

HOUSE No. 3404

The Commonwealth of Massachusetts

PRESENTED BY:

Sarah K. Peake

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 establishing driver privacy protections.

PETITION OF:

| NAME: | DISTRICT/ADDRESS: | DATE ADDED: |
|-----------------------|------------------------|------------------|
| <i>Sarah K. Peake</i> | <i>4th Barnstable</i> | <i>1/11/2023</i> |
| <i>James J. O'Day</i> | <i>14th Worcester</i> | <i>2/7/2023</i> |
| <i>Jason M. Lewis</i> | <i>Fifth Middlesex</i> | <i>2/14/2023</i> |

HOUSE No. 3404

By Representative Peake of Provincetown, a petition (accompanied by bill, House, No. 3404) of Sarah K. Peake, James J. O'Day and Jason M. Lewis for legislation to establish driver privacy protections. Transportation.

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-Third General Court
(2023-2024)**

An Act establishing driver privacy protections.

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 are hereby amended by inserting after chapter 90J the
2 following chapter:-

3 CHAPTER 90K. DRIVER PRIVACY PROTECTIONS.

4 Section 1. As used in this chapter, the following words shall have the following meanings
5 unless the context clearly requires otherwise: -

6 “Automated license plate reader system” or “ALPR system”, an automated system of one
7 or more mobile or fixed high-speed cameras used in combination with computer algorithms to
8 convert images of license plates into computer-readable license plate identifying data.

9 “Automated license plate reader data” or “ALPR data”, all data collected by automated
10 license plate reader systems, including but not limited to the GPS coordinates, location, date and

11 time, speed of travel, photograph, license plate number, or other identifying information;
12 provided that ALPR data does not include tolling data.

13 “Toll collection technology”, any technology used for toll collection or assessment,
14 including radio-frequency identifying transponders and automated license plate reader systems.

15 “Tolling data”, any data captured or created by toll collection technologies, including,
16 without limitation, GPS coordinates or other vehicle location information, dates and times
17 traveled, images, vehicle speed, and license plate numbers, existing in any form or medium,
18 whether electronic, paper or otherwise, and any copies thereof;

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

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

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

37 “Vehicle data”, GPS information revealing the location of vehicles that is created by the
38 hardware or software in vehicles and that is collected or accessed by private parties other than
39 the driver, including but not limited to original equipment manufacturers, vehicle software
40 providers, and aftermarket analysts of onboard diagnostics.

41 Section 2. Persons acting under color of state law shall not: (a) use an ALPR system to
42 track or otherwise monitor activity protected by Articles II or XVI of the Massachusetts
43 Declaration of Rights or the First Amendment to the United States Constitution; (b) retain ALPR
44 data longer than 14 days except in connection with a specific criminal investigation based on
45 articulable facts linking the data to a crime; (c) disclose, sell or permit access to ALPR data
46 except as required in a judicial proceeding; or (d) access ALPR data from other governmental or
47 non-governmental entities except pursuant to a valid search warrant.

48 Section 3.

49 (a) Notwithstanding any general or special law or regulation to the contrary, toll
50 collection technologies shall only be used to identify the location of any vehicle for tolling
51 purposes under section 13 of chapter 6C of the general laws.

52 (b) The department of transportation, and any agent acting on its behalf, shall not access,
53 search, review, disclose, or exchange tolling data in its possession, custody, or control except as
54 necessary to:-

55 i. assess, collect or pursue the payment tolls or fines or surcharges related to unpaid
56 tolls;

57 ii. install, maintain or repair an ALPR or transponder system or a system storing
58 tolling data;

59 iii. respond to a reasonable belief that an individual is at imminent risk of serious
60 physical injury, death or abduction in accordance with this section;

61 iv. comply with a search warrant, production order, or preservation request issued in
62 connection with the investigation or prosecution of a felony.

63 (c) Notwithstanding any general or special law or regulation to the contrary, the
64 department of transportation shall permanently erase or destroy all tolling data in its possession,
65 custody, or control not later than 120 days following the date on which the tolling data was
66 created; provided, however, that the department may retain tolling data beyond the 120-day
67 period as necessary to comply with a search warrant, production order, or preservation request,
68 or as necessary to collect unpaid tolls or fines or surcharges related to unpaid tolls.

69 Section 4. Law enforcement access to toll collection and vehicle data

70 (a) No toll collection or vehicle data shall be shared with or provided to any law
71 enforcement entity or any law enforcement official without a search warrant, or production
72 order; provided, however, that a law enforcement entity or official may request and obtain such

73 data without a search warrant if it reasonably believes that an individual is at imminent risk of
74 serious physical injury, death or abduction and that such data is necessary to solve such situation.
75 The request shall be narrowly tailored to address the emergency and subject to the following
76 limitations:

77 (i) the request shall document the factual basis for believing the existence of a situation
78 that requires obtaining toll collection and/or vehicle data without delay of the information
79 because an individual is at imminent risk of serious physical injury, death, or abduction; and

80 (ii) not later than 48 hours after the government office obtains access to records, it shall
81 file with the office of the attorney general a written notice describing with particularity the
82 grounds for such emergency access and the parameters of the tolling data accessed, searched,
83 reviewed or disclosed; or

84 Section 5. Notwithstanding any general or special law or regulation to the contrary,
85 ALPR data, tolling data, and vehicle data collected, retained, disclosed, sold, or accessed in
86 violation of this chapter shall not be admitted, offered or cited by any governmental entity for
87 any purpose in any criminal, civil, or administrative proceeding; provided, however, that an
88 individual whose rights have been violated by the improper transfer of or access to these data,
89 may introduce evidence concerning such data in a civil action brought pursuant to section 6 or
90 may grant permission to another party in a civil proceeding to introduce such evidence.

91 Section 6. Enforcement.

92 (a) Any aggrieved person may institute a civil action in a district or superior court for
93 damages resulting from a violation of this chapter, or in superior court for injunctive relief to
94 restrain any such violation.

95 (b) If in any such action a willful violation is found to have occurred, the violator shall
96 not be entitled to claim any privilege absolute or qualified. In addition to any liability for such
97 actual damages as may be shown, the violator shall be liable for treble damages, or, in the
98 alternative, exemplary damages of not less than one hundred and not more than one thousand
99 dollars for each violation, together with costs and reasonable attorney's fees.

100 (c) The attorney general shall enforce this chapter and shall have the power to petition the
101 court for injunctive relief and other appropriate relief against any person that fails to comply
102 therewith.