



Legislative Committee

Chair: John Junk
SCA Appraisal Co.

Vice Chair: Dave McClune
CAA



Event Data Recorder
CIC Legislative Committee Update
presented by Injury Sciences

Collision Industry Conference
San Francisco, CA
September 14, 2005



Injury Sciences LLC

- Only provider of OEM “black box” data harvesting network (in 37 states) and desktop evaluations for claims professionals
- Customers include 16 auto insurers which sell nearly 20% of the auto insurance policies in the U.S.

Enacted EDR Legislation



State	Mfg Notice to Buyer	Access by Owner Consent	Access by Court Order	Miscellaneous Provisions	Status
Arkansas SB 51	X	X	X	Payment on claim cannot be contingent on owner consent	Signed into law 4/1/05
California Veh. Code §9951	X	X	X		Current Law
North Dakota SB 2200	X	X	X	Consent cannot be required for insurability; data may not be used to set rates	Enacted. Applies to all vehicles mfg after 7/31/05
Nevada AB 315	X	X	X		Enacted. To become law 1/06
Texas HB 160	X	X	X	Must have court order based on public safety or criminal issues to retrieve “vehicle location data”	Enacted. To become law 9/06



Pending EDR Legislation - NE

State	Mfg Notice to Buyer	Access by Owner Consent	Access by Court Order	Other Access	Miscellaneous Provisions
Connecticut SB 824					Only addresses use by peace officer, who must obtain consent of owner, or a search warrant before accessing
New Hampshire 599	X	X	X	Access by law enforcement or party litigants in death cases	Must disconnect upon owner's request. If the vehicle is involved in an accident resulting in death, the data can be retrieved by a law enforcement officer
New Jersey AB 2090/SB2546	X	X	X		Owner has right to disable the device
Pennsylvania HB 1294	X ("seller")	X	X		Seller to notify purchaser that data can be used as evidence in legal proceedings – data removed in violation of act is inadmissible



Pending EDR Legislation - NE

State	Mfg Notice to Buyer	Access by Owner Consent	Access by Court Order	Other Access	Miscellaneous Provisions
New York AB 872/SB 850	X	X	X		
New York AB 6093	X Each sale shall include a verbal and written notification			Persons with EDR involved in an accident shall submit EDR to law enforcement upon request at accident scene for accident recon report	Addresses use of data in criminal proceedings
New York AB 2628/SB1422					All vehicles registered in Dec. 2006 must have EDR device
New York AB 8130/SB 3375					Requires all vehicles sold or leased after 1/07 to have EDR/Allows premium reductions for monitoring vehicle operated by minor
Massachusetts HB 2092/HB 1973	X	X	X		



Pending EDR Legislation - NW

State	Mfg Notice to Buyer	Access by Owner Consent	Access by Court Order	Other Access	Miscellaneous Provisions
Alaska SB 18	X	X	X		
Montana D 1197		X Creates tort action for invasion of privacy if information released without owner's consent			EDR device must be capable of deactivation by owner, or vehicle cannot be sold in the state
Montana HB 322		X	X must show compell -ing state interest		EDR device must be capable of deactivation by owner, or vehicle cannot be sold in the state



Pending EDR Legislation - Other

State	Mfg Notice to Buyer	Access by Owner Consent	Access by Court Order	Other Access	Miscellaneous Provisions
Tennessee HB 1303/SB 1850	X	X	X		
Tennessee HB 1304/SB 1806	X	X	X	Access to parties product liability action	Information obtained <i>in violation of</i> act is not admissible in court;
West Virginia HB 2850	X	X	X		
Louisiana HB 275	X States that the “Seller or Lessor” must notify				



Who is the “Owner”

- “Registered” and/or “Owner”:

When Data is Recorded	When Data is Accessed
Arkansas	New York
North Dakota	Tennessee
	West Virginia

- Most states do not define beyond “owner” or “registered owner”
- Some states use “persons having all incidents of ownership”



Model Legislation - AAM

- Requires disclosure of EDR existence in owner's manual
- If applicable, disclosure in subscription services agreement
- Defines vehicle owner as a person:
 - ◆ Possessing legal title, and
 - ◆ Entitled to possession of the vehicle as a purchase under a security agreement, or
 - ◆ Entitled to possession of the vehicle as a lessee provided lease is over 3 months
- Defines an EDR (includes recording steering performance and ACN)



Model Legislation - AAM

- Defines conditions in which EDR data can be downloaded
 - ◆ Owner
 - ◆ Owner or owner's agent or legal representative consents
 - ◆ Court order
 - ◆ For purposes of improving safety provided identity of the owner and driver not disclosed and last 4 digits of VIN deleted
 - ◆ Retrieved by a dealer or an auto technician to service or repair the motor vehicle
 - ◆ ACN



PCI's Proposed Revisions

- Additional conditions in which EDR data can be downloaded
 - ◆ Retrieval by or on behalf of an insurer for claims adjusting and investigation, fraud investigation, loss control or research
 - ◆ As provided by contract
 - ◆ As otherwise required or permitted by federal or state law



Appellate Law - EDR

- ◆ *Harris v. GMC* (2000) - found that EDR data should be admitted under the *Daubert* criteria that governs the qualification and admission of scientific testimony
- ◆ *Bachman v. GM* (2002) – After extensive review of evidence found data scientifically reliable. Suggested expert testimony may not be necessary.
- ◆ *State New York v. Christmann* (Jan. 2004) – Citing Bachman, found general acceptance in the scientific community. No need for expert witness.
- ◆ *State New York v. Hopkins* (Aug. 2004) – Found scientifically reliable based upon case review and supporting documentation. Frye hearing not necessary.
- ◆ *Matos v. State Florida* (March 2005) – citing Bachman, held EDR scientifically reliable and not “new or novel” science.



Legal Analysis

Authoritative white paper – “Legal Issues Surrounding the Implementation and Use of Event Data Recorders” by Michael Edmund O’Neill – Assoc. Professor, George Mason University School of Law

- ◆ Fifth Amendment does not necessarily apply
- ◆ Fourth Amendment only applies relative to owners expectations to privacy
 - ◆ Fourth Amendment rights not as strong in a mobile vehicle
 - ◆ Fourth Amendment exceptions remain applicable
- ◆ Federal rules of discovery, evidence spoliation and admissibility apply



Proposed Rulemaking by NHTSA

- For light vehicles equipped with EDRs (estimated to be in 65-90% of 2004 model years)
 - Require the EDRs to record a minimum set of specified elements
 - Vehicle speed (-8 to 0 seconds)
 - Engine RPM (-8 to 0 seconds)
 - Engine throttle % (-8 to 0 seconds)
 - Braking (-8 to 0 seconds)
 - Driver belt usage (-1 second)
 - Longitudinal acceleration (ΔV) – Crash Data
 - Standardize the data format
 - Require that the EDRs function during and after front, side and rear vehicle crashes
 - Require vehicle manufacturers to:
 - Make publicly available information that would enable crash investigators to retrieve data from the EDR
 - Include a brief standardized statement in the owner's manual indicating that the vehicle is equipped with an EDR
- Proposed effective date of September 01, 2008



Thank You!

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