

AMENDMENTS TO LB831

Introduced by Judiciary.

1 1. Strike the original sections and insert the following new
2 sections:

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

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

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

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

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

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

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

4 Sec. 3. (1) Except as otherwise provided in this section or in
5 section 4 of this act, the use of an automatic license plate reader
6 system by any person acting under color of state law is prohibited.

7 (2) An automatic license plate reader system may be used by a person
8 acting under color of state law when such use is:

9 (a) By a state, county, city, or village law enforcement agency as
10 an alert for the purpose of identifying:

11 (i) Outstanding parking or traffic violations;

12 (ii) An unregistered or uninsured vehicle;

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

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

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

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

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

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

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

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

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

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

29 Sec. 4. (1) Except as otherwise provided in this section, the use
30 or sharing of captured plate data obtained for the purposes described in
31 subsection (2) of section 3 of this act is prohibited. Captured plate

1 data obtained for the purposes described in subsection (2) of section 3
2 of this act may be retained:

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

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

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

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

10 (e) As part of an ongoing investigation if the captured plate data
11 is confirmed as matching an alert and is destroyed at the conclusion of
12 either:

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

15 (ii) Any criminal action undertaken in the matter involving the
16 captured plate data.

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

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

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

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

1 Sec. 5. (1)(a) An operator of an automatic license plate reader
2 system, upon the request of a governmental entity or a defendant in a
3 criminal case, shall take all necessary steps to preserve captured plate
4 data in its possession for fourteen days pending the issuance of a court
5 order under subsection (2) of this section.

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

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

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

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

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

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

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

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

3 (2) Adopt a privacy policy to ensure that captured plate data is not
4 shared in violation of the Automatic License Plate Reader Privacy Act or
5 any other law, and conspicuously post the privacy policy on the
6 governmental entity's Internet web site; and

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

11 (i) The number of license plates scanned;

12 (ii) The names of the lists against which captured plate data was
13 checked, the number of confirmed matches, and the number of matches that
14 upon further investigation did not correlate to an alert;

15 (iii) The number of matches that resulted in arrest and prosecution;

16 (iv) The number of preservation requests received under subsection
17 (1) of section 5 of this act;

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

23 (vi) The number of disclosure orders received under subsection (2)
24 of section 5 of this act;

25 (vii) The number of disclosure orders applied for under subsection
26 (2) of section 5 of this act, broken down by:

27 (A) The number of applications for disclosure orders to governmental
28 entities under subsection (2) of section 5 of this act that were denied;

29 (B) The number of orders for disclosure to governmental entities
30 under subsection (2) of section 5 of this act resulting in arrest and
31 prosecution;

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

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

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

11 (ix) Any changes in policy that affect privacy concerns.

12 (b) The reporting requirements of this subsection shall not apply to
13 weighing stations using an automatic license plate reader system pursuant
14 to subdivision (2)(e) of section 3 of this act.

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

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

29 Sec. 9. (1) Captured plate data is not considered a public record
30 for the purposes of sections 84-712 to 84-712.09 and may only be
31 disclosed to the person to whom the vehicle is registered or with the

1 prior written consent of the person to whom the vehicle is registered.

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

11 Sec. 10. (1) The purchase or use of cell-site simulator technology
12 or devices by a law enforcement agency is prohibited. Any law enforcement
13 agency that currently possesses or uses cell-site simulator technology or
14 devices shall discontinue such use and discard the technology or devices.

15 (2) For purposes of this section, cell-site simulator means a device
16 that transmits or receives radio waves to or from a communications device
17 and that can be used to intercept, collect, access, transfer, or forward
18 the data transmitted or received by the communications device or stored
19 on the communications device. Cell-site simulator includes an
20 international mobile subscriber identity catcher or other surveillance or
21 eavesdropping device that mimics a cellular base station and transmits
22 radio waves that cause cell phones or other communications devices in the
23 area to transmit or receive radio waves, electronic data, location data,
24 information used to calculate location, identifying information,
25 communications content, or metadata, or otherwise obtains this
26 information through passive means, such as through the use of a digital
27 analyzer or other passive interception device.