

2019 HOUSE TRANSPORTATION

HB 1197

2019 HOUSE STANDING COMMITTEE MINUTES

Transportation Committee
Fort Totten Room, State Capitol

HB 1197
1/31/2019
#31915

- Subcommittee
 Conference Committee

Committee Clerk Signature Jeanette Cook

Explanation or reason for introduction of bill/resolution:

A BILL relating to autonomous vehicle data ownership.

Minutes:

Attachment 1-2

Chairman Ruby opened the hearing on HB 1197.

Representative George Keiser, District 47, spoke to introduce and support HB 1197.

Representative Keiser related a story about he and his wife using OnStar technology in a 2005 Tahoe they were driving. He pointed out the year and age of the car and the information that was available at that time. Today I have a five-year-old Accura MVX and a new Accura, and they have some amazing features. The new one is not fully autonomous, but it has many safety features on it. It will vibrate if you get over the white line, and it will slow down if you have the cruise on, and you come up to a vehicle that is driving slower. It slows down until you can pass. Then it will accelerate and you can pass.

A few years ago we had a bill in which auto manufacturers wanted to put a black box in the cars, so they could track what was happening. The legislature opposed collecting information about our driving habits. There are insurance companies that will discount your insurance if you buy the box, and they can track your driving habits. You opt in to that.

The issue for me is, who owns my private driving data. When I purchased my new Accura with extra safety features, can they now track my driving data? I have not asked, but I'm sure they could.

12:00

This bill says two things:

- 1) I own my own personal data. The manufacturer can share the aggregate data as much as they want, as long as they don't identify the individual drivers.
- 2) They can use the data collected from the system, that I purchased, to try to make a safer vehicle, but they can't use it without my permission. That is important because eventually we will get into the insurance arena with this information. When you have a fully autonomous vehicle, the manufacturers have said, that at that point, insurance will be under product liability, not auto insurance. If I override the autonomous system, then who has the liability?

Think about the ability to effectively underwrite the insurance for any individual if you have a comprehensive set of information regarding that individual's driving habits. It puts an underwriter in a very powerful position. As a consumer I don't want that information to be available.

The purpose of this bill is, if I pay for the system that generates my driving information, I have no problem with them collecting that information. They can use the information, but they cannot share it without my consent or share it with third parties. They can get the permission. This state is an opt in state.

The data that is being used and available today is phenomenal. I just want protection for my data.

Representative Owens: I'm wondering how this bill conflicts with the bill we passed in 2005 dealing with the black box? This seems to give them the ability to use your information. Are we undoing what we did in 2005?

Rep. Keiser: I don't think we are doing that at all. At that time the manufacturers wanted to put in black boxes to collect data. We said that you can't do that. The reality is today that these electronic systems are black boxes. You give permission to put them in when you pay for them.

Representative Owens: The black boxes were being put in cars anyway. Cadillac was the first make to have them. We didn't have any control over the boxes, and they only recorded the last 8 seconds of a sudden event. The 8 seconds was being used against drivers, but we stopped them from using the information by demanding that the information belonged to the owner.

Representative Nelson: What happens when you sell your vehicle, and the next owner owns your driving record? Is that your intention?

Rep. Keiser: They would just own their own data not mine. I think that is the intent. You can ask LC about that.

Representative Hanson: Would there be any reason to extend this to newer vehicles beyond autonomous vehicles?

Rep. Keiser: Any information transferred through the control system, I think would be protected.

Representative Kading: In the bill it seems like we are creating a right for the manufacturer of the vehicle to have that data. In the third paragraph it states that they can't share it, but they have a right to it. If I want to modify my vehicle, so it won't share any data with anyone, it appears that with this bill *I* would be infringing on *their* right and couldn't do it. Are you intending to do that?

Rep. Keiser: The reality is that they have the potential to collect the data now. They can't use your data, but they can use the aggregate data. That is the protection. I want them to collect the data to develop safer vehicles. They just can't share or sell or give away **MY** data.

Chairman Ruby: In this bill the definition refers to level 4 and 5 only, which would be without a driver. So, this wouldn't apply to the type of vehicle like your Accura. This seems limited as far as the types of technologies that are out there. Is that the intent?

Rep. Keiser: That is not the intent. If the committee wished to amend it by changing the definitions, that is okay. I am not an expert on the different levels.

Chairman Ruby: In a previous bill we used the definition: A vehicle equipped with an **automated driving system**. That is defined as: The hardware and software collectively capable of performing the entire dynamic task for the vehicle on a sustained basis when installed in a motor vehicle and engaged in regardless of whether it is limited to a specific operation, design, or domain.

Rep. Keiser: If that is a better definition, I am open to that.

Chairman Ruby: I think it will fit both situations.

Representative Jones: If I have a vehicle and sell it to an insurance company because it was wrecked, then they accessed the data to say that I did something improperly. If they bought the vehicle, and the data was theirs, can they use it? Do we need to look at that?

Rep. Keiser: It may need to say that owner that creates that data, owns it. We included insurance companies in here to stop manufacturers and insurance companies from working together and forming corporations, so they can share the data. It would be a great advantage for the insurance company.

Representative Owens: I would still want to make sure that this bill doesn't interfere with the 2005 bill.

Chairman Ruby: Don't you believe that the other bill covers these kind of vehicles?

Rep. Keiser: If it does, they are in violation of the law right now.

34:00

There was not further support for HB 1197.

Jason Wetzel, Regional Director of Government Relations for General Motors, spoke to oppose HB 1197. Written testimony was provided. See attachment #1.

(39:50)

Chairman Ruby: If you are the manufacturer and all that data is being collected, you are the only holder of the data, correct?

Jason Wetzel: The kind of data that we are talking about here is not being shared.

Representative Jones: Would you like us to take out the insurers and sellers?

Jason Wetzel: We don't support the bill in any form.

Leighton Yates, Senior Manager, State Affairs, Alliance Auto, provided testimony in opposition to HB 1197. See attachment #2.

There was no further oppositional testimony on HB 1197.

Pat Ward, insurance representative, spoke in a neutral capacity: If this bill were to pass, we would certainly want paragraph three to stay in because some of our insurance companies have agreements with customers and provide an aftermarket device. It is kept in a car and logs how you drive for a discount on insurance. It is a choice that a consumer makes, and we would like to be able to sell it to consumers who want it.

There was no further neutral testimony on HB 1197.

The hearing on HB 1197 was closed.

2019 HOUSE STANDING COMMITTEE MINUTES

Transportation Committee
Fort Totten Room, State Capitol

HB1197
2/1/2019
#32005

- Subcommittee
- Conference Committee

Committee Clerk Signature Jeanette Cook

Explanation or reason for introduction of bill/resolution:

A bill relating to autonomous vehicle data ownership.

Minutes:

Chairman Ruby brought HB 1197 back before the committee and briefly reviewed the bill.

Representative Hanson: I wonder if we should use the word autonomous driving system rather than fully autonomous car, so it doesn't seem to mean ONLY fully autonomous?

Chairman Ruby: By using autonomous vehicle, they are just referring to Level 4 and 5 vehicles.

Representative Jones: If we change the word "eliminate" to "assist", then it would be non-exclusive of the other, and it would cover all the levels of autonomous vehicles.

Representative Paur: In sections 2 and 3 it says autonomous vehicles or autonomous vehicular technology. We could just take out autonomous vehicles, and then replace autonomous vehicles in part 1 with the technology phrase.

Representative Hanson: I like Representative Jones suggestion to change "eliminate to assist".

Representative Weisz: There are other issues. In Subsection 2, you are opening it up that the manufacturer of the vehicle might want the data, now it says the seller of the vehicle can share the data. I don't think that will make them comfortable. I don't think I support any part of the bill at this point.

Chairman Ruby: We could change "eliminate to assist". I don't know if this is the type of information that Rep. Keiser is trying to protect.

Representative Owens: In paragraph two and three this actually reverses what we did on the black box. This sets it up so once anyone owns the vehicle, then the data belongs to

them. Even if it was collected during the previous ownership. I think that changing “eliminate to assist” fixes that problem, but I won’t support it with paragraph 3.

Representative Kading: I couldn’t support this in the current form either. Under #2 we are giving the manufacturer or seller the right to the non-aggregate data. I think that you should have to consent to giving up even that data. If we move this, I would want to also add in paragraph 3,” with the consent of the owner of the autonomous vehicle”. I think consent should be given for any type of data that is being collected.

Representative Jones: In the testimony it said that by purchasing the vehicle, you were consenting to the data to be used in the aggregate.

Chairman Ruby: I believe that the testimony from General Motors was convincing about the problems that this would cause.

Representative Kading moved a DO NOT PASS on HB 1197.

Representative Paulson seconded the motion.

A roll call vote was taken: Aye 12 Nay 1 Absent 1

The motion carried.

Representative Owens will carry HB 1197.

Date: 2-1-19
 Roll Call Vote #: 1

**2019 HOUSE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. HB1197**

House Transportation Committee

Subcommittee

Amendment LC# or Description: _____

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar

Other Actions: Reconsider _____

Motion Made By Kading Seconded By Paulson

Representatives	Yes	No	Representatives	Yes	No
CHAIRMAN RUBY	X		REP LAURIEBETH HAGER	X	
VICE CHAIR BECKER	X		REP KARLA ROSE HANSON		X
REP JIM GRUENEICH	X		REP MARVIN NELSON	X	
REP TERRY JONES	X				
REP TOM KADING	X				
REP EMILY O'BRIEN	A				
REP MARK OWENS	X				
REP BOB PAULSON	X				
REP GARY PAUR	X				
REP ROBIN WEISZ	X				
REP GREG WESTLIND	X				

Total (Yes) 12 No 1

Absent 1

Floor Assignment Owens

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1197: Transportation Committee (Rep. D. Ruby, Chairman) recommends **DO NOT PASS** (12 YEAS, 1 NAYS, 1 ABSENT AND NOT VOTING). HB 1197 was placed on the Eleventh order on the calendar.

2019 TESTIMONY

HB 1197

General Motors Testimony: HB 1197
North Dakota House Transportation Committee
January 31, 2019

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Good afternoon Chair and members of the House Transportation Committee. My name is Jason Wetzel and I am Regional Director of Government Relations for General Motors.

I appreciate the opportunity to comment on House Bill 1197, relating to autonomous vehicle (AV) data ownership.

As originally proposed, the legislation allows manufacturers, insurers, or sellers of AVs or AV technology to share, release, or distribute non-identifying aggregate vehicle data collected by AVs

There are several issues created by this proposed legislation. The bill attempts to predict marketplace dynamics well before fully automated vehicles—vehicles designed to operate without human drivers—are owned by the general public. AV technology is still in its early stages and requires much more testing and learnings by automakers before it can reach mainstream production. Consumer ownership of fully automated vehicles is not imminent and there is little reason to rush to make sweeping changes before we have a solid understanding of how the technology will be developed and deployed.

In the meantime, while this technology develops, there is no evidence to suggest that vehicle owners and other stakeholders will not be able to access AV data when necessary or appropriate. Most automobile manufacturers, including GM, install event data recorders (EDRs) in their vehicles. EDRs are regulated under Federal Motor Vehicle Safety Standard 563, § 51-07-28 of the North Dakota Code, and the Federal Driver Privacy Act of 2015. An EDR is a function on the Sensing and Diagnostic Module (SDM) that records vehicle data including speed, seatbelt use, brake use, and change in velocity five seconds before, during, and after a crash or near-crash event. The SDM is the module that “tells” the airbag to fire when crash or near-crash conditions are met. Consent from the vehicle owner must be obtained to access EDR data unless one of the limited exceptions is met such as for emergency response, service and repair, and official government request. Manufacturers are required to disclose the presence and recording capability of an EDR in owners’ manuals. Some insurance companies may also enter into agreements with insureds to install aftermarket recording devices that plug into the dashboard to record vehicle data about an insured’s driving for potential discounts. These products are independent from manufacturers’ EDRs.

There is no evidence that regulation of AV data is yet needed. Any effort to proceed with such premature regulation would be unprecedented and would unnecessarily raise significant consumer concerns and could impede the development of AVs. This bill could also create precedent for data ownership that could impact autonomous technologies such as the unmanned aircraft system (UAS) industry advancing in North Dakota.

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In fact, HB 1197's data ownership rights could lead to broad and unfettered data access to AV data. This construct fails to account for the potentially significant cybersecurity concerns created by potentially mandating public wide access to safety critical vehicle systems for data. These are not systems being designed for open access by third parties. Moreover, AV development and ultimately deployment relies upon secure storage and transmission of vehicle data to connected vehicle networks. This bill could threaten that important imperative necessary to move this technology forward. There is no comparable law to this bill in any state today, including those states that have passed laws allowing the testing and deployment of AVs.

This bill may also impede upon proprietary information developed by technology companies and automakers. The measure states that the owner of an AV owns any data or information stored by the AV or gathered by the use of the AV. It does not draw a distinction between data generated by the AV and the software installed to make the vehicle function and operate. When you purchase a smart phone for example, you do not own the licensed software that enables the phone to operate. You own the phone, your texts, emails, and all of your personal information, but not the copyrighted proprietary software. More simply put -- you don't own the recipe for secret sauce when you buy a Big Mac.

Fully autonomous vehicles will generate terabytes of data as they operate. HB 1197 would treat incomprehensible lines of 1s and 0s as if it is information that is easy to access and decode, and for some reason -- share with third parties. Translating raw data into something understandable demands a tremendous amount of time and resources and may not even be possible for all or close to all of the data an AV will generate.

Mr. Chairman and members of the committee, HB 1197 is not ripe to solve any existing consumer issue. Instead, it raises significant concerns that could threaten AV development and its potentially dramatic safety benefits on North Dakota roadways. For that reason, I respectfully request that you oppose HB 1197.



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January 31, 2019

Hon. Dan Ruby, Chair
House Committee on Transportation
State Capitol
Bismarck, ND 58505

Re: House Bill 1197 – **Oppose** Automated Vehicle Data

Dear Chair Ruby,:

On behalf of the Alliance of Automobile Manufacturers, I would like to thank you for the opportunity to express our concerns with House Bill 1197, legislation that raises a host of privacy and cybersecurity concerns, with little apparent benefit to North Dakota drivers. The Alliance is a trade association representing twelve of the world's leading car and light truck manufacturers, including BMW Group, FCA US LLC, Ford Motor Company, General Motors Company, Jaguar Land Rover, Mazda, Mercedes-Benz USA, Mitsubishi Motors, Porsche, Toyota, Volkswagen Group of America, and Volvo Car USA. Together, Alliance members account for roughly 70% of the cars and light duty trucks sold throughout the United States each year.

Automated Driving Systems (ADS) have the potential to revolutionize mobility, and dramatically reduce the 94% of accidents that the Federal government attributes to human error.¹ These systems use multiple redundant sensors to create a 360-degree field of view to guide the vehicle. They can react faster than a human driver to changing conditions, and have the capacity to eliminate many safety issues relating to driver distraction. Eventually, ADS have the potential to increase mobility for economically disadvantaged, blind, disabled, and elderly individuals who may be incapable of accessing or operating a conventional motor vehicle.

Representative Keiser should be recognized and commended his foresight on this subject. At some point in the future – when fully automated vehicles are made available to consumers for private purchase – legislators will need to wrestle with a host of insurance and liability issues, but that day is not today. It is simply premature to consider how private passenger insurance will be impacted by this new technology, until we understand how the technology will be utilized.

Many believe the first uses for fully automated vehicles will not be in vehicles owned by private individuals, but in fleet or car-sharing application – imagine a college campus, military base, or airport. In these situations, we would not be talking about private passenger insurance at all, but likely self-insured entities. Given the development that is still necessary before individuals will be in a position to purchase a fully automated vehicle, there will be plenty of time to thoughtfully consider the issues raised in this legislation.

With that said, we see many concerns with the bill as drafted. First, it is unclear why this legislation is necessary at all, as an insurer can already collect and use data from a vehicle with a consumer's consent. There are countless advertisements on television of insurers who offer safe driving discounts, in exchange for allowing in the insurer to collect data from the vehicle and monitor driving behavior. We are aware of nothing in North Dakota law that would prohibit insurers from including such provisions for use and sharing in the contracts for these safe driving plug-in devices.

¹ See National Motor Vehicle Crash Causation Survey (NMVCCS)

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Automakers have gone to great length to inform consumers what data is collected from a vehicle, and how that data is utilized. These efforts have been highly praised by privacy watchdog groups. In 2014, automakers developed a set of Privacy Principles that recognize technologies and services in automobiles are increasingly designed to enhance vehicle safety, improve vehicle performance, and augment the driving experience. Many of these technologies and services rely upon information generated by vehicle systems. The Principles have a strong lineage based on the FTC's Fair Information Practice Principles. With signatures from all Alliance members, they represent an industry wide commitment to responsible stewardship of the information collected to provide vehicle services.

Second, the legislation fails to utilize terms in a clearly defined and technically actionable manner. The term "autonomous vehicle," as defined, would not allow for clear delineation between existing technologies and future automated driving systems. As result, there would be confusion in determining whether a vehicle is, or is not, subject to the legislation. Even more concerning, the term "data" is not defined in any way in the bill. Vehicles generate stunning amounts of data, given the dozens of individual sensors now found on everyday vehicles. This data generation will grow exponentially when automated driving systems are deployed. The undefined scope of data in the bill as drafted could allow for misinterpretation. Additionally, much of this data, even if it is "stored" or "gathered" in the vehicle, may not be retrievable in any sort of usable format. Declaring ownership of information, when a vehicle may not have the technical ability to deliver such information anywhere off the vehicle, will lead to consumer confusion.

While adjustments to state insurance and liability laws may be necessary at some point in the future as a result of the deployment of automated vehicle technology, we see no reason to rush such consideration of this data portion in piecemeal fashion, particularly when the industry has already addressed data privacy for all vehicles through commitments to its consumers. A targeted bill considered in a vacuum will do little to address the range of issues that may need to be addressed. We would recommend, instead, taking the time to have a thoughtful dialog on the subject, at a time when the changes to the insurance and legal marketplace are in better focus. In fact, the North Dakota chapter of a major insurance association testified for similar reasons in opposition.

We thank you for the opportunity to express our concerns, and would welcome the opportunity to meet with you, the committee, or any interested parties to further discuss the concerns that led to your filing of this legislation. We respectfully ask that members of the committee provide a "do not pass" recommendation for HB 1197.

Sincerely,



Leighton Yates
Senior Manager, State Affairs

Cc: House Committee on Transportation