

LEGISLATURE OF NEBRASKA  
ONE HUNDRED FOURTH LEGISLATURE  
SECOND SESSION

**LEGISLATIVE BILL 831**

Introduced by Hansen, 26.

Read first time January 08, 2016

Committee:

- 1 A BILL FOR AN ACT relating to motor vehicles; to adopt the Automatic
- 2 License Plate Reader Privacy Act; and to provide severability.
- 3 Be it enacted by the people of the State of Nebraska,

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

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

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

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

19           (3) Captured plate data means global positioning system coordinates,  
20 date and time, photograph, license plate number, and any other data  
21 captured by or derived from any automatic license plate reader system;

22           (4) Governmental entity means a department or agency of the state or  
23 a political subdivision thereof, or an individual acting for or on behalf  
24 of the state or a political subdivision thereof; and

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

28           Sec. 3. (1) Except as otherwise provided in this section, it shall  
29 be unlawful for any person acting under color of state law to use an  
30 automatic license plate reader system.

31           (2) An automatic license plate reader system may be used by a person

1 acting under color of state law when such use is:

2 (a) By state, county, city, or village law enforcement agencies for  
3 the comparison of captured plate data with data held by the Department of  
4 Motor Vehicles, each criminal justice information system maintained in  
5 this state, the Federal Bureau of Investigation National Crime  
6 Information Center, the Federal Bureau of Investigation Kidnappings and  
7 Missing Persons list, the Missing Persons Information Clearinghouse  
8 established under section 29-214.01, and license plate numbers that have  
9 been manually entered into the automatic license plate reader system upon  
10 an officer's determination that the vehicles or individuals associated  
11 with the license plate numbers are relevant and material to an ongoing  
12 criminal or missing persons investigation for the purpose of identifying:

13 (i) Outstanding parking or traffic violations;

14 (ii) An unregistered or uninsured vehicle;

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

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

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

21 (vi) A vehicle associated with a missing person;

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

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

25 (b) By parking enforcement entities for regulating the use of  
26 parking facilities;

27 (c) For the purpose of controlling access to secured areas; or

28 (d) For the purpose of electronic toll collection.

29 Sec. 4. (1) Captured plate data obtained for the purposes described  
30 in subsection (2) of section 3 of this act shall not be used or shared  
31 for any other purpose and shall not be retained except:

1       (a) As evidence under subsection (2) of section 3 of this act;

2       (b) Pursuant to a preservation request under subsection (1) of  
3 section 5 of this act;

4       (c) Pursuant to a disclosure order under subsection (2) of section 5  
5 of this act;

6       (d) Pursuant to a warrant issued under the Federal Rules of Criminal  
7 Procedure or sections 29-401 to 29-411; or

8       (e) As part of an ongoing investigation provided that captured plate  
9 data is confirmed as matching an alert and is destroyed at the conclusion  
10 of either:

11       (i) An investigation that does not result in any criminal charges  
12 being filed; or

13       (ii) Any criminal action undertaken in the matter involving the  
14 captured plate data.

15       (2) Any governmental entity that uses automatic license plate reader  
16 systems pursuant to subsection (2) of section 3 of this act must update  
17 those systems from the databases enumerated in such subsection at the  
18 beginning of each law enforcement agency shift if such updates are  
19 available.

20       (3) Any governmental entity that uses automatic license plate reader  
21 systems pursuant to subsection (2) of section 3 of this act may manually  
22 enter license plate numbers into the automatic license plate reader  
23 system only where a law enforcement officer determines that the vehicle  
24 or individuals associated with the license plate number are relevant and  
25 material to an ongoing criminal or missing persons investigation subject  
26 to the following limitations:

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

28       (b) Manual entries must be automatically purged at the end of each  
29 law enforcement agency shift.

30       Sec. 5. (1)(a) An operator of an automatic license plate reader  
31 system, upon the request of a governmental entity or a defendant in a

1 criminal case, shall take all necessary steps to preserve captured plate  
2 data in its possession for fourteen days pending the issuance of a court  
3 order under subsection (2) of this section.

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

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

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

11 (2) A governmental entity or defendant in a criminal case may apply  
12 for a court order for disclosure of captured plate data, which shall be  
13 issued by the court if the governmental entity or defendant in a criminal  
14 case offers specific and articulable facts showing there are reasonable  
15 grounds to believe the captured plate data is relevant and material to an  
16 ongoing criminal or missing persons investigation or criminal prosecution  
17 or defense.

18 (3) Captured plate data held by a governmental entity shall be  
19 destroyed if the application for an order under subsection (2) of this  
20 section is denied or at the end of six months, whichever is later.

21 (4) A governmental entity may obtain, receive, or use privately held  
22 captured plate data only pursuant to a warrant issued under the Federal  
23 Rules of Criminal Procedure or sections 29-401 to 29-411 or the procedure  
24 described in subsection (2) of this section, and only if the private  
25 automatic license plate reader system retains captured plate data for  
26 fourteen days or fewer.

27 Sec. 6. Any governmental entity that uses an automatic license  
28 plate reader system shall:

29 (1) Adopt a policy governing use of the system and conspicuously  
30 post the policy on the governmental entity's Internet web site;

31 (2) Adopt a privacy policy to ensure that captured plate data is not

1 shared in violation of the Automatic License Plate Reader Privacy Act or  
2 any other law, and conspicuously post the privacy policy on the  
3 governmental entity's Internet web site; and

4 (3) Report annually to the Nebraska Commission on Law Enforcement  
5 and Criminal Justice on its automatic license plate reader practices and  
6 usage. The report shall also be conspicuously posted on the governmental  
7 entity's Internet web site. The report shall include:

8 (a) The number of license plates scanned;

9 (b) The names of the lists against which captured plate data was  
10 checked, the number of confirmed matches, and the number of matches that  
11 upon further investigation did not correlate to an alert;

12 (c) The number of matches that resulted in arrest and prosecution;

13 (d) The number of preservation requests received under subsection  
14 (1) of section 5 of this act;

15 (e) The number of preservation requests issued under subsection (1)  
16 of section 5 of this act, broken down by the number of preservation  
17 requests issued to other governmental entities and the number of  
18 preservation requests issued to private automatic license plate reader  
19 systems;

20 (f) The number of disclosure orders received under subsection (2) of  
21 section 5 of this act;

22 (g) The number of disclosure orders applied for under subsection (2)  
23 of section 5 of this act, broken down by:

24 (i) The number of applications for disclosure orders to governmental  
25 entities under subsection (2) of section 5 of this act that were denied;

26 (ii) The number of orders for disclosure to governmental entities  
27 under subsection (2) of section 5 of this act resulting in arrest and  
28 prosecution;

29 (iii) The number of applications for disclosure orders to private  
30 automatic license plate reader systems under subsection (2) of section 5  
31 of this act that were denied; and

1        (iv) The number of orders for disclosure to private automatic  
2 license plate reader systems under subsection (2) of section 5 of this  
3 act resulting in arrest and prosecution;

4        (h) The number of manually-entered license plate numbers under  
5 subsection (3) of section 4 of this act, broken down by reason justifying  
6 the entry, the number of confirmed matches, and the number of matches  
7 that upon further investigation did not correlate to an alert; and

8        (i) Any changes in policy that affect privacy concerns.

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

15        Sec. 8. (1) Any person who violates the Automatic License Plate  
16 Reader Privacy Act shall be subject to legal action for damages. Such  
17 action may be brought by any other person claiming that a violation of  
18 the act has injured his or her business, his or her person, or his or her  
19 reputation. A person so injured shall be entitled to actual damages,  
20 including mental pain and suffering endured by him or her on account of  
21 violation of the provisions of the act, and reasonable attorney's fees  
22 and costs of litigation.

23        (2) Any person who intentionally and knowingly violates section 3 of  
24 this act is guilty of a Class I misdemeanor.

25        Sec. 9. (1) Captured plate data is not considered a public record  
26 for the purposes of sections 84-712 to 84-712.09 and may only be  
27 disclosed to the person to whom the vehicle is registered or with the  
28 prior written consent of the person to whom the vehicle is registered.

29        (2) Upon the presentation to an appropriate governmental entity of a  
30 valid, outstanding protection order pursuant to the Protection from  
31 Domestic Abuse Act, the Uniform Interstate Enforcement of Domestic

1 Violence Protection Orders Act, or section 28-311.09 or 28-311.10  
2 protecting the driver of a vehicle jointly registered with or registered  
3 solely in the name of the individual against whom the order was issued,  
4 captured plate data may not be disclosed except pursuant to a disclosure  
5 order under subsection (2) of section 5 of this act or as the result of a  
6 match pursuant to subsection (2) of section 3 of this act.

7       Sec. 10. The provisions in this act are severable. If any part or  
8 provision of this act, or the application of this act to any person,  
9 entity, or circumstance, is held invalid, the remainder of this act,  
10 including the application of such part or provision to other persons,  
11 entities, or circumstances, shall not be affected by such holding and  
12 shall continue to have force and effect.