

2015 Regular Session

HOUSE BILL NO. 737

BY REPRESENTATIVE ORTEGO

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

MOTOR VEHICLES: Provides relative to the ownership of recording devices in motor vehicles

1 AN ACT

2 To enact Part XVII of Chapter 3 of Title 32 of the Louisiana Revised Statutes of 1950, to be
3 comprised of R.S. 32:691 through 697, relative to recording devices in motor
4 vehicles; to provide for disclosure of the existence of a recording device to the owner
5 of a motor vehicle; to provide for ownership of a motor vehicle recording device; to
6 provide exceptions for ownership; to provide for access to recorded data on a motor
7 vehicle recording device; to provide for a condition precedent to a request for
8 recorded data; to provide for a prohibition on conditioning insurance coverage and
9 payment of a claim on the release of recorded data; to provide for a prohibition on
10 the download of recorded data; to provide for commercial availability of a tool
11 capable of accessing and retrieving recorded data; and to provide for related matters.

12 Be it enacted by the Legislature of Louisiana:

13 Section 1. Part XVII of Chapter 3 of Title 32 of the Louisiana Revised Statutes of
14 1950, comprised of R.S. 32:691 through 697, is hereby enacted to read as follows:

15 PART XVII. MOTOR VEHICLE RECORDING DEVICES

16 §691. Definitions

17 As used in this Part, the following words and phrases shall have the meaning
18 ascribed to them in this Section, unless the context requires otherwise:

19 (1) "Accessed" means downloaded, extracted, scanned, read, or otherwise
20 retrieved.

1 (2) "Custodian" means any person or entity that stores, holds, maintains,
2 administers, or is responsible for granting access to the recorded data for third party
3 access.

4 (3) "Owner" means a person or entity having all the incidents of ownership,
5 including legal title of a vehicle, whether or not such person lends, rents, or creates
6 a security interest in the vehicle; a person entitled to the possession of a vehicle as
7 the purchaser under a security agreement; a person entitled to possession of the
8 vehicle as the lessee pursuant to a written lease agreement, provided such agreement
9 at its inception is for a period in excess of three months; or a person who is the
10 authorized representative of the owner.

11 (4)(a) "Recorded data" means the data stored or preserved electronically in
12 a recording device identifying performance or operation information about the motor
13 vehicle including, but not limited to, the following:

14 (i) Vehicle speed.

15 (ii) Vehicle steering performance.

16 (iii) Vehicle brake performance including, but not limited to, whether brakes
17 were applied before a crash.

18 (iv) The driver's seatbelt restraint status.

19 (v) A measurement quantifying velocity change and impact severity, Delta-
20 V.

21 (vi) Engine speed.

22 (vii) Ignition cycle count at event time.

23 (viii) Ignition cycle count at investigation.

24 (ix) Passenger's airbag state, enabled and disabled.

25 (x) Supplemental inflatable restraint warning lamp status, on or off.

26 (xi) Throttle position.

27 (xii) Time between near-deploy and deploy event.

28 (xiii) Time from vehicle impact to airbag deployment.

1 **(b) For the purposes of this Paragraph, "recorded data" shall also include the**
2 **specific information included in all data elements provided for in 49 CFR Part 563.7.**

3 **(5) "Recording device" means an event data recorder, as defined in 49 CFR**
4 **Part 563, that records the vehicle's dynamic time-series data during the time period**
5 **just prior to a crash event or during a crash event, intended for retrieval after the**
6 **crash event. For the purposes of this definition, the event data does not include audio**
7 **and video data.**

8 **§692. Disclosure of the existence of a recording device**

9 **A. A manufacturer of a new motor vehicle that is sold or leased in this state**
10 **and that is equipped with a recording device shall disclose that fact in the owner's**
11 **manual of the vehicle. A disclosure in the owner's manual is deemed a valid**
12 **disclosure. The provisions of this Subsection shall apply only to vehicles**
13 **manufactured in 2008 and subsequent model years.**

14 **B. If a recording device is to be installed in a vehicle aftermarket, the**
15 **manufacturer or distributor of the device shall disclose in the product manual the**
16 **type of information that the device may record and whether the recording device has**
17 **the ability to transmit recorded data to a central communications system or other**
18 **external device. A disclosure in the product manual is deemed a valid disclosure.**

19 **C. If a motor vehicle is equipped with a recording device that is part of a**
20 **subscription service, then the information that may be recorded, stored, transmitted,**
21 **or dispensed shall be disclosed in the subscription service agreement.**

22 **§693. Data ownership; access; responsibilities; exceptions**

23 **A.(1) The recorded data on a motor vehicle recording device is exclusively**
24 **owned by the owner of the motor vehicle.**

25 **(2) When the recording device and recorded data are not removed or**
26 **separated from the motor vehicle, the ownership of the recording device and**
27 **recorded data survives the sale of the motor vehicle to any nonbeneficial owner such**
28 **as an insurer, salvage yard, or other person who does not possess and use the motor**
29 **vehicle for normal transportation purposes.**

1 B. Recorded data shall not be retrieved, downloaded, scanned, disseminated,
2 read, or otherwise accessed by a person other than the owner of the motor vehicle in
3 which the recording device is installed, except under the following circumstances:

4 (1) With the written consent of the owner of the motor vehicle or owner's
5 legal representative.

6 (2) The owner of the motor vehicle or the owner's legal representative has
7 a contract with an original equipment manufacturer or a third-party subscription
8 service that requires access to a recording device or recorded data in order to perform
9 the contract, as long as the recorded data is only accessed and used in accordance
10 with the contract. In such instance, the owner shall be notified, in writing, of the
11 recording device.

12 (3) A licensed new motor vehicle dealer or a technician or mechanic at a
13 motor vehicle repair or service facility requires access to recorded data in order to
14 accomplish his normal and ordinary diagnosis, service, and repair duties, and such
15 recorded data is only used to perform such duties.

16 (4) The recorded data is accessed by an emergency response provider and
17 is used only for the purpose of determining the need for or facilitating an emergency
18 response. Such persons are authorized to receive data transmitted or communicated
19 by any electronic system of a motor vehicle that constitutes an automatic crash
20 notification system and utilizes or reports data provided by or recorded by recording
21 devices installed on or attached to a motor vehicle to assist them in performing their
22 duties as emergency response providers.

23 (5) Upon authority of a court or other judicial or administrative authority
24 having jurisdiction.

25 (6)(a) The recorded data is accessed by law enforcement in the course of an
26 investigation, where constitutionally permissible and in accordance with any
27 applicable criminal law, regarding searches and seizures upon probable cause to
28 believe that the recording device contains evidence relating to a violation of the laws
29 of Louisiana or the United States.

1 (b) The provisions of this Paragraph shall not apply to accident
2 investigations conducted by or involving law enforcement.

3 (7) For the purpose of improving motor vehicle safety, security, or traffic
4 management, including medical research of the human body's reaction to motor
5 vehicle crashes, provided that the identity of the owner or driver is not disclosed in
6 connection with that retrieved data. For the purposes of this Subsection, disclosure
7 of the vehicle identification number with the last six digits deleted does not
8 constitute the disclosure of the identity of the owner or driver.

9 (8) For the original equipment manufacturer's internal safety, quality control,
10 and related research purposes.

11 C. No owner, insurer, custodian, or other person shall delete, erase,
12 manipulate, or otherwise make unavailable for access any recorded data when
13 litigation is reasonably anticipated.

14 D. If a person or entity accesses recorded data pursuant to this Section, such
15 entity or person shall not transmit or otherwise convey the recorded data to a third
16 party unless necessary to carry out his duties. Owners shall be notified, in writing,
17 of any such disclosure to third parties, identifying the name of the third party and the
18 reasons for disclosure.

19 §694. Data dissemination

20 The custodian of recorded data obtained from a recording device shall
21 provide any such recorded data or other information recorded, held, stored,
22 maintained, or administered to the owner of the motor vehicle, upon request, without
23 a court order.

24 §695. Condition precedent to a request for recorded data; settlement

25 The consent of the motor vehicle owner or the owner's legal representative
26 for use of recorded data shall not be requested or obtained for purposes of
27 investigating a motor vehicle accident or insurance claim until after the event giving
28 rise to the claim has occurred, and shall not be made a condition of the defense,
29 payment, or settlement of an obligation or claim. For underwriting and rating

1 purposes, the motor vehicle owner may provide his consent either directly to the
2 insurer or through and as certified by a named insured. However, in the event of a
3 demand for coverage by the insured, the insured is required to comply with all
4 contractual provisions within the insurance policy.

5 §696. Failure to access recorded data; insurer

6 The failure of an insurer or owner to obtain access to the recorded data shall
7 not create, nor shall it be construed to create, an independent or private cause of
8 action in favor of any person. Nothing in this Section shall be construed to relieve
9 the insurer or motor vehicle owner of the obligation to provide the recorded data in
10 any litigation subject to the rights and remedies afforded to the parties by law.

11 §697. Retrieval of data

12 A manufacturer of a motor vehicle sold or leased in this state that is equipped
13 with a recording device shall ensure by licensing agreement or other means that a
14 tool or tools are available that are capable of accessing and retrieving the information
15 stored in a recording device.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

HB 737 Reengrossed

2015 Regular Session

Ortego

Abstract: Provides for the ownership, disclosure, dissemination, retrieval, and retention of data located on recording devices in motor vehicles.

Proposed law (R.S. 32:691) defines accessed, custodian, owner, recorded data, and recording device.

Proposed law (R.S. 32:692(A)) requires a manufacturer of a new motor vehicle that is sold or leased in this state and that is equipped with a recording device to disclose that fact in the owner's manual of the vehicle. A disclosure in the owner's manual is a valid disclosure. Specifies that the provisions apply only to vehicles manufactured for 2008 and subsequent model years.

Proposed law (R.S. 32:692(B)) requires the manufacturer to disclose in the product manual the type of information that the recording device may record and whether the recording device has the ability to transmit recorded data to a central communications system or other external device. A disclosure in the product manual is a valid disclosure.

Proposed law (R.S. 32:692(C)) requires disclosure of recording device if the motor vehicle has a subscription agreement.

Proposed law (R.S. 32:693(A)(1)) mandates that the owner of the motor vehicle has exclusive rights to the recording device.

Proposed law (R.S. 32:693(A)(2)) provides that when the recorded data is not removed or separated from the motor vehicle, the ownership of the recorded data survives the sale of the motor vehicle to any non-beneficial owner, or other person who does not possess and use the motor vehicle for normal transportation purposes.

Proposed law (R.S. 32:693(B)) prohibits any person, other than the owner, from retrieving or accessing recorded data except when there is written consent by the owner; a court, judicial, or administrative order; for diagnosing, servicing, or repairing the vehicle; the dispatch of emergency medical personnel; probable cause related to the commission of an offense; improving motor vehicle safety, security, and traffic management; and for the original equipment manufacturer's internal safety and quality control. Proposed law specifies that the law enforcement exception does not apply to accident investigations.

Proposed law (R.S. 32:693(C)) prohibits an owner, insurer, or other person from deleting, erasing, manipulating, or otherwise making unavailable for access any recorded data when litigation is reasonably anticipated.

Proposed law (R.S. 32:693(D)) prohibits an entity or person from transmitting or otherwise conveying the recorded data to a third party unless necessary to carry out their duties. The owner must have written notification identifying the name of the third party and reasons for disclosure.

Proposed law (R.S. 32:694) provides that custodian recorded data shall provide any recorded data or other information recorded, held, stored, maintained, or administered, to the owner of the motor vehicle, upon request, without a court order.

Proposed law (R.S. 32:695) prohibits the consent of the motor vehicle owner from being requested until after a claim arises, and specifies that it cannot be made a condition of the defense, payment, or settlement of an obligation or claim. Further provides that the motor vehicle owner may provide his consent either directly to the insurer or through and as certified by a named insured. In the event of a demand for coverage by the insured, the insured is required to comply with all contractual provisions within the insurance policy.

Proposed law (R.S. 32:696) provides that the failure of an insurer or owner to obtain access to the recorded data does not create an independent or private cause of action in favor of any person. Nothing in proposed law is construed to relieve the insurer or owner of the motor vehicle of the obligation to provide the recorded data in any litigation subject to the rights and remedies afforded to the parties by law.

Proposed law (R.S. 32:697) requires a manufacturer of a motor vehicle sold or leased in this state that is equipped with a recording device to ensure by licensing agreement or other means that tools are available that are capable of accessing and retrieving the recorded data stored in a recording device.

(Adds R.S. 32:691-697)

Summary of Amendments Adopted by House

The Committee Amendments Proposed by House Committee on Transportation, Highways and Public Works to the original bill:

1. Make technical changes.

2. Delete provisions that defined recorded data and recording device and instead describes the elements that define recorded data and clarifies the definition of recording device.
3. Add a provision that specifies an original equipment manufacturer, in addition to a third party subscription service, could have a contractual relationship with an owner or owner's legal representative relative to accessing a recording device or recorded data.
4. Modify a provision that prescribes a court of competent jurisdiction to grant access to recorded data pursuant to discovery by broadening the application to a court, judicial, or administrative authority.
5. Add provisions that authorizes access to recorded data on a recording device when necessary to improve motor vehicle safety and for purposes of the original manufacturer's safety and quality control.

The House Floor Amendments to the engrossed bill:

1. Make technical changes.
2. Clarify that "SIR" is "supplement inflatable restraint" warning lamp status.
3. Clarify that a disclosure in the owner's manual is deemed a valid disclosure.
4. Clarify that a disclosure in the product manual is deemed a valid disclosure.
5. Add an exception that proposed law regarding law enforcement access to recorded data is not applicable to accident investigations conducted by or involving law enforcement.
6. Clarify that law enforcement's access to recorded data is permissible in accordance with applicable criminal law.
7. Add a provision that requires the insured to comply with all contractual provisions within an insurance policy when there is a demand for coverage by the insured.
8. Clarify that proposed law relative to the failure to access recorded data is applicable to an insurer and owner of a motor vehicle.
9. Add a provision that prohibits an insurer or owner of a motor vehicle from being relieved of an obligation to provide recorded data in any litigation subject to the rights and remedies afforded to the parties by law.
10. Delete a provision that proscribes an insurer from refusing to renew a motor vehicle policy if an owner refuses to provide access to the recorded data on a recording device.
11. Delete a provision that proscribes an insurer from reducing coverage, increasing the insured's premium, or apply a discount if the owner of a motor vehicle refuses to provide access to the recorded data on a recording device.