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**OPPOSITION TO SENATE BILL 697**

**The Proposal Will Inhibit Insurers from Accurately Assessing Risk** - The main reasons that such telematics devices are employed by insurers is to more accurately assess the risk that an insured poses. In this way and with additional data and variables, insurers seek to more accurately price their auto products. More accurately rated products benefit both insurers and insureds. Limiting insurers' decision-making ability by prohibiting insurers from conditioning the issuance or renewal of a policy on whether the vehicle is equipped with an EDR, and prohibiting cancellation/exclusion/limitation/denial of claims on whether there is an EDR, limits insurers ability to accurately price risk & provide reasonably-priced products for consumers.

**The Proposal Will Disrupt Accident Reconstruction/Investigations and Claims Processing** - The objective data available from EDRs can be useful to insurer efforts to reconstruct the events surrounding automobile accidents. EDR data is an investigative tool and is not used as the sole basis for determining liability.

There does not appear to be any substantive reason why access cannot be adequately controlled by existing discovery procedures. While rules vary, the usual standard for discovery requests is that they be "calculated to lead to admissible evidence." Ordinarily a request for EDR data in an accident case would meet that standard. A party opposing access would have the opportunity to pursue a protective order. Standard discovery practice is not at odds with privacy concerns. Information far more sensitive than five seconds of vehicle performance information is regularly addressed within discovery.

**Consumers are Protected by Current Federal Privacy Regulations** - The issue of notice to consumers is addressed by the NHTSA regulation, which requires a specific notice in the owner's manual indicating that the vehicle is equipped with an EDR and describing the functions and capabilities of EDRs.

**The Bill Suffers from Technical Problems** - The definition of event data recorder is entirely different from what it actually is. The bill defines anything installed that tracks rate of speed, location etc. as an EDR. That would make telematics devices, Garmins, the vehicles CPU, cell phones in a cradle, etc. EDRs under the bill. An event data recorder is a specific installed piece of hardware designed to record vehicle information at the time of an accident. At a minimum, if this bill goes forward, it should be revised to track the NHTSA definition of EDRs.

Second, the exception for usage based insurance only exempts usage based insurance where consent was given at the time the policy was issued. Therefore, customers who voluntarily add any telematics devices after the policy issued would not be exempt. This could be corrected with the deletion of "at the time the policy was entered" from Section 2(c).

We respectfully request you to oppose SB-697.



# DUEY STROEBEL

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

## Testimony on Senate Bill 697

Thank you colleagues of the Senate Committee on Government Operations and Consumer Protection for considering my testimony in favor of Senate Bill 697. This is a bill to protect the privacy of automobile owners in Wisconsin. It was crafted after reviewing and comparing similar laws in over a dozen states. The goal is simple: require consent of the owner of digital information when that data is accessed.

This bill protects civil liberties while recognizing the nature of quickly advancing technology. It defines “event data recorder” broadly. This is meant to include the multiple components collecting data in many cars and future technological advances not currently imagined. Since technology is advancing quickly, it is very difficult for consumers to foresee what personal data could be recorded and subsequently used or distributed.

While I am certainly not someone who favors excessive government mandates on private industry, simply asking for written permission to use someone’s personal property should not be considered burdensome or excessive. Requiring written consent for those seeking data is a modest regulation that ensures owners of this data know what data is being collected, how it is being collected, and why it is being used.

It is important to note that, unlike most marketplaces, auto insurance is a mandated purchase, leaving a consumer with no recourse if insurance companies were to require data disclosure as a boilerplate contract term. The bill prohibits insurers from conditioning the issuance, renewal, or cancellation of a policy “wholly or substantially” on an insured’s decision because of the use of an event data recording device. It is the job of the insurer to negotiate with the consumer regarding the necessity of the collection of data. If a consumer decides not to share their data, the insurer can adjust the premium accordingly.

This bill will not hinder the use of future technology. The bill has a moderate perspective on regulating technology and personal privacy.

My office has been working for several months with stakeholders, including the insurance industry. This bill reflects compromises with all stakeholders that moves forward this key policy discussion. In an advancing world, our society is ever more dependent on technology. We must balance technology, which makes us more efficient, with protecting the civil liberties and privacy of Wisconsinites.



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# HOWARD MARKLEIN

STATE SENATOR • 17<sup>TH</sup> SENATE DISTRICT

February 4, 2016

## TESTIMONY ON SENATE BILL 617

Thank you to Chairman Stroebel and the rest of the Senate Committee on Government Operations and Consumer Protection for the opportunity to testify on Senate Bill 617 relating to surplus retention limitations for providers of rate-based services purchased by the Department of Children and Families, the Department of Corrections, the Department of Health Services, or a county department of human services, social services, community programs, or developmental disabilities services.

Foster care and mental health treatment are some of the most important services provided to children and families by private for-profit and nonprofit agencies. Government relies on these private agencies to serve families in need of care. Foster care and other children and families' resources are always stretched in this state. There has been an increase in the number of kids getting sent out-of-state because Wisconsin does not have the capacity. This is not good for the kids and it costs the state more in valuable resources. In order to grow service capacity, providers need financial stability.

Under current law, many of the regulations place an unnecessary reporting and tracking burden on nonprofit children's agencies while restricting their ability to retain a "rainy day fund" for their earnings. In a for-profit agency, they are not restricted in their ability to retain such a fund. They get to keep 7.5-10% of earnings. When they earn money, they keep it and decide how they spend it.

This bill would make a number of technical changes to the regulation of contracts between the government and these nonprofit agencies. These provisions would permit a 5% retained earnings, eliminate an arbitrary 4-year tracking requirement and 10% cumulative cap for rate-based services, clarify the ownership of earnings, and expand the options to spend these earnings. This would level the playing field between for-profit and nonprofit agencies.

It is important to note that permitting 5% retained earnings does not guarantee various agencies 5% in retained earnings. If they make 2%, they keep 2%. This simply allows them to retain a "rainy day fund" like many businesses and for-profit children's agencies. Anything in excess of 5% results in all purchasers being notified about their equal claim to the excess. All of the funds that counties spend on rate-based services provided by these agencies are reinvested in Wisconsin's child and family services system.

The provisions of this bill were part of the 2015-17 budget and were vetoed out of the budget. Since then, we have worked diligently with the state agencies impacted to clarify these provisions.

I would like to thank Representative Kooyenga for his leadership on this bill. The Wisconsin Association of Family and Children's Agencies (WAFCA) is present to answer any technical questions regarding the operations of their member agencies. I am happy to take questions from committee members at this time.



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# JESSE KREMER

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

*February 4, 2016*  
*Committee on Government Operations and Consumer Protection*  
*Public Hearing*  
*SB 697*

Members of the Committee,

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* and drones. This bill addresses privacy concerns relating to motor vehicle event data recorders (EDRs) and other vehicle data.

Event data recorders, commonly known as “black boxes,” use sensors to record technical information about a vehicle’s operation in relation to an event, such as an accident. While not yet mandated by the federal government, over 96 percent of all new cars on the road today contain a black box. In 2006, the National Highway Transportation Safety Administration (NHTSA) created an EDR rule standardizing the data that EDRs in vehicle model years 2013 and newer must collect. It should be noted that the NHTSA rule does not prohibit an auto manufacturer from collecting other data in addition to the required data points, or collecting for longer periods of time. A list of the required data points is provided with this testimony.

In addition to EDR data, your vehicle also records other information concerning vehicle operation and driving habits via onboard diagnostic, infotainment and navigation systems. Automatic Crash Notification (ACN) systems use information collected by the EDR, GPS and airbag sensors to alert first responders and police after an accident.

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.

This bill would codify ownership of vehicle data, 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 mutual agreement between the owner and an insurance company for a usage-based policy;
3. A diagnostic test performed by a mechanic to diagnose a problem;
4. Law enforcement release of information to an insurance company during a claims investigation or for anti-fraud activities; and
5. For a contracted subscription service, such as OnStar.

This bill would also prohibit an insurance company from basing policy denial or cancellation substantially on whether access to an EDR is granted. In addition, Wisconsin's DOT would be required to add EDR information to the Wisconsin Buyer's Guide window sticker, filled out by used car dealers indicating the presence of an EDR in a vehicle.

If signed into law, Wisconsin will join 17 other states having enacted similar privacy legislation. As EDRs develop in complexity and interactivity, this legislation will ensure that Wisconsin's motorists are sufficiently protected from unauthorized data access and transmission.

Thank you for your time.

## Appendix A. Data Recorded by an EDR

**Table A-1. The 15 Data Points Required for All Passenger Vehicles with an EDR**  
Per NHTSA regulation promulgated in 2006

Data Element	Recording interval/time (relative to time zero)	Measurement Significance
Delta-V, longitudinal	0-250 milliseconds (ms)	Cumulative change in velocity along a longitudinal axis starting from crash time (change in forward crash speed)
Maximum delta-V, longitudinal	0-300 ms	Maximum value of the cumulative change in velocity
Time, maximum delta-V	0-300 ms	Time from the beginning of the crash at which the maximum change in forward speed occurs
Speed, vehicle indicated	-5.0 to 0 sec	Vehicle ground level speed
Engine throttle, % full (or accelerator pedal, % full)	-5.0 to 0 sec	Acceleration as measured by the throttle position sensor on the accelerator pedal (compared to a fully depressed position)
Service brake, on/off	-5.0 to 0 sec	Status of the device connected to the brake pedal system to detect whether the pedal was pressed
Ignition cycle, crash	-1.0 sec	Number of power cycles applied to the recording device at the time of the crash
Ignition cycle, download	At time of download	Number of power cycles applied to the recording device prior to EDR downloading
Safety belt status, driver	-1.0 sec	Whether safety belt was fastened or unfastened
Frontal air bag warning lamp, on/off	-1.0 sec	Indicates whether the air bag system was working one second prior to the crash
Frontal air bag deployment, time to deploy (driver)	Event	Time needed for the driver's air bag to deploy
Frontal air bag deployment, time to deploy (right front passenger)	Event	Time needed for the front passenger's air bag to deploy
Multi-event, number of events	Event	Number of distinct crash events occurring within five seconds. For example, this would show if a car was sideswiped by a vehicle before a head-on crash.
Time from event 1 to 2	As needed	Time between two recorded events, such as a skid and a crash.
Complete file recorded (yes, no)	Following other data	Indicates whether the EDR completed the recording.

**Sources:** Event Data Recorders, 71 *Federal Register* 51029 (Aug. 28, 2006); NHTSA, "Federal Motor Vehicle Safety Standards; Event Data Recorders," 77 *Federal Register* 74156 (Dec. 13, 2012); Lou Stanley, "Decoding Data: EDRs in Auto Claims Investigation," *PropertyCasualty360*, January 27, 2014.

## MEMORANDUM

**TO:** Honorable Members of the Senate Committee on Government Operations and Consumer Protection

**FROM:** Sarah Diedrick-Kasdorf, Deputy Director of Government Affairs,  
Wisconsin Counties Association  
Lisa Hassenstab, Executive Director, Wisconsin County Human Services Association

**DATE:** February 4, 2016

**SUBJECT:** Opposition to Senate Bill 617

The Wisconsin Counties Association (WCA) and Wisconsin County Human Services Association (WCHSA) had the opportunity to review Senate Bill 617. Based on that review, counties identified a number of concerns with the proposal.

County human and social services departments have great respect for the Wisconsin Association of Family and Children's Agencies (WAFCA) and its membership. During the 2015-17 state biennial budget, a conference call was held between counties, WAFCA, and a number of its member agencies to discuss the concerns raised by counties. Although consensus was not reached in the short conversation, counties believe that we can come to an agreement with additional discussion and offered to work with WAFCA following adoption of the state budget. We remain committed to participating in discussions on surplus retention limitations for providers of rate-based services.

Therefore, WCA and WCHSA request that Senate Bill 617 not move forward at this time to allow the bill authors, counties, WAFCA members, and the Departments of Children and Families, Health Services, and Corrections to meet and discuss the proposal in greater detail. Counties believe that a bill can be drafted to meet the needs of the private human services agencies, while at the same time protecting state and county tax dollars.

If you have any questions, please do not hesitate to contact WCA at 608.663.7188 or WCHSA at 608.469.5903.

Thank you for considering our comments.