

HOUSE No. 3102

The Commonwealth of Massachusetts

PRESENTED BY:

William M. Straus

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 relative to automatic license plate readers.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>William M. Straus</i>	<i>10th Bristol</i>	<i>1/16/2015</i>

HOUSE No. 3102

By Mr. Straus of Mattapoisett, a petition (accompanied by bill, House, No. 3102) of William M. Straus relative to automatic license plate readers. Transportation.

The Commonwealth of Massachusetts

In the One Hundred and Eighty-Ninth General Court
(2015-2016)

An Act relative to automatic license plate readers.

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. The General Laws, as amended by section 9 of chapter 79 of the acts of
2 2014, are hereby further amended by inserting after chapter 90I the following chapter:-

3 Chapter 90J Automatic License Plate Reader Systems

4 Section 1. Definitions

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

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

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

"Department" means department of transportation;

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

"Governmental entity" means any official, officer, agency, office, instrumentality, department, division, committee, board, advisory board, commission or other body or authority of the commonwealth, or of any county or municipality, or any employee thereof, or any agent or other person acting on behalf thereof while acting within the scope of such agency or representation;

"Law enforcement agency" means any state or municipal law enforcement agency;

"Law enforcement officer" means a state or municipal police officer or traffic or parking enforcement officer;

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

"Non-governmental entity" means any person other than a governmental entity;

"Person" means any individual, partnership, corporation, association, society, entity or governmental entity;

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

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

46 “Search warrant” means: (i) a federal search warrant issued upon a determination of
47 probable cause by a court or justice authorized to issue warrants in criminal cases that meets the
48 requirements of the Federal Rules of Criminal Procedure; or (ii) a state search warrant issued
49 pursuant to the requirements of sections 2 through 3A, inclusive, of chapter 276 by a court or
50 justice authorized to issue warrants in criminal cases; provided, that such federal or state search
51 warrant shall be issued only upon a determination that the entity seeking the warrant has

probable cause to believe that evidence of an imminent or actual felony will be found in the ALPR data described in such warrant.

Section 2. State or municipal government; permitted uses

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

- (a) law enforcement agencies for legitimate law enforcement purposes; and
- (b) the department for the purpose of assessing and collecting tolls.

Section 3. General obligations

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

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

- (1) confirm that the license plate number of the targeted vehicle matches the license plate number that prompted the alert; and
- (2) use reasonable effort to confirm that the information or circumstances giving rise to the alert have not changed materially since the time such information was last updated pursuant to subsection (a).

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

(1) private ways designated as such by appropriate signs or markers or private property without the prior written consent of the owner of record of such way or property; or

(2) any parking lot owned or leased by any governmental entity.

Section 4. Certification

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

Section 5. ALPR data; retention by law enforcement

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

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

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

Section 6. ALPR data; retention by the executive office

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

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

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

Section 7. ALPR data; retention by non-governmental entities

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

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

- (1) to comply with a search warrant, a production order, or a preservation request;
- (2) to document, investigate or litigate civil claims related to individual instances of insurance fraud or motor vehicle theft;
- (3) to document or litigate civil claims related to individual instances of motor vehicle repossession; or
- (4) in connection with the payment or collection of unpaid tolls or parking fees, or civil claims related thereto.

Section 8. ALPR data; government access and review

Notwithstanding any general or special law or regulation to the contrary, a governmental entity may not access, search, review, disclose, or exchange ALPR data from any source; provided, however, that, subject to section 4:

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

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

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

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

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

135 (1) section 5;

136 (2) a search warrant; or

137 (3) a production order;

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

140 (1) section 7;

141 (2) a search warrant;

142 (3) a production order; or

143 (4) a preservation request;

144 (g) a law enforcement agency, a district attorney's office or the office of the attorney
145 general may access, search, and review ALPR data obtained pursuant to a search warrant in
146 connection with the investigation or prosecution of a felony; or

147 (h) a governmental entity may access, search, review or disclose ALPR data collected
148 by the department or its agent for the purpose of assessing, collecting or pursuing tolls.

149 Section 9. Additional protections

Notwithstanding any general or special law or regulation to the contrary, ALPR data derived from vehicles registered or operated within the commonwealth shall not be used in any way by any person:

- (1) to determine a person's numerical or other credit rating;
- (2) to determine whether to offer or enter into any secured or unsecured credit facility or loan;
- (3) to determine a person's insurance rate or rating with respect to any form of insurance, including, without limitation, any policy of life insurance, health insurance, automobile insurance or liability insurance;
- (4) to make any determination with respect to hiring, dismissal, discharge, suspension, compensation or any other employment decision; or
- (5) to identify targets of or to engage in any form of promotion, marketing, advertising or solicitation.

Nothing in this section shall be construed to prevent a person from reporting unpaid tolls or parking fees to any credit reporting agency.

Section 10. ALPR data; admissibility

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

(b) Notwithstanding any general or special law or regulation to the contrary, ALPR data shall not be discoverable, admissible in evidence or offered or cited for any purpose in any civil or administrative proceeding by any party; provided, however, that subject to subsection (a), such data shall be admissible when offered in any civil or administrative proceeding relating to the collection of tolls or arising out of claims of insurance fraud, motor vehicle theft, or motor vehicle repossession.

Section 11. Civil actions

(a) Any aggrieved person may institute a civil action in district or superior court for damages resulting from a violation of this chapter, 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 treble damages, or, in the alternative, exemplary damages of not less than one hundred and not more than one thousand dollars for each violation, together with costs and reasonable attorney's fees.

(b) A violation of sections 3, 8 or 9 of this chapter shall also be a violation of section 2 of chapter 93A.

Section 12. Data security

ALPR data derived from vehicles registered or operated within the commonwealth shall be deemed personal information under chapter 93H and all rules and regulations promulgated thereunder.

Section 13. Further regulation by governmental entities

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

Section 14. Reporting

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

- (i) the total number of ALPR systems being operated within the commonwealth;
- (ii) the number of municipalities submitting ALPR data to the executive office pursuant to section 5;
- (iii) the number of license plate scans transferred to the executive office pursuant to section 5;
- (iv) the number of license plate scans transferred to the executive office pursuant to section 6;
- (v) the number of state warrants seeking ALPR data served on the executive office;
- and
- (vi) the number of federal warrants seeking ALPR data served on the executive office.

Section 15. Executive office; rules and regulations

209 The executive office shall promulgate rules and regulations necessary to implement
210 sections 2 through 8, inclusive, and section 14, including, without limitation, rules and
211 regulations:

212 (a) ensuring that only those governmental entities authorized by this chapter to use
213 ALPR systems and access ALPR data do so for the limited purposes set forth in this chapter; and

214 (b) establishing an auditing process to assess compliance with this chapter by
215 governmental entities.

216 Section 16. Office of the attorney general; enforcement

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

220 Section 17. Severability

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