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# JESSE KREMER

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STATE REPRESENTATIVE • 59<sup>TH</sup> ASSEMBLY DISTRICT

*Testimony before the Assembly Committee on Consumer Protection  
May 23, 2017*

Members of the Committee and Chairwoman Duchow,

Thank you for holding a hearing and providing an opportunity for testimony to be given on Assembly Bill 254.

Technology is evolving so rapidly that it is often difficult to remain proactive and stay abreast of potential privacy concerns; highlighted by the advent of now common-place technologies including smart phones, *Google Earth*, drones and the seemingly futuristic technology of autonomous cars. This bill addresses privacy concerns related to motor Vehicle Data Recorders (VDRs).

Vehicle Data Recorders encompass a wide variety of identifying vehicle information. These components can include:

- Event Data Recorders (EDR) that compile dynamic time-series data just prior to a crash, commonly known as "black boxes";
- On board diagnostic systems that record information concerning driving habits and vehicle operations;
- Automatic Crash Notification (ACN) systems that collect GPS, EDR and airbag sensor data; and
- Infotainment systems including OnStar, Sync, etc.

While not yet mandated by the federal government, over 96 percent of all new cars on the road today contain some combination of "smart data" recording systems. In 2006, for example, the National Highway Transportation Safety Administration (NHTSA) created an EDR rule standardizing the data that the EDR component must collect in vehicle model years 2013 and newer. *(It should be noted that the NHTSA rule does not prohibit an auto manufacturer from collecting other data in addition to the required EDR data points, or collecting them for longer periods of time.)*

Although the federal Drivers Privacy Protection Act (DPPA) places limits on access to a vehicle owner's personal information, it does not apply to EDR data. In 2015 the federal Driver Privacy Act (DPA) sought to remedy this, however the DPA only applies to EDR data leaving all other data yet unprotected.

This bill would codify ownership of Vehicle Data Recorders, and would simply require the owner or lessee's written consent before data can be accessed or transmitted, except for the following situations:

1. A court order;
2. A diagnostic test performed by a mechanic to diagnose a problem;
3. Law enforcement release of information to an insurance company during a claims investigation or for anti-fraud activities;
4. For a contracted subscription service, such as OnStar;
5. To facilitate emergency response in a silver or amber alert; and
6. To investigate an insurance claim to execute an insurance policy.



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This bill will also require the Wisconsin DOT to add a VDR checkbox to the Wisconsin Buyer's Guide window sticker, filled out by used car dealers indicating that a VDR may be present in a vehicle.

As VDRs develop in complexity and interactivity, this legislation will ensure that Wisconsin's motorists are sufficiently protected from unauthorized data access and transmission.

Thank you.



To: Members, Assembly Committee on Consumer Protection  
From: Alliance of Automobile Manufacturers  
Date: May 23, 2017  
RE: Oppose Assembly Bill 254– Vehicle Data Recorders

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On behalf of the Alliance of Automobile Manufacturers, I would like to thank you for the opportunity to express our opposition to Assembly Bill 254 (AB 254). This legislation stifles safety research, adds burdensome red-tape requirements, and impedes our ability to provide emergency services - with little apparent benefit to Wisconsin drivers. The Alliance is a trade association representing twelve of the world's leading car and light truck manufacturers, including BMW Group, FCA US LLC, Ford Motor Company, General Motors Company, Jaguar Land Rover, Mazda, Mercedes-Benz USA, Mitsubishi Motors, Porsche, Toyota, Volkswagen Group of America, and Volvo Car USA. Together, Alliance members account for roughly 70 percent of the cars and light duty trucks sold throughout the United States each year.

AB 254 creates a state specific definition of a vehicle data recorder. Event data recorder is defined in federal law under National Highway Traffic Safety Administration (49 CFR 563) and the Driver Privacy Act of 2015 requiring owner's consent for the EDR data, except in certain circumstances. This bill expands on the federal definition to include a variety of other purposes, and does *not* provide essential exceptions for emergency services or vehicle safety. While we support the underlining principles of data ownership and privacy protections, AB 254 far exceeds the federal definition and omits key exceptions.

EDRs not only assure the correct deployment of airbags, but they are capable of providing vital information that can reveal detailed information about the operation of a vehicle in the moments before a "triggering event (crash/near-crash)." In the instance of a triggering event where the data is be retrieved by an authorized party (OEM or Court if court ordered), the data is retrieved with the use of an EDR Reader, but not before having an owner's consent to access the EDR data. This EDR tool is mandated by Federal rule and its use is permitted by Federal law. The automaker is not receiving a live feed of information since EDRs constantly record over themselves until a triggering event stops that and captures the snapshot in time.

Additionally, to inform consumers how the auto industry has taken the necessary steps to address data privacy and security, automakers have developed a set of Privacy Principles<sup>1</sup>. The Principles represent a unified commitment to responsible stewardship of the information collected to provide vehicle services. They also serve as a tool to educate consumers about data while acknowledging the different types of data that may or may not be generated, transmitted, retained, or shared in an automobile today. There are five different types of data identified:

- **Data generated in an automobile, but not transmitted outside of the vehicle, that is necessary for the operation of the vehicle** (i.e. steering, braking and crash avoidance).
- **Data transmitted outside of the vehicle** (i.e. automatic crash notification systems to emergency responders).
- **Data transmitted into and out of the vehicle** (i.e. enhanced navigation systems, remote start, and vehicle diagnostics reports).
- **Data generation that is required by law** (i.e. emissions controls, tire pressure sensors, and event data recorders (EDR))
- **Data that is shared** (i.e. technical data regarding warranty or safety).\*with consent

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<sup>1</sup>[https://autoalliance.org/wp-content/uploads/2017/01/Consumer\\_Privacy\\_Principlesfor\\_VehicleTechnologies\\_Services.pdf](https://autoalliance.org/wp-content/uploads/2017/01/Consumer_Privacy_Principlesfor_VehicleTechnologies_Services.pdf)

It would be false to say that all data generated by a vehicle is stored, tracked, or transmitted somewhere. Most of this data is raw – countless lines of ones and zeros that translates to the thousands of mechanical parts communicating with each other throughout each vehicle. Although, there is information that NHTSA considers to be “very valuable to understanding crashes, and which can be used in a variety of ways to improve motor vehicle safety,” but under this bill, automobile manufacturers must receive written, electronic or recorded consent to collect and analyze this data.

The National Highway Traffic Safety Administration (NHTSA) EDR regulations further provides that:

The purpose of this part is to help ensure that EDRs record, in a readily usable manner, data valuable for effective crash investigations and for analysis of safety equipment performance (e.g., advanced restraint systems). These data will help provide a better understanding of the circumstances in which crashes and injuries occur and will lead to safer vehicle designs. 49 CFR 563.2.

While it is true that a handful of states have created their own version of what an EDR is, they almost all provide an exemption for improving motor vehicle safety, security or traffic management, including for research purposes. Something this bill does not do. Additionally, while this bill does cover some emergency issues like Silver and Amber alerts, it fails to accept all emergency response in the event of a vehicle crash. This could potentially leave those in an accident without assistance.

As technology changes and our cars become safer, research in this area suffers when states create their own technological island not rooted in continuity with the direction of research, and often only a temporary fix as industry advances move at a rapid pace. Improved data assists safety researchers, auto engineers, government researchers and trauma doctors in their work. There are already sufficient privacy protections in federal law and this bill just creates unnecessary Wisconsin-specific requirements. We thank you for the opportunity to express our opposition to AB 254.

“(6) in coordination with Department of State, enter into cooperative agreements and collaborative research and development agreements with foreign governments.”

(b) TITLE 23 AMENDMENT.—Section 403 of title 23, United States Code, is amended—

(1) in subsection (b)(2)(C), by inserting “foreign government (in coordination with the Department of State)” after “institution,”; and

(2) in subsection (c)(1)(A), by inserting “foreign governments,” after “local governments.”

(c) AUDIT.—The Department of Transportation Inspector General shall conduct an audit of the Secretary of Transportation’s management and oversight of cooperative agreements and collaborative research and development agreements, including any cooperative agreements between the Secretary of Transportation and foreign governments under section 30182(b)(6) of title 49, United States Code, and subsections (b)(2)(C) and (c)(1)(A) of title 23, United States Code.

## Subtitle C—Miscellaneous Provisions

### PART I—DRIVER PRIVACY ACT OF 2015

Driver Privacy  
Act of 2015.  
49 USC 30101  
note.

#### SEC. 24301. SHORT TITLE.

This part may be cited as the “Driver Privacy Act of 2015”.

49 USC 30101  
note.

#### SEC. 24302. LIMITATIONS ON DATA RETRIEVAL FROM VEHICLE EVENT DATA RECORDERS.

(a) OWNERSHIP OF DATA.—Any data retained by an event data recorder (as defined in section 563.5 of title 49, Code of Federal Regulations), regardless of when the motor vehicle in which it is installed was manufactured, is the property of the owner, or, in the case of a leased vehicle, the lessee of the motor vehicle in which the event data recorder is installed.

(b) PRIVACY.—Data recorded or transmitted by an event data recorder described in subsection (a) may not be accessed by a person other than an owner or a lessee of the motor vehicle in which the event data recorder is installed unless—

(1) a court or other judicial or administrative authority having jurisdiction—

(A) authorizes the retrieval of the data; and

(B) to the extent that there is retrieved data, the data is subject to the standards for admission into evidence required by that court or other administrative authority;

(2) an owner or a lessee of the motor vehicle provides written, electronic, or recorded audio consent to the retrieval of the data for any purpose, including the purpose of diagnosing, servicing, or repairing the motor vehicle, or by agreeing to a subscription that describes how data will be retrieved and used;

(3) the data is retrieved pursuant to an investigation or inspection authorized under section 1131(a) or 30166 of title 49, United States Code, and the personally identifiable information of an owner or a lessee of the vehicle and the vehicle identification number is not disclosed in connection with the retrieved data, except that the vehicle identification number may be disclosed to the certifying manufacturer;

(4) the data is retrieved for the purpose of determining the need for, or facilitating, emergency medical response in response to a motor vehicle crash; or

(5) the data is retrieved for traffic safety research, and the personally identifiable information of an owner or a lessee of the vehicle and the vehicle identification number is not disclosed in connection with the retrieved data.

**SEC. 24303. VEHICLE EVENT DATA RECORDER STUDY.**

49 USC 30101  
note.

(a) **IN GENERAL.**—Not later than 1 year after the date of enactment of this Act, the Administrator of the National Highway Traffic Safety Administration shall submit to Congress a report that contains the results of a study conducted by the Administrator to determine the amount of time event data recorders installed in passenger motor vehicles should capture and record for retrieval vehicle-related data in conjunction with an event in order to provide sufficient information to investigate the cause of motor vehicle crashes.

(b) **RULEMAKING.**—Not later than 2 years after submitting the report required under subsection (a), the Administrator of the National Highway Traffic Safety Administration shall promulgate regulations to establish the appropriate period during which event data recorders installed in passenger motor vehicles may capture and record for retrieval vehicle-related data to the time necessary to provide accident investigators with vehicle-related information pertinent to crashes involving such motor vehicles.

**PART II—SAFETY THROUGH INFORMED  
CONSUMERS ACT OF 2015**

Safety Through  
Informed  
Consumers Act of  
2015.  
49 USC 30101  
note.

**SEC. 24321. SHORT TITLE.**

This part may be cited as the “Safety Through Informed Consumers Act of 2015”.

**SEC. 24322. PASSENGER MOTOR VEHICLE INFORMATION.**

Section 32302 of title 49, United States Code, is amended by inserting after subsection (b) the following:

“(c) **CRASH AVOIDANCE.**—Not later than 1 year after the date of enactment of the Safety Through Informed Consumers Act of 2015, the Secretary shall promulgate a rule to ensure that crash avoidance information is indicated next to crashworthiness information on stickers placed on motor vehicles by their manufacturers.”.

**PART III—TIRE EFFICIENCY, SAFETY, AND  
REGISTRATION ACT OF 2015**

Tire Efficiency,  
Safety, and  
Registration Act  
of 2015.  
49 USC 30101  
note.

**SEC. 24331. SHORT TITLE.**

This part may be cited as the “Tire Efficiency, Safety, and Registration Act of 2015” or the “TESR Act”.

**SEC. 24332. TIRE FUEL EFFICIENCY MINIMUM PERFORMANCE STANDARDS.**

Section 32304A of title 49, United States Code, is amended—

(1) in the section heading, by inserting “AND STANDARDS” after “CONSUMER TIRE INFORMATION”;

(2) in subsection (a)—