

Asked and Answered

By Steve Thorpe

sthorpe@legalnews.com

Gov. Rick Snyder recently signed laws that would allow “driverless” cars to be legally road-tested in Michigan. The laws would limit civil liabilities for manufacturers and installers, except under very limited circumstances. Senate Bill 169 (now officially known as Public Acts 231 of 2013) cleared the way for the road-testing and lays out the ground rules. Steven M. Gursten is a recognized expert on no-fault insurance litigation and is head of Michigan Auto Law, the state’s largest law firm handling car accident, truck accident and motorcycle accident cases.

Thorpe: With potentially risky new technology like this, we usually see fervent supporters and equally passionate doomsayers. Why do you think we currently see so few people questioning the safety of these vehicles and their testing?

Gursten: I think there are two factors at work here. First, and most importantly, the laws do not permit the operation of truly “driverless” vehicles on Michigan’s roadways (at least not yet). By “driverless” I am referring to vehicles that “operate without any control or monitoring by an operator.” The new laws allow so-called “driverless” cars, but only if there is an actual, human driver present as well. The new law provides that there must be a licensed, experienced driver present within the so-called “driverless” vehicle who “has the ability to monitor the vehicle’s performance and, if necessary, immediately take control of the vehicle’s movements.” Second, the new law imposes substantial restrictions on when and how a “driverless” vehicle can be operated on Michigan’s roadways. “Driverless” cars can go out on the road only to “transport” the vehicle from one place to another or to “test” the vehicle’s “automated technology.”

Thorpe: The laws talk a lot about “defects” as a trigger for liability. Tell us about that.

Gursten: This trigger applies only to the manufacturers of “driverless” cars, the manufacturers of “driverless” vehicle technology and the installers of “driverless” vehicle equipment, and what it does is provide immunity from all civil liability for personal injury damages that may result from an accident involving a “driverless” vehicle. However, if the cause of the resulting personal injuries is a “defect” that was “present in the vehicle when it was manufactured” and/or it was “present in the equipment when it was installed,” then the manufacturers and/or installers may be liable.

Thorpe: What are the conditions and requirements manufacturers must follow to test their driverless vehicles?

Gursten: In addition to the requirement discussed above that there must be an actual, human licensed driver present who's able to "take control of the vehicle's movements" if necessary, the following conditions must be met in order to lawfully test drive a "driverless" car on Michigan's road ways: (1) The "driverless" vehicle must be covered by a valid No Fault auto insurance policy; (2) The vehicle's operator must be "authorized" by the manufacturer of the "automated technology" that is being tested in the vehicle; and, (3) A "special plate approved by the secretary of state" must be obtained.

Thorpe: In a recent blog post at www.michiganautolaw.com, you said that the new laws are "an example of how, as technology advances, the rights and legal protections of consumers may fail to keep pace." Explain.

Gursten: The law must change to allow room for this new "driverless" vehicle technology to develop. This technology one day promises to save tens of thousands of lives, and these laws are necessary to give this technology a chance to develop. As I've often said, I look forward to my own obsolescence one day as a lawyer who helps people injured in automobile accidents. Hopefully there will come a time in the next 10 years where they won't need lawyers like me at all.

But as exciting as the promise of this new technology is, we cannot forget about people. The legislature should be creating parallel protections to safeguard people's legal rights while they are allowing this technology to develop. Declaring that manufacturers and installers will be "immune from civil liability for damages" ignores the developing nature of the technology today and dangers it poses to other drivers and to the public in general. While the new laws give near immunity protections to the manufacturers and installers to nurture their budding technology, they do this by preemptively stripping people of their opportunities for legal recourse should the new technology prove more deadly and dangerous than we hope. But there are alternatives that allow us to nurture this technology and protect people that lawmakers can adopt in Michigan.

Thorpe: What additional safeguards, rules or laws would you like to see in place for driverless vehicle testing?

Gursten: First, I'd like to see federal agencies such as the U.S. Department of Transportation become involved now and create national minimum safety standards for the testing and operation of "driverless" vehicle on public roadways. That needs to be done immediately. At first, there can be dozens of companies creating and adapting this technology. Creating uniform standards will become very important. Second, we should create a separate insurance coverage for accidental bodily injury that would be required for all owners and operators of "driverless" autonomous vehicles. Given that this technology promises to eliminate most car accidents (since most car accidents are not accidents at all, they are caused by quite human error), this new type of insurance would be less expensive than the insurance required today to protect against human error and human negligence. And the limits would be higher, which is a fair compromise as we

protect the manufacturers and adapters of this technology in these early years. We could actually have the best of both worlds - much higher liability minimums at a very inexpensive price - that could protect against the potentially unknown dangers from this new technology. Once we have these new liability insurance limits in place, we can now protect drivers, the public, manufacturers and installers equally.

Thorpe: Heard any good driverless car jokes in the course of your research on this topic?

Gursten: There are some great cartoons if you Google it!