

Calendar No. 239

114TH CONGRESS }
1st Session }

SENATE

{ REPORT
114-147

DRIVER PRIVACY ACT OF 2015

R E P O R T

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND
TRANSPORTATION

ON

S. 766



SEPTEMBER 28, 2015.—Ordered to be printed

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SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ONE HUNDRED FOURTEENTH CONGRESS

FIRST SESSION

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Mr. THUNE, from the Committee on Commerce, Science, and
Transportation, submitted the following

R E P O R T

[To accompany S. 766]

The Committee on Commerce, Science, and Transportation, to which was referred the bill (S. 766) to limit the retrieval of data from vehicle event data recorders, and for other purposes, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE OF THE BILL

The purpose of S. 766, the Driver Privacy Act of 2015, is to establish limitations on data retrieval from vehicle event data recorders (EDRs). Under current law, there are no Federal standards for ownership, use, or privacy of this data. The bill would establish that the owner or lessee of a motor vehicle owns the data contained within the vehicle's EDR, and would create specific circumstances under which the data that is recorded or transmitted by an EDR can be accessed by entities other than the owner or lessee.

BACKGROUND AND NEEDS

EDRs capture information about a vehicle just before and at the time of a crash event. While the EDR records continuously as a vehicle travels, the data is only stored if a major event occurs, such as a crash or air bag deployment. The data in these recorders can be used for crash reconstruction and is also used by the National Highway Traffic Safety Administration (NHTSA) to conduct investigations into potential vehicle defects. NHTSA has not required the installation of EDRs on new light vehicles; however it has promulgated regulations specifying uniform, national requirements for vehicles equipped with EDRs concerning the collection, storage, and irretrievability of onboard motor vehicle crash event data (see 49 C.F.R. pt. 563). NHTSA estimates that vehicle manufacturers

voluntarily install EDRs on approximately 96 percent of new motor vehicles.

SUMMARY OF PROVISIONS

The Driver Privacy Act of 2015 would establish the owner or lessee of a motor vehicle as the owner of data collected and stored on the vehicle's EDR. The bill would limit access to that data recorded or transmitted by the EDR by anyone other than the owner or lessee of the vehicle, and it would enumerate the specific circumstances under which the data could be accessed by other entities. In addition, the bill would require NHTSA to conduct a study for submission to Congress on the appropriate amount of time that EDRs should capture and record for retrieval vehicle-related data before and after a crash and, within two years after the study's completion, require NHTSA to issue regulations establishing the appropriate time period.

S. 766 would use the definition of EDR in section 563.5 of title 49 of the Code of Federal Regulations. In this context the Committee contemplates that the term should not be interpreted as to burden unnecessarily the development and dissemination of advanced vehicle safety technologies, including autonomous vehicles. In the latter respect, the Committee contemplates that the EDR would be discrete from any devices and functions used for the operation of such vehicles.

LEGISLATIVE HISTORY

In the 113th Congress, Senator Hoeven introduced a similar bill, S. 1925, with Senator Klobuchar and 16 other cosponsors. On April 9, 2014, in an open Executive Session, the Committee considered that bill with an amendment in the nature of a substitute and reported S. 1925 favorably by voice vote. The amendment clarified the description of the data to which the bill refers, made clear that the requirements of section 2 would apply to "motor vehicles" not just "passenger motor vehicles," removed a limitation on data retrieval, provided two years for NHTSA's rulemaking; and made other minor changes.

In the 114th Congress, Senator Hoeven, along with Senator Klobuchar, introduced S. 766. On March 25, 2015, in an open Executive Session, the Committee considered that bill and ordered S. 766 to be reported favorably by voice vote.

ESTIMATED COSTS

In accordance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate and section 403 of the Congressional Budget Act of 1974, the Committee provides the following cost estimate, prepared by the Congressional Budget Office:

S. 766—Driver Privacy Act of 2015

S. 766 would establish that any data collected by event data recorders (EDRs) in motor vehicles are the property of the owner or lessee of the vehicle and would set broad conditions under which such data could be retrieved by others for purposes such as judicial proceedings, investigations, and traffic safety research. The bill also would require the National Highway Traffic Safety Adminis-

tration (NHTSA) to complete a study and a rulemaking about the data collected by EDRs.

Based on information from NHTSA, CBO estimates that implementing S. 766 would cost about \$1 million over the 2016–2020 period, assuming the availability of appropriated funds. Enacting S. 766 would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.

S. 766 contains no intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local or tribal governments.

By requiring NHTSA to issue regulations that establish the appropriate period for EDRs to capture and record information, the bill could impose a private-sector mandate on automobile manufacturers if those regulations require changes in the design of motor vehicles. Most manufacturers currently install EDRs in new vehicles. Current standards for EDRs require them to capture and record a few seconds before and after a crash. If NHTSA issues regulations that would alter the required time period captured by EDRs, manufacturers may have to redesign the electronic equipment and storage space of their vehicles to accommodate a different type of EDR, which could amount to a substantial increase in costs for the industry. However, because the cost of the mandate would depend on future regulations, CBO cannot determine whether the aggregate cost of the mandates would exceed the annual threshold for private-sector mandates established in UMRA (\$154 million in 2015, adjusted annually for inflation).

The CBO staff contacts for this estimate are Sarah Puro (for federal costs) and Amy Petz (for the private-sector impact). The estimate was approved by Theresa Gullo, Assistant Director for Budget Analysis.

REGULATORY IMPACT

In accordance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee provides the following evaluation of the regulatory impact of the legislation, as reported:

NUMBER OF PERSONS COVERED

The legislation would apply to motor vehicle owners and lessees and to auto manufacturers that build vehicles equipped with EDRs. The regulations would revise existing regulations and would not impact any additional entities.

ECONOMIC IMPACT

This legislation is not expected to have an adverse economic impact on the Nation.

PRIVACY

S. 766 would not have a negative impact on the personal privacy of individuals. By clarifying that the owner or lessee of a vehicle is also the owner of any information collected by an EDR, S. 766 would greatly enhance the personal privacy of these individuals.

PAPERWORK

The Committee does not anticipate a major increase in paperwork requirements for private individuals or businesses due to S. 766. The bill would call on NHTSA to conduct a study and issue

regulations regarding the appropriate amount of time for an EDR to capture and record for retrieval vehicle-related data.

CONGRESSIONALLY DIRECTED SPENDING

In compliance with paragraph 4(b) of rule XLIV of the Standing Rules of the Senate, the Committee provides that no provisions contained in the bill, as reported, meet the definition of congressionally directed spending items under the rule.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title.

Section 1 would establish the title of the bill, the Driver Privacy Act of 2015.

Section 2. Limitations on data retrieval from vehicle event data recorders.

Section 2(a) would establish the owner of a motor vehicle—or, in the case of a leased vehicle, the lessee—as the owner of the data retained by an EDR.

Section 2(b) would establish that data recorded or transmitted by an EDR could not be retrieved by anyone other than the owner or lessee unless one of five conditions is met: (1) a court or administrative authority, with jurisdiction authorizes retrieval; (2) the owner or lessee provides written, electronic, or recorded audio consent, or the owner or lessee agrees to a subscription that describes how data will be retrieved and used; (3) the data is retrieved pursuant to an investigation or inspection by NHTSA and no personally identifiable information is disclosed, except that the vehicle identification number may be disclosed to the certifying manufacturer; (4) the data is retrieved for the purpose of determining the need for, or facilitating, an emergency medical response; or (5) the data is retrieved for traffic safety research and no personally identifiable information or vehicle identification number is disclosed.

Section 3. Vehicle event data recorder study.

Section 3 would require NHTSA to conduct a study to determine the amount of time that EDRs installed in passenger motor vehicles should capture and record for retrieval vehicle-related data in conjunction with an event in order to provide sufficient information to investigate the cause of motor vehicle crashes. NHTSA would be required to submit that study to Congress and, within two years, issue regulations establishing the amount of time before and after a crash that EDRs must capture and record for retrieval vehicle-related data.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, the Committee states that the bill as reported would make no change to existing law.