



## **Event Data Recorders (EDRs)**

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An EDR is an electronic device that detects a vehicle collision and records information for a few seconds of time before, during and after the collision. According to the National Highway Traffic Safety Administration (NHTSA) of the U.S. Department of Transportation, an estimated 15 percent of the light vehicles presently on the road are equipped with EDRs, and between 65 and 90 percent of model year 2004 light vehicle models will be so equipped.

These EDRs and Sensing and Diagnostic Modules (SDMs) are intended by manufacturers to capture performance data relating to specific vehicle equipment. They are also available in the aftermarket. These devices can benefit many groups in the population, including consumers/drivers, safety/traffic control officials, law enforcement, vehicle manufacturers, vehicle repair personnel, and insurers.

For insurers, data downloaded from an EDR or SDM can be used for a variety of claims, rating, and underwriting purposes. Many insurers have already discovered the value of the data stored in these devices for claims adjusting and investigation, and are making extensive use of this capability. Others have only begun to explore the possibilities.

So far, for the most part, insurers have not been using these particular devices for rating or underwriting. However, some insurers have been experimenting with other forms of telematics as part of various “pay as you drive” or mileage-based rating systems.

Unfortunately, counterproductive legislation was first enacted in California to deny or at least restrict access to recorded data, even for a variety of legitimate uses. Copycat legislation was recently enacted in Arkansas, Nevada, New York, North Dakota, and Texas, and has surfaced in several other states: Alaska, Massachusetts, Montana, New Hampshire, Pennsylvania, Tennessee, Virginia, and West Virginia.

### **Laws, Regulations & Legislation**

Section 9951 of the California Vehicle Code (added by AB 213/Chapter No. 427) requires new motor vehicle manufacturers to disclose the presence of an EDR to the buyer. NHTSA has proposed federal regulations along the same lines, allowing such disclosures to be contained in the owner’s manual.

In 2003, the California Legislature was consumed with the issue of privacy. Unfortunately, the presence of EDRs in a vehicle became cast as a potential invasion of privacy. As a result, the Legislature went overboard. Aside from the disclosure requirement, the California law also restricts access to data from EDRs unless the vehicle owner provides affirmative consent, by court order or under several other limited conditions. Insurers are not exempted.

Much of the EDR legislation has been patterned after the California law, aided by the fact that the Alliance of Automobile Manufacturers has drafted and promoted a model bill around the country. Although this model contains some improvements, it remains problematic for insurers.

In consultation with AAM, the PCI is actively seeking amendments that balance consumer/driver privacy vs. legitimate insurer needs and uses for the recorded data, by providing the following exemptions allowing access:

- Claims adjusting and investigation, fraud investigation, loss control, and research.
- As provided by contract.
- As otherwise required or permitted by federal or state law.

AAM has agreed not to oppose our amendment at the state level.

## Privacy Debate

For the PCI and member companies, there are two keys to addressing these misplaced privacy concerns. The first is to identify legitimate insurer needs and uses for such data, and to balance those vis a vis consumer/driver privacy concerns.

- The only information recorded by EDRs is “crash-pulse” data, that is, how specific vehicle equipment or systems operated shortly before a collision or triggering event. Unlike airline “black boxes,” the devices do not record human conversation by drivers or passengers.
- Congress, state legislatures, and state insurance departments have taken steps to protect sensitive personal financial and medical information. To attempt to lump generic vehicle speed, steering, braking, headlight illumination, airbag deployment, and seatbelt status under the same sort of “affirmative consent” system is unnecessary, and trivializes the much greater importance of the financial and medical information.
- Along with police reports, witness statements, photographs of the vehicle(s), and physical evidence from the accident scene (e.g. skid marks, debris, etc.), EDR data may help the investigation and reconstruction of vehicle accidents. If an adjuster can easily photograph the damaged vehicle(s) at the body shop or measure the skid marks at the accident scene, without costly delays and restrictions, why shouldn't he or she also be able to simply download generic data?
- EDR data is only one of many tools and resources used by insurers. See the others noted above. Even when available, it is not always necessarily used. Adjusting decisions are not based solely upon such data.
- Automobile insurance policies contain language requiring the insured/driver to cooperate with the insurer in investigating the accident and adjusting the claim. This includes allowing access to the vehicle and its contents. EDRs are a component part of the vehicle. Why should this data be treated differently?
- Some accidents involve fraudulent activity. Many state laws require that insurers aggressively investigate and report suspected fraud. Access to this data may be needed to allow insurers to ascertain whether such activity may be involved.
- While EDR technology has been around for many years, it must also be noted that technologies and their uses evolve very quickly. Policymakers may be premature in enacting legislation based upon assumptions that may quickly become as obsolete as the technology they seek to regulate or restrict.

The second key is to identify consumer/driver benefits from allowing insurer access and/or the costs of prohibiting such access:

- Sometimes, unfortunately, there are no living witnesses to serious collisions. This data takes on increased importance in such situations, yet such laws make no exception to allow insurers to overcome this lack of a reliable witness in order to quickly settle the claims of surviving family members.
- Like auto manufacturers and safety agencies, that are exempted, insurers also need access to this data for loss control and prevention activity to promote highway and vehicle occupant safety. Why should insurers be denied access?
- Requiring court orders to obtain access to EDR data encourages unnecessary litigation, adds unnecessary expense for policyholders, and delays claim payment.

Additionally, neither the California law or the AAM model provides an exemption for law enforcement. Some would argue that insurers should have no greater access than the police. The salient difference is that the police are investigating potential crimes on behalf of the government and, as such, are subject to the “search and seizure” strictures of the Fourth Amendment to the U.S. Constitution, as well as similar provisions in various state constitutions. Thus, while it may be appropriate to require a court-issued search warrant before law enforcement

may download this data as part of a criminal investigation, it would be inappropriate to impose such burdens upon private insurance companies involved in performing contractual duties or engaging in civil litigation.

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