

Calif. Trucking Bill Has Autonomous Vehicle Industry On Edge

By **Linda Chiem**

Law360 (May 12, 2023, 7:01 PM EDT) -- Momentum for a California proposal seeking to ban autonomous heavy-duty trucks from operating without a human driver behind the wheel has sparked fears that the Golden State will kick off a nationwide patchwork of state regulations that will hinder the burgeoning autonomous vehicle industry, experts say.

Assembly Bill 316, which advanced out of two committees in the lower chamber of the California State Legislature this spring, would prohibit the operation of any autonomous vehicle weighing more than 10,001 pounds on public roads for testing purposes, transporting goods or transporting passengers without a human safety operator physically present in the autonomous vehicle at the time of operation.

The bill's next hearing is before the Assembly Appropriations Committee on May 18.

The bill's staunchest supporters, including the International Brotherhood of Teamsters and the California Labor Federation, say it's crucial to ensuring highway safety and trucking industry jobs. But critics of the bill say it prematurely handcuffs autonomous vehicle developers with shortsighted wholesale restrictions.

"For years, there has been tension in the autonomous vehicles space between the compelling goals of advancing technology, promoting public safety and preserving jobs. A.B. 316 is highlighting the strain," said Steve Wernikoff, partner and co-leader of the autonomous vehicles practice group at Honigman LLP.

In the absence of a uniform federal regulatory framework governing autonomous vehicle operations, there's growing unease that states like California will start filling in the regulatory gaps with blanket mandates that could curb innovation and disrupt interstate commerce in the long term, experts say.

"Autonomous technology holds great societal promise. But proposals such as A.B. 316 run the risk of stifling development," said Eric J. Tanenblatt, Dentons' global chair of public policy and regulation and co-leader of the firm's global autonomous vehicle practice. "A.B. 316 demonstrates the need for more comprehensive frameworks and approaches, and reflects the struggle states are having on how best to craft accurate regulations for driverless technology in the absence of a federal framework."

"Due to California's role as a major hub for autonomous technology, this proposal, if adopted, could have an outsized influence on the industry," Tanenblatt added. "By prohibiting self-driving trucks outright, California could restrict the full potential of this technology in a state that is often seen as a leader in this space."

The National Highway Traffic Safety Administration, the U.S. auto safety regulator, in recent years has issued mostly voluntary guidelines laying out best practices for the industry to follow regarding cars with autonomous driving capabilities.

The agency in March 2022 issued a first-of-its-kind final rule updating the Federal Motor Vehicle Safety Standards governing occupant safety in cars with automated driving systems. The rule allows autonomous vehicles to be built without manual controls or protective features such as steering wheels or airbags. But there still is no singular federal rule governing how autonomous vehicles are deployed nationwide.

To that end, state and local governments have implemented their own regulations related to how AVs can be tested and operated within their jurisdictions, with some requiring special permits and waivers.

California is considered a leader in autonomous vehicle development. The Bay Area is home to Alphabet Inc. unit Waymo LLC, General Motors unit Cruise LLC, Amazon's Zoox Inc., Nuro Inc., WeRide Corp. and other AV developers.

Tucker Ellis LLP partner Tod Northman characterized A.B. 316 as "a solution in search of a problem," noting the

bill is worrisome because of the significant national shortage of long-haul truckers and the demonstrated safety of pilot autonomous trucking initiatives.

"Autonomous trucking is, in my view, the most promising early-term commercial use case for AV," he said. "California has been a leader in AV regulation on the state level. If other states follow California's lead, autonomous trucking development could be permanently stalled, and the U.S. could cede global leadership in AV development."

The state's Department of Motor Vehicles sets the rules for autonomous vehicle testing and deployment on California roads. Since 2019, California has allowed autonomous light-duty vehicles to be tested on its roadways, but there is a 10,000-pound weight limit. More recently, the state DMV signaled it would start contemplating rules for heavy-duty autonomous truck operations.

Labor organizations promptly lobbied for legislation, contending it was "highly irregular and undemocratic for such a sweeping public policy change to be implemented by the DMV." They cited highway safety risks and a lack of assurances from AV developers that truck drivers and jobs wouldn't be displaced once full automation hits the mainstream.

A.B. 316 was introduced in January by state Assemblymembers Cecilia Aguiar-Curry, Laura Friedman and Ash Kalra, Democrats, and Tom Lackey, a Republican.

"When this industry proves to me, my colleagues and our constituents that humanless trucking and driverless school buses are safer than our model in California, they will have the support to proceed," Aguiar-Curry, D-Winters, said in a statement last month.

Jason Rabinowitz, president of the Teamsters Joint Council 7, said A.B. 316 is "common-sense legislation to everyone except the tech companies and their allies in Sacramento advocating against it."

A chief concern is that the California bill doesn't set a date for lifting the requirement that all heavy-duty AV operations have a human driver at the controls.

"A concerning aspect of these laws to the AV industry is that, as written, they do not sunset," Honigman's Wernikoff noted. "This means that, absent amendment or revocation, there is no path for driverless deployment to occur in those states. In that situation, companies will have to think carefully about whether it makes sense to expend the resources to advance AV technology in those jurisdictions."

Ariel Wolf, chair of the autonomous and connected mobility group at Venable LLP, said there's no precedent for a state to require a human driver to be present — in perpetuity — in order to fully deploy commercial AVs.

"Requiring a human driver to be present in an AV is fundamentally at odds with the aim of the technology," he told Law360. "A vehicle driving autonomously is the feature, not the bug."

"There's just no leg to stand on when trying to make this bill about safety ... if these concerns are legitimate, you'd think that the DMV process would be a great place to bring that to bear, right?" Wolf added. "It'd be a tremendous mistake to proceed along these lines for purely political and irrational reasons. So the process has a ways to go, and we're going to continue to engage thoughtfully with anyone who wants to listen to thoughtful engagement."

Other states are toying with similar approaches to California's.

For example, Illinois state lawmakers this session floated H.B. 1403, which states "an operator of an autonomous vehicle shall not use the vehicle to engage in the transport of interstate commerce or the transporting of passengers, or the transporting of goods, unless a human safety operator is physically present in the autonomous vehicle such that he or she has the ability to monitor the vehicle's performance and intervene if necessary, including operating or shutting off the vehicle."

But the Autonomous Vehicle Industry Association has said there's zero evidence that autonomous trucks are somehow unsafe or will spark mass layoffs of truck drivers, arguing the California bill is being pushed through based on nothing more than speculation. The association maintains that autonomous trucks will instead enhance safety on roadways by removing errors by impaired, distracted or drowsy drivers.

Northman agreed, saying "there is little evidence that a 'human safety operator' improves the safety of autonomous vehicle operations, and A.B. 316 would effectively stifle needed research for autonomous trucking in California."

It's worth "bear[ing] in mind, we haven't experienced safety problems with pilot autonomous trucking

deployment in other states," he added.

Further, A.B. 316 assumes that the status quo is preferable to autonomous trucking deployment, but safety figures show "human-driven long-haul trucking is a fraught endeavor, with truck-driver error causing the vast majority of accidents between trucks and cars," according to Northman.

"A.B. 316 flies in the face of a decade of learning and would evince a NIMBY attitude, pushing the autonomous trucking industry to other states," Northman said.

--Editing by Alanna Weissman and Philip Shea.