2005 ASSEMBLY BILL 925

1 AN ACT *to renumber and amend* 631.36 (4) (am); *to amend* 625.12 (1) (e),

2 625.12 (2), 625.15 (1) and 628.34 (3) (a); and *to create* 340.01 (15t), 347.365,

3 631.36 (4) (am) 2. and 632.368 of the statutes; **relating to:** event data recorders

4 and providing a penalty.

Analysis by the Legislative Reference Bureau

This bill requires a manufacturer of a vehicle to disclose to a buyer that the vehicle is equipped with an event data recorder. An event data recorder is a device that is capable of recording information regarding the vehicle's travel patterns, use of safety equipment, and other data for the purpose of providing information after a vehicular accident. The bill also requires the provider of a service that enables a vehicle to transmit information regarding an accident to a centralized communications system to inform a subscriber of the service that the vehicle is equipped with an event data recorder.

The bill places limits on access to the information recorded by the event data recorder. Under the bill only the registered owner or long–term lessee of the vehicle may retrieve the information unless he or she consents to having someone else retrieve the information, a court in a criminal matter orders the release of the information, or a licensed motor vehicle dealer, technician, or mechanic uses the information to service or repair the vehicle. In addition, under the bill the data may be retrieved for the purpose of improving motor vehicle safety and for medical research involving the effects of a vehicular accident on the human body, so long as the identity of the vehicle's owner or driver is not released. A person who violates

these provisions may be liable for the injured party's attorney fees, and double damages or $1,000, whichever is greater.

The bill also prohibits insurers that issue motor vehicle insurance policies from having access to data stored in or retrieved from event data recorders. An event data recorder is defined in the bill as a device that is installed in a motor vehicle; that records information about the vehicle's travel patterns, including speed, the vehicle's performance, such as steering and braking, and the driver's use of a safety belt; and that has the ability to transmit to a central communications system information concerning an accident involving the motor vehicle.

An insured or an applicant for motor vehicle insurance may authorize an insurer to have access to data in an event data recorder, but the authorization must be in writing in a signed document that is separate from the insurance policy. An insurer is prohibited from refusing to issue or renew a motor vehicle insurance policy, or from determining premium rates for such a policy, on the basis of whether an insured or applicant authorizes the insurer to have access to data in an event data recorder.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1   SECTION 1. 340.01 (15t) of the statutes is created to read:

2   340.01 **(15t)** "Event data recorder" means a device that is installed in a vehicle

3   and does any of the following, for the purpose of storing or retrieving data after an

4   accident:

5   (a) Records the speed and direction at which the vehicle is traveling.

6   (b) Records a history of where the vehicle travels.

7   (c) Records steering performance.

8   (d) Records brake performance, including, but not limited to, recording

9   whether brakes were applied before an accident.

10   (e) Records whether a driver's safety belt was in use.

11   (f) Transmits, or has the ability to transmit, information concerning an

12   accident involving the vehicle to a central communications system.

13   SECTION 2. 347.365 of the statutes is created to read:

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1   **347.365 Event data recorders; disclosure; access to data. (1)** A

2   manufacturer of a vehicle that is equipped with an event data recorder and that is

3   manufactured on or after the effective date of this subsection .... [revisor inserts

4   date], shall disclose the existence of the event data recorder in the vehicle's owner's

5   manual.

6   **(2)** If a vehicle is equipped, as a subscription service, with an event data

7   recorder that is capable of transmitting information concerning an accident

8   involving the vehicle to a central communications system, the service provider shall

9   disclose, in writing, the existence of the event data recorder in the subscription

10   service agreement or contract.

11   **(3)** Except as provided in s. 632.368 (3), data recorded by an event data recorder

12   may not be downloaded or otherwise retrieved by a person other than the registered

13   owner or long–term lessee of the vehicle, unless one of the following applies:

14   (a) The registered owner or lessee of the vehicle consents, in writing, to the

15   retrieval of the information.

16   (b) A court in a criminal proceeding orders the retrieval of the data.

17   (c) The identification of the registered owner or driver of the vehicle is not

18   disclosed, and the data is used to improve motor vehicle safety or for medical research

19   involving the study of the human body's reaction to vehicular accidents. The

20   disclosure of the vehicle identification number does not constitute the disclosure of

21   the registered owner or driver of the vehicle under this paragraph. Data disclosed

22   under this paragraph may be released for the purpose of improving motor vehicle

23   safety or for medical research involving the study of the human body's reaction to

24   vehicular accidents.

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1   (d) The data is retrieved by a licensed motor vehicle dealer, service technician,

2 or mechanic for the purpose of diagnosing, repairing, or servicing the vehicle.

3   **(4)** Any person violating this section shall be liable to any person injured

4 thereby for twice the amount of damages sustained in consequence of such violation,

5 or $1,000, whichever amount is greater, and for payment of reasonable attorney fees

6 incurred by the injured person in connection with the violation. Liability under this

7 subsection may be enforced by suit in any court of competent jurisdiction.

8   **SECTION 3.** 625.12 (1) (e) of the statutes is amended to read:

9   625.12 **(1)** (e) Subject to s̶. ss. 632.365 and 632.368 (4) (b), all other relevant

10 factors, including the judgment of technical personnel.

11   **SECTION 4.** 625.12 (2) of the statutes is amended to read:

12   625.12 **(2)** CLASSIFICATION. Risks may be classified in any reasonable way for

13 the establishment of rates and minimum premiums, except that no classifications

14 may be based on race, color, creed̶, or national origin, and classifications in

15 automobile insurance may not be based on physical condition or developmental

16 disability as defined in s. 51.01 (5). Subject to s̶. ss. 632.365 and 632.368 (4) (b), rates

17 thus produced may be modified for individual risks in accordance with rating plans

18 or schedules that establish reasonable standards for measuring probable variations

19 in hazards, expenses, or both. Rates may also be modified for individual risks under

20 s. 625.13 (2).

21   **SECTION 5.** 625.15 (1) of the statutes is amended to read:

22   625.15 **(1)** RATE MAKING. An insurer may itself establish rates and

23 supplementary rate information for one or more market segments based on the

24 factors in s. 625.12 and, if the rates are for motor vehicle liability insurance, subject

25 to s̶. ss. 632.365 and 632.368 (4) (b), or the insurer may use rates and supplementary

1 rate information prepared by a rate service organization, with average expense

2 factors determined by the rate service organization or with such modification for its

3 own expense and loss experience as the credibility of that experience allows.

4   SECTION 6. 628.34 (3) (a) of the statutes is amended to read:

5   628.34 **(3)** (a) No insurer may unfairly discriminate among policyholders by

6 charging different premiums or by offering different terms of coverage except on the

7 basis of classifications related to the nature and the degree of the risk covered or the

8 expenses involved, subject to ss. 632.365, 632.368 (4) (b), 632.746, and 632.748.

9 Rates are not unfairly discriminatory if they are averaged broadly among persons

10 insured under a group, blanket or franchise policy, and terms are not unfairly

11 discriminatory merely because they are more favorable than in a similar individual

12 policy.

13   SECTION 7. 631.36 (4) (am) of the statutes is renumbered 631.36 (4) (am) (intro.)

14 and amended to read:

15   631.36 **(4)** (am) *Prohibited nonrenewals.* (intro.) Notwithstanding par. (a) an

16 insurer may not refuse to renew a policy solely because of the any of the following:

17   1. The termination of an insurance marketing intermediary's contract with the

18 insurer unless the insurer complies with sub. (4m).

19   SECTION 8. 631.36 (4) (am) 2. of the statutes is created to read:

20   631.36 **(4)** (am) 2. If the policy is a motor vehicle liability insurance policy, the

21 insured's refusal to authorize the insurer to have access to data stored in or retrieved

22 from an event data recorder, as provided in s. 632.368 (4) (a).

23   SECTION 9. 632.368 of the statutes is created to read:

24   **632.368 Access to data in event data recorders. (1)** DEFINITIONS. In this

25 section:

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1   (a) "Event data recorder" has the meaning given in s. 340.01 (15t).

2   (b) "Insurer" means an insurer that issues motor vehicle liability insurance

3 policies.

4   **(2)** PROHIBITION ON ACCESS TO DATA. (a) Except as provided in sub. (3), an insurer

5 may not have access to data that is stored in or retrieved from an event data recorder.

6   (b) Paragraph (a) does not apply to data stored in or retrieved from an event

7 data recorder that is installed in a motor vehicle owned by the insurer.

8   **(3)** AUTHORIZATION FOR ACCESS. An insured or applicant for insurance may

9 authorize an insurer to have access to data stored in or retrieved from an event data

10 recorder that is installed in a motor vehicle owned by the insured or applicant. Any

11 authorization must be given knowingly and voluntarily in writing in a document that

12 is separate from the insurance policy and that is signed by the insured or applicant.

13   **(4)** PROHIBITED ACTIONS WHEN AUTHORIZATION DENIED. (a) An insurer may not

14 refuse to issue or renew a motor vehicle liability insurance policy on the basis of

15 whether the applicant or insured authorizes the insurer to have access to data stored

16 in or retrieved from an event data recorder.

17   (b) An insurer may not use as a factor in determining premium rates for a motor

18 vehicle liability insurance policy whether the applicant or insured authorizes the

19 insurer to have access to data stored in or retrieved from an event data recorder.

20   SECTION 10. **Initial applicability.**

21   (1) PROHIBITIONS ON ACCESS TO DATA. If a motor vehicle liability insurance policy

22 that is in effect on the effective date of this subsection contains a provision that is

23 inconsistent with the treatment of section 632.368 (2) (a) and (3) of the statutes, the

24 treatment of section 632.368 (2) (a) and (3) of the statutes first applies to that motor

25 vehicle liability insurance policy on the date on which it is renewed.

1   (2) PROHIBITIONS ON INSURANCE USE OF REFUSAL TO ALLOW ACCESS TO DATA.

2   (a) *Coverage.*

3   1. 'Issuance.' The treatment of section 632.368 (4) (a) (with respect to not

4   refusing to issue a motor vehicle liability insurance policy) of the statutes first

5   applies to motor vehicle liability insurance policies that are issued on the effective

6   date of this subdivision.

7   2. 'Renewal.' The treatment of section 632.368 (4) (a) (with respect to not

8   refusing to renew a motor vehicle liability insurance policy) of the statutes, the

9   renumbering and amendment of section 631.36 (4) (am) of the statutes, and the

10   creation of section 631.36 (4) (am) 2. of the statutes first apply to motor vehicle

11   liability insurance policies that are renewed on the effective date of this subdivision.

12   (b) *Rates.* The treatment of sections 625.12 (1) (e) and (2), 625.15 (1), 628.34

13   (3) (a), and 632.368 (4) (b) of the statutes first applies to all of the following:

14   1. Except as provided in subdivision 2., premium rates for motor vehicle

15   liability insurance policies that are issued or renewed on the effective date of this

16   subdivision.

17   2. Premium rates that are modified on the effective date of this subdivision for

18   motor vehicle liability insurance policies that are in effect on the effective date of this

19   subdivision.

20   **(END)**