

ALASKA STATE LEGISLATURE
SENATE TRANSPORTATION STANDING COMMITTEE

April 6, 2006

1:37 p.m.

MEMBERS PRESENT

Senator Charlie Huggins, Chair
Senator John Cowdery, Vice Chair
Senator Hollis French

MEMBERS ABSENT

Senator Gene Therriault
Senator Albert Kookesh

COMMITTEE CALENDAR

SENATE BILL NO. 18

"An Act relating to motor vehicles equipped with data recording or transmitting devices."

HEARD AND HELD

PREVIOUS COMMITTEE ACTION

BILL: SB 18

SHORT TITLE: AUTO DEALERS DISCLOSURE DATA RECORDER

SPONSOR(s): SENATOR(s) ELTON

01/11/05	(S)	PREFILE RELEASED 12/30/04
01/11/05	(S)	READ THE FIRST TIME - REFERRALS
01/11/05	(S)	TRA, JUD
04/06/06	(H)	TRA AT 1:30 PM CAPITOL 17

WITNESS REGISTER

PAUL A. WILEY, Staff to Senator Elton
State Capitol, Room 115
Juneau, AK 99801-1182

POSITION STATEMENT: Supported SB 18

KEVIN O'NEIL
Chief of Staff to Senator Tim Leslie, California
Tahoe City, CA

POSITION STATEMENT: Supported SB 18

CLYDE E. (ED) SNIFFEN JR., Assistant Attorney General

Department of Law
PO Box 110300
Juneau, AK 99811-0300
POSITION STATEMENT: Commented on SB 18

SENATOR KIM ELTON
State Capitol, Room 115
Juneau, AK 99801-1182
POSITION STATEMENT: Sponsor, SB 18

ACTION NARRATIVE

CHAIR CHARLIE HUGGINS called the Senate Transportation Standing Committee meeting to order at [1:37:33 PM](#). Present were Senators John Cowdery, Hollis French and Chair Charlie Huggins.

SB 18-AUTO DEALERS DISCLOSURE DATA RECORDER

CHAIR CHARLIE HUGGINS announced SB 18 to be up for consideration.

SENATOR KIM ELTON, sponsor, introduced staff member, Paul Wiley to assist him with an explanation of the bill.

SENATOR ELTON said that the bill accomplishes two things: Section 1 provides for consumer notification and section 2 provides a recipe for release of data that is collected by an event data recorder (EDR), or "black box". He explained that black boxes record speed, seat belt, stopping distance, braking data, steering data, and severity of impact data. They have been commonly used since the late 1990's to improve the safety of cars. General Motors (GM) began using them extensively in 1998, and over half the cars sold in the 2004 model year are equipped with them. Its data is designed to be downloaded and used by car manufacturers to improve the safety of their vehicles, but legal experts say that it can be used as evidence in civil or criminal court cases. The problem is that most owners have no idea whether an EDR is installed in their vehicle. In addition, a National Highway Traffic Safety Administration (NHTSA) study of 700 crashes found a 40 percent error rate in the data.

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SENATOR ELTON said the NHTSA position is that EDRs and the data recorded on them should belong to the automobile owners. AAA believes the presence of an EDR should be disclosed to the buyer and that the data should be aggregated and used only for safety research.

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SENATOR ELTON explained that Section 1 of the bill proposes a simple notification to the buyer, perhaps just a disclosure tucked into the owner's manual. Section 2 defines three ways that data can be used: the owner can authorize its use for any purpose; a court can subpoena the data for use as evidence; it can be aggregated and used for safety research. He said that six states have passed similar legislation with broad bipartisan support including Arkansas, Texas, North Dakota and California.

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SENATOR ELTON said that the Alliance for Auto Manufacturers suggested a couple of minor changes to the language and asked if Chair Huggins wanted him to go over those changes.

CHAIR HUGGINS replied not at this time.

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SENATOR COWDERY asked if this is beneficial to the consumer.

SENATOR ELTON responded yes, but it is a double-edged sword. It is becoming more common for insurance carriers to ask for data from the EDR when investigating claims, and he believes that the consumer should have the right to control release of that data unless it has been subpoenaed or is required for safety research.

SENATOR COWDERY asked if Senator Elton had said that 40 percent of the data is inaccurate.

SENATOR ELTON responded that in its study of 700 crashes, NHTSA had problems with 40 percent of the data gathered. Some of the problems might have been due to equipment damage during the crash, or to download failure.

SENATOR COWDERY asked how many cases in Alaska have used this tool to prosecute.

SENATOR ELTON answered that he has not heard of any in Alaska. A prosecutor in New York did convict the owner of a car on a criminal charge based on data that was collected from an EDR; but the data was accessed through a subpoena, which this bill allows.

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PAUL WILEY, Staff to Senator Kim Elton, commented that he recognizes that the data could be useful to insurance companies for setting rates and investigating claims, and the bill does not intend to hinder them.

SENATOR COWDERY commented that insurance companies charge different rates for different types of cars based on actuarial data. He questioned what the benefit would be to the insurance company or to the insured, if the data is not accurate.

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SENATOR ELTON responded that an attorney might use the data to cast doubt on the testimony of a witness whether or not it is totally accurate. He asked Senator Hollis if, as an attorney, he could comment on that.

SENATOR HOLLIS said that Senator Elton is correct and, to the extent that there are deficiencies in the data, they would be discovered during cross-examination.

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SENATOR ELTON said that there are different devices on a car that collect data and are not implicated by this legislation. The device that captures air pressure in tires is one example, OnStar is another that offers road emergency and location services through a contractual subscription. Some insurance companies provide a rate discount to customers who allow them access to OnStar data for the first 6 months of coverage. Black boxes are different in that the consumer is not told about the presence of an EDR and he has no choice in the collection of its data.

MR. WILEY added that, relative to data inaccuracy, it is more often a problem with the harvesting of the data and how it is deciphered, than with the data itself. One reason for this bill is to ensure that the data is extracted and read by people trained to do it properly.

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SENATOR COWDERY asked who currently gives permission to harvest data on a black box after an accident.

SENATOR ELTON responded that typically the information is harvested by a car dealer or repair shop. One relatively benign use for the data by car dealers is to assist in servicing. He said that he thinks that use should be allowed under the bill.

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SENATOR COWDERY asked whether a car dealer might access the data even if it were not needed for servicing.

SENATOR ELTON replied probably not. He qualified that by saying that there are uses the dealer might make of the data that could be detrimental to the consumer. For example, if a person brings his car in for warranty work and the dealer finds that he was going 200 mph in second gear, it might void the warranty. As long as the consumer is aware of the presence of the EDR, he feels that the trade-off is justified.

[2:01:15 PM](#)

SENATOR COWDERY said that he can see both sides of the issue. If a driver is going 80 mph in a school zone, he does not feel the data should be protected. On the other hand, there is privacy to be considered.

SENATOR ELTON responded that if a person breaks the law, the police can obtain access to the data in the same way they can obtain information of other kinds to aid in an investigation.

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He said a second-degree benefit is that, if the consumer knows the EDR is there and what it does, a rational consumer might behave differently, knowing the data being collected might be used against him in a law enforcement situation.

MR. WILEY remarked to Senator Cowdery that the bill is not intended to keep manufacturers or dealers from using the data legitimately.

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SENATOR COWDERY asked what the original purpose of the device was.

SENATOR ELTON responded that it was to improve safety in automobiles and passenger vehicles.

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SENATOR FRENCH commented that Senator Cowdery has outlined the competing policies in this issue.

SENATOR COWDERY reminded the committee that they heard a bill on aftermarket parts a few years ago. That bill was brought because research on data collected from EDRs disclosed that the use of aftermarket parts caused a delay in the deployment of airbags.

He said that he thinks that type of benefit justifies the use of these devices.

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SENATOR ELTON said that he remembers that bill and it represents a perfectly legitimate use of the data, one that is allowed under this bill. Data can be harvested for the purpose of research to improve automobile safety. The one caveat is that the auto manufacturer gets the data in a way that does not identify the owner or the driver.

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SENATOR FRENCH asked whether one has to actually plug something in to get the data right now.

MR. WILEY replied that in most cases, yes. There are other types of black boxes though, such as those EDRs connected to OnStar using a satellite uplink.

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SENATOR FRENCH commented that it is not hard to see the next step in the evolution of this technology. An insurance agent could drive by the repair shop after a car has been involved in an accident and download the data using a wireless connection. This bill provides some measure of privacy and forces the agent to come to the owner for permission to use the data.

SENATOR ELTON added that it is permissible under this bill for a consumer to sign a contract with an insurance agent providing access to the data; but that means the consumer knows the EDR is there and has made a decision to release access to the data. He said he suspects that most Alaskans don't even know their vehicle has such a device.

MR. WILEY pointed out that another benefit of disclosure is that the consumer could provide the data to police or to the insurance company to clear him of responsibility for an accident; but if he does not know that the EDR is there, the data is likely to be lost.

SENATOR ELTON added that it is only beneficial if the consumer knows about it.

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CHAIR HUGGINS asked what the device costs.

MR. WILEY replied that it not a stand-alone device, it is generally part of the airbag system, so there is no extra cost to the consumer.

CHAIR HUGGINS pointed out that GM pays something for it.

SENATOR ELTON responded that he doesn't know what that cost is.

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CHAIR HUGGINS commented that he supposes the consumer is paying for it, but if the data is intended to provide information only to the manufacturer, the cost may not be passed on. He said he would be interested to know.

SENATOR ELTON said he would check on it.

CHAIR HUGGINS said that, in our society, representing a client in court is often more a sporting proposition than a search for objective information; but if one is looking for the truth and this box can provide the facts of the matter, he does not understand why it should not be used.

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He also said that he assumes the accuracy of the data will continue to improve and that it will ultimately be 90-95 percent accurate and wireless. It might be useful to the majority of citizens in holding down their insurance rates, because insurance companies could properly target high-risk clients. He thinks the people who would benefit from it would want the data to be made available.

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KEVIN O'NEAL, Chief of Staff to Senator Tim Leslie, California, said that California was the first state to pass a bill like this. This bill allows consumers to know the device is on the car and controls how the information it captures can be used. It is important to remember that the EDRs under discussion gather information and only record in the event of an accident. Also, the information is encrypted so it cannot be read except by someone who has the right equipment. It was intended for use by GM to improve the safety of its vehicles, not by police or insurance companies.

The black box on an airplane is not a good example to use in discussing this legislation, he said, because everyone knows there is a black box on an airplane. Also, because it is public transportation, the public has a right to know what was recorded

in the event of an accident. One might argue that a multiple car collision also gives the public the right to know, but consumers don't know that there is an EDR in their personal vehicles, so it is a different situation.

He ended by saying that this is a good bill.

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CHAIR HUGGINS asked Mr. O'Neal why California did not choose to disclose the existence of an EDR in the purchase contract.

MR. O'NEAL responded that they worked closely with GM and decided that the owner's manual was the best place for it. Manufacturers print new manuals for every model year, so it was a simple matter to insert a page regarding the EDR. Also, information printed in the sales contract does not provide any statutory protection in the event of an accident.

He said that he agrees that the data should be used if it could prove a person was not at fault in an accident, but the insurance company is going to fight over that anyway.

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CHAIR HUGGINS commented to Mr. O'Neal that it sounds as if he favors releasing EDR data only if it can prove a person was not at fault. He asked whether he thought it should be used if the individual was at fault.

MR. O'NEAL answered that, if a person is at fault, there are other avenues to get that information. Under California law, the insurance company would go after the information on the guilty party's EDR using a subpoena if necessary. Either way it will end up in court.

CHAIR HUGGINS asked Mr. O'Neal if California has tracked any impact on insurance rates since passing the bill.

MR. O'NEAL replied no.

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CHAIR HUGGINS asked whether Greyhound buses have to be equipped with a black box.

MR. O'NEAL replied that he does not know.

CHAIR HUGGINS asked if Mr. O'Neal had anything to add.

MR. O'NEAL replied that there are republican principles in this bill, which is why Tim [Leslie] carried it forward. If the auto manufacturers have nothing to hide, there is no reason that consumers should not know about these devices.

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ED SNIFFEN, Assistant Attorney General, said that he was available to answer questions and that the Department of Law prepared a zero fiscal note, but it was not completed in time for this hearing.

SENATOR FRENCH advised Mr. Sniffen that the committee has a copy of the fiscal note.

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CHAIR HUGGINS said that this bill is intriguing, and his reaction is to wonder how to leverage the technology to everyone's advantage, not how to keep it private.

SENATOR ELTON said that is a good point, but he has a couple of responses, neither of which is provable. He said he thinks there is an effect on insurance. If the data is used by car manufacturers as allowed under this bill, it should have a beneficial effect on rates because cars will become safer. It also has the potential to change some driver behavior, if drivers know that data is being collected. But there is a "Big Brother" element here as well. If these devices are installed and working without the knowledge of the consumer, it is like having a "snitch" along all the time. The main thing is that the consumer knows it is there.

In summary, he said that he thinks there are beneficial uses for the data, and the bill is structured in such a way that it does not constrain those uses.

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CHAIR HUGGINS noted that it is a matter of perspective. If someone close to you is a victim in a major accident and the answer to what happened is in that black box, you might care very little about anyone's privacy. On the other hand, most people don't want anyone to gather information about them. There was a terrible backlash in Anchorage when the assembly approved the use of photo radar, yet Alaskans voted to put camera surveillance in the schools. It's a matter of where it is, how it is used, and how close you are to it.

SENATOR FRENCH said that he got a photo radar ticket and thinks he is one of the only people who has actually paid one.

SENATOR ELTON said that the Chair's point was well taken, but he suspects that any data related to a major accident would automatically be subpoenaed.

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SENATOR ELTON asked if he could go through the NHTSA's suggestions.

CHAIR HUGGINS agreed.

SENATOR ELTON listed the suggested changes starting on page 1, line 9, after "device", add the words "or feature", so that it reads "a device or feature that is installed"; and on line 11, strike "records where the vehicle travels", because direction of travel is not collected by a black box. On lines 13-14, strike the language at bottom of the page that reads "or has the ability to transmit information about an accident in which the vehicle is involved to a central communications system". A black box does not do that, and it implicates services like OnStar, which are not affected by this legislation.

He apologized for not having these cleanup amendments incorporated into the bill before it was presented, but Legislative Legal was behind and could not get to it.

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CHAIR HUGGINS said that GPS and automatic data recording will soon be in cell phones, and he was just thinking about who owns the phones and data.

SENATOR FRENCH said that cell phone locating technology exists because the towers relay which tower is picking up your information, and it is obtainable by court order.

CHAIR HUGGINS said that his point was that this conversation will get broader in our society, and the legislature has to be sure about the precedent it is setting in how it approaches this.

SENATOR ELTON summarized by saying that he does not disagree. He thinks that in this instance, as in many others, the cure is to simply let consumers know what they are getting.

[SB 18 was held over.]

There being no further business to come before the committee, Chair Huggins adjourned the Senate Transportation Standing Committee meeting at [2:37:06 PM](#).