
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair

2017 - 2018 Regular

Bill No: AB 87 **Hearing Date:** June 26, 2018
Author: Ting
Version: June 4, 2018
Urgency: No **Fiscal:** Yes
Consultant: GC

Subject: *Vehicles: Removal: Autonomous Vehicles*

HISTORY

Source: Author

Prior Legislation: SB 1298 (Padilla), Ch. 570, Stats. of 2012

Support: Amalgamated Transit Union; Automobile Club of Southern California; California Police Chiefs Association; California Teamsters Public Affairs Council;

Opposition: None known

Assembly Floor Vote: Not relevant

PURPOSE

The purpose of this bill is to allow law enforcement officials to remove and hold a vehicle that is operating in autonomous mode without an approved application or permit that is required to test, deploy, or otherwise operate the autonomous vehicle (AV) on public roads.

Existing law provides the right of the people of the United States to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized. (U. S. Const. amend. IV)

Existing law authorizes a peace officer or other specified public employees to remove a vehicle if the vehicle is found or operated upon a highway, public land, or an off-street parking facility, under specified circumstances. (Cal. Veh. Code § 22651)

Existing law requires the release of these removed vehicles to the owner or person in control of the vehicle only after the owner or person provides the storing law enforcement agency with proof of current registration and a valid driver's license, with some specified exemptions. (Cal. Veh. Code § 22650, et. seq.)

Existing law authorizes the operation of autonomous vehicles on public roads for testing and non-testing purposes under certain circumstances subject to regulations adopted by the Department of Motor Vehicles (DMV), as specified. (Cal. Veh. Code § 38750)

Existing law defines autonomous technology as technology that has the capability to drive a vehicle without the active physical control or monitoring by a human operator. (Cal. Veh. Code § 38750)

This bill authorizes a peace officer or other specified public employees to remove a vehicle if the vehicle is operating upon a highway, public land, or an off-street parking facility that is using autonomous technology without an approved application or permit that is required to test, deploy, or otherwise operate the autonomous vehicle on public roads

This bill specifies that this does not provide the authority to stop an autonomous vehicle for the sole purpose of determining whether the vehicle is operating without a permit.

This bill requires that the vehicle be released to the registered owner or driver only if the owner or driver provides proof of an approved application or permit required to test, deploy, or otherwise operate the autonomous vehicle on public roads.

COMMENTS

1. Need for This Bill

According to the author:

Autonomous vehicles can create new opportunities for disabled, elderly, and low-income people to be mobile. While this exciting technology has the potential to transform transportation, public safety should be the first priority. For the safe deployment of autonomous vehicles, it is essential that law enforcement has the tools to remove illegally operating autonomous vehicles from public roads. This bill gives law enforcement the authority to impound an autonomous vehicle operating without a valid permit and to hold onto that vehicle until a valid permit or certificate of planned non-operation is furnished.

2. This Bill Specifies that a Vehicle May Not Be Stopped For the Purpose of Checking if the AV is Permitted

This bill provides law enforcement with the authority to impound any unpermitted AVs in the state until manufacturer provides a valid permit from the DMV. There is some concern that this bill will make AVs subject to surprise impounding (e.g., impounded if the AV has a recently expired permit) and difficult to get back. However, the bill specifies that law enforcement officials cannot pull over AVs just to check for a permit. Law enforcement officials can check for a permit only in the event that they are already interacting with the vehicle (e.g., if it breaks a traffic law). These provisions comply with Fourth Amendment standards that prohibit unreasonable stops, searches, and seizures. Also, there is the general expectation that manufacturers and owners of AVs should be keeping their operating AVs under permit. This bill will hopefully serve as a deterrent for those who may try to circumvent the DMV's permitting process and ensure that all AVs operating in the state are permitted.

3. DMV Requires Autonomous Vehicle Permits Under Existing Law

All AVs require a permit to operate in the state. In 2012, SB 1298 (Padilla) established conditions for the operation of AVs in California. In 2014, the DMV adopted regulations for the testing of AVs requiring a test driver and established an application and approval process for a testing permit. As of this date, there are 54 manufacturers that have this permit and are able to test on public roads in the state. In early 2018, the DMV adopted regulations for testing AVs without a driver and for deployment (e.g., the sale, lease, or providing rides for a fee) of AVs in the state. DMV began accepting applications for these permits on April 1, 2018. No manufacturers have obtained either permit to date.

4. AVs Operating Without Permits Cannot be Impounded

In December 2016, Uber was found testing unpermitted AVs in the City of San Francisco.¹ Due to the lack of clarity in the law, San Francisco Police Department was unable to impound the vehicles. In response, the DMV revoked the vehicle registration of Uber's AVs, though the vehicles themselves had no problems. This bill would give law enforcement the authority to impound AVs that are operating in the state and are found to have no testing or deployment permit.

5. What is an Autonomous Vehicle?

The Society for Automotive Engineers International (SAE) has developed a framework to define increasing levels of driving automation:²

- 1) Level 1: Automated system on the vehicle can assist the human driver with *one* part of driving (e.g., automatic brakes).
- 2) Level 2: Automated system can handle *both* steering and braking/accelerating in some circumstances (e.g., adaptive cruise control), but the driver must be engaged at all times and do the rest of the driving.
- 3) Level 3: Automated system can do *all* of the driving, in some circumstances. However, the driver must be able to take control when prompted by the system.
- 4) Level 4: Automated system can do all of the driving, in some circumstances. The driver or passenger does not need to pay attention.
- 5) Level 5: Automated system can do all of the driving under *all* circumstances.

DMV regulations define a vehicle as autonomous, and thus in need of a permit to operate, if it achieves at least Level 3. This means that vehicles with Level 2 or partial automotive technology, such as any driver-assistance feature, like Tesla Autopilot, do not have to have a permit to operate. The difference between a Level 2 and Level 3 vehicle may become blurred in future years, as more vehicles have the technology to operate in some form of "autonomous mode". There is a question of how law enforcement will be able to determine if a vehicle has the level of autonomous technology, such that it requires a permit and would be in violation of operating without one.

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¹ <https://www.nytimes.com/2016/12/21/technology/san-francisco-california-uber-driverless-car-.html>

² <https://www.nhtsa.gov/technology-innovation/automated-vehicles-safety>