

1 S.155

2 Introduced by Senators Ashe, Benning, and Sears

3 Referred to Committee on

4 Date:

5 Subject: Privacy; medical records; drones; automated license plate readers

6 Statement of purpose of bill as introduced: This bill proposes a number of  
7 measures intended to enhance privacy protection. The bill includes the  
8 following provisions:

9 (1) The bill proposes to establish a private right of action for a person  
10 whose protected health care information is improperly disclosed.

11 (2) The bill proposes to establish regulations for the use of drones, also  
12 known as unmanned aerial vehicles. The bill proposes to permit a law  
13 enforcement agency to use a drone only if the agency obtains a warrant or if  
14 emergency circumstances exist.

15 (3) The bill proposes to restrict the use of automated license plate  
16 recognition (ALPR) systems, to address the confidentiality of data captured by  
17 ALPR systems, and to limit such data from being retained for more than  
18 18 months unless certain exceptions apply.

19 An act relating to privacy protection

1 It is hereby enacted by the General Assembly of the State of Vermont:

2 \* \* \* Protected Health Information \* \* \*

3 Sec. 1. 18 V.S.A. chapter 42B is added to read:

4 CHAPTER 42B. HEALTH CARE PRIVACY

5 § 1881. DISCLOSURE OF PROTECTED HEALTH INFORMATION

6 PROHIBITED

7 (a) As used in this section:

8 (1) “Covered entity” shall have the same meaning as in 45 C.F.R.

9 § 160.103.

10 (2) “Protected health information” shall have the same meaning as in

11 45 C.F.R. § 160.103.

12 (b) A covered entity shall not disclose protected health information unless

13 the disclosure is permitted under the Health Insurance Portability and

14 Accountability Act of 1996 (HIPAA).

15 § 1882. PRIVATE CAUSE OF ACTION

16 (a) A person whose protected health information is disclosed by a covered  
17 entity in violation of subsection 1881(b) of this title may bring an action in the

18 Civil Division of the Superior Court for damages, injunctive relief, punitive

19 damages, and reasonable costs and attorney’s fees. The court may issue an

20 award for the person’s actual damages or \$500.00 for a first violation or

21 \$1,000.00 for each subsequent violation, whichever is greater.

1        (b) This section shall not limit any other claims a person may have under  
2        applicable law.

3                                \* \* \* Drones \* \* \*

4        Sec. 2. 20 V.S.A. part 11 is added to read:

5                                        PART 11. DRONES

6    CHAPTER 205. DRONES

7        § 4621. DEFINITIONS

8        As used in this chapter:

9                (1) “Drone” means a powered aerial vehicle that does not carry a human  
10        operator and is able to fly autonomously or to be piloted remotely.

11                (2) “Law enforcement agency” means:

12                        (A) the Vermont State Police;

13                        (B) a municipal police department;

14                        (C) a sheriff’s department;

15                        (D) the Office of the Attorney General;

16                        (E) a State’s Attorney’s office;

17                        (F) the Capitol Police Department;

18                        (G) the Department of Liquor Control;

19                        (H) the Department of Fish and Wildlife;

20                        (I) the Department of Motor Vehicles;

21                        (J) a State investigator; or

1           (K) a person or entity acting on behalf of an agency listed in this  
2           subdivision (2).

3           § 4622. LAW ENFORCEMENT USE OF DRONES

4           (a) Except as provided in subsection (b) of this section, a law enforcement  
5           agency shall not use a drone for any purpose or disclose or receive information  
6           acquired through the operation of a drone.

7           (b) A law enforcement agency may use a drone and may disclose or receive  
8           information acquired through the operation of a drone if the drone is operated  
9           under:

10           (1) a warrant obtained pursuant to Rule 41 of the Vermont Rules of  
11           Criminal Procedure; or

12           (2) emergency circumstances pursuant to section 4623 of this title.

13           (c)(1) When a drone is used pursuant to subsection (b) of this section, the  
14           drone shall be operated in a manner to collect data only on the target of the  
15           surveillance and to avoid data collection on any other person, home, or area.

16           (2) If a drone used pursuant to subsection (b) of this section collects data  
17           on any person, home, or area other than the target of the surveillance, the data:

18           (A) shall not be used, copied, or disclosed for any purpose; and

19           (B) shall be deleted as soon as possible and in no event later than  
20           24 hours after the data were collected.

1           (3) Facial recognition or any other biometric matching technology shall  
2           not be used on any data that a drone collects on any person, home, or area  
3           other than the target of the surveillance.

4           (d) Information or evidence gathered in violation of this section shall be  
5           inadmissible in any judicial or administrative proceeding.

6           § 4623. USE OF DRONES IN EMERGENCY SITUATIONS

7           (a) A law enforcement agency may use a drone and may disclose or receive  
8           information acquired through the operation of a drone if:

9                   (1) an emergency situation exists in which it is reasonable to believe  
10                  there is an imminent threat of death or serious bodily injury to any person; and

11                   (2) the law enforcement agency obtains a search warrant for the use of  
12                  the drone within 48 hours after the use commenced.

13           (b) If the court denies an application for a warrant filed pursuant to  
14           subdivision (a)(2) of this section:

15                   (1) use of the drone shall cease immediately; and

16                   (2) information or evidence gathered through use of the drone shall be  
17                  destroyed and is inadmissible in any judicial or administrative proceeding.

18           (c) If a law enforcement agency using a drone in an emergency situation  
19           pursuant to this section obtains the information sought, the agency shall  
20           immediately cease use of the drone.

1     § 4624. NONLAW ENFORCEMENT USE OF DRONES

2           (a) Any use of drones by any person other than a law enforcement agency  
3     shall comply with all Federal Aviation Administration requirements and  
4     guidelines.

5           (b) It is the intent of the General Assembly that any person who uses a  
6     model aircraft as defined in the Federal Aviation Administration  
7     Modernization and Reform Act of 2012 shall comply with the Academy of  
8     Model Aeronautics National Model Aircraft Safety Code.

9     § 4625. REPORTS

10          (a) On or before September 1 of each year, any law enforcement agency  
11     that has used a drone within the previous 12 months shall report the following  
12     information to the Department of Public Safety:

13           (1) The number of times the agency used a drone within the previous  
14     12 months. For each use of a drone, the agency shall report the type of  
15     incident involved, the nature of the information collected, and the rationale for  
16     deployment of the drone.

17           (2) The number of criminal investigations aided and arrests made  
18     through use of information gained by the use of drones within the previous  
19     12 months, including a description of how the drone aided each investigation  
20     or arrest.

1           (3) The number of times a drone collected data on any person, home, or  
2           area other than the target of the surveillance within the previous 12 months and  
3           the type of data collected in each instance.

4           (4) The cost of the agency's unmanned aerial vehicle program and the  
5           program's source of funding.

6           (b) On or before December 1 of each year that information is collected  
7           under subsection (a) of this section, the Department of Public Safety shall  
8           report the information to the House and Senate Committees on Judiciary and  
9           on Government Operations.

10          Sec. 3. 13 V.S.A. § 4018 is added to read:

11          § 4018. DRONES

12           (a) No person shall equip a drone with a dangerous or deadly weapon or  
13           fire a projectile from a drone. A person who violates this section shall be  
14           imprisoned not more than one year or fined not more than \$1,000.00, or both.

15           (b) As used in this section:

16           (1) "Drone" shall have the same meaning as in 20 V.S.A. § 4621.

17           (2) "Dangerous or deadly weapon" shall have the same meaning as in  
18           section 4016 of this title.

1                   \* \* \* Automated License Plate Recognition Systems \* \* \*

2           Sec. 4. 23 V.S.A. § 1607a is added to read:

3           § 1607a. AUTOMATED LICENSE PLATE RECOGNITION SYSTEMS

4           (a) Definitions. As used in this section and section 1608a of this title:

5                   (1) “Automated license plate recognition system” or “ALPR system”

6           means a system of one or more mobile or fixed high-speed cameras combined  
7           with computer algorithms that convert images of license plates into  
8           computer-readable files of license plate numbers.

9                   (2) “Captured plate data” means:

10                   (A) the data captured by an ALPR system, including a photograph of  
11           a license plate, GPS coordinates of the location of a license plate, and the date  
12           and time that an ALPR system captured data relating to a license plate; and

13                   (B) the files of license plate numbers derived from images of license  
14           plates.

15                   (3) “Department” means the Department of Public Safety.

16                   (4) “Law enforcement officer” means a State Police officer, municipal  
17           police officer, motor vehicle inspector, Capitol Police officer, constable,  
18           sheriff, or deputy sheriff who is certified by the Vermont Criminal Justice  
19           Training Council as a Level II or Level III law enforcement officer under  
20           20 V.S.A. § 2358.



1           (5) “Legitimate law enforcement purpose” means:

2                   (A) detection, investigation, analysis, or enforcement of a crime,

3 traffic violation, or parking violation;

4                   (B) defending against a pending or reasonably anticipated charge or

5 complaint of a crime, traffic violation, or parking violation;

6                   (C) operation of AMBER alerts; or

7                   (D) missing or endangered person searches.

8           (6) “Vermont law enforcement agency” means:

9                   (A) the Department of Public Safety;

10                  (B) a municipal police department;

11                  (C) a sheriff’s department;

12                  (D) the Office of the Attorney General;

13                  (E) a State’s Attorney’s office;

14                  (F) the Capitol Police Department;

15                  (G) the Department of Motor Vehicles.

16           (7) “Warrant” means a warrant issued pursuant to Rule 41 of the  
17 Vermont or Federal Rules of Criminal Procedure.

18           (b) Restrictions on use of ALPR systems; ALPR database content.

19                   (1) A person shall not operate an ALPR system in Vermont unless he or  
20 she is a law enforcement officer and operates the system for a legitimate law

1 enforcement purpose. A law enforcement officer shall not operate an ALPR  
2 system in Vermont unless:

3 (A) the officer is certified in ALPR operation by the Vermont  
4 Criminal Justice Training Council; and

5 (B) the system automatically transfers captured plate data to the  
6 statewide ALPR server maintained by the Department and captured plate data  
7 are automatically deleted from the system after the data's transfer to the  
8 Department.

9 (2) A Department supervisor must approve the entry of any data onto  
10 the statewide ALPR server other than data collected by an ALPR system itself,  
11 and any such entry shall be for a legitimate law enforcement purpose.

12 (c) Confidentiality of captured plate data; exceptions.

13 (1) Except as provided in this subsection, captured plate data are exempt  
14 from public inspection and copying under the Public Records Act and shall be  
15 kept confidential. Captured plate data shall not be subject to subpoena or  
16 discovery, or be admissible in evidence, in any private civil action.

17 (2)(A) Upon request, the Department may disclose captured plate data  
18 lawfully retained under this section for a legitimate law enforcement purpose.  
19 A receiving person may use the data or further disclose it, but only for a  
20 legitimate law enforcement purpose.

1           (B) Any requests for captured plate data from the Department under  
2           this subdivision (2) shall be in writing and include the name of the requester  
3           and, if applicable, the law enforcement agency the requester is employed by  
4           and the law enforcement agency's Originating Agency Identifier number. The  
5           request shall describe the legitimate law enforcement purpose for which the  
6           data are to be used. The Department shall retain all requests and record in  
7           writing the outcome of the request and any information that was provided to  
8           the requester or, if applicable, its reasons for denying or not fulfilling the  
9           request. The Department shall retain the information described in this  
10          subdivision (c)(2)(B) for at least three years.

11           (3) The Department shall not release captured plate data to a person  
12          unless the person has accepted the terms of a user agreement with the  
13          Department. The user agreement shall specify the confidentiality, permitted  
14          uses, and authorized retention periods of the data in accordance with the  
15          provisions of this section.

16          (d) Limitation on retention of captured plate data; extensions, exception.

17           (1) A person shall not retain captured plate data for more than  
18          18 months after the date of its creation unless:

19           (A) this period is extended under a warrant or pursuant to section  
20          1608a of this title; or

1           (B) the plate data is relevant to the defense of a pending or  
2 reasonably anticipated charge or complaint.

3           (2) Except for captured plate data described in subdivision (1)(B) of this  
4 subsection, captured plate data shall be destroyed upon the expiration of the  
5 18-month period, plus any authorized extension of this period.

6           (e) Applicability to data received from other jurisdictions. This section  
7 shall apply to captured plate data received from outside Vermont, whether  
8 from a public or private person. Such data shall be retained and used  
9 consistent with the requirements of this section and of the sending person.

10          (f) Special provisions for commercial motor vehicle enforcement. With  
11 respect to the use of ALPRs for commercial motor vehicle screening,  
12 inspection, and compliance activities pursuant to Federal Motor Carrier Safety  
13 Regulations:

14           (1) Notwithstanding subdivisions (b)(1)(B) and (b)(2) of this section:

15           (A) Captured plate data are not required to be automatically  
16 transferred to the Department of Public Safety. However, data must be  
17 transferred from an ALPR system to a centralized ALPR database designated  
18 by the Department of Motor Vehicles and deleted from individual ALPR units  
19 after the transfer.

20           (B) A Department of Motor Vehicle supervisor must approve the  
21 entry of data onto the centralized database.

1           (2) The Department of Motor Vehicles shall have the same authority and  
2           responsibilities as the Department of Public Safety as specified in  
3           subsection (c) of this section.

4           (g) Penalties.

5           (1) A person who knowingly uses an ALPR system or captured plate  
6           data in violation of this section or who knowingly violates the confidentiality  
7           provisions of this section shall be fined not more than \$1,000.00 or imprisoned  
8           not more than two years, or both.

9           (2) A person who knowingly retains captured plate data beyond the time  
10          limits established under this section and section 1608a of this title shall be  
11          fined not more than \$500.00.

12          (h) Oversight. The Department, in consultation with the Department of  
13          Motor Vehicles, shall establish a review process to ensure that information  
14          obtained through the use of ALPR systems is used only for the purposes  
15          permitted under this section. The Department shall report the results of this  
16          review annually on or before January 15 to the Senate and House Committees  
17          on Judiciary. The report shall contain the following information based on prior  
18          calendar year data in connection with the statewide ALPR database and, if  
19          applicable, for any separate ALPR database that may be established in  
20          connection with commercial motor vehicle enforcement:

- 1           (1) the total number of ALPR units being operated in the State and the  
2           number of units submitting data;
- 3           (2) the total number of ALPR readings that each agency submitted to the  
4           database;
- 5           (3) the 12-month cumulative number of ALPR readings retained on the  
6           database for more than 18 months;
- 7           (4) the total number of requests made for ALPR data;
- 8           (5) the total number of requests that resulted in release of information;
- 9           (6) the total number of out-of-state requests; and
- 10           (7) the total number of out-of-state requests that resulted in release of  
11           information.

12           (i) Rulemaking authority. The Department may adopt rules to implement  
13           this section.

14           Sec. 5. 23 V.S.A. § 1608a is added to read:

15           § 1608a. PRESERVATION OF DATA

16           (a) Preservation request.

17           (1) An out-of-state or Vermont law enforcement agency or a person  
18           against whom a charge or complaint is pending or is reasonably anticipated to  
19           be brought or his or her representative may apply to the Criminal Division of  
20           the Superior Court for an extension of up to 90 days of the 18-month retention  
21           period established under subsection 1607a(d) of this title if the agency or

1 person offers specific and articulable facts showing that there are reasonable  
2 grounds to believe that the captured plate data are relevant and material to an  
3 ongoing criminal or missing persons investigation or to a pending court or  
4 Judicial Bureau traffic proceeding. Requests for additional 90-day extensions  
5 or for extensions of longer duration may be made to the court subject to the  
6 same standards applicable to an initial extension request under this subdivision.

7 (2) A person making a preservation request under this section shall  
8 submit an affidavit stating:

9 (A) the particular camera or cameras for which captured plate data  
10 must be preserved or the particular license plate for which captured plate data  
11 must be preserved; and

12 (B) the date or dates and time frames for which captured plate data  
13 must be preserved.

14 (b) If a request for a preservation order is denied, the captured plate data  
15 shall be destroyed upon the final denial of the request on appeal or upon the  
16 expiration or waiver of appeal rights, unless the data are required to be  
17 preserved under a warrant.

18 \* \* \* Effective Date \* \* \*

19 Sec. 6. EFFECTIVE DATE

20 This act shall take effect on July 1, 2016.