

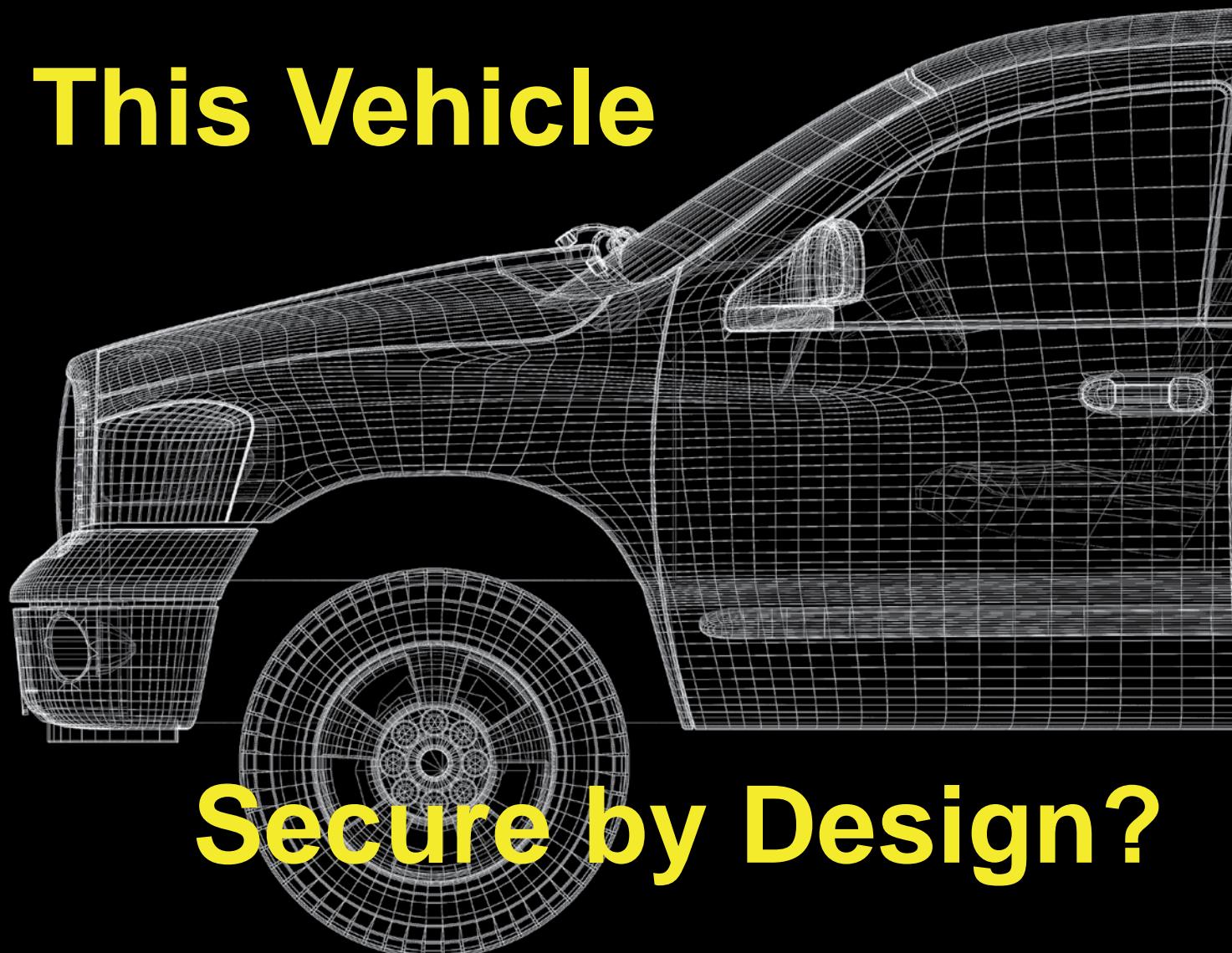


NMA Foundation

Driving Freedoms

Vol. 30 • Issue 3 • Summer 2019

Is This Vehicle



Secure by Design?

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Driving Freedoms

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The NMA Foundation is a non-profit organization dedicated to finding innovative ways to improve and protect the interests of North American motorists.

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to avoid any lapse.**

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CAUTION: NOT FOR THE TIMID

BY GARY BILLER, PRESIDENT, NMA

Past issues of *Driving Freedoms* and NMA e-newsletters are replete with warnings of ongoing efforts to severely restrict drivers and cars under the guise of making roads safer. Late last year, Shelia Dunn began compiling our weekly War on Cars Watch feature on the NMA blog. If you think we are paranoid, keep reading.

A recent communique from Member Stephen Adams of Oregon highlighted how serious the anti-driver sentiment has become. He forwarded the abstract of a forthcoming paper to be published by the New York University Law Review. He suggested that we emulate a similar rhetorical approach, except in reverse, to combat Vision Zero's goal of getting us out of our cars. I thought Stephen was kidding until I read the summary of the NYU monograph, ***Should Law Subsidize Driving?***, by associate professor Gregory H. Shill—ironic, no?—of the University of Iowa College of Law.

Some excerpts:

"A century ago, captains of industry and their allies in government launched a social experiment in urban America: the abandonment of mass transit in favor of a new personal technology, the private automobile. Decades of public and private investment in this shift have created a car-centric landscape with Dickensian consequences.

"In the United States, motor vehicles are now the leading killer of children and the top producers of greenhouse gases.

They rack up trillions of dollars in direct and indirect costs annually, and the most vulnerable—children, the poor, and people of color or with disabilities—pay the steepest price. The appeal of cars' convenience and the lack of meaningful alternatives has created a public health catastrophe."

"This Article . . . begins by identifying a submerged, disconnected system of rules that furnish indirect yet extravagant subsidies to driving. These subsidies lower the price of driving by comprehensively reassigning its costs to non-drivers and society at large. They are found in every field of law, from traffic law to land use regulation to tax, tort, and environmental law. Law's role is not primary, and at times, it is even constructive. But where it is destructive, it is uniquely so: law not only inflames a public health emergency but legitimizes it, extending its longevity."

"The Article urges a teardown of this regime. It also calls for a basic reorientation of relevant law towards consensus social priorities, such as health, prosperity, and equity."

While Professor Shill writes with more flourish than the typical Vision Zero advocate, the thoughts expressed are similar in tone, aggression, and hyperbole. I found myself again

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A Look Closer with NMA Blogger John Carr

John Carr joined the NMA in 1995 and became a Massachusetts state activist three years later. In 2009, he began writing an occasional post for us and has since become a weekly mainstay on the NMA Blog. John has helped a number of tech startups and is currently working in the field of artificial intelligence.

Catch his blog; A Look Closer from NMA's John Carr, every Thursday on our Motorists.org site. John's focus is always on those issues that bother the motoring public whether we realize it or not. The following is an example of John's unique observations from an April 2019 post that focuses on speed limits, statistics, and shenanigans from the Insurance Institute for Highway Safety (IIHS).

Unfit to Fit

In 2017 academic researchers got a lot of press when they showed putting a tiny sticker on a stop sign could turn it into a speed limit sign. The human eye was not fooled. Machine vision was.

In 2019 ticket industry lobbyists got a lot of press when they turned a change in speed limits into a public safety emergency. Statisticians were not fooled. Reporters were.

In machine learning, we call it overfitting. In crash data analysis, it's a blend of overfitting and its twin underfitting. People pretend the flawed model is reality, just like they keep citing a discredited mathematical model of pedestrian fatalities.

Recall that last year the Insurance Institute for Highway Safety lied about a speed limit reduction in Boston. The data showed no change in traffic speed after the city speed limit was reduced from 30 to 25.

Grasping for anything to publish, they looked at cars that were going 36 mph when the speed limit was 30 — a few of those slowed down to 35. Average speed didn't change, so a few must have sped up to 37. The press release boasted of a big decrease in traffic going over 35. In fact, the evidence showed even that ± 1 mph change was not caused by the speed limit reduction.

If you prune the data set and explore enough parameters, you will find a model to make your data fit your conclusion.

This spring the IIHS dumped another load of statistical BS: speed limit increases killed tens of thousands of people. This press release is regurgitated from 2016. As long as it gets attention, they'll keep publishing it. It's been debunked before, and I'm mostly not getting into the statistics.

Instead, I'm going to ask, "so what?" What if we lived in a fantasy world where people drive the speed limit, and deaths go up with speed limit increases?

Among the government's many statistical reports is one called "The Economic and Societal Impact Of Motor Vehicle Crashes." You can use it to put a dollar value on car accidents and traffic delay.

At \$25 per hour, the time we spend driving adds up to around a trillion dollars per year.

The IIHS counted fatalities. Fatal motor vehicle crashes cost us \$176 billion per year. (Most of that is noneconomic cost, the \$100,000 per year society values being alive and well instead of cold and dead.)

The ratio of those costs is over 5:1. If we drive 1% faster and traffic deaths increase by 5%, the time saved cancels out the increase in deaths.



The IIHS claims increasing the maximum speed limit in a state by 5 mph (about 8%) increases total fatalities by less than 4%. In our fantasy world, where people drive the speed limit, and faster driving is deadly, the time savings from speeding up is worth ten times as much as the risk. In other words, IIHS says speed saves. Floor it.

We've been here before. Many years ago Scottsdale, Arizona got some publicity by paying for a report saying speed cameras were good. Subjected to a similar cost-benefit analysis, the report actually said we should ban speed cameras.

I said the IIHS lives in a fantasy world. Here's a clue. Increasing the highest speed limit on any freeway in a state was claimed to increase fatalities by 2.8% on roads other than freeways. When Texas raised the speed limit on a toll road near Austin, people died on city streets in El Paso 500 miles away. Increasing the speed limit in West Texas killed people in Houston, where speed limits had been reduced under orders from the EPA.

The model is a broken exercise in self-gratification. The IIHS is not making a serious attempt to find out why people die on the highway. They are not doing a cost-benefit analysis of traffic policy.

All we have here is another self-serving press release from the ticket industry.



NMA WASHINGTON REPORT

BY ROBERT TALLEY, NMA LOBBYIST

Congress is not immune to discussing the threats drivers face every day. A recent oversight hearing in the House Energy and Commerce Committee titled “Summer Driving Dangers: Exploring Ways to Protect Drivers and Their Families” explored some of the risks and discussed options to address traffic safety.

Mostly focused on technological advances, the hearing considered whether the National Highway Traffic Safety Administration (NHTSA) should mandate new technologies like automatic emergency brakes, blind spot detection, and lane departure warnings, which have been demonstrated to reduce crashes. Moreover, the hearing explored whether cars should be required to alert drivers not to leave unattended children in the back seat or for keyless cars to have an automatic shutoff to prevent unattended, unnecessary idling. Finally, the hearing addressed current safety testing and data storage in electronic data recovery devices. At least 14 new federal mandates or revisions to safety standards were discussed.

Not discussed in any detail was the cost of these technologies and whether the marginal economic or social benefits justify the costs.

In a separate hearing setting the stage for a highway funding bill anticipated next year, NHTSA testified in support of policy changes deemphasizing the 85th percentile standard for speed limits. It advocated automated speed limit enforcement and also endorsed federal funding for state and local high-visibility enforcement programs.

Regarding speed limits, NHTSA expressed concern that reliance on the 85th percentile guidance has led to higher speed limits across the country. Forty-one states have a maximum speed limit of 70 mph, and seven have an 80 mph limit. NHTSA favors consideration of factors that are currently optional in speed limit determination; factors include crash history, road characteristics, road conditions, and pedestrian/bicycle traffic. Requiring states to take these factors into account when setting speed limits could potentially include irrelevant subjectivity, such as social, political,

and personal biases.

NHTSA has also expressed support for automated speed enforcement, including point to point enforcement that is calculated by the average speed of a vehicle between two points. Such automated speed enforcement is not used currently in the U.S.

Perhaps most notably, NHTSA asked Congress for legislative authority to award incentive grants for states to establish a BAC limit of 0.05 or lower for all drivers. While NHTSA has encouraged states to consider lowering the BAC to 0.05, only the state of Utah has officially done so. Should NHTSA obtain authority to link federal funding to lowering the BAC standard for a DUI, it is reasonable to assume more states will follow Utah’s lead.

All of these initiatives are designed to meet NHTSA’s Vision Zero goal of zero deaths and injuries on the nation’s highways. Consideration of incorporating the proposals into federal law will occur over the course of the next year.

Caution: Not for the Timid

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agreeing with Adams, who remarked, “If not taken seriously and rebutted with the same intensity, it could do major damage to driving freedoms.”

These salvos from the anti-driver crowd strengthen my resolve to guide our organization to a heightened level of advocacy as a dominant source of rational, relevant, and reliable highway transportation information. We cannot be passive in the face of those whose goals are to turn driving into political and social instruments.

HOW TO STAY INFORMED ON MOTORIST RIGHTS’ ISSUES

Inform yourself and others through a number of NMA resources.

- *NMA’s Driving News Feed, curated daily: www.motorists.org/news
- *Head to your state page for local news: www.motorists.org/chapters/
- *If you want news headlines delivered straight to your email, subscribe to Driving News Daily: www.motorists.org/nma-subscriptions/
- *If you have not already, subscribe to the weekly NMA E-Newsletter emailed every Sunday: www.motorists.org/nma-subscriptions

Social Media is also a great way to stay current.

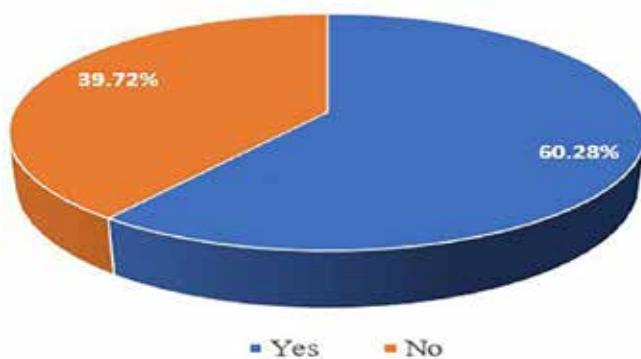
- *Facebook: www.facebook.com/motorists/
- *Three Twitter Accounts: [@motorists](https://twitter.com/motorists) [@motoristnews](https://twitter.com/motoristnews) [@speedtrapx](https://twitter.com/speedtrapx)
- *LinkedIn: www.linkedin.com/company/national-motorists-association/
- *Pinterest: www.pinterest.com/drivingfreedoms/

Many Resources to stay informed only from the NMA!

Should License Renewal Requirements Increase for Advanced-Age Drivers?

Editor's Note: The NMA conducted an online survey between April and June 2019 designed to help us better understand member sentiment about this important issue. Gary Biller's "License Renewal and Older Drivers" column in the Spring 2019 issue of Driving Freedoms provided some context. Early results of the survey were published in NMA E-Newsletter #543, which can be found at <https://www.motorists.org/alerts/surveying-driver-license-renewal-requirements-the-responses-nma-e-newsletter-543/>. We present here the final results of the poll, culled from the responses of several hundred participants. The earlier e-newsletter included some interesting responses to the essay question #5: Please share additional thoughts about advanced-age driver's license renewal requirements, including any not covered in the earlier questions. More of these observations are shared here.

1. Should driver license renewal requirements increase in frequency and/or scope for drivers who have reached a certain age?

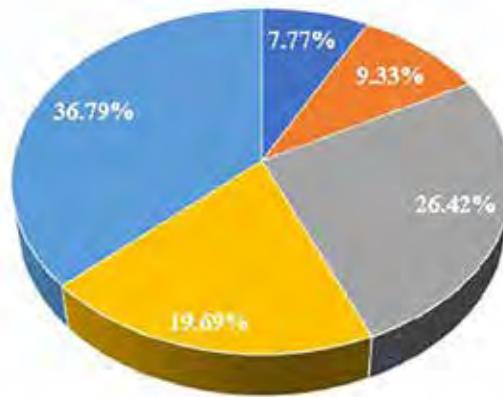


Older drivers in general drive less per year and I believe (due to their realization that they are getting older) drive more carefully. Older drivers should not have undue restrictions placed upon the ability to maintain their driver's license with relative ease. You will not see the older driver driving around in a cyberspace stupor with their eyes firmly fixed upon a cell phone reading emails and typing replies to the exclusion to all situational awareness. I am 73 and consider myself a reasonably accomplished driver having raced SCCA for a number of years. I recently completed a BMW two-day M-performance course and finished third on a wet course figure 8 competition and was competitive in several other events. As we get older, we realize that our reaction times, vision, etc. start to diminish, and additional testing is appropriate to evaluate one's abilities. I have found that younger people tend to underestimate the latent abilities of the older driver and think of "old" as being a considerably younger age than it should be.

I was a chauffeur in south Florida for 5 years, 1986 to 1991. I drove other people's cars, but we also had our own and did a lot of airport and cruise ship work. I was the Prisoner of I-95. Old people on drugs were the biggest menace on the road. They were completely out of it. Pedal confusion was so common that I personally knew someone whose storefront was crashed into, and our local supermarket installed huge anti-tank pylons in front. Retesting was a big issue. I developed the Tennis Ball Test. They come out to DMV yearly. In the waiting room someone unexpectedly just casually lobs a tennis ball to them. If they catch the ball, they're good to go for another year. If they just sit there as the ball bounces off their chest, it's automatic failure and license cancellation. Simple!

I'll be there soon someday hopefully and would gladly submit to more tests to know I'm safe on the road. I don't think more laws/requirements will stop some elderly from driving, though. Like drunk drivers, they feel they are safe even though they may not be and will not obey laws.

2. Above which age should drivers be required to pass additional licensing requirements?



■ Age 60 ■ Age 65 ■ Age 70 ■ Age 75 ■ Age 80 or older

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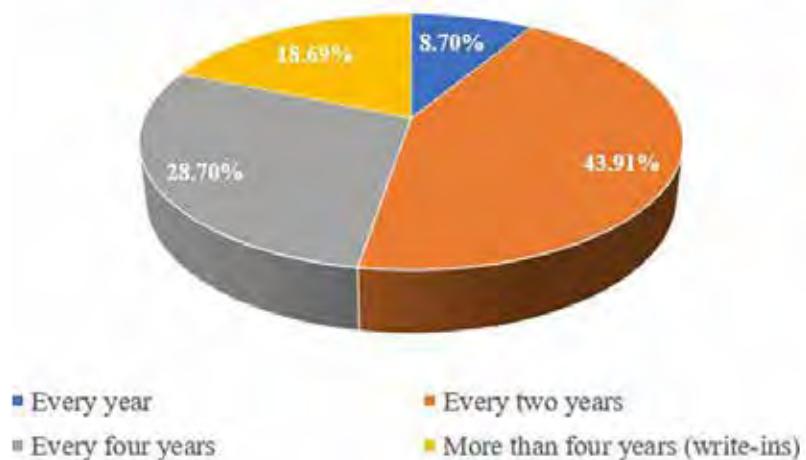
There is a real need to develop autonomous/driver assist devices and systems for vehicles. Compared to the technology required that would allow people to travel further and more frequently into outer space, the engineering behind driver assist/self driving cars should be "a walk in the park." If you think this would be just an expensive extravagance, think again. Have you ever checked into the costs of assisted living arrangements, nursing homes, paid drivers, or caregivers - especially caregivers that drive?

Unless there is actual, statistical evidence that older drivers are more accident prone than younger drivers, additional regulation is a solution without a problem. It would be an unnecessary intrusion into the life of older people.

It would be best if the original driving education that Americans are given were much, much more in-depth and extensive, comparable to what is currently required in Germany to get a driver's license. Driving should be considered a highly skilled activity rather than being considered an afterthought as it is now. All vehicles sold in the US should be equipped with safety and all-weather driving equipment, and all drivers should be familiar with how to use it, items such as fire extinguishers, the equipment to change a tire, tire chains, jumper cables, etc. Using these items correctly should be part of the driving test.

License renewal requirements should not be based on age but on objective criteria reflecting ability to drive so any age can be flagged if issues are discovered. That first poll question was probably asked elsewhere over a decade ago as the justification to create the Graduated Driver's License for new teen drivers. Just look how that got distorted as more feel-good and punitive measures were added over that time, including forcing the requirements on 18-21 year-olds. Would this be another mandate to all in an impacted group to find a few? Wasn't that how mandated car inspections got started?

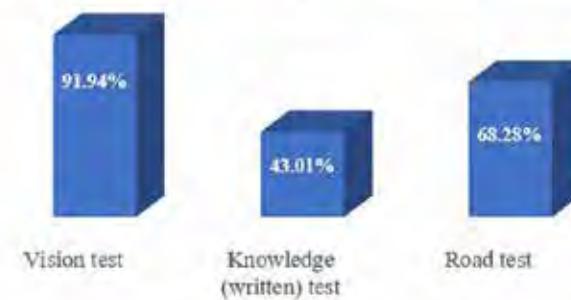
3. How frequently should advanced-age drivers be tested?



While some, if not most, older drivers can remain quite competent into their older years, it would only be prudent to test them periodically to ensure continued competence. Perhaps a driving history could help determine the necessity of or appropriate testing. Some who have driven all their lives never have had any actual skills—drivers who logged relatively few miles and/or primarily drove under very limited conditions, like commuting in congested/slower traffic—while others drove MANY miles, like truckers or those who drove daily in their jobs under varied and all-speed conditions. Those with racing experience or specialized driver training could also be considered. I'm 68 and while I'm among the latter (uncountable millions of miles plus road-racing experience from autocross to vintage enduros), I know the testing is coming and, while I consider it a waste of my time, I'd rather they test us all and keep even one that might be dangerous off the road.

The interval for subsequent testing should be based on performance the last time. Drivers with full skills and vision and knowledge should get at least four years before the next test. An at-fault accident after, perhaps, age 75 should trigger testing. The problem is that there is a wide distribution of health, vision, skill, and mental levels after age 70. The key is to leave healthy seniors alone and to weed from the driving population those with failing skills and mental acuity.

4. What should advanced-age driver's license renewal testing consist of (choose all that apply)?

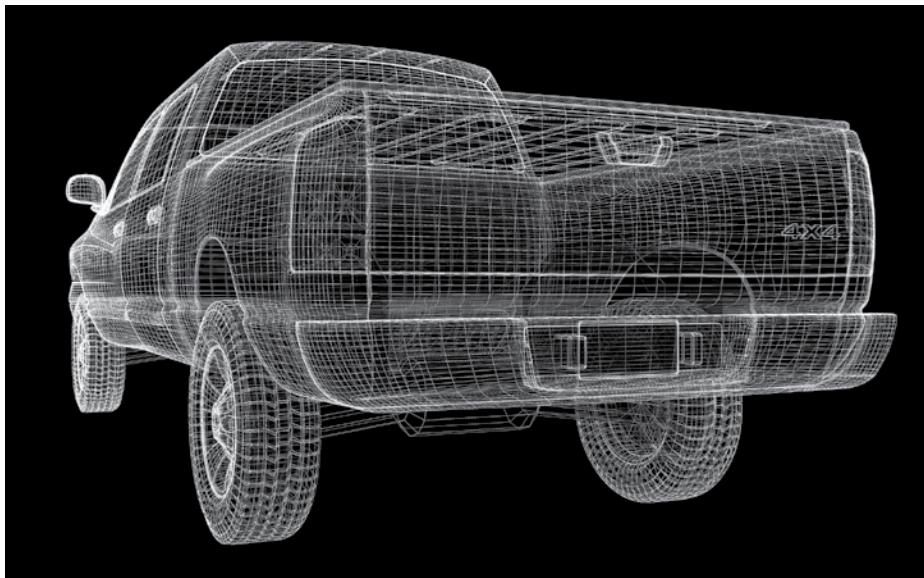


Is This Vehicle Secure by Design?

Did you know that the operating system of a Dreamliner jet uses about 6.5 million lines of programming code, while a late model Ford F150 pick up requires more than 20 times that amount? That is just the basic, everyday truck that close to one million people in the US buy every year, not the connected or driverless model of the future. That same truck has about 100 different computer chips, 10 operating systems, and hundreds of feet of wiring and optical cable.

Cars and trucks today are not yet so much connected to the Internet of Things but instead are more dependent on their own connected electronic systems. The list of computer-controlled and connected features includes a wide variety of conveniences for the modern driver: adaptive cruise control, back-up cameras, GPS systems, infotainment systems, lane assist, and side-mirror cameras. Unfortunately, all of these systems and the associated code can be vulnerable to hacking. As vehicle capability grows, so does the susceptibility of operating systems to outside attack.

The modern vehicle is a moving computer—actually a cluster of computers working together. As cyber-physical systems (CPS), vehicles now interact with both physical elements and software that operate on different spatial and temporal levels.



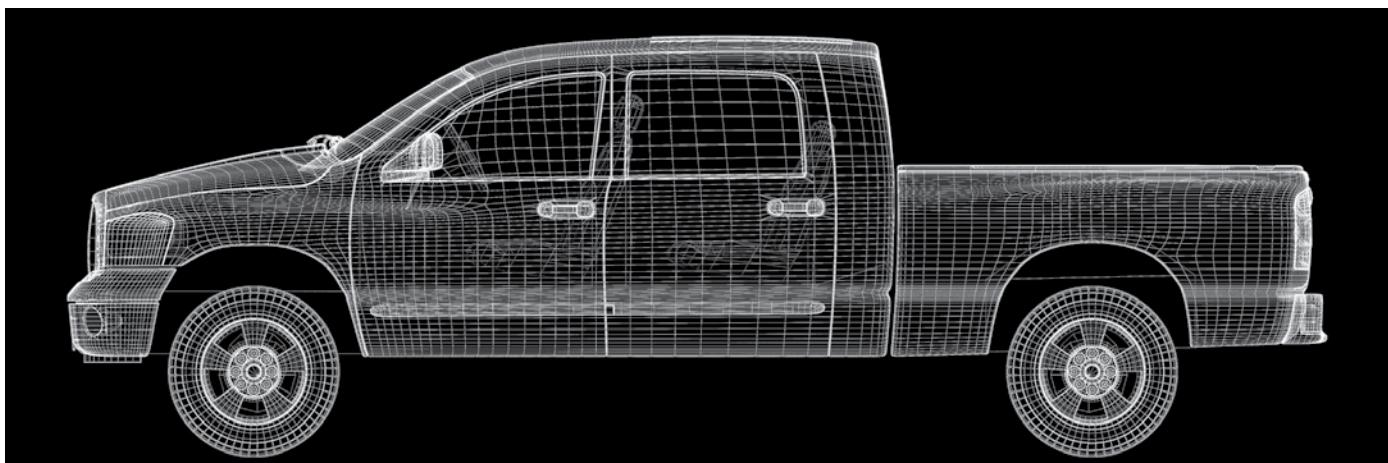
Known for designing and manufacturing vehicles, automakers have also become software companies. For example, Volkswagen announced in June that it aims to boost in-house software development 60 percent by 2025. The company plans to scale up to 5,000 digital experts into a new unit called “Car Software.”

Connected vehicles have become increasingly mainstream, and many models have already started talking to other vehicles, transportation infrastructure, and to the manufacturers, which receive over-the-air (OTA) updates as needed. In the next ten to twenty years, networked ecosystems will only increase with the advent of driverless cars.

With this rush towards connectivity and autonomous driving, are any of our new vehicles secure by design? Probably not.

Inconvenient, expensive, and a risk to people’s physical safety, cyber attacks against connected vehicles are not yet widespread, but as the systems become more sophisticated, so will the hackers.

Two years ago, computer hacking researcher Andrea Palanca and his team demonstrated a vulnerability in a vehicle’s Controller Area Network (CAN) Bus standard. He recently stated in Forbes that the biggest and most difficult barrier is the ability to patch known vulnerabilities in the car’s computers and sensors that control everything from the infotainment center to more critical car functions such



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as acceleration, braking, and steering. The other issue he noted is that a car and its systems will be in use for seven to ten years, which is a much longer time than most other consumer electronic devices.

Today, vehicles are also not generally designed to receive remote, or OTA patching. Currently, applying patches to software problems requires owners to visit dealers when their cars are recalled due to a system problem.

Another issue: All the connected auto technology produced today comes from all over the world as part of the global supply chain with no industry standards in place. Palanca added:

"The priority for car makers for the existing fleet should be to design a sustainable way to maintain a list of embedded computers inside vehicles, and then promptly reach customers should security flaws arise so they can apply patches to components."

Synopsys researcher Dennis Kengo Oka doubts this will ever happen with the current fleet of cars. He said, "It has to be security by design. It will take a few years until we see the next generation of vehicles that are built that way." Another Synopsys researcher, Art Dahmert, agreed, adding that the many different models and configurations of any fleet, current or future, make developing an effective security initiative complicated.

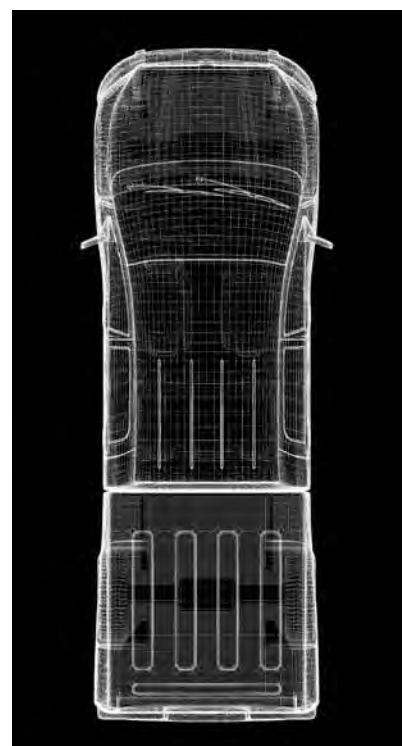
Cyber attacks can come from a variety of sources: criminals, malicious hackers, and even nation-states. Not only do criminals want to steal your car, people inside the vehicle could be subjected to hostage situations or placed in harm's way with a deliberate crash. Keeping personal data safe is also an issue for those who load information into the car's advanced systems and infotainment unit.

Dahmert recommends that motorists perform an assessment of their current vehicles, identifying and even ranking any potential risk areas. Just what are some of the current entry point vulnerabilities?

- **Electronic key fobs.** These convenient devices use a signal to open car doors. On the street, thieves could intercept the signal or steal manufacturing codes to gain access.

- **Mobile phone apps.** If not properly secured when used in conjunction with your car, such as a remote start function, hackers could mine a cellphone for personal data and vehicle functions.

- **Car infotainment systems.** Just like your phone or computer, downloading an infotainment app could introduce embedded malware into the vehicle's system.



- **On-Board Diagnostic (OBD) dongles.** This is a port that provides user access to a vehicle's performance diagnostics. It can also send vehicle information wirelessly when triggered properly, a signal that could be stolen to gain access to a car's CAN system.

As the sales of connected vehicles increase, and more complex systems and software are installed, expect more cyber attacks on cars and trucks. Security measures often do not advance quickly enough, and many vulnerabilities are unknown until a hack occurs in what is called a zero-day attack.

In February, the Ponemon Institute released a report entitled *Securing the Connected Car: A Study of Automotive Industry Cybersecurity Practices*.

The primary conclusion was striking: Automakers are not ready for primetime when it comes to auto cybersecurity. Based on a survey of nearly 600 security experts, product development professionals, and engineers within the auto industry, the conclusions indicated that the majority of respondents were very much aware of the cybersecurity threat. Some other conclusions drawn by the survey:

- Sixty-two percent said they believe a malicious or proof-of-concept attack (which is not necessarily malicious but could expose additional vulnerabilities) is likely in the next 12 months.

- Only 10 percent of the respondents' companies have an established cybersecurity team.

- Forty-four percent related that their companies do not impose cybersecurity requirements on suppliers and other third parties.

- A majority said their organizations don't have the skills, budgets, or resources to make products secure before they reach the market.

Another conclusion of the study: No comprehensive data have been collected to evaluate the auto industry's overall cybersecurity or its capability to addressing the risks.

The cybersecurity industry is calling for a "shift left," which would make security testing mandatory throughout the product development cycle. Currently, most vehicle cybersecurity testing occurs late in the process, which ultimately costs more in time and money to fix potential vulnerabilities. This would be a start, but cybersecurity vehicle standards for automakers also needs to be established worldwide.

As we move ever closer to a connected and perhaps driverless universe, we should insist, as consumers, that the vehicles we drive are secure by design. 

Civil Asset Forfeiture Hurts Everyone

Civil Asset Forfeiture or CAF laws permit law enforcement to seize the property of anyone who is suspected of involvement in a criminal activity. Because the seizure is a civil instead of criminal action, property owners are not entitled to a court-appointed attorney.

Police departments often use this process to obtain the use of assets to generate cash, which is used for equipment purchases, training, and to supplement salaries. Forfeiture has captured the attention of the media, courts, elected officials, and citizens who recognize the injustice of the practice and want the laws changed or eliminated.

US Supreme Court

Earlier this year, the US Supreme Court ruled unanimously in *Timbs v. Indiana* that the Excessive Fines Clause of the Eighth Amendment applies to states. According to the American Civil Liberties Union (ACLU), the issue is not yet resolved. The Court sent the case to the lower court to determine if the facts of the forfeiture case violated the Excessive Fines Clause. The *Timbs* decision requires the Indiana Supreme Court to determine if the forfeiture was excessive given the nature of the crime and thus violated his Eighth Amendment rights. Plaintiff Tyson Timbs was arrested for having less than \$300 of drugs, but his \$45,000 vehicle was confiscated.

The Supreme Court recognized in this case that the Constitution guarantees freedom from excessive monetary fines and fees as a fundamental right. Left unresolved is how this ruling will affect the thousands of people who have already had property confiscated by government agencies. The ACLU contends on its website that *Timbs* should be taken as an invitation to litigate CAF claims more often and to encourage courts to give the Excessive Fines Clause greater protection from government overreach.



US Congress

Several US Representatives recently introduced HB 1895, the Fifth Amendment Integrity Restoration Act. The FAIR Act would prevent citizens from having personal property seized without due process and ensure additional safeguards to increase governmental accountability. The hope is to restore an individual's right of innocence until proven guilty—rather than proof of innocence after the fact.

In June, by a voice vote, lawmakers adopted an amendment to the Justice Department funding that would restore a prohibition on allowing local law enforcement to turn cases over to federal agents who operate with few restrictions. This basically plugs the loophole that local law enforcement uses to get around state law in order to keep more of the loot.

The FAIR Act is still in play and is a good beginning for national CAF reform. Write your representative today to ask for vigorous support of the FAIR Act. To find out more about this important legislation, check out the NMA Bill Tracker: <https://www.motorists.org/alerts/us-hb1895/>.

State Legislatures

So far in the 2019 legislative season, civil asset forfeiture reform bills passed in Alabama, Arkansas, Hawaii, Michigan, and North Dakota. Further legislative study continues in South Carolina. Reform bills did not pass legislative committees in Minnesota, Tennessee, Texas, and Utah. The conversation on CAF continues in the right direction, but more work is needed at the state and local levels.

For several years, Alabama lawmakers have tried to pass forfeiture reform, and this year some progress has been made. The Alabama District Attorneys Association created the voluntary Alabama Forfeiture Accountability System. Local district attorneys will use the database to track the dates and locations of property seizures, the status of criminal offenses associated with the seizures, and the final disposition of the case including if and how innocent citizens got back their property. In April, the Governor announced that the US Justice Department gave \$38,336 for the database. Alabama joins 37 other states in maintaining a central asset

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forfeiture database. Alabama lawmakers also passed a reform bill this year. SB 191 passed, despite the opposition of the Alabama District Attorneys Association.

Both chambers of the Arkansas legislature passed CAF reform (SB 308) unanimously. Deputy Director of the Justice Network, Jenna Moll, called the passage of the Civil Asset Forfeiture Reform Act of 2019 “a watershed moment for forfeiture reform efforts in the US.” Police and prosecutors will now need to obtain a criminal conviction in most cases before seizing property.

Arkansas joins three other states—Nebraska, New Mexico, and North Carolina—in severely curtailing or abolishing asset forfeiture. Between 2010 and 2018, Arkansas seized nearly \$88 million in cash, about \$9.7 million annually. This amount does not include the value of roughly 4,900 vehicles, 3,300 weapons, and 1,000 other items, according to University of Central Arkansas economist Jeremy Horpedahl.

In Hawaii, lawmakers passed a reform bill that prohibits forfeiture without a felony conviction. The bill also requires that the proceeds of forfeited property be deposited in the state’s general fund. As of the end of June, Governor David Ige stated that he would veto the reform bill claiming “We don’t see any kind of abuse like this in our state.”

Michigan police officers and prosecutors now need a conviction before seizing assets valued at less than \$50,000. Governor Gretchen Whitmer recently signed SB 2 into law. In 2017, police departments in the state confiscated assets valued at more than \$13 million. In the same year, 736 individuals who surrendered property were never charged with a crime. Michigan ACLU spokesman Kimberly Buddin said her organization applauds the new law but would like to see legislators go further and pass legislation that prevents police departments from keeping forfeited cash.

Minnesota lawmakers failed to pass

CAF reform legislation in 2019. Two bills, SB 2155 and HF 1971, were not voted out of committee. The bills would have allowed limited participation in the federal Equitable Sharing Program, and eliminate forfeiture without a conviction.

Until recently, the Institute for Justice awarded the state of North Dakota a grade of F in its Policing for Profit Report. Before Governor Doug Burgum signed House Bill 1286 into law, officers could seize property by declaring probable cause and keep 100 percent of the assets worth less than \$200,000. Police now must obtain a conviction before seizing assets. The bill’s sponsor, Rep. Rick Becker, expressed disappointment that the bill was watered down and is considering a referendum for the 2020 ballot that would further strengthen the state’s forfeiture law.

After a two-year newspaper investigation into South Carolina forfeiture was reported, more than 100 House members cosponsored reform bill H 3968, which would have eliminated authorization to seize property without a conviction. Unfortunately, the legislation stalled when lawmakers realized how existing forfeiture laws would be affected. House Speaker Jay Lucas formed a committee to study how CAF is currently being used in the state. The group has already started work and expects to introduce a new bill for the 2020 legislative session.

Before and during the 2019 legislative session, Tennesseans against Civil Asset Forfeiture gathered 39 cosponsors for HB 340. The legislation supported due process and plugged the federal government Equitable Sharing Program

loophole. Law enforcement lobbied hard against the bill and in March, the House Civil Justice Subcommittee placed HB 340 in “summer study,” which generally means the bill is unlikely to return.

Unfortunately, Texas lawmakers will not be able to take up forfeiture reform again until 2021 because state lawmakers meet every other year. Two bills, HB 182 and HB 404 would have required a criminal conviction before assets could be taken. All forfeitures would also have been required to be deposited in the general fund of the county where the seizing agency was located. Neither bill made it out of committee.

Texas law enforcement is currently allowed to keep cash proceeds of seized property. State agencies have been among the most active participants in the federal Equitable Sharing Program. From 2000 to 2013, law enforcement received a total of \$349.7 million or \$25 million annually in federal-sharing proceeds.

Utah State Senator Todd Weiler sponsored SB 109, which would have eliminated a loophole he said was a “pay to play” incentive that allows police under current law to skirt due process. The bill would require police to take asset seizure cases to state rather than federal courts where forfeiture controls are lighter. Also, agencies could apply for grants from the state’s asset forfeiture pool without having to seize assets to qualify. The legislation passed the Senate unanimously but bogged down in the House. The Libertas Institute and the ACLU of Utah supported the bill. The Utah Chiefs of Police Association and the Utah Attorney General’s office contended SB 109 was an unfair slap at law enforcement.

Civil asset forfeiture is a focal point of the NMA’s national legislative agenda. Policing for profit, with motorists often as prime targets, violates the rights of innocent people. For those convicted, the excessive forfeiture frequently exceeds the nature of the crime.



Ongoing NMA Activity in the Keystone State

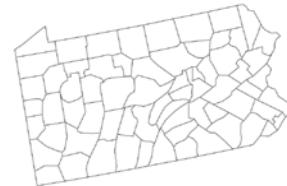
NMA, OOIDA Appeal Dismissal of Pennsylvania Turnpike Toll Lawsuit

In April, Judge Yvette Kane of the United States District Court for the Middle District of Pennsylvania dismissed a complaint filed one year earlier by the Owner-Operator Independent Drivers Association and the National Motorists Association. The lawsuit had charged the Pennsylvania Turnpike Commission (PTC), the governor, the state secretary of transportation and others with excessive tolling and redirecting a substantial amount of the proceeds to non-turnpike projects.

Plaintiffs OOIDA and the NMA immediately announced that they would appeal the verdict to the Third Circuit Court of Appeals. While disappointed by the decision, plaintiff attorneys from The Cullen

Law Firm noted that the judge did not rule against the primary commerce clause argument—see, <https://www.motorists.org/alerts/taking-tolling-task-nma-weekly-e-newsletter-480/>—but rather decided the precedents cited weren't applicable, thereby teeing up the case for appeal.

While the original lawsuit was pending in District Court, two Pennsylvania officials had interesting reactions under the pressure that the \$450 million annual payments from the PTC to PennDOT were being threatened. Auditor General Eugene DePasquale stated that the Turnpike Commission was on a “road to ruin” with mounting debt despite significant



toll increases each year for the past decade.

Governor Tom Wolf went even further, noting during a radio interview that, “People using the turnpike are paying too much. The turnpike is really driving business away... It's just too expensive for the turnpike and turnpike customers.” He added, “The turnpike tolls were supposed to be temporary. [They] turned out to be burdensome . . .”

Meanwhile, PTC has resumed borrowing hundreds of millions of dollars earmarked in large part for state mass transit systems, signaling the likelihood of continuing significant annual toll hikes unless the OOIDA/NMA appeal is successful.

Whistleblowers Claim Fraud at Philadelphia Parking Authority's Red-Light Camera Program

The person who originally contacted the NMA about alleged mismanagement and fraud at the powerful Philadelphia Parking Authority (PPA)—see “Whistleblowers” in the Winter 2018 issue of Driving Freedoms (<https://www.motorists.org/newsletter/>)—has gone public with his accusations. Andrew Dankanich, former head of the PPA’s red-light camera program, and a work colleague identified themselves in a TV interview with an investigative reporter who the NMA originally contacted on Dankanich’s behalf.

It is unclear whether the related FBI forensic accounting probe of the PPA that began around November 2017 continues. But the case has received renewed attention because of public charges leveled by Dankanich and Nicholas Mar-

randino, former quality assurance officer at PPA. The pair of ex-employees have asked a federal judge to provide them with whistleblower protection.

Among the Dankanich/Marrandino allegations:

- A quid pro quo existed between Conduent, the PPA’s red-light camera vendor, and Philadelphia city officials. Former PPA head Vincent Fenerty Jr. renewed a \$100 million contract with Conduent in 2014 and 2017 and then refused to collect from the company after an internal audit showed Conduent owed the PPA \$25 million in damages for contract violations. Former Philadelphia Mayor Michael Nutter left office in 2016 and gained a lucrative seat on the Conduent board of directors, which paid him \$295,000 in 2018.

- The PPA issued photo tickets to motorists even though agency reviews showed no violations occurred. The red-light camera program raked in \$20 million in fines from April 2017 to March 2018 after issuing an average of nearly 600 tickets a day for the year.

- PPA paid a settlement to another camera vendor, American Traffic Solutions after it sued the agency. Reportedly, the funds paid came from red-light camera revenues that were to benefit Philadelphia schools.

Amid this turmoil, the Philadelphia City Council voted in May to allow the PPA to run speed cameras in the city. As Dankanich previously told the NMA, “If this is how badly the PPA runs its red-light camera program, how do you think it will handle speed cameras?”



DRIVING NEWS

This information is current at time of printing. Get daily driving news updates from across the country through the “NMA Driving News” area of our website www.motorists.org/news/. For even more in-depth coverage of motorists’ issues from some of the country’s leading commentators, visit the NMA Blog at www.motorists.org/blog/.

Arkansas

Governor Asa Hutchinson has signed into law a speed limit increase to 75 mph on controlled-access four-lane highways outside of urban areas and to 65 mph on similar highways in urban areas. The limits go into effect on or after July 2020.

Arizona

In April, the Phoenix City Council deadlocked on the city’s Vision Zero plan which had mixed reviews from the public. This essentially killed the plan for now.

California

The San Francisco Board of Supervisors recently passed the Stop Secret Surveillance ordinance. The ban effectively outlaws the city’s agencies and police department from using facial recognition. It also requires officials to get city approval before purchasing other kinds of surveillance equipment, including license plate readers and camera-enabled drones.

During several recent public meetings in San Marino, residents asked the city to give \$34 million back that was earmarked for five street projects. For almost 60 years, residents in San Marino and other San Gabriel Valley communities have debated and litigated the completion of the 710 freeway gap between I-10 and I-210. Most recently, plans for a 6.3 mile underground tunnel was defeated. In a 2008 referendum, voters even decided on Measure R which would have allowed funding for finishing this last leg. Now, with the collected Measure R money, the Metropolitan Transportation Authority has awarded \$515 million for a total of 34 street projects to seven cities in east Los Angeles County to help alleviate congestion.

San Marino residents say though that these projects will just increase commuter traffic in their city, which is what they do not want.

Colorado

The city of Denver announced that the police department will begin testing GPS trackers that would be shot at fleeing vehicles with the hope of cutting down on potentially dangerous police chases. The soup can-sized device is propelled by compressed air from a double-barrel launcher on the front of a patrol car. After the device sticks to a suspected vehicle, officers back off, while a supervisor tracks the car and finds a safer location to make the stop.

District of Columbia

The DC Council wants to recruit up to 80 residents (10 in each ward) to become the city’s parking monitors. These “citizen cops” would have the ability to issue tickets for blocking crosswalks, bike lanes, and bus stops. Critics say the plan could put citizens at risk of road rage incidents, while also creating more potential for favoritism and discrimination in traffic crackdowns.

Delaware/Maryland

The state of Delaware recently opened a new US Route 301 toll road. Many drivers, including commercial truckers, are not taking the tollway, and instead are diverting onto rural Cecil County, Maryland roads. By law, trucks with four axles are required to take the toll road, and both state highway patrols have been working together on special enforcement activities to find truck toll diverters. Delaware is also providing toll discounts through the EZ-Pass program to entice regular commuters onto the 301.

Florida

Governor Ron DeSantis recently signed into law a controversial toll bill (SB7068) that will build three toll roads on the relatively rural western side of the state. Supporters say this plan will help prepare for future growth and assist with smoother disaster evacuations. Detractors claim that the new toll roads would devastate large rural and natural tracts of land.

The SunPass billing scandal is still not resolved. Last June, the company Conduent attempted a week-long billing system upgrade which ended up throwing the whole state tolling system into chaos. Problems with automatic billing persist. At the end of March, the DOT announced that it fined the company \$4.6 million dollars for the problems, and also announced that it replaced its director of toll systems. FDOT Secretary Kevin Thibault wants to assess maximum performance penalties allowed under the state’s \$600 million contract with Conduent. The DOT announced that SunPass customers will again be receiving fines for missed payments by the end of June.

Hawaii

In May, the Honolulu DMV announced that 72 percent of all the 167,000 motorists who renewed their driver’s license over the past 10 months used the appointment system. Drivers can now make appointments up to six months in advance.

Iowa

Windsor Heights, a suburb of Des Moines with a population just under 5,000, has initially decided to increase the speed limit on its main thoroughfare from 25 to 30 mph. Some city business owners previously expressed their concerns that the combination of low speed limits and multiple speed cameras kept customers away. The city council will hold at least two more public hearings on the ordinance before adopting it later this summer.

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Illinois

Governor J.B. Pritzker is expected to sign into law HB 1631, which would require police officers to record the race of drivers during traffic stops and gather other data intended to identify signs of racial profiling. Fifteen years ago, controls recommended by the Illinois Traffic Stop Study were implemented but had a sunset clause of June 30, 2019. Connecticut and North Carolina have similar laws, but many states keep little race data associated with traffic stops.

Louisiana

The New Orleans newspaper *The Advocate* reported that more than 25 towns in 2018 generated at least half their revenue from speeding ticket fines. Sixty other municipalities raised 30 percent of revenue this way. The newspaper also reported that 194 of the state's 304 towns raised more in traffic fines and forfeitures than in property taxes. Robert Scott of the Public Affairs Research Council of LA said, "That's the symbol of a broken system when you have to depend on preying on people to pay your bills." Henderson (pop. 1,771), one of the more notorious speed trap towns, raised \$1.1 million dollars in fines last year. That accounts for 85 percent of the town's revenue stream.

Montana

Speed limits for commercial truckers will increase from 65 to 70 mph on both interstates and state highways after Governor Steve Bullock signed HB393 into law. Before, truckers had different speed limits for day and night and will continue to have lower speed limits than cars. No word yet on when the updated speed limits will go into effect.

New York

Manhattan will become the first US city to utilize congestion tolling. The state projects the driving tax will generate \$1.5 billion a year to help support repairing the

city's subway system. Drivers will start paying in 2021, but specifics have not yet been ironed out by officials. Other US cities are also considering congestion pricing.

New York City's reputation as a giant speed trap will be enhanced by a new law that will grow the current roster of 140 speed cameras to as many as 2,250 of the photo enforcement devices across the five boroughs and their 750 school zones. The new law will ticket drivers from 6 AM to 10 PM on weekdays. At least 700 cameras will be deployed this summer in time for the start of school.

Oklahoma

Governor Kevin Stitt recently signed into law an increase in speed limits on turnpikes from 75 to 80 mph and on certain state highways from 70 to 75 mph.

In November, the state kicked off the Uninsured Vehicle Enforcement Diversion or UVED program which uses automatic license plate readers to find uninsured motorists. As of mid-March, more than 15,000 car owners received warning letters. About 700, or five percent of those flagged, had insurance. One of the biggest issues for the mistakes: Improper registration of used vehicles that have changed ownership.

Pennsylvania

Small town police departments are going out of service because cities cannot find enough part-time officers. The pay is generally between \$12 and \$15 dollars an hour, with no benefits. Many police academy graduates work a number of these jobs until they can land a full-time position. The state police reported that they are now patrolling either full or part-time 1,711 communities, which accounts for nearly two-thirds of the state's municipalities and nearly 30 percent of the population. Despite that, the US Department of Justice recently found that the commonwealth has more local police departments than any other state.

Texas

Red-light cameras are now banned in the state. Almost immediately after Governor Greg Abbott's signature on June 2nd, 33 municipalities stopped operating the devices. Due to a grandfather clause in the law, some cities may still elect to issue camera tickets until their current contracts expire.

Austin has figured out a new way to raise funds for the city's infrastructure and parking enforcement—\$30 permits for each of the 15,000 scooters (from seven different Mobility as a Service companies) that are blanketing the city. Between May 2018 and March 2019, the city raked in more than \$715,000 from permit fees and about \$35,000 from impound fines. Austin is also working on an ordinance for police to start fining scooter riders who break the law.

Utah

The state DOT has installed a new radar system, not to catch speeders, but to warn drivers of wildlife crossing Route 73 in a one-mile stretch that has seen about 100 deer-related collisions since 2015. The radar will detect large animals in the vicinity and then flash an alert to drivers.

Washington State

In April, Seattle announced it would not build all one hundred miles of protected bike lanes/greenways as promised in its Bicycle Master Plan. The reversal is due to the cost (an unbelievable \$12 million/mile), and a lack of funding from the federal government. A week before this announcement, Seattle's DOT cancelled the highly contentious 35th Avenue Northeast bike lane project. Seventy percent of businesses along this corridor wrote to complain about taking parking spaces away for the bike lanes. The road diet, however, will still be built, bringing traffic down from two lanes in both directions to one lane either way with a left hand turn lane in the center.