HOUSE DOCKET, NO. 1117 FILED ON: 1/16/2013

HOUSE . . . . . No. 3068

The Commonwealth of Massachusetts

PRESENTED BY:

Jonathan Hecht

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act to regulate the use of automatic license plate reader systems.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
Jonathan Hecht	*29th Middlesex*	*1/16/2013*
Josh S. Cutler	*6th Plymouth*	*1/16/2013*
William N. Brownsberger	*Second Suffolk and Middlesex*	*1/16/2013*
Martha M. Walz	*8th Suffolk*	*1/16/2013*
Kay Khan	*11th Middlesex*	*1/16/2013*
Peter V. Kocot	*1st Hampshire*	*1/16/2013*
James J. O'Day	*14th Worcester*	*1/16/2013*
David M. Rogers	*24th Middlesex*	*1/16/2013*
Paul McMurtry	*11th Norfolk*	*1/16/2013*
Ruth B. Balser	*12th Middlesex*	*1/16/2013*
Timothy J. Toomey, Jr.	*26th Middlesex*	*1/16/2013*
Carl M. Sciortino, Jr.	*34th Middlesex*	*1/16/2013*
Benjamin Swan	*11th Hampden*	*1/16/2013*
Brian R. Mannal	*2nd Barnstable*	*1/16/2013*
Christine E. Canavan	*10th Plymouth*	*1/16/2013*
Anne M. Gobi	*5th Worcester*	*1/16/2013*
Denise Andrews	*2nd Franklin*	*1/16/2013*
John W. Scibak	*2nd Hampshire*	*1/16/2013*

Michael J. Barrett	*Third Middlesex*	*1/16/2013*
Frank I. Smizik	*15th Norfolk*	*1/16/2013*
Diana DiZoglio	*14th Essex*	*1/16/2013*
Viriato Manuel deMacedo	*1st Plymouth*	*1/16/2013*
Denise Provost	*27th Middlesex*	*1/16/2013*
Harold P. Naughton, Jr.	*12th Worcester*	*1/16/2013*
Cory Atkins	*14th Middlesex*	*1/16/2013*
Thomas P. Conroy	*13th Middlesex*	*1/16/2013*
Jason M. Lewis	*Fifth Middlesex*	*1/16/2013*
Antonio F. D. Cabral	*13th Bristol*	*1/16/2013*
Kenneth I. Gordon	*21st Middlesex*	*1/16/2013*
Tom Sannicandro	*7th Middlesex*	*1/16/2013*

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By Mr. Hecht of Watertown, a petition (accompanied by bill, House, No. 3068) of Jonathan Hecht and others for legislation to regulate the use of automatic license plate reader systems. Transportation.

The Commonwealth of Massachusetts

In the Year Two Thousand Thirteen

An Act to regulate the use of automatic license plate reader systems.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. The General Laws are hereby amended by inserting after chapter 90C the following chapter:-

CHAPTER 90C½.

AUTOMATIC LICENSE PLATE READERS.

Section 1. In this chapter, unless the context otherwise requires, the following words shall have the following meanings:-

"Automatic license plate reader system" or "ALPR system": a system of one or more mobile or fixed high speed cameras used in combination with computer algorithms to convert images of license plates into computer-readable data.

"Captured plate data": the GPS coordinates, date and time, photograph, license plate number, and any other data captured by or derived from any ALPR system.

"Secured area": an area, enclosed by clear boundaries, to which access is limited and entry is only obtainable through specific access-control points.

Section 2.

(a) Except as provided for in this section, it shall be unlawful for any individual, partnership, corporation, association, or state or local government entity to use an ALPR system.

(b) Automatic license plate reader systems may be used:

(1) By state, county, or municipal law enforcement agencies for the immediate comparison of captured plate data with data held by the Registry of Motor Vehicles, the Department of Criminal Justice Information Services, the National Crime Information Center, the FBI Kidnappings and Missing Persons list, and the child protective alert system established pursuant to section 51H of chapter 119 or the silver alert system established pursuant to section 18L of chapter 6A for the purpose of identifying:

a. Outstanding parking or traffic violations;

b. A violation of vehicle registration requirements

c. A vehicle in violation of the inspection requirements set forth in section 7A of chapter 90;

d. A stolen vehicle or stolen license plate;

e. A vehicle registered to an individual for whom there is an outstanding default or arrest warrant for felony charges appearing in the warrant management system established pursuant to section twenty-three A of chapter two hundred and seventy-six, or outstanding default or arrest warrants for felony charges issued in another jurisdiction; or

f. A vehicle associated with a missing person;

(2) By parking enforcement entities, for the regulation of public parking pursuant to sections 20A and 20A1/2 of chapter 90;

(3) For the purpose of controlling access to secured areas; or

(4) By the Department of Transportation, for the purpose of electronic toll collection under section thirteen of chapter 6C.

(c) Captured plate data obtained for the purposes described under subsection (b) shall not be used or shared for any other purpose and shall not be preserved for more than 48 hours except pursuant to a preservation request under subsection (a) of section 3, a disclosure order under subsection (b) of section 3, or a warrant issued using the procedures described in sections 2 through 3A of chapter 276. Captured plate data may be maintained within the custody and control of a law enforcement agency for more than 48 hours only with the authorization of a search warrant issued under sections 2 through 3A of chapter 276.

(d) Any entity that uses ALPR systems pursuant to subsection (b)(1) shall update those systems from the enumerated databases every 24 hours if such updates are available.

(e) Entities authorized to use ALPR systems under subsection (b) shall not sell, trade, or exchange captured plate data for any purpose.

(f) An alert from an ALPR system used under subsection (b)(1) does not constitute reasonable suspicion or probable cause to perform a traffic stop. If an ALPR system alerts on a plate, officers must visually confirm that the plate number and state of origin match the alert before taking law enforcement action.

Section 3.

(a) Upon the request of a law enforcement agency, an operator of an ALPR system shall take all necessary steps to immediately preserve captured plate data in its possession. A requesting agency must specify in a written sworn statement: (1) the particular camera or cameras for which captured plate data must be preserved or the particular license plate for which captured plate data must be preserved; and (2) the date or dates and timeframes for which captured plate data must be preserved.

(b) A law enforcement agency may apply for a court order for disclosure of captured plate data which shall be issued by any court of competent jurisdiction if the agency offers specific and articulable facts showing that there are reasonable grounds to believe that the captured plate data is relevant and material to an ongoing criminal or missing persons investigation.

(c) Captured plate data shall be destroyed by the operator of the ALPR system if the application for a disclosure order is denied or at the end of 14 days, whichever is later.

Section 4. Any entity that uses ALPR systems pursuant to subsection (b) of Section 2 shall:

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

(2) Adopt a privacy policy to ensure that captured plate data is not shared in violation of this act or any other law and conspicuously post the privacy policy on the agency's web site; and

(3) Report annually its automatic license plate reader practices and usage to the state authority that governs the entity, and conspicuously post the report on the entity's web site. The report shall include:

(a) The number of license plates scanned;

(b) The number of preservation requests under subsection (a) of section 3;

(c) The number of disclosure orders under subsection (b) of section 3;

(d) Any changes in policy that affect privacy concerns; and

(e) For law enforcement agencies operating ALPR systems pursuant to subsection (b)(1) of section 2:

i. The names of the lists against which captured plate data was checked, and for each list the number of confirmed matches;

ii. The number of disclosure orders under subsection (b) of section 3 resulting in criminal charges, and the number of such charges resulting in conviction.

Section 5. Any plate data captured in violation of Section 2 or improperly maintained in violation of Section 3 shall not be introduced by the commonwealth in any grand jury or criminal proceeding or in any civil or administrative proceeding brought by the commonwealth or any government office or official.

The commonwealth shall disclose to the defense the existence and the contents of any such captured data pursuant to the provisions of Rule 14(a)(1) of the Massachusetts Rules of Criminal Procedure. A criminal defendant shall be entitled to introduce evidence of captured data, however obtained and maintained, in his or her defense.

An individual whose rights have been violated by the improper capture or maintenance of plate data may introduce evidence concerning that plate data in a civil action brought pursuant to section 2F or may grant permission to another party in a civil proceeding to introduce such evidence.

Section 6. Any aggrieved person may institute a civil action in district or superior court for damages resulting from a violation of section 2, or in superior court to restrain any such violation. If in any such action a willful violation is found to have occurred, the violator shall not be entitled to claim any privilege absolute or qualified, and he shall, in addition to any liability for such actual damages as may be shown, be liable for exemplary damages of not less than one hundred and not more than one thousand dollars for each violation, together with costs and reasonable attorneys' fees and disbursements incurred by the person bringing the action.

Section 7. Captured plate data shall be considered personal data under chapter 66A of the general laws. Captured plate data may only be disclosed to, or with the prior written consent of, the person to whom the vehicle is registered; provided, however, that upon presentation to an operator of an ALPR system of a valid, current abuse prevention order under chapter 209A protecting the driver of a vehicle jointly registered with or registered solely in the name of the individual against whom the order was issued, captured plate data may not be disclosed except pursuant to a disclosure order under section 3 or as the result of a match under section 2.