

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2021-2022 Regular Session

SB 346 (Wieckowski)
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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 consumer groups. The California New Car Dealers Association are 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) Prohibits a person or entity from providing the operation of an in-vehicle camera within this state without prominently informing, during the purchase of the vehicle, either the user or the person designated by the user to purchase the vehicle.
- 2) Prohibits any video recording collected or retained through an in-vehicle camera by the manufacturer of the vehicle from being shared or sold to a third party or being used for advertising. Such video recordings can only be retained, outside the vehicle, when the user first provides affirmative written or electronic consent.
- 3) 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.
- 4) 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.

- 5) Provides for enforcement by the Attorney General or any district attorney when a person knowingly engages in a violation. It provides for injunctive relief and a civil penalty not to exceed \$2,500 per vehicle equipped with an in-vehicle camera sold or leased in violation of the bill.
- 6) 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. Just last year, the voters of California enacted a revamp of the CCPA, the California Privacy Rights Act of 2020 (CPRA), which will take full effect starting in 2023.

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

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

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 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

2. Privacy in one's own vehicle

According to the author:

SB 346 will protect consumer privacy when in a commonly occupied and often personal space, our vehicles, and pre-empt its erasure by invasive technologies. The right to privacy is a cornerstone of the American constitution. Yet, increasingly invasive technologies threaten to erode privacy in those places we most expect it. The use of in-vehicle cameras to monitor our gaze, gauge attentiveness, and record sensitive biometric data while we commute to work or pick up our children allow private companies to build detailed composites of our habits and likes. Although these features also have the potential to increase safety and comfort, the data they generate is highly valued by large corporations looking to improve their targeted advertising. If disseminated and shared for such

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/> [as of Mar. 4, 2021].

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].

commercial purposes, this data would eliminate any semblance of privacy when driving our vehicles. Without laws in place, who can access such sensitive information and for what purposes is left to the discretion of profit-seeking firms. SB 346 will pre-empt the collection of highly sensitive personal information and protect consumer privacy during one of our most common activities.

The U.S. Supreme Court and the courts of this state have repeatedly noted the expectations of privacy individuals have in their vehicles.⁴ The Consumer Federation of California, the sponsor of the bill, highlights this expectation of privacy and the rights at stake:

These new features pose a significant risk to user privacy. People often spend a significant portion of their days inside their car, whether it be a work commute, running errands, or simply a leisure drive. A car can often act as a second home, and, similar to when people are in their home, there is an expectation of privacy. Videos recorded by these cameras and other sensors in the car can potentially be accessed and collected by vehicle manufacturers. This data, which can reveal a lot about a person's driving habits and preferences, is extremely valuable. The brand of driving glasses a person wears or the type of takeout they prefer, for example, is information that can be sold to or shared with third parties, used for targeted advertising, and used for other purposes beyond the reasonable expectation of the consumer.

Consumers do not expect that buying a new car can also potentially mean opening up their private life to the car's manufacturer. In fact, once the vehicle is sold, it would seem that the manufacturers' right to any interior video should be extinguished. Privacy protections already exist for other kinds of technology that collect data in people's private spaces.

This bill responds to these 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 shared or sold with third parties. The recordings cannot be retained anywhere outside the vehicle itself without first securing the affirmative written or electronic consent of the user.

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 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 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 to this lack of a consumer enforcement mechanism, a group of privacy and consumer protection groups writes in a support if amended to include a right of action position:

While we support the intent behind the bill, we remained concerned that relying on the Attorney General and district attorneys to enforce the law will leave the majority of consumers unable to rely on the protections the bill provides. Last year, the Dutch data protection authority - with an annual budget of approximately €15,000,000⁶ - revealed that the agency was able to investigate 138 cases out of more than 27,000 complaints - and admitted that the volume of complaints it has been receiving is greater

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

⁶ “Report of EU Data Protection Authorities – Part 4: Resources,” *Deloitte Privacy Services*. Accessed March 9, 2021. <https://www2.deloitte.com/content/dam/Deloitte/nl/Documents/risk/deloitte-nl-risk-reports-resources.pdf>.

than its ability to deal with.⁷ So far, the California Attorney General has issued zero fines or enforcement actions under the California Consumer Privacy Act against violating businesses.

Including a private right of action for impacted consumers in SB 346 would ease the enforcement burden on an already thinly stretched, under-resourced Attorney General's office, and would help ensure consumers' privacy is protected under the law.

Writing in support, the Consumer Attorneys of California state:

Car manufacturers are now equipping cars with interior cameras that can record the driver and passengers. Tesla's model 3 is equipped with a camera designed to record the vehicle's cabin. The Cadillac CT6 started using in-vehicle cameras to monitor the driver during autonomous driving sessions. These new features provide a utility; however, consumer privacy rights must be protected. Drivers have an expectation of privacy in their vehicles. Videos recorded by these cameras can be accessed and collected by the vehicle manufacturer and then sold to third parties for targeted advertising. SB 346 aligns this new technology with our current California privacy laws and consumer protections.

Oakland Privacy writes in support: "Senate Bill 346 ensures that no retention or transfer can happen without prominent notice, which prevents notices hidden inside of lengthy privacy policies usually ignored by consumers."

The California New Car Dealers Association writes in opposition to the bill:

Requiring dealers to inform customers about the presence of any in-vehicle cameras during the vehicle purchase process will be extremely difficult to implement on a vehicle-by-vehicle basis, and this operational difficulty is especially acute with civil penalties attached.

SUPPORT

Consumer Federation of California (sponsor)
Consumer Attorneys of California
Consumer Watchdog
Consumers for Auto Reliability and Safety
Oakland Privacy

⁷ "Complaints trigger 25 Dutch GDPR enforcement cases," *Pinsent Masons*. February 17, 2020. <https://www.pinsentmasons.com/out-law/news/complaints-25-dutch-gdpr-cases>.

OPPOSITION

California New Car Dealers Association

RELATED LEGISLATION

Pending Legislation: AB 1262 (Cunningham, 2021) adds smart speaker devices to the statutory scheme governing connected televisions. This bill is currently in the Assembly Committee on Privacy and Consumer Protection.

Prior Legislation:

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.
