

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2021-2022 Regular Session

SB 1398 (Gonzalez)
Version: March 14, 2022
Hearing Date: April 26, 2022
Fiscal: Yes
Urgency: No
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SUBJECT

Vehicles: consumer notices

DIGEST

This bill implements consumer protections in connection with semiautonomous driver assistance features.

EXECUTIVE SUMMARY

The Vehicle Code defines an “autonomous vehicle” as any vehicle equipped with autonomous technology that has been integrated into that vehicle that meets certain definitions of SAE International’s “Taxonomy and Definitions for Terms Related to Driving Automation Systems for On-Road Motor Vehicles, standard J3016 (APR2021),” as may be revised. SAE is an international association that develops industry standards. Existing law provides a series of guidelines for securing authorization to operate autonomous vehicles on public roads for testing. Autonomous vehicles are prohibited from being operated on roads until the manufacturer submits an application to the Department of Motor Vehicles (DMV), and that application is approved, as provided

Concerns have arisen across the country that existing regulations related to partial driving automation do not adequately protect consumers, and specifically, that manufacturers are deceptively describing and advertising their vehicles.

This bill requires dealers and manufacturers to clearly detail the functions and limitations of certain semiautonomous vehicle features. The bill prohibits the use of language that might inaccurately imply that certain features allow the vehicle to function as an autonomous vehicle or otherwise has functionality not actually included.

This bill is author sponsored. It is supported by the Consumer Federation of California and various AAA affiliates. This bill passed out of the Senate Transportation Committee on a 16 to 0 vote.

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Defines “autonomous technology” as technology that has the capability to drive a vehicle without the active physical control or monitoring by a human operator. “Autonomous vehicle” means any vehicle equipped with autonomous technology that has been integrated into that vehicle that meets the definition of Level 3, Level 4, or Level 5 of SAE International’s “Taxonomy and Definitions for Terms Related to Driving Automation Systems for On-Road Motor Vehicles, standard J3016 (APR2021),” as may be revised. (Veh. Code § 38750(a).)
- 2) Provides that an autonomous vehicle does not include a vehicle that is equipped with one or more collision avoidance systems, including, but not limited to, electronic blind spot assistance, automated emergency braking systems, park assist, adaptive cruise control, lane keep assist, lane departure warning, traffic jam and queuing assist, or other similar systems that enhance safety or provide driver assistance, but are not capable, collectively or singularly, of driving the vehicle without the active control or monitoring of a human operator. (Veh. Code § 38750(a).)
- 3) Authorizes an autonomous vehicle to be operated on public roads for testing purposes by specified drivers where certain requirements are met. (Veh. Code § 38750(b).)
- 4) Prohibits an autonomous vehicle from being operated on public roads until the manufacturer submits an application to the Department of Motor Vehicles (DMV), and that application is approved, as provided. (Veh. Code § 38750(c).)
- 5) Establishes the Unfair Competition Law (UCL), which provides a statutory cause of action for any unlawful, unfair, or fraudulent business act or practice and unfair, deceptive, untrue, or misleading advertising, including over the internet. (Bus. & Prof. Code § 17200 et seq.)
- 6) Establishes the False Advertising Law (FAL), which proscribes making or disseminating any statement that is known or should be known to be untrue or misleading with intent to directly or indirectly dispose of real or personal property. (Bus. & Prof. Code § 17500 et seq.)
- 7) Provides remedies for individuals who have suffered damages as a result of fraud or deceit, including situations involving fraudulent misrepresentations. (See Civil Code §§ 1709-1710, 1572-1573.)

- 8) Establishes the Consumer Legal Remedies Act (CLRA), which prohibits unfair methods of competition and unfair or deceptive acts or practices undertaken by any person in a transaction intended to result or which results in the sale or lease of goods or services to any consumer. (Civ. Code § 1770(a).)

This bill:

- 1) Prohibits a dealer or manufacturer from selling any new passenger vehicle that is equipped with any semiautonomous driver assistance feature, or providing any software update or other vehicle upgrade that adds any semiautonomous driver assistance feature, without, at the time of delivering or upgrading the vehicle, providing the buyer or owner with a notice that clearly describes the functions and limitations of any such feature with which the vehicle is equipped.
- 2) Prohibits a manufacturer or dealer from naming, referring to, or marketing any semiautonomous driver assistance feature using language that implies or would otherwise lead a reasonable person to believe, that the feature allows the vehicle to function as an autonomous vehicle, as defined, or otherwise has functionality not actually included in the feature.
- 3) Defines “semiautonomous driver assistance feature” as a vehicle system or feature, including, but not limited to, monitored autopilot systems, electronic blind spot monitoring, automated emergency braking, parking assist, adaptive cruise control, lane keep assist, lane departure warning, traffic jam and queuing assist, or other similar system, that enhances safety or provides driver assistance, but is not capable, collectively or singularly, of driving the vehicle without the active control or monitoring of a human operator.

COMMENTS

1. Ensuring transparency in autonomous vehicles

As discussed, an “autonomous vehicle” is any vehicle equipped with autonomous technology that has been integrated into that vehicle that meets the definition of Level 3, Level 4, or Level 5 of SAE International’s “Taxonomy and Definitions for Terms Related to Driving Automation Systems for On-Road Motor Vehicles, standard J3016 (APR2021),” as may be revised. The Vehicle Code specifically provides that an autonomous vehicle does not include a vehicle that is equipped with one or more collision avoidance systems, including, but not limited to, electronic blind spot assistance, automated emergency braking systems, park assist, adaptive cruise control, lane keep assist, lane departure warning, traffic jam and queuing assist, or other similar systems that enhance safety or provide driver assistance, but are not capable,

collectively or singularly, of driving the vehicle without the active control or monitoring of a human operator. (Veh. Code § 38750(a).)

In recent years there have been widespread concerns that vehicles with some of these latter features, “semiautonomous driver assistance features,” have been hailed as autonomous vehicles, or at least implied they are something they are not, much to the detriment of driver safety.

As early as 2018, consumer groups have been calling for investigations and regulatory action in response to these deceptive practices:

The Center for Auto Safety and Consumer Watchdog today called on the Federal Trade Commission to investigate dangerously misleading and deceptive advertising and marketing practices and representations made by Tesla Motors, Inc. regarding the safety and capabilities of its Autopilot feature. At least two people are dead and one is injured in the United States as a result of Tesla deceiving and misleading consumers into believing its vehicle’s Autopilot feature is safer and more capable than it is in practice, the public interest groups said in a letter to FTC Chairman Joseph Simons.

After studying the first of these fatal accidents, the National Transportation Safety Board (NTSB) determined that over-reliance on, and a lack of understanding of, the Autopilot feature can lead to death, the groups noted. The marketing and advertising practices of Tesla, combined with CEO Elon Musk’s public statements, have made it reasonable for Tesla owners to believe, and act on that belief, that a Tesla with Autopilot is an autonomous vehicle capable of “self-driving,” the letter warned.¹

However, it is not just consumer groups. The lead federal agency regulating this space has specifically highlighted their concerns with these practices:

The head of the U.S. National Transportation Safety Board on Tuesday doubled down on criticisms of Tesla’s driver-assist systems following several fatal crashes in recent years, calling the company’s use of “Full Self-Driving” for its latest systems “misleading.”

The comments come a day after NTSB Chairwoman Jennifer Homendy sent a letter to Tesla CEO Elon Musk about the company’s failure to respond to recommendations issued by the safety watchdog four years

¹ News, *Center for Auto Safety and Consumer Watchdog Request FTC Investigation into Deceptive Tesla “Autopilot”* (May 23, 2018) The Center for Auto Safety, https://www.autosafety.org/ftc_investigation_request_tesla_autopilot/.

ago to limit the system's functionality and implement more stringent safeguards to monitor driver disengagement.

"It's clear that if you're marketing something as full self-driving and it is not full self-driving, and people are misusing the vehicles and the technology, but you have a design flaw and you have to prevent that misuse," Homendy said" "And part of that is how you talk about your technology. It is not full self-driving. . . . It's misleading."²

Just last year, United States Senator Richard Blumenthal and Edward Markey wrote to Federal Trade Commission Chair Lina Khan to express their "serious concerns about Tesla's misleading advertising of its Autopilot and Full Self-Driving (FSD) features."³ They asserted "Tesla's marketing has repeatedly overstated the capabilities of its vehicles, and these statements increasingly pose a threat to motorists and other users of the road." They implored the FTC "to open an investigation into potentially deceptive and unfair practices in Tesla's advertising and marketing of its driving automation systems and take appropriate enforcement action to ensure the safety of all drivers on the road."

This bill simply requires dealers and manufacturers that sell new passenger vehicles equipped with semiautonomous driver assistance features to provide a notice that clearly describes the functions and limitations of those features. A manufacturer or dealer is prohibited from naming, referring to, or marketing any semiautonomous driver assistance feature using language that implies or that would otherwise lead a reasonable person to believe that the feature allows the vehicle to function as an autonomous vehicle, or otherwise has functionality not actually included in the feature.

According to the author:

Senate Bill (SB) 1398 increases consumer safety by requiring dealers and manufacturers that sell passenger vehicles equipped with a partial driving automation feature or provides any software update or vehicle upgrade that adds a partial driving automation feature to give a clear description of the functions and limitations of those features. Further, SB 1398 prohibits a manufacturer or dealer from deceptively naming, referring to, or marketing these features.

² Michael Wayland, *NTSB head criticizes Tesla's self-driving features, calls them 'misleading'* (October 27, 2021) CNBC, <https://www.cnbc.com/2021/10/26/ntsb-head-criticizes-teslas-self-driving-features-calls-them-misleading.html>.

³ Senators Richard Blumenthal and Edward Markey, *Letter to Chair Lina Khan* (August 18, 2021) <https://www.blumenthal.senate.gov/imo/media/doc/2021.08.18%20-%20FTC%20-%20Tesla.pdf>.

The provisions of this bill do not provide an explicit basis for consumer enforcement. The DMV has the authority to take action against those in violation. However, to ensure that the bill does not undermine other laws that may allow for other bases for holding violators accountable the author has committed to inserting a preservation clause in the bill to make clear it does not abrogate or limit any other obligation imposed by other laws.

2. Stakeholder positions

The Consumer Federation of California writes in support:

Currently, the DMV regulates truly automated driving systems, those which do not require active control or monitoring by a human, and evaluates descriptions of this technology. However, semiautonomous driver assistance features, similar to autopilot or blind spot monitoring, do not get the same oversight of their naming, marketing, or description of these features.

This gap in oversight of vehicles with these technologies means that consumers can be confused by, or purposely misled by, descriptions of the features. A consumer who purchases a vehicle or vehicle upgrade may be under the false impression that their vehicle is now more autonomous. A simple cruise control feature can be marketed in such a way that a consumer may believe that they can pay less attention to the road. This can have dangerous consequences, including accidents and death.

SB 1398 fills this gap in regulation by requiring vehicle dealers or manufacturers to provide a notice to consumers at purchase which describes the functions and limitations of any semiautonomous driver assistance feature.

Writing in support, the Automobile Club of Southern California and AAA Northern California explain the need for the bill:

The AAA Foundation for Traffic Safety (AAAFTS) conducted a survey in 2018 of over 1,200 owners of vehicles equipped with various ADAS features. While most vehicle owners had favorable impressions of their ADAS features, many lacked an understanding of key limitations of the technologies. For instance, only one in five fully understood blind spot monitoring systems are unable to detect vehicles passing at very high speeds. Similarly, another AAA Consumer Survey in 2018 found 40 percent of Americans expected monitored autopilot systems, with names like Autopilot, ProPILOT or Pilot Assist, to have the ability to drive the car by themselves. This lack of consumer understanding regarding ADAS

functionality and limitations is attributable, at least in part, to a gap between the terminology automakers and dealers use verses how their vehicles can actually perform.

The AAA Clubs support SB 1398 because there is a strong need to help consumers better understand the technologies in use now and those coming in the future, especially as automakers continue to market wide-ranging terms to describe similar features.

SUPPORT

AAA Northern California
Automobile Club of Southern California
Consumer Federation of California
Green Hills Software

OPPOSITION

None known

RELATED LEGISLATION

Prior Legislation:

SB 66 (Allen, 2021) requires the Secretary of the California State Transportation Agency to establish an advisory committee – the California Council on the Future of Transportation – to provide the Governor and Legislature with recommendations for changes in state policy to ensure that as autonomous vehicles are deployed, they enhance the state’s efforts to increase road and transit safety, promote equity, and meet public health and environmental objectives. This bill was held on suspense in the Assembly Appropriations Committee.

SB 500 (Min, Ch. 277, Stats. 2021) requires, commencing January 1, 2030, to the extent authorized by federal law, any autonomous vehicle of model year of 2031 or later and a gross vehicle weight rating of less than 8,501 pounds shall only be operated if it is a zero-emission vehicle.

SB 570 (Wieckowski, Ch. 428, Stats. 2021) specifies that certain vehicle equipment requirements that apply to traditional vehicles do not apply to autonomous vehicles.

PRIOR VOTES:

Senate Transportation Committee (Ayes 16, Noes 0)
