SB

18

SENATOR KIM ELTON

SB 18 – Automobile Black Box Notification

Sponsor Statement

Many cars (over 40 million nation-wide) carry a tattletale, and few Alaskans know it. Event data recorders (EDRs), also called Sensing and Diagnostic Modules (SDMs) record a 5-30 second loop of information, including vehicle and engine speed, throttle position, brake pedal position, seatbelt switch (on/off), and sometimes steering position.

These black box recorders were created largely to help manufacturers improve air bag technology by collecting data from the few seconds just before an accident. They have served, and continue to serve that purpose well.

Few people know their vehicles are recording their every move. Fewer still are aware that data from these recorders are the latest tool in prosecuting traffic incidents. There is no law or controlling jurisprudence on who owns the data on these recorders, or how it can be accessed. SB 18 requires manufacturers to notify Alaskans that these devices are in the automobiles they buy. It also makes clear that when you buy a vehicle, you own the data it collects. While ensuring access to information for law enforcement purposes, the bill prevents access by others without the owner's consent.

Six states, with strong bi-partisan support, have passed legislation similar to SB 18. At least 15 other states are considering such bills this year.

American auto manufacturers have made tremendous strides in passenger safety by developing, and later refining airbag technology. Many of these refinements were possible because EDRs and SDMs provided actual crash data essential to improving airbags. For this reason, leading organizations like the Auto Alliance and the National Motorists Association support the technology. These same organizations, along with such organizations as the Consumer's Union and the Electronic Privacy Information Center, also support telling consumers these black boxes are there.

I respectfully ask for your support.

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Paul Wiley

From: Paul Wiley
Sent: Wednesday, April 05, 2006 4:56 PM
To: Deborah Grundmann
Subject: RE: SB 18

Deb,

Sen. Elton will be presenting SB 18 tomorrow in (S) TRA. I will be along to assist with information.

Kevin O'Neill, staffer for Assemblyman Tim Leslie, R-Tahoe City, CA. will also be testifying. Tim Leslie passed very similar legislation in the California State Legislature a few years ago with strong bi-partisan support.

I am trying to reach some other folks, but as of now this is the only confirmation.

Now, I believe you said you were interested in *(1) what* information is recorded by the technology and *(2) who* has access to the information.

(1) Data collected can include all or some of the following: seat belt status (on or off); forward post-crash velocity changes; acceleration patterns; braking patterns; steering wheel position and patterns; vehicle speed as well as engine speed (RPMs); percent throttle, etc.

The data collected varies from manufacturer to manufacturer, as well as from year to year, as technology, and the ability to decipher the data the technology records, evolves.

(2) It is somewhat more difficult to find the answer to this question, which is part of the reason for the introduction of SB 18. The technology was originally invented, and continues to be used, for the advancement of vehicular safety. However, it is being used in litigation more and more often; sometimes in favor of the vehicle owner, but in most cases against him/her. Many of these cases in which EDR data has been used to convict, or acquit, a defendant have been positive and just. Yet, because of some flaws in retrieving the data, as well as the data itself, some individuals have been wrongfully accused because of misrepresentation of the data harvested.

The technology, as well as the ability to investigate the EDR data, will continue to improve. This bill does not hinder the positive uses of EDRs.

Should local police officers be allowed to harvest one's EDR data without a court order? Can an insurance company extract the data without a client's consent in order to deny them, or set their rates? It is difficult to say, but as of now the odds are not in favor of the individual consumer.

The fact is, the owner of the vehicle should own this data and should be aware of the technology that is recording their every move. The information recorded is being put to more and more uses everyday. The question of who owns the data, who can access it and how, should be set in Alaska Statute before consumer privacy-andproperty-rights are lost completely. They are already in jeopardy.

We look forward to answering any further questions tomorrow afternoon.

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From: Deborah Grundmann
Sent: Wednesday, April 05, 2006 3:19 PM
To: Paul Wiley
Subject: SB 18

Hi,
Who will be presenting SB 18 for the Committee tomorrow? Also, do you have anyone else to testify?
Thanks
deb

The following is an excerpt from the homepage of the **Auto Alliance**- a leading advocacy group for the automobile industry on public policy issues representing such groups as DaimlerChrysler, BMW, General, Mazda, Mitsubishi, Porsche, Toyota and Volkswagen, Ford Motor Co.:

Balancing Safety and Privacy

EDRs are a public safety matter, because EDRs advance safety for everyone on the road. At the same time, consideration should be given to consumer privacy concerns as the safety community is advancing auto safety.

Alliance members support these key points.

Consumer Information: The Alliance supports providing consumers with important information on their autos, including EDRs. Notification of the presence of EDRs is provided in the owner's manual, along with information on what data are collected, how the data is used and consumer ownership of data.

Consumer Ownership of Data: The Alliance advocates that data gathered by an EDR remains the sole property of the vehicle's owner or lessee, and the permission of the owner or lessee is required to access the data.

Service Agreement Notification: The Alliance supports requirements that subscription service providers notify their customers if crash-related information will be recorded and transmitted. Subscription services include Automatic Collision Notification.

Your new car is recording . . . you

The Beacon Journal | Oct 31 2004

'Event data recorder,' recording speed, seat belt use in millions of cars, raises privacy questions.
Did you know that more than 40 million of the newest cars on the road have black boxes in them that record such things as speed and whether the driver was wearing a seat belt seconds before a crash?

You're not alone. Most people don't.

That's the problem that consumer advocates have with the devices, which are also called ``event data recorders.''

``A lot of people have no idea that they're inside (their cars),'' said Mantill Williams, national director of public affairs for AAA, the nation's largest auto club.

While they differ from the black boxes in airplanes, which record conversations in the cockpit, black boxes in automobiles do record some data about the car's speed in rapid deceleration before a crash. The devices vary slightly according to manufacturer, but only record about 10 to 30 seconds worth of data.

But that still makes people nervous. Akron resident Roger Forte said the black boxes invade privacy.

``Big Brother is really coming down on us hard and people don't know it,'' he said. ``I drag-race and like high performance cars. I can see in the future getting a notice in the mail saying I was going 20.5 miles per hour in a school zone on such and such a day or I was going 56 miles in a 55 zone. ''

The leader in placing the black boxes in vehicles is General Motors. All passenger vehicles since 1998 with air bags have the devices, spokesman Alan Adler said. Up to 90 percent of new model vehicles of all makes have the boxes, according to the National Highway Traffic Safety Administration.

But Adler said there's a lot of misconceptions about the devices. They don't record where you were or what you were doing. They collect certain bits of speed data to determine whether the air bag system operated correctly.

Adler said GM is also concerned about consumers' privacy and said that anytime data from the devices are used, it is with the consumers' consent.

But consumer advocates say they're also worried about the data being used against consumers.

``We wouldn't want to see them used by insurance companies and local police departments to the detriment of the individual consumer. These things are not perfect yet. They could have errors in them and they shouldn't be used as some sort of information to either fine a consumer or cause them to lose their insurance,'' said R. David Pittle, senior vice president of technical policy for Consumers Union, the publisher of Consumer Reports.

Pittle said the nonprofit organization sees the value in the devices to help manufacturers and the government study accidents to design safer cars, but said the information has to be carefully controlled for the privacy of consumers.

AAA officials said they would support black boxes only if protections were in place to ensure the data are used only for safety research and can't be traced to specific drivers.

Notification of driver

Williams said AAA believes automakers should list the black box on the list of equipment because most people have no idea that their car is equipped with the device. Adler of GM said the manufacturer lists it in the owner's manual in the air bag section.

NHTSA in July proposed standard requirements for the boxes. The proposal would not require the installation of the boxes, but outlines the data that would be collected if the boxes are placed on a voluntary basis.

NHTSA spokesman Tim Hurd said the agency sees good crash information that can come from the devices. The agency is reviewing comments on its proposal.

Hurd said whether insurers and attorneys are going to use the information in the devices needs to be worked out by state legislatures and the industry.

Phil Haseltine, president of the Automotive Coalition for Traffic Safety, a nonprofit educational organization funded by the automakers, said the industry players differ in their opinions about the black boxes.

``Some companies have stronger concerns about consumer reaction and privacy issues,'' he said.

Haseltine said the devices are providing the same type of information that an accident reconstruction expert would put together at the scene, but he believes the privacy issues are important. Consumers should be notified and educated about the devices, he said.

``The key to the acceptance of anything new like this is an understanding of what the technology is all about,'' he said.

However, Hurd said the consumers should still own the data in the devices, just as they own the car.

Industry experts said they have not heard of insurers punitively using information in the black boxes in setting insurance premiums.

TripSense

One area insurer, Progressive Insurance in Mayfield Heights, is testing a program it says uses data collected from a vehicle to give discounts to its customers.

TripSense, which is being tested only in Minnesota, is a program that allows people who consider themselves good drivers to prove it with data to get discounts on their premiums.

Here's how it works: A driver agrees to install a matchbox-sized data device into a port under the steering wheel. The device for six months will record what speeds you drove, at what time and how far.

It can't tell whether you were speeding on a particular day, but the aggregate information will give the insurance company an idea of whether for instance, you always drive 45 mph, or 90 mph, said Dave Huber, TripSense product manager.

Huber said the program is completely voluntary and cannot be used in a punitive way. Premiums cannot go up as a result of the data, and you will not be dropped in the future, he said.

Drivers are able to review their data and what type of discount they'd receive on their computer before deciding whether to upload the information to Progressive. If they share the information, they get an automatic 5 percent discount on their premium. You can get further discounts of as much as 25 percent, depending on the data.

For instance, a person who drives at 2 a.m. on a Saturday morning is more risky than driving during the business day.

TripSense voluntary

Huber said that because the program is voluntary, there shouldn't be worries about privacy.

``The only thing I really know is how much you're driving. I don't know where. I don't know -- to use the extreme example -- if you're up going to a strip club,'' Huber said. ``It's not for everybody, but to the safe driver that feels like they're

paying too much (for insurance) -- the better driver than they're given credit for -- those are the folks who we're trying to get the feedback from."

Huber said the company is not using the data for any purpose other than to collect data. The company is also collecting information about rapid acceleration and deceleration, but is not using that to determine discounts, he said.

To me, this program might make sense to someone who is a consistently safe and conscientious driver. But I don't think I'd be willing to try it. At times, I know I have a lead foot, but that doesn't mean I'm an unsafe driver at all times.

Pittle of Consumers Union said he'll be interested to find out how many people choose to share their information with Progressive. He also said insurers should base their rates on whether you're making claims and not what kind of driver you are.

``This really comes down to the choice of the consumer. I think people may be reluctant to believe it would never be used against them," he said.

Huber said it's still early in the program, so there's not enough data to make any conclusions.

Thinking Out of the Black Box

By Jim Harper
Published 12/10/2004 12:05:46 AM

New cars offer a delightful array of information and services: satellite radio, intelligent cruise control, braking and steering assistance, navigation systems, and roadside assistance, to name a few. These all appeal to drivers' desire for safety, convenience, and comfort.

But a troublesome feature of most new cars is the Event Data Recorder ("EDR"), or Black Box. As in commercial airplanes, the automobile Black Box keeps a running record of how a car is being operated, including speed, acceleration, braking, steering, and seat belt use.

When there is an "event" -- usually a crash -- the EDR moves the last several seconds of information into long-term storage for later downloading. Well over half of the 2004 model passenger cars and light vehicles have some recording capability of this type.

The National Highway Traffic Safety Administration has proposed standards for the data collected by EDRs, but the agency emphasized in a recent notice that it is not mandating Black Boxes. It will be under pressure to do so. The National Transportation Safety Board has listed Black Boxes as one of its "most wanted" measures.

There are obvious safety benefits if auto accidents can be dissected in detail, of course. Auto manufacturers, safety groups, and insurers want this information. Police departments want it too.

Already, prosecutors are using information from automobile Black Boxes as evidence against drivers. Last year, one Robert Christmann was convicted in a New York traffic fatality based upon information downloaded from his car's Black Box.

But car manufacturers aren't touting the safety benefits of the Black Box like they do so many other improvements on the modern automobile. That is because the Black Box is not a safety feature; it is a surveillance tool -- and when drivers learn about it, they are none too happy.

After I commented on Black Boxes in a news story earlier this year, letters poured into my e-mail box. "This is 'over the top,' and a definite infringement on my privacy," said one outraged car owner. Another wrote, "[T]his is a personal vehicle, I've paid for it, paid my taxes, enough said." From another, simply: "Not on my car."

Many correspondents wanted to know which cars have Black Boxes so they can determine whether their personal vehicles were, in effect, spying on them.

There are a number of directions in which this technology is likely to go. It could collect and retain more information for longer periods. It could interact with Global

Positioning Systems (GPS) to record where a car has traveled. And it could combine with communications systems to signal authorities in real time

Joan Borucki, Governor Arnold Schwarzenegger's nominee to head California's Department of Motor Vehicles, has proposed a mileage tax that Black Boxes could administer. The Oregon Department of Transportation has also considered a mileage tax.

In 2001, a Connecticut car rental company began charging renters a $150 fine for speeding in their rental cars, using a GPS-equipped monitoring system. Consumers can shun companies which make this a practice. But they could not refuse an automatically-issued traffic citation if governments were to add Black-Box-citation revenue to what they now get from red-light cameras.

Legislation passed by the state of California is likely a sign where things are headed. The state requires notices in the owner's manuals of cars that have Black Boxes. The new law also allows data to be accessed under court order, for research, and for other reasons. California's EDR law replaced consumer choice with an agreement among politicians, bureaucrats, and industry on a nice low level of protection for consumers.

There is no question that aggregated EDR data can provide important safety benefits. If traffic accidents and deaths can be averted by improving automobile safety, these safety advances should be pursued. But they should be pursued in a way that unites the interests of drivers with the interests of the community.

Insurers should offer car owners discounts if their EDR-equipped cars reveal good driving habits and freedom from blame in accidents. Consumers, not the government, should decide if they want their cars to collect such data, and if they want to share it with others.

Jim Harper is director of information policy studies at the Cato Institute.