

HB 1324-FN – AS INTRODUCED

2014 SESSION

14-2470
05/03

HOUSE BILL ***1324-FN***

AN ACT relative to access to event data recorders.

SPONSORS: Rep. Kurk, Hills 2

COMMITTEE: Transportation

ANALYSIS

This bill modifies the regulation of event data recorders.

Explanation: Matter added to current law appears in ***bold italics***.
Matter removed from current law appears [~~in brackets and struck through.~~]
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Fourteen

AN ACT relative to access to event data recorders.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 1 Event Data Recorders. RSA 357-G:1 is repealed and reenacted to read as follows:
2 357-G:1 Definitions. In this chapter, unless the context otherwise indicates, the following terms
3 have the following meanings:

4 I. “Owner” means:

5 (a) A person having all the incidents of ownership, including legal title, of a motor
6 vehicle, whether or not the person lends, rents, or creates a security interest in the motor vehicle;

7 (b) A person entitled to the possession of a motor vehicle as the purchaser under a
8 security agreement;

9 (c) A person entitled to possession of a motor vehicle as a lessee pursuant to a written
10 lease agreement for a period of more than 3 months; or

11 (d) If a third party requests access to a recording device to investigate a collision, the
12 owner of the motor vehicle at the time the collision occurred.

13 II. “Recording device” means an electronic system, and the physical device or mechanism
14 containing the electronic system, that primarily, or incidental to its primary function, preserves or
15 records, in electronic form, data collected by sensors or provided by other systems within a motor
16 vehicle. “Recording device” includes event data recorders, sensing and diagnostic modules, electronic
17 control modules, automatic crash notification systems, geographic information systems, and any
18 other device that records and preserves data that can be accessed related to that motor vehicle.
19 “Recording device” does not include onboard diagnostic systems whose exclusive function is to
20 capture fault codes used to diagnose or service the motor vehicle.

21 357-G:2 Disclosure in Owner’s Manual, Subscription Service Agreement, and Product Manual.

22 I. A manufacturer of a motor vehicle sold or leased in this state that is equipped with one or
23 more recording devices shall disclose in the owner’s manual that the motor vehicle is equipped with
24 one or more recording devices and, if so, the type of data recorded and whether the recording device
25 or devices have the ability to transmit information to a central communications system or other
26 external device.

27 II. If a recording device is used as part of a subscription service, the subscription service
28 agreement shall disclose the type of information that the device may record or transmit.

29 III. A disclosure made in writing is deemed a disclosure in the owner’s manual.

30 IV. If a recording device is to be installed in a vehicle aftermarket, the manufacturer or
31 distributor of the device shall disclose in the product manual the type of information that the device

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1 may record and whether the recording device has the ability to transmit information to a central
2 communications system or other external device.

3 V. A disclosure made in writing is deemed a disclosure in the product manual.

4 357-G:3 Confidential Information; Exceptions.

5 I. Information recorded or transmitted by a recording device may not be retrieved,
6 downloaded, scanned, read, or otherwise accessed by a person other than the owner of the motor
7 vehicle in which the recording device is installed except:

8 (a) Upon a court order or pursuant to discovery. Any information recorded or
9 transmitted by a recording device and obtained by a court order or pursuant to discovery is private
10 and confidential and is not subject to public disclosure;

11 (b) With the consent of the owner, given for a specific instance of access, for any purpose;

12 (c) For determining the need for or facilitating emergency medical response if a motor
13 vehicle collision occurs, provided that the information retrieved is used solely for medical purposes;
14 or

15 (d) For subscription services pursuant to an agreement in which disclosure required
16 under RSA 357-G:2 has been made, provided that the information retrieved is used solely for the
17 purposes of fulfilling the subscription service.

18 II. Information that can be associated with an individual and that is recorded or transmitted
19 by a recording device may not be sold or otherwise made available to a third party unless the owner
20 of the information explicitly grants permission for the sale.

21 357-G:4 Tools Available. A manufacturer of a motor vehicle sold or leased in this state that is
22 equipped with a recording device shall ensure by licensing agreement or other means that a tool or
23 tools are available that are capable of accessing and retrieving the information stored in a recording
24 device. The tool or tools shall be commercially available no later than 90 days after the effective date
25 of this chapter.

26 357-G:5 Violations; Injunctive Relief; Damages.

27 I. Any person who violates RSA 357-G:3 is guilty of a class A misdemeanor.

28 II. A violation of this chapter is not reasonable in relation to the development and
29 preservation of business and is an unfair or deceptive act in trade or commerce and an unfair method
30 of competition for the purpose of applying RSA 358-A, the consumer protection act, for any unfair or
31 deceptive trade practice committed.

32 2 Effective date This act shall take effect on January 1, 2015.

HB 1324-FN - FISCAL NOTE

AN ACT relative to access to event data recorders.

FISCAL IMPACT:

The Judicial Branch, Department of Justice, and New Hampshire Association of Counties state this bill, **as introduced**, may increase state and county expenditures by an indeterminable amount in FY 2015 and each year thereafter. There will be no fiscal impact on state, county, and local revenue, or local expenditures.

METHODOLOGY:

The Department of Justice states this bill repeals and reenacts RSA 357-G, relative to event data recorders in a motor vehicle, creating a new misdemeanor for violations of the confidential information section and would continue to treat violations of this chapter as an unfair or deceptive act under the Consumer Protection Act (RSA 358-A). The Department states passage of this bill could increase the number of enforcement actions taken by its Consumer Protection and Antitrust Bureau, which may result in an indeterminable increase to Department expenditures as it cannot predict the amount of cases in which it will be involved. The Department also states to the extent charges of the new misdemeanor A penalty established in this bill are brought by the state or county prosecutor, state and county expenditures may increase by an indeterminable amount.

The Judicial Branch states it does not have information to estimate how many additional class A misdemeanor prosecutions may result from this proposed bill, however does have information on the average cost of processing a class A misdemeanor case in court. The Branch states the average cost per case for a class A misdemeanor case in the district division of the circuit court will be \$66.17 in FY 2015, and \$67.64 in FY 2016. Additionally, the Branch states this bill makes violations of RSA 357-G unfair or deceptive acts or practices under the Consumer Protection Act. The Branch states such cases are often hard fought cases and one alone could result in a cost in excess of \$10,000. The possibility for any case to be appealed increases the estimated costs. All costs are estimated based on case weight information from the last needs assessment completed in 2005. Since the last needs assessment studies there have been changes to the judicial system, such as the formation of the circuit court, more self-represented litigants and how cases are processed, that may impact the costs associated with processing cases.

The New Hampshire Association of Counties states to the extent more individuals are charged, convicted, and sentenced to incarceration in a county correctional facility, the counties will have increased expenditures. The Association is unable to determine the number of individuals who may be charged, convicted or incarcerated as a result of this bill to determine an exact fiscal impact. The average annual cost to incarcerate an individual in a county correctional facility is approximately \$35,000. There is no impact on county revenue.