

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2023-2024 Regular Session

SB 296 (Dodd)
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Fiscal: Yes
Urgency: No
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SUBJECT

In-vehicle cameras

DIGEST

This bill requires the disclosure of in-vehicle cameras installed by the manufacturer and places restrictions on what can be done with video recordings from such cameras and where such recordings can be retained. The bill prohibits compelling an entity to build specific features for the purpose of allowing the monitoring of communications.

EXECUTIVE SUMMARY

In recent years, there has been an explosion of new technology placed in consumer vehicles. Arguably the most ubiquitous in newer vehicles are the many cameras built into them. Back up cameras provide a live picture as a driver backs out of the driveway or a parking spot. Newer camera blind-spot monitoring systems alert drivers to other vehicles or objects in proximity to the vehicle, often coupled with flashing lights or beeping. However, the latest trend has these camera systems facing inward. These can provide a variety of benefits for the driver and manufacturer. However, as with most technology, the benefits come with some potential drawbacks.

This bill addresses growing concerns regarding consumer privacy with respect to the installation of these inward-facing vehicle cameras and the recordings taken with them. The bill requires clear disclosure to a consumer of installed “in-vehicle cameras” at the time of purchase. It places guardrails around what can be done with the recordings from a camera installed by the manufacturer, including restrictions on using the recordings for advertising or selling them, and it prohibits certain features that allow for law enforcement to monitor communications. “Users” must provide affirmative consent before the recordings can be retained at any location other than the vehicle itself. This bill is sponsored by the Consumer Federation of California and supported by other organizations, such as Consumers for Auto Reliability and Oakland Privacy. A coalition of industry groups, including the California Chamber of Commerce, is in opposition.

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Prohibits a person or entity from providing the operation of a voice recognition feature within this state without prominently informing, during the initial setup or installation of a connected television, either the user or the person designated by the user to perform the initial setup or installation of a connected television. (Bus. & Prof. Code § 22948.20(a).)
- 2) Provides that any actual recordings of spoken word collected through the operation of a voice recognition feature by the manufacturer of a connected television, or a third-party contractor, for the purpose of improving the voice recognition feature, including, but not limited to, the operation of an accessible user interface for people with disabilities, shall not be sold or used for any advertising purpose. (Bus. & Prof. Code § 22948.20(b), (c).)
- 3) Prohibits a person or entity from compelling a manufacturer or other entity providing the operation of a voice recognition feature to build specific features for the purpose of allowing an investigative or law enforcement officer to monitor communications through that feature. (Bus. & Prof. Code § 22948.20(d).)
- 4) Provides, pursuant to the California Constitution, that all people are by nature free and independent and have inalienable rights. Among these are enjoying and defending life and liberty, acquiring, possessing, and protecting property, and pursuing and obtaining safety, happiness, and privacy. (Cal. Const. art. I, § 1.)
- 5) Permits a person to bring an action in tort for an invasion of privacy and provides that in order to state a claim for violation of the constitutional right to privacy, a plaintiff must establish the following three elements: (1) a legally-protected privacy interest; (2) a reasonable expectation of privacy in the circumstances; and (3) conduct by the defendant that constitutes a serious invasion of privacy. (*Hill v. National Collegiate Athletic Assn.* (1994) 7 Cal.4th 1, 40.)
- 6) Renders an individual liable for constructive invasion of privacy when that individual attempts to capture, in a manner that is offensive to a reasonable person, any type of visual image, sound recording, or other physical impression of another engaging in a private, personal, or familial activity, through the use of any device, regardless of whether there is a physical trespass, if this image, sound recording, or other physical impression could not have been achieved without a trespass unless the device was used. (Civ. Code § 1708.8.)
- 7) States that no person who owns, controls, operates, or manages a satellite or cable television corporation, or who leases channels on a satellite or cable system

shall use any electronic device to record, transmit, or observe any events or listen to, record, or monitor any conversations that take place inside a subscriber's residence, workplace, or place of business, without obtaining the express written consent of the subscriber, as specified. (Pen. Code § 637.5(a)(1).)

- 8) Establishes the California Consumer Privacy Act of 2018 (CCPA), which grants consumers certain rights with regard to their personal information, including enhanced notice and disclosure of information collection and uses; the right to access the information; the right to delete it; the right to restrict the sale of information; and protection from discrimination for exercising these rights. It places attendant obligations on businesses to respect those rights. (Civ. Code § 1798.100 et seq.)
- 9) Provides that a manufacturer of a new motor vehicle sold or leased in this state that is equipped with one or more recording devices commonly referred to as "event data recorders (EDR)" or "sensing and diagnostic modules (SDM)," shall disclose that fact in the owner's manual for the vehicle. Data recorded on such recording devices may not be downloaded or otherwise retrieved by a person other than the registered owner of the motor vehicle, except under specified circumstances. (Veh. Code § 9951.)

This bill:

- 1) Requires a manufacturer of a new motor vehicle model that is equipped with in-vehicle cameras that is sold or leased in California to disclose that fact in the owner's manual. If a vehicle is equipped with in-vehicle cameras and the camera does not come standard with the vehicle model, the manufacturer shall disclose that the vehicle is so equipped in a document sent to the seller or leaser of the vehicle.
- 2) Requires prominent disclosure during the purchase of the vehicle of in-vehicle cameras to a user or another designated person before the sale or lease of a new motor vehicle equipped with in-vehicle cameras. This requires the seller to provide the user with a separate disclosure that acknowledges the existence and operation of an in-vehicle camera in the purchased vehicle, and obtain the written or electronic signature of the user or purchaser on that disclosure. The disclosure shall meet all of the following criteria:
 - a) be contained on a single document or single internet website that is separate from the conditional sales contract, purchase order, and any other document;
 - b) specify the rights and remedies available to the user, as specified; and
 - c) contain the following language, written in at least 20-point bold type:

“This vehicle is equipped with an in-vehicle camera capable of recording the driver and other individuals inside the vehicle. For more information about the in-vehicle camera please consult your automotive dealer, the vehicle manufacturer, or the vehicle owner’s manual.

By law, signing this acknowledgment form does not waive any rights of the user or constitute consent to a manufacturer to share, sell, or retain any images or videos captured by the in-vehicle camera.”

- 3) Provides that a person or entity shall not be held liable for a violation of the previous provision if the manufacturer of that vehicle is in violation of paragraph (1) with respect to that vehicle.
- 4) Prohibits any image or video recording collected or retained through operation of an in-vehicle camera from being sold to a third party or being used for any advertising. Such image or recording can be shared with a third party only with affirmative proper consent and as specified, except as provided.
- 5) Provides that such video recordings can only be retained, outside the vehicle, when the user first provides affirmative prior consent. Such consent is also required before it can be downloaded, retrieved, or otherwise accessed by a person or entity other than the user.
- 6) Requires the person or entity that provides operation of the in-vehicle camera to provide effective mechanisms to revoke consent, as specified.
- 7) Prohibits discrimination against a user for exercising their rights under the bill.
- 8) 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.
- 9) Defines “in-vehicle camera” to mean any device included as part of a vehicle by the manufacturer that is designed to, or is capable of, recording images or video inside the cabin of the vehicle. A “user” is a person who originally purchases, leases, or takes ownership of a vehicle equipped with an in-vehicle camera, excluding a person who is incidentally recorded when a vehicle is operated by a user. The bill does not apply to cameras installed in vehicles that are primarily for commercial use.
- 10) Provides for enforcement by the Attorney General or any district attorney. It provides for injunctive relief and a civil penalty not to exceed \$2,500 per vehicle

equipped with an in-vehicle camera knowingly sold or leased in violation of this bill.

- 11) Provides that its remedies and penalties are cumulative, waiver of its protections is contrary to public policy, and the provisions of the bill are severable.

COMMENTS

1. California's commitment to privacy

California recognizes that the right to privacy is a fundamental right, and has enshrined that right along with other fundamental rights in section 1, article I of the California Constitution. The Legislature has continued to renew its commitment to this inviolable right as new technologies and ways of communicating become the norm.

In response to growing concerns about the privacy and safety of consumers' data, proponents of the California Consumer Privacy Act, a statewide ballot initiative, began collecting signatures in order to qualify it for the November 2018 election. The goal was to empower consumers to find out what information businesses were collecting on them and give them the choice to tell businesses to stop selling their personal information. In response to the pending initiative, which was subsequently withdrawn, AB 375 (Chau, Ch. 55, Stats. 2018) was introduced, quickly shepherded through the legislative process, and signed into law. The outcome was the California Consumer Privacy Act of 2018 (CCPA), Civil Code Section 1798.100 et seq. It provides a number of new rights to consumers over their personal information. Namely, consumers have a right to certain disclosures about what information is being collected and the uses it is being put to. They have the right to access and to delete, as specified, the personal information held by businesses. Consumers also have the right to opt out of the sale of their information. Bolstering the law even further, the voters of California enacted a revamp of the CCPA, the California Privacy Rights Act of 2020 (CPRA), which takes full effect this year.

But even before the CCPA addressed the general collection of data by businesses, the State has grappled with specific intrusions into privacy that it felt necessary to respond to. AB 213 (Leslie, Ch. 427, Stats. 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 a vehicle travels."¹ AB 213 enacted Section 9951 of the Vehicle Code, which provides that a "manufacturer of a new motor vehicle sold or leased in this state that is equipped with one or more recording devices commonly referred to as 'event data recorders (EDR)' or 'sensing and diagnostic modules (SDM),' shall disclose that fact in the owner's manual for the vehicle." In addition to this disclosure, the statute also

¹ Senate Judiciary Committee, *Analysis of AB 213 (Leslie, Ch. 427, Stats. 2003)* (July 8, 2003).

prohibits any person other than the owner from downloading or otherwise retrieving data recorded by one of these devices except under the following circumstances:

- the owner consents to retrieval;
- in response to a valid court order;
- for the purpose of improving motor vehicle safety, including medical research, where the identity of the owner is not disclosed; and
- for the purpose of diagnosing, servicing, or repairing the motor vehicle, as specified.

This bill addresses yet another growing trend, the placement of cameras inside vehicles. While back-up cameras and blind-spot monitoring cameras have become standard features, the placement of interior-facing cameras is starting to take off. There are estimates that the “global automotive camera market is expected to almost double in the next 6 years, increasing to a 15 billion-dollar industry.”² Models from Hyundai, BMW, and Cadillac have built in cameras to monitor drivers. Companies like Volvo and Tesla will soon have them in all of their vehicles. With the gaining ubiquity of such intrusive cameras comes serious concerns about privacy, as the cameras can record everything going on in a vehicle, and with advanced facial recognition technology and machine learning, it can detect a driver’s identity and even their mood.³ The U.S. Supreme Court and the courts of this state have repeatedly noted the expectations of privacy individuals have in their vehicles.⁴

2. Privacy in one’s own vehicle

According to the author:

Increasingly in society today, we find ourselves being recorded or surveilled with no idea how the images are being used. This erosion of privacy is now happening inside our own cars. My bill would prevent the unwanted taking of video by in-vehicle cameras and give the consumer more control over their personal information.

² Dalvin Brown, *Where are the cameras in your car and what are they looking for?* (April 23, 2019) USA Today, <https://www.usatoday.com/story/tech/2019/04/23/cameras-inside-outside-new-cars/3506205002/>. All citations are current as of March 15, 2023.

³ John R. Quain, *Soon, Your Car May Be Able to Read Your Expressions* (April 6, 2017) The New York Times, <https://www.nytimes.com/2017/04/06/automobiles/wheels/cars-facial-recognition-expressions.html> [as of Mar. 4, 2021].

⁴ *United States v. Jones* (2012) 132 S. Ct. 945, 956; *People v. Xinos* (2011) 192 Cal.App.4th 637, 659 [“We conclude that a motorist’s subjective and reasonable expectation of privacy with regard to her or his own vehicle encompasses the digital data held in the vehicle’s SDM.”]; *People v. Bell* (1996) 43 Cal.App.4th 754, 770 [“There is a legitimate expectation of privacy in the interior of a car.”].)

The Consumer Federation of California, the sponsor of the bill, makes the case for the bill:

Consumers spend a lot of time inside their vehicles running errands, commuting to work, or going on road trips and the increase of in-vehicle cameras installed in vehicles potentially puts consumer's privacy at risk. The use of in-vehicle cameras to monitor a driver's gaze, attentiveness, and to record sensitive data allows private companies to build composites of consumers' habits and likes that can be used for targeted advertisement as well as data collection and monetization.

SB 296 enhances consumer control of their data and includes some situations where data sharing is prohibited. This would ensure that the private data and recordings of those cameras inside your vehicle's interior are controlled by consumers, and not just another way in which consumer privacy is being eroded by corporations while they profit off of your personal information through selling, sharing and otherwise brokering information about consumer data and behavior.

This bill responds to the growing privacy concerns by requiring prominent notice to the person taking ownership of a vehicle of such "in-vehicle cameras" during purchase. It further places restrictions on the video recordings collected or retained through operation of the cameras by the manufacturer. Such recordings cannot be used for advertising purposes and cannot be sold with third parties. They can only be shared with third parties under limited circumstances such as with the affirmative prior consent of the user and only then when certain additional criteria are met, including that the recordings or images are shared only to the extent necessary to improve or update portions of a vehicle's safety system which rely on or utilize the in-vehicle camera. The recordings cannot be retained anywhere outside the vehicle itself without first securing the affirmative written or electronic consent of the user.

The provisions of the bill are borrowed heavily from the statutory scheme dealing with connected televisions and the recording devices included therein as part of the voice recognition features.⁵ That law was established by AB 1116 (Assembly Committee on Privacy and Consumer Protection, Ch. 524, Stats. 2015) as a response to concerns that consumers did not know such features were installed in their televisions and had no control over what was being done with the recordings.

Similar to this bill, AB 1116 prohibits a person or entity from providing the operation of such features without first "prominently informing" the user. It also includes complete prohibitions on using recordings for advertising or selling the recordings. This bill also borrows the following prohibition nearly verbatim from the connected television

⁵ Bus. & Prof. Code § 22948.20 et seq.

statute: “A person or entity shall not compel a manufacturer or other entity providing the operation of a voice recognition feature to build specific features for the purpose of allowing an investigative or law enforcement officer to monitor communications through that feature.”

This bill establishes a series of straightforward protections to ensure consumers have baseline information, protections, and control over the happenings inside their own vehicles. The bill only applies to in-vehicle cameras that are placed there by the vehicle manufacturer and only those cameras that can record the interior of the cabin. Consumers then have control over what they would like done with such recordings and where a manufacturer can store them.

The bill subjects violations to a modest enforcement scheme. Actions for relief can only be brought by the Attorney General or a district attorney. Persons who knowingly violate the statute are subject to civil penalties, capped at \$2,500 for each vehicle in violation and injunctive relief. Courts are explicitly empowered to make whatever other orders or judgments are necessary to prevent violations. Therefore, consumers are unable to directly seek a remedy when they are harmed by violations of this bill. In response, the Consumer Attorneys of California urge stronger mechanisms in their support letter:

Bills that provide consumers with their own remedies give Californians an active role in enforcing their rights. Consumer legal rights are essential to ensure the important laws we pass in California are being followed since government enforcement is often limited due to resources. The enforcement in SB 296 is limited to the Attorney General, which may lead to minimal enforcement given state resources. We urge the author to consider providing consumers with a direct remedy to enforce their own rights through a private right of action.

3. Responding to the veto

The bill largely mirrors SB 346 (Wieckowski, 2021), which was vetoed by Governor Newsom. In his veto message, the Governor stated:

This bill would place restrictions on what can be done with images and video recordings from in-vehicle cameras, and where such recordings can be retained.

I share the author's concern for consumer privacy and commitment to this issue, and I am supportive of placing strong limitations against selling, sharing, or using for advertising any images or video recordings collected from in-vehicle cameras.

However, the bill contains broad language that could unintentionally prohibit a vehicle manufacturer from updating or improving critical technology. In-vehicle cameras have the potential to detect impaired or distracted driving and, if used appropriately, could reduce the number of motor vehicle accidents and casualties.

It is important to advance balanced policies that protect consumers and their privacy without inadvertently impeding our ability to innovate and improve new technologies - especially when a technology has the potential to save lives.

In response, the author has made amendments that make clear images and video recordings can be shared to not only improve, but also update the vehicle's safety system, including technology related to the detection of distracted drivers used in conjunction with driver-assist features.

4. Stakeholder positions

Oakland Privacy writes in support:

Senate Bill 296 continues the Legislature's consideration of enhanced privacy protections for particularly sensitive personal information. For many of us, our vehicles are places where we spend a great deal of time and the inside of it is a physical space considered fundamentally private, much like the inside of our own homes. We may engage in conversations about family business or our health, or participate in sensitive business-related meetings or conversations. We do not act in the space of our own private vehicle as if we are being overheard by third parties.

Even more innocuous acts like the radio stations we choose to listen to, or the podcasts we select, are considered by the vehicle's occupants as fundamentally private choices. Essentially, in-vehicle cameras are much like smart speaker devices, in that they are repositories of information from Californian's private lives and activities. This is timely legislation.

A coalition of groups, including TechNet and the Civil Justice Association of California, write in opposition to the bill:

Some of our most pressing concerns include: (1) the bill provides a carve-out for in-vehicle cameras from the California Consumer Privacy Act (CCPA); and (2) the inability for industry to comply due to the conflict between the consent requirements and the anti-discrimination requirements. In addition to these concerns, it remains unclear what

problem the bill is trying to address and the basis for this remedy in existing law.

SUPPORT

Consumer Federation of California (sponsor)
California Association for Micro Enterprise Opportunity
Consumer Attorneys of California
Consumers for Auto Reliability
Oakland Privacy

OPPOSITION

Alliance for Automotive Innovation
California Chamber of Commerce
Civil Justice Association of California
TechNet

RELATED LEGISLATION

Pending Legislation: None known.

Prior Legislation:

AB 1262 (Cunningham, 2022) would have added smart speaker devices to the statutory scheme governing connected televisions. This bill was passed by the Legislature, but vetoed by Governor Newsom. In his veto message, the Governor again stated he shared the author's concern but feared unintended consequences.

SB 346 (Wieckowski, 2021) *See* Comment 2.

AB 375 (Chau, Ch. 55, Stats. 2018) *See* Comment 1.

AB 1116 (Assembly Committee on Privacy and Consumer Protection, Ch. 524, Stats. 2015) *See* Comment 2.

AB 213 (Leslie, Ch. 427, Stats. 2003) *See* Comment 1.