

SENATE BILL NO. _____ HOUSE BILL NO. _____

1 A BILL to amend the Code of Virginia by adding in Chapter 10 of Title 46.2 an article numbered 24,
2 consisting of sections numbered 46.2-1193 through 46.2-1197, relating to recording devices in
3 motor vehicles.

4 **Be it enacted by the General Assembly of Virginia:**

5 **1. That the Code of Virginia is amended by adding in Chapter 10 of Title 46.2 an article**
6 **numbered 24, consisting of sections numbered 46.2-1193 through 46.2-1197, as follows:**

7 Article 24.

8 Recording Devices.

9 § 46.2-1193. Definitions.

10 A. As used in this section:

11 "Authorized person" means any person meeting the requirements of subsection A of § 46.2-1195
12 who is entitled as a result of that qualification to have access to or separately possess hardware from a
13 motor vehicle, or to retrieve or download recorded data from a recording device of a motor vehicle.

14 "Emergency medical response provider" means any person in the sequence of immediate medical
15 care that regularly follows the occurrence of a motor vehicle crash and seeks to provide first aid and
16 emergency medical care to victims of a motor vehicle crash, including, but not limited to, ambulance
17 services, emergency physicians, and hospital emergency rooms and staff.

18 "Event" means an occurrence, such as a motor vehicle crash, or a condition of some device or
19 system of the vehicle which may be memorialized electronically as recorded data in the recording device
20 of a motor vehicle.

21 "Hardware" means the physical device or mechanism that contains the recording device.

22 "Recording device" means an electronic system that primarily, or incidental to its primary
23 function, utilizes, preserves, or records, in electronic form, data collected by sensors or provided by
24 other systems within the vehicle. "Recording device" includes event data recorders (EDR), sensing and
25 diagnostic modules (SDM), electronic control modules (ECM), automatic crash notification (ACN)

26 systems, geographic information systems (GIS), and any other device that records and preserves data
27 that can be retrieved or downloaded from the vehicle.

28 "Recorded data" means the data stored or preserved electronically in a recording device
29 identifying performance or operation information about that vehicle, including but not limited to:

- 30 1. The speed of the motor vehicle or the direction in which the vehicle is traveling;
- 31 2. Vehicle location data;
- 32 3. Steering performance;
- 33 4. Brake performance, including, but not limited to, whether brakes were applied before a crash;
- 34 5. The driver's seatbelt status; or
- 35 6. Information concerning a crash in which the motor vehicle has been involved when a crash

36 occurs.

37 "Vehicle operator" means a person with ownership and possessory rights in the vehicle and the
38 right to use the motor vehicle, including lessees and permissive users.

39 § 46.2-1194. Event data recorders; disclosure.

40 A. A manufacturer of a new motor vehicle sold or leased in Virginia shall disclose the presence
41 of any recording devices and the type of data recorded in the owner's manual for the vehicle. The seller
42 or lessor of the new motor vehicle shall conspicuously disclose these facts prior to sale or lease.

43 B. This section applies to all motor vehicles manufactured for the model year 2007 and
44 subsequent model years.

45 § 46.2-1195. Access to hardware and recorded data.

46 A. Recorded data contained in the recording device of a motor vehicle shall be deemed the
47 personal property of the vehicle owner. Other than the vehicle owner, only persons in the categories
48 described below shall be authorized persons, and have any right to retrieve, remove, or possess hardware
49 from a motor vehicle, or to access, scan, download, or otherwise read or extract the recorded data
50 contained in the recording device of a motor vehicle:

51 1. A person who has the written permission of the vehicle owner, or has a contract with the
52 vehicle owner that requires access to the hardware, recording devices, or recorded data in order to
53 perform the contract;

54 2. A technician, mechanic, or garage person at a motor vehicle repair or servicing facility who
55 requires access to recorded data in order to carry out his normal and ordinary servicing and repair duties.
56 Such person may divulge, to the vehicle owner, any recorded data that is accessed, read, or downloaded,
57 but shall not divulge such data to any other person absent an order of a court of competent jurisdiction;

58 3. Emergency medical response providers are authorized to receive data transmitted or
59 communicated by any electronic system of a motor vehicle that constitutes an automatic crash
60 notification system and utilizes or reports data provided by or recorded by recording devices of a motor
61 vehicle to assist them in performing their duties as emergency medical response providers. Such person
62 may divulge, to the vehicle owner, any recorded data that is received, accessed, read, or downloaded, but
63 shall not divulge such data to any other person absent an order of a court of competent jurisdiction; and

64 4. An insurance company or lienholder of the vehicle owner where the owner was involved in an
65 event where the damage is estimated to exceed \$10,000 or the event has resulted in serious bodily injury
66 or death to any person.

67 5. For persons not covered in the preceding four categories, and those with an interest in the civil
68 or criminal consequences of an event, the following rules shall apply:

69 a. The hardware, recording device, and recorded data in a motor vehicle shall only be accessed
70 by or separately possessed by persons other than the vehicle owner pursuant to and under the authority
71 of the legal processes ordinarily applicable to those seeking access to the private physical or
72 documentary evidence of others.

73 b. Persons seeking access to the hardware, recording device, or recorded data relative to an event
74 for purposes of civil or criminal law interests shall do so only through established civil or criminal
75 processes, including, but not limited to warrant, court order, or other process applicable to the
76 prelitigation preservation of evidence.

77 B. The personal property right of a vehicle owner in the hardware, recording device, and
78 recorded data related to an event survives removal or separation of the hardware, recording device, and
79 recorded data from the motor vehicle. Where the hardware, recording device, and recorded data are not
80 removed or separated from the motor vehicle, that property right survives the sale of the motor vehicle
81 to any nonbeneficial owner such as an insurer, salvage yard, or other person who does not possess and
82 use the motor vehicle for normal transportation purposes. The property right of a vehicle owner in the
83 hardware, recording device, and recorded data related to an event terminates upon the sale of a motor
84 vehicle containing those elements to a subsequent beneficial owner.

85 C. A lienholder or insurer shall not make the vehicle owner's consent to the retrieval of recorded
86 data conditioned upon the payment or settlement of an obligation or claim; however, the insured is
87 required to comply with all policy provisions including any provision that requires the insured to
88 cooperate with the insurer.

89 D. An insurer or lessor shall not require a vehicle owner to provide written permission for access
90 or retrieval of recorded data from a recording device as a condition of the policy or lease.

91 § 46.2-1196. Responsibilities and duties of persons accessing information.

92 A. An authorized person as described in subdivisions A 2 and A 3 of § 46.2-1195 shall be
93 responsible for using and maintaining hardware, recording devices, and recorded data accessed or
94 received by them in a manner consistent with the competent and ethical practice of their trade or
95 profession and only for the purpose for which they received or had access to it, and as addressed in this
96 article. All other authorized persons shall (i) not damage or alter hardware, recording devices, or
97 recorded data from their immediate post-event condition; (ii) protect against abuse, damage, tampering,
98 or any other alteration to hardware, recording devices, and recorded data while in the possession of the
99 authorized person; and (iii) return the hardware to the person from whom they received possession or
100 pursuant to the terms of the applicable warrant, court order, or other process or authority, in the same
101 condition as originally received.

102 B. An authorized person as described in subdivisions A 1 and A 4 of § 46.2-1195 shall (i) ensure
103 that he is competent to retrieve, handle, possess, and store hardware, recording devices, and recorded

104 data, and to competently access, read, or download recorded data without altering, damaging, erasing, or
105 otherwise rendering it inaccessible to subsequently authorized persons; (ii) create and maintain a
106 detailed written chain of custody or log of all receipts, transfers, movements, storage conditions,
107 energizing, data downloads, reads, or other manipulation of any sort of the hardware, recording devices,
108 or recorded data; (iii) attach to the hardware, or supply to the possessor of the hardware for attachment
109 to the hardware, as applicable, the written chain of custody or log required by this section and a sealed
110 copy of any data accessed, read, or downloaded, upon the fulfillment and conclusion of the terms of the
111 access to the hardware, recording devices, or recorded data; and (iv) provide to subsequent authorized
112 persons within seven days of request and presentation of the authorizing warrant, court order, or other
113 process or permission that authorizes their possession or access to the hardware, recording devices, or
114 recorded data, a copy of the chain of custody or log he prepared pursuant to this section and all recorded
115 data accessed, read, or downloaded during his previous access to or possession of the hardware,
116 recording devices, or recorded data.

117 § 46.2-1197. Consequences of breach or violation of responsibilities or duties.

118 A. Authorized persons and their employers or contractors shall be liable to the vehicle owner for
119 all damage, alteration, or spoliation caused to the hardware, recording devices, or recorded data that
120 occurs during the authorized person's possession of the hardware, recording device, or recorded data, or
121 as a result of the authorized person's failure to fulfill his responsibilities or to comply with his duties
122 under this article, and for consequential damages arising from the damage, alteration, or spoliation.

123 B. Where the authorized person is a representative of, or acting for or on behalf of, the
124 Commonwealth or a political subdivision thereof, or hired as an expert for purposes of a criminal
125 investigation or inquiry, the occurrence of damage, alteration, or spoliation to hardware, recording
126 devices, or recorded data while in his possession shall, in addition to liability provided in subsection A,
127 result in the exclusion from evidence of the recorded data in any criminal proceeding arising from the
128 event memorialized in the recorded data, and any opinions relying to any extent on the recorded data or
129 any interpretation of the recorded data.

130 C. Any authorized person who has intentionally altered, spoiled, or damaged hardware, recording
131 devices, or recorded data, shall, in addition to the liability provided in subsection A and any penalties
132 applicable to such person under the process rendering him an authorized person, shall also be guilty of
133 breaking, injuring, tampering with, or removing a part of a vehicle, a Class 1 misdemeanor, as provided
134 in § 18.2-146.

135 D. Nothing in this article shall enlarge or diminish the duty or lack of duty under existing law of
136 a vehicle owner to preserve a motor vehicle or any part of it after an event.

137 #