

HOUSE No. 3148

The Commonwealth of Massachusetts

PRESENTED BY:

William M. Straus

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act relative to all-electronic tolling data privacy.

PETITION OF:

NAME:

William M. Straus

DISTRICT/ADDRESS:

10th Bristol

HOUSE No. 3148

By Mr. Straus of Mattapoisett, a petition (accompanied by bill, House, No. 3148) of William M. Straus relative to the collection of all-electronic tolling data. Transportation.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. 3439 OF 2017-2018.]

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-First General Court
(2019-2020)**

An Act relative to all-electronic tolling data privacy.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 Section 1. As used throughout this act, the following words shall have the following
2 meanings, unless the context clearly requires otherwise:

3 "Tolling data" means any data captured or created by an ALPR system or from signals or
4 radio frequencies emitted by a transponder in connection with the assessment or collection of a
5 toll, including, without limitation, GPS coordinates or vehicle location information, dates and
6 times traveled, images, vehicle speed, and license plate numbers, existing in an any form or
7 medium, whether electronic, paper or otherwise, and any copies thereof;

8 "Automated license plate reader system" or "ALPR system" means an automated system
9 of one or more mobile or fixed high-speed cameras combined with computer algorithms to
10 convert images of license plates into computer-readable data;

11 “Department” means Massachusetts department of transportation;

12 “Preservation request” means written notice obtained by a federal, state or municipal law
13 enforcement agency or a defendant in a criminal case requesting that certain tolling data be
14 preserved and retained for a specified period of time from the date such request is received;
15 provided, that such preservation request shall be accompanied by an affidavit stating: (i) the
16 parameters identifying which tolling data must be preserved, including, without limitation, the
17 license plate numbers, if any, and the dates, times, and locations; and (ii) that such specified
18 period of time is necessary to obtain a search warrant or production order compelling the
19 production of such tolling data;

20 “Production order” means an order or summons obtained by a defendant in a criminal
21 case charged with a felony requiring the department or an agent of the department to produce
22 tolling data; provided, that such order or summons shall be issued in compliance with
23 Massachusetts Rule of Criminal Procedure 17(a)(2); provided further, that any tolling data
24 produced in response to such order or summons shall be deemed privileged for the purposes of
25 complying therewith;

26 “Search warrant” means: (i) a federal search warrant issued upon a determination of
27 probable cause by a court or justice authorized to issue warrants in criminal cases that meets the
28 requirements of the Federal Rules of Criminal Procedure; or (ii) a state search warrant issued
29 pursuant to the requirements of sections 2 through 3A, inclusive, of chapter 276 by a court or
30 justice authorized to issue warrants in criminal cases.

31 Section 2. Notwithstanding any general or special law or regulation to the contrary, the
32 department, and any agent acting on its behalf, shall not access, search, review, disclose, or

33 exchange tolling data in its possession, custody, or control; provided, however, that the
34 department or an agent thereof may:

35 (a) access, search, review or disclose tolling data for the purpose of assessing, collecting
36 or pursuing the payment tolls or fines or surcharges related to unpaid tolls;

37 (b) access, search, or review tolling data as necessary to install, maintain or repair an
38 ALPR or transponder system or a system storing tolling data;

39 (c) access, search, review, disclose or exchange tolling data as necessary to respond to a
40 reasonable belief that an individual is at imminent risk of serious physical injury, death or
41 abduction; provided, that not later than 48 hours after responding, the department shall provide
42 written notice to the office of the attorney general describing with particularity the grounds for
43 such emergency access and the parameters of the tolling data accessed, searched, reviewed or
44 disclosed; or

45 (d) access, search, review or disclose tolling data as necessary to comply with a search
46 warrant, production order, or preservation request issued in connection with the investigation or
47 prosecution of a felony.

48 Section 3. (a) Notwithstanding any general or special law or regulation to the contrary,
49 and subject to subsection (b), the department shall permanently erase or destroy, or cause to be
50 permanently erased or destroyed, all tolling data in its possession, custody, or control not later
51 than 120 days following the date on which the tolling data was created.

52 (b) The department may retain tolling data beyond the 120-day period established under
53 subsection (a) as necessary to comply with a search warrant, production order, or preservation
54 request, or as necessary to collect unpaid tolls or fines or surcharges related to unpaid tolls.

55 Section 4. Any aggrieved person may institute a civil action in district or superior court
56 for damages resulting from a violation of this chapter, or in superior court for injunctive relief. If
57 in any such action a willful violation is found to have occurred, the violator shall not be entitled
58 to claim any privilege absolute or qualified, and he shall, in addition to any liability for such
59 actual damages as may be shown, be liable for treble damages, or, in the alternative, exemplary
60 damages of not less than one hundred and not more than one thousand dollars for each violation,
61 together with costs and reasonable attorney's fees.