

SUBJECT: Restricting access to accident data from vehicle recording devices

COMMITTEE: Transportation — committee substitute recommended

VOTE: 6 ayes — Krusee, Phillips, Callegari, Casteel, Deshotel, West

0 nays

3 absent — Flores, Hamric, Hill

WITNESSES: For — Michael White, ATX Group

Against — None

BACKGROUND: Event data recorders (EDRs) and sensing and diagnostic modules (SDMs), commonly referred to as “black boxes,” are recording devices that manufacturers install in vehicles to store information pertaining to car accidents. These recording devices collect data on vehicle and driver performance, including speed, direction, acceleration, seatbelt usage, and brake activity, immediately before and after an “event,” usually a collision. Subscription in-car navigation services, such as OnStar, utilize similar technology.

The National Transportation Safety Board estimates that most cars and other light vehicles manufactured after 2002 contain recording devices. Information from black boxes can be used to research vehicle safety issues and to determine fault in civil or criminal investigations.

DIGEST: CSHB 160 would require manufactures to notify owners of vehicle recording devices installed in new cars by including such information in the owner’s manual. Third parties could not access the information recorded by a vehicle recording device without the consent of the vehicle owner or a court order.

A recording device would include a manufacturer-installed feature that records retrievable information from the vehicle after an accident involving the vehicle, including the vehicle's speed, traveling direction, location, or brake performance, including whether the brakes were applied before an accident, or the driver's safety belt use, or transmits information

concerning an accident to a central communications system when the accident occurs.

Subscription services that utilize recording devices would be required to notify their customers in the subscription agreement of the presence of such devices but would not be required to obtain court orders or owner consent to retrieve vehicle recording device data.

The bill would take effect September 1, 2006.

**SUPPORTERS
SAY:**

CShB 160 would help protect consumer privacy rights by notifying car buyers of the presence of recording devices in new vehicles and establishing that black box data is the property of a vehicle owner. Consumers have a right to know that recording devices have been installed in their cars and either to decide whether third parties should have access to black box data or to require a court order demonstrating why such access should be allowed.

Studies indicate that many drivers are not aware that these devices have been installed in their cars by the manufacturer. Current law does not regulate the installation of recording devices in vehicles. Manufacturers are not required to notify vehicle owners that recording devices have been installed, and access to information collected by these recording devices is unrestricted.

CShB 160 would restrict the availability of black box data only to parties that can demonstrate a legitimate need for it, such as law enforcement officers or prosecutors. Obtaining court orders in the course of criminal investigations or civil lawsuits is a routine practice, and the bill would not place an unreasonable burden on those who can demonstrate a legitimate purpose for such data. Instead, CShB 160 would prevent abuses such as overzealous police officers using black box data inappropriately in the investigation of minor traffic violations. Private information from recording devices should be retrieved only when deemed necessary by a court or when expressly authorized by the owner.

CShB 160 would serve as a necessary first step in curbing the potential abuse of recording-device technology in vehicles. Some parents already have installed commercially available data recording devices in their own vehicles to monitor their teenage drivers, as have some companies to track the activities of their truck drivers. While the bill would not prevent these

activities, it would begin the overdue process of regulating the rapid expansion of the black box industry in Texas.

CSHB 160 would set a precedent for limiting other questionable uses for black box data. California and Oregon, for example, are considering the use of black box data to levy a “mileage tax” on drivers as a source of transportation revenue.

The bill is necessary to keep pace with technology and give the courts a statutory reference to look to in deciding cases involving these devices. Those subscribing to a service such as a navigation system that also can record or transmit vehicle data would be fully aware of that capability because the bill would require the subscription agreement to disclose it.

The bill would not place any additional burden on researchers who seek to use black box data to improve vehicle safety. Currently, a technician who collects such data normally asks the owner’s permission before accessing the black box.

**OPPONENTS
SAY:**

Fears concerning the access and potential abuse by third parties of information stored in black boxes largely are unsubstantiated. Many people incorrectly believe that black boxes can record everything that happens in a car, including conversations, and that anyone can easily access this information. In reality, black boxes are used primarily to record data a few seconds before and after an accident in order to help determine the cause of the crash and provide information for research on automobile safety. In an effort to protect the privacy rights of consumers, this bill in fact would make it more difficult for parties that have a legitimate need for this data to obtain it.

CSHB 160 would place an unnecessary burden on police officers investigating crimes committed during traffic accidents by forcing them to obtain court orders or owner permission to access black box data. Law enforcement officers ordinarily do not seek black box data in the course of investigating minor traffic violations such as speeding infractions, and this bill would serve only to unnecessarily complicate legitimate criminal investigations.

Access to collision-related black box data can help insurance companies settle claims faster, assess fault more often in collisions, and prevent insurance fraud, all of which could result in lower premiums for

policyholders. By restricting such access, this bill would hamper insurers from using this new technology in ways that would benefit those companies and the public.

Finally, by requiring the owner's permission to collect black box data, this bill would make it more difficult for car manufacturers and automobile safety researchers to use the data to design safer vehicles and prevent accidents. Manufacturers and researchers study aggregate data, rather than information on individual vehicle owners, so the collection of black box data does not affect the privacy rights of consumers.

OTHER
OPPONENTS
SAY:

Subscription services should not be exempt from obtaining the owner's permission or a court order before retrieving vehicle data. Anyone who wants to access information from a black box installed in a car first should get permission from the owner or the courts.

This bill would not go far enough in notifying consumers of the presence of black boxes in new cars. Most, if not all, manufacturers already include such information in owner's manuals, yet few motorists realize that they may be driving a car containing a black box. Manufacturers should have to do more to make buyers aware of the existence of recording devices in new vehicles.

NOTES:

The bill as introduced would have required only law enforcement officers and prosecutors to obtain a court order to access black box data, while the committee substitute would require any third party to obtain a court order or owner consent to retrieve such information. The substitute added the requirement that subscription services disclose in the subscription agreement use of any device that records or transmits vehicle accident data while exempting such services from the requirement that the data be retrieved only with the owner's consent or a court order. The committee substitute also stipulates that the automobile manufacturer, rather than the new-car dealer, would have to notify the consumer of the presence of a black box through language in the owner's manual. Finally, the substitute changed the original bill's effective date from September 1, 2005, to September 1, 2006.