

Date of Hearing: June 20, 2022

ASSEMBLY COMMITTEE ON TRANSPORTATION

Laura Friedman, Chair

SB 1398 (Gonzalez) – As Amended June 13, 2022

SENATE VOTE: 31-0

SUBJECT: Vehicles: consumer notices

SUMMARY: Requires a dealer or manufacturer of a passenger vehicle that is equipped with any partial driving automation feature to provide the buyer or owner with a notice that provides the name of each feature and clearly describe the functions and limitations of the feature.

Specifically, **this bill:**

- 1) Prohibits a manufacturer or dealer from featuring or describing any partial driving automation feature in written marketing materials from 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 when it lacks that functionality.
- 2) Defines “partial driving automation feature” as a system equipped with a level 2 partial driving automation in the Society of Automotive Engineers (SAE) Standard (J3016) (April 2021).
- 3) Requires manufacturers to provide dealers with the information required for dealers to comply with the requirement to provide purchasers with information on the functions and limitations of the partial driving automation feature.
- 4) Provides that the requirement to provide information on the partial driving automation vehicle shall not be construed to alter any existing duty of care or limit the civil liability of a manufacturer or dealer.
- 5) Provides that compliance with the above provisions shall not be construed as a defense in any claim of negligence or product defect arising from the use of a partial driving automation feature.

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.
- 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.

- 3) Authorizes an autonomous vehicle to be operated on public roads for testing purposes by specified drivers where certain requirements are met.
- 4) Per regulation, prohibits manufacturers from representing in any advertising the sale or lease of a vehicle that is autonomous when it is not.
- 5) 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.
- 6) 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.
- 7) 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.
- 8) Provides remedies for individuals who have suffered damages as a result of fraud or deceit, including situations involving fraudulent misrepresentations.
- 9) 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.

FISCAL EFFECT: According to the Senate Appropriations Committee, pursuant to Senate Rule 28.8, negligible state costs.

COMMENTS:

In 2012, the Legislature passed SB 1298 (Padilla), Chapter 570, Statutes of 2012, which permitted AVs to be operated on public roads for testing purposes by a driver under certain conditions. In 2014, DMV released regulations to allow for the testing of AVs with a test driver, and in April 2018, DMV finalized regulations for the testing and deployment of AVs on public roads without a driver, with certain limitations. 58 companies currently have a testing permit with a driver, and eight companies have received a testing permit without a driver. One company has received a deployment permit.

AVs have the potential benefit of saving hundreds of thousands of lives. According to the National Highway Traffic Safety Administration (NHTSA), 94% of all vehicle collisions are the result of human error. From 2000 to 2017, 620,709 individuals were killed in a car collision on American roads.

SAE International is a U.S. based professional association of engineers. SAE International's *Taxonomy and Definition for Terms Related to Driving Automation Systems for On-Road Motor Vehicles* have become the accepted engineering definitions for the different levels of automation with NHTSA and DMV. SAE has designated six different levels of Automated Vehicles (AVs):

Level 0: The human driver does all the driving.

Level 1: An advanced driver assistance system (ADAS) on the vehicle can sometimes assist the human driver with either steering or braking/accelerating, but not both simultaneously. An example includes adaptive cruise control.

Level 2: ADAS on the vehicle control both steering and braking/accelerating simultaneously under some circumstances. The human driver must pay full attention ("monitor the driving environment") at all times and perform the rest of the driving task. Examples include Tesla's Autopilot and Cadillac Super Cruise.

Level 3: An ADAS on the vehicle performs all aspects of the driving task under some circumstances. In those circumstances, the human driver must be ready to take back control at any time when the ADAS requests the human driver to do so. In all other circumstances, the human driver performs the driving task.

Level 4: ADAS on the vehicle performs all driving tasks and monitors the driving environment – essentially, does all the driving – in certain circumstances. The human need not pay attention in those circumstances.

Level 5: ADAS on the vehicle does all the driving in all circumstances. The human occupants are passengers and do not need to be involved in driving.

Both the federal and state law define AVs as vehicles with automated technology of Levels 3-5.

Level 2 and Level 3 systems relieve the driver of some or all of the dynamic driving task, while still requiring the driver to pay active attention to the road.

Experts and some AV developers have questioned whether Level 3 vehicles are safe at all, as it creates a split responsibility between drivers and machines. In October of 2015, Google released a report on its experiences with its driverless technology. In 2012, several Google employees were allowed to use one of Google's vehicles on autonomous mode for the freeway portion of their commute to work. Every employee was warned that the car is in its beginning stage, and they should pay attention 100% of the time. Each car was equipped with a video camera inside that would film the passengers.

Despite Google's instructions, videos showed that some drivers completely turned away from the driving seat to do things like search for a cell-phone charger, while others simply relaxed. Engineers call this behavior automation bias. Google stated in their report: "We saw human nature at work: people trust technology very quickly once they see that it works. As a result, it's difficult for them to dip in and out of the task of driving when they are encouraged to switch off and relax."

Waymo, Google's automated vehicle arm, has publicly stated they will not be releasing Level 3 vehicles out of safety concerns that drivers may fall asleep while systems are operating, placing the driver and other users at risk.

Research at Virginia Tech University sponsored by General Motors (GM) and the Federal Highway Administration found similar results. Twelve drivers were given vehicles with adaptive cruise control that handled a car's steering and breaking and put on a test track. Drivers were provided reading material, food, drinks and entertainment media. A passenger joined them and was watching a DVD during the test drive. 58% of drivers watched the DVD for some time during the three hour trip. 25% of the drivers read--increasing their risk of a car crash by 3.4 times. Overall, drivers were estimated to be looking away from the road about 33% of the time during the course of the three-hour trip.

According to the author, "Senate Bill (SB) 1398 increases consumer safety by requiring dealers and manufacturers that sell new 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."

While Level 2 systems are not as advanced as Level 3 systems, the problems identified by Google for Level 3 systems for driver overreliance have been prevalent for users of Level 2 systems. Unlike Level 3 systems, level 2 systems are not capable of completing all dynamic driving tasks, but can complete enough of the dynamic driving tasks where drivers may stop paying attention. Cars with level 2 technology have several features to deal with this problem. Tesla requires a hand to be on the wheel, while General Motor's Super Cruise has a camera that monitors a human's face to make sure they are paying attention. Tesla's system to ensure drivers are paying attention has not been fool proof. For example, in September of 2021 a Tesla driver was arrested in Glendale, California for driving under the influence. The driver was passed out behind the wheel as the vehicle operating on Autopilot was driving at slow speeds on a freeway overpass. Law enforcement got in front of the vehicle and slowed down to get the vehicle to stop.

The Automobile Club of Southern California and AAA Northern California, Nevada and Utah, writing in support of this bill, argue "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."

The NHTSA’s crash investigation team has 42 open investigations related to Level 2 driver assist technologies, 35 of which involve Tesla.

Several prominent individuals and companies have particularly critiqued Tesla for using the terms “full self-driving” and “autopilot” to describe their technology as misleading to consumers while leading them to overly rely on those systems to drive. In an interview with the Wall Street Journal, NTSB Chair Jennifer Homendy said Tesla’s use of Full Self Driving ““has clearly misled numerous people to misuse and abuse technology.” She has called the name “disingenuous”, saying people pay more attention to marketing and a name than they do warnings or manuals.

In 2020 a German court ordered Tesla to stop using the terms “autopilot” and “full self-driving” in their advertising. More recently in the United States, Senator Blumenthal of Connecticut and Senator Markey of Massachusetts have called for the Federal Trade Commission to open an investigation into whether Tesla has engaged in deceptive marketing practices regarding the capabilities of its Autopilot and Full Self-Driving systems. California’s DMV currently has an open investigation into Tesla for false advertising as it relates to the use of both terms.

Waymo, Google’s autonomous driving division, in January of 2021 stopped referring to its systems as “self-driving” in part because it believes Tesla’s use of the term has created confusion with drivers.

Tesla, for its part, states on its website that “Autopilot and Full Self-Driving Capability are intended for use with a fully attentive driver, who has their hands on the wheel and is prepared to take over at any moment. While these features are designed to become more capable over time, the currently enabled features do not make the vehicle autonomous.” Both systems are clearly marked in Tesla’s advertising as being in “beta,” signaling to consumers that the technology is still in its testing phase.

Tesla, writing in opposition to this bill, argues “We take consumer education very seriously and wholeheartedly support efforts to ensure that consumers are well educated about their vehicle. To this end, we have mandatory education on our vehicle features upon taking possession of the vehicle and provide numerous points of education when using features, online, and in the owner's manual. Unfortunately, SB 1398 misses the mark of promoting consumer education. It offers a vague solution to an undefined problem without examining the sufficiency of the DMV’s broad authority over advertising statements (*see* Cal. Code Regs. Tit. 13 § 228.28).

Double Referral: Should this bill pass this committee it will be referred to the Assembly Judiciary Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

AAA Northern California, Nevada & Utah
Auto Club of Southern California (AAA)
Consumer Attorneys of California
Consumer Federation of California

Oppose

Alliance for Automotive Innovation
Tesla

Analysis Prepared by: David Sforza / TRANS. / (916) 319-2093