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# JESSE KREMER

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

*February 2, 2016*  
*Public Hearing*  
*Committee on Consumer Protection*

Members of the Committee and Chairman Krug,

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.

## Appendix B. Entities Seeking Use of EDR Data

Table B-1. Potential Users of EDR Crash Data

Entity	Reasons for Use
Motor Vehicle Manufacturers	Improvement of vehicle design and diagnose vehicle systems
Government	Federal government: better management of highway safety and administration of vehicle safety standards State governments: management of road systems Local governments: earlier and better assignment of specific emergency responders to crash scenes
Law Enforcement	Validation of collision causation with impartial data
Insurance Companies	Improvement of collision analysis in settling claims; rate-setting based on driver behavior as recorded by EDRs
Courts	Retrieval of more accurate, scientific information during court proceedings, reducing the need for costly experts who attempt to reconstruct crash scenarios
Human Factors Research	Better understanding of human involvement in crashes
State Insurance Commissioners	Support for decisions on insurance rates, potentially including discounts for car owners who agree in advance to release EDR data after a crash
Interest Groups	Improvement of statistical data used by organizations seeking changes in public policy
Fleet Owners and Drivers	Improvement of driver safety and education and use of real-time vehicle data while a commercial passenger vehicle is in operation
Medical Institutions	Improvement of hospital and EMS responses to crashes
Vehicle Buyers	Review of EDR data could inform a potential car buyer of previous accidents and their severity
Transportation Researchers and Academics	Research on vehicles, highways, and driver behavior

**Source:** CRS modification of analysis presented in NHTSA EDR Working Group, *Event Data Recorders*, Final Report, August 2001, pp. 57-58.

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# Romaine Quinn

STATE REPRESENTATIVE • 75th ASSEMBLY DISTRICT

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## AB 838

This bill serves to bring Wisconsin's legislation into line with current technology. Privacy rights should concern all of us, and this bill serves to clarify an area where technology has gotten ahead of the law.

Our cell phones contain GPS data on every trip we have taken; I only recently learned that I could turn off this feature. I suspect there are some here today who are learning about this for the first time. The black boxes we are discussing today contain a wide range of information that, when put together, could be used to trace individuals' movements and identify their information to third parties.

According to Nate Cardozo, staff attorney at the Electronic Frontier Foundation, a non-profit group that monitors privacy rights, "The car manufacturers can use that data at will, including location, which has significant privacy implications." (<http://articles.latimes.com/2013/feb/15/autos/la-fi-hy-advocates-say-car-black-boxes-could-become-a-privacy-nightmare-20130215>)

As these and other technologies become ubiquitous, and the possibility for privacy violations grows, few customers are fully aware of the extent of the information stored in their cars.

This bill will enshrine the idea that the black box information belongs to the car owner, and only to the owner. Others may use this information – for safe driver discounts, routine maintenance, and police investigations. However, the car owner must give his or her consent to sharing this information, or the police must obtain a warrant.



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Mount Morris Mutual  
Mutual of Wausau Insurance  
Nationwide Indemnity  
Old Republic Surety Co  
Partners Mutual Insurance Co  
Pella Mutual Insurance  
Progressive Group of Insurance Cos  
Racine County Mutual Insurance Co  
Rural Mutual Insurance Co  
SECURA Insurance  
Sentry Insurance  
S F M  
Sheboygan Falls Insurance  
Society Insurance  
State Farm Insurance  
State Auto Insurance Cos  
Sugar Creek Mutual Insurance Co  
Travelers  
United Wisconsin Insurance Co  
USAA  
WEA Property & Casualty Co  
West Bend Mutual Insurance  
Western National Mutual Ins Co  
Wilson Mutual Insurance  
Wisc County Mutual Insurance Co  
Wisc Mutual Insurance Co  
Wisc Reinsurance Corp

**OPPOSITION TO ASSEMBLY BILL 838**

**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 AB-838.



*The*  
**Hamilton Consulting Group**

Legislative, Regulatory & Information Services

**Memorandum**

**Corrected**

**To:** Assembly Committee on Consumer Protection  
**From:** Caty McDermott, Bob Fassbender  
On Behalf of the Alliance of Automobile Manufacturers  
**Date:** February 15, 2016  
**Re:** Opposition to AB 838 (Event Data Recorders)

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The Alliance of Automobile Manufacturers is a trade association of 12 vehicle manufacturers.<sup>1</sup> We serve as the leading advocacy group for the automobile industry on a range of public policy issues, including privacy protections that are the subject of the bill. Please see our Consumer Privacy Protection Principles. Attached.

Generally, the Alliance supports the underlying policies contained in AB 838. However, we were not consulted prior to the introduction of this legislation. As introduced, or amended by AA1, *the bill has serious flaws that impede our ability to provide emergency services and advance the vehicle safety purpose underpinning federal EDR requirements.*

The legislation before you prohibits accessing, collecting, or transferring *any* information about the motor vehicle without written consent of the motor vehicle owner. This would include information from vehicles involved in accidents or stranded in dangerous weather conditions.

There are occasions in which auto manufacturers, for example, through services such as OnStar, access on-vehicle data to assist motorists, including those in accidents. There is no feasible way to obtain written consent for such services except through a contract. But contracts are not necessarily required to access these services in emergencies. You simply “push the button” and request help. Or in case of accidents, automatic alerts can be sent to the service provider upon the triggering of built-in sensors, even when the passengers are incapacitated. *But under this bill, the transfer of such vital, sometimes life-saving data is forbidden without written consent.*

The National Highway Traffic Safety Administration (NHTSA) EDR regulations 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.

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<sup>1</sup> BMW Group, Fiat Chrysler Automobiles, Ford Motor Company, General Motors Company, Jaguar Land Rover, Mazda, Mercedes-Benz USA, Mitsubishi Motors, Porsche, Toyota, Volkswagen Group of America and Volvo Cars North America.

But under this bill, automobile manufacturers must receive written consent to collect and analyze this data considered by NHTSA to be “very valuable to understanding crashes, and which can be used in a variety of ways to improve motor vehicle safety.”<sup>2</sup>

There are many obstacles to obtain such written consent, most daunting would be obtaining such consent for the millions of vehicles already on the road. Thus, this legislation undermines the primary purpose of developing and installing EDRs in motor vehicles, which is providing improved data to assist safety researchers, auto engineers, government researchers and trauma doctors in their work.

We respectfully ask you to oppose AB 838.

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<sup>2</sup> Welcome to the NHTSA Event Data Recorder Research Web site.  
[http://www.nhtsa.gov/Research/Event+Data+Recorder+\(EDR\)/Welcome+to+the+NHTSA+Event+Data+Recorder+Research+Web+site](http://www.nhtsa.gov/Research/Event+Data+Recorder+(EDR)/Welcome+to+the+NHTSA+Event+Data+Recorder+Research+Web+site).