

# HOUSE BILL REPORT

## ESHB 2361

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### As Amended by the Senate

**Title:** An act relating to usage-based automobile insurance and exempting certain usage-based insurance information from public inspection.

**Brief Description:** Concerning usage-based automobile insurance.

**Sponsors:** House Committee on Business & Financial Services (originally sponsored by Representatives Kirby, Bailey, Kelley, Parker, Rivers, Buys, Blake, Hurst, Condotta and Pollet).

#### **Brief History:**

##### **Committee Activity:**

Business & Financial Services: 1/23/12, 1/24/12, 1/26/12, 1/27/12, 1/31/12 [DPS].

##### **Floor Activity:**

Passed House: 2/10/12, 73-23.

Senate Amended.

Passed Senate: 3/1/12, 38-10.

#### **Brief Summary of Engrossed Substitute Bill**

- Defines usage-based insurance.
- Exempts certain usage-based insurance rate information from public inspection.
- Collection, use, retention, and sales of information from a recording device is limited.

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### HOUSE COMMITTEE ON BUSINESS & FINANCIAL SERVICES

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 11 members: Representatives Kirby, Chair; Kelley, Vice Chair; Bailey, Ranking Minority Member; Buys, Assistant Ranking Minority Member; Blake, Hudgins, Hurst, Kretz, Pedersen, Rivers and Ryu.

**Minority Report:** Do not pass. Signed by 1 member: Representative Condotta.

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

**Staff:** Jon Hedegard (786-7127).

**Background:**

Every person in this state who operates a motor vehicle must be insured under an insurance liability policy, a liability bond, a certificate of deposit, or be self-insured. There are minimum amounts of liability coverage required by the financial responsibility statutes.

The Insurance Commissioner (Commissioner) oversees the business of insurance in this state. This includes the regulation of insurance rates and policies. Automobile insurance rates and forms are filed with the Commissioner and must be approved by the Commissioner prior to use by an insurer. If the Commissioner determines that filed rates are not excessive, inadequate, or unfairly discriminatory, then the Commissioner must approve them.

Automobile rates may be adjusted for any factor that is not prohibited by law. Rates are often adjusted according to factors including the driver's age, sex, marital status, miles driven, claims history, geographical area, credit history, and the make, model, and year of a vehicle. The Insurance Code requires that certain safety features and anti-theft devices must receive due consideration in a rate filing by an insurer. A senior who takes a motor vehicle accident prevention course must receive a premium reduction in a rate filing by an insurer.

The Insurance Code has provisions exempting certain information, including information filed in support of rate filings from public inspection. Other provisions of the Insurance Code provide an exception to the exemption from public inspection for supporting information for automobile insurance rate filings. The supporting information is available for public inspection after a rate is approved and the filing becomes effective.

One area where the information does not become public is when an "insurance score" or "credit score" model is used. A model that utilizes credit history as a rating factor must be filed for approval of the Commissioner but, by law, is not subject to public disclosure. There are specific disclosure requirements for actions taken by an insurer based on credit history.

"Usage-based insurance" is not defined in the Insurance Code. The phrase is sometimes used to refer to a product where an insurer rates a policyholder based on how a vehicle was driven. This may include the amount of miles, location of the driving, time the miles are driven, speed, and other driving characteristics. Generally, some type of recorder is required to supply the insurer with the information used in rating. The insurer may apply penalties or rewards based on that information which can lead to a higher or lower rate.

Event Data Recorders.

In 2009 a law was enacted that regulated event data recorders (EDR law) in automobiles. A recording device is defined as an electronic system in a vehicle that preserves or records data collected by sensors or provided by other systems in the vehicle. Data on a recording device may not be accessed by anyone other than the owner of the vehicle except in the following situations:

- upon a court order for the data or pursuant to discovery;
- when consent is given by the owner or someone who would reasonably be assumed to have the consent of the owner;

- for research to improve vehicle safety as long as the owner and the vehicle remain anonymous;
- to respond to a medical emergency; and
- when the data is being used to fulfill a subscription services agreement.

Violations of the act are per se violations of the Consumer Protection Act. It is a misdemeanor to improperly access data or to the sell any data from a recording device to a third party without the explicit permission of the owner.

**Summary of Engrossed Substitute Bill:**

"Usage-based insurance" is defined as "private passenger automobile coverage that uses data from any recording device as defined in RCW 46.35.010, or a system, or business method that records and preserves data arising from the actual usage of a motor vehicle to determine rates or premiums."

Information regarding the usage-based component in a filing of usage-based insurance is confidential and must be withheld from public inspection.

Location based data may not be collected by an insurer without:

- disclosure to the insured that such information is being collected; and
- the insured's consent.

Individually identifiable usage information retrieved from a recording device may only be used or retained:

- for purposes of determining premium; or
- as allowed by the EDR law.

Individually identifiable usage information retrieved from a recording device may not be disclosed to any third party except as allowed by the EDR law.

**EFFECT OF SENATE AMENDMENT(S):**

The definition of "usage-based insurance" is modified. Language regarding information from a system or a business method that records and preserves data arising from the actual usage of a motor vehicle is removed from the definition.

Several provisions are removed. Provisions that require an insurer to provide disclosure to a policyholder and receive consent from the policyholder before gathering location-based data are removed. Provisions that limit an insurer's ability to use and retention of individually identifiable usage information retrieved from a recording device to enumerated purposes, such as setting rates, are removed. Provisions that limit an insurer's ability to disclose or sell individually identifiable usage information retrieved from a recording device are removed.

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.

**Staff Summary of Public Testimony:**

(In support) Both the bill and the proposed substitute bill are simple and both accomplish the same goal. The idea is to make certain information confidential. The underlying bill does that by referring to the Uniform Trade Secrets Act. The proposed substitute bill uses the definition of recording device that is in existing law and makes information obtained from that recording device confidential. The concerns raised about this bill appear to be based on an inability to compete with a product that is available in most of the country. That product will not be sold in this state without some type of confidentiality protections. The product is patented but the information in the rate filings would be open to public inspection. The patent could be defended by litigation but that is more expensive and it exposes the company's information.

(With concerns) The Office of the Insurance Commissioner (OIC) is concerned about the trade secret provisions in the underlying bill. The issue is possible litigation against the OIC regarding the OIC's application of the trade secret status. A better approach is taken in the proposed substitute bill which holds the information as confidential. This approach will not lead to the same liability for the state and will eliminate concerns about legal costs. The primary concerns with the underlying bill were regarding the trade secrets provision. The proposed substitute bill is new and there has not been time to adequately review it. It is not clear that the definition of a recording device is the best definition. Many companies are interested in this type of product but are concerned that this type of bill will forestall their options. Insurers believe in competition. One insurer has a product that is patented. It is suing other insurers who have tried to develop competing products based on similar concepts. The one insurer with a product should not be given even more protection than their existing patents. This type of insurance is a good idea. There are unlimited types of systems and products that may result from this type of concept. The bill limits protection to one type of product sold by one insurer.

(Opposed) The product is not an issue for privacy advocates. There are privacy concerns with the underlying bill and the proposed substitute bill. The recording device mentioned is part of a law that was negotiated by a number of different stakeholders. A similar discussion did not occur with this bill. A consumer should know how their information is going to be used and have the ability to either give or deny permission for release of that information to a third party. The underlying bill is not supported. The proposed substitute bill will be reviewed. The concern is asking for legislation to allow just one company to bring one product to the market. Until the litigation in this area is resolved, it is inappropriate to craft a solution that may only benefit one company.

**Persons Testifying:** (In support) Representative Kirby, prime sponsor; and Carrie Tellefson, Progressive Insurance.

(With concerns) Kacy Scott and Marta DeLeon, Office of the Insurance Commissioner; Jean Leonard, Washington Insurers; Jim Bricker, PEMCO Mutual; and Gary Strannigan, Safeco Mutual Insurance.

(Opposed) Shankar Narayan, American Civil Liberties Union of Washington; and Cliff Webster, American Insurance Association.

**Persons Signed In To Testify But Not Testifying:** None.