

SENATE BILL REPORT

SSB 5574

As Amended by House, April 14, 2009

Title: An act relating to protecting consumer data in motor vehicles.

Brief Description: Protecting consumer data in motor vehicles.

Sponsors: Senate Committee on Labor, Commerce & Consumer Protection (originally sponsored by Senators Kauffman, Kline, Tom, Hargrove, Oemig, Regala, Fairley, McAuliffe, McDermott, Fraser, Shin, Keiser and Kohl-Welles).

Brief History:

Committee Activity: Labor, Commerce & Consumer Protection: 2/05/09, 2/17/09 [DPS].

Passed Senate: 3/04/09, 36-11.

Passed House: 4/14/09, 97-0.

SENATE COMMITTEE ON LABOR, COMMERCE & CONSUMER PROTECTION

Majority Report: That Substitute Senate Bill No. 5574 be substituted therefor, and the substitute bill do pass.

Signed by Senators Kohl-Welles, Chair; Keiser, Vice Chair; Holmquist, Ranking Minority Member; Franklin, Honeyford, King and Kline.

Staff: Ingrid Mungia (786-7423)

Background: Recording devices, such as event data recorders (EDRs), sensing and diagnostic modules, and automatic crash notification systems, are installed in many vehicles by the manufacturer. Depending on the device, it can record between five and 90 seconds of information about the vehicle before and after a collision occurs. The data recorded may include vehicle speed, steering performance, brake performance, the driver's seatbelt status, direction of the vehicle, and vehicle location. Some of these recording devices can also transmit information about a collision to a central communications system so that emergency help can be sent. This same collision information may also be sent to the vehicle's manufacturer for safety analysis purposes.

Recording devices may also be installed in vehicles pursuant to a subscription service, the most well known of which is probably the OnStar system. These subscription services provide the driver with directions, diagnostics, and emergency assistance. Subscription service devices may record and transmit data back to the service provider.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Washington law does not currently regulate these recording devices. On the federal level, the National Highway Traffic Safety Association (NHTSA) has issued regulations relating to EDRs which auto manufacturers must comply with beginning in 2012. Under the regulations, auto manufacturers must disclose the presence of a EDR in the vehicle's owners manual with an explanation of the functions and capabilities of the EDR. The NHTSA regulations also specify uniform requirements for the types of data that an EDR must collect, including vehicle speed, brake performance, and seat belt status of driver and front passenger.

Summary of Substitute Bill: If an auto manufacturer has installed a recording device in a vehicle, it must disclose the device's presence and functions in the vehicle's owners manual. Subscription services that include the use of a recording device must provide the same disclosures in the service agreement, and after-market products that include the use of a recording device must provide the same disclosures in the product manual. The owner of the motor vehicle at the time the data is created retains exclusive ownership rights to the data. Ownership of the data does not pass to an insurer because of succession in ownership.

A recording device is defined as an electronic system in a vehicle that preserves or records data collected by sensors or provided by other systems in the vehicle. It includes event data recorders, sensing and diagnostic modules, electronic control modules, automatic crash notification systems, and geographic information systems.

Data on a recording device may not be accessed by anyone other than the owner of the vehicle except in the following five situations: (1) upon a court order for the data; (2) when the owner consents; (3) for research to improve vehicle safety as long as the owner and the vehicle remain anonymous; (4) to respond to a medical emergency; and (5) when the data is being used to fulfill a subscription services agreement. The accessing of recording device data by anyone other than the owner except in one of the situations described above is a misdemeanor.

Insurers may not refuse to renew an insurance policy or take any other negative underwriting action against an insured solely because the insured will not provide access to recording device data. Owner consent to the retrieval or use of the data cannot be conditioned upon the settlement of a claim. Advance written permission to retrieve or use the data as a condition of an insurance policy is prohibited.

Violations of the act are per se violations of the Consumer Protection Act.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: Yes.

Effective Date: The bill takes effect on July 1, 2010.

Staff Summary of Public Testimony: PRO: There are devices installed in motor vehicles that record information. When EDRs are installed in vehicles you don't know they are there. This bill makes the auto manufacturers inform the consumer the vehicle does have an EDR and the owner of the vehicle is the owner of the data. The federal government has given manufacturers until 2011 to inform consumers about EDRs. Eleven other states have similar laws. This bill is designed to cover all technologies that record information in your a car. This information is information you might not want to be shared with other people. The information is your information and you should have control over it. The industry developers are not going to solve this problem. Only the Legislature can solve the problem.

OTHER: We have concerns with this bill. It is prohibitively expensive to produce owners manuals for different states. The NHTSA does have model language that we would like to use. We are working with the House on more uniform language. We would not be able to use our "pay as you drive" program. We want uniformity and consistency in federal law and among the states. We want subscription services like OnStar to be continued to be developed and used. The auto industry wants to accurately define what is an EDR, who owns the information, the requirement to notice, access to information, and what are the remedies. Putting this under the Consumer Protection Act is inappropriate.

Persons Testifying: PRO: Senator Kauffman, prime sponsor; Doug Klunder, American Civil Liberties Union of Washington.

OTHER: Ryan Spiller, Auto Alliance; Carrie Tellefson, Progressive Insurance; Cliff Webster, American Insurance Association, General Motors.

House Amendment(s): Clarifies that the definition of a recording device does not include onboard diagnostic systems whose exclusive function is to capture codes used to diagnose or service the motor vehicle. Removes the requirement that the disclosure of the existence of recording devices in a motor vehicle be done in bold face type. Allows the requirement of disclosing the existence of recording devices in a motor vehicle to be met through any written disclosure. Allows access to the information on a recording device pursuant to discovery, and requires that any information on a recording device that is obtained by a court order or pursuant to discovery be treated as private and confidential and not be subject to public disclosure. Requires explicit permission from the owner of any information that can be associated with the owner prior to its sale to a third party. Removes language specifying the ownership of data on a recording device after a change in control of the motor vehicle. Requires that within 90 days of enactment a manufacturer ensures that there are tools commercially available to access and retrieve information stored in a recording device. Removes restrictions related to underwriting actions that can be taken by insurers when a motor vehicle refuses to provide access to data on a recording device.