

SENATE BILL NO. 503

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee for Courts of Justice

on February 12, 2024)

(Patrons Prior to Substitute--Senators Surovell and Diggs [SB 206])

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; civil penalty.

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 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 (i) for the purposes of enforcement of parking, speed limits, traffic laws, tolling requirements, high-occupancy vehicle requirements, or on-road emissions monitoring; (ii) by the Virginia Port Authority for terminal operations; or (iii) by the Department of Motor Vehicles at permanent weighing stations and in mobile weighing operations to identify commercial motor vehicles with unpaid liquidated damages for weight violations pursuant to § 46.2-1131 or commercial motor vehicles with out-of-service orders or in need of a safety inspection.

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

28 B. Operation of and access to a license plate reader system by any law-enforcement agency shall
29 be for official law-enforcement purposes only and shall only be used to scan, detect, and record data about
30 vehicles and license plate numbers for the purpose of identifying a vehicle that is (i) associated with a
31 wanted, missing, or endangered person or human trafficking; (ii) stolen; or (iii) involved in an active law-
32 enforcement investigation.

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

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

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

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

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

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

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

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

67 G. Following a positive match by a license plate reader system, the law-enforcement officer shall
68 attempt to visually verify that the image of the license plate displayed by the license plate reader system
69 matches the vehicle for which such search has been authorized. A positive match alone shall not constitute
70 reasonable suspicion as grounds for a law-enforcement officer to stop a vehicle. The officer must develop
71 independent reasonable suspicion for the stop, which may include visually confirming the license plate
72 number on the vehicle. Additionally, the results from a license plate reader system shall not be the sole
73 basis to establish probable cause for the issuance of a search warrant or an arrest warrant, but shall be
74 admissible as exculpatory evidence.

75 H. License plate reader system data shall be purged from the database or system within 30 days of
76 its capture in such a manner that such data is destroyed and not recoverable. However, if such data is part
77 of an ongoing investigation, the data may be retained until final disposition of the matter in accordance
78 with applicable records retention law and policy. If the final disposition of the matter was a conviction,

79 then such data shall be retained until the conclusion of all appeals and any other post-conviction
80 proceedings in accordance with applicable records retention law and policy.

81 I. Law-enforcement agencies and their private vendors shall not share law-enforcement license
82 plate reader system data except with other law-enforcement agencies and shall not sell license plate reader
83 system data for any purpose. Law-enforcement agencies shall individually query license plate reader
84 system data stored and maintained by the private vendor operating such license plate reader system, and
85 any individual accessing such system data shall certify electronically or in writing that such access is for
86 an authorized law-enforcement purpose. No law-enforcement agency shall engage in bulk downloads,
87 storage, or sharing of such data unrelated to a specific query made pursuant to subsection B.

88 J. Any law-enforcement agency that installs or uses any license plate reader system shall (i) publish
89 its license plate reader system policy on its website, if any, and make hard copies of such policy available
90 at the office of such agency; (ii) maintain records sufficient to facilitate discovery in criminal proceedings,
91 post-conviction proceedings, public reporting, and auditing of compliance with such agency's license plate
92 reader system policies unless such data is required to be purged pursuant to subsection H; and (iii) make
93 public a log of the use of such system, to be updated on a monthly basis, displaying: (a) the aggregate
94 number of vehicles on which license plate reader system data is collected for each month of use; (b) a list
95 of all state and federal databases with which the data was compared, unless the existence of any such
96 database itself is not public; (c) the number of instances of unauthorized access to the license plate reader
97 system technology, including any unauthorized access by employees of such agency; (d) how many times
98 an officer utilized an investigative lead based on license plate reader system data; (e) how many cases
99 were closed due to an investigative lead from a license plate reader system; (f) what types of criminal
100 offenses were investigated or closed; and (g) demographic information for cases closed.

101 K. Any person employed by a law-enforcement agency or its private vendor who willfully and
102 intentionally violates the requirements regarding access and disclosure in this section or the agency's
103 policy for the use of a license plate reader system for the first time shall be subject to a civil penalty of up
104 to \$1,000 per disclosure and shall be required to complete training on the agency's license plate reader
105 system policy before being reinstated to operate such technology. Any person employed by a law-

106 enforcement agency or its private vendor who willfully and intentionally violates the requirements
107 regarding access and disclosure in this section or the agency's license plate reader system policy for a
108 second time shall be subject to a civil penalty of up to \$2,500 per disclosure, and such law-enforcement
109 agency shall terminate such person's employment or, if such person is employed by such private vendor,
110 terminate the access of such person to such license plate reader system and any data from such system.

111 L. Any state or local law-enforcement agency that places and operates a license plate reader system
112 pursuant to the provisions of this section shall report to the Department of State Police, in a format to be
113 determined by the Department of State Police, by January 15 of each year on the use of license plate reader
114 systems, including (i) the aggregate number of vehicles on which license plate reader system data is
115 collected for each year; (ii) a list of all state and federal databases with which the data was compared,
116 unless the existence of any such database itself is not public; (iii) how many times an officer utilized an
117 investigative lead based on license plate reader system data; (iv) how many cases were closed due to an
118 investigative lead from a license plate reader system; (v) what types of criminal offenses were investigated
119 or closed; (vi) demographic information for cases closed; and (vii) the number of instances of unauthorized
120 access to the license plate reader system technology, including any unauthorized access by employees of
121 such agency or the Department of State Police. If any information or data (a) contains an articulable
122 concern for any person's safety; (b) is otherwise prohibited from public disclosure by federal or state
123 statute; or (c) if disclosed, may compromise sensitive criminal justice information, such information or
124 data may be excluded from public disclosure. The Department of State Police shall aggregate such
125 information by law-enforcement agency and report it to the General Assembly and the Virginia State
126 Crime Commission by March 15 of each year. No evidence discovered or obtained in violation of this
127 section shall be admissible in any trial, hearing, or other proceeding.

128 **§ 33.2-210. Traffic regulations; penalty.**

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

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

142 C. The provisions of this section shall not prevent or limit the use of any device that is authorized
143 for use by any other provision of law.

144 **2. That any law-enforcement agency operating a license plate reader system, as defined in § 2.2-**
145 **5517 of the Code of Virginia, as created by this act, prior to July 1, 2024, shall be exempt from the**
146 **provisions of this act until January 1, 2025. Any such law-enforcement agency shall ensure that such**
147 **license plate reader system and the associated agency policies comply with the provisions of § 2.2-**
148 **5517 of the Code of Virginia, as created by this act, by January 1, 2025, or discontinue the use of**
149 **such system.**

150 **3. That the Virginia State Crime Commission shall review and report on the implementation of the**
151 **provisions of this act by reviewing the annual data collected by the Department of State Police**
152 **pursuant to subsection L of § 2.2-5517 of the Code of Virginia, as created by this act. Such report**
153 **shall be made publicly available by July 1, 2027.**

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