

AMENDED IN SENATE MARCH 29, 2012

SENATE BILL

No. 1330

Introduced by Senator Simitian

February 23, 2012

An act to add Sections 2413.5 and 2413.7 to the Vehicle Code, relating to vehicles.

LEGISLATIVE COUNSEL'S DIGEST

SB 1330, as amended, Simitian. Vehicles: license plate recognition technology: personal information.

(1) Existing law authorizes the Department of the California Highway Patrol to retain license plate data captured by license plate recognition (LPR) technology for not more than 60 days unless the data is being used as evidence or for the investigation of felonies. Existing law prohibits the department from selling the data or from making the data available to an agency that is not a law enforcement agency or an individual that is not a law enforcement officer.

Existing law authorizes the department to use LPR data for the purpose of locating vehicles or persons reasonably suspected of being involved in the commission of a public offense and requires the department to monitor the internal use of the data to prevent unauthorized use and to submit to the Legislature, as a part of the annual automobile theft report, information on the department's LPR practices and usage.

This bill would apply similar requirements to state and local law enforcement agencies other than the Department of the California Highway Patrol and would require these agencies to comply with ~~all statutory and constitutional requirements~~ and the requirements of these provisions, thereby imposing a state-mandated program by requiring local agencies to perform new duties.

This bill would also apply similar requirements to persons, as defined, who use LPR technology and would additionally require, among other things, disclosure to a law enforcement agency, only pursuant to a search warrant, except as specified. The bill would require a law enforcement agency that obtains data pursuant to the search warrant to notify the person whose information is disclosed that his or her records have been obtained. The bill would authorize a person whose information is sold or disclosed in violation of these provisions to bring a civil action and would entitle the person to recover any and all consequential and incidental damages, including all costs and attorney’s fees.

Because the failure to comply with these provisions would constitute an infraction under the Vehicle Code, the bill would also impose a state-mandated local program, by creating a new crime.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 2413.5 is added to the Vehicle Code, to
 2 read:
 3 2413.5. (a) (1) The Legislature finds and declares that state
 4 and local law enforcement agencies, in addition to the Department
 5 of the California Highway Patrol, have established vehicle theft
 6 prevention, investigation, and apprehension programs. State and
 7 local law enforcement agencies assist that department and federal
 8 law enforcement agencies by participating in multijurisdictional
 9 vehicle theft investigations and by establishing programs to
 10 improve the ability of law enforcement to combat vehicle theft.
 11 (2) Except as provided in subdivision (c), a state or local law
 12 enforcement agency may only use license plate recognition (LPR)
 13 technology when its use complies with ~~all statutory and~~

1 ~~constitutional requirements~~ and the requirements of subdivision
2 (b).

3 (b) A state or local law enforcement agency that uses LPR
4 technology shall comply with all of the following:

5 (1) It shall retain license plate data captured by LPR technology
6 for not more than 60 days, except in circumstances when the data
7 is being used as evidence or for all felonies being investigated,
8 including, but not limited to, auto theft, homicides, kidnaping,
9 burglaries, elder and juvenile abductions, Amber Alerts, and Blue
10 Alerts.

11 (2) It shall not sell LPR data for any purpose and it shall not
12 make the data available to an agency or person that is not a law
13 enforcement agency or an individual who is not a law enforcement
14 officer. The data may be used by a law enforcement agency only
15 for purposes of locating vehicles or persons when either ~~are~~ *is*
16 reasonably suspected of being involved in the commission of a
17 public offense.

18 (3) It shall monitor the internal use of LPR data to prevent its
19 unauthorized use.

20 (4) It shall adopt a privacy policy to ensure that personally
21 identifiable information is not unlawfully disclosed.

22 (5) It shall conspicuously post the privacy policy on the agency's
23 Internet Web site.

24 (6) It shall report annually its LPR practices and usage, including
25 the number of LPR data disclosures, a record of the agencies to
26 which data was disclosed and for what purpose, and any changes
27 in policy that affect privacy concerns to the state or local agency
28 that governs the law enforcement agency.

29 (c) This section applies to all state and local law enforcement
30 agencies, other than the Department of the California Highway
31 Patrol, which is subject to Section 2413.

32 SEC. 2. Section 2413.7 is added to the Vehicle Code, to read:

33 2413.7. (a) A person, other than a state and local law
34 enforcement agency, shall comply with ~~all statutory and~~
35 ~~constitutional requirements~~ and subdivision (b) when using license
36 plate recognition (LPR) technology. As used in this section, a
37 "person" has the same meaning as defined in Section 470.

38 (b) A person who uses LPR technology shall comply with all
39 of the following:

1 (1) The person shall retain license plate data captured by LPR
2 technology for not more than 60 days.

3 (2) The person shall not sell LPR data for any purpose and shall
4 not make the data available to an agency or person that is not a
5 law enforcement agency or an individual who is not a law
6 enforcement officer.

7 (3) ~~The~~ *Except as provided in subparagraph (4), the person*
8 shall make data available to a law enforcement agency only
9 pursuant to a search warrant. Absent a provision in the search
10 warrant to the contrary, the law enforcement agency shall
11 immediately, but in any event within ~~not less~~ *no more* than five
12 days, notify the person whose information has been disclosed that
13 his or her records have been obtained and shall provide that person
14 with a copy of the search warrant and the identity of the law
15 enforcement agency or law enforcement officer to whom the
16 records were provided.

17 (4) The person shall allow a peace officer, as defined in Section
18 830.1 or 830.2 of the Penal Code, when conducting a criminal or
19 traffic collision investigation, to obtain personally identifiable
20 information of a person if the officer has good cause to believe
21 that a delay in obtaining this information by seeking a search
22 warrant would cause an adverse result as defined in paragraph (2)
23 of subdivision (a) of Section 1524.2 of the Penal Code.

24 (5) The person shall monitor the internal use of LPR data to
25 prevent its unauthorized use.

26 (6) The person shall adopt a privacy policy to ensure that
27 personally identifiable information is not unlawfully disclosed.

28 (7) The person shall conspicuously post the privacy policy on
29 its Internet Web site.

30 (8) The person shall report annually its LPR practices and usage,
31 including the number of LPR data disclosures, a record of the law
32 enforcement agencies or peace officers to which data was disclosed
33 and for what purpose, and any changes in policy that affect privacy
34 concerns to the Department of Justice.

35 (c) A person whose information is sold or disclosed in violation
36 of this section may bring a civil action and shall be entitled to
37 recover any and all consequential and incidental damages,
38 including all costs and attorney's fees.

39 SEC. 3. No reimbursement is required by this act pursuant to
40 Section 6 of Article XIII B of the California Constitution for certain

1 costs that may be incurred by a local agency or school district
2 because, in that regard, this act creates a new crime or infraction,
3 eliminates a crime or infraction, or changes the penalty for a crime
4 or infraction, within the meaning of Section 17556 of the
5 Government Code, or changes the definition of a crime within the
6 meaning of Section 6 of Article XIII B of the California
7 Constitution.

8 However, if the Commission on State Mandates determines that
9 this act contains other costs mandated by the state, reimbursement
10 to local agencies and school districts for those costs shall be made
11 pursuant to Part 7 (commencing with Section 17500) of Division
12 4 of Title 2 of the Government Code.

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