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**The Journal of Robotics,  
Artificial Intelligence & Law**

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THE JOURNAL OF ROBOTICS, ARTIFICIAL INTELLIGENCE & LAW (ISSN 2575-5633 (print) /ISSN 2575-5617 (online) at \$495.00 annually is published six times per year by Full Court Press, a Fastcase, Inc., imprint. Copyright 2022 Fastcase, Inc. No part of this journal may be reproduced in any form—by microfilm, xerography, or otherwise—or incorporated into any information retrieval system without the written permission of the copyright owner. For customer support, please contact Fastcase, Inc., 711 D St. NW, Suite 200, Washington, D.C. 20004, 202.999.4777 (phone), 202.521.3462 (fax), or email customer service at [support@fastcase.com](mailto:support@fastcase.com).

Publishing Staff

Publisher: Morgan Morrisette Wright

Production Editor: Sharon D. Ray

Cover Art Design: Juan Bustamante

Cite this publication as:

The Journal of Robotics, Artificial Intelligence & Law (Fastcase)

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A Full Court Press, Fastcase, Inc., Publication

Editorial Office

711 D St. NW, Suite 200, Washington, D.C. 20004

<https://www.fastcase.com/>

POSTMASTER: Send address changes to THE JOURNAL OF ROBOTICS, ARTIFICIAL INTELLIGENCE & LAW, 711 D St. NW, Suite 200, Washington, D.C. 20004.

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ISSN 2575-5633 (print)

ISSN 2575-5617 (online)

# The Advent of Autonomy Drives Novel Considerations for Insurance in a Driverless World

John P. Mastando III and Yonatan Shefa\*

*Developments in autonomous vehicles technology have already begun to disrupt considerations for vehicle manufacturing and insurance, as reflected by industry authorities' new vocabulary for these emerging trends. Novel questions of liability likewise have surfaced since technological error may also need to be considered along with driver error. These phenomena have begun to stir new ideas around who carries what insurance. The authors of this article discuss insurance for autonomous vehicles.*

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Widespread access to advanced autonomous vehicles (“AV”) remains a futuristic scenario, but that future—which will have a significant impact on the insurance industry—is fast approaching. Developments in AV technology have already begun to disrupt considerations for vehicle manufacturing and insurance,<sup>1</sup> as reflected by industry authorities' new vocabulary for these emerging trends. Novel questions of liability likewise have surfaced since technological error may also need to be considered along with driver error.<sup>2</sup> These phenomena have begun to stir new ideas around who carries what insurance.

Additionally, both state and federal legislation have started to address the new technology, with a diversity of state legislative activity, and federal legislation underway. The uniformity of legislation, or lack thereof, is sure to impact the growth of AV technology and the insurance sector. Moreover, regulation of data and privacy stands to affect insurance coverage. Auto insurance may experience interesting changes.

## What Is Autonomy: New Nomenclature May Reflect a New Insurance Paradigm

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The new AV discourse evidences this new paradigm. The Society of Automotive Engineers describes six levels of automation in

terms of driver engagement. These range from Level 0, all-human driving, to Level 5, no human involvement. The intermediate levels vary in the driving the AV performs, under which circumstances, and the human oversight required.<sup>3</sup>

Consider the current state of vehicle technology insurers operate in. Most vehicles are considered Level 0. Some publicly available vehicles offer Level 1 automation that handles either (1) steering or (2) braking and acceleration assistance, but not both simultaneously.<sup>4</sup> Certain car companies offer vehicles with Level 2 capabilities of “partial driving automation” that manage steering, acceleration, and braking in certain circumstances, but require the driver to remain alert, often with hands on the steering wheel. To date, no vehicles sold to consumers in the United States possess automation Levels 3 to 5, under which an individual no longer needs to actively supervise driving.<sup>5</sup> A few companies such as Waymo (which provides driverless taxi services via an app) and Nuro (which offers driverless delivery services and has been featured in advertisements for Domino’s Pizza) possess truly driverless vehicles, but those AVs operate commercially in limited circumstances and locations.<sup>6</sup>

## The AV Industry Has Brought Us to the Cusp of a Paradigm Shift

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As AVs advance to Levels 3 and beyond, issues of liability and insurance coverage may become increasingly complex. Even in a Level 3 AV, where an autonomous system handles all driving in certain situations, the driver must remain ready to take over upon request.<sup>7</sup> In these situations, commentators argue that human oversight will be implicated if an accident occurs, and personal auto insurance relevant.<sup>8</sup> However, as human oversight diminishes, product liability may become increasingly prominent, as it already is when vehicles malfunction.<sup>9</sup> As driving changes, insurance may follow.

Tesla—whose vehicles offer semi-AV features—has been experimenting with specialized insurance programs. In October 2017, Tesla, partnering with Liberty Mutual, launched a car insurance product called InsureMyTesla, tailored for Tesla vehicles.<sup>10</sup> In 2019, Tesla shifted gears with an in-house Tesla Insurance program, working with State National Insurance Company. The insurance program, open to owners of Tesla vehicles, is currently available in

Arizona, California, Illinois, Ohio and Texas, with plans to expand further.<sup>11</sup>

Waymo, for its part, announced in December 2017 a partnership with Trōv to insure its passengers.<sup>12</sup> Trōv, an insurance startup recently acquired by Travelers, allowed companies to offer embedded insurance products to their customers, such as, with Waymo, trip-based insurance coverage.<sup>13</sup> Reportedly, Trōv would provide Waymo passengers insurance for lost or damaged property and trip-related medical expenses.<sup>14</sup> Waymo's app more recently indicates Blanket Accident Insurance coverage is available to passengers through Liberty Mutual.<sup>15</sup>

## State Legislation Has Begun to Create New Insurance Frameworks

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As AVs evolve, federal and state statutes and regulations appear poised to have an impact on the insurance industry. The Hawaii legislature recently found that 29 states and D.C. have enacted legislation, and governors in 11 states have issued executive orders, regarding AVs.<sup>16</sup> Such regulations, and how they vary, will be important to watch.

While auto insurance regulation is currently a function primarily of state law, the National Highway Traffic Safety Administration ("NHTSA") has issued guidance for states regarding AV liability and insurance regulation. The NHTSA considerations include: (a) allocation of liability among AV owners, operators, passengers, manufacturers, and other entities in the event of a crash; (b) determination of which parties should carry vehicle insurance; and (c) operation of laws allocating tort liability.<sup>17</sup> Further, NHTSA suggests that entities applying to test AVs on public roadways be required to prove ability to satisfy judgments for damages, and cites the American Association of Motor Vehicle Administrators' recommended minimum requirement of \$5 million in insurance.<sup>18</sup>

Concerning liability, with higher-level AVs not yet available to consumers, many existing state AV laws regulate manufacturers and commercial service providers permitted to test AVs on public roads.<sup>19</sup> In line with NHTSA's guidance, states like New York and Washington require the testing entity to maintain a \$5 million insurance policy.<sup>20</sup>



States like California, which allow AVs to operate for testing and non-testing purposes, seem to require AV manufacturers to maintain a \$5 million insurance policy in either context.<sup>21</sup> States like Nevada have a \$5 million insurance requirement for testing,<sup>22</sup> but have different requirements in commercial contexts, such as \$1,500,000 per accident while an AV operates as part of a transportation network company (“TNC”), also known as a rideshare company.<sup>23</sup> Still, other states, like Arizona, simply provide that the entity testing or operating the AV meet applicable insurance requirements.<sup>24</sup>

Which entities must carry insurance similarly varies by state and context. Certain states appear to offer flexibility in certain situations. For example, in Nevada, an entity testing AVs on a highway must submit proof of insurance, but for a monitored AV provider operating a vehicle for a TNC, TNC insurance may be provided through one or a combination of policies by any one or a combination of the TNC, driver, and monitored AV provider.<sup>25</sup> In Florida, an AV used as part of a TNC must be covered by a specific insurance policy maintained by either the AV owner, the TNC, or a combination of the two.<sup>26</sup> Separately, Florida permits the operation of low-speed delivery AVs not capable of human occupancy.<sup>27</sup> Such AVs may be covered by a policy belonging to either the AV owner, the teleoperation system owner, the remote human operator, or a combination thereof. States like Texas seem to simply provide that the AV maintain liability coverage.<sup>28</sup>

## **Federal Law Could Potentially Introduce Radical Changes to Auto Insurance: State Preemption, Cybersecurity, and Privacy**

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While federal AV law has been slower to develop, a bill called the Safely Ensuring Lives Future Deployment and Research in Vehicle Evolution Act, or Self Drive Act, was reintroduced in the U.S. House of Representatives in June 2021, after Senate opposition in 2017, and failing to gain traction when reintroduced in 2020.<sup>29</sup> Among other things, the bill preempts states from maintaining regulations of the design, construction, or performance of AVs unless identical to standards prescribed under the bill, and instructs the Secretary of Transportation to establish a “Highly Automated Vehicle Advisory Council” within NHTSA.<sup>30</sup>

Some Self Drive Act provisions will interest insurance industry stakeholders—even if the draft bill says relatively little regarding AV insurance, other than to state that its preemption provision should not prohibit state regulation of insurance.<sup>31</sup> For example, Section 5 would prohibit manufacture or importation of “any highly automated vehicle, vehicle that performs partial driving automation, or automated driving system *unless* such manufacturer has developed a cybersecurity plan.”<sup>32</sup> Under Section 5, such cybersecurity plans would provide for mitigating reasonably foreseeable vulnerabilities from cyberattacks, and preventive and corrective action against such vulnerabilities, including measures to safeguard key controls and systems. This cybersecurity plan requirement is notable because various commentators have asserted that networked AVs could enable damaging cyberattacks.<sup>33</sup> For this reason, many experts believe that demand for cybersecurity insurance will increase with AVs in the market, and some have suggested that auto insurance policies might include cybersecurity riders.<sup>34</sup>

The Self Drive Act also would require AV manufacturers to develop privacy plans under specific criteria. Commentators have noted AV data may interest auto insurers for their own use and to potentially monetize.<sup>35</sup> Accordingly, insurance industry actors have expressed concerns over the potential for disparate state data standards, and have stated that federal standards might be useful.<sup>36</sup>

## Takeaways

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- The development of AVs may introduce changes to the auto insurance industry.
- New auto insurance models have accompanied novel AV developments.
- The increasing number of states enacting AV regulation may play an important role in auto insurance’s future.
- Auto industry stakeholders will want to monitor whether the Self Drive Act gains more traction this time around.

## Notes

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18. *Id.* at 23, 27 n.34.

19. See, e.g., Nev. Rev. Stat. Ann. § 482A.080; Cal. Veh. Code § 38750(b).

20. See N.Y. State Dep't of Motor Vehicles, Apply for an Autonomous Vehicle Technology Demonstration/Testing Permit, <https://dmv.ny.gov/dmv/apply-autonomous-vehicle-technology-demonstration-testing-permit> (last visited Oct. 29, 2021); Wash. Rev. Code Ann. § 46.30.050. According to a recent regulation, companies seeking a testing permit must also indemnify the city of New York against legal liabilities associated with testing AVs on public highways in the city. See Ryan Deffenbaugh, How the city is preparing for the arrival of self-driving cars, *Crain's New York Business* (Sept. 2, 2021), <https://www.crainsnewyork.com/technology/how-new-york-city-preparing-arrival-self-driving-cars>.

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by the vehicle manufacturer, the person that modifies the vehicle by installing autonomous technology ...”), (b)(3) (“Prior to the start of testing in this state, the manufacturer performing the testing shall obtain an instrument of insurance, surety bond, or proof of self-insurance in the amount of five million dollars (\$5,000,000).”), (c)(3) (“an autonomous vehicle shall not be operated on public roads until the manufacturer submits an application ... [that] shall contain ... A certification that the manufacturer will maintain, an instrument of insurance, a surety bond, or proof of self-insurance ... in an amount of five million dollars (\$5,000,000)”).

22. Nev. Rev. Stat. Ann. § 482A.060.

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