

Avoiding Wrong Turns Under Consumer Protection Laws

Recent Developments in Litigation Regarding Consumer Driving Data

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Telematics Is Driving New Litigation

Heightened scrutiny of “telematics” to collect consumer driving data has led to an increase in enforcement actions and private litigation implicating insurers.



Roadmap for Today's Presentation

- Overview of Telematics and Usage-Based Insurance
- Consumer Resistance to Telematics and UBI
- Federal Enforcement: FTC Action Against General Motors
- State Attorney General Actions
- Private Class Action Litigation
- Emerging State Legislation
- Risk Mitigation Considerations
- The Road Ahead

Overview of Telematics & Usage- Based Insurance

What is Telematics?

Telematics refers to technology that tracks, gathers and transmits driving behavior data through sensors in vehicles or smartphones, which can then be used to assess risk and inform insurance decisions

Data Collection Methods

- Plug-in devices (OBD-II port)
- Smartphone applications
- Built-in connected car technology
- Insurers may collect data directly or purchase from third-party providers

Types of Data Collected

- GPS location and routes
- Speed and acceleration
- Braking patterns
- Time of day driving
- Mileage
- Phone usage

Usage-Based Insurance (UBI) Programs

What is UBI?

UBI programs use telematics data to price insurance premiums based on the policyholder's driving behavior rather than solely on "traditional" demographic factors

Types of UBI Programs

- Pay-as-you-drive (mileage-based)
- Pay-how-you-drive (behavior-based)
- Hybrid programs combining both

Traditional vs. UBI Rating

- Traditional: demographics, credit, location
- UBI: adds individual driving patterns
- More personalized risk assessment

Benefits of Telematics and UBI

Telematics and UBI programs offer significant benefits to insurers and consumers

For Insurers

- More accurate risk assessment
- Reduced claims costs
- Improved customer retention
- Better fraud detection

For Consumers

- Potential premium savings (~12%-30%)
- Personalized feedback on driving
- Fairer pricing based on behavior
- Real-time accident response

Safety Benefits

Impact on Driver Behavior

Research demonstrates that telematics programs may improve road safety by encouraging safer driving habits through feedback and financial incentives

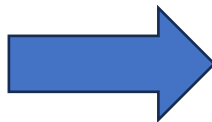
Key Findings

- Nearly 90% of crashes attributed to driver-related factors
- UBI programs may reduce hard braking, speeding, and phone distraction
- Immediate feedback helps drivers recognize and correct risky behaviors
- Financial incentives motivate sustained behavior change

Consumer Resistance to Telematics and UBI

Resistance to Telematics

Consumer Concerns



- Lack of informed consent to data collection
- Privacy
- Misuse or misappropriation by third parties
- Accuracy of collected data

Uptick in Litigation

- FTC Action
- States Attorney General Actions
- Investigations
- Private Class Action Lawsuits

Data Accuracy Concerns



“Sir, this is a roller coaster.”

Federal Enforcement Efforts

FTC Enforcement Action against GM

In 2024, the Federal Trade Commission initiated an enforcement action against General Motors and OnStar, marking a significant development in the regulation of telematics

Key Events

- New York Times article investigated GM's data sharing practices
- Consumer reporting agencies sold consumer reports to insurers
- Consumer complaints about premium increases or denial of coverage
- FTC action against GM/OnStar for disclosure and consent practices
- No insurance companies named
- Consent order reached in 2024

State Attorney General Actions

Common Themes in State AG Actions

State enforcement actions share common themes regarding inadequate disclosure and consent practices

Alleged Disclosure Failures

- Inadequate notice of data collection
- Hidden purposes for data use
- Unclear third-party sharing practices

Alleged Consent Issues

- No affirmative opt-in
- Manipulative enrollment tactics
- Difficulty withdrawing consent

Texas v. Allstate and Arity (Jan. 2025)

Case Overview

The Texas Attorney General filed action against Allstate and Arity for violations of state data privacy and insurance laws

Causes of Action

- Texas Data Privacy and Security Act
- Data Broker Law violations
- Deceptive insurance practices

Key Allegations

- Failure to inform consumers
- No consent for monetization
- Extensive data analysis and sale

Dismissed for lack of jurisdiction.

Private Class Action Litigation

Summary of Claims

Claims Asserted in Private Litigation

Federal Statutes

- Federal Wiretap Act
- Computer Fraud and Abuse Act
- Fair Credit Reporting Act (against data brokers)

Consumer Protection Laws

- State UDAP statutes
- State Wiretap statutes
- Other state data protection/privacy statutes

Common Law Claims

- Invasion of privacy
- Intrusion upon seclusion
- Unjust Enrichment
- Breach of Contract

Multidistrict Litigation

In re Consumer Vehicle Driving Data Tracking Litigation

MDL No. 3115 – Northern District of Georgia (June 2024)

Parties, Claims and Status

- Consolidated over 25 class actions from California, Florida, Michigan, New York and Pennsylvania
- Filed against GM, OnStar, Verisk, LexisNexis Risk Solutions (no insurance companies)
- Alleges violations of Federal Wiretap Act, FCRA, and state consumer fraud acts, among other claims
- Oral Argument on Motion to Dismiss held on September 5, 2025, decision pending

Putative Class Actions Naming Insurers

Siefke v. Toyota, Progressive Cas. Ins. Co. & Connected Analytic Services

No. 4:25-cv-00406 – Eastern District of Texas (April 2025)

Parties, Claims and Status

- Alleges violations of Federal Wiretap Act, Computer Fraud and Abuse Act (Toyota), and common law claims
- Defendants moved to compel arbitration
- On October 10, Court granted limited jurisdictional discovery concerning the issue of contract formation (essentially whether plaintiff consented to arbitration)

Putative Class Actions Naming Insurers

Sims v. Allstate et al.

No. 25-cv-00407 – Northern District of Illinois (May 2025)

Parties, Claims and Status

- Consolidation of 14 related cases
- Claims relate to the use of SDK (software development kits) in third-party apps
- Alleges violations of Federal Wiretap Act, Fair Credit Reporting Act, Computer Fraud and Abuse Act, common law claims and state consumer protection statutes
- Motion to Dismiss fully briefed as of September 15, 2025, decision pending

Federal Wiretap Act: Claims and Defenses

18 U.S.C. § 2511

The Federal Wiretap Act prohibits intentional interception, use, or disclosure of electronic communications.

Party Exception

Defendants are parties to the communication or received consent from one party

Tracking Device Exemption

FWA excludes communications from “tracking devices” which include telematics systems

No Contemporaneous Interception

Data collected within self-contained app, not intercepted during transit affecting interstate commerce

Other Key Defense Arguments

Motions to Dismiss Include:

Preemption of state law claims under FCRA

Defendants are parties to the communication or received consent from one party; in any event FCRA does not require consent of consumer data

Filed Rate Doctrine

Consumers cannot seek damages related to insurance rates that are publicly filed and approved by state regulators

Informed Consent

Case law does not require “a highly granular disclosure”

Conspicuous hyperlinks to privacy policies and terms of use

Proposed State Legislation

Proposed State Legislation Overview

Several states are considering legislation specifically addressing telematics data and connected vehicle privacy; however not many of these bills have gained traction

Approaches Vary

- Outright prohibition (California)
- Purchase bans (Missouri proposal)
- Discount-only rules (New York)
- Comprehensive privacy laws (Maryland)

Common Themes

- Consumer consent requirements
- Data security standards
- Notification obligations
- Consumer rights to access/delete data

Avoiding Wrong Turns

Litigation Risk Factors

Multiple risk factors increase exposure to class action litigation

Key Risk Factors

- Inadequate disclosure of data collection practices
- Lack of clear, affirmative consent mechanisms
- Data sharing without consumer knowledge
- Use of confusing or manipulative enrollment processes
- Multiple parties in data chain without clear responsibility
- Adverse outcomes for consumers (rate increases, coverage denials)

Disclosure

Considerations

- What data is collected (be specific)
- How data will be used (pricing, underwriting, research)
- All third parties who will receive data
- How long data will be retained
- Consumer rights regarding their data
- How to exercise those rights
- User friendly

"Dark Patterns"

"Manipulative" design techniques that obscure key information or steer consumers toward certain choices

Consent

Obtaining Consumer Consent

Clear Opt-In

- Not pre-checked boxes
- Conspicuous placement
- Plain language
- Separate from other consents
- Key features not contingent on opt-in

Documentation

- Record consent and timing
- Review third party consent/disclosures where possible
- Maintain audit trail

Withdrawal Rights

- Easy withdrawal mechanism
- Same ease as opting in
- Clear instructions
- Deletion requests

The Road Ahead

Potential Impacts on Insurers

Buckle Up

The regulatory and litigation landscape will continue to evolve as stakeholders balance innovation with pricing concerns and privacy protection

Potential Future Legal Developments

- Additional enactment and enforcement of comprehensive state data protection laws
- Potential legislation regarding insurers' use of telematics
- Liability solely when obtained from third parties?
- Outcome of pending litigation may influence continued federal and state enforcement actions
- Potential evolution of class action litigation strategies
- Industry development of best practices
- Greater standardization of consent processes and/or requirements

Questions?

Thank you for attending!