

SENATE No. 2141

The Commonwealth of Massachusetts

In the Year Two Thousand Twenty-Four

SENATE, May 8, 2014.

The committee on Transportation to whom was referred the (accompanied by bill, Senate, No. 1648) of Cynthia S. Creem, William N. Brownsberger, Martha M. Walz, Kay Khan and other members of the General Court for legislation to regulate the use of automatic license plate reader systems., reports recommending that the accompanying bill (Senate, No. 2141).

For the committee,
Thomas M. McGee

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In the Year Two Thousand Fourteen

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:

1 SECTION 1. WHEREAS, the motor vehicle, like the cellular telephone at issue in
2 Commonwealth v. Augustine, SJC-11482 (decided Feb. 18, 2014), is “an indispensable part of
3 modern [American] life;” and

4 WHEREAS, under chapter 90 of the General Laws, residents are required to register their
5 vehicles with the commonwealth and to affix license plates to the exterior of those vehicles; and

6 WHEREAS, advances in technology have resulted in the development and production of
7 so-called automatic license plate reader systems, or ALPR systems, consisting of high-speed
8 cameras that act in combination with certain computer algorithms to capture images of license
9 plates and reduce those images to searchable text; and

10 WHEREAS, such systems are further capable of stamping those images with searchable
11 time, date and GPS coordinates; and

12 WHEREAS, the data being generated by the use of ALPR systems has grown
13 exponentially in recent years, with law enforcement agencies and private data companies having
14 compiled hundreds of millions of license plate scans each month concerning a majority of the
15 registered vehicles in the nation; and

16 WHEREAS, this trend is expected to continue as the prices of ALPR and data storage
17 systems continue to fall; and

18 WHEREAS, law enforcement agencies and private users have utilized ALPR systems to
19 surveil specific groups or events, such as political rallies or low-income populations; and

20 WHEREAS, more generally, such data in the aggregate enables state and local
21 governments and other end-users to catalogue the travels of the commonwealth's citizens over
22 extended periods of time; and

23 WHEREAS, the existence of and awareness of such surveillance techniques "chill[]
24 associational and expressive freedoms," Commonwealth v. Augustine, quoting U.S. v. Jones,
25 132 S. Ct. 945 (2012); and

26 WHEREAS, such monitoring infringes upon "the existence of a reasonable societal
27 expectation of privacy in the sum of one's public movements," U.S. v. Jones, 132 S. Ct. 945
28 (2012); and

29 WHEREAS, users of ALPR systems necessarily avail themselves of state laws that
30 compel motor vehicle owners, under threat of criminal penalty, to compromise those
31 expectations of privacy by publicly displaying registration numbers; and

32 WHEREAS, the commonwealth now seeks to limit the extent to which motor vehicle
33 owners so compromise their privacy when they comply with such laws; and

34 NOW THEREFOR, the General Laws, as amended by section 9 of chapter 79 of the acts
35 of 2014, are hereby further amended by inserting after chapter 90I the following chapter:-

36 Chapter 90J Automatic License Plate Reader Systems

37 Section 1. Definitions

38 As used throughout this chapter, the following words shall have the following meanings:

39 "ALPR data" means any data captured, created or originated by an ALPR system,
40 including, without limitation, GPS coordinates, dates, times, images and license plate numbers,
41 existing in an any form or medium, whether electronic, paper or otherwise, and any copies
42 thereof;

43 "Automated license plate reader system" or "ALPR system" means a system of one or
44 more mobile or fixed high-speed cameras combined with computer algorithms to convert images
45 of license plates into computer-readable data;

46 "Department" means department of transportation;

47 "Executive office" means executive office of public safety and security;

48 "Governmental entity" means any official, officer, agency, office, instrumentality,
49 department, division, committee, board, advisory board, commission or other body or authority
50 of the commonwealth, or of any county or municipality, or any employee thereof, or any agent or

51 other person acting on behalf thereof while acting within the scope of such agency or
52 representation;

53 “Law enforcement agency” means any state or municipal law enforcement agency;

54 “Law enforcement officer” means a state or municipal police officer or traffic or parking
55 enforcement officer;

56 “Legitimate law enforcement purpose” means: detection or investigation of a crime,
57 traffic violation or parking violation; operation of AMBER alerts; or searches for missing or
58 endangered persons;

59 “Non-governmental entity” means any person other than a governmental entity;

60 “Person” means any individual, partnership, corporation, association, society, entity or
61 governmental entity;

62 “Preservation request” means written notice delivered by a federal, state or municipal law
63 enforcement agency or a defendant in a criminal case to the executive office or a non-
64 governmental entity requesting that certain ALPR data be preserved and retained for a specified
65 period of time not to exceed 30 days from the date such request is received; provided, that such
66 preservation request shall be accompanied by an affidavit stating: (i) the parameters identifying
67 which ALPR data must be preserved, including, without limitation, the license plate numbers, if
68 any, and the dates, times, and locations; and (ii) that such specified period of time is necessary to
69 obtain a search warrant or production order compelling the production of such ALPR data;
70 provided further, that the agency or defendant may serve subsequent preservation requests
71 pending resolution of any motion filed in connection with such search warrant or production
72 order, or any appeal related thereto;

73 “Production order” means an order or summons obtained by a defendant in a criminal
74 case charged with a felony requiring a non-governmental entity or the executive office to
75 produce ALPR data; provided, that such order or summons shall be issued in compliance with
76 Massachusetts Rule of Criminal Procedure 17(a)(2); provided further, that any ALPR data
77 produced in response to such order or summons shall be deemed privileged for the purposes of
78 complying therewith;

79 “Search warrant” means: (i) a federal search warrant issued upon a determination of
80 probable cause by a court or justice authorized to issue warrants in criminal cases that meets the
81 requirements of the Federal Rules of Criminal Procedure; or (ii) a state search warrant issued
82 pursuant to the requirements of sections 2 through 3A, inclusive, of chapter 276 by a court or
83 justice authorized to issue warrants in criminal cases; provided, that such federal or state search
84 warrant shall be issued only upon a determination that probable cause exists to believe that the
85 ALPR data described in such warrant is relevant and material to the investigation of a felony.

86 Section 2. State or municipal government; permitted uses

87 Notwithstanding any general or special law or regulation to the contrary, it shall be
88 unlawful for any governmental entity to use an ALPR system; provided, however, that an ALPR
89 system may be used by:

90 (a) law enforcement agencies for legitimate law enforcement purposes; and

91 (b) the department for the purpose of assessing and collecting tolls.

92 Section 3. General obligations

93 (a) Any database or other information against which license plate numbers are
94 cross-referenced by an ALPR system operated by any person shall be updated every 24 hours, or
95 at such other intervals as updated information become available if greater than 24 hours.

96 (b) Prior to taking any action in response to an alert or prompt from an ALPR
97 system operated by any person, the individual so alerted shall confirm that:

98 (1) the license plate number of the targeted vehicle matches the license
99 plate number that prompted the alert; and

100 (2) the information or circumstances giving rise to the alert have not
101 changed materially since the time such information was last updated pursuant to subsection (a).

102 (c) No person shall operate an ALPR system while traveling on:

103 (1) private ways or property without the prior written consent of the
104 owner of record of such way or property; or

105 (2) any property owned or leased by the commonwealth, or any
106 agency, authority or political subdivision thereof; provided, however, that a law enforcement
107 agency may operate an ALPR system on such property for a legitimate law enforcement purpose.

108 Section 4. Certification

109 No employee, agent or any individual acting on behalf of any governmental entity shall
110 access, search, review or disclose ALPR data or operate an ALPR system unless and until such
111 employee, agent or individual has been certified by the executive office as having reviewed and
112 understood the laws and regulations applicable to ALPR system operation and data storage.

113 Section 5. ALPR data; retention by law enforcement

114 Notwithstanding any general or special law or regulation to the contrary, not later than 48
115 hours following the time ALPR data is captured, created or originated by an ALPR system
116 operated by a law enforcement agency, the agency:

117 (a) may, at the option of the agency, transfer such data to the executive office;
118 and

119 (b) shall permanently erase or destroy any such data in its possession, custody
120 or control.

121 Section 6. ALPR data; retention by the department

122 (a) Not later than 48 hours following the time ALPR data is captured, created
123 or originated by an ALPR system operated by the department or its agent, the department or its
124 agent shall transfer such data to the executive office.

125 (b) Not later than 90 days following the date ALPR data is captured, created
126 or originated by an ALPR system operated by the department or its agent, the department or its
127 agent shall permanently erase or destroy any such data in its possession, custody or control;
128 provided, however, that the department or its agent may retain such data for longer than 90 days
129 if such data is necessary to identify, collect or pursue unpaid tolls; provided further, that such
130 data shall be permanently erased or destroyed not later than 7 days following the date such tolls
131 are paid.

132 Section 7. ALPR data; retention by the executive office

133 (a) The executive office shall retain and store ALPR data transferred to it
134 pursuant to sections 5 or 6 for a period of 90 days. At the end of such 90-day period, the
135 executive office shall permanently erase or destroy all such data in its possession, custody, or
136 control.

137 (b) ALPR data may be retained beyond the 90-day period established under
138 subsection (a) as necessary to comply with:

- 139 (1) a search warrant;
140 (2) a production order; or
141 (3) a preservation request.

142 (c) The executive office shall retain and store ALPR data pursuant to
143 subsection (a):

- 144 (1) in a physically secure room used exclusively for the purposes set
145 forth in subsection (a); and
146 (2) if stored electronically, on a system that is not connected to the
147 Internet or any wide-area or local-area network.

148 Section 8. ALPR data; retention by non-governmental entities

149 (a) Notwithstanding any general or special law or regulation to the contrary, a
150 non-governmental entity shall permanently erase or destroy all ALPR data in its possession,
151 custody, or control that is derived from vehicles registered or operated within the
152 commonwealth, including any portions of documents or records derived from such ALPR data,
153 not later than 90 days following the date such data was captured, created or originated by an
154 ALPR system.

155 (b) Such ALPR data may be retained beyond the 90-day period established
156 under subsection (a) as necessary to comply with:

- 157 (1) a search warrant;
- 158 (2) a production order; or
- 159 (3) a preservation request.

160 Section 9. ALPR data; government access and review

161 Subject to section 4, notwithstanding any other general or special law or regulation to the
162 contrary, a governmental entity may not access, search, review, disclose, or exchange ALPR data
163 from any source; provided, however, that:

164 (a) a law enforcement officer may access, search or review ALPR data as
165 necessary to comply with subsection (a) of section 3;

166 (b) a law enforcement officer may access, search or review ALPR data
167 immediately following an alert from an ALPR system prior to executing a motor vehicle stop or
168 issuing a ticket or citation as necessary to comply with subsection (b) of section 3;

169 (c) an employee or agent of a law enforcement agency, the executive office or
170 the department may access ALPR data as necessary to install, maintain or repair an ALPR
171 system or a system storing ALPR data;

172 (d) a law enforcement officer or an employee of a law enforcement agency,
173 the executive office, or the department may access, search, review or disclose ALPR data as
174 necessary to respond to a reasonable belief that an individual is at imminent risk of serious
175 physical injury, death or abduction; provided, that not later than 48 hours after accessing such
176 ALPR data, the agency, executive office or department shall provide written notice to the office
177 of the attorney general describing with particularity the grounds for such emergency access and
178 the parameters of the ALPR data accessed, searched, reviewed or disclosed; provided further,
179 that such ALPR data within the possession, custody or control of the law enforcement agency
180 shall be permanently erased or destroyed not later than 48 hours after such imminent risk ceases
181 to exist;

182 (e) a law enforcement officer or an employee of a law enforcement agency
183 may access, search, review or disclose ALPR data as necessary to comply with:

- 184 (1) section 5;
- 185 (2) a search warrant; or
- 186 (3) a production order;

187 (f) an employee of the executive office may access, search, review or disclose
188 ALPR data as necessary to comply with:

- 189 (1) section 7;
- 190 (2) a search warrant;
- 191 (3) a production order; or
- 192 (4) a preservation request;

193 (g) a law enforcement agency, a district attorney's office or the office of the
194 attorney general may access, search, and review ALPR data obtained pursuant to a search
195 warrant in connection with the investigation or prosecution of a felony; provided, however, that
196 such ALPR data shall not be disclosed unless material to and in furtherance of such investigation
197 or prosecution; provided further, that any such ALPR data not material to such investigation or
198 prosecution shall be permanently erased or destroyed not later than 6 months following the date
199 the search warrant was executed; provided further, that such agency or office may apply to the
200 district or superior court for an order allowing for extensions of not more than 6 months upon a
201 showing that a determination as to the materiality of such ALPR data could not be made through
202 reasonable effort within such period of time; or

203 (h) an employee or agent of the department may access, search, review or
204 disclose ALPR data:

- 205 (1) as necessary to comply with section 6; or
- 206 (2) for the purpose of assessing, collecting or pursuing tolls.

207 Section 10. Additional protections

208 (a) ALPR data in the possession, custody or control of a non-governmental
209 entity that is derived from motor vehicles registered or operated within the commonwealth may
210 not be disclosed to or exchanged with any other person; provided, however, that such non-
211 governmental entity may disclose such data:

212 (1) to a law enforcement officer responding to a reasonable belief that
213 an individual is at imminent risk of serious physical injury, death or abduction; provided, that
214 such law enforcement officer submits an affidavit to such non-governmental entity describing
215 with particularity the grounds for such emergency access and the parameters of the ALPR data
216 requested; provided further, that not later than 48 hours after disclosing, sharing or exchanging
217 such ALPR data, such law enforcement officer shall deliver a copy of such affidavit to the office
218 of the attorney general;

219 (2) pursuant to a search warrant or production order;

220 (3) as necessary in connection with matters of motor vehicle or driver
221 safety and theft, motor vehicle emissions, motor vehicle product alterations, recalls, or
222 advisories, performance monitoring of motor vehicles and dealers by motor vehicle
223 manufacturers;

224 (4) as necessary in connection with motor vehicle market research
225 activities, so long as the ALPR data is not published, redisclosed, or used to contact individuals;

226 (5) for use by any insurer or insurance support organization, or by a
227 self-insured entity, or its agents, employees, or contractors, in connection with claims
228 investigation activities; or

229 (6) for use in connection with the operation of private toll
230 transportation facilities.

231 (b) Notwithstanding subsection (a), or any other general or special law or
232 regulation to the contrary, ALPR data derived from vehicles registered or operated within the
233 commonwealth shall not be used in any way by any person:

234 (1) to determine a person's numerical or other credit rating; provided,
235 however, that nothing in this subsection shall be construed to prevent the department from
236 reporting unpaid tolls to any credit reporting agency or service;

237 (2) to make any determination with respect to any secured or
238 unsecured credit facility or loan, or any other form of financing, whether secured or unsecured,
239 including, without limitation, any determination as to whether to extend such financing, the
240 applicable interest rate or rate of return, or whether an event of default exists;

241 (3) to determine a person's insurance rate or rating with respect to any
242 form of insurance, including, without limitation, any policy of life insurance, health insurance,
243 automobile insurance or liability insurance;

244 (4) to make any determination with respect to hiring, dismissal,
245 discharge, suspension, compensation or any other employment decision; or

246 (5) to identify targets of or to engage in any form of promotion,
247 marketing, advertising or solicitation.

248 (c) A recipient of ALPR data disclosed pursuant to subsection (a) may
249 disclose such data only as permitted under subsection (a); provided, that any recipient of ALPR
250 data shall be subject to the retention limitations and obligations contained in sections 8 and 9, as
251 applicable.

252 Section 11. ALPR data; admissibility

253 (a) Notwithstanding any general or special law or regulation to the contrary,
254 ALPR data produced, obtained or maintained in violation of this chapter shall not be admitted,
255 offered or cited by any governmental entity for any purpose in any criminal proceeding.

256 (b) Notwithstanding any general or special law or regulation to the contrary,
257 ALPR data shall not be discoverable, admissible in evidence or offered or cited for any purpose
258 in any civil or administrative proceeding by any party; provided, however, that subject to
259 subsection (a), such data shall be admissible when offered by the department in any civil or
260 administrative proceeding relating to the collection of tolls.

261 Section 12. Civil actions

262 (a) Any aggrieved person may institute a civil action in district or superior
263 court for damages resulting from a violation of this chapter, or in superior court to restrain any
264 such violation. If in any such action a willful violation is found to have occurred, the violator
265 shall not be entitled to claim any privilege absolute or qualified, and he shall, in addition to any
266 liability for such actual damages as may be shown, be liable for treble damages, or, in the
267 alternative, exemplary damages of not less than one hundred and not more than one thousand
268 dollars for each violation, together with costs and reasonable attorney's fees.

269 (b) A violation of sections 3, 8 or 10 of this chapter shall also be a violation of
270 section 2 of chapter 93A.

271 Section 13. Violations; reporting requirements

272 Any individual certified in accordance with section 4 shall promptly provide written
273 notice to the office of the attorney general if such person has knowledge of a violation of any of
274 the provisions of this chapter.

275 Section 14. Data security

276 ALPR data derived from vehicles registered or operated within the commonwealth shall
277 be deemed personal information under chapter 93H and all rules and regulations promulgated
278 thereunder; provided, that the data security provisions contained in subsection (c) of section 7
279 applicable to the executive office shall not be construed in any way by any court, office, division

280 or agency to mean that less protection is required from any other governmental or non-
281 governmental entity.

282 Section 15. Further regulation by governmental entities

283 Nothing contained in this chapter shall be construed to prevent a law enforcement
284 agency, a municipality, the executive office or the department from adopting stricter limitations
285 with respect ALPR systems or ALPR data.

286 Section 16. Reporting

287 On or before March 1 annually, the executive office shall file a report with the clerks of
288 the senate and house of representatives containing the following information based on data from
289 the prior calendar year:

- 290 (i) the total number of ALPR systems being operated within the
291 commonwealth;
- 292 (ii) the number of municipalities submitting ALPR data to the executive office
293 pursuant to section 5;
- 294 (iii) the number of license plate scans transferred to the executive office
295 pursuant to section 5;
- 296 (iv) the number of license plate scans transferred to the executive office
297 pursuant to section 6;
- 298 (v) the number of state warrants seeking ALPR data served on the executive
299 office; and
- 300 (vi) the number of federal warrants seeking ALPR data served on the
301 executive office.

302 Section 17. Executive office; rules and regulations

303 The executive office shall promulgate rules and regulations necessary to implement
304 sections 2 through 9, inclusive, and section 16, including, without limitation, rules and
305 regulations:

- 306 (a) ensuring that only those governmental entities authorized by this chapter
307 to use ALPR systems and access ALPR data do so for the limited purposes set forth in this
308 chapter; and
- 309 (b) establishing an auditing process to assess compliance with this chapter by
310 governmental entities.

311 Section 18. Office of the attorney general; enforcement

312 The attorney general shall enforce sections 2 through 10, inclusive, and shall have the
313 power to petition the court for injunctive relief, relief under chapter 93A, or other appropriate
314 relief against any person that fails to comply therewith.

315 Section 19. Severability

316 If any provision of this chapter or the application thereof to any person or circumstance is
317 held invalid, the invalidity shall not affect other provisions or applications of the chapter which
318 can be given effect without the invalid provision or application, and to this end the provisions of
319 this chapter are declared to be severable.