

## SUMMARY -- HB 322

Roger Koopman, HD 70

- (1) Establishes that the information gathered on automobile event data recorders (black boxes) is the personal property of the vehicle owner.
- (2) Prohibits the release or transfer of this information without either a) the owner's written consent, or b) a district court order asserting compelling state interest.
- (3) Provides for punitive as well as compensatory damages to be assessed when these privacy rights are violated, at a jury or judge's discretion.

COMMENT: Most citizens are not even aware that their vehicle is likely to be equipped with an event data recorder, that monitors and records a driver's speed, use of brakes, and various other information on the vehicle's systems. This data is commonly accessed without a search warrant, and may be used in a variety of ways – without the owner's knowledge or permission. This bill establishes the privacy interests of the vehicle owner, in accordance with the Montana State Constitution, and prohibits unrestricted access to this information. In so doing, the bill goes beyond event data recorders, and begins to build a legal bulwark against unwanted private sector and governmental intrusion into people's private lives. Considering all the ways that detailed information can already be collected on private citizens, this legislation comes none too soon in establishing our essential privacy rights over an area where the threat of privacy violation is becoming increasingly ominous.

## **IS YOUR CAR SPYING ON YOU?**

<http://www.csmonitor.com/2004/1227/p13s01-wmgn.html>

ERIC C. EVARTS, CHRISTIAN SCIENCE MONITOR - It was only a matter of time. For several years, electronic devices in cars have monitored acceleration and braking to save fuel and improve safety. Now, they're saving some of that data to give automakers and police a better idea of how you drive. So far most of the devices record the last five seconds of readings before a crash, for example, a little like flight-data recorders in airplanes. The information has proven extremely useful to auto designers and accident investigators. It's also being used to prosecute drivers.

"The problem is most people don't realize these devices are in their vehicle," says Eric Skrum, spokesman for the National Motorists Association in Madison, Wis. "That information can be used against you, and there's no sort of regulation about who owns that information."

Already, drivers have had data from their own cars used to convict them. Last month, Danny Hopkins of New York was sentenced to 5 to 15 years in prison for killing Lindsay Kyle after the black box in his Cadillac CTS indicated the car was going 106 miles per hour five seconds before the crash. Investigators originally thought the car was going only 65 to 70 miles per hour. In St. Louis, Clifton McIntire of Phippsburg, Me., pleaded guilty to manslaughter last month after the black box in his GMC pickup revealed that he was going 85 miles an hour before he slammed into the back of a Toyota.

Today an estimated 30 million cars contain these "black boxes" - they're actually silver - known as event data recorders. Most record simple data such as whether airbags deployed or if passengers wore seatbelts. But most cars from General Motors and Ford, as well as some Toyotas and Hondas, track even more information, including vehicle and engine speed, and whether the driver was accelerating or braking. . .

The National Highway Traffic Safety Administration . . . proposes that the recorders become standard equipment starting in 2009 models, retain the last eight seconds of data before a crash and include added data from electronic stability control and antilock braking systems. . .

"This is another example of where technology has outstripped the law and certain assumptions of how the world works," says Jay Stanley, director of communications for the Technology and Liberty Project at the American Civil Liberties Union in New York.

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>> -----Original Message-----

>> Subject: Auto's black box evidence

>> Date: Thu, 13 Jan 2005 17:50:46 -0600

>> From: "Moss, Frederick" <[fmoss@mail.smu.edu](mailto:fmoss@mail.smu.edu)>

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>> A Nassau Co. trial judge is reported today to have ruled a vehicular  
>> homicide defendant's car's black box to be admissible to prove the speed  
>> of the car and other facts, such as the rpms of the motor and the use  
>> (Or not) of the brakes. The box records such data occurring 5 seconds  
>> before the air bag deploys. The police retrieved the box without a  
>> warrant, but got one later. The court held that since the warrant was  
>> obtained with evidence independent of the warrantless search, the box  
>> was admissible. The news account is not quite clear, but the court also  
>> seemed to say that because the defendant was driving in public, he had  
>> no reasonable expectation of privacy regarding the speed at which he was  
>> driving. The court also upheld the admission of the box data against a  
>> Frye challenge.

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>> It is not clear whether the court held that the police must have a  
>> warrant to retrieve a black box from a person's personal auto. It may  
>> be that it felt the warrant was required because the police search of  
>> the car went beyond that necessary to retrieve the box and, therefore,  
>> invaded spaces in which the deft had a reasonable expectation of  
>> privacy. However, that the search also went into "private" spaces in  
>> the car seems irrelevant if they did not seize anything there in  
>> addition to the box from under the hood. (??)

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>> Reported in the NYLJ by Andrew Harris. The case is People v. Slade, No.  
>> 0666-2003, by acting Nassau County Supreme Court Justice Alan M.  
>> Honorof.

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>> Fred

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>> Frederick C. Moss

>> Assoc. Prof. of Law

>> Dedman School of Law

>> Southern Methodist University

>> P.O. Box 750116

>> Dallas, Texas 75275-0116

>> 214-768-2742

>> 214-768-3142 (fax)

>> [fmoss@mail.smu.edu](mailto:fmoss@mail.smu.edu) <<mailto:fmoss@mail.smu.edu>>