HOUSE DOCKET, NO. 1363 FILED ON: 1/16/2019

HOUSE . . . . . No. 3148

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 all-electronic tolling data privacy.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
William M. Straus	*10th Bristol*	*1/16/2019*

HOUSE DOCKET, NO. 1363 FILED ON: 1/16/2019

HOUSE . . . . . No. 3148

By Mr. Straus of Mattapoisett, a petition (accompanied by bill, House, No. 3148) of William M. Straus relative to the collection of all-electronic tolling data. Transportation.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. *3439* OF 2017-2018.]

The Commonwealth of Massachusetts

In the One Hundred and Ninety-First General Court
(2019-2020)

An Act relative to all-electronic tolling data privacy.

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. As used throughout this act, the following words shall have the following meanings, unless the context clearly requires otherwise:

"Tolling data" means any data captured or created by an ALPR system or from signals or radio frequencies emitted by a transponder in connection with the assessment or collection of a toll, including, without limitation, GPS coordinates or vehicle location information, dates and times traveled, images, vehicle speed, and license plate numbers, existing in an any form or medium, whether electronic, paper or otherwise, and any copies thereof;

"Automated license plate reader system" or "ALPR system" means an automated 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 Massachusetts department of transportation;

"Preservation request" means written notice obtained by a federal, state or municipal law enforcement agency or a defendant in a criminal case requesting that certain tolling data be preserved and retained for a specified period of time from the date such request is received; provided, that such preservation request shall be accompanied by an affidavit stating: (i) the parameters identifying which tolling data must be preserved, including, without limitation, the license plate numbers, if any, and the dates, times, and locations; and (ii) that such specified period of time is necessary to obtain a search warrant or production order compelling the production of such tolling data;

"Production order" means an order or summons obtained by a defendant in a criminal case charged with a felony requiring the department or an agent of the department to produce tolling data; provided, that such order or summons shall be issued in compliance with Massachusetts Rule of Criminal Procedure 17(a)(2); provided further, that any tolling data produced in response to such order or summons shall be deemed privileged for the purposes of complying therewith;

"Search warrant" means: (i) a federal search warrant issued upon a determination of probable cause by a court or justice authorized to issue warrants in criminal cases that meets the requirements of the Federal Rules of Criminal Procedure; or (ii) a state search warrant issued pursuant to the requirements of sections 2 through 3A, inclusive, of chapter 276 by a court or justice authorized to issue warrants in criminal cases.

Section 2. Notwithstanding any general or special law or regulation to the contrary, the department, and any agent acting on its behalf, shall not access, search, review, disclose, or

exchange tolling data in its possession, custody, or control; provided, however, that the department or an agent thereof may:

(a) access, search, review or disclose tolling data for the purpose of assessing, collecting or pursuing the payment tolls or fines or surcharges related to unpaid tolls;

(b) access, search, or review tolling data as necessary to install, maintain or repair an ALPR or transponder system or a system storing tolling data;

(c) access, search, review, disclose or exchange tolling 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 responding, the 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 tolling data accessed, searched, reviewed or disclosed; or

(d) access, search, review or disclose tolling data as necessary to comply with a search warrant, production order, or preservation request issued in connection with the investigation or prosecution of a felony.

Section 3. (a) Notwithstanding any general or special law or regulation to the contrary, and subject to subsection (b), the department shall permanently erase or destroy, or cause to be permanently erased or destroyed, all tolling data in its possession, custody, or control not later than 120 days following the date on which the tolling data was created.

(b) The department may retain tolling data beyond the 120-day period established under subsection (a) as necessary to comply with a search warrant, production order, or preservation request, or as necessary to collect unpaid tolls or fines or surcharges related to unpaid tolls.

Section 4. 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 for injunctive relief. 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.