STATE OF OKLAHOMA

2nd Session of the 55th Legislature (2016)

COMMITTEE SUBSTITUTE
FOR ENGROSSED
SENATE BILL NO. 1144 By: Dahm of the Senate

and

Walker of the House

COMMITTEE SUBSTITUTE

[motor vehicles - Automatic License Plate Reader Privacy Act – reader systems - misdemeanor - fine - plate data - annual reports - cause of action - effective date]

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1139.2 of Title 47, unless there is created a duplication in numbering, reads as follows:

This act shall be known and may be cited as the "Automatic License Plate Reader Privacy Act".

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1139.3 of Title 47, unless there is created a duplication in numbering, reads as follows:

As used in the Automatic License Plate Reader Privacy Act:

1. "Automatic license plate reader system" means a system of one or more mobile or fixed automated high-speed cameras used in combination with computer algorithms to convert images of license plates into computer-readable data;

2. "Captured plate data" means the GPS coordinates, date and time, photograph, license plate number and any other data captured by or derived from any automatic license plate reader system;

3. "Secured area" means an area, enclosed by clear boundaries, to which access is limited and not open to the public and entry is only obtainable through specific access-control points;

4. "Alert" means data held by the Department of Motor Vehicles, the state Criminal Justice Information System, the National Crime Information Center, the FBI Kidnappings and Missing Persons list, Oklahoma Missing Persons list, and license plate numbers that have been manually entered into the automatic license plate reader system upon an officer's determination that the vehicles or individuals associated with the license plate numbers are relevant and material to an ongoing criminal or missing persons investigation; and

5. "Governmental entity" means a department or agency of the state or a political subdivision thereof, or an individual acting for or on behalf of the state or a political subdivision thereof.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1139.4 of Title 47, unless there is created a duplication in numbering, reads as follows:

A. Except as provided in subsection B of this section or as provided in Section 7 of this act, it shall be unlawful for any person acting on behalf of a governmental entity to use an automatic license plate reader system.

B. An automatic license plate reader system may be used by a person acting on behalf of a governmental entity as follows:

1. By state, county or municipal law enforcement agencies for the comparison of captured plate data with data held by the Department of Public Safety, the state Criminal Justice Information System, the National Crime Information Center, the FBI Kidnappings and Missing Persons list, Oklahoma Missing Persons list, and license plate numbers that have been manually entered into the automatic license plate reader system upon an officer's determination that the vehicles or individuals associated with the license plate numbers are relevant and material to an ongoing criminal or missing persons investigation for the purpose of identifying:

a. outstanding parking or traffic violations,

b. an unregistered or uninsured vehicle,

c. a vehicle in violation of the inspection requirements set forth in Section 1113 of Title 47 of the Oklahoma Statutes,

d. a vehicle in violation of any other vehicle registration requirement,

e. a vehicle registered to an individual for whom there is an outstanding felony warrant,

f. a vehicle associated with a missing person,

g. a vehicle that has been reported as stolen, or

h. a vehicle that is relevant and material to an ongoing criminal investigation;

2. By parking enforcement entities for regulating the use of parking facilities;

3. For the purpose of controlling access to secured areas; or

4. For the purpose of electronic toll collection.

C. Any person convicted of violating any provision of this section shall be guilty of a misdemeanor and upon conviction shall be punished by a fine not to exceed Five Hundred Dollars ($500.00).

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1139.5 of Title 47, unless there is created a duplication in numbering, reads as follows:

A. Captured plate data obtained for the purposes described in subsection B of Section 3 of this act shall not be used or shared for any other purpose and shall not be retained except:

1. As evidence under subsection B of Section 3 of this act;

2. Pursuant to a preservation request pursuant to subsection A of Section 5 of this act;

3. Pursuant to a disclosure order under subsection B of Section 5 of this act;

4. Pursuant to a warrant issued using the procedures described in the Federal Rules of Criminal Procedure or according to Section 1230 of Title 22 of the Oklahoma Statutes; or

5. As part of an ongoing investigation, provided that captured plate data is confirmed as matching an alert and is destroyed at the conclusion of either:

a. an investigation that does not result in any criminal charges being filed, or

b. any criminal action undertaken in the matter involving the captured plate data.

B. Any governmental entity that uses automatic license plate reader systems pursuant to subsection B of Section 3 of this act must update those systems from the databases enumerated in subsection B of Section 3 of this act at the beginning of each work shift if such updates are available.

C. Any governmental entity that uses automatic license plate reader systems pursuant to subsection B of Section 3 of this act may manually enter license plate numbers into the automatic license plate reader system only when an officer determines that the vehicle or individuals associated with the license plate number are relevant and material to an ongoing criminal or missing persons investigation and subject to the following limitations:

1. Any manual entry must document the reason for the entry; and

2. Manual entries must be automatically purged at the end of each shift.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1139.6 of Title 47, unless there is created a duplication in numbering, reads as follows:

A. 1. An operator of an automatic license plate reader system, upon the request of a governmental entity or a defendant in a criminal case, shall take all necessary steps to preserve captured plate data in its possession for fourteen (14) days pending the issuance of a court order under subsection B of Section 5 of this act.

2. A requesting governmental entity or defendant in a criminal case must specify in a written sworn statement:

a. the particular camera or cameras for which captured plate data must be preserved or the particular license plate for which captured plate data must be preserved, and

b. the date or dates and time frames for which captured plate data must be preserved.

B. A governmental entity or defendant in a criminal case may apply for a court order for disclosure of captured plate data, which shall be issued by any court of competent jurisdiction if the governmental entity or defendant in a criminal case offers specific

and articulable facts showing there are reasonable grounds to believe the captured plate data is relevant and material to an ongoing criminal or missing persons investigation or criminal prosecution or defense.

C. Captured plate data held by a governmental entity shall be destroyed if the application for an order under subsection B of this section is denied or at the end of fourteen (14) days, whichever is later.

D. A governmental entity may obtain, receive, or use privately held captured plate data only pursuant to a warrant issued using the procedures described in the Federal Rules of Criminal Procedure or according to Section 1230 of Title 22 of the Oklahoma Statutes or the procedure described in subsection B of this section, and only if the private automatic license plate reader system retains captured plate data for fourteen (14) days or fewer.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1139.7 of Title 47, unless there is created a duplication in numbering, reads as follows:

Any governmental entity that uses automatic license plate reader systems pursuant to subsection B of Section 3 of this act shall:

1. Adopt a policy governing use of the system and conspicuously post the policy on the governmental entity's Internet website;

2. Adopt a privacy policy to ensure that captured plate data is not shared in violation of this act or any other law, and

conspicuously post the privacy policy on the governmental entity's Internet website; and

3. Report annually on its automatic license plate reader practices and usage to the state or local body that governs the governmental entity. The report must be conspicuously posted on the governmental entity's Internet website. The report shall include:

a. the number of license plates scanned,

b. the names of lists against which captured plate data was checked, and the number of confirmed matches and the number of matches that upon further investigation did not correlate to an alert,

c. the number of matches that resulted in arrest and prosecution,

d. the number of preservation requests received under subsection A of Section 5 of this act,

e. the number of preservation requests issued under subsection A of Section 5 of this act, broken down by the number of preservation requests issued to other governmental entities and the number of preservation requests issued to private automatic license plate reader systems,

f. the number of disclosure orders received under subsection B of Section 5 of this act,

g. the number of disclosure orders applied for under subsection B of Section 5 of this act, broken down by:

(1) the number of applications for disclosure orders to governmental entities under subsection B of Section 5 of this act that were denied,

(2) the number of orders for disclosure to governmental entities under subsection B of Section 5 of this act resulting in arrest and prosecution,

(3) the number of applications for disclosure orders to private automatic license plate reader systems under subsection B of Section 5 of this act that were denied, and

(4) the number of orders for disclosure to private automatic license plate reader systems under subsection B of Section 5 of this act resulting in arrest and prosecution,

h. the number of manually entered license plate numbers under subsection C of Section 4 of this act, broken down by reason justifying the entry, and the number of confirmed matches and the number of matches that upon further investigation did not correlate to an alert, and

i. any changes in policy that affect privacy concerns.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1139.8 of Title 47, unless there is created a duplication in numbering, reads as follows:

A. The use by a state agency of an automatic license plate reader system in conjunction with the operation of a port of entry or weigh station, as defined in Section 1201 of Title 47 of the Oklahoma Statutes, for the purpose of enforcing motor carrier or commercial motor vehicle requirements is exempted from the requirements set forth in Sections 3 through 6 of this act, except as provided in this section.

B. Any state agency using automatic license plate reader systems at a port of entry or weigh station for the purpose described in subsection A of this section shall retain captured plate data in a secured system for no longer than one (1) year with the exception of data required for use as evidence in an administrative investigation or proceeding to enforce motor carrier or commercial motor vehicle requirements. Captured plate data retained longer than one (1) year under this exception shall be deleted in accordance with Oklahoma Records Management Act provisions applicable to documents utilized in administrative investigations or proceedings.

C. Any state agency using automatic license plate reader systems at a port of entry or weigh station for the purpose described in subsection A of this section may share captured plate

data with any other Oklahoma state agency involved in the operation of ports of entry or weigh stations where the purpose of the information sharing is the enforcement of motor carrier or commercial motor vehicle requirements. If requested captured plate data is to be used by the requesting agency for purposes other than motor carrier or commercial vehicle enforcement or the captured plate data is requested by a governmental entity not involved in the operation of ports of entry or weigh stations, or if the captured plate data is requested by an individual, the requirements set forth in subsections A and B of Section 5 of this act shall apply to the data request.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1139.9 of Title 47, unless there is created a duplication in numbering, reads as follows:

No captured plate data and no evidence derived therefrom may be received in evidence in any trial, hearing or other proceeding in or before any court, grand jury, department, officer, agency, regulatory body, legislative committee or other authority of the State of Oklahoma or political subdivision thereof, if the disclosure of that information would be in violation of any applicable provision of this act.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1139.10 of Title 47, unless there is created a duplication in numbering, reads as follows:

Any person who violates the provisions of this act shall be subject to legal action for damages, to be brought by any other person claiming that a violation of this act has injured such person's business, person or reputation. A person so injured shall be entitled to actual damages, including mental pain and suffering endured by the person on account of a violation of the provisions of this act, and a reasonable attorney fee and other costs of litigation.

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1139.11 of Title 47, unless there is created a duplication in numbering, reads as follows:

A. Captured plate data is not considered a public record for the purposes of the Oklahoma Open Records Act and may only be disclosed to the person to whom the vehicle is registered, or with the prior written consent of the person to whom the vehicle is registered.

B. Upon the presentation to an appropriate governmental entity of a valid, outstanding protection order protecting the driver of a vehicle jointly registered with or registered solely in the name of the individual against whom the order was issued, captured plate data may not be disclosed except pursuant to a disclosure order under subsection B of Section 5 of this act or as a result of a match pursuant to subsection B of Section 3 of this act.

SECTION 11. This act shall become effective November 1, 2016.

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