

HOUSE BILL NO. 149

INTRODUCED BY D. ZOLNIKOV, B. BENNETT

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A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY PROHIBITING THE USE OF A LICENSE PLATE ~~SCANNER~~ READER BY THE STATE OR A LOCAL GOVERNMENT; PROVIDING EXCEPTIONS; PROVIDING A PENALTY FOR A VIOLATION OF THE PROHIBITION; AND LIMITING ACCESS TO INFORMATION OBTAINED BY USING A LICENSE PLATE ~~SCANNER~~ READER."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Use of license plate ~~scanner~~ READER prohibited -- exceptions -- definition -- penalty.** (1) Except as provided in subsection (2), an agency or employee of the state or any subdivision of the state may not use, either directly or indirectly, a license plate ~~scanner~~ READER on any public highway.

(2) (a) The department of transportation or an incorporated city or town may use a license plate ~~scanner~~ READER:

(i) to collect data for planning. If data is collected under this subsection (2)(a)(i), the department of transportation or city or town shall ensure and maintain the anonymity of the vehicle, the vehicle owner, the driver of the vehicle, and any passengers in the vehicle. Data collected under this subsection (2)(a)(i) without a search warrant or outside of judicially recognized exceptions to search warrant requirements may not be used to investigate or prosecute an individual or as evidence in court.

(ii) in a regulated parking system, but only to identify a vehicle's location and license plate number to enforce parking restrictions.

(b) The department of transportation may use a device and equipment, including license plate ~~scanners~~ READERS, if necessary, to implement 61-10-101 through 61-10-104, 61-10-106 through 61-10-110, and 61-10-154 if the devices or equipment are used in screening operations associated with:

- (i) virtual ports of entry;
- (ii) weigh station ramps using automated weigh station screening systems;
- (iii) virtual weigh stations using weigh-in-motion technology; or
- (iv) an automatic vehicle identification system that enables participating transponder-equipped vehicles

1 to be prescreened throughout the nation at designated weigh stations, port-of-entry facilities, or agricultural  
2 interdiction facilities.

3 (c) Nothing in this section prohibits an agency of the state or any subdivision of the state from using its  
4 own vehicles, aircraft, or equipment, including a license plate ~~scanner~~ READER, to track, monitor, or otherwise  
5 maintain information about the agency's or subdivision's vehicles, aircraft, or equipment.

6 (D) STATE OR LOCAL LAW ENFORCEMENT MAY USE A DEVICE AND EQUIPMENT, INCLUDING LICENSE PLATE  
7 READERS IF NECESSARY, IF THE FOLLOWING REQUIREMENTS ARE MET:

8 (I) A STATE OR LOCAL LAW ENFORCEMENT AGENCY THAT USES AN AUTOMATIC LICENSE PLATE READER SYSTEM  
9 SHALL ADOPT AND PUBLICIZE A WRITTEN POLICY GOVERNING ITS USE BEFORE THE AUTOMATIC LICENSE PLATE READER  
10 SYSTEM IS OPERATIONAL. THE POLICY MUST ADDRESS THE FOLLOWING:

11 (A) USE OF ANY DATABASE TO COMPARE DATA OBTAINED BY THE AUTOMATIC LICENSE PLATE READER SYSTEM;

12 (B) RETENTION OF DATA ASSOCIATED WITH THE AUTOMATIC LICENSE PLATE READER SYSTEM;

13 (C) SHARING OF THE DATA WITH ANOTHER LAW ENFORCEMENT AGENCY;

14 (D) TRAINING OF AUTOMATIC LICENSE PLATE READER SYSTEM OPERATORS;

15 (E) SUPERVISORY OVERSIGHT OF AUTOMATIC LICENSE PLATE READER SYSTEM USE;

16 (F) ACCESS TO AND SECURITY OF DATA;

17 (G) ACCESS TO DATA OBTAINED BY AUTOMATIC LICENSE PLATE READER SYSTEMS NOT OPERATED BY THE LAW  
18 ENFORCEMENT AGENCY; AND

19 (H) ANY OTHER SUBJECTS RELATED TO AUTOMATIC LICENSE PLATE READER SYSTEM USE BY THE LAW  
20 ENFORCEMENT AGENCY.

21 (II) AT LEAST ONCE EVERY YEAR, THE LAW ENFORCEMENT AGENCY SHALL AUDIT ITS AUTOMATIC LICENSE PLATE  
22 READER SYSTEM USE AND EFFECTIVENESS AND REPORT THE FINDINGS TO THE HEAD OF THE LAW ENFORCEMENT AGENCY  
23 RESPONSIBLE FOR OPERATING THE SYSTEM.

24 (III) DATA OBTAINED BY A LAW ENFORCEMENT AGENCY IN ACCORDANCE WITH THIS SUBSECTION (2)(D) MUST BE  
25 OBTAINED, ACCESSED, PRESERVED, OR DISCLOSED ONLY FOR LAW ENFORCEMENT OR CRIMINAL JUSTICE PURPOSES.

26 (IV) A LAW ENFORCEMENT AGENCY THAT USES A LICENSE PLATE READER SYSTEM SHALL:

27 (A) MAINTAIN A RECORD OF USERS WHO ACCESS LICENSE PLATE READER DATA. THE RECORD MUST BE  
28 MAINTAINED INDEFINITELY.

29 (B) KEEP SYSTEM MAINTENANCE AND CALIBRATION SCHEDULES AND RECORDS ON FILE.

30 (V) OPERATION OF A LICENSE PLATE READER AND ACCESS TO DATA COLLECTED BY A LICENSE PLATE READER

1 MUST BE FOR OFFICIAL LAW ENFORCEMENT PURPOSES ONLY. A LICENSE PLATE READER MUST BE USED ONLY TO SCAN,  
 2 DETECT, AND IDENTIFY A LICENSE PLATE NUMBER FOR THE PURPOSE OF IDENTIFYING A VEHICLE THAT IS:

3 (A) STOLEN;

4 (B) ASSOCIATED WITH A WANTED, MISSING, OR ENDANGERED PERSON;

5 (C) REGISTERED TO A PERSON AGAINST WHOM THERE IS AN OUTSTANDING WARRANT;

6 (D) IN VIOLATION OF COMMERCIAL TRUCKING REQUIREMENTS;

7 (E) INVOLVED IN CASE-SPECIFIC CRIMINAL INVESTIGATIVE SURVEILLANCE;

8 (F) INVOLVED IN A HOMICIDE, SHOOTING, OR OTHER MAJOR CRIME OR INCIDENT; OR

9 (G) IN THE VICINITY OF A RECENT CRIME AND MAY BE CONNECTED TO THAT CRIME.

10 (vi) A POSITIVE MATCH BY A LICENSE PLATE READER ALONE DOES NOT CONSTITUTE REASONABLE SUSPICION AS  
 11 GROUND FOR A LAW ENFORCEMENT OFFICER TO STOP A VEHICLE. THE OFFICER SHALL:

12 (A) DEVELOP INDEPENDENT REASONABLE SUSPICION FOR THE STOP; OR

13 (B) IMMEDIATELY CONFIRM VISUALLY THAT THE LICENSE PLATE ON A VEHICLE MATCHES THE IMAGE OF THE  
 14 LICENSE PLATE DISPLAYED ON THE LICENSE PLATE READER AND CONFIRM BY OTHER MEANS THAT THE LICENSE PLATE  
 15 NUMBER MEETS ONE OF THE CRITERIA SPECIFIED IN SUBSECTION (2)(D)(V).

16 (vii) A LAW ENFORCEMENT AGENCY THAT USES AN AUTOMATIC LICENSE PLATE READER SYSTEM IN ACCORDANCE  
 17 WITH THIS SECTION SHALL UPDATE THE SYSTEM FROM THE DATABASES SPECIFIED PURSUANT TO SUBSECTION (2)(D)(I)  
 18 EVERY 24 HOURS IF AN UPDATE IS AVAILABLE OR AS SOON AS PRACTICABLE AFTER AN UPDATE BECOMES AVAILABLE.

19 (viii) A LICENSE PLATE READER MAY BE INSTALLED FOR THE SOLE PURPOSE OF RECORDING AND CHECKING  
 20 LICENSE PLATES AND MAY NOT BE CAPABLE OF PHOTOGRAPHING, RECORDING, OR PRODUCING IMAGES OF THE  
 21 OCCUPANTS OF A VEHICLE.

22 (3) A public employee or public officer, as the terms are defined in 2-2-102, who violates the provisions  
 23 of this section is subject to the applicable penalties provided for in Title 2, chapter 2.

24 (4) ~~In~~ AS USED IN this section, "~~license plate scanner~~" THE FOLLOWING DEFINITIONS APPLY:

25 (A) "LAW ENFORCEMENT AGENCY" MEANS:

26 (i) AN AGENCY OR OFFICER OF THE STATE OF MONTANA OR A POLITICAL SUBDIVISION THAT IS EMPOWERED BY  
 27 THE LAWS OF THIS STATE TO CONDUCT INVESTIGATIONS OR TO MAKE ARRESTS; AND

28 (ii) AN ATTORNEY, INCLUDING THE ATTORNEY GENERAL, WHO IS AUTHORIZED BY THE LAWS OF THIS STATE TO  
 29 PROSECUTE OR TO PARTICIPATE IN THE PROSECUTION OF A PERSON WHO IS ARRESTED OR WHO MAY BE SUBJECT TO A  
 30 CIVIL ACTION RELATED TO OR CONCERNING AN ARREST.

1           (B) "LICENSE PLATE READER" means a device principally designed and primarily used for determining the  
 2 ownership of a motor vehicle, the mileage or route traveled by a motor vehicle, the location or identity of a motor  
 3 vehicle, or the identity of a motor vehicle's occupants on the public highways, as defined in 60-1-103, through the  
 4 use of a camera or other imaging device or any other device, including but not limited to a transponder, cellular  
 5 telephone, global positioning satellite, automated electronic toll collection system, automated license plate  
 6 recognition system, or radio frequency identification device that by itself or in conjunction with other devices or  
 7 information can be used to determine the ownership of a motor vehicle or the identity of a motor vehicle's  
 8 occupants or the mileage, location, or route traveled by the motor vehicle.

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10           **NEW SECTION. SECTION 2. PRESERVATION AND DISCLOSURE OF RECORDS BY LAW ENFORCEMENT AGENCY.**

11 (1) EXCEPT AS PROVIDED IN SUBSECTION (2), CAPTURED LICENSE PLATE DATA OBTAINED BY AN AUTOMATIC LICENSE  
 12 PLATE READER SYSTEM THAT IS OPERATED BY OR ON BEHALF OF A LAW ENFORCEMENT AGENCY FOR LAW ENFORCEMENT  
 13 PURPOSES PURSUANT TO [SECTION 1(2)(D)] MAY NOT BE PRESERVED FOR MORE THAN 90 DAYS AFTER THE DATE THAT  
 14 THE DATA IS CAPTURED.

15           (2) DATA OBTAINED BY AN AUTOMATIC LICENSE PLATE READER MAY BE PRESERVED FOR MORE THAN 90 DAYS  
 16 PURSUANT TO ANY OF THE FOLLOWING:

17           (A) A PRESERVATION REQUEST SUBMITTED PURSUANT TO SUBSECTION (3);

18           (B) A SEARCH WARRANT ISSUED PURSUANT TO 46-5-220;

19           (C) A FEDERAL SEARCH WARRANT ISSUED IN COMPLIANCE WITH THE FEDERAL RULES OF CIVIL PROCEDURE.

20           (3) UPON THE REQUEST OF A LAW ENFORCEMENT AGENCY, THE CUSTODIAN OF CAPTURED LICENSE PLATE DATA  
 21 SHALL TAKE ALL NECESSARY STEPS TO IMMEDIATELY PRESERVE CAPTURED LICENSE PLATE DATA IN ITS POSSESSION. A  
 22 REQUESTING AGENCY MUST SPECIFY IN A SWORN WRITTEN STATEMENT:

23           (A) THE LOCATION OF THE PARTICULAR CAMERA OR CAMERAS FOR WHICH CAPTURED LICENSE PLATE DATA MUST  
 24 BE PRESERVED;

25           (B) THE PARTICULAR LICENSE PLATE FOR WHICH CAPTURED LICENSE PLATE DATA MUST BE PRESERVED;

26           (C) THE DATE OR DATES AND TIMEFRAMES FOR WHICH CAPTURED LICENSE PLATE DATA MUST BE PRESERVED;

27           (D) SPECIFIC AND ARTICULABLE FACTS SHOWING THAT THERE ARE REASONABLE GROUNDS TO BELIEVE THAT THE  
 28 CAPTURED LICENSE PLATE DATA IS RELEVANT AND MATERIAL TO AN ONGOING CRIMINAL OR MISSING PERSONS  
 29 INVESTIGATION OR IS NEEDED TO PROVE A VIOLATION OF A MOTOR CARRIER SAFETY REGULATION; AND

30           (E) THE CASE AND THE IDENTITY OF THE PARTIES INVOLVED IN THE CASE.

1           (4) ONE YEAR FROM THE DATE OF THE INITIAL PRESERVATION REQUEST, THE CAPTURED LICENSE PLATE DATA  
2 OBTAINED BY AN AUTOMATIC LICENSE PLATE READER SYSTEM MUST BE DESTROYED ACCORDING TO THE CUSTODIAN'S  
3 RECORD OR DATA RETENTION POLICY, UNLESS THE CUSTODIAN RECEIVES ANOTHER PRESERVATION REQUEST WITHIN THE  
4 1-YEAR PERIOD. IF THE CUSTODIAN RECEIVES ANOTHER PRESERVATION REQUEST, THE 1-YEAR RETENTION PERIOD  
5 RESETS BASED ON THE DATE OF THE SECOND REQUEST.

6           (5) LICENSE PLATE DATA CAPTURED IN ACCORDANCE WITH [SECTION 1] IS A PUBLIC RECORD BUT IS PROTECTED  
7 FROM DISCLOSURE UNDER THE PROVISIONS OF TITLE 2, CHAPTER 6, PARTS 10 THROUGH 12, EXCEPT TO THE PERSON  
8 TO WHOM THE LICENSE PLATE IS REGISTERED.

9           (6) NOTHING IN THIS SECTION MAY BE CONSTRUED AS REQUIRING THE DISCLOSURE OF CAPTURED LICENSE PLATE  
10 DATA IF A LAW ENFORCEMENT AGENCY DETERMINES THAT DISCLOSURE OF THAT DATA WILL COMPROMISE AN ONGOING  
11 INVESTIGATION.

12           (7) CAPTURED LICENSE PLATE DATA MAY NOT BE SOLD FOR ANY PURPOSE.

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14           NEW SECTION. Section 3. Confidentiality of information. The information collected or stored in any  
15 database under the provisions of [section 1(2)(A) THROUGH (2)(C)]:

16           (1) is private, is not a public record, and is not subject to public disclosure;

17           (2) may be accessed by an employee of the state or a political subdivision of the state only for the  
18 purpose of providing customer service or for statistical, administrative, or legal activities necessary to perform  
19 the employee's duties; and

20           (3) may be maintained only for the time minimally necessary, but no more than 18 months.

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22           NEW SECTION. Section 4. Codification instruction. [Sections 1 ~~and 2~~ THROUGH 3] are intended to  
23 be codified as an integral part of Title 46, chapter 5, part 1, and the provisions of Title 46, chapter 5, part 1, apply  
24 to [sections 1 ~~and 2~~ THROUGH 3].

25                                   - END -