

# SENATE BILL REPORT

## ESHB 2361

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As of February 22, 2012

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

**Committee Activity:** Financial Institutions, Housing & Insurance: 2/21/12.

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### SENATE COMMITTEE ON FINANCIAL INSTITUTIONS, HOUSING & INSURANCE

**Staff:** Edward Redmond (786-7471)

**Background:** The Insurance Commissioner (Commissioner) regulates insurance in Washington, including motor vehicle liability insurance. This oversight includes regulation of rates, forms, financial conditions, claims practices, and other issues related to the business of insurance.

All drivers of vehicles registered in Washington State must be insured under an insurance liability policy, a liability bond, a certificate of deposit, or else be self-insured. In determining rates, motor vehicle insurance companies must give consideration to the impacts of safety and anti-theft devices. Insurance companies are required to file their rate plans with the Commissioner, and these rate plans must not be excessive, inadequate, or unfairly discriminatory.

Presently, no provisions exist in the motor vehicle liability code that specifically address usage-based liability insurance products. The phrase usage-based insurance, however, is sometimes used to refer to a product when 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.

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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.*

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 Bill:** The term usage-based insurance is defined as private passenger automobile coverage that uses data gathered by an insurer through a recording device as defined in statute, or a system, or a business method that records and preserves data arising from the actual use of a motor vehicle to determine rates or premiums.

The provisions regarding the filing of insurance rates open to public inspection are amended. The usage-based insurance component of the rate filing is confidential and must be withheld from public inspection.

Location-based data may not be collected by an insurer absent disclosure to the insured that such information is being collected and receiving 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.

**Appropriation:** None.

**Fiscal Note:** Available.

**Committee/Commission/Task Force Created:** No.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Staff Summary of Public Testimony:** PRO: There is an insurance company that offers a product all over the community except here. There is nothing in the state's statute preventing an insurance company from offering such usage-based insurance products; however, the OIC's current disclosure requirements would result in insurance companies having to disclose their trade secrets used to determine usage-based premium rates. This bill has been worked on for years; this year both houses have passed bills which are very similar.

The prime sponsor is willing to work with the Senate to get this bill passed. This is not an authorizing bill, the bill just allows for proprietary information to be kept confidential. Progressive, Liberty Mutual, Property Casualty Insurers of America, Allstate, and Professional Insurance Agents support the amendment that would remove section three from the House version in order to mirror the version passed by the Senate. This is a competitively neutral bill.

In 2010 the state energy strategy was legislated and the Department of Commerce (Commerce) completed that process over the last 18 months utilizing input from over 26 advisory members. There were three goals: (1) maintain lower and competitive energy prices, (2) foster green energy jobs, and (3) lower the state's greenhouse gas emissions. Commerce is in support of this legislation as it may help to lower the state's greenhouse gas emissions.

**Persons Testifying:** PRO: Representative Kirby, prime sponsor; Michael Transue, Liberty Mutual; Carrie Tellefson, Progressive Insurance; Mel Sorensen, Property Casualty Insurers of America, Allstate, Professional Insurance Agents; Roel Hammerschlag, Commerce.