

To: Transportation Interim Committee  
From: Joe Carroll, Staff Attorney  
Date: January 3, 2022

Re: liability and autonomous vehicles

## **Introduction**

Researchers for the National Council of State Legislatures track autonomous vehicle legislation across the nation.<sup>1</sup> They note that in 2015 95% of automobile crashes involved driver error and that "proponents of autonomous vehicles argue that they could remove human error from the driving equation and prevent the lion's share of crashes," but that others "are concerned that driverless vehicles could pose a danger to other motorists and pedestrians."<sup>2</sup> This raises important questions about apportioning liability between people and the products they are using on the road.

This memo will provide a quick overview of: (I) vehicle liability laws in Montana; (II) products liability laws in Montana; (III) bills from the 2019 session that sought to deal with autonomous vehicle liability; and (IV) how some other states have legislated autonomous vehicle liability.

## **I. Vehicle liability in Montana**

In 1979 the Legislature passed our state's mandatory vehicle liability law to protect victims of motor vehicle accidents.<sup>3</sup> Generally, owners of motor vehicles registered in Montana are required under 61-6-301, MCA, to carry motor vehicle insurance. But that statute has a self-insurance exception, and 61-6-303, MCA, exempts certain classes of vehicles, including motorcycles and implements of husbandry, from mandatory insurance.

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<sup>1</sup> "Autonomous Vehicles . . . Enacted Legislation", <https://www.ncsl.org/research/transportation/autonomous-vehicles-self-driving-vehicles-enacted-legislation.aspx>

<sup>2</sup> "Regulating Autonomous Vehicles", Ben Husch and Anne Teigen, <https://www.ncsl.org/research/transportation/regulating-autonomous-vehicles.aspx>

<sup>3</sup> "Compliance with Montana's Mandatory Motor Vehicle Liability Insurance Law", <https://leg.mt.gov/content/Publications/Audit/Report/05P-06.pdf>

Section 61-6-103, MCA, provides minimum coverage requirements for required motor vehicle liability policies. Those minimums are:

- (i) \$25,000 because of bodily injury to or death of one person in any one accident and subject to the limit for one person;
- (ii) \$50,000 because of bodily injury to or death of two or more persons in any one accident; and
- (iii) \$20,000 because of injury to or destruction of property of others in any one accident.

Section 61-6-304, MCA, provides penalties for not carrying the minimum insurance required. The penalties are:

<b>1<sup>st</sup> conviction</b>	<b>2<sup>nd</sup> conviction</b>	<b>3<sup>rd</sup> or subsequent conviction</b>	<b>4<sup>th</sup> or subsequent conviction</b>
\$250-\$500 fine	\$350 fine	\$500 fine, or imprisonment for not more than 10 days, or both	\$500 fine, or imprisonment for not more than 10 days, or both
	surrender of vehicle registration receipt and license plate, if vehicle was operated by its owner, immediate family member, or someone authorized by the owner	surrender of vehicle registration receipt and license plate, if vehicle was operated by its owner, immediate family member, or someone authorized by the owner	surrender of vehicle registration receipt and license plate, if vehicle was operated by its owner, immediate family member, or someone authorized by the owner
			surrender of driver's license, if vehicle driven at the time of offense was registered to the offender or an immediate family member

The statute further provides that:

An offender is considered to have been previously convicted for the purposes of sentencing if less than 5 years have elapsed between the commission of the present offense and a previous conviction.

## **II. Products liability in Montana**

Section 27-1-719, MCA, is Montana's general products liability statute. It provides that the manufacturer or retailer of "a product in a defective condition that is unreasonably dangerous to a user or consumer . . . is liable for physical harm caused by the product to the ultimate user or consumer." Many nuances and exceptions exist and can be discussed at a legislator's request.

## **III. 2019 bills**

Two bills in the 2019 session dealt with autonomous vehicle liability. Neither bill passed.

House Bill 304 (2019), sponsored by Shane Morigeau, sought to add a new section to Title 61, chapter 6. It would have placed liability on the operator of a vehicle using a driving automation system for the operator's acts or omissions, while preserving the operator's ability to seek contribution from other parties. The bill transmitted from the House to the Senate and was tabled in the Senate Judiciary Committee.<sup>4</sup>

House Bill 769 (2019), sponsored by Tom Winter, sought to add six new sections to Title 61. It would have allowed for on-demand autonomous vehicle networks to operate under Title 69. It would have required the owner of a vehicle equipped with an automated driving system to ensure it complies with insurance requirements before operating it in the state. The bill was tabled in the House Judiciary Committee.<sup>5</sup>

## **IV. Other states**

Other states have taken a wide variety of approaches to liability issues for autonomous vehicles. Significant differences exist regarding: (A) insurance coverage for autonomous vehicles; (B) who or what is operating an autonomous vehicle or is otherwise responsible for its actions; (C) liability and product liability laws.

### *A. Insurance coverage*

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<sup>4</sup>[http://laws.leg.mt.gov/legprd/LAW0210W\\$BSIV.ActionQuery?P\\_BILL\\_NO1=304&P\\_BLTP\\_BILL\\_TYP\\_CD=HB&Z\\_AC TION=Find&P\\_SESS=20191](http://laws.leg.mt.gov/legprd/LAW0210W$BSIV.ActionQuery?P_BILL_NO1=304&P_BLTP_BILL_TYP_CD=HB&Z_AC TION=Find&P_SESS=20191)

<sup>5</sup>[http://laws.leg.mt.gov/legprd/LAW0210W\\$BSIV.ActionQuery?P\\_BILL\\_NO1=769&P\\_BLTP\\_BILL\\_TYP\\_CD=HB&Z\\_AC TION=Find&P\\_SESS=20191](http://laws.leg.mt.gov/legprd/LAW0210W$BSIV.ActionQuery?P_BILL_NO1=769&P_BLTP_BILL_TYP_CD=HB&Z_AC TION=Find&P_SESS=20191)

Six states—Iowa, Nebraska, North Carolina, North Dakota, Texas, and Utah—explicitly require autonomous vehicles to follow their ordinary motor vehicle insurance laws.<sup>6</sup> Georgia requires insurance coverage at 250% of ordinary requirements.<sup>7</sup> Alabama and Louisiana require \$2,000,000 coverage for autonomous commercial vehicles.<sup>8</sup>

*B. Operator/Responsible party*

Florida and Utah have legislated that an automated driving system is the operator of a vehicle when the ADS is engaged.<sup>9</sup> Alabama and Texas consider the owner of the automated vehicle to be its operator.<sup>10</sup> Iowa has legislated that an owner is liable if an automated vehicle fails to stop after an accident.<sup>11</sup> Louisiana has legislated that the person or entity operating an automated vehicle may be issued traffic citations or other penalties.<sup>12</sup>

*C. Liability*

In autonomous vehicle legislation, Alabama, Colorado, and Louisiana have explicitly preserved their ordinary liability laws.<sup>13</sup> Washington, D.C., Florida, and Michigan have limited the liability of manufacturers of vehicles made autonomous by third parties.<sup>14</sup> Michigan has limited the liability of repair shops that follow manufacturer specifications when repairing autonomous vehicles.<sup>15</sup>

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<sup>6</sup> Iowa Code 321.516; R.R.S. Neb. 60-3304; N.C. Gen. Stat. 20-401; N.D. Cent. Cod, 39-01-01.2; Tex. Transp. Code 545.454; Utah Code Ann. 41-26-107

<sup>7</sup> O.C.G.A. 40-8-11

<sup>8</sup> Code of Ala. 32-9B-3; La. R.S. 32:400.3

<sup>9</sup> Fla. Stat. 316.86; Utah Code Ann. 41-26-104

<sup>10</sup> Code of Ala. 32-9B-4; Tex. Transp. Code 545.453

<sup>11</sup> Iowa Code 321.517

<sup>12</sup> La. R.S. 32:400.4

<sup>13</sup> Code of Ala. 32-9B-8; C.R.S. 42-4-242; La. R.S. 32:400.8

<sup>14</sup> D.C. Code 50-2353; Fla. Stat. 316.86; MCLS 600.2949b

<sup>15</sup> MCLS 600.2949b