

LEGISLATIVE BILL 93

Approved by the Governor February 14, 2018

Introduced by Hansen, 26; Ebke, 32.

A BILL FOR AN ACT relating to law enforcement; to adopt the Automatic License Plate Reader Privacy Act.

Be it enacted by the people of the State of Nebraska,

Section 1. Sections 1 to 9 of this act shall be known and may be cited as the Automatic License Plate Reader Privacy Act.

Sec. 2. For purposes of the Automatic License Plate Reader Privacy Act:

(1) Alert means data held by the Department of Motor Vehicles, each criminal justice information system maintained in this state, the Federal Bureau of Investigation National Crime Information Center, the Federal Bureau of Investigation Kidnappings and Missing Persons list, the Missing Persons Information Clearinghouse established under section 29-214.01, and license plate numbers that have been manually entered into the automatic license plate reader system upon a law enforcement officer's determination that the vehicles or individuals associated with the license plate numbers are relevant and material to an ongoing criminal or missing persons investigation;

(2) Automatic license plate reader system means one or more mobile or fixed automated high-speed cameras used in combination with computer algorithms to convert images of license plates into computer-readable data;

(3) Captured plate data means global positioning system coordinates, date and time information, photographs, license plate numbers, and any other data captured by or derived from any automatic license plate reader system;

(4) Governmental entity means a department or agency of this state, the federal government, another state, or a political subdivision or an individual acting for or as an agent of any of such entities; and

(5) Secured area means a place, enclosed by clear boundaries, to which access is limited and not open to the public and into which entry is only obtainable through specific access-control points.

Sec. 3. (1) Except as otherwise provided in this section or in section 4 of this act, the use of an automatic license plate reader system by a governmental entity is prohibited.

(2) An automatic license plate reader system may be used when such use is:

(a) By a law enforcement agency of a governmental entity for the purpose of identifying:

(i) Outstanding parking or traffic violations;

(ii) An unregistered or uninsured vehicle;

(iii) A vehicle in violation of the vehicle equipment requirements set forth under the Nebraska Rules of the Road;

(iv) A vehicle in violation of any other vehicle registration requirement;

(v) A vehicle registered to an individual for whom there is an outstanding warrant;

(vi) A vehicle associated with a missing person;

(vii) A vehicle that has been reported as stolen; or

(viii) A vehicle that is relevant and material to an ongoing criminal investigation;

(b) By a parking enforcement entity for regulating the use of a parking facility;

(c) For the purpose of controlling access to a secured area;

(d) For the purpose of electronic toll collection; or

(e) To assist weighing stations in performing their duties under section 60-1301.

Sec. 4. (1) A governmental entity shall not retain captured plate data obtained under subsection (2) of section 3 of this act for more than one hundred eighty days unless the captured plate data is:

(a) Evidence related to a purpose listed in subsection (2) of section 3 of this act;

(b) Subject to a preservation request under subsection (1) of section 5 of this act; or

(c) The subject of a warrant, subpoena, or court order.

(2) Any governmental entity that uses automatic license plate reader systems pursuant to subsection (2) of section 3 of this act must update such systems from the data bases used by the governmental entities enumerated in such subsection at the beginning of each law enforcement agency shift if such updates are available.

(3) Any governmental entity that uses automatic license plate reader systems pursuant to subsection (2) of section 3 of this act may manually query captured plate data only when a law enforcement officer determines that the vehicle or individuals associated with the license plate number are relevant and material to an ongoing criminal or missing persons investigation subject to the following limitations:

(a) Any manual entry must document the reason for the entry; and

(b) Manual entries must be automatically purged at the end of each law enforcement agency shift, unless the criminal investigation or missing persons

investigation remains ongoing.

Sec. 5. (1)(a) An operator of an automatic license plate reader system shall, upon the request of a governmental entity or a defendant in a criminal case, take all necessary steps to preserve captured plate data in its possession pending the issuance of a warrant, subpoena, or order of a court.

(b) A requesting governmental entity or defendant in a criminal case must specify in a written sworn statement:

(i) The particular camera or cameras for which captured plate data must be preserved or the particular license plate for which captured plate data must be preserved; and

(ii) The date or dates and timeframes for which captured plate data must be preserved.

(2) A governmental entity or defendant in a criminal case may apply for a court order for disclosure of captured plate data, which shall be issued by the court if the governmental entity or defendant in a criminal case offers specific and articulable facts showing there are reasonable grounds to believe the captured plate data is relevant and material to the criminal or civil action. Nothing in this subsection shall prevent the governmental entity from disclosing any captured plate data: (a) To the parties to a criminal or civil action; (b) for administrative purposes; (c) to alert the public of an emergency situation; or (d) relating to a missing person.

Sec. 6. Except as otherwise provided in subdivision (3)(b) of this section, any governmental entity that uses an automatic license plate reader system shall:

(1) Adopt a policy governing use of the system and conspicuously post the policy on the governmental entity's Internet web site or, if no web site is available, in its main office;

(2) Adopt a privacy policy to ensure that captured plate data is not shared in violation of the Automatic License Plate Reader Privacy Act or any other law and conspicuously post the privacy policy on its Internet web site or, if no web site is available, in its main governmental office; and

(3)(a) Report annually to the Nebraska Commission on Law Enforcement and Criminal Justice on its automatic license plate reader practices and usage. The report shall also be conspicuously posted on the governmental entity's Internet web site or, if no web site is available, in its main office. The report shall include the following information, if captured by the automatic license plate reader system:

(i) The names of each list against which captured plate data was checked, the number of confirmed matches, and the number of matches that upon further investigation did not correlate to an alert; and

(ii) The number of manually-entered license plate numbers under subsection (3) of section 4 of this act, the number of confirmed matches, and the number of matches that upon further investigation did not correlate to an alert.

(b) The reporting requirements of this subsection shall not apply to governmental entities using an automatic license plate reader system pursuant to subdivisions (2)(b) through (e) of section 3 of this act.

Sec. 7. No captured plate data and no evidence derived therefrom may be received in evidence in any trial, hearing, or other proceeding before any court, grand jury, department, officer, agency, regulatory body, legislative committee, or other authority of this state, or a political subdivision thereof, if the disclosure of that information would be in violation of the Automatic License Plate Reader Privacy Act.

Sec. 8. Any person who violates the Automatic License Plate Reader Privacy Act shall be liable for damages that proximately cause injury to the business, person, or reputation of another individual or entity.

Sec. 9. (1) Captured plate data held by a governmental entity is not considered a public record for purposes of sections 84-712 to 84-712.09 and shall only be disclosed to the person to whom the vehicle is registered or with the prior written consent of the person to whom the vehicle is registered or pursuant to a disclosure order under subsection (2) of section 5 of this act or as the result of a match pursuant to subsection (2) of section 3 of this act.

(2) Upon the presentation to a governmental entity of a valid, outstanding protection order pursuant to the Protection from Domestic Abuse Act, the Uniform Interstate Enforcement of Domestic Violence Protection Orders Act, or section 28-311.09 or 28-311.10 protecting the driver of a vehicle jointly registered with or registered solely in the name of the individual against whom the order was issued, captured plate data may not be disclosed except pursuant to a disclosure order under subsection (2) of section 5 of this act or as the result of a match pursuant to subsection (2) of section 3 of this act.