

Insurance Buyers' News



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Vehicle Safety

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Cyber Threats Drive Concern About Vehicle Vulnerability

The technological sophistication of today's cars and trucks is making them increasingly vulnerable to cyber security threats.

The software operating in today's vehicles has about 100 million lines of code. "It would be easy to say the modern car is a computer on wheels, but it's more like 30 or more computers on wheels," Bruce Emaus, the chairman of SAE International's embedded software standards committee, told the *New York Times* recently.

Although there have been relatively few cyber-related incidents so far, they have exposed some important vulnerabilities. Some examples include:

- In 2015, a team of researchers successfully hacked into a Jeep Cherokee's infotainment system, gaining control of the vehicle's engine, brakes, and other critical functions. They were able to do this through a vulnerability in the vehicle's cellular

connectivity system.

- In 2016, researchers were able to remotely access and control a Tesla Model S by exploiting a vulnerability in the vehicle's software. They were able to unlock the doors, start the engine, and even apply the brakes while the car was in motion.
- In 2016, security researchers were able to take control of a Nissan Leaf's climate control system, accessing it through the vehicle's mobile app. They were able to turn on the vehicle's air conditioning and heat, as well as drain the car's battery.
- In 2013, a team of researchers were able to hack into a Toyota Prius and disable the vehicle's brakes while it was traveling at high speeds. They were able to do this by exploiting a vulnerability in the vehicle's wireless communication system.

Distracted Driving Up by 12 Percent

APRIL 2023 - The National Highway Traffic Safety Administration (NHTSA) has released its analysis of the 2021 fatal crash data. The analysis underscores the risk of distracted and other forms of risky driving. Fatalities in distraction-affected crashes increased by 12% from 3,154 in 2020 to 3,522 in 2021, a total of 8.2% of all fatalities reported.

A distraction-affected crash is any crash where a driver was identified as distracted at the time of the crash. Even with these high numbers, distraction is likely underreported because the behavior is difficult to detect during crash investigations, and police reports likely understate its incidence.

"These new data tell us just how much harm distracted driving can cause and why a nationwide campaign is more important today than ever," said Sophie Shulman, NHTSA's Deputy Administrator. "We need to

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- * In 2018, researchers were able to hack into a BMW's infotainment system and access the vehicle's GPS data, microphone, and phone contacts. They were able to do this through a vulnerability in the vehicle's ConnectedDrive system.
- * More recently the press reported a prank in Russia where dozens of cabs converged on a single address in central Moscow, causing a major traffic jam. In addition, a 19-year-old security researcher blogged about how he took advantage of a bug to remotely hack into more than 25 Teslas — "By accident. And curiosity," he noted.

The main cyber threats to vehicles are:

- 1 **Cybersecurity threats:** With the increasing use of electronic control units (ECUs) and internet connectivity, vehicles are becoming more vulnerable to hackers who can gain access to the vehicle's systems and take control of critical functions such as brakes, acceleration, or steering.
- 2 **Software glitches:** As vehicles become more reliant on software, there is an increased risk of bugs and glitches that could cause malfunctions. A software bug could, for example, cause the vehicle to suddenly accelerate or shut down

while driving.

- 3 **GPS tracking:** The GPS systems used in modern vehicles are vulnerable to hacking and tracking. Hackers could gain access to the GPS system and track the vehicle's location or even use it to steal the car.
- 4 **Sensor malfunction:** Modern cars are equipped with a wide range of sensors that are used to monitor everything from the engine's performance to the car's position on the road. If a sensor malfunctions, it could cause the car's systems to fail or provide incorrect information to the driver.
- 5 **Over-the-air updates:** Some car manufacturers now offer over-the-air updates to their vehicles, which can introduce vulnerabilities if not properly secured. Hackers could potentially intercept these updates and use them to gain access to the car's systems.

Research and Solutions

Fortunately, there are several organizations and initiatives working to reduce vehicular cyber risk. They include:

- * The National Institute of Standards and Technology (NIST), which has developed and promoted cybersecurity best practices guidance in the United States.
- * The Automotive Information Sharing and Analysis Center (Auto-ISAC), an industry-wide organization formed by automotive manufacturers to share and analyze cyber threats and vulnerabilities in vehicles.
- * The Cybersecurity and Infrastructure Security Agency (CISA), which is a federal agency responsible for protecting the nation's critical infrastructure from cyber threats. CISA collaborates with the automotive industry to provide guidance and best practices for securing

This Just In

use all the tools we have to reduce distracted driving: state laws, education and outreach, and disabling of phones while driving can all work to save lives."

When coupled with new data from NHTSA's "The Economic and Societal Impact of Motor Vehicle Crashes, 2019," the impact of distracted driving becomes even clearer. That report, which was released in February, estimated distraction by observing driver behavior in the real world. The study found that distraction was involved in 29% of all crashes, resulting in 10,546 fatalities, 1.3 million nonfatal injuries, and \$98.2 billion in economic costs in 2019.

connected vehicles and their supporting infrastructure.

- * The Security and Privacy in Your Car (SPY Car) Act. This proposed legislation aims to establish cybersecurity standards for vehicles sold in the United States. It would require automakers to develop and maintain cybersecurity policies and implement measures to protect against hacking and unauthorized access.
- * The Federal Automated Vehicles Policy: a set of guidelines issued by the National Highway Traffic Safety Administration (NHTSA) to promote the safe and secure development and deployment of autonomous vehicles.

Overall, the increasing reliance on electronics in modern vehicles has made them more vulnerable to a range of potential vulnerabilities, highlighting the importance of robust cybersecurity measures to protect against these risks. The automotive industry, regulators, and policymakers are increasingly recognizing the importance of cybersecurity in vehicles and are taking steps to address this issue. ■

Tort Reform Movement Gains Momentum in Florida

In April, Florida's Governor DeSantis signed a tort reform bill that will have a significant impact on insurance litigation.



The bill modifies the bad faith framework, eliminates one-way attorneys' fees, shortens the statute of limitations for negligence claims and changes the comparative negligence standard. In response, Florida attorneys moved to file more than 25,000 insurance claim cases before the law went into effect.

The Florida tort reform bill is the latest in a multi-decade effort to reduce litigation costs and quell the effects of social inflation.

History of the Tort Reform Movement

The origins of the tort reform movement can be traced back to concerns about the rising costs of liability insurance and its impact on businesses, particularly in the healthcare industry. In the early 1980s many physicians and hospitals were facing high insurance premiums and were forced to practice defensive medicine to protect themselves against lawsuits. Defensive medicine was driving up healthcare costs and even causing a shortage of doctors in certain areas.

In response to these concerns, various interest groups began advocating for changes to the civil justice system. They argued that the system was biased in favor of plaintiffs and allowed frivolous lawsuits to proceed, resulting in excessive damages awards that were often unrelated to the actual harm suffered by the plaintiff.

Since then, tort reform measures have been enacted in various states across the United States. Here are a few examples:

Texas: In 2003, Texas passed sweeping tort reform legislation that placed caps on non-economic damages in medical malpractice cases, limited the liability of businesses in certain situations, and made it more difficult to sue for product liability.

Missouri: In 2020, Missouri passed a law that places limits on punitive damages in personal injury and wrongful death cases. The law also requires

plaintiffs to prove that a defendant was more than 50% at fault in order to recover damages.

Oklahoma: In 2019, Oklahoma passed a law that places a \$350,000 cap on non-economic damages in personal injury cases, and a \$300,000 cap on non-economic damages in wrongful death cases. The law also requires plaintiffs to provide more detailed information about their claims before filing a lawsuit.

Indiana: In 2018, Indiana passed a law that limits the amount of damages that can be awarded in medical malpractice cases. The law places a cap of \$1.25 million on total damages, including both economic and non-economic damages.

Florida: In addition to the tort reform measures signed by Governor DeSantis this year, Florida has also passed other tort reform laws in recent years, such as a law that places limits on the amount of damages that can be awarded in auto accident cases.

Congressional Efforts at Tort Reform

Debates about tort reform in Congress have been divisive and little legislation has been passed, except for:

- ✳️ **CAFA** – the Class Action Fairness Act (2005) established federal jurisdiction over certain large class-action lawsuits that previously could only be heard in state courts. The law was intended to prevent forum shopping and to provide defendants with greater protections against

frivolous lawsuits.

- ✱ ACA – the Patient Protection and Affordable Care Act (Obamacare), passed in 2010, includes reducing healthcare costs by limiting medical malpractice lawsuits and encouraging the use of alternative dispute resolution methods.

Goals of Tort Reform

Overall, the goals of tort reform are:

- ✱ Lower insurance rates: By reducing the number of frivolous lawsuits and capping damages, insurance companies may be able to offer lower premiums to their customers. As the *Wall Street Journal* pointed out in an editorial about this year's Florida tort reforms, "Collusive agreements between physicians and lawyers to inflate charges will no longer be protected by attorney-client privilege. Lawyers could previously ensure that juries saw only the inflated amounts billed by their hand-picked doctors, and juries often based awards on those trumped-up bills."
- ✱ Faster resolution of cases: The new law requires plaintiffs to provide a detailed demand letter to defendants before filing a lawsuit. This could lead to faster settlement negotiations and a quicker resolution of cases, which would benefit both plaintiffs and defendants.
- ✱ Reduced healthcare costs: Medical malpractice claims can result in large settlements or verdicts, which can drive up healthcare costs. The new law limits the amount of damages that can be awarded in medical malpractice cases, which could help to reduce healthcare costs for patients.
- ✱ Protection for businesses: The new law provides protection for businesses from "frivolous" lawsuits, which could help to reduce the cost of doing business in Florida. This could potentially lead to more job creation and economic growth in the state.

It's worth noting that tort reform is a contentious issue, as can be seen by the lack of legislation at the Congressional level. Supporters argue that tort reform can help to reduce the number of frivolous lawsuits and lower the cost of doing business, while opponents say that it can limit justice for individuals harmed by the actions of others. ■

Protect Yourself When Working with Contractors

One of the most effective and simplest ways of protecting your organization from liability due to contractors' and subcontractors' operations is with Additional Insured coverage.

Liability insurance covers you from losses due to claims your company, its employees or products or services caused harm or wrong to a third party. Sometimes, however, your organization can be considered "vicariously liable" when another business, such as a subcontractor, causes harm when doing work on your behalf. In these cases, you would want the contractor or other business' policy to apply rather than yours.

There are two ways to obtain coverage under another entity's policy. In the first, "contractual indemnity," your contract with the other party requires it to "indemnify," or cover you for any liability costs resulting from your joint operations. Alternatively, you can also require the other party to name your firm as an additional insured under its insurance policy.

However, obtaining additional insured status often provides greater

protection than contractual indemnity. Some states and courts look unfavorably on contractual indemnity because subcontractors who want business sometimes have little bargaining power. Additional insured coverage, on the other hand, causes no such problems.

For your contractor to provide you with "additional insured" coverage, it must obtain an additional insured endorsement, which modifies its general liability policy. Unlike the policy owner (or "named insured"), the additional insured has no responsibility for keeping any records needed for determining premiums, paying premiums or reporting claims.

When you require additional insured coverage under another organization's policy, you'll probably ask for a certificate of insurance to provide proof of coverage. Be aware that the certificate provides proof that the coverage existed on the date the certificate was issued. The named insured



can cancel coverage without providing notice to you. You can request the insurer to provide you thirty days' notice of cancellation or nonrenewal of the endorsement. However, the certificate is not part of the policy and not binding on the insurer. In the case of large or high-risk projects, you can request that the contractor modify its policy with an endorsement that obliges the insurer to provide this notice.

Considerations for Subcontractors

If the shoe is on the other foot and you are a subcontractor, obtaining additional insured endorsements for contractors and providing the required certificates can be an administrative hassle. To solve this problem, you can

buy a blanket additional insured endorsement. This provides additional insured coverage to any party with which you enter a contractual agreement (typically a construction contract or equipment rental contract).

Blanket additional insured endorsements are not as desirable for the additional insured. Blanket endorsements do not name specific additional insureds, so the insurer cannot provide notice of cancellation or nonrenewal. They usually provide narrower coverage as well — for example, many of these endorsements state that coverage ends when operations are completed. This could be construed to eliminate coverage for claims that occur during operations but aren't filed until later.

For more information on covering additional insureds, please contact us. ■

“Nice to Have” Insurance Policies

Nice to have” insurance policies are policies that not all businesses carry but maybe should carry. Three of the most important ones include:

Professional Liability (PL)

In addition to lawyers, doctors and accountants, many businesses now need PL insurance. You don't have to consider yourself a “professional” to need coverage for negligent acts. If you give advice and recommendations, if you create programs or products for your customers or if you provide a service, you need liability protection. Some examples you may not think of right away include:

- * Personal Trainers
- * Pest Control Services
- * Beauticians-barbers
- * Management Consultants
- * Occupational Therapists
- * Photographers

Cyber Liability

Some of the main risks of cyber-crime include:

- * Identity theft from security breaches of sensitive information when stolen by a hacker or inadvertently disclosed, including Social Security num-

bers, credit card numbers, employee identification numbers, drivers' license numbers, birth dates and PIN numbers.

- * Business interruption from a hacker shutting down a network. Damage to the firm's reputation.
- * Costs associated with damage to data records caused by a hacker.
- * Theft of valuable digital assets, including customer lists, business trade secrets and other similar electronic business assets.
- * Introduction of malware, worms and other malicious computer code.

Directors & Officers Insurance

There are two or sometimes three parts to these policies:

- * Part A covers directors and officers, reimbursing them directly for claims of liability that arise from their corporate duties.
- * Part B covers the corporation, reimbursing it for expenses it pays on behalf of the directors and officers, if state law permits or corporate charter or by-laws require the corporation to indemnify directors and officers.
- * Part C, or “entity coverage,” which many policies include, covers the corporation itself when it is named in a lawsuit or claim. If you have questions or feel that you lack any of these coverages, please contact us.

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