

HOUSE BILL NO. 920

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Public Safety

on _____)

(Patron Prior to Substitute--Delegate Shin)

A BILL to amend and reenact § 33.2-210 of the Code of Virginia and 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, relating to license plate reader systems; penalties.

Be it enacted by the General Assembly of Virginia:

1. That § 33.2-210 of the Code of Virginia is amended and reenacted and 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, as follows:

CHAPTER 55.6.

USE OF LICENSE PLATE READERS.

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

A. For the purposes of this section:

"Data trust" means the secure digital storage of images and other data collected by a license plate reader that is held by the owner of the license plate reader or other responsible non-law enforcement entity that may only be accessed by a law-enforcement officer as provided in this section.

"License plate reader" means a high-speed, computer-controlled camera system used to optically scan license plates for the purposes authorized pursuant to this section. "License plate reader" does not refer to a camera system used solely for recording information for traffic violation enforcement or tolling purposes.

B. Any state or local law-enforcement agency may install, maintain, and operate license plate readers as authorized pursuant to this section. Any license plate readers placed in the right-of-way of highways under the jurisdiction of the Commonwealth Transportation Board or the Department of

27 Transportation shall comply with the regulations of the Board governing activities in the right-of-way as
28 authorized pursuant to § 33.2-210.

29 C. Data and information collected by a license plate reader shall be limited exclusively to data and
30 information about (i) the make, model, condition, location, and color of a vehicle and the information on
31 the vehicle's license plate and (ii) the date and time the data and information were collected. License plate
32 readers shall not be capable of photographing, recording, or producing images of the occupants of a motor
33 vehicle. The use of a license plate reader and access to a data trust is restricted to law-enforcement
34 agencies.

35 D. License plate readers shall only be used to scan, detect, and identify license plate numbers for
36 the purpose of identifying a vehicle that is (i) associated with a wanted, missing, or endangered person or
37 human trafficking; (ii) stolen; or (iii) involved in an active law-enforcement investigation.

38 E. The law-enforcement agency may enter into agreements with private vendors for the installation
39 and maintenance of license plate readers, including all related support services such as operations and
40 administration. Any law-enforcement agency using a license plate reader shall enter into an agreement
41 with such vendor or another responsible non-law-enforcement entity to operate and maintain a data trust.
42 Images and data captured by such license plate reader shall be held in such data trust. The data trust shall
43 also establish an alert for any new data or information collected related to such vehicle and shall provide
44 such data to the requesting law-enforcement officer. In the affidavit or application for such warrant or
45 court order, the law-enforcement officer shall (a) define the geographic area to be searched, (b) provide a
46 description of the vehicle being searched for, and (c) identify the relevant period of time to be searched.

47 Any data or information captured by a license plate reader in accordance with subsection D may
48 be accessed by a law-enforcement officer unrestricted for eight hours from the time the data or information
49 was captured. After eight hours from the time the data was captured by a license plate reader, the data
50 trust shall release such data or information to a law-enforcement officer only pursuant to a search warrant
51 or court order.

52 Notwithstanding the provisions of this subsection, access to license plate reader and data trust
53 records shall be authorized on a case-by-case basis for audit verification purposes. All inquiries and access
54 permission or denial shall be recorded for audit verification purposes.

55 F. Following a positive match by a license plate reader, the law-enforcement officer shall attempt
56 to visually verify that the image of the license plate displayed by the license plate reader matches the
57 vehicle for which such search has been authorized. A positive match alone shall not constitute reasonable
58 suspicion as grounds for a law-enforcement officer to stop a vehicle. The officer must develop independent
59 reasonable suspicion for the stop, which may include visually confirming the license plate number on the
60 vehicle.

61 G. License plate reader data shall not be recorded or transmitted except as authorized pursuant to
62 this section and shall be purged from the system within 30 days of capture in such a manner as to be
63 unrecoverable. However, such data shall be retained if a positive match results in an arrest, citation, or
64 assignment to protective custody, or has identified a vehicle that was the subject of a missing person
65 report. Such data shall be retained until the final disposition of the case. Such data may also be retained if
66 necessary to comply with the requirements of subsection I.

67 H. Any law-enforcement agency using license plate readers shall administer a documented training
68 process for acquiring proficiency in the operation of such license plate readers and compliance with federal
69 and state laws and regulations and any other legal requirements related to license plate readers.

70 I. Any law-enforcement agency that uses license plate reader technology shall maintain records
71 sufficient to facilitate discovery in criminal proceedings, post-conviction proceedings, public reporting,
72 and auditing of compliance with this section. Such agency shall collect and maintain data pertaining to (i)
73 how many times an officer utilized an investigative lead based upon a license plate reader data; (ii) how
74 many cases were closed due to an investigative lead from a license plate reader; (iii) what types of criminal
75 offenses were investigated or closed; and (iv) demographic information for cases closed.

76 J. A law-enforcement agency that uses license plate readers shall publicly post and annually update
77 by April 1 of each year a report providing information to the public regarding the agency's use of license
78 plate readers. The report shall include all data required by subsection I and (i) all instances of unauthorized

79 access of the license plate reader technology or data trust, including any unauthorized access by employees
80 of the agency, and (ii) vendor information, including the specific technology employed. However, such
81 agency may exclude from such report any information or data that (a) contains an articulable concern for
82 any person's safety, (b) is otherwise prohibited from public disclosure by law, or (c) if disclosed, may
83 compromise sensitive criminal justice information.

84 For the purposes of this subsection, "sensitive criminal justice information" means information
85 related to (1) an ongoing criminal investigation or proceeding, (2) the identity of a confidential source, or
86 (3) law-enforcement investigative techniques and procedures.

87 K. Notwithstanding any other provision of law, all videos, images, or other data or information
88 collected by license plate readers shall be used exclusively as provided in this section and shall not be (i)
89 open to the public; (ii) sold or used for sales, solicitation, or marketing purposes; (iii) disclosed to any
90 other entity unless such disclosure is consistent with the requirements of this section; or (iv) used in a
91 court in a pending action or proceeding unless the action or proceeding relates to a criminal violation or
92 such data or information is requested upon order from a court of competent jurisdiction. All data collected
93 shall be confidential and for law-enforcement purposes only. Such data may be shared only with other
94 state, local, and federal law-enforcement agencies for investigative purposes pursuant to a criminal or
95 administrative warrant and a written agreement with the agency or department collecting such data.

96 L. The chief law-enforcement officer of any law-enforcement agency using license plate readers
97 shall certify that the license plate readers and data trust meet all requirements of this section.
98 Notwithstanding any provision of this section, to ensure compliance with the provisions of this section
99 and to investigate complaints of misuse, the Attorney General, or a designee thereof, may examine and
100 audit any license plate reader, data trust, or server used to store data collected by a license plate reader
101 pursuant to this section and any records pertaining to the use of such license plate reader. The Attorney
102 General may seek an injunction banning the use of a license plate reader against any law-enforcement
103 agency found to have misused a license plate reader or the data collected therein. If such an injunction is
104 granted, the Attorney General, or a designee thereof, may confiscate such license plate readers to deter
105 future violations of this section.

106 M. In addition to any other penalty under law, any person that violates the data and information
107 collection and destruction requirements of this section or discloses personal information in violation of
108 this section shall be subject to a civil penalty of \$10,000 per disclosure, and such violation shall be grounds
109 for revocation by the Commonwealth Transportation Board of all permits for license plate readers issued
110 to such person.

111 **§ 33.2-210. Traffic regulations; penalty.**

112 A. The Board shall have the power and duty to make regulations that are not in conflict with the
113 laws of the Commonwealth for the protection of and covering traffic on and for the use of systems of state
114 highways, including for the placement of license plate readers as authorized in § 2.2-5517, and shall have
115 the authority to add to, amend, or repeal such regulations.

116 B. The regulations, together with any additions or amendments thereto, prescribed by the Board
117 under the authority of this section shall have the force and effect of law, and any person, firm, or
118 corporation violating any such regulation or any addition or amendment thereto is guilty of a misdemeanor
119 punishable by a fine of not less than \$5 nor more than \$100 for each offense. Such person shall be civilly
120 liable to the Commonwealth for the actual damage sustained by the Commonwealth by reason of his
121 wrongful act. Such damages may be recovered at the suit of the Board and, when collected, paid into the
122 state treasury to the credit of the Department. Any regulations promulgated by the Board shall be
123 developed in accordance with the Administrative Process Act (§ 2.2-4000 et seq.) except when specifically
124 exempted by law.

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