

HB0168S01 compared with HB0168

~~{deleted text}~~ shows text that was in HB0168 but was deleted in HB0168S01.

inserted text shows text that was not in HB0168 but was inserted into HB0168S01.

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Representative Jefferson S. Burton proposes the following substitute bill:

LICENSE PLATE READER SYSTEMS AMENDMENTS

2023 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Jefferson S. Burton

Senate Sponsor: ~~{_____}~~ Todd D. Weiler

LONG TITLE

General Description:

This bill amends provisions related to the use of license plate reading technology and data obtained through license plate reading technology.

Highlighted Provisions:

This bill:

- ~~{ → } allows a law enforcement agency to use license plate reading technology gathered by a private entity in certain circumstances;~~
- ~~{ } ▶ allows the Department of Transportation to issue a permit for the use of license plate reading technology on a state highway in certain circumstances;~~
- ▶ amends provisions related to a government entity's ability to use privately held data obtained through license plate reading technology;
- ▶ requires a law enforcement agency participating in a license plate reading

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technology program to publicly post policies related to license plate reading technology and special use permits the law enforcement agency has received;

- ▶ defines parameters for the collection and retention of information for investigative searches and for audit purposes gathered through license plate reading technology by a law enforcement agency;
- ▶ requires a law enforcement agency to obtain a warrant before the law enforcement agency may access captured license plate data; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

41-6a-2003, as last amended by Laws of Utah 2022, Chapter 82

41-6a-2005, as last amended by Laws of Utah 2014, Chapter 276

41-6a-2006, as enacted by Laws of Utah 2013, Chapter 447

72-1-212, as enacted by Laws of Utah 2015, Chapter 267

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **41-6a-2003** is amended to read:

41-6a-2003. Automatic license plate reader systems -- Restrictions.

(1) Except as provided in Subsection (2), a governmental entity may not use an automatic license plate reader system.

(2) ~~[An]~~ Subject to Subsection (3), an automatic license plate reader system may be used:

(a) by a law enforcement agency for the purpose of protecting public safety, conducting criminal investigations, or ensuring compliance with local, state, and federal laws;

(b) by a governmental parking enforcement entity for the purpose of enforcing state and local parking laws;

(c) by a parking enforcement entity for regulating the use of a parking facility;

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(d) for the purpose of controlling access to a secured area;
(e) for the purpose of collecting an electronic toll;
(f) for the purpose of enforcing motor carrier laws;
(g) by a public transit district for the purpose of assessing parking needs and conducting a travel pattern analysis;

(h) by an institution of higher education within the state system of higher education as described in Section 53B-1-102:

(i) for a purpose described in Subsections (2)(a) through (d); or

(ii) if the data collected is anonymized, for research and educational purposes; or

(i) by the Utah Inland Port Authority, created in Section 11-58-201, or by a contractor of the Utah Inland Port Authority with the approval of the board of the Utah Inland Port Authority, if:

(i) the automatic license plate reader system is used only within a project area, as defined in Section 11-58-102, of the Utah Inland Port Authority;

(ii) the purpose of using the automatic license plate reader system is to improve supply chain efficiency or the efficiency of the movement of goods by analyzing and researching data related to commercial vehicle traffic; and

(iii) specific license plate information is anonymized.

(3) (a) A law enforcement agency using a license plate reader system in accordance with Subsection (2) may not use an automatic license plate reader system unless:

(~~f~~a~~i~~) the law enforcement agency has a written policy regarding the use, management, and auditing of the automatic license plate reader system;

(~~f~~b~~i~~) for any stationary device installed with the purpose of capturing license plate data of vehicles traveling on a state highway, the law enforcement agency obtains a special use permit as described in Section 72-1-212 from the Department of Transportation before installing the device; and

(~~f~~c~~i~~) the policy under Subsection (3)(a)(i) and any special use permits granted in accordance with Subsection (3)(~~f~~b~~a~~)(ii) are:

(~~f~~i~~A~~) posted and publicly available on the appropriate city, county, or state website;

or

(~~f~~i~~B~~) posted on the Utah Public Notice Website created in Section 63A-16-601 if the

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law enforcement agency does not have access to a website under Subsection

(3)(~~fc~~a)(~~ft~~iii)(A).

(b) A law enforcement agency that has collected data with a license plate reader system as provided in Subsection (3)(a) may not search or otherwise access the captured plate data unless the law enforcement agency:

(i) has obtained a search warrant issued using the procedures described in the Utah Rules of Civil Procedure or an equivalent federal warrant; or

(ii) can demonstrate a lawful exception to the requirement to obtain a search warrant.

Section 2. Section **41-6a-2005** is amended to read:

41-6a-2005. Preservation request.

(1) A person or governmental entity using an automatic license plate reader system shall take all steps necessary to preserve captured plate data in its possession for 14 days after the date the data is captured pending the issuance of a court order requiring the disclosure of the captured plate data if a governmental entity or defendant in a criminal case requesting the captured plate data submits a written statement to the person or governmental entity using an automatic license plate reader system:

(a) requesting the person or governmental entity to preserve the captured plate data;

(b) identifying:

(i) the camera or cameras for which captured plate data shall be preserved;

(ii) the license plate for which captured plate data shall be preserved; or

(iii) the dates and time frames for which captured plate data shall be preserved; and

(c) notifying the person or governmental entity maintaining the captured plate data that the governmental entity or defendant in a criminal case is applying for a court order for disclosure of the captured plate data.

(2) (a) A governmental entity or defendant in a criminal case may apply for a court order for the disclosure of captured plate data possessed by a governmental entity.

(b) A court that is a court of competent jurisdiction shall issue a court order requiring the disclosure of captured plate data if the governmental entity or defendant in a criminal case 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 person investigation.

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(3) Captured plate data that is the subject of an application for a disclosure order under Subsection (2) may be destroyed at the later of:

(a) the date that an application for an order under Subsection (2) is denied and any appeal exhausted;

(b) the end of 14 days, if the person or governmental entity does not otherwise preserve the captured plate data; or

(c) the end of the period described in Subsection 41-6a-2004(1)(c).

(4) Notwithstanding Subsection (2), a governmental entity may enter into a memorandum of understanding with another governmental entity to share access to an automatic license plate reader system or captured ~~{license }~~plate data otherwise authorized by this part.

~~[(4)] (5) ~~{(a)}~~ A governmental entity may obtain, receive, or use privately held captured plate data only ~~{}~~: ~~{}~~ for the purposes authorized in Subsection 41-6a-2003(2).~~

~~{(b) A governmental entity shall maintain and dispose of any captured license plate data as provided in this part.~~

~~{(a) (i) pursuant to a warrant issued using the procedures described in the Utah Rules of Criminal Procedure, ~~{or}~~ an equivalent federal warrant, or a lawful exception to the warrant requirement; or ~~{}~~~~

~~{(ii) using the procedure described in Subsection (2); ~~{and}~~~~

~~{(b) if the private automatic license plate reader system retains captured plate data for 30 days or fewer~~[-:]; and~~~~

~~{(c) for the purposes authorized in Subsection 41-6a-2003(2).~~

(6) (a) A law enforcement agency shall preserve a record of:

(i) the number of times a search of captured license plate data is conducted by the agency, or the agency's employees or agents; and

(ii) the crime type and incident number associated with each search of captured license plate data.

(b) A law enforcement agency shall preserve a record identified in Subsection (6)(a) for at least five years.

Section 3. Section **41-6a-2006** is amended to read:

41-6a-2006. Penalties.

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A person who [~~violates a provision under this part~~] knowingly or intentionally obtains or discloses captured license plate data in violation of this part is guilty of a class B misdemeanor.

Section 4. Section **72-1-212** is amended to read:

72-1-212. Special use permitting -- Rulemaking.

~~[(1) For purposes of this section, "special use permit" means a permit issued for a special use or a special event that takes place on a highway.]~~

(1) As used in this section:

(a) "Law enforcement agency" means the same as that term is defined in Section 53-3-102.

(b) "Special use permit" means a permit issued:

(i) for a special use or a special event that takes place on a highway; or

(ii) to a law enforcement agency to install any stationary device with the purpose of capturing license plate data of vehicles traveling on a state highway regardless of whether the device is installed on property owned by the department or the law enforcement agency.

(2) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, and in consultation with representatives of the Utah League of Cities and Towns and the Utah Association of Counties, the department shall make rules that are not inconsistent with this chapter or the constitution and laws of this state or of the United States governing the issuance of a special use permit to maintain public safety and serve the needs of the traveling public.

(3) The rules described in Subsection (2) may:

(a) establish the highways for which the highest number of special use permits are issued;

(b) develop, in consultation with municipalities, a limit on the number of special use permits that may be issued in any calendar year on a particular highway;

(c) require a person to submit an application designated by the department before the department issues a special use permit;

(d) limit the number of special use permits issued on any one day for any specified location based on a first-come, first-served basis for completed applications;

(e) establish criteria for evaluating completed applications, such as historic use, potential economic benefit, or other relevant factors;

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(f) specify conditions that are required to be met before a special use permit may be issued;

(g) establish a penalty for failure to fulfill conditions required by the special use permit, including suspension of the special use permit or suspension of a future special use permit;

(h) require an applicant to obtain insurance for certain special uses or special events; or

(i) provide other requirements to maintain public safety and serve the needs of the traveling public.

(4) The limit on the number of special use permits described in Subsection (3)(b) may not include:

(a) ~~†~~ a special use permit issued for a municipality-sponsored special use or special event on a highway within the jurisdiction of the municipality~~[-]†~~; or

(b) a special use permit issued to a law enforcement agency to install a device as part of an automatic license plate reader system authorized by Section 41-6a-2003.

(5) The rules described in Subsection (2) shall consider:

(a) traveler safety and mobility;

(b) the safety of special use or special event participants;

(c) emergency access;

(d) the mobility of residents close to the event or use;

(e) access and economic impact to businesses affected by changes to the normal operation of highway traffic; ~~and~~

(f) past performance of an applicant's adherence to special use permit requirements~~[-]†~~ †; and

(g) whether a law enforcement agency applying for a special use permit has published a policy online as required by Section 41-6a-2003.

(6) Notwithstanding any other provision of this chapter, the department may require a law enforcement agency applying for a special use permit described in this section to obtain an encroachment permit.

~~[(6)]~~ (7) The department shall adopt a fee schedule in accordance with Section 63J-1-504 that reflects the cost of services provided by the department associated with special use permits and with special uses or special events that take place on a highway.

(8) For a device installed in accordance with Section 41-6a-2003, the installation,

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maintenance, data retrieved, and removal are the responsibility of the law enforcement agency that obtains the special use permit.