

HOUSE BILL NO. 775

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Communications, Technology and Innovation

on _____)

(Patrons Prior to Substitute--Delegates Herring and Bloxom [HB 1037])

A BILL to amend the Code of Virginia by adding in Title 2.2 a chapter numbered 55.6, consisting of a section numbered 2.2-5517, and by adding a section numbered 33.2-210.1, relating to license plate reader systems; civil penalty.

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Title 2.2 a chapter numbered 55.6, consisting of a section numbered 2.2-5517, and by adding a section numbered 33.2-210.1 as follows:

CHAPTER 55.6.

USE OF LICENSE PLATE READER SYSTEMS.

§ 2.2-5517. Use of license plate reader systems; civil penalty.

A. For the purposes of this section:

"License plate reader system" means a system of automated high-speed cameras used in combination with computer algorithms to convert images of vehicles and license plates into computer-readable data that can be queried by an individually-authenticated user using auditable queries and that shall not be used for bulk downloads or bulk queries. "License plate reader system" does not refer to electronic devices used solely for recording information for traffic violation enforcement or tolling purposes.

"License plate reader system data" means data collected by a license plate reader system.

B. Operation of and access to a license plate reader system by any law-enforcement agency shall be for official law-enforcement purposes only and shall only be used to scan, detect, and record data about vehicles and license plate numbers for the purpose of identifying a vehicle that is (i) associated with a

26 wanted, missing, or endangered person or human trafficking; (ii) stolen; (iii) involved in an active law-
27 enforcement investigation; or (iv) in the vicinity of a recent crime and may be connected to that crime.

28 C. All state and local law-enforcement agencies are prohibited from using license plate reader
29 systems or license plate reader system data for the purpose of interfering with individuals engaged in
30 lawful activities or tracking individuals on the basis of the content of lawfully protected speech.

31 D. Pursuant to § 2.2-1112, the Division of Purchases and Supply (the Division) shall determine
32 the appropriate license plate reader system technology for use in accordance with this section. The
33 Division shall not approve any license plate reader system technology unless the Division has certified
34 that such system will not share any law-enforcement data gathered in the Commonwealth with any third
35 party other than as authorized in subsection I. The Division shall require approved vendors to annually
36 confirm continued compliance with this section. Law-enforcement agencies may enter into agreements
37 with private vendors for the installation and maintenance of license plate reader systems approved by the
38 Division, including all support services, such as operations and administration for compensation.

39 E. The Department of State Police (the Department) shall create a model policy regarding the use
40 of license plate reader systems, which shall be known as the State Police Model License Plate Reader
41 Systems Technology Policy, and shall, as a part of such model policy, administer protocols for handling
42 requests for assistance in the use of license plate reader systems technology made to the Department by
43 local law-enforcement agencies. The Department shall publicly post such policy no later than July 1, 2024,
44 and such policy shall be updated annually thereafter and shall include:

45 1. Requirements for training, including the nature and frequency of specialized training required
46 for an individual to be authorized by a law-enforcement agency to utilize license plate reader systems as
47 authorized by this section;

48 2. The extent to which a law-enforcement agency shall document instances when license plate
49 reader systems are used and how long such information is retained;

50 3. Procedures for the confirmation of any match generated by license plate reader systems as
51 provided in subsection G; and

52 4. Promulgation of standing orders, policies, or public materials by law-enforcement agencies that
53 use license plate reader systems.

54 F. Any local or state law-enforcement agency that intends to use a license plate reader system shall
55 (i) confirm that such system meets all requirements of this section and is approved by the Division; (ii)
56 establish a policy governing such system's use in accordance with this section and with the State Police
57 Model License Plate Reader Systems Technology Policy that includes training requirements for the
58 officers that will use such system, an internal auditing schedule that occurs at least quarterly to ensure
59 proper use of such system, and data retention limits that conform with subsection H; and (iii) obtain a
60 permit from the Commonwealth Transportation Board before installing a license plate reader system on a
61 state highway right-of-way.

62 G. Following a positive match by a license plate reader system, the law-enforcement officer shall
63 attempt to visually verify that the image of the license plate displayed by the license plate reader system
64 matches the vehicle for which such search has been authorized. A positive match alone shall not constitute
65 reasonable suspicion as grounds for a law-enforcement officer to stop a vehicle. The officer must develop
66 independent reasonable suspicion for the stop, which may include visually confirming the license plate
67 number on the vehicle.

68 H. License plate reader system data shall be purged from the database or system within 30 days of
69 its capture in such a manner that such data is destroyed and not recoverable. However, if such data is part
70 of an ongoing investigation, the data may be retained until final disposition of the matter in accordance
71 with applicable records retention law and policy. If the final disposition of the matter was a conviction,
72 then such data shall be retained until the conclusion of all appeals and any other post-conviction
73 proceedings in accordance with applicable records retention law and policy.

74 I. Law-enforcement agencies and their private vendors shall not share law-enforcement license
75 plate reader system data except with other law-enforcement agencies and shall not sell license plate reader
76 system data for any purpose. Law-enforcement agencies shall individually query license plate reader
77 system data stored and maintained by the private vendor operating such license plate reader system, and

78 no such law-enforcement agency shall engage in bulk downloads, storage, or sharing of such data
79 unrelated to a specific purpose identified in subsection B.

80 J. Any law-enforcement agency that installs or uses any license plate reader system shall (i) publish
81 its license plate reader system policy on its website, if any, and make hard copies of such policy available
82 at the office of such agency; (ii) make public a log of the use of such system, to be updated on a monthly
83 basis, displaying the aggregate number of vehicles on which license plate reader system data is collected
84 for each month of use; (iii) publish a list of all state and federal databases with which the data were
85 compared, unless the existence of any such database itself is not public; (iv) maintain records sufficient to
86 facilitate discovery in criminal proceedings, post-conviction proceedings, public reporting, and auditing
87 of compliance with such agency's license plate reader system policies unless such data is required to be
88 purged pursuant to subsection H; and (v) collect data pertaining to (a) how many times an officer utilized
89 an investigative lead based on license plate reader system data, (b) how many cases were closed due to an
90 investigative lead from a license plate reader system, (c) what types of criminal offenses were investigated
91 or closed, and (d) demographic information for cases closed.

92 K. Any person employed by a law-enforcement agency or their private vendor who violates this
93 section or the agency's policy for the use of a license plate reader system for the first time shall be subject
94 to a civil penalty of up to \$1,000 per disclosure and shall be required to complete training on the agency's
95 license plate reader system policy before being reinstated to operate such technology. Any person
96 employed by a law-enforcement agency or their private vendor who violates this section or the agency's
97 license plate reader system policy for a second time shall be subject to a civil penalty of up to \$2,500 per
98 disclosure, and such law-enforcement agency shall terminate such person's employment or, if such person
99 is employed by such private vendor, terminate the access of such person to such license plate reader system
100 and any data from such system.

101 L. Any state or local law-enforcement agency that places and operates a license plate reader system
102 pursuant to the provisions of this section shall report to the Department of State Police, in a format to be
103 determined by the Department of State Police, by January 15 of each year on the use of license plate reader
104 systems, including (i) the aggregate number of vehicles on which license plate reader system data is

105 collected for each year; (ii) a list of all state and federal databases with which the data was compared,
106 unless the existence of any such database itself is not public; (iii) how many times an officer utilized an
107 investigative lead based on license plate reader system data; (iv) how many cases were closed due to an
108 investigative lead from a license plate reader system; (v) what types of criminal offenses were investigated
109 or closed; (vi) demographic information for cases closed; and (vii) instances of unauthorized access to the
110 license plate reader system technology, including any unauthorized access by employees of such agency
111 or the Department of State Police. If any information or data (a) contains an articulable concern for any
112 person's safety; (b) is otherwise prohibited from public disclosure by federal or state statute; or (c) if
113 disclosed, may compromise sensitive criminal justice information, such information or data may be
114 excluded from public disclosure. The Department of State Police shall aggregate such information and
115 report it to the General Assembly by March 15 of each year.

116 **§ 33.2-210.1. License plate readers in highway right-of-way.**

117 A. The Board shall have the power and duty to establish by regulation a permitting process for the
118 installation of license plate reader systems, as defined in § 2.2-5517, on state highway rights-of-way. Such
119 regulations shall not conflict with the provisions of § 2.2-5517. Such permitting process shall (i) require
120 the use of breakaway poles meeting the American Association of State Highway and Transportation
121 Officials' Manual for Assessing Safety Hardware's (MASH) uniform guidelines in areas without barriers;
122 (ii) allow the installation of non-MASH-tested poles if such poles are (a) located behind barriers such as
123 guardrails or a curb and gutter or (b) installed at least 15 feet off the edge of the nearest travel lane or fog
124 line; (iii) allow attachment to existing infrastructure provided the proper approvals are obtained from the
125 authorities with jurisdiction or ownership over the existing infrastructure; (iv) allow third parties to submit
126 permit applications on behalf of law-enforcement agencies if the third party has obtained a letter of
127 authorization signed by the agency; and (v) utilize a single umbrella permit for multiple locations. The
128 Board shall establish a review period for permit applications lasting no more than 30 days.

129 B. The provisions of this section shall not prevent or limit the use of any device that is authorized
130 for use by any other provision of law.

131 **2. That any law-enforcement agency operating a license plate reader system, as defined in § 2.2-**
132 **5517 of the Code of Virginia, as created by this act, prior to July 1, 2024, shall be exempt from the**
133 **provisions of this act until January 1, 2025. Any such law-enforcement agency shall ensure that such**
134 **license plate reader system and the associated agency policies comply with the provisions of § 2.2-**
135 **5517 of the Code of Virginia, as created by this act, by January 1, 2025, or discontinue the use of**
136 **such system.**

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