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**State Senate**

**State Assembly**

**Department of  
Insurance**

## 3 Concerns Automakers Have With California's Autonomous Vehicle Regulations

SACRAMENTO, Calif. — Nearly 200 local government officials, federal transportation policymakers and private industry representatives gathered in the California Capitol building on Oct. 19 to comment on and share concerns about recent revisions, released in late September, to the California Department of Motor Vehicles' (DMV) draft guidelines for the testing and deployment of autonomous vehicles (AVs) in the state.

"The goal is to get this type of life-saving technology on the streets as soon it can be," said DMV Chief Counsel Brian Soublet. "But also, to make sure that it is done in a safe manner." Over the last several years, the DMV has taken a collaborative approach, working with manufacturers, consumers, public interest groups, the disabled community, local agencies, academic/research institutions and other stakeholders.

However, many at the hearing were still not pleased with the latest revisions. The concerns generate primarily from the discrepancies between the federal policy released by the National Highway Traffic Safety Administration (NHTSA) and the DMV draft regulation. Also at issue is that the revisions would require companies to "self-certify" that their vehicles meet both federal vehicle safety standards and NHTSA's guidelines for autonomous vehicles.

Many of the speakers who addressed the panel represented automakers and trade groups, and their concerns with the DMV's guidelines generally fell within three particular areas.

### 1. Data-Sharing

A lot of confusion surrounds how much data and what type of data must be disclosed. The federal policy states that a data-recording and data-sharing policy should be worked out with relevant standards-creating bodies in order to hasten the process of deployment. California's draft regulations, however, require manufacturers to equip the vehicles with data recorders and release the data within 24 hours to law enforcement agencies.

The primary understanding is that sharing data will help manufacturers to understand mistakes made by other developers. By sharing information on collisions, sudden braking and acceleration, for instance, there will be a reduction in errors that cause such mistakes.

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“Data sharing is an essential component,” said Jennifer Cohen of the Los Angeles Department of Transportation. “Crash and disengagement data must be shared with local municipalities and with the state.”

But a potential fear among AV developers is that this data could become public record and reveal information about how to operate and program a self-driving vehicle. This could create competitive disadvantages for California manufacturers.

“Regulations that require manufacturers to describe how they achieve their results is tantamount to forced disclosure of intellectual property and trade secrets,” said Peter Leroe-Muñoz, vice president for the Silicon Valley Leadership Group, whose sentiments were echoed by representatives from General Motors and Audi.

## 2. Municipal Permits

Another point of contention was the requirement that any AV testing must receive municipal permits or specific ordinances allowing the experiment. The draft regulations maintain that any testing of vehicles without a human driver present can only be done with the explicit consent of the local community in the form of an ordinance or resolution.

But this creates an unnecessary amount of red tape that hinders the deployment of autonomous vehicles, explained Ron Medford, safety director for Google's self-driving car.

“Having three layers of government overseeing the testing of self-driving cars,” he said, “could create a patchwork of regulations.”

## 3. Mandatory 15-Point Safety Checklist

Perhaps the most common concern voiced was fear that the DMV has effectively mandated the U.S. Department of Transportation’s 15-step safety self-checklist. The NHTSA policy clearly states that the checklist, which the administration refers to as the "Guidance," is not mandatory, "and is not intended for States to codify as legal requirements for the development, design, manufacture, testing, and operation of automated vehicles.”

### Federal Safety Self-Checklist

1. Data Recording and Sharing
2. Privacy
3. System Safety
4. Vehicle Cybersecurity
5. Human Machine Interface
6. Crashworthiness
7. Consumer Education and Training
8. Registration and Certification
9. Post-Crash Behavior
10. Federal, State and Local Laws
11. Ethical Considerations
12. Operational Design Domain

13. Object and Event Detection and Response
14. Fall Back (Minimal Risk Condition)
15. Validation Methods

The federal policy suggests that manufacturers submit a "self-check" letter to state and federal agencies signaling that it passed all of the tests, but does not require this.

The DMV drafted rules, however, state that the manufacturers must submit a safety assessment letter explaining how it performs in relation to the aforementioned test. By requiring this letter, many automotive representatives argue that the DMV has effectively mandated the voluntary guidelines. If adopted in its current form, the DMV regulations run contrary to the NHTSA goal of having its policy and rules be a flexible, living document.

The panel committed to taking concerns raised into consideration before releasing finalized regulations, and DMV Director Jean Shiimoto said that together, through collaboration, the department will be able to get the final guidelines right the first time around.

## Study Finds Los Angeles Has Highest Workers' Comp Costs in State

A study released by the Workers' Compensation Insurance Rating Bureau this week found that the Los Angeles area still has the highest costs associated with workers' compensation compared to the rest of the state. The study factored in many different variables to try and balance out things such as cost of living and wages, as well as the levels of industrial versus residential density. Doing so allowed the study's authors to track trends throughout the state that showed a general trend towards higher workers' compensation rates and costs in Southern California than the northern parts of the state.

One of the factors contributing to this is that the Los Angeles and Long Beach areas had a higher rate of indemnity claims than California as a whole, while areas such as Silicon Valley had a much lower frequency of such claims. Los Angeles and Long Beach are also far more litigious as a region, with medical legal costs totaling over 2.8% of the costs for workers' compensation claims. The rest of California totaled only around 2.0%.

This trend also continued in the overall number of indemnity claims, with the Long Beach and Los Angeles region having a rate that was 24.0% higher than the rest of the state and the Silicon Valley area 25.8% lower than the state. The study stated that overall "The Los Angeles/Long Beach area has the highest share of indemnity claims, 39.0 percent, compared to a statewide average of 35.2 percent, and the highest share of all claims that are cumulative trauma, 8.3 percent, compared to a statewide average of 5.2 percent at first report."

## New Rules Regarding Information Sharing by Internet Providers

This week federal regulators approved new rules regarding the sharing of consumer information by high-speed internet providers. Going forward, providers will be required to obtain the customer's permission before they share "sensitive" information such as browsing history, application usage, or geographic location. The move represents a trend towards consumer protection by the Federal Communications Commission, especially following the net neutrality decisions reached earlier in the year.

While it is still possible for providers to share non-sensitive information such as a consumer's name, address, and data plan, the amount of information deemed non-sensitive is quite limited compared to what is protected under the new rules. Sensitive information is anything from what websites a consumer visits to the contents of communications such as Social Security numbers and financial information. This decision has been met with approval by consumer advocacy groups, who state that the ubiquity of the internet and the wide range of information available online have given internet providers an unprecedented view into the lives of their customers.

However these rules were opposed by internet providers, who stated that they will have a much more difficult time sharing information than individual websites such as Facebook and Google. This is because these privacy rules apply at the level of internet providers and not to the individual websites like Facebook that host such information. Those websites are overseen by a different regulator, the Federal Trade Commission, which had control over internet service providers until the net neutrality rules put in place by the Federal Communications Commission.

While the rules were softened in some ways from the original proposal made in March, other definitions were expanded to include more types of information. In the first proposal that was made by the FCC's Chairman Tom Wheeler, customers would have been required to opt in to any form of information sharing, which prompted pushback from the broadband industry. However while that requirement was dropped, the definition of sensitive information was expanded from the original definitions from the FTC to include browsing history and application usage. This led to the proposal being opposed by the two Republican members of the Commission, who argued that broadband providers should not face tougher restrictions than individual websites.

Along with the new restrictions on information sharing, new requirements were put in place regarding consumer notifications. This means that internet providers are now required to inform customers about which types of information are being gathered, how it will be used, and by whom. Additionally, new rules have been established regarding data breaches, giving internet providers 30 days to inform consumers of a breach and only seven days to inform the FCC. If the breach affects more than 5,000 customers, they will also be required to notify the FBI and Secret Service.

These rules have become especially relevant following the announcement last week of AT&T's proposed acquisition of Time Warner, combining an internet service provider with content producers in one company. Some have speculated that a driving factor in the deal is the acquisition of more consumer data by AT&T, who would gain access to subscribers of a wide variety of Time Warner properties, including HBO, CNN, and others. AT&T has stated that while they are glad that the rules set by the FCC are now closer to the ones from the

FTC, they disagree with the classification of data from web browsing and app usage as sensitive.

## Late Surge in California Voter Registration

October 24<sup>th</sup> marked the end of voter registration in California for those who wish to vote in the upcoming November 8<sup>th</sup> election. Registration, which was already so strong in California that it surpassed the populations of 46 states, saw another late jump just before the deadline as many rushed to get their information submitted or updated at the last minute. In the final two days of registration, 500,000 Californians either registered to vote for the first time or updated their information to ensure that they would be able to vote.

According to Secretary of State Alex Padilla, over 203,000 people registered or updated their information on Sunday, October 23<sup>rd</sup>, and 297,000 registered and updated their information on the final day of October 24<sup>th</sup>. While the latest total numbers of registered voters are not yet available, as of September 9<sup>th</sup>, over 18.25 million people in California were registered to vote. The last two months of registration in the run-up to a hotly contested election season saw sharp jumps in registration throughout the state, ensuring that the final number will likely be much higher. The Secretary of State's office stated that updated numbers will be released sometime next week.

## High Number of Properties at Elevated Wildfire Risk in California

In the annual CoreLogic Wildfire Risk report released this week, it was determined that in 13 Western states that face danger from wildfires, California has the highest number of properties at "Extreme" or "High" risk of being damaged by wildfires. According to the report, 645,445 properties are at risk in 2016 of being damaged by a wildfire, with the Riverside-San Bernardino-Ontario region having the highest concentration of those properties. According to the report, the total value of the 1.8 million properties in the 13 states surveyed is over \$500 billion.

This report comes on the heels of the worst fire year recorded over the last 20 years. While in the last two decades 5.8 million acres have burned in the west each year, 2015 saw nearly double that amount with 10.1 million acres affected by wildfires. This was due to many factors, including an ongoing drought in California and other western states, as well as record-high temperatures that contributed to dry conditions on the ground.

So far 2016 has turned out to be a better year overall for wildfire damage, but that could still change. The drought has not yet ended, leaving dead trees throughout the Sierra Nevada Mountains and dry conditions elsewhere that are ripe for out of control wildfires. This has led to the high number of properties that are at elevated levels of wildfire risk, contributing to a difficult situation for agents who write high-risk property insurance policies.

According to Scott Smith, the vice president of Networked Insurance Agents, the number of carriers who are willing to write policies for properties in the areas deemed at High and Extreme risk is declining, especially after such a difficult year in 2015. He stated that "In the high brush

exposure areas there's probably been at least a 50 percent reduction in the available carriers, if not more." This has led to many being shifted over to California's Fair Access to Insurance Requirements plan, with the possibility that many more will go to the FAIR plan in the future if insurers continue to lose interest in high-risk properties.

## Commissioner Jones Calls for Lower Work Comp Rates

This week, California's Insurance Commissioner Dave Jones released a finding stating that since the overall costs for providers of workers' compensation insurance have declined, those insurers should lower their rates to pass the savings on to employers. The advisory pure premium rate released with that finding was at \$2.19 per 100 of employer payroll, a rate that is 13.8% lower than the pure premium rates filed by insurers.

Commissioner Jones stated that the decrease in costs for insurers was a result of Senate Bill 863, California's workers' compensation reform law. His advisory premiums also take into account projections of future savings as a result of two recently-passed bills. SB 1160 and AB 1244 are both pieces of anti-fraud legislation that together seek to curtail the ability of medical providers who have been either convicted or indicted of workers' comp fraud to seek liens against insurers.

In his advisory statement Jones said that "Insurers' net costs in the workers' compensation system continue to decline as a result of SB 863 and other reform laws enacted by the Legislature and Governor Brown, which is good news. Workers' compensation insurers should pass these cost savings onto employers, but there is no legal requirement that they do so, and workers' compensation insurers continue to file pure premium rates that are higher than the pure premium rate warranted by their costs." While the Commissioner does not have authority over workers' compensation rates, his advisory rates were supported by a recent filing by the Workers' Compensation Insurance Rating Bureau that found that the pure premium rates from insurers were higher than necessary.

Following this finding, on Friday Commissioner Jones announced an advisory pure premium rate for 2017 that was 5.6% the 2016 rate at \$2.19 per \$100 of payroll. This was lower than the 4.3% cut recommended by the WCIRB, and is the fourth consecutive cut issued since January of 2015.