

Draft CT EDR Testimony on S. 974

Good morning/afternoon. I am Tracy Morelli and thank you for this opportunity to testify, on behalf of the Alliance of Automobile Manufacturers (Alliance), before the Transportation Committee on Senate Bill 974, An Act Limiting Law Enforcement Access To Recorded Information In “Black Box” Event Data Recorders in Motor Vehicles. In today’s complex technological world, **data drives safety like never before**. Event data recorders (EDRs) are now providing improved data to assist safety researchers, auto engineers, government researchers and trauma doctors in their work.

Consistent with need for more real world data, Alliance members have voluntarily installed Event Data Recorders (EDRs) which provide improved data to assist safety researchers, auto engineers, government researchers and trauma doctors in their work. EDRs can improve our collective understanding of crash events and lead to improvements in vehicle safety systems. Recording certain data elements in the moments just prior to and during a crash can contribute to the breadth and reliability of the crash data already gathered by state and federal governments and widely used by public and private entities to study and improve transportation safety. The National Highway Traffic Safety Administration and the National Transportation Safety Board have noted the important safety benefits of EDRs.

EDRs are a public safety matter, because EDRs advance safety for everyone on the road. At the same time, consideration should be given to consumer privacy concerns as the safety community is advancing auto safety. Alliance members support these key points:

1) Consumer Information: The Alliance supports providing consumers with important information on their autos, including EDRs. Notification of the presence of EDRs is provided in the owner’s manual, along with information on what data are collected, how the data is used and consumer ownership of data.

2) Consumer Ownership of Data: The Alliance advocates that data gathered by an EDR remains the sole property of the vehicle's owner or lessee, and the permission of the owner or lessee is required to access the data.

3) Service Agreement Notification: The Alliance supports requirements that subscription service providers notify their customers if crash-related information will be recorded and transmitted. Subscription services include Automatic Collision Notification.

4) National Leadership: The Alliance supports federal policy that would pre-empt inconsistent state or local laws.

A federal policy ensures that the benefits of EDRs are not jeopardized by an unnecessary patchwork of potentially conflicting state requirements. NHTSA recently issued a regulation, Docket No. NHTSA-2006-25666 (71 Fed. Reg. 50998; August 28, 2006), federally mandating performance and disclosure requirements for voluntarily installed EDRs. NHTSA's regulation, acknowledging the importance of consistent EDR requirements and encouraging the continued voluntary installation of EDRs by automakers, preempts conflicting state and local requirements.

The Alliance has developed model legislation to ensure consistent laws. Our bill, drafted soon after the adoption of the California EDR law, incorporates the technical and legal expertise resulting from our members' years of experience with motor vehicle safety and EDRs. The model bill was updated after the issuance of NHTSA's regulation to recognize those elements, including disclosure, that have been preempted by federal law.

The Alliance supports the intent of S. 974; however, several technical amendments are necessary to enable us to fully support the text of the bill as well. Our suggested amendments are outlined below.

First, the bill defines the time of "ownership" as the time the data is "recorded." This gives rise to enforceability concerns, e.g., how can the owner at the time the data was created be readily determined? Also, one person may own the vehicle at the time the data is created and a

subsequent person may own the vehicle at a later date when the data is accessed. The owner at the time the data is "accessed" is apparent and easily determined and should be substituted into S. 974.

Second, the bill permits data retrieval by a peace officer pursuant to a search warrant issued by a judge of a court of competent jurisdiction. The Alliance model bill provides additionally for retrieval by an "administrative authority." This "administrative authority" language is needed to allow access by crash investigators working on behalf of the National Highway Traffic Safety Administration (NHTSA) or other federal, state, or local agencies or authoritative bodies properly designated such responsibilities and should be added to S. 974.

Third, the Alliance model bill contains an exception to owner consent allowing the data to be "retrieved for the purpose of determining the need for or facilitating emergency medical response in the event of a motor vehicle crash." Our model bill contains this provision because it reflects a basic function of EDRs that have an automatic crash notification (CAN) feature. Information provided through this feature helps EMS personnel to locate vehicles involved in a crash and enables EMS an early assessment of the severity of the crash and likely injuries. This exception will save lives and should be added to S. 974.

Fourth, when the EDR data is used for the purpose of improving motor vehicle safety, S.974 states that the disclosure of the vehicle's identification number (VIN) with the last four digits deleted shall not constitute disclosure of the identify of the owner. NHTSA and the Alliance, however, have found through testing of VIN "decoder" programs that only VINs with the last six digits deleted protect the identity of the vehicle owner. This testing is discussed in detail in a NHTSA final rule dated April 21, 2004 (See Federal Register, Volume 69 at Page

21409). The number “four” should simply be replaced with “six” to in S. 974 in this section to more effectively protect owner identity.

Fifth, S.974 allows a peace officer who retrieves data pursuant to a warrant to disclose this data without restriction and to anyone. We oppose this provision because it would allow any individual or member of the public, including trial attorneys, insurers, etc., to obtain the data from a peace officer, even if the data was properly obtained pursuant to a warrant. This broad allowance detracts from the consent and identity protections contained in S. 974. The Alliance asks that the Senate, instead, adopt language similar to the Alliance model bill restricting the release of EDR data, obtained for the purposes of improving motor vehicle safety, security and traffic management, only for those purposes and only if the identify of the owner or driver is not disclosed.

Fifth, the Alliance supports the retrieval of EDR data by subscription services, without exception, provided the fact the EDR data may be recorded or transmitted is disclosed to the owner in the subscription service agreement. Owner consent, in this instance, is evidenced through the subscription services agreement. We suggest substitution of the Alliance model bill’s language on subscription services to more concisely reflect the nuances of consent and disclosure associated with these services.

We thank the committee for this opportunity to testify and welcome questions.