

SENATE No. 2299

The Commonwealth of Massachusetts

—
In the One Hundred and Ninetieth General Court
(2017-2018)
—

SENATE, Monday, February 12, 2018

The committee on Transportation, to whom was referred the petition (accompanied by bill, Senate, No. 1909) of Cynthia S. Creem, Michael J. Barrett, Jay R. Kaufman, Marjorie C. Decker and other members of the General Court for legislation to regulate the use of automatic license plate reader systems,- reports the accompanying bill (Senate, No. 2299).

For the committee,
Joseph A. Boncore

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An Act to regulate the use of automatic license plate reader systems.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 The General Laws, as appearing in the 2014 Official Edition, are hereby amended by
2 inserting after chapter 90I the following chapter:-

3 Chapter 90J Automatic License Plate Reader Systems

4 Section 1. Definitions

5 As used throughout this chapter, the following words shall have the following meanings:

6 "ALPR data" means any data captured, created or originated by an ALPR system,
7 including, without limitation, GPS coordinates, dates, times, images and license plate numbers,
8 existing in an any form or medium, whether electronic, paper or otherwise, and any copies
9 thereof;

10 "Automated license plate reader system" or "ALPR system" means an automated system
11 of one or more mobile or fixed high-speed cameras combined with computer algorithms to
12 convert images of license plates into computer-readable data;

13 “Department” means department of transportation;

14 “Executive office” means executive office of public safety and security;

15 “Governmental entity” means any official, officer, agency, office, instrumentality,
16 department, division, committee, board, advisory board, commission or other body or authority
17 of the commonwealth, or of any county or municipality, or any employee thereof, or any agent or
18 other person acting on behalf thereof while acting within the scope of such agency or
19 representation;

20 “Law enforcement agency” means any state or municipal law enforcement agency;

21 “Law enforcement officer” means a state or municipal police officer or traffic or parking
22 enforcement officer;

23 “Legitimate law enforcement purpose” means: detection or investigation of a crime,
24 traffic violation or parking violation; operation of AMBER alerts; or searches for missing or
25 endangered persons;

26 “Non-governmental entity” means any person other than a governmental entity;

27 “Person” means any individual, partnership, corporation, association, society, entity or
28 governmental entity;

29 “Preservation request” means written notice delivered by a federal, state or municipal law
30 enforcement agency or a defendant in a criminal case to the executive office or a non-
31 governmental entity requesting that certain ALPR data be preserved and retained for a specified
32 period of time not to exceed 30 days from the date such request is received; provided, that such
33 preservation request shall be accompanied by an affidavit stating: (i) the parameters identifying

34 which ALPR data must be preserved, including, without limitation, the license plate numbers, if
35 any, and the dates, times, and locations; and (ii) that such specified period of time is necessary to
36 obtain a search warrant or production order compelling the production of such ALPR data;
37 provided further, that the agency or defendant may serve subsequent preservation requests
38 pending resolution of any motion filed in connection with such search warrant or production
39 order, or any appeal related thereto;

40 “Production order” means an order or summons obtained by a defendant in a criminal
41 case charged with a felony requiring a non-governmental entity or the executive office to
42 produce ALPR data; provided, that such order or summons shall be issued in compliance with
43 Massachusetts Rule of Criminal Procedure 17(a)(2); provided further, that any ALPR data
44 produced in response to such order or summons shall be deemed privileged for the purposes of
45 complying therewith;

46 “Search warrant” means: (i) a federal search warrant issued upon a determination of
47 probable cause by a court or justice authorized to issue warrants in criminal cases that meets the
48 requirements of the Federal Rules of Criminal Procedure; or (ii) a state search warrant issued
49 pursuant to the requirements of sections 2 through 3A, inclusive, of chapter 276 by a court or
50 justice authorized to issue warrants in criminal cases.

51 Section 2. State or municipal government; permitted uses

52 Notwithstanding any general or special law or regulation to the contrary, it shall be
53 unlawful for any governmental entity to use an ALPR system; provided, however, that an ALPR
54 system may be used by:

55 (a) law enforcement agencies for legitimate law enforcement purposes; and

56 (b) the department or an agent acting on behalf thereof for the purpose of assessing or
57 collecting tolls or parking fees.

58 Section 3. General obligations

59 (a) Any database or other information against which license plate numbers are cross-
60 referenced by an ALPR system operated by any person shall be updated every 24 hours, or at
61 such other intervals as updated information become available if greater than 24 hours.

62 (b) Prior to taking any action in response to an alert or prompt from an ALPR system
63 operated by any person, the individual so alerted shall confirm that the license plate number and
64 state of issuance of the targeted vehicle matches the license plate number and state of issuance
65 that prompted the alert.

66 Section 4. ALPR data; retention by law enforcement

67 Notwithstanding any general or special law or regulation to the contrary, not later than 48
68 hours following the time ALPR data is captured, created or originated by an ALPR system
69 operated by a law enforcement agency, the law enforcement agency:

70 (a) may, at the option of the law enforcement agency, transfer such data to the executive
71 office; and

72 (b) in any event shall permanently erase or destroy any such data in its possession,
73 custody or control.

74 Section 5. ALPR data; retention by the executive office

75 (a) The executive office shall retain and store ALPR data transferred to it pursuant to
76 section 4 for a period of 120 days. At the end of such 120-day period, the executive office shall
77 permanently erase or destroy all such data in its possession, custody, or control.

78 (b) ALPR data may be retained beyond the 120-day period established under subsection
79 (a) as necessary to comply with a search warrant, production order, or preservation request.

80 Section 6. ALPR data; retention by non-governmental entities

81 A governmental entity shall not enter into a business agreement with, or access ALPR
82 data from, a non-governmental entity that retains ALPR data derived from vehicles registered or
83 operated within the Commonwealth for periods longer than those established for the executive
84 office under section 5.

85 Section 7. ALPR data; government access and review

86 Notwithstanding any general or special law or regulation to the contrary, a governmental
87 entity may not access, search, review, disclose, or exchange ALPR data from any source;
88 provided, however, that:

89 (a) a law enforcement agency or officer may access, search or review ALPR data as
90 necessary to comply with section 3;

91 (b) a law enforcement agency, the executive office or the department, or an agent thereof,
92 may access ALPR data as necessary to install, maintain or repair an ALPR system or a system
93 storing ALPR data;

94 (d) a governmental entity may access, search, review or disclose ALPR data as necessary
95 to respond to a reasonable belief that an individual is at imminent risk of serious physical injury,

96 death or abduction; provided, that not later than 48 hours after accessing such ALPR data, the
97 agency, executive office or department shall provide written notice to the office of the attorney
98 general describing with particularity the grounds for such emergency access and the parameters
99 of the ALPR data accessed, searched, reviewed or disclosed; provided further, that such ALPR
100 data within the possession, custody or control of the law enforcement agency shall be
101 permanently erased or destroyed not later than 48 hours after such imminent risk ceases to exist;

102 (e) a law enforcement agency or the executive office may access, search, review or
103 disclose ALPR data as necessary to comply with: (i) sections 5 or 7; or (ii) a search warrant,
104 production order or preservation request issued in connection with the investigation or
105 prosecution of a felony;

106 (g) a law enforcement agency, a district attorney's office or the office of the attorney
107 general may access, search, review or disclose ALPR data obtained pursuant to a production
108 order or search warrant in order to further the investigation or prosecution of a felony; provided,
109 that notwithstanding sections 4 and 5, such data may be retained until and shall be permanently
110 erased or destroyed promptly following the conclusion of the investigation or prosecution,
111 including any appeals; or

112 (h) a governmental entity or an agent thereof may access, search, review or disclose
113 ALPR data for the purpose of assessing, collecting or pursuing tolls, parking fees, or fines related
114 to parking or traffic violations.

115 Section 8. Additional protections

116 Notwithstanding any general or special law or regulation to the contrary, ALPR data
117 derived from vehicles registered or operated within the commonwealth shall not be used in any
118 way by any person:

119 (i) to determine a person's numerical or other credit rating;

120 (ii) to determine whether to offer or enter into any secured or unsecured credit facility or
121 loan;

122 (iii) to determine a person's insurance rate or rating with respect to any form of
123 insurance, including, without limitation, any policy of life insurance, health insurance,
124 automobile insurance or liability insurance; provided however, that nothing in this subsection
125 shall be construed to prevent the verification of the accuracy of information submitted by an
126 applicant to a motor vehicle insurance carrier or its agent in support of an application for or
127 renewal of a motor vehicle insurance policy in order to make a determination as to whether to
128 extend such insurance coverage;

129 (iv) to make any determination with respect to hiring, dismissal, discharge, suspension,
130 compensation or any other employment decision; or

131 (v) to identify targets of or to engage in any form of promotion, marketing, advertising or
132 solicitation.

133 Nothing in this section shall be construed to prevent a person from reporting unpaid tolls,
134 violations or parking fees to any credit reporting agency.

135 Section 9. ALPR data; admissibility

136 (a) Notwithstanding any general or special law or regulation to the contrary, ALPR data
137 produced, obtained or maintained in knowing violation of this chapter shall not be admitted,
138 offered or cited by any governmental entity for any purpose in any criminal, civil, or
139 administrative proceeding.

140 (b) Notwithstanding any general or special law or regulation to the contrary, ALPR data
141 shall not be discoverable, admissible in evidence or offered or cited for any purpose in any civil
142 or administrative proceeding by any party; provided, however, that subject to subsection (a),
143 such data shall be admissible when offered in any civil or administrative proceeding (i) relating
144 to the collection of tolls, parking fees, or traffic or parking violations, or (ii) arising out of claims
145 of insurance fraud, motor vehicle theft, or motor vehicle repossession.

146 Section 10. Civil actions

147 (a) Any aggrieved person may institute a civil action in district or superior court for
148 damages resulting from a violation of this chapter, or in superior court to restrain any such
149 violation. If in any such action a willful violation is found to have occurred, the violator shall not
150 be entitled to claim any privilege absolute or qualified, and he shall, in addition to any liability
151 for such actual damages as may be shown, be liable for treble damages, or, in the alternative,
152 exemplary damages of not less than one hundred and not more than one thousand dollars for
153 each violation, together with costs and reasonable attorney's fees.

154 (b) A violation of section 8 of this chapter shall also be a violation of section 2 of chapter
155 93A.

156 Section 11. Further regulation by governmental entities

157 Nothing contained in this chapter shall be construed to prevent a law enforcement
158 agency, a municipality, the executive office or the department from adopting stricter limitations
159 with respect to ALPR systems or ALPR data.

160 Section 12. Reporting

161 On or before March 1 annually, the executive office shall file a report with the clerks of
162 the senate and house of representatives containing the following information based on data from
163 the prior calendar year: (i) the total number of ALPR systems being operated within the
164 commonwealth; (ii) the number of municipalities submitting ALPR data to the executive office
165 pursuant to section 5; (iii) the number of license plate scans transferred to the executive office
166 pursuant to section 5; and (iv) the number of search warrants and production requests seeking
167 ALPR data served on the executive office.

168 Section 13. Executive office; rules and regulations

169 The executive office shall promulgate rules and regulations necessary to implement
170 sections 2 through 7, inclusive, and section 12, including, without limitation, rules and
171 regulations establishing an auditing process to assess compliance with this chapter by
172 governmental entities.

173 Section 14. Office of the attorney general; enforcement

174 The attorney general shall enforce sections 2 through 8, inclusive, and shall have the
175 power to petition the court for injunctive relief, relief under chapter 93A, or other appropriate
176 relief against any person that fails to comply therewith.

177 Section 15. Severability

178 If any provision of this chapter or the application thereof to any person or circumstance is
179 held invalid, the invalidity shall not affect other provisions or applications of the chapter which
180 can be given effect without the invalid provision or application, and to this end the provisions of
181 this chapter are declared to be severable.