

SENATE THIRD READING
SB 346 (Wieckowski)
As Amended August 24, 2022
Majority vote

SUMMARY

This bill prohibits the use of any image or video recording collected or retained through the operation of an in-vehicle camera for advertising, sale to a third party, sharing with a third party except as specified, retention at any location other than the vehicle itself without consent, and access by a person other than the registered owner of the vehicle without consent; and prohibits a person from compelling a manufacturer or other entity to build specific features into an in-vehicle camera for surveillance purposes. This bill is sponsored by the Consumer Federation of California.

Major Provisions

- 1) Prohibits the use of any image or video recording collected or retained through the operation of an in-vehicle camera for any of the following purposes: any advertising; sale to a third party; sharing with a third party, except under specified circumstances pertaining to improvement or repair of the vehicle's safety system; retaining at any location other than the vehicle itself, unless the user has provided affirmative prior consent; or download, retrieval, or other access by a person or entity other than the registered owner of the motor vehicle, unless the user has provided affirmative prior consent.
- 2) Requires a person or entity that provides the operation of an in-vehicle camera in this state to provide effective mechanisms, without any cost, penalty, or unnecessary steps, for a consumer to revoke their consent provided pursuant to the bill's provisions after it is given; and requires such a person to honor the user's consent revocation, and delete from all locations other than the vehicle itself any image or recording associated with that user that has been collected, retained, downloaded, or retrieved by that person or entity, as soon as practicable, but not later than 30 days after the user revokes consent.
- 3) Provides that images or video recordings retained through the operation of an in-vehicle camera may be retrieved or shared without the user's permission if any of the following apply: a) a court or other judicial or administrative authority having jurisdiction authorizes the retrieval of the images or video recordings and the video recordings are subject to the standards for admission into evidence required by that court or other administrative authority; b) the images or video recordings are retrieved pursuant to an investigation or inspection authorized by federal law to be conducted by the National Transportation Safety Board or the Secretary of Transportation, and the personal information of an owner or a lessee of the vehicle, including the vehicle identification number, is not disclosed in connection with the video recordings retrieved; or c) the images or video recordings are retrieved for the purpose of immediately determining the need for, or facilitating, emergency medical response to a motor vehicle crash.
- 4) Prohibits a person or entity from compelling a manufacturer or other entity providing the operation of an in-vehicle camera to build specific features for the purpose of allowing an investigative or law enforcement officer to monitor communications through that feature.

- 5) Provides that actions for relief pursuant to the provisions of the bill may be prosecuted exclusively in a court of competent jurisdiction in a civil action brought in the name of the people of the State of California by the Attorney General or by any district attorney; and provides that a person who knowingly engages, has engaged, or proposes to engage in a violation of the bill's provisions shall be liable for a civil penalty not to exceed \$2,500 for each vehicle equipped with an in-vehicle camera sold or leased in violation of the bill.

COMMENTS

The United States and California Supreme Courts have, on several occasions, affirmed that individuals possess a reasonable expectation of privacy inside their vehicles. (*See, e.g., United States v. Jones* (2012) 132 S. Ct. 945; *People v. Bell* (1996) 43 Cal. App. 4th 754.) Recognizing the privacy implications of advances in technology equipped to motor vehicles, this Legislature has on several occasions placed limitations on the collection or use of certain vehicle diagnostic and surveillance data.

AB 213 (Leslie), Chapter 427, Statutes of 2003, responded to the growing number of vehicle manufacturers "installing recording devices in vehicles that may perform a variety of functions, from recording and transmitting accident data to recording a history of where the vehicle travels," and provides that a manufacturer of a new motor vehicle sold or leased in this state that is equipped with an "event data recorder (EDR)" or "sensing and diagnostic module (SDM)" shall disclose that fact in the owner's manual, and may not download or otherwise retrieve any of the following data except under specified circumstances: recordings of how fast and in which direction the motor vehicle is traveling; recordings containing a history of where the motor vehicle travels; recordings of steering performance; recordings of brake performance, including, but not limited to, whether brakes were applied before an accident; recordings of the driver's seatbelt status; or information concerning an accident in which the motor vehicle has been involved.

AB 2840 (Corbett), Chapter 317, Statutes of 2004, established specific limitations governing the use of electronic surveillance technology by persons or entities in the business of renting passenger vehicles to the public. Specifically, AB 2840 prohibits a rental company from using, accessing, or obtaining any information relating to the renter's use of the rental vehicle that was obtained using electronic surveillance technology, except under specified circumstances. For the purposes of that chapter, "electronic surveillance technology" is defined to mean a technological method or system used to observe, monitor, or collect information, including telematics, GPS, wireless technology, or location-based technologies, but *not* including EDRs, SDMs, or other systems used for the purpose of identifying, diagnosing, or monitoring functions related to the potential need to repair, service, or perform maintenance on the rental vehicle, or as part of the vehicle's airbag sensing and diagnostic system.

This bill responds to the growing ubiquity of sophisticated in-vehicle cameras. In-vehicle cameras can serve a variety of functions, ranging from using facial-recognition technology to automatically adjust seat and mirror settings for each driver to detecting drowsy or distracted drivers and either alerting them or capping speed. In the United States, all new cars are required to have backup cameras to help drivers avoid accidents, and other countries have already expanded such safety requirements to include in-vehicle, driver-directed sensors and cameras. However, little is known about how data collected by these cameras are stored and used, and with most new cars sold in the United States, including all new Fords, GMs, and BMWs, and

nearly all Toyotas and Volkswagens, coming with built-in internet connections, the possibility that such private data is being made immediately accessible to automobile manufacturers without the knowledge or consent of the driver arguably warrants specific protections.

Images and video recordings including individuals are typically considered to be more sensitive than diagnostic information concerning the general state of a vehicle (i.e. data collected by EDRs and SDMs), and personal vehicles are typically considered to garner a greater expectation of privacy than rental vehicles which do not belong to the renter. Accordingly, protections for image and video recording data collected in a personal vehicle should arguably be at least as strong as protections for EDR and SDM data, and at least as strong as protections for electronic surveillance data in rental vehicles. From a public policy standpoint, the bill in print seems to provide protections that would be coherent with such existing laws, whereas defaulting to the protections of the CCPA, which place few limitations on the collection of personal information and provide only the right to opt out of the sharing or sale of that personal information, seemingly would not.

This bill seeks to provide privacy protections for data collected by in-vehicle cameras that are consistent with the level of sensitivity California law has thus far assigned to similar, albeit arguably less sensitive, data. SB 346 as it is currently in print seeks to protect the privacy of drivers by prohibiting all of the following: the use of recordings collected or retained by the manufacturer through operation of an in-vehicle camera for any advertising; selling recordings to third parties; sharing **recordings** with third parties except for specified purposes pertaining to the improvement or repair of the vehicle's safety or camera system; retaining recordings anywhere other than the vehicle itself without the user's affirmative consent; and downloading, retrieving, or otherwise accessing recordings without the user's affirmative prior consent. The bill requires that the person or entity providing the operation of an in-vehicle camera to provide effective mechanisms for a consumer to revoke their consent at any time after it is given, and to honor the consent revocation, and delete recordings associated with the user from all locations other than the vehicle itself, as soon as practicable, but not later than 30 days after the user revokes consent. The bill further prohibits a person or entity from compelling a manufacturer to build specific features into in-vehicle cameras for the purpose of allowing surveillance by law enforcement.

Notably, this bill as amended does not require notice or consent for sharing recordings with a third party to the extent necessary to diagnose, service, or repair the in-vehicle camera or equipment that relies on the camera. This amendment appears to respond to opposition arguments that a user could not be notified of a malfunctioning camera system without consent, presenting a risk to safety. Staff notes that the bill did not, and still does not prohibit diagnosis of a malfunctioning in-vehicle camera system so long as doing so does not require sharing images or video recordings with a third party. Vehicles typically maintain diagnostic mechanisms for various instruments within the vehicle itself that do not require transmission of information to a third party. Accordingly, it is not entirely clear why indicating a malfunctioning system in this case would necessarily require transmission of recordings to a third party. Additionally, while removing this consent requirement may arguably facilitate identification of problems in the vehicle's safety systems, it does not seem that doing so necessitates removing the user's right to notice that their images or video recordings are being shared with a third party for that purpose. Still, on balance the bill seems to provide several critical protections for the privacy of users of vehicles equipped with in-vehicle cameras.

According to the Author

Drivers have a reasonable expectation of privacy in their vehicle that supersedes commercial interests. However, the use of in-vehicle cameras capable of generating valuable data threatens to erode such consumer privacy. Firms like BMW and General Motors already use inward facing video to monitor driver's attentiveness and gaze. Critically, the use of in-vehicle cameras will only grow. [...] Future software may also generate highly sensitive and valuable biometric data from these videos, e.g. the drivers' emotional state. [...]

SB 346 would [...] prohibit manufacturers from retaining video recordings in any location, other than the vehicle itself, unless the user first provides affirmative written or electronic consent. It would also prohibit any person or entity from compelling the manufacturer, or entity providing the operation of an in-vehicle camera, to build features for the purpose of allowing an investigative or law enforcement officer to monitor communications through that feature. This bill would bring parity to the law by restricting the sale of private information collected by devices in consumers' private lives.

Arguments in Support

The sponsors of this bill, Consumer Federation of California, argue:

People often spend a significant portion of their days inside their car, whether it be a work commute, running errands, or simply a leisure drive. A car can often act as a second home, and, similar to when people are in their home, there is an expectation of privacy. [...] The amount of personal data collected through the use of new technologies is staggering and has come under scrutiny, leading to a push for further regulation. CFC believes that images collected by in-vehicle cameras are particularly sensitive and California should enact strong common sense rules to ensure that new technology or features do not come at the expense of consumer privacy. Drivers and consumers deserve strong protections as vehicles and vehicle technology continue to evolve and change into the future.

Arguments in Opposition

The Alliance for Automotive Innovation and TechNet argue:

In contrast to the CCPA, SB 346 lacks critical exemptions that ensure workability and avoid undermining other important public policy goals. This includes situations where compliance with certain restrictions would create a conflict with a business's other legal obligations or prevent its compliance with legal orders, or otherwise hinder its ability to innovate, to name a few. This is most problematic with respect to the sharing restrictions. Such overly restrictive prohibitions against sharing, combined with other issues with the bill (such as its failure to clearly make a critical distinction between the handling of identifiable data that can be linked to a consumer and data that cannot), raise serious concerns about unreasonable interference with legitimate uses of this technology, both now and in the future.

FISCAL COMMENTS

According to the Assembly Appropriations Committee:

- 1) Costs (General Fund) of \$366,000 annually to the DOJ in additional legal staff to handle the anticipated workload related to enforcing the requirements of this bill.

- 2) Cost pressure (Trial Court Trust Fund (TCTF)) in the hundreds of thousands of dollars to the trial courts to hear and adjudicate cases related to violations of this bill. It is unclear how many new actions will be filed statewide, but if 10 cases are filed in state civil court annually requiring seven to ten days, or 56 to 80 hours of court time, at an average cost per hour of \$1,000 in workload costs, the cost to the trial courts would be between \$560,000 and \$800,000 annually. Although courts are not funded on the basis of workload, increased pressure on the TCTF and staff workload may create a need for increased funding for courts from the General Fund (GF) to perform existing duties.

VOTES

SENATE FLOOR: 36-3-1

YES: Allen, Archuleta, Atkins, Becker, Borgeas, Bradford, Caballero, Cortese, Dahle, Dodd, Durazo, Eggman, Glazer, Gonzalez, Grove, Hertzberg, Hueso, Hurtado, Kamlager, Laird, Leyva, Limón, McGuire, Melendez, Min, Newman, Nielsen, Pan, Portantino, Roth, Rubio, Skinner, Stern, Umberg, Wieckowski, Wiener

NO: Jones, Ochoa Bogh, Wilk

ABS, ABST OR NV: Bates

ASM PRIVACY AND CONSUMER PROTECTION: 9-0-2

YES: Gabriel, Bauer-Kahan, Bennett, Berman, Cunningham, Mike Fong, Irwin, Wicks, Wilson

ABS, ABST OR NV: Kiley, Valladares

ASM APPROPRIATIONS: 13-1-2

YES: Holden, Bryan, Calderon, Arambula, Davies, Mike Fong, Gabriel, Eduardo Garcia, Levine, Quirk, Robert Rivas, Akilah Weber, McCarty

NO: Bigelow

ABS, ABST OR NV: Megan Dahle, Fong

UPDATED

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