

NOTE: This draft represents a melding of two pieces of legislation presented at the November Emerging Technologies Issues meeting concerning recording devices in vehicles. This bill represents a general agreement and melding of those two drafts as to elements that legislation involving recording devices should include. However, there is still some policy debate as to whether the language on page 3, lines 9-19 (relating to access to recorded data for research purposes) and page 3, lines 22-25 (giving insurance companies access to recorded data if an accident involves \$10,000 or more damage or results in serious bodily injury/death) is necessary, and will likely be the focus of debate at the Dec. 1 JCOTS meeting regarding this issue

**MOTOR VEHICLE ELECTRONIC RECORDING DEVICES**

*A BILL to amend the Code of Virginia by adding in article 10 of Chapter 10 of Title 46.2 a section numbered 1088.6, and a section numbered 46.2-1532.2, relating to motor vehicle electronic recording devices; disclosure.*

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

**1. That the Code of Virginia is amended by adding in article 10 of Chapter 10 of Title 46.2 a section numbered 1088.6, and a section numbered 46.2-1532.2 as follows:**

*§ 46.2-1088.6. Motor vehicle recording devices.*

*A. As used in this section:*

*“Accessed” means downloaded, extracted, scanned, read or otherwise retrieved.*

*“Owner” means a person having all the incidents of ownership, including the legal title of a vehicle whether or not such person lends, rents, or creates a security interest in the vehicle; a person entitled to the possession of a vehicle as the purchaser under a security agreement; or the person entitled to possession of the vehicle as lessee pursuant to a written lease agreement, provided such agreement at inception is for a period in excess of three (3) months.*

*“Primary named insured” means the person with whom an insurer has entered into an insurance contract and who is responsible for payment of the premiums for that contract.*

1           *“Recorded data” means the data stored or preserved electronically in a recording device*  
2 *identifying performance or operation information about the motor vehicle, including but not*  
3 *limited to:*

- 4           1. *Speed of the motor vehicle or the direction in which the vehicle is traveling, or both;*
- 5           2. *Vehicle location data;*
- 6           3. *Vehicle steering performance;*
- 7           4. *Vehicle brake performance, including, but not limited to, whether brakes were applied*  
8 *before a crash;*
- 9           5. *The driver's seatbelt status;*
- 10          6. *Information concerning a crash in which the motor vehicle has been involved,*  
11 *including the ability to transmit such information to a central communications system.*

12           *“Recording device” means an electronic system, and the physical device or mechanism*  
13 *containing the electronic system, that primarily, or incidental to its primary function, utilizes,*  
14 *preserves, or records, in electronic form, data collected by sensors or provided by other systems*  
15 *within the vehicle. “Recording device” includes event data recorders (“EDRs”), sensing and*  
16 *diagnostic modules (“SDMs”), electronic control modules (“ECMs”), automatic crash*  
17 *notification (“ACN”) systems, geographic information systems (“GISs”), and any other device*  
18 *that records and preserves data that can be accessed related to that vehicle.*

19           *B. Recorded may not be accessed by a person other than an owner of the motor vehicle ,*  
20 *except under any one or more of the following circumstances:*

21           1. *The owner of the motor vehicle or the owner’s agent or legal representative consents*  
22 *to access to the recorded data; provided, however, that consent related to an insurance claim*  
23 *may not be requested or obtained from the owner or the owner’s agent or legal representative*  
24 *until after the event giving rise to the claim has occurred;*

25           2. *The owner of the motor vehicle has a contract with a third party, other than an*  
26 *insurance company, that requires access to a recording device or recorded data in order to*  
27 *perform the contract, so long as the recorded data is only access and used in accordance with*  
28 *the contract;*

29           3. *A licensed new motor vehicle dealer, or a technician, mechanic, or garage person at a*  
30 *motor vehicle repair or servicing facility requires access to recorded data in order to carry out*  
31 *his normal and ordinary diagnosing, servicing and repair duties;*

1           4. The data is accessed by an emergency medical response provider for the purpose of  
2 determining the need for or facilitating an emergency medical response. Such persons are  
3 authorized to receive data transmitted or communicated by any electronic system of a motor  
4 vehicle that constitutes an automatic crash notification system and utilizes or reports data  
5 provided by or recorded by recording devices installed on or attached to a motor vehicle to  
6 assist them in performing their duties as emergency medical response providers;

7           5. Upon authority of a court or other judicial or administrative authority of competent  
8 jurisdiction;

9           6. The recorded data is access and used only for the purpose of improving motor vehicle  
10 safety, security or traffic management, including for medical research of the human body's  
11 reaction to motor vehicle crashes, and provided that the identity of the owner or driver is not  
12 disclosed in connection with that recorded data. A person, including a service or data processor  
13 operating on behalf of such person, authorized to access recorded data from a recording device  
14 pursuant to this paragraph, may not release that data, except: (i) for the purposes of motor  
15 vehicle safety and medical research communities to advance motor vehicle safety, security, or  
16 traffic management; or (ii) to a data processor solely for the purposes permitted by this  
17 subsection, and only if the identity of the owner or driver is not disclosed. For the purposes of  
18 this subsection, the disclosure of the vehicle identification number (VIN) with the last four digits  
19 deleted does not constitute the disclosure of the identity of the owner or driver;

20           7. The data is accessed for insurance underwriting or rating, provided that the primary  
21 named insured has consented to the access to the data; or

22           8. Notwithstanding subdivision 1 of this subsection, the owner's vehicle was involved in  
23 an event where damage is estimated to exceed \$10,000 or where serious bodily harm or death  
24 resulted, in which case the insurance company or lien holder of the vehicle owner may access  
25 recorded data.

26           D. Where the recording device and recorded data are not removed or separated from the  
27 motor vehicle, the ownership of the recording device and recorded data survives the sale of the  
28 motor vehicle to any nonbeneficial owner such as an insurer, salvage yard, or other person who  
29 does not possess and use the motor vehicle for normal transportation purposes.

30           § 46.2-1533.2. Certain disclosures required by motor vehicle manufacturers; motor  
31 vehicle recording devices.

1            *A manufacturer of a new vehicle sold or leased in the Commonwealth shall disclose in*  
2 *the owners manual for the vehicle the presence of any recording devices installed by the*  
3 *manufacturer and the type of data recorded.*

4            *The provisions of this section shall apply only to vehicles manufactured for the 2008 and*  
5 *subsequent model years.*