

HOUSE OF REPRESENTATIVES

EIGHTY-NINTH SESSION

H. F. No. 222

01/20/2015 Authored by Cornish, Hilstrom, Zerwas and Simonson

The bill was read for the first time and referred to the Committee on Civil Law and Data Practices

03/12/2015 Adoption of Report: Amended and re-referred to the Committee on Public Safety and Crime Prevention Policy and Finance

03/25/2015 Adoption of Report: Placed on the General Register as Amended
Read Second Time

1.1 A bill for an act
 1.2 relating to data practices; classifying data related to automated license plate
 1.3 readers and requiring a governing policy; requiring a log of use; requiring data to
 1.4 be destroyed in certain circumstances; requiring a report; amending Minnesota
 1.5 Statutes 2014, section 13.82, subdivision 2, by adding a subdivision; proposing
 1.6 coding for new law in Minnesota Statutes, chapters 13; 626.

1.7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.8 Section 1. Minnesota Statutes 2014, section 13.82, subdivision 2, is amended to read:

1.9 Subd. 2. **Arrest data.** The following data created or collected by law enforcement
 1.10 agencies which document any actions taken by them to cite, arrest, incarcerate or
 1.11 otherwise substantially deprive an adult individual of liberty shall be public at all times
 1.12 in the originating agency:

1.13 (a) time, date and place of the action;

1.14 (b) any resistance encountered by the agency;

1.15 (c) any pursuit engaged in by the agency;

1.16 (d) whether any weapons were used by the agency or other individual;

1.17 (e) the charge, arrest or search warrants, or other legal basis for the action;

1.18 (f) the identities of the agencies, units within the agencies and individual persons

1.19 taking the action;

1.20 (g) whether and where the individual is being held in custody or is being incarcerated
 1.21 by the agency;

1.22 (h) the date, time and legal basis for any transfer of custody and the identity of the
 1.23 agency or person who received custody;

1.24 (i) the date, time and legal basis for any release from custody or incarceration;

2.1 (j) the name, age, sex and last known address of an adult person or the age and sex
2.2 of any juvenile person cited, arrested, incarcerated or otherwise substantially deprived
2.3 of liberty;

2.4 (k) whether the agency employed an automated license plate reader, wiretaps or
2.5 other eavesdropping techniques, unless the release of this specific data would jeopardize
2.6 an ongoing investigation;

2.7 (l) the manner in which the agencies received the information that led to the arrest
2.8 and the names of individuals who supplied the information unless the identities of those
2.9 individuals qualify for protection under subdivision 17; and

2.10 (m) response or incident report number.

2.11 Sec. 2. Minnesota Statutes 2014, section 13.82, is amended by adding a subdivision to
2.12 read:

2.13 Subd. 31. **Use of surveillance technology.** Notwithstanding subdivision 25,
2.14 and section 13.37, subdivision 2, the existence of all technology maintained by a
2.15 law enforcement agency that may be used to electronically capture an audio, video,
2.16 photographic, or other record of the activities of the general public, or of an individual
2.17 or group of individuals, for purposes of conducting an investigation, responding to an
2.18 incident or request for service, monitoring or maintaining public order and safety, or
2.19 engaging in any other law enforcement function authorized by law is public data.

2.20 Sec. 3. **[13.824] AUTOMATED LICENSE PLATE READERS.**

2.21 Subdivision 1. **Definition.** As used in this section, "automated license plate reader"
2.22 means government data derived from an automated reader that captures motor vehicle
2.23 license plate numbers. Automated license plate reader includes a device that is owned
2.24 or operated by a person who is not a government entity to the extent that data collected
2.25 by the reader are shared with a law enforcement agency.

2.26 Subd. 2. **Data collection; classification; use restrictions.** (a) Data collected by an
2.27 automated license plate reader must be limited to the following:

2.28 (1) license plate numbers;

2.29 (2) date, time, and location data on vehicles; and

2.30 (3) pictures of license plates, vehicles, and areas surrounding the vehicles.

2.31 Collection of any data not authorized by this paragraph is prohibited.

2.32 (b) All data collected by an automated license plate reader are private data on
2.33 individuals or nonpublic data unless the data are public under section 13.82, subdivision 2,
2.34 3, or 6, or are active criminal investigative data under section 13.82, subdivision 7.

3.1 (c) Data collected from an automated license plate reader may only be matched with
3.2 data in the Minnesota license plate data file, provided that a law enforcement agency
3.3 may use additional sources of data for matching if the additional data relate to an active
3.4 criminal investigation. A central state repository of automated license plate reader data is
3.5 prohibited unless explicitly authorized by law.

3.6 (d) An automated license plate reader may not be used to target and track a person
3.7 subject to an active criminal investigation unless authorized by a warrant, issued upon
3.8 probable cause.

3.9 Subd. 3. **Destruction of data required.** (a) Notwithstanding section 138.17, and
3.10 except as otherwise provided in this subdivision, data collected by an automated license
3.11 plate reader that are not related to an active criminal investigation must be destroyed no
3.12 later than 30 days from the date of collection.

3.13 (b) Upon written request from an individual who is the subject of a pending criminal
3.14 charge or complaint, along with the case or complaint number and a statement that the
3.15 data may be used as exculpatory evidence, data otherwise subject to destruction under
3.16 paragraph (a) must be preserved by the law enforcement agency until the criminal charge
3.17 or complaint is resolved or dismissed.

3.18 (c) Upon written request from a program participant under chapter 5B, automated
3.19 license plate reader data related to the program participant must be destroyed at the
3.20 time of collection or upon receipt of the request, whichever occurs later, unless the data
3.21 are active criminal investigative data. The existence of a request submitted under this
3.22 paragraph is private data on individuals.

3.23 (d) Data that are inactive criminal investigative data are subject to destruction
3.24 according to the retention schedule for the data established under section 138.17.

3.25 Subd. 4. **Sharing among law enforcement agencies.** (a) Automated license plate
3.26 reader data that are not related to an active criminal investigation may only be shared
3.27 with, or disseminated to, another law enforcement agency upon meeting the standards
3.28 for requesting access to data as provided in subdivision 7.

3.29 (b) If data collected by an automated license plate reader are shared with another law
3.30 enforcement agency under this subdivision, the agency that receives the data must comply
3.31 with all data classification, destruction, and security requirements of this section.

3.32 (c) Automated license plate reader data that are not related to an active criminal
3.33 investigation may not be shared with, disseminated to, sold to, or traded with any other
3.34 individual or entity unless explicitly authorized by this subdivision or other law.

4.1 Subd. 5. **Log of use required.** (a) A law enforcement agency that installs or
4.2 uses an automated license plate reader must maintain a public log of its use, including
4.3 but not limited to:

4.4 (1) specific times of day that the reader actively collected data;

4.5 (2) the aggregate number of vehicles or license plates on which data are collected for
4.6 each period of active use;

4.7 (3) for each period of active use, the number of vehicles or license plates in each of
4.8 the following categories where the data identify a vehicle or license plate that has been
4.9 stolen, a warrant for the arrest of the owner of the vehicle or an owner with a suspended or
4.10 revoked driver's license or similar category, or are active investigative data; and

4.11 (4) for a reader at a stationary or fixed location, the location at which the reader
4.12 actively collected data and is installed and used.

4.13 (b) The law enforcement agency must maintain a list of the current and previous
4.14 locations, including dates at those locations, of any fixed stationary automated license
4.15 plate readers used by the agency. The agency's list must be accessible to the public, unless
4.16 the agency determines that the data are security information as provided in section 13.37,
4.17 subdivision 2. A determination that these data are security information is subject to
4.18 in-camera judicial review as provided in section 13.08, subdivision 4.

4.19 Subd. 6. **Annual audit.** (a) In addition to the log required under subdivision 5, the
4.20 law enforcement agency must maintain records showing the date and time automated
4.21 license plate reader data were collected and the applicable classification of the data. The
4.22 law enforcement agency shall arrange for an independent, annual audit of the records to
4.23 determine whether data currently in the records are classified, how the data are used,
4.24 whether they are destroyed as required under this section, and to verify compliance with
4.25 subdivision 7. Data in the records required under this paragraph are classified as provided
4.26 in subdivision 2.

4.27 (b) The results of the audit are public. A law enforcement agency determined to
4.28 be in a pattern of substantial noncompliance with this section must immediately suspend
4.29 operation of all automated license plate reader devices until such time as the legislature
4.30 has authorized the agency, by law, to reinstate their use. An order of suspension under
4.31 this paragraph shall be issued by the commissioner of administration, upon review of the
4.32 results of the audit, review of the applicable provisions of this chapter, and after providing
4.33 the agency a reasonable opportunity to respond to the audit's findings.

4.34 (c) A report summarizing the results of each audit must be provided to the
4.35 commissioner of administration, to the chair and ranking minority members of the
4.36 committees of the house of representatives and the senate with jurisdiction over data

5.1 practices and public safety issues, and to the Legislative Commission on Data Practices
5.2 and Personal Data Privacy no later than 30 days following completion of the audit.

5.3 Subd. 7. **Authorization to access data.** (a) A law enforcement agency must comply
5.4 with sections 13.05, subdivision 5, and 13.055 in the operation of automated license plate
5.5 readers, and in maintaining automated license plate reader data.

5.6 (b) The responsible authority for a law enforcement agency must establish written
5.7 procedures to ensure that law enforcement personnel have access to the data only if
5.8 authorized in writing, on a case-by-case basis, by the chief of police, sheriff, or head
5.9 of the law enforcement agency, or their designee, to obtain access to data collected
5.10 by an automated license plate reader for a legitimate, specified, and documented law
5.11 enforcement purpose. Consistent with the requirements of paragraph (c), a request for
5.12 access must be pertinent to an active criminal investigation, and must include a record of
5.13 the factual basis for the request and any associated case number, complaint, or incident
5.14 that is the basis for the request.

5.15 (c) The ability of authorized individuals to enter, update, or access automated license
5.16 plate reader data must be limited through the use of role-based access that corresponds
5.17 to the official duties or training level of the individual and the statutory authorization
5.18 that grants access for that purpose. All queries and responses, and all actions in which
5.19 data are entered, updated, accessed, shared, or disseminated, must be recorded in a data
5.20 audit trail. Data contained in the audit trail are public, to the extent that the data are
5.21 not otherwise classified by law.

5.22 Subd. 8. **Notification to Bureau of Criminal Apprehension.** (a) Within ten days
5.23 of the installation or current use of an automated license plate reader, a law enforcement
5.24 agency must notify the Bureau of Criminal Apprehension of that installation or use and of
5.25 any fixed location of a stationary automated license plate reader.

5.26 (b) The Bureau of Criminal Apprehension must maintain a list of law enforcement
5.27 agencies using automated license plate readers, including locations of any fixed stationary
5.28 automated license plate readers. Except to the extent that the law enforcement agency
5.29 determines that the location of a specific reader is security information, as defined in
5.30 section 13.37, this list is accessible to the public and must be available on the bureau's
5.31 Web site. A determination that the location of a reader is security information is subject to
5.32 in-camera judicial review, as provided in section 13.08, subdivision 4.

5.33 **EFFECTIVE DATE.** This section is effective the August 1, 2015. Data collected
5.34 before the effective date of this section must be destroyed, if required by this section, no
5.35 later than 15 days after the date this section becomes effective.

6.1 Sec. 4. **[626.8472] AUTOMATED LICENSE PLATE READER POLICY.**

6.2 The chief law enforcement officer of every state and local law enforcement agency
6.3 that maintains an automated license plate reader shall establish and enforce a written
6.4 policy governing use of the reader. Use of an automated license plate reader without
6.5 adoption of a written policy under this section is prohibited. At a minimum, the policies
6.6 and procedures must incorporate the requirements of section 13.824, and the employee
6.7 discipline standards for unauthorized access to data contained in section 13.09.

6.8 **EFFECTIVE DATE.** This section is effective August 1, 2015, provided that chief
6.9 law enforcement officers shall adopt the policy required under this section no later than
6.10 January 15, 2016.