

24103148D

SENATE BILL NO. 539

Offered January 10, 2024

Prefiled January 10, 2024

A BILL to amend and reenact § 33.2-210 of the Code of Virginia and to amend the Code of Virginia by adding in Title 2.2 a chapter numbered 55.6, consisting of a section numbered 2.2-5517, relating to license plate reader systems; penalties.

Patrons—Bagby and Salim

Referred to Committee on Transportation

Be it enacted by the General Assembly of Virginia:

1. That § 33.2-210 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding in Title 2.2 a chapter numbered 55.6, consisting of a section numbered 2.2-5517, as follows:

CHAPTER 55.6.

USE OF LICENSE PLATE READERS.

§ 2.2-5517. Use of license plate readers; civil penalty.

A. For the purposes of this section:

"License plate reader" means a high-speed, computer-controlled camera system used to optically scan license plates for the purposes authorized pursuant to this section.

"Data trust" means the secure digital storage of images and other data collected by a license plate reader that is held by the owner of the license plate reader or other responsible non-law enforcement entity that may only be accessed by a law-enforcement officer as provided in this section.

B. Any state or local law-enforcement agency may install, maintain, and operate license plate readers as authorized pursuant to this section. Any license plate readers placed in the right-of-way of highways under the jurisdiction of the Commonwealth Transportation Board or the Department of Transportation shall comply with the regulations of the Board governing activities in the right-of-way as authorized pursuant to § 33.2-210.

C. Data and information collected by a license plate reader shall be limited exclusively to data and information about (i) the make, model, condition, location, and color of a vehicle and the information on the vehicle's license plate and (ii) the date and time the data and information were collected. License plate readers shall not be capable of photographing, recording, or producing images of the occupants of a motor vehicle. The use of a license plate reader and access to a data trust is restricted to law-enforcement agencies.

D. License plate readers shall only be used to scan, detect, and identify license plate numbers for the purpose of identifying:

1. Stolen vehicles;

2. Vehicles associated with missing or endangered persons;

3. Vehicles involved in human trafficking as described in § 18.2-355;

4. Vehicles involved in the suspected killing of a police animal as described in § 18.2-144.1;

5. Vehicles involved in suspected acts of terrorism;

6. Vehicles involved in violent felonies as described in § 19.2-297.1; and

7. Vehicles involved in a suspected violation of §§ 18.2-154, 18.2-279, 18.2-89, 18.2-90, 18.2-91, 18.2-93, and 18.2-423 through 18.2-423.2.

However, license plate readers shall not be used for (i) identifying vehicles involved in suspected violations of probation or parole for the offenses listed in this subsection or (ii) enforcement of speed limits, traffic regulations, tolling requirements, or high-occupancy vehicle requirements.

E. The law-enforcement agency may enter into agreements with private vendors for the installation and maintenance of devices, including all related support services such as operations and administration. Any law-enforcement agency using a license plate reader shall enter into an agreement with such vendor or another responsible non-law-enforcement entity to operate and maintain a data trust. Images and data captured by such license plate reader shall be held in such data trust. Only law-enforcement officers may access such data trust and such access shall be limited as provided in this section. Upon application by an eligible law-enforcement officer for data and information related to a vehicle (i) involved in an investigation for an offense listed in subsection D or (ii) for which a search has been authorized pursuant to a search warrant or court order, the data trust may release relevant data and information related to such vehicle collected in the eight hours prior to such application, unless the search warrant or court order identifies a different search period. The data trust shall also

INTRODUCED

SB539

59 establish an alert for any new data or information collected related to such vehicle and shall provide  
60 such data to the requesting law-enforcement officer. In the affidavit or application for such warrant or  
61 court order, the law-enforcement officer shall (a) define the geographic area to be searched, (b) provide  
62 a description of the vehicle being searched for; and (c) identify the relevant period of time to be  
63 searched.

64 Notwithstanding the provisions of this subsection, access to license plate reader and data trust  
65 records shall be authorized on a case-by-case basis for audit verification purposes. All inquiries and  
66 access permission or denial shall be recorded for audit verification purposes.

67 F. Following a positive match by a license plate reader, the law-enforcement officer shall attempt to  
68 visually verify that the image of the license plate displayed by the license plate reader matches the  
69 vehicle for which such search has been authorized. A positive match alone shall not constitute  
70 reasonable suspicion as grounds for a law-enforcement officer to stop a vehicle. The officer must  
71 develop independent reasonable suspicion for the stop, which may include visually confirming the  
72 license plate number on the vehicle.

73 G. License plate reader data shall not be recorded or transmitted except as authorized pursuant to  
74 this section and shall be purged from the system within 30 days of capture in such a manner as to be  
75 unrecoverable. However, such data shall be retained if a positive match results in an arrest, citation, or  
76 assignment to protective custody, or has identified a vehicle that was the subject of a missing person  
77 report. Such data shall be retained until the final disposition of the case. Such data may also be  
78 retained if necessary to comply with the requirements of subsection I.

79 H. Any law-enforcement agency using license plate readers shall administer a documented training  
80 process for acquiring proficiency in the operation of such license plate readers and compliance with  
81 federal and state laws and regulations and any other legal requirements related to license plate readers.

82 I. Any law-enforcement agency that uses license plate reader technology shall maintain records  
83 sufficient to facilitate discovery in criminal proceedings, post-conviction proceedings, public reporting,  
84 and auditing of compliance with this section. Such agency shall collect and maintain data pertaining to  
85 (i) a complete history of each user's queries; (ii) the total number of queries conducted; (iii) the number  
86 of queries that resulted in matches; (iv) the number of cases that were closed due to an investigative  
87 lead from license plate reader technology; (v) the types of criminal offenses being investigated; (vi)  
88 demographic information for the individuals whose license plates are queried; and (vii) if applicable,  
89 any other entities with which the agency shared license plate reader data.

90 J. A law-enforcement agency that uses license plate readers shall publicly post and annually update  
91 by April 1 of each year a report providing information to the public regarding the agency's use of  
92 license plate readers. The report shall include all data required by clauses (ii) through (vii) of  
93 subsection I and (i) all instances of unauthorized access of the license plate reader technology or data  
94 trust, including any unauthorized access by employees of the agency, and (ii) vendor information,  
95 including the specific technology employed. However, such agency may exclude from such report any  
96 information or data that (a) contains an articulable concern for any person's safety, (b) is otherwise  
97 prohibited from public disclosure by law, or (c) if disclosed, may compromise sensitive criminal justice  
98 information.

99 For the purposes of this subsection, "sensitive criminal justice information" means information  
100 related to (1) an ongoing criminal investigation or proceeding, (2) the identity of a confidential source,  
101 or (3) law-enforcement investigative techniques and procedures.

102 K. Notwithstanding any other provision of law, all videos, images, or other data or information  
103 collected by license plate readers shall be used exclusively as provided in this section and shall not be  
104 (i) open to the public; (ii) sold or used for sales, solicitation, or marketing purposes; (iii) disclosed to  
105 any other entity unless such disclosure is consistent with the requirements of this section; or (iv) used in  
106 a court in a pending action or proceeding unless the action or proceeding relates to a criminal  
107 violation or such data or information is requested upon order from a court of competent jurisdiction. All  
108 data collected shall be confidential and for law-enforcement purposes only. Such data may be only  
109 shared with other state, local, and federal law-enforcement agencies for investigative purposes pursuant  
110 to a criminal or administrative warrant and a written agreement with the agency or department  
111 collecting such data.

112 L. The chief law-enforcement officer of any law-enforcement agency using license plate readers shall  
113 certify that the license plate readers and data trust meet all requirements of this section.  
114 Notwithstanding any provision of this section, to ensure compliance with the provisions of this section  
115 and to investigate complaints of misuse, the Attorney General, or a designee thereof, may examine and  
116 audit any license plate reader, data trust, or server used to store data collected by a license plate  
117 reader pursuant to this section and any records pertaining to the use of such license plate reader. The  
118 Attorney General may seek an injunction banning the use of a license plate reader against any  
119 law-enforcement agency found to have misused a device or the data collected therein. If such an  
120 injunction is granted, the Attorney General, or a designee thereof, may confiscate such license plate

121 readers to deter future violations of this section.

122 *M. In addition to any other penalty under law, any person that violates the data and information*  
123 *collection and destruction requirements of this section or discloses personal information in violation of*  
124 *this section shall be subject to a civil penalty of \$10,000 per disclosure, and such violation shall be*  
125 *grounds for revocation by the Commonwealth Transportation Board of all permits for devices issued to*  
126 *such person.*

127 **§ 33.2-210. Traffic regulations; penalty.**

128 A. The Board shall have the power and duty to make regulations that are not in conflict with the  
129 laws of the Commonwealth for the protection of and covering traffic on and for the use of systems of  
130 state highways, *including for the placement of license plate readers as authorized in § 2.2-5517*, and  
131 shall have the authority to add to, amend, or repeal such regulations.

132 B. The regulations, together with any additions or amendments thereto, prescribed by the Board  
133 under the authority of this section shall have the force and effect of law, and any person, firm, or  
134 corporation violating any such regulation or any addition or amendment thereto is guilty of a  
135 misdemeanor punishable by a fine of not less than \$5 nor more than \$100 for each offense. Such person  
136 shall be civilly liable to the Commonwealth for the actual damage sustained by the Commonwealth by  
137 reason of his wrongful act. Such damages may be recovered at the suit of the Board and, when  
138 collected, paid into the state treasury to the credit of the Department. Any regulations promulgated by  
139 the Board shall be developed in accordance with the Administrative Process Act (§ 2.2-4000 et seq.)  
140 except when specifically exempted by law.