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# JESSE KREMER

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

*Testimony before the Senate Committee Government Operations, Technology and Consumer Protection  
May 23, 2017*

Members of the Committee,

Thank you for holding a hearing and providing an opportunity for testimony to be given on Senate Bill 196.

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.



# DUEY STROEBEL

STATE SENATOR • 20<sup>TH</sup> DISTRICT

Good morning. Senate bill 196 is an important step to understand what type of data is being created, stored, and accessed in our vehicles.

Two years ago ABATE of Wisconsin approached our offices to draft a bill related to crash data available in vehicles. Through research and discussions with stakeholders, the bill morphed into protecting all data created and potentially stored in our vehicles.

Consumers in Wisconsin should know what information their vehicle can detect, record and potentially transmit. It is my belief the owner of the vehicle should decide when that data is given to another entity, including the manufacturer, insurance company, mechanic, or government.

During the development of this bill last session the Drivers Protection Act of 2015 passed Congress. This federal law took effect just a few months ago and was related to an event data recorder or EDR. Generically, an EDR stores data after a crash or near-crash incident.

Things like speed, direction, braking pressure, seat belt, air bag deployment, *et cetera* are stored for the purposes of accident investigation and safety.

Federal law ensures this crash data is protected by written, electronic, or recordable verbal consent unless the owner of the vehicle has signed a subscription service (think OnStar), to dispatch emergency personnel, and for use in highway and vehicle safety research.

Federal law protects only accident data created and stored in a motor vehicle. This law is an important first step in protecting the personal property and privacy of our citizens.

With SB 196, it is my intent to protect all data created and potentially stored in a motor vehicle including diagnostic, infotainment, GPS, and more.

Under SB 196, any device that records and stores data is considered a vehicle data recorder. With some exceptions, the owner must provide written, electronic, or recordable verbal consent for this data to be accessed. The consent standard is the same as the accident data protected under federal law.

Because SB 196 seeks to protect more data than federal law, some exceptions found in federal law are not included in the bill. Likewise, additional exceptions are included in the bill.

This bill protects diagnostic data unless a mechanic is attempting to fix a problem. It is likely a mechanic will be accessing different data points under this exception than would be found in an EDR.



# DUEY STROEBEL

STATE SENATOR • 20<sup>TH</sup> DISTRICT

Through months of meetings, my office has attempted to work through many issues with stakeholders. Today, I suspect we will hear from car manufacturers who do not like Wisconsin's expanded definition of protected vehicle data.

This bill is not intended to force manufacturers to act differently when selling or designing automobiles. Contrary to a memo circulated by the Alliance of Automobile Manufacturers, this bill does not require consent for the creation of data. The Alliance cleverly left the word "stored" out of their memo. Under this bill, features that create and store data will be allowed to operate; however, unless the owner of the vehicle (and the data) provides consent, that data cannot be accessed or collected for another use. The data would remain housed in the vehicle.

The Alliance contends that unless consent is provided, any vehicle function that records data would have to be disabled. This is not true. Data may be recorded and stored at any time.

For months, my office has worked directly with the Alliance to try to find language both ABATE and the Alliance could support. To date, this language has not been found.

Again, this bill is about expanding on the federal law. Event data recorders are regulated under federal law and will remain so.

The intent of this bill is to ensure Wisconsin consumers own their vehicle data and provide permission when that data is pulled from their vehicle. I am confident after deliberation this committee will be able to recommend for passage a good and workable bill. Wisconsin will lead the way in protecting all data in a motor vehicle.

Thank you.



To: Members, Senate Committee on Government Operations, Technology and Consumer Protection  
From: Alliance of Automobile Manufacturers  
Date: May 23, 2017  
RE: Oppose Senate Bill 196 – 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 Senate Bill 196 (SB 196). 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.

SB 196 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, SB 196 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).

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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)

- **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

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 SB 196.