

1 HOUSE BILL NO. 414  
2 INTRODUCED BY E. STAFMAN, D. BAUM

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4 A BILL FOR AN ACT ENTITLED: "AN ACT AUTHORIZING STATE AND LOCAL GOVERNMENT USE OF  
5 CERTAIN AUTOMATED TRAFFIC ENFORCEMENT SYSTEMS; AND AMENDING SECTIONS 46-5-117, 61-  
6 8-203, AND 61-8-206, MCA."

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8 WHEREAS, Kelly Fulton, was born on June 5, 1982, in Billings, Montana; and  
9 WHEREAS, Kelly Fulton taught mathematics to students at Bozeman High School until October 2022  
10 and was tragically killed when he was hit by a vehicle while riding his bike to work; and  
11 WHEREAS, this act is intended to honor Kelly Fulton's memory.

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

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15 **Section 1.** Section 46-5-117, MCA, is amended to read:

16 **"46-5-117. Use of license plate reader prohibited -- exceptions -- definition -- penalty.** (1) Except  
17 as provided in subsection (2), an agency or employee of the state or any subdivision of the state may not use,  
18 either directly or indirectly, a license plate reader on any public highway.

19 (2) (a) The department of transportation or an incorporated city or town may use a license plate  
20 reader:

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

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

28 (b) The department of transportation may use a device and equipment, including license plate

1 readers, if necessary, to implement 61-10-101 through 61-10-104, 61-10-106 through 61-10-110, and 61-10-  
2 154 if the devices or equipment are used in screening operations associated with:

- 3 (i) virtual ports of entry;
- 4 (ii) weigh station ramps using automated weigh station screening systems;
- 5 (iii) virtual weigh stations using weigh-in-motion technology; or
- 6 (iv) an automatic vehicle identification system that enables participating transponder-equipped  
7 vehicles to be prescreened throughout the nation at designated weigh stations, port-of-entry facilities, or  
8 agricultural interdiction facilities.

9 (c) Nothing in this section prohibits an agency of the state or any subdivision of the state from  
10 using its own vehicles, aircraft, or equipment, including a license plate reader, to track, monitor, or otherwise  
11 maintain information about the agency's or subdivision's vehicles, aircraft, or equipment.

12 (d) State or local law enforcement may use a device and equipment, including license plate  
13 readers, if necessary, if the following requirements are met:

14 (i) A state or local law enforcement agency that uses an automatic license plate reader system  
15 shall adopt and publicize a written policy governing its use before the automatic license plate reader system is  
16 operational. The policy must address the following:

- 17 (A) use of any database to compare data obtained by the automatic license plate reader system;
- 18 (B) retention of data associated with the automatic license plate reader system;
- 19 (C) sharing of the data with another law enforcement agency;
- 20 (D) training of automatic license plate reader system operators;
- 21 (E) supervisory oversight of automatic license plate reader system use;
- 22 (F) access to and security of data;
- 23 (G) access to data obtained by automatic license plate reader systems not operated by the law  
24 enforcement agency; and

25 (H) any other subjects related to automatic license plate reader system use by the law enforcement  
26 agency.

27 (ii) At least once every year, the law enforcement agency shall audit its automatic license plate  
28 reader system use and effectiveness and report the findings to the head of the law enforcement agency

1 responsible for operating the system.

2 (iii) Data obtained by a law enforcement agency in accordance with this subsection (2)(d) must be  
3 obtained, accessed, preserved, or disclosed only for law enforcement or criminal justice purposes.

4 (iv) A law enforcement agency that uses a license plate reader system shall:

5 (A) maintain a record of users who access license plate reader data. The record must be  
6 maintained indefinitely.

7 (B) keep system maintenance and calibration schedules and records on file.

8 (v) Operation of a license plate reader by a law enforcement agency and access to data collected  
9 by a license plate reader operated by a law enforcement agency must be for official law enforcement purposes  
10 only. A license plate reader must be used by a law enforcement agency only to scan, detect, and identify a  
11 license plate number for the purpose of identifying a vehicle that is:

12 (A) stolen;

13 (B) associated with a wanted, missing, or endangered person;

14 (C) registered to a person against whom there is an outstanding warrant;

15 (D) in violation of commercial trucking requirements;

16 (E) involved in case-specific criminal investigative surveillance;

17 (F) involved in a homicide, shooting, or other major crime or incident; ~~or~~

18 (G) in the vicinity of a recent crime and may be connected to that crime; or

19 (H) in violation of a traffic law as captured by an automated enforcement system designed to detect  
20 violations attached to a traffic control device. This subsection (2)(d)(v)(H) does not apply to a vehicle involved  
21 solely in violation of 61-8-207.

22 (vi) A positive match by a license plate reader alone does not constitute reasonable suspicion as  
23 grounds for a law enforcement officer to stop a vehicle. The officer shall:

24 (A) develop independent reasonable suspicion for the stop; or

25 (B) immediately confirm visually that the license plate on a vehicle matches the image of the  
26 license plate displayed on the license plate reader and confirm by other means that the license plate number  
27 meets one of the criteria specified in subsection (2)(d)(v).

28 (vii) A law enforcement agency that uses an automatic license plate reader system in accordance

1 with this section shall update the system from the databases specified pursuant to subsection (2)(d)(i) every 24  
2 hours if an update is available or as soon as practicable after an update becomes available.

3 (viii) A license plate reader may be installed for the sole purpose of recording and checking license  
4 plates.

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

7 (4) As used in this section, the following definitions apply:

8 (a) "Law enforcement agency" means:

9 (i) an agency or officer of the state of Montana or of a political subdivision that is empowered by  
10 the laws of this state to conduct investigations or to make arrests; and

11 (ii) an attorney, including the attorney general, who is authorized by the laws of this state to  
12 prosecute or to participate in the prosecution of a person who is arrested or who may be subject to a civil action  
13 related to or concerning an arrest.

14 (b) "License plate reader" means a device principally designed and primarily used for determining  
15 the ownership of a motor vehicle, the mileage or route traveled by a motor vehicle, the location or identity of a  
16 motor vehicle, or the identity of a motor vehicle's occupants on the public highways, as defined in 60-1-103,  
17 through the use of a camera or other imaging device or any other device, including but not limited to a  
18 transponder, cellular telephone, global positioning satellite, automated electronic toll collection system,  
19 automated license plate recognition system, or radio frequency identification device that by itself or in  
20 conjunction with other devices or information can be used to determine the ownership of a motor vehicle or the  
21 identity of a motor vehicle's occupants or the mileage, location, or route traveled by the motor vehicle."  
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23 **Section 2.** Section 61-8-203, MCA, is amended to read:

24 **"61-8-203. Department of transportation to place traffic control devices on highways it**  
25 **maintains and approve traffic control devices on highways under its jurisdiction.** (1) The department of  
26 transportation shall place and maintain traffic control devices, conforming to its manual and specifications, ~~upon~~  
27 on all highways maintained by the department of transportation that the department considers necessary to  
28 carry out the provisions of chapter 9 and this chapter or to regulate, warn, or guide traffic.

1 (2) A local authority or other entity may not place or maintain a traffic control device ~~upon~~on a  
2 highway under the jurisdiction of the department of transportation except with the department's permission.

3 (3) The unauthorized erection of a sign, marker, emblem, or other traffic control device on a  
4 highway under the jurisdiction of the department of transportation by any other entity is a misdemeanor and is  
5 punishable as provided in 61-8-712.

6 (4) The erection or maintenance of a sign, marker, emblem, or traffic control device on a highway  
7 under the jurisdiction of the department of transportation is subject to the rules and specifications that the  
8 department adopts and publishes in the interest of public safety and convenience.

9 (5) ~~(a)~~ An automated enforcement system designed to detect traffic violations that is attached to a  
10 traffic control device may ~~not~~ be used to enforce traffic laws. subject to the restrictions of 46-5-117(2)(d)(v).

11 ~~(b) — Subsection (5)(a) does not apply to:~~

12 ~~(i) — red light cameras attached to traffic control devices at intersections; or~~

13 ~~(ii) — automated enforcement systems attached to traffic control devices at railroad grade crossings."~~

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15 **Section 3.** Section 61-8-206, MCA, is amended to read:

16 **"61-8-206. Local traffic control devices.** (1) Local authorities in their respective jurisdictions shall  
17 place and maintain traffic control devices ~~upon~~on highways under their jurisdiction that they consider  
18 necessary to indicate and to carry out the provisions of this chapter or local traffic ordinances or to regulate,  
19 warn, or guide traffic. All traffic control devices must conform to the state manual and specifications.

20 (2) (a) An automated enforcement system designed to detect traffic violations that is attached to a  
21 traffic control device may ~~not~~ be used to enforce traffic laws. subject to the restrictions of 46-5-117(2)(d)(v).

22 ~~(b) — Subsection (2)(a) does not apply to:~~

23 ~~(i) — red light cameras attached to traffic control devices at intersections; or~~

24 ~~(ii) — automated enforcement systems attached to traffic control devices at railroad grade crossings."~~

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