigan Department of Transportation. A “platoon” is defined as a “group of individual motor vehicles that are traveling in a unified manner at electronically coordinated speeds.” Because commercial truck platooning is widely expected to be among the first commercial applications to be implemented for automated vehicles, the legislation is also an exciting development.
- For Further Consideration. *While the legislation exempts platoon operators from laws requiring safe following distances, platoon operators would still have to ensure “reasonable access for other vehicles to afford those vehicles safe movement among lanes or exit or enter the highway.” This concept will presumably be clarified further. Moreover, since the legislation does not specify any criteria or standards by which platooning plans will be evaluated, further rules on this topic can be expected.*
- On-Demand Automated Vehicle Networks. The legislation defines “on-demand automated vehicle networks,” such as ridesharing or cars-for-hire services which connect passengers to vehicles for transportation. It further defines the vehicle fleets that could qualify as “on-demand automated vehicle networks” to consist of those that are either involved in a SAVE Project (see below) or vehicles supplied and controlled by a “motor vehicle manufacturer” and equipped with automated driving systems. Furthermore, to be an eligible “motor vehicle manufacturer” an entity must either be (a) a car company that manufactures and distributes motor vehicles in the US, or (b) an entity that (i) manufactures safety-certified automated vehicles in the US, (ii) has tested such vehicles for at least 1 million miles, and (iii) obtains proof of insurance or surety for at least \$10 million. The legislation also authorizes on-demand automated motor vehicle networks to be operated on public roadways in the state, and prevents local governments from imposing local fees or franchises or regulation on such on-demand automated motor vehicle networks.
- For Further Consideration. *Under the legislation, both existing car companies (that manufacture and distribute) motor vehicles as well as other entities that satisfy the three criteria outlined above can set up automated vehicle ridesharing services in Michigan. In either case, however, the entity must be a “manufacturer” of automated vehicles. Presumably, this means that only an entity which is registered as a vehicle manufacturer is eligible to operate an on-demand automated vehicle network under the legislation. This could include companies that purchase fleets, retrofit the vehicles with their automated vehicle systems and then self-certify that these vehicles comply with Federal Motor Vehicle Safety Standards (FMVSS). Alternatively, a non-manufacturing entity could do the same in a joint venture with a recognized manufacturer. Some more clarification in the definition of “manufacturer” would be helpful. More confusing, however, is that the legislation does not expressly prohibit non-manufacturing entities (that may not satisfy the three criteria) from setting up automated vehicle ridesharing services outside the auspices of the legislation. Nor does it require all automated vehicle ridesharing services to comply with the legislative requirements for “on-demand automated vehicle networks,” as defined in the legislation. Arguably, therefore, a non-manufacturing entity that equips vehicles with automated driving system may still be able to set up and operate an automated vehicle ridesharing service, but it would not be exempt from local governmental regulation, franchising or fee requirements, at least until Dec. 31, 2022.*

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- SAVE Projects. The legislation recognizes a special type of “on-demand automated vehicle network” as a “SAVE Project.” A motor vehicle manufacturer (satisfying either of the two tests described above) can voluntarily participate in a SAVE Project if it notifies the State and self-certifies that its vehicles and automated driving systems meet certain requirements. The manufacturer also designates the geographical boundaries in which it will operate and must maintain and file incident reports to the State and NHTSA. By participating in a SAVE Project, the entity acknowledges that it assumes liability for each incident in which one of its automated driving systems is at fault.
- For Further Consideration. *The SAVE Project legislation contains some new and exciting elements for automated ridesharing services, and seems to be aimed at encouraging manufacturers to implement them up in Michigan. However, since a manufacturer could implement its automated ridesharing systems as an “on-demand automated vehicle network” that is not registered as “SAVE Project,” it could thereby avoid the numerous reporting and regulatory requirements imposed only on SAVE Projects. Perhaps there will be other benefits announced for SAVE Projects that will clarify the benefits of operating an automated ridesharing service under a SAVE Project designation.*

In summary, Michigan’s new legislation represents a bold step forward in spurring the development of automated vehicles in Michigan. Like many bold initiatives, however, an on-going process of clarification and additional legislation and rulemaking is needed to fill in some of the gaps.

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