

HOUSE BILL REPORT

SSB 5574

As Reported by House Committee On:
Transportation

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:

Transportation: 3/16/09, 4/2/09 [DPA].

**Brief Summary of Substitute Bill
(As Amended by House)**

- Requires a notification or insert in the owner's manual of a vehicle, a subscription service agreement, or a product manual of the existence of any recording device that preserves or records data collected by sensors or systems within the motor vehicle.
- Prevents access to information on a recording device without the permission of the owner except in specific circumstances.
- Makes violations of the act a violation of the Consumer Protection Act.
- Prevents insurers from taking negative underwriting actions based on an individual's decision to deny access to data from a recording device.
- Requires the commercial availability of tools for accessing and retrieving information stored in a recording device.

HOUSE COMMITTEE ON TRANSPORTATION

Majority Report: Do pass as amended. Signed by 20 members: Representatives Clibborn, Chair; Liias, Vice Chair; Armstrong, Campbell, Driscoll, Eddy, Finn, Johnson, Klippert,

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.

Moeller, Rolfes, Sells, Shea, Simpson, Springer, Takko, Upthegrove, Wallace, Williams and Wood.

Minority Report: Do not pass. Signed by 6 members: Representatives Roach, Ranking Minority Member; Rodne, Assistant Ranking Minority Member; Cox, Ericksen, Herrera and Kristiansen.

Staff: David Munnecke (786-7315)

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.

Washington law does not currently regulate these recording devices. On the federal level, the National Highway Traffic Safety Administration (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 an EDR in the vehicle's owner's manual along 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 the seat belt status of the driver and front passenger.

Summary of Amended 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 owner's 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. These disclosures may be accomplished through inserts into the manuals.

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 or pursuant to discovery; (2) when consent is given by the owner or someone who would reasonably be assumed to have the consent of the owner; (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, as is the sale of any data from a recording device to a third party without the explicit permission of the owner. The owner of the motor vehicle at the time the data is created retains exclusive ownership rights to the data and ownership of the data does not pass to an insurer because of a succession in ownership.

Insurers may not refuse to renew or cancel 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. Similarly, owner consent to the retrieval or use of the data cannot be conditioned upon the settlement of a claim, and advance written permission to retrieve or use the data as a condition of an insurance policy is prohibited.

Manufacturers of motor vehicles that are sold or leased in the state must ensure that tools for accessing and retrieving information stored in a recording device are commercially available.

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

Amended Bill Compared to Original Bill:

A prohibition on the sale of any data from a recording device to a third party without the explicit permission of the owner is added, as is a requirement that manufacturers of motor vehicles that are sold or leased in the state must ensure that tools for accessing and retrieving information stored in a recording device are commercially available.

The allowance for obtaining data from a recording device pursuant to a court order is expanded to allow data to be obtained pursuant to discovery. Data obtained through either avenue is designated private and confidential and is exempted from public disclosure. The allowance for obtaining data with the consent of the owner is also expanded to include consent from a person that the individual requesting access would reasonably believe has the consent of the owner to grant access.

A requirement is added that explicit permission must be obtained prior to the sale of information recorded or transmitted by a recording device to a third party.

The prohibition on nonrenewal of an insurance policy based on a refusal to allow access to recording device data is expanded to include cancellation.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date of Amended Bill: The bill takes effect on July 1, 2010, except section 5 regarding the commercial availability of tools for accessing and retrieving information stored in a recording device, which takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) Data recording devices are installed in many vehicles and collect information regarding speed, seatbelt use, braking, and various other aspects of the vehicle. Many consumers are unaware of the existence of these devices. This bill would require that all consumers be informed of the existence of these devices and allow the consumer to protect the data that the devices record.

There is the potential for the data recorded on these devices to be misused, which is why 11 other states have passed laws protecting this type of data. In 2012 a federal rule designed to offer some protection to this type of data is also scheduled to take effect.

Any bill that aims to protect this type of information must do three things: (1) have as broad a definition of the data as possible; (2) make a clear statement regarding the ownership of the data on the device; and (3) contain penalties for the misuse of the data.

(With concerns) The information collected by a vehicle should be owned by the owner of the vehicle. However, that information should be available under reasonable circumstances, such as pursuant to the discovery process.

There are federal regulations that are going to go into effect in the relatively near future, which will provide a national standard in regards to this type of information. Motor vehicle manufacturers are concerned about anything that would require them to meet different standards in different states. Also, bolded language in the owner's manual should be saved for truly significant requirements.

(Opposed) None.

Persons Testifying: (In support) Senator Kauffman, prime sponsor; and Shankar Narayan, American Civil Liberties Union of Washington.

(With concerns) James Curry, American Insurance Association and General Motors; Carrie Tellefson, Progressive Insurance; Ryan Spiller, Auto Alliance; and Stephen Buckner, Association of International Automobile Manufacturers.

Persons Signed In To Testify But Not Testifying: None.