

LEGISLATURE OF NEBRASKA
ONE HUNDRED FOURTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 831

Introduced by Hansen, 26.

Read first time January 08, 2016

Committee: Judiciary

- 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.