

117TH CONGRESS
1ST SESSION

S. 3231

To amend title 18, United States Code, to require law enforcement officials to obtain a warrant before accessing data stored in cars, and for other purposes.

IN THE SENATE OF THE UNITED STATES

NOVEMBER 18, 2021

Mr. WYDEN (for himself and Ms. LUMMIS) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To amend title 18, United States Code, to require law enforcement officials to obtain a warrant before accessing data stored in cars, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Closing the
5 Warrantless Digital Car Search Loophole Act of 2021”.

6 **SEC. 2. VEHICLE DATA.**

7 (a) IN GENERAL.—Part I of title 18, United States
8 Code, is amended by adding at the end the following:

1 **“CHAPTER 124—ACCESSING VEHICLE**
 2 **DATA.**

“Sec.

“2730. Definitions.

“2731. Prohibition on access to vehicle data.

“2732. Prohibition on use of acquired information as evidence.

3 **“§ 2730. Definitions**

4 “In this chapter:

5 “(1) ACCESS.—The term ‘access’—

6 “(A) means any retrieval of covered vehicle
 7 data, regardless of—

8 “(i) whether the data is obtained as
 9 the information is being produced or from
 10 digital storage; and

11 “(ii) where the vehicle data is stored
 12 or transmitted, including by wire or radio;
 13 and

14 “(B) does not include data covered by
 15 chapter 119 of this title or section 104 of the
 16 Foreign Intelligence Surveillance Act of 1978
 17 (50 U.S.C. 1804).

18 “(2) CONSENT.—The term ‘consent’—

19 “(A) means an affirmative, express, and
 20 voluntary agreement that—

21 “(i) states that the person providing
 22 the consent is providing consent to a gov-
 23 ernment official to access the digital con-

1 tents, access credential, or online account
 2 information, or other information being
 3 sought;

4 “(ii) specifies the type of content, ac-
 5 cess credential, or online account informa-
 6 tion the person is providing access to;

7 “(iii) specifies the time period of the
 8 covered vehicle data to be accessed;

9 “(iv) informs the person providing
 10 consent that consent is optional and that
 11 the government official attempting to ob-
 12 tain consent must otherwise acquire a war-
 13 rant if consent is not obtained;

14 “(v) does not involve sanctions or the
 15 threat of sanctions for withholding consent;
 16 and

17 “(vi) uses clear, simple, and com-
 18 prehensible language that is presented in a
 19 way that is accessible to the person pro-
 20 viding consent; and

21 “(B) does not include consent obtained
 22 through agreement to a generic privacy policy.

23 “(3) COVERED VEHICLE DATA.—The term ‘cov-
 24 ered vehicle data’—

1 “(A) means all onboard and telematics
2 data generated by, processed by, or stored on a
3 noncommercial vehicle using computing, storage
4 and communication systems installed, attached
5 to, or carried in the vehicle, including diagnostic
6 data, entertainment system data, navigation
7 data, images or data captured by onboard sen-
8 sors, or cameras, including images or data used
9 to support automated features or autonomous
10 driving, internet access, and communication to
11 and from vehicle occupants;

12 “(B) includes data gathered by event data
13 recorders; and

14 “(C) does not include—

15 “(i) automotive software installed by
16 the manufacturer, as defined by applicable
17 industry standards or regulations;

18 “(ii) any data subject to chapter 119
19 of this title or section 104 of the Foreign
20 Intelligence Surveillance Act of 1978 (50
21 U.S.C. 1804); or

22 “(iii) data that is collected from out-
23 side the vehicle, including speed data and
24 geolocation data, for purposes of traffic,
25 law enforcement, or toll collection.

1 “(4) EVENT DATA RECORDER.—The term
2 ‘event data recorder’ has the meaning given the term
3 in section 563.5 of title 49, Code of Federal Regula-
4 tions (as in effect on March 5, 2019).

5 “(5) INVESTIGATIVE OR LAW ENFORCEMENT
6 OFFICER.—The term ‘investigative or law enforce-
7 ment officer’ means any officer of the United States
8 or of a State or political subdivision thereof and any
9 Tribal justice official, who is empowered by law to
10 execute searches, to seize evidence, or to make ar-
11 rests for a violation of Federal or State law.

12 “(6) NONCOMMERCIAL VEHICLE.—The term
13 ‘noncommercial vehicle’ has the meaning given the
14 term ‘non-CMV’ in section 383.5 of title 49, Code of
15 Federal Regulations.

16 “(7) STATE.—The term ‘State’ means any
17 State of the United States, the District of Columbia,
18 and any territory or possession of the United States.

19 “(8) VEHICLE OPERATOR.—The term ‘vehicle
20 operator’ means—

21 “(A) a person who controls the operation
22 of a vehicle at the time consent is sought; and

23 “(B) with respect to a vehicle that is not
24 classified as a highly autonomous vehicle by the

1 Secretary of Transportation, the driver of the
2 vehicle.

3 **“§ 2731. Prohibition on access to vehicle data**

4 “(a) IN GENERAL.—Except as provided in subsection
5 (b), an investigative or law enforcement officer may not
6 access covered vehicle data unless pursuant to a warrant
7 issued in accordance with the procedures described in rule
8 41 of the Federal Rules of Criminal Procedure (or, in the
9 case of a State court, issued using State warrant proce-
10 dures) by a court of competent jurisdiction, or as other-
11 wise provided in this chapter or sections 104 and 303 of
12 the Foreign Intelligence Surveillance Act of 1978 (50
13 U.S.C. 1804, 1823).

14 “(b) EXCEPTIONS.—

15 “(1) CONSENT.—

16 “(A) IN GENERAL.—An investigative or
17 law enforcement officer may access covered ve-
18 hicle data if—

19 “(i) the vehicle operator provides prior
20 consent to such access; and

21 “(ii) no passenger 14 years of age or
22 older objects to the access.

23 “(B) VEHICLE OWNER.—If the vehicle op-
24 erator cannot be located with reasonable effort,
25 the vehicle owner or, in the case of a leased ve-

1 hicle, the lessee, may provide consent under this
2 paragraph.

3 “(C) UNLAWFUL POSSESSION.—No indi-
4 vidual may provide or withhold consent under
5 this paragraph or object to another individual
6 accessing covered vehicle data if the indi-
7 vidual—

8 “(i) is the vehicle operator who is in
9 unlawful possession of the vehicle; or

10 “(ii) is a passenger who unlawfully
11 obtained access to the vehicle.

12 “(D) ORAL CONSENT.—Consent provided
13 under this paragraph shall be in writing un-
14 less—

15 “(i) the person providing the consent
16 requests that the consent be made orally;
17 and

18 “(ii) the request for consent and the
19 consent are recorded.

20 “(E) CONSENT OF VEHICLE OPERATOR.—
21 If the vehicle operator is not the owner of the
22 vehicle and provides consent under this para-
23 graph, the consent is valid only with respect to
24 covered vehicle data generated during the lawful

1 possession and use of the vehicle by the vehicle
2 operator.

3 “(2) EMERGENCY.—

4 “(A) IN GENERAL.—An investigative or
5 law enforcement officer, the Attorney General,
6 the Deputy Attorney General, the Associate At-
7 torney General, or the principal prosecuting at-
8 torney of any State or subdivision thereof act-
9 ing pursuant to a statute of that State, may ac-
10 cess covered vehicle data if—

11 “(i) such officer reasonably deter-
12 mines that an emergency situation exists
13 that—

14 “(I) involves immediate danger of
15 death or serious physical injury to any
16 person; and

17 “(II) requires access to covered
18 vehicle data before such officer can,
19 with due diligence, obtain a warrant;

20 “(ii) there are grounds upon which a
21 warrant could be granted to authorize such
22 access; and

23 “(iii) an application for a warrant ap-
24 proving such access is submitted to a court

1 within 48 hours after the access has oc-
 2 curred or begins to occur.

3 “(B) DENIAL.—If an application for a
 4 warrant submitted pursuant to subparagraph
 5 (A)(iii) is denied, any covered vehicle data
 6 accessed under this paragraph shall be treated
 7 as having been obtained in violation of this
 8 chapter.

9 “(3) EVENT DATA RECORDER FOR MOTOR VE-
 10 HICLE SAFETY.—In addition to the exceptions in
 11 paragraphs (1) and (2), data recorded or trans-
 12 mitted by an event data recorder may be accessed
 13 from a noncommercial vehicle if authorized by para-
 14 graph (3), (4), or (5) of section 24302(b) of the
 15 Driver Privacy Act of 2015 (49 U.S.C. 30101 note).

16 “(4) RULE OF CONSTRUCTION.—Nothing in
 17 this section shall be interpreted to require the trans-
 18 mission or storage of data that is not otherwise
 19 transmitted or stored, or the retrieval of data that
 20 is not generally retrievable.

21 **“§ 2732. Prohibition on use of acquired information**
 22 **as evidence**

23 “(a) IN GENERAL.—If any covered vehicle data has
 24 been acquired in violation of this chapter, no part of such
 25 information and no evidence derived therefrom may be re-

1 ceived in evidence in any trial, hearing, or other pro-
 2 ceeding in or before any court, grand jury, department,
 3 officer, agency, regulatory body, legislative committee, or
 4 other authority of the United States, a State, or a political
 5 subdivision thereof.

6 “(b) PROBABLE CAUSE.—No data described in sec-
 7 tion 2731(b)(3) may be used to establish probable cause.”.

8 (b) TECHNICAL AND CONFORMING AMENDMENTS.—

9 (1) DRIVER PRIVACY ACT OF 2015.—Section
 10 24302 of the Driver Privacy Act of 2015 (49 U.S.C.
 11 30101 note) is amended—

12 (A) in subsection (b), in the matter pre-
 13 ceding paragraph (1), by striking “Data” and
 14 inserting “Except as provided in subsection (c),
 15 data”; and

16 (B) by adding at the end the following:

17 “(c) INVESTIGATIVE OR LAW ENFORCEMENT OFFI-
 18 CERS.—An investigative or law enforcement officer may
 19 only access or retrieve data recorded or transmitted by an
 20 event data recorder described in subsection (a) in accord-
 21 ance with chapter 124 of title 18, United States Code.”.

22 (2) TABLE OF CHAPTERS.—The table of chap-
 23 ters for part 1 of title 18, United States Code, is
 24 amended by adding at the end the following:

“124. Accessing vehicle data 2730”.

