S T A T E O F N E W Y O R K

7245

I N S E N A T E

April 11, 2016

Introduced by Sen. HOYLMAN -- read twice and ordered printed, and when printed to be committed to the Committee on Consumer Protection

AN ACT to amend the general business law and the executive law, in relation to the use of automatic license plate reader systems

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. The general business law is amended by adding a new section 397-b to read as follows:

S 397-B. USE OF AUTOMATIC LICENSE PLATE READER SYSTEMS PROHIBITED. AS USED IN THIS SECTION: 1. "AUTOMATIC LICENSE PLATE READER SYSTEM" OR "ALPR SYSTEM" SHALL MEAN A SYSTEM OF ONE OR MORE MOBILE OR FIXED HIGH SPEED CAMERAS USED IN COMBINATION WITH COMPUTER ALGORITHMS TO CONVERT IMAGES OF LICENSE PLATES INTO COMPUTER-READABLE DATA.

2. IT SHALL BE UNLAWFUL FOR ANY BUSINESS, INDIVIDUAL, PARTNERSHIP, CORPORATION, ASSOCIATION, OR STATE OR LOCAL GOVERNMENT NON-LAW ENFORCEMENT ENTITY TO USE AN AUTOMATIC LICENSE PLATE READER SYSTEM.

3. THE PROVISIONS OF THIS SECTION SHALL NOT APPLY TO AN ELECTRONIC TOLL COLLECTION SYSTEM OR ASSOCIATED TRANSACTION SYSTEM OR ANY COMPONENT THEREOF WHICH IS OPERATED BY A PUBLIC AUTHORITY FOR THE PURPOSE OF IMPOSING AND COLLECTING TOLLS ON A ROADWAY WITHIN THE STATE.

4. A VIOLATION OF THE PROVISIONS OF THIS SECTION SHALL CONSTITUTE A VIOLATION, AND UPON CONVICTION THEREOF SHALL BE PUNISHABLE BY A TERM OF IMPRISONMENT NOT TO EXCEED FIFTEEN DAYS, OR BY A FINE OF NOT MORE THAN ONE THOUSAND DOLLARS, OR BY BOTH SUCH FINE AND IMPRISONMENT. EACH UNLAWFULLY INSTALLED OR MAINTAINED DEVICE SHALL CONSTITUTE A SEPARATE AND DISTINCT VIOLATION.

S 2. The executive law is amended by adding a new section 837-s to read as follows:

S 837-S. USE OF AUTOMATIC LICENSE PLATE READERS BY LAW ENFORCEMENT AGENCIES. 1. THE USE OF AUTOMATIC LICENSE PLATE READER SYSTEMS BY STATE AND LOCAL LAW ENFORCEMENT AGENCIES SHALL BE GOVERNED BY THIS SECTION.

(A) "AUTOMATIC LICENSE PLATE READER SYSTEM" OR "ALPR SYSTEM" SHALL MEAN A SYSTEM OF ONE OR MORE MOBILE OR FIXED HIGH SPEED CAMERAS USED IN

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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COMBINATION WITH COMPUTER ALGORITHMS TO CONVERT IMAGES OF LICENSE PLATES INTO COMPUTER-READABLE DATA.

(B) "CAPTURED PLATE DATA" SHALL MEAN THE GPS COORDINATES, DATE AND TIME, PHOTOGRAPH, LICENSE PLATE NUMBER, AND ANY OTHER DATA CAPTURED BY OR DERIVED FROM ANY ALPR SYSTEM.

(C) "SECURED AREA" SHALL MEAN AN AREA, ENCLOSED BY CLEAR BOUNDARIES, TO WHICH ACCESS IS LIMITED AND ENTRY IS ONLY OBTAINABLE THROUGH SPECIFIC ACCESS-CONTROL POINTS.

2. (A) A STATE OR LOCAL LAW ENFORCEMENT AGENCY MAY USE AN AUTOMATIC LICENSE PLATE READER FOR THE IMMEDIATE COMPARISON OF CAPTURED PLATE DATA HELD BY THE REGISTRY OF MOTOR VEHICLES, THE DEPARTMENT OF CRIMINAL JUSTICE INFORMATION SERVICES, THE NATIONAL CRIME INFORMATION CENTER, THE FBI KIDNAPPINGS AND MISSING PERSONS LIST, AND THE NEW YORK STATE AMBER ALERT PLAN FOR THE PURPOSE OF IDENTIFYING:

(I) OUTSTANDING PARKING OR TRAFFIC VIOLATIONS;

(II) A VIOLATION OF VEHICLE REGISTRATION REQUIREMENTS;

(III) A VEHICLE IN VIOLATION OF INSPECTION REQUIREMENTS;

(IV) A STOLEN VEHICLE OR STOLEN LICENSE PLATE;

(V) A VEHICLE REGISTERED TO AN INDIVIDUAL FOR WHOM THERE IS AN OUTSTANDING DEFAULT OR ARREST WARRANT FOR FELONY CHARGES; OR

(VI) A VEHICLE ASSOCIATED WITH A MISSING PERSON.

(B) AUTOMATIC LICENSE PLATE READERS MAY ALSO BE USED: (I) BY PARKING ENFORCEMENT ENTITIES FOR THE REGULATION OF PUBLIC PARKING;

(II) BY STATE OR LOCAL GOVERNMENT AGENCIES FOR THE PURPOSE OF CONTROLLING ACCESS TO SECURED AREAS; AND

(III) BY THE DEPARTMENT OF TRANSPORTATION OR A PUBLIC AUTHORITY, FOR THE PURPOSE OF ELECTRONIC TOLL COLLECTION.

3. (A) CAPTURED PLATE DATA OBTAINED FOR THE PURPOSES DESCRIBED UNDER THIS SECTION SHALL NOT BE USED OR SHARED FOR ANY OTHER PURPOSE AND SHALL NOT BE PRESERVED FOR MORE THAN ONE HUNDRED EIGHTY DAYS EXCEPT PURSUANT TO A PRESERVATION OR DISCLOSURE REQUEST UNDER THIS SUBDIVISION, OR A WARRANT. CAPTURED PLATE DATA MAY BE MAINTAINED WITHIN THE CUSTODY AND CONTROL OF A LAW ENFORCEMENT AGENCY FOR A LONGER TIME PERIOD IF THE DATA IS RETAINED OR STORED AS PART OF AN ONGOING INVESTIGATION, AND IN SUCH CASE THE DATA SHALL BE DESTROYED AT THE CONCLUSION OF EITHER (I) AN INVESTIGATION THAT DOES NOT RESULT IN ANY CRIMINAL CHARGES BEING FILED; OR (II) ANY CRIMINAL ACTION UNDERTAKEN IN THE MATTER INVOLVING THE CAPTURED PLATE DATA.

(B) UPON THE REQUEST OF ANY LAW ENFORCEMENT AGENCY, AN OPERATOR OF AN ALPR SYSTEM SHALL TAKE ALL NECESSARY STEPS TO IMMEDIATELY PRESERVE CAPTURED PLATE DATA IN ITS POSSESSION. A REQUESTING AGENCY MUST SPECIFY IN A WRITTEN SWORN STATEMENT: (I) 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 (II) THE DATE OR DATES AND TIMEFRAMES FOR WHICH CAPTURED PLATE DATA MUST BE PRESERVED.

(C) A LAW ENFORCEMENT AGENCY MAY APPLY FOR A COURT ORDER FOR DISCLOSURE OF CAPTURED PLATE DATA WHICH SHALL BE ISSUED BY ANY COURT OF COMPETENT JURISDICTION IF THE AGENCY OFFERS SPECIFIC AND ARTICULABLE FACTS SHOWING THAT THERE ARE REASONABLE GROUNDS TO BELIEVE THAT THE CAPTURED PLATE DATA IS RELEVANT AND MATERIAL TO AN ONGOING CRIMINAL OR MISSING PERSONS INVESTIGATION.

(D) CAPTURED PLATE DATA SHALL BE DESTROYED BY THE OPERATOR OF THE ALPR SYSTEM IF THE APPLICATION FOR A DISCLOSURE ORDER IS DENIED OR AT THE END OF FOURTEEN DAYS, WHICHEVER IS LATER.

4. ENTITIES AUTHORIZED TO USE ALPR SYSTEMS UNDER SUBDIVISION TWO OF THIS SECTION SHALL NOT SELL, TRADE, OR EXCHANGE CAPTURED PLATE DATA FOR ANY PURPOSE.

5. AN ALERT FROM AN ALPR SYSTEM USED BY A LAW ENFORCEMENT AGENCY DOES NOT CONSTITUTE REASONABLE SUSPICION OR PROBABLE CAUSE TO PERFORM A TRAFFIC STOP. IF AN ALPR SYSTEM ALERTS ON A PLATE, A LAW ENFORCEMENT OFFICER MUST VISUALLY CONFIRM THAT THE PLATE NUMBER AND STATE OF ORIGIN MATCH THE ALERT BEFORE TAKING LAW ENFORCEMENT ACTION.

6. LAW ENFORCEMENT AGENCIES THAT USE ALPR SYSTEMS SHALL:

(A) ADOPT A POLICY GOVERNING USE OF THE SYSTEM AND CONSPICUOUSLY POST THE POLICY ON THE ENTITY'S WEB SITE;

(B) ADOPT A PRIVACY POLICY TO ENSURE THAT CAPTURED PLATE DATA IS NOT SHARED IN VIOLATION OF THIS SECTION OR ANY OTHER LAW AND CONSPICUOUSLY POST THE PRIVACY POLICY ON THE AGENCY'S WEB SITE; AND

(C) REPORT ANNUALLY ITS AUTOMATIC LICENSE PLATE READER PRACTICES AND USAGE TO THE DIVISION, AND CONSPICUOUSLY POST THE REPORT ON THE ENTITY'S WEB SITE. THE REPORT SHALL INCLUDE:

(I) THE NUMBER OF LICENSE PLATES SCANNED;

(II) THE NUMBER OF PRESERVATION REQUESTS;

(III) THE NUMBER OF DISCLOSURE ORDERS;

(IV) ANY CHANGES IN POLICY THAT AFFECT PRIVACY CONCERNS;

(V) THE NAMES OF THE LISTS AGAINST WHICH CAPTURED PLATE DATA WAS CHECKED, AND FOR EACH LIST THE NUMBER OF CONFIRMED MATCHES;

(VI) THE NUMBER OF DISCLOSURE ORDERS RESULTING IN CRIMINAL CHARGES, AND THE NUMBER OF SUCH CHARGES RESULTING IN CONVICTION;

(VII) THE TOTAL NUMBER OF AUTOMATIC LICENSE PLATE READERS BEING OPERATED BY THE AGENCY;

(VIII) THE NUMBER OF AUTOMATIC LICENSE PLATE READER READINGS BEING RETAINED;

(IX) THE NUMBER OF REQUESTS MADE FOR AUTOMATIC LICENSE PLATE READER DATA, INCLUDING (A) THE NUMBER OF REQUESTS THAT RESULTED IN THE RELEASE OF INFORMATION; (B) THE NUMBER OF OUT-OF-STATE REQUESTS; (C) THE NUMBER OF FEDERAL REQUESTS; (D) THE NUMBER OF OUT-OF-STATE REQUESTS THAT RESULTED IN A RELEASE OF INFORMATION; AND

(X) ANY DATA BREACHES OR UNAUTHORIZED USES OF THE AUTOMATIC LICENSE PLATE READER DATABASE.

7. ANY PLATE DATA CAPTURED OR IMPROPERLY MAINTAINED SHALL NOT BE INTRODUCED BY THE STATE IN ANY GRAND JURY OR CRIMINAL PROCEEDING OR IN ANY CIVIL OR ADMINISTRATIVE PROCEEDING BROUGHT BY THE STATE OR ANY GOVERNMENT OFFICE OR OFFICIAL. THE STATE SHALL DISCLOSE TO THE DEFENSE THE EXISTENCE AND THE CONTENTS OF ANY SUCH CAPTURED DATA. A CRIMINAL DEFENDANT SHALL BE ENTITLED TO INTRODUCE EVIDENCE OF CAPTURED DATA, HOWEVER OBTAINED AND MAINTAINED, IN HIS OR HER DEFENSE. AN INDIVIDUAL WHOSE RIGHTS HAVE BEEN VIOLATED BY THE IMPROPER CAPTURE OR MAINTENANCE OF PLATE DATA MAY INTRODUCE EVIDENCE CONCERNING THAT PLATE DATA IN A CIVIL ACTION OR MAY GRANT PERMISSION TO ANOTHER PARTY IN A CIVIL PROCEEDING TO INTRODUCE SUCH EVIDENCE.

8. (A) ANY AGGRIEVED PERSON MAY INSTITUTE A CIVIL ACTION TO RESTRAIN ANY VIOLATION OF THIS SECTION. 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 OR SHE SHALL, IN ADDITION TO ANY LIABILITY FOR SUCH ACTUAL DAMAGES AS MAY BE SHOWN, BE LIABLE FOR EXEMPLARY DAMAGES OF NOT LESS THAN ONE HUNDRED AND NOT MORE THAN ONE THOUSAND DOLLARS FOR EACH VIOLATION, TOGETHER WITH COSTS AND REASONABLE ATTORNEYS' FEES AND DISBURSEMENTS INCURRED BY THE PERSON BRINGING THE ACTION.

(B) ANY EMPLOYEE OF A LAW ENFORCEMENT AGENCY AUTHORIZED TO UTILIZE AN ALPR SYSTEM WHO VIOLATES THE PROVISIONS OF THIS SECTION PROHIBITING THE USE, SALE, DISSEMINATION OR OTHER DISTRIBUTION OF LICENSE PLATE DATA FOR OTHER THAN LEGITIMATE LAW ENFORCEMENT PURPOSES SHALL BE GUILTY OF A MISDEMEANOR PUNISHABLE BY A SENTENCE OF IMPRISONMENT NOT EXCEEDING ONE YEAR OR A FINE NOT EXCEEDING TEN THOUSAND DOLLARS OR BY BOTH SUCH FINE AND IMPRISONMENT.

9. CAPTURED PLATE DATA SHALL BE CONSIDERED PERSONAL DATA. CAPTURED PLATE DATA MAY ONLY BE DISCLOSED TO, OR WITH THE PRIOR WRITTEN CONSENT OF, THE PERSON TO WHOM THE VEHICLE IS REGISTERED; PROVIDED, HOWEVER, THAT UPON PRESENTATION TO AN OPERATOR OF AN ALPR SYSTEM OF A VALID, CURRENT ABUSE PREVENTION 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 OR AS THE RESULT OF A MATCH.

S 3. This act shall take effect immediately.