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SENATE BILL NO. 90**AMENDMENT IN THE NATURE OF A SUBSTITUTE**(Proposed by the Senate Committee for Courts of Justice
on February 13, 2006)

(Patron Prior to Substitute—Senator Watkins)

A BILL to amend the Code of Virginia by adding a section numbered 38.2-2213.1, by adding in Article 10 of Chapter 10 of Title 46.2 a section numbered 46.2-1088.6, and by adding a section numbered 46.2-1532.2, relating to motor vehicle electronic recording devices; insurance; disclosure.

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding a section numbered 38.2-2213.1, by adding in Article 10 of Chapter 10 of Title 46.2 a section numbered 46.2-1088.6, and by adding a section numbered 46.2-1532.2 as follows:

§ 38.2-2213.1. Cancellation, rate increase, etc. disallowed when owner fails to allow access to recorded data from recorded device.

No insurer or agent shall cancel, refuse to issue, or refuse to renew a motor vehicle insurance policy as defined in § 38.2-2212 including such policies assigned to any insurer by the Virginia Automobile Insurance Plan, nor shall such insurer reduce coverage, increase its insured's premium, apply a surcharge, refuse to apply a discount, place in a less favorable tier, refuse to place in the company's best tier, or when there are multiple companies available within a group of insurers, fail to place in the most favorably priced company solely because an owner refuses to allow an insurer access to recorded data from a recording device, nor shall the owner's refusal to allow access to the recorded data be construed as a breach of the duty to cooperate as provided for in such motor vehicle insurance policy.

§ 46.2-1088.6. Motor vehicle recording devices.

A. As used in this section:

"Accessed" means downloaded, extracted, scanned, read, or otherwise retrieved.

"Owner" means a person having all the incidents of ownership, including the legal title of a vehicle whether or not such person lends, rents, or creates a security interest in the vehicle; a person entitled to the possession of a vehicle as the purchaser under a security agreement; or a person entitled to possession of the vehicle as the lessee pursuant to a written lease agreement, provided such agreement at inception is for a period in excess of three months.

"Recorded data" means the data stored or preserved electronically in a recording device identifying performance or operation information about the motor vehicle including, but not limited to:

1. Speed of the motor vehicle or the direction in which the vehicle is traveling, or both;

2. Vehicle location data;

3. Vehicle steering performance;

4. Vehicle brake performance including, but not limited to, whether brakes were applied before a crash;

5. The driver's seatbelt status; and

6. Information concerning a crash in which the motor vehicle has been involved, including the ability to transmit such information to a central communications system.

"Recording device" means an electronic system, and the physical device or mechanism containing the electronic system, that primarily, or incidental to its primary function, preserves or records, in electronic form, data collected by sensors or provided by other systems within the vehicle. "Recording device" includes event data recorders (EDRs), sensing and diagnostic modules (SDMs), electronic control modules (ECMs), automatic crash notification (ACN) systems, geographic information systems (GIS), and any other device that records and preserves data that can be accessed related to that vehicle.

B. Recorded data may only be accessed by the motor vehicle owner or with the consent of the motor vehicle owner or the owner's agent or legal representative, except under the following circumstances:

1. The owner of the motor vehicle has a contract with a third-party subscription service that requires access to a recording device or recorded data in order to perform the contract, so long as the recorded data is only accessed and used in accordance with the contract;

2. A licensed new motor vehicle dealer, or a technician or mechanic at a motor vehicle repair or servicing facility requires access to recorded data in order to carry out his normal and ordinary diagnosing, servicing, and repair duties and such recorded data is used only to perform such duties;

3. The recorded data is accessed by an emergency response provider and is used only for the purpose of determining the need for or facilitating an emergency response. Such persons are authorized to receive data transmitted or communicated by any electronic system of a motor vehicle that constitutes an automatic crash notification system and utilizes or reports data provided by or recorded by recording devices installed on or attached to a motor vehicle to assist them in performing their duties as

60 emergency response providers;

61 4. Upon authority of a court of competent jurisdiction; or

62 5. The recorded data is accessed by law enforcement in the course of an investigation where
63 constitutionally permissible and in accordance with any applicable law regarding searches and seizures
64 upon probable cause to believe that the recording device contains evidence relating to a violation of the
65 laws of the Commonwealth or the United States.

66 C. If a person or entity accesses recorded data pursuant to subdivisions B 2 or B 3 of subsection B,
67 such entity or person shall not transmit or otherwise convey the recorded data to a third party unless
68 necessary to carry out their duties thereunder.

69 D. When the recording device and recorded data are not removed or separated from the motor
70 vehicle, the ownership of the recording device and recorded data survives the sale of the motor vehicle
71 to any nonbeneficial owner such as an insurer, salvage yard, or other person who does not possess and
72 use the motor vehicle for normal transportation purposes.

73 § 46.2-1532.2. Certain disclosures required by motor vehicle manufacturers; motor vehicle recording
74 devices.

75 A. A manufacturer of a new vehicle sold or leased in the Commonwealth that is equipped with one
76 or more recording devices, as defined in § 46.2-1088.6, installed by the manufacturer shall disclose that
77 fact in the owner's manual for the vehicle.

78 B. The provisions of this section shall apply only to vehicles manufactured for 2008 and subsequent
79 model years.