

Date of Hearing: June 27, 2023

ASSEMBLY COMMITTEE ON PRIVACY AND CONSUMER PROTECTION

Jesse Gabriel, Chair

SB 296 (Dodd) – As Amended June 21, 2023

SENATE VOTE: 36-0

SUBJECT: In-vehicle cameras

SYNOPSIS

As supporters of this bill note, for many of us, our vehicles are places where we spend a great deal of time. As a result, the insides of our vehicles are a physical space considered fundamentally private, much like the insides of our own homes. We may engage in conversations about family matters or our health, or participate in sensitive business-related meetings or conversations. We do not act in the space of our private vehicles as if we are being overheard by third parties.

This bill, sponsored by the Consumer Federation of California, seeks to protect the privacy of individuals in their cars by responding to the growing ubiquity of sophisticated in-vehicle cameras. In-vehicle cameras can serve a variety of functions, ranging from using facial-recognition technology to automatically adjust seat and mirror settings for each driver, to detecting drowsy or distracted drivers and either alerting them or capping vehicle speed in response. In the United States, all new cars are required to have backup cameras to help drivers avoid accidents, and other countries have already expanded such safety requirements to include in-vehicle, driver-directed sensors and cameras. However, little is known about how data collected by these cameras is stored and used, and with most new cars sold in the United States, including all new Fords, GMs, and BMWs, and nearly all Toyotas and Volkswagens, coming with built-in internet connections, the possibility that such private data is being made immediately accessible to automobile manufacturers without the knowledge or consent of the driver arguably warrants specific protections.

Essentially, this bill does four significant things in order to protect the privacy of consumers who own cars with in-vehicle cameras:

- 1. Requires car dealers to clearly inform buyers of their privacy rights when a car they are considering purchasing includes an in-vehicle camera.*
- 2. Establishes strict prohibitions against images or videos being used for advertising or sold to a third-party without first receiving informed prior consent from the car owner. In addition, the bill allows for the sharing of images or videos with a third-party without consent only if necessary to diagnose, repair, or improve certain systems in the car.*
- 3. Requires that images and video recordings can only be retained on the car technology itself and only downloaded with informed prior consent or if it is necessary for diagnosis, repairs, or improvements related to the cameras, the systems that require the cameras, or safety improvements.*

4. *Requires that the manufacturer provide an effective method that allows people to revoke their consent to the use of their images and video.*

This bill simply seeks to provide privacy protections for data collected by in-vehicle cameras consistent with the level of sensitivity California law has thus far assigned to similar, albeit arguably less sensitive, automobile data. In addition, this bill is in keeping with the intent of the California Consumer Privacy Act (CCPA), as amended by Proposition 24 (2020), the California Privacy Rights Act (CPRA). The privacy protections provided under the CCPA are intended to establish a floor, and not a ceiling, in terms of allowing the Legislature to adopt additional privacy protections. Specifically, the CPRA allowed for amendment by the Legislature with a majority vote of both houses and the signature of the Governor, as long as those amendments further the intent of the Act. This bill meets that requirement.

The bill is supported by a number of organizations including the Consumer Attorneys of California, Consumer Watchdog, and Oakland Privacy. A coalition made up of the Alliance for Automotive Innovation, Chamber of Commerce, the Civil Justice Association of California, and Technet have an “oppose unless amended” position.

If passed by this Committee, the bill will next be heard by the Assembly Judiciary Committee.

SUMMARY: 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. Specifically, **this bill:**

- 1) Requires a manufacturer of a new motor vehicle model that is equipped with in-vehicle cameras that is sold or leased in California to disclose that fact in the owner’s manual. If a vehicle is equipped with in-vehicle cameras and the camera does not come standard with the vehicle model, the manufacturer shall disclose that the vehicle is so equipped in a document sent to the dealer of the vehicle.
- 2) Requires a dealer to prominently disclose to the buyer during the purchase of a vehicle the existence of in-vehicle cameras before the execution of a conditional sales contract. This requires the dealer to provide the user with a separate disclosure that acknowledges the existence and operation of an in-vehicle camera in the purchased vehicle, and obtain the written or electronic signature of the user or purchaser on that disclosure. The disclosure must do all of the following:
 - a) Be contained on a single document or single internet website that is separate from the conditional sales contract, purchase order, and any other document;
 - b) Specify the rights and remedies available to the user, as specified; and
 - c) Contain the following language, written in at least 20-point bold type:

“This vehicle is equipped with an in-vehicle camera capable of recording the driver and other individuals inside the vehicle. For more information about the in-vehicle camera please consult your automotive dealer, the vehicle manufacturer, or the vehicle owner’s manual.

By law, signing this acknowledgment form does not waive any rights of the user or constitute consent to a manufacturer to share, sell, or retain any images or videos captured by the in-vehicle camera.”

- 3) Provides that a dealer shall not be held liable for a violation of the previous provision if the manufacturer of that vehicle is in violation of paragraph 1) with respect to that vehicle.
- 4) Prohibits any image or video recording collected or retained through operation of an in-vehicle camera from being sold to a third party or being used for any advertising. Such an image or recording can be shared with a third party only with affirmative prior consent and as specified, except as provided.
- 5) Provides that such images or video recordings can only be retained outside the vehicle if either of the following apply:
 - a) The user first provides affirmative prior consent; or
 - b) Images and video recordings are retained only to the extent necessary to diagnose, service, or repair the in-vehicle camera or equipment that relies on the camera, or to improve portions of the vehicle’s safety system.
- 6) Requires either 5) a) or b) above before the image or video recording can be downloaded, retrieved, or otherwise accessed by a person or entity other than the user. In the case of b), the person or entity that downloads, retrieves or accesses the images or recordings cannot use them for any reason other than those specified in b). The person or entity in possession of the images or recordings is prohibited from sharing or retaining the images.
- 7) Requires the person or entity that provides operation of the in-vehicle camera to provide effective mechanisms to revoke consent, as specified.
- 8) Prohibits discrimination against a user for exercising their rights under the bill.
- 9) States that discriminatory acts include, but are not limited to: denying goods, services or benefits; charging different prices or rates; providing a different level of quality goods or services; suggesting that the user will receive a different price or rate or a different level of quality; and considering the user’s exercise of rights as a basis for suspicion of criminal wrongdoing or unlawful conduct.
- 10) Allows the retrieval and sharing of images or video recordings without consent if any of the following apply:
 - a) The images or video recordings are admitted into evidence in a court, arbitration, or other judicial or administrative proceeding.
 - b) Images or video recordings are necessary in the federal investigation of a motor vehicle accident and information on the owner is not disclosed.
 - c) Images or video recordings are needed for the purpose of determining the need for emergency medical personnel response in the event of a motor vehicle crash.

- 11) Prohibits a person or entity from compelling a manufacturer or other entity that provides 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.
- 12) Defines “affirmative prior consent” as a user’s freely given, informed, and unambiguous authorization, as specified. “Affirmative prior consent” is not acceptance of general or broad terms of use; hovering over, muting, pausing, or closing a piece of content in an administrative format; or agreement obtained through a user interface designed to subvert or impair user autonomy, decision making, or choice.
- 13) 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.
- 14) Defines “user” as 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. The bill does not apply to cameras installed in vehicles that are primarily for commercial use.
- 15) Defines “dealer” as having the same meaning set forth in Section 285 of the Vehicle Code.
- 16) Defines “vehicle manufacturer” or “manufacturer” as having the same meaning set forth in Section 672 of the Vehicle Code.
- 17) Provides for enforcement by the Attorney General or any district attorney. The bill provides for injunctive relief and a civil penalty not to exceed \$2,500 per vehicle equipped with an in-vehicle camera knowingly sold or leased in violation of this bill.
- 18) Provides that the bill’s remedies and penalties are cumulative, waiver of its protections is contrary to public policy, and its provisions are severable.
- 19) Provides that this bill does not reduce the rights afforded to a consumer or the obligations imposed on a business pursuant to any applicable state or federal law for the protection of privacy.
- 20) States that, in the event of a conflict between this bill and any other state law, the provisions of the law that afford the greatest protection for the right of privacy for consumers shall control.
- 21) Provides that this bill does not apply to cameras installed in commercial vehicles, as defined.
- 22) States that 20) does not authorize the sale or advertising for commercial use of any image or video depicting a commercial driver without their consent.

EXISTING LAW:

- 1) Provides that, among other rights, all people have an inalienable right to pursue and obtain privacy. (Cal. Const., art.1, § 1.)
- 2) Provides that a plaintiff alleging an invasion of privacy in violation of the state constitutional right to privacy must establish each of the following: (i) a legally-protected privacy interest;

- (ii) a reasonable expectation of privacy in the circumstances; and (iii) conduct by the defendant that constitutes a serious invasion of privacy. (*Hill v. National Collegiate Athletic Assn.* (1994) 7 Cal. 4th 1, 40.)
- 3) Provides that there is a legitimate expectation of privacy in the interior of a car. (*People v. Bell* (1996) 43 Cal. App. 4th 754, 770.)
 - 4) Requires a manufacturer of a new motor vehicle sold or leased in this state that is equipped with one or more “event data recorders (EDRs)” or “sensing and diagnostic modules (SDMs),” to disclose that fact in the owner’s manual for the vehicle. (Veh. Code § 9951(a).)
 - 5) Provides that specified data recorded on a recording device subject to 4) may not be downloaded or otherwise retrieved by a person other than the registered owner of the motor vehicle, except under specified circumstances, and prohibits any person authorized to download or otherwise retrieve data from a recording device pursuant to one of those specified circumstances from releasing that data, except to specified parties and only if the identity of the registered owner or driver is not disclosed. Specified data includes: a) how fast and in which direction the motor vehicle is traveling; b) a history of where the motor vehicle travels; c) steering performance; d) brake performance, including but not limited to, whether brakes were applied before an accident; e) the driver’s seatbelt status; and f) information concerning an accident that can be transmitted to a central communications system. (Veh. Code § 9951(b)-(d).)
 - 6) Prohibits a person or entity in the business of renting passenger vehicles to the public from using, accessing, or obtaining any information relating to the renter’s use of the rental vehicle that was obtained using electronic surveillance technology, except under specified circumstances. (Civ. Code § 1939.23(a).)
 - 7) Prohibits, with exceptions, electronic eavesdropping or recording of private communications by telephone, radio telephone, cellular radio telephone, cable or any other device or in any other manner. Violation can result in penalties of up to \$10,000 and imprisonment in county jail or state prison for up to one year. (Pen. Code § 630-638.)
 - 8) Prohibits cable and satellite television operators from monitoring or recording conversations in a subscriber’s residence, except as specified, or from sharing individually identifiable information on subscriber viewing habits or other personal information without written consent. (Pen. Code § 637.5.)
 - 9) Requires connected televisions, as defined, to prohibit any 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 the connected television. (Bus. & Prof. Code § 22948.20(a).)
 - 10) Prohibits actual recordings of spoken word collected through the operation of a voice recognition feature by the manufacturer of a connected television, or by a third party contracting with a manufacturer, 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, from being sold or used for any advertising purpose. (Bus. & Prof. Code § 22948.20(b).)

- 11) Prohibits any 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(c).)
- 12) Establishes the California Consumer Privacy Act (CCPA). (Civ. Code §§ 1798.100-1798.199.100.)
- 13) Provides that the CCPA applies to any for-profit entity that collects consumers' personal information, does business in California, and meets one or more of the following criteria:
 - a) It had gross annual revenue of over \$25 million in the previous calendar year.
 - b) It buys, receives, or sells the personal information of 100,000 or more California residents, households, or devices annually.
 - c) It derives 50% or more of its annual revenue from selling California residents' personal information. (Civ. Code § 1798.140(d).)
- 14) Defines "consumer" as a natural person who is a California resident. (Civ. Code § 1798.140(i).)
- 15) Provides a consumer, subject to exemptions and qualifications, various rights, including the following:
 - a) The right to know the business or commercial purpose for collecting, selling, or sharing personal information and the categories of persons to whom the business discloses personal information. (Civ. Code § 1798.110.)
 - b) The right to request that a business disclose the specific pieces of information the business has collected about the consumer, and the categories of third parties to whom the personal information was disclosed. (Civ. Code § 1798.110.)
 - c) The right to request deletion of personal information that a business has collected from the consumer. (Civ. Code § 1798.105.)
 - d) The right to opt-out of the sale of the consumer's personal information if the consumer is over 16 years of age. (Sale of the personal information of a consumer below the age of 16 is barred unless the minor opts-in to its sale.) (Civ. Code § 1798.120.)
 - e) The right to equal service and price, despite the consumer's exercise of any of these rights, unless the difference in price is reasonably related to the value of the customer's data. (Civ. Code § 1798.125.)
- 16) Defines "personal information" as information that identifies, relates to, describes, is reasonably capable of being associated with, or could reasonably be linked, directly or indirectly, with a particular consumer or household. Personal information includes such information as:

- a) Name, alias, postal address, unique personal identifier, online identifier, IP address, email address, account name, social security number, driver's license number, passport number, or other identifier.
 - b) Commercial information, including records of personal property, products or services purchased, obtained, or considered, or other purchasing or consuming histories or tendencies.
 - c) Biometric information.
 - d) Internet activity information, including browsing history and search history.
 - e) Geolocation data.
 - f) Professional or employment-related information. (Civ. Code § 1798.140(v).)
- 17) Prohibits a business from discriminating against a consumer because the consumer exercised any rights under the CCPA, including, but not limited to, by: denying goods or services to the consumer; charging different prices or rates for goods or services; providing a different level or quality of goods or services to the consumer; or suggesting that the consumer will receive a different price or rate for goods or services or a different level or quality of goods or services. (Civ. Code § 1798.125(a)(1).)
- 18) Defines “dealer” as a person who for commission, money, or other thing of value, sells, exchanges, buys, or offers for sale, negotiates or attempts to negotiate, a sale or exchange of an interest in, a vehicle, as specified. (Veh. Code § 285.)
- 19) Defines “vehicle manufacturer” or “manufacturer” as any person who produces from raw materials or new basic components a vehicle, as specified. (Veh. Code § 672.)

FISCAL EFFECT: As currently in print this bill is keyed fiscal.

COMMENTS:

1) **Purpose of the bill.** This bill seeks to protect the privacy of drivers by ensuring that consumers are informed of the presence of in-vehicle cameras upon purchase or lease of a new motor vehicle and by providing drivers with additional control over the retention, use, and disclosure of data collected by in-vehicle cameras.

The bill largely mirrors last year's SB 346 (Wieckowski, 2021), which was vetoed by Governor Newsom. In his veto message, the Governor stated:

This bill would place restrictions on what can be done with images and video recordings from in-vehicle cameras, and where such recordings can be retained.

I share the author's concern for consumer privacy and commitment to this issue, and I am supportive of placing strong limitations against selling, sharing, or using for advertising any images or video recordings collected from in-vehicle cameras.

However, the bill contains broad language that could unintentionally prohibit a vehicle manufacturer from updating or improving critical technology. In-vehicle cameras have the potential to detect impaired or distracted driving and, if used appropriately, could reduce the number of motor vehicle accidents and casualties.

It is important to advance balanced policies that protect consumers and their privacy without inadvertently impeding our ability to innovate and improve new technologies—especially when a technology has the potential to save lives.

In response, this author has made amendments to make clear that images and video recordings can be shared to not only improve, but also update, the vehicle's safety system, including technology related to the detection of distracted drivers used in conjunction with driver-assistance features.

2) **Author's statement.** According to the author:

Increasingly in society today, we find ourselves being recorded or surveilled with no idea how the images are being used. This erosion of privacy is now happening inside our own cars. My bill would prevent the unwanted taking of video by in-vehicle cameras and give the consumer more control over their personal information.

3) **What this bill does.** Essentially, this bill does four significant things in order to protect the privacy of consumers who own cars with in-vehicle cameras:

1. Requires car dealers to clearly inform buyers of their privacy rights when a car they are considering purchasing includes an in-vehicle camera.
2. Establishes strict prohibitions against images or videos being used for advertising or sold to a third-party without first receiving affirmative prior consent from the car owner. In addition, the bill allows for the sharing of images or videos with a third-party only if necessary to diagnose, repair, or improve certain systems in the car.
3. Requires that the images and video recordings can only be retained on the car technology itself and only downloaded with affirmative prior consent or if necessary for diagnosis, repairs, or improvements related to the cameras, the systems that require the cameras, or safety improvements. There are three exceptions to the consent requirement:
 - a. If the video is needed as evidence in a legal proceeding.
 - b. If the video is needed to determine whether or not emergency medical services are necessary in the event of an accident.
 - c. If the video is necessary for a federal investigation related to an accident (in which case the owner's identifying information would not be included).
4. Requires that the manufacturer provide an effective method that allows people to revoke their consent to the use of their images and video.

4) **Analysis.** Recent revelations about Tesla employees inappropriately sharing video recordings of Tesla owners, who were unaware that they were being recorded, speak to the need for

regulating the use of in-vehicle cameras. According to the complaint filed in federal court in April:

Since at least 2019, the cameras in Tesla vehicles captured highly-invasive videos and images of the cars' owners, which Tesla employees were able to access—not for the stated purposes of communication, fulfillment of services, and enhancement of Tesla vehicle driving systems—but for the tasteless and tortious entertainment of Tesla employees, and perhaps those outside the company, and the humiliation of those surreptitiously recorded.

By virtue of this defective system, Tesla employees accessed and circulated recordings of Tesla customers in private and embarrassing situations, without their consent including, for example, video of a man approaching a Tesla vehicle completely naked, and video of vehicle crashes and road-rage incidents. Tesla employees also shared pictures of family pets, which were made into memes by embellishing them with captions or commentary before posting them in group chats. (*Yeh v. Tesla, inc.*, No. 3:23-cv-01704 Class Action Complaint (2023) available at <https://storage.courtlistener.com/recap/gov.uscourts.cand.410887/gov.uscourts.cand.410887.1.0.pdf>)

The experience of Tesla owners demonstrates the increasing encroachment of surveillance technology into spaces that people generally consider to be private and illustrates the need for lawmakers to vigilantly protect consumers against that encroachment. While this bill will not completely eliminate the potential for this type of invasion of privacy, it will ensure that car buyers are aware that an in-vehicle camera is present and its ability to capture intimate, private information. In addition, the bill will require, except in specific circumstances, that the images that are captured are stored with the car and not at another site where they can be easily downloaded and shared. As discussed in detail below, consumers have a right to expect that, like their homes, their vehicles are private spaces where their privacy is protected.

Opponents of the bill argue:

The [California Consumer Privacy Act (CCPA)] currently provides broad consumer protections that are technology- and industry-neutral, as was the intent of the law. Contrastingly, SB 296 provides a technology and industry carve out for in-vehicle cameras and lacks critical provisions that ensure workability. The proponents state that technology is becoming more advanced and therefore the Legislature should preemptively restrict the use of this information; however, the law does not separately regulate cameras in TVs, smart phones, and other devices that are used in consumers' homes where there is an equal if not even greater expectation of privacy. This ensures that any personal information that is collected, shares the same protections under the CCPA, regardless of the method by which it is collected.

As discussed in detail in the following two sections, despite the opponent's assertions, this bill simply seeks to provide additional privacy protections for data collected by in-vehicle cameras that are consistent with the level of sensitivity California law has thus far assigned to similar, albeit arguably less sensitive, data. In addition, this bill is in keeping with the intent of the CCPA, as it was amended by Proposition 24 (2020), which established the California Privacy Rights Act (CPRA). The privacy protections provided under the CCPA are intended to establish a floor and not a ceiling in terms of allowing the Legislature to adopt additional privacy protections. Specifically, the CPRA allowed for amendment by the Legislature with a majority

vote of both houses and the signature of the Governor, as long as those amendments further the intent of the Act. This bill, which requires that buyers receive information regarding an in-car camera and restricts where the video recordings are stored and how they are used, is not in conflict with and does not supplant the CCPA. However, out of an abundance of caution, the author has included clarifying language to that effect and the bill states that in the event there is ambiguity between this bill and other state and federal laws, that the law with the strictest privacy protections will supersede any other.

5) In-vehicle cameras and the reasonable expectation of privacy. In 1967, the United States Supreme Court held that private conversations secluded from the public are protected against government surveillance under the Fourth Amendment's protections against unreasonable search and seizure. (*Katz v. United States* (1967) 389 U.S. 347.) The decision in that case relied heavily on affirming the existence of a reasonable societal expectation that private conversations in areas secluded from the public will be afforded privacy. Since then, the proliferation of so-called "smart" devices and vehicles, with the ability to both actively and passively collect various types of information, have redefined our understanding of this expectation.

The United States and California Supreme Courts have, on several occasions, affirmed that individuals possess a reasonable expectation of privacy inside their vehicles. (See, e.g., *United States v. Jones* (2012) 565 U.S. 400; *People v. Xinos* (2011) 192 Cal. App. 4th 637; *People v. Bell* (1996) 43. Cal. App. 4th 754.)

This Legislature has also previously recognized the particular need to regulate surveillance in vehicles. In 2003, the Governor signed into law AB 213 (Leslie, Chap. 427, Stats. 2003), which required motor vehicle manufacturers to disclose in the vehicle's owner's manual if a vehicle sold or leased in this state is equipped with one or more "event data recorders (EDRs)" or "sensing and diagnostic modules (SDMs)," recording devices that collect certain telematics from the operation of the vehicle. AB 213 also prohibited any person other than the owner of a vehicle from downloading or otherwise retrieving EDR or SDM data, except with the consent of the owner or under specified circumstances.

AB 213 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 the vehicle travels," and provides that a manufacturer of a new motor vehicle sold or leased in this state may not download or otherwise retrieve any of the following data except under specified circumstances: recordings of how fast and in which direction the motor vehicle is traveling; recordings containing a history of where the motor vehicle travels; recordings of steering performance; recordings of brake performance, including, but not limited to, whether brakes were applied before an accident; recordings of the driver's seatbelt status; and information concerning an accident in which the motor vehicle has been involved.

The specific circumstances in which EDR or SDM data can be downloaded or otherwise retrieved by a person other than the registered owner of the motor vehicle are similar to this bill: 1) the registered owner of the motor vehicle consents to the retrieval of the information; 2) in response to a court order; 3) for the purpose of improving motor vehicle safety, provided the identity of the registered owner or driver is not disclosed in connection with the retrieved data; or 4) the data is retrieved by a licensed new motor vehicle dealer or automotive technician for the purpose of diagnosing, servicing, or repairing the motor vehicle. In any one of these permitted

circumstances, a person authorized to download or otherwise retrieve this data may not release that data, except to share among the motor vehicle safety and medical research communities to advance motor vehicle safety, and only if the identity of the registered owner or driver is not disclosed.

AB 2840 (Corbett, Chap. 317, Stats. 2004) established specific limitations governing the use of electronic surveillance technology by persons or entities in the business of renting passenger vehicles to the public. Specifically, under AB 2840, a rental company is prohibited from using, accessing, or obtaining any information relating to the renter's use of the rental vehicle that was obtained using electronic surveillance technology, except under specified circumstances. For the purposes of that bill, "electronic surveillance technology" is defined to mean a technological method or system used to observe, monitor, or collect information, including telematics, GPS, wireless technology, or location-based technologies, but not including EDRs, SDMs, or other systems used for the purpose of identifying, diagnosing, or monitoring functions related to the potential need to repair, service, or perform maintenance on the rental vehicle, or as part of the vehicle's airbag sensing and diagnostic system. Specified circumstances in which electronic surveillance technology can be used under AB 2840 are limited to locating a stolen, abandoned, or missing rental vehicle if it has not been returned following 72 hours after the contracted return date, has been discovered to have been stolen or abandoned, or is the subject of an AMBER alert. In those circumstances, the rental company must maintain a record of information relevant to the activation of that technology.

This bill seeks to protect the privacy of individuals in their cars by responding to the growing ubiquity of sophisticated in-vehicle cameras. In-vehicle cameras can serve a variety of functions, ranging from using facial-recognition technology to automatically adjust seat and mirror settings for each driver, to detecting drowsy or distracted drivers and either alerting them or capping vehicle speed. In the United States, all new cars are required to have backup cameras to help drivers avoid accidents, and other countries have already expanded such safety requirements to include in-vehicle, driver-directed sensors and cameras. However, little is known about how data collected by these cameras is stored and used, and with most new cars sold in the United States, including all new Fords, GMs, and BMWs, and nearly all Toyotas and Volkswagens, coming with built-in internet connections, the possibility that such private data is being made immediately accessible to automobile manufacturers without the knowledge or consent of the driver arguably warrants specific protections.

Images and video recordings including individuals are typically considered to be more sensitive than diagnostic information concerning the general state of a vehicle (i.e., data collected by EDRs and SDMs), and personal vehicles are typically considered to confer a greater expectation of privacy than rental vehicles, since the latter do not belong to the renter. Accordingly, protections for image and video recording data collected in a personal vehicle should arguably be at least as strong as protections for EDR and SDM data, and at least as strong as protections for electronic surveillance data in rental vehicles. From a public policy standpoint, the bill in print seems to provide protections that would be coherent with such existing laws, whereas defaulting to the protections of the CCPA, which place few limitations on the collection of personal information and provide only the right to opt out of the sharing or sale of that personal information, seemingly would not.

6) **The California Consumer Privacy Act (CCPA).** In 2018, California enacted landmark privacy legislation, the CCPA (AB 375, Chau, Ch. 55, Stats. 2018), giving consumers certain

rights regarding their personal information, including: (1) the right to know what personal information is collected and sold about them; (2) the right to request the categories and specific pieces of personal information the business collects about them; and (3) the right to opt-out of the sale of their personal information, or opt-in in the case of minors under 16 years of age. The CCPA includes in its definition of personal information “audio, electronic, visual, thermal, olfactory, or similar information,” which would likely capture images and recordings captured by in-vehicle cameras. (Civ. Code § 1798.100, et seq.)

Accordingly, the protections provided by the CCPA are available with respect to recordings collected by in-vehicle cameras to the extent that the data are identifiable. The CCPA also provides a private right of action in the event a consumer’s nonencrypted and nonredacted personal information is subject to unauthorized access, theft, or disclosure, which would apply if the unauthorized access, theft, or disclosure was the result of negligence by the business. (Civ. Code Sec. 1798.150.)

The CCPA provides minimum protections for personal information generally, and as such, extends such protections to identifiable recordings collected by in-vehicle cameras, but it explicitly leaves room for further regulation in circumstances in which more extensive protection is necessary. Specifically, the CCPA includes provisions indicating that its protections for consumer privacy and data control should be interpreted broadly and should be in addition to, not in the place of, more specific consumer protections as circumstances demand. Section 1798.194 of the Civil Code, for instance, provides that the CCPA “shall be liberally construed to effectuate its purposes,” and Section 1798.175 of the Civil Code further provides:

[The CCPA] is intended to further the constitutional right to privacy and to supplement existing laws relating to consumers’ personal information [...] Wherever possible, law relating to consumers’ personal information should be construed to harmonize with provisions of [the CCPA], but in the event of a conflict between other laws and provisions of [the CCPA], the provisions of the law that afford the greatest protection for the right of privacy for consumers shall control.

Furthermore, the California Privacy Rights Act (CPRA), passed by ballot initiative as Proposition 24 in 2020, which supplemented, and in some cases supplanted, the CCPA, explicitly provides for amendments of its general privacy provisions so long as those changes further the protection of consumer privacy. Specifically, the CPRA allowed for amendment by the Legislature with a majority vote of both houses and the signature of the Governor, but only if “such amendments are consistent with and further the purpose and intent of this Act[.]” which is “to further protect consumers’ rights, including the constitutional right of privacy.” (Ballot Pamphlet Primary Elect. (Nov. 3, 2020) Text of Proposed Laws, pp. 43-44, 74-75.)

Based on these provisions, it does not seem that privacy laws that supplement the protections provided in the CCPA in cases of particular sensitivity conflict with the purpose and intent of the CCPA, nor would such a law necessarily be construed to deprive consumers of the protections under the CCPA by expanding upon them.

7) **Related legislation.** AB 1262 (Cunningham, 2022) would have added smart speaker devices to the statutory scheme governing connected televisions. This bill was passed by the Legislature, but vetoed by the Governor. In his veto message, the Governor stated he shared the author’s concern but feared unintended consequences.

SB 346 (Wieckowski, 2021-22) a substantially similar bill was vetoed by the Governor. See Comment 1.

AB 375 (Chau, Chap. 55, Stats. 2018) enacted the California Consumer Privacy Act (CCPA) giving consumers certain rights regarding their personal information, including: (1) the right to know what personal information is collected and sold about them; (2) the right to request the categories and specific pieces of personal information the business collects about them; and (3) the right to opt-out of the sale of their personal information, or opt-in in the case of minors under 16 years of age.

AB 1116 (Assembly Committee on Privacy and Consumer Protection, Chap. 524, Stats. 2015) prohibited the collection and use of spoken words and conversations captured by Internet-connected televisions, commonly known as “connected televisions” or “smart TVs” without first informing the user, and prohibited using or selling for advertising purposes any spoken words or sounds collected through a connected television for purposes of improving the voice recognition feature.

AB 2840 (Corbett, Chap. 317, Stats. 2004) prohibited a rental car company from using, accessing, or obtaining any information relating to a renter’s use of the vehicle that was obtained using “electronic surveillance technology,” except under specified circumstances.

AB 213 (Leslie, Chap. 427, Stats. 2003) 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.

ARGUMENTS IN SUPPORT. The Consumer Federation of California, the sponsor of the bill, makes the case for the bill:

Consumers spend a lot of time inside their vehicles running errands, commuting to work, or going on road trips and the increase of in-vehicle cameras installed in vehicles potentially puts consumer’s privacy at risk. The use of in-vehicle cameras to monitor a driver’s gaze, attentiveness, and to record sensitive data allows private companies to build composites of consumers’ habits and likes that can be used for targeted advertisement as well as data collection and monetization.

SB 296 enhances consumer control of their data and includes some situations where data sharing is prohibited. This would ensure that the private data and recordings of those cameras inside your vehicle’s interior are controlled by consumers, and not just another way in which consumer privacy is being eroded by corporations while they profit off of your personal information through selling, sharing and otherwise brokering information about consumer data and behavior.

Oakland Privacy writes in support:

Senate Bill 296 continues the Legislature's consideration of enhanced privacy protections for particularly sensitive personal information. For many of us, our vehicles are places where we spend a great deal of time and the inside of it is a physical space considered fundamentally private, much like the inside of our own homes. We may engage in conversations about family business or our health, or participate in sensitive business-related meetings or

conversations. We do not act in the space of our own private vehicle as if we are being overheard by third parties.

Even more innocuous acts like the radio stations we choose to listen to, or the podcasts we select, are considered by the vehicle's occupants as fundamentally private choices. Essentially, in-vehicle cameras are much like smart speaker devices, in that they are repositories of information from Californian's private lives and activities. This is timely legislation.

ARGUMENTS IN OPPOSITION. A coalition of groups, including TechNet and the Civil Justice Association of California, write in opposition to the bill:

Some of our most pressing concerns include: (1) the bill provides a carve-out for in-vehicle cameras from the California Consumer Privacy Act (CCPA); and (2) the inability for industry to comply due to the conflict between the consent requirements and the anti-discrimination requirements. In addition to these concerns, it remains unclear what problem the bill is trying to address and the basis for this remedy in existing law.

REGISTERED SUPPORT / OPPOSITION:

Support

Consumer Federation of California (sponsor)
California Association for Micro Enterprise Opportunity
Consumer Attorneys of California
Consumer Watchdog
Consumers for Auto Reliability & Safety
Housing & Economic Right Advocates
Oakland Privacy

Opposition

Alliance for Automotive Innovation
California Chamber of Commerce
Civil Justice Association of California
Technet

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