

21104029D

SENATE BILL NO. 1198
FLOOR AMENDMENT IN THE NATURE OF A SUBSTITUTE
 (Proposed by Senator Petersen
 on February 3, 2021)

(Patron Prior to Substitute—Senator Petersen)

A BILL to amend and reenact §§ 2.2-3800, 2.2-3801, 2.2-3802, and 52-48 of the Code of Virginia, relating to Government Data Collection and Dissemination Practices Act; license plate readers.

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-3800, 2.2-3801, 2.2-3802, and 52-48 of the Code of Virginia are amended and reenacted as follows:

§ 2.2-3800. Short title; findings; principles of information practice.

A. This chapter may be cited as the "Government Data Collection and Dissemination Practices Act."

B. The General Assembly finds that:

1. An individual's privacy is directly affected by the extensive collection, maintenance, use, and dissemination of personal information;

2. The increasing use of computers and sophisticated information technology has greatly magnified the harm that can occur from these practices;

3. An individual's opportunities to secure employment, insurance, credit, and his right to due process, and other legal protections are endangered by the misuse of certain of these personal information systems; and

4. In order to preserve the rights guaranteed a citizen in a free society, legislation is necessary to establish procedures to govern information systems containing records on individuals.

C. Recordkeeping agencies of the Commonwealth and political subdivisions shall adhere to the following principles of information practice to ensure safeguards for personal privacy:

1. There shall be no personal information system whose existence is secret.

2. Information shall not be collected unless the need for it has been clearly established in advance.

3. Information shall be appropriate and relevant to the purpose for which it has been collected.

4. Information shall not be obtained by fraudulent or unfair means.

5. Information shall not be used unless it is accurate and current.

6. There shall be a prescribed procedure for an individual to learn the purpose for which information has been recorded and particulars about its use and dissemination.

7. There shall be a clearly prescribed and uncomplicated procedure for an individual to correct, erase, or amend inaccurate, obsolete, or irrelevant information.

8. Any agency holding personal information shall assure its reliability and take precautions to prevent its misuse.

9. There shall be a clearly prescribed procedure to prevent personal information collected for one purpose from being used or disseminated for another purpose unless such use or dissemination is authorized or required by law.

10. The Commonwealth or any agency or political subdivision thereof shall not collect personal information except as explicitly or implicitly authorized by law.

11. *Absent a criminal or administrative warrant, law-enforcement and regulatory agencies shall not use license plate readers to collect or maintain personal information in a manner where such personal information is of unknown relevance and will not be promptly evaluated and potentially used to investigate suspected criminal activity, civil and regulatory violations, or terrorism by any person, or in support of the emissions inspection program authorized by Article 22 (§ 46.2-1176 et seq.) of Chapter 10 of Title 46.2. Notwithstanding the restrictions set forth in this subdivision, law-enforcement agencies shall be allowed to collect information from license plate readers without a warrant; however, any information collected from a license plate reader shall not be subject to any outside inquiries or internal usage except for the investigation of a report of a missing person, suspected criminal activity, civil and regulatory violations, or terrorism by any person, and shall be retained for no more than 30 days, unless such personal information is being used for such purposes. A law-enforcement or regulatory agency shall not acquire personal information from any third-party private vendor collected by such vendor from a license plate if such agency would be prohibited from collecting or maintaining the personal information itself, unless such license plate reader technology is being utilized as part of the emissions inspection program authorized by Article 22 (§ 46.2-1176 et seq.) of Chapter 10 of Title 46.2.*

§ 2.2-3801. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Agency" means any agency, authority, board, department, division, commission, institution, bureau, or like governmental entity of the Commonwealth or of any unit of local government including counties,

60 cities, towns, regional governments, and the departments thereof, and includes constitutional officers,
61 except as otherwise expressly provided by law. "Agency" shall also include any entity, whether public or
62 private, with which any of the foregoing has entered into a contractual relationship for the operation of a
63 system of personal information to accomplish an agency function. Any such entity included in this
64 definition by reason of a contractual relationship shall only be deemed an agency as relates to services
65 performed pursuant to that contractual relationship, provided that if any such entity is a consumer
66 reporting agency, it shall be deemed to have satisfied all of the requirements of this chapter if it fully
67 complies with the requirements of the Federal Fair Credit Reporting Act as applicable to services
68 performed pursuant to such contractual relationship.

69 "Data subject" means an individual about whom personal information is indexed or may be located
70 under his name, personal number, or other identifiable particulars, in an information system.

71 "Disseminate" means to release, transfer, or otherwise communicate information orally, in writing, or
72 by electronic means.

73 "Information system" means the total components and operations of a record-keeping process,
74 including information collected or managed by means of computer networks and the Internet, whether
75 automated or manual, ~~containing personal information and the name, personal number, or other~~
76 ~~identifying particulars of a data subject and regardless of any separation of databases within an agency,~~
77 ~~or among or between cooperating agencies, that collects, stores, or disseminates personal information.~~

78 "License plate reader" means a high-speed, computer-controlled camera system that may be mounted
79 on street poles, streetlights, highway overpasses, or mobile trailers or attached to vehicles to optically
80 scan license plates.

81 "Personal information" means all information that (i) describes, locates, or indexes anything about an
82 individual including, but not limited to, his social security number, driver's license number, *license plate*
83 *number*, agency-issued identification number, student identification number, *and* real or personal
84 property holdings derived from tax returns; and his education, financial transactions, medical history,
85 ancestry, religion, political ideology, *and* criminal or employment record; or (ii) affords a basis for
86 inferring personal characteristics, such as finger and voice prints, photographs, or things done by or to
87 such individual; and the record of his presence, registration, or membership in an organization or
88 activity, *presence at any place*, or admission to an institution. "Personal information" ~~shall~~ *does* not
89 include routine information maintained for the purpose of internal office administration whose use could
90 not be such as to affect adversely any data subject nor does the term include real estate assessment
91 information.

92 "Proper purpose" includes the sharing or dissemination of data or information among and between
93 agencies in order to (i) streamline administrative processes to improve the efficiency and efficacy of
94 services, access to services, eligibility determinations for services, and service delivery; (ii) reduce
95 paperwork and administrative burdens on applicants for and recipients of public services; (iii) improve
96 the efficiency and efficacy of the management of public programs; (iv) prevent fraud and improve
97 auditing capabilities; (v) conduct outcomes-related research; (vi) develop quantifiable data to aid in
98 policy development and decision making to promote the most efficient and effective use of resources;
99 and (vii) perform data analytics regarding any of the purposes set forth in this definition.

100 "Purge" means to obliterate information completely from the transient, permanent, or archival records
101 of an agency.

102 **§ 2.2-3802. Systems to which chapter inapplicable.**

103 The provisions of this chapter shall not apply to personal information systems:

104 1. Maintained by any court of the Commonwealth;

105 2. Which may exist in publications of general circulation;

106 3. Contained in the Criminal Justice Information System as defined in §§ 9.1-126 through 9.1-137 or
107 in the Sex Offender and Crimes Against Minors Registry maintained by the Department of State Police
108 pursuant to Chapter 9 (§ 9.1-900 et seq.) of Title 9.1, except to the extent that information is required to
109 be posted on the Internet pursuant to § 9.1-913;

110 4. Contained in the Virginia Juvenile Justice Information System as defined in §§ 16.1-222 through
111 16.1-225;

112 5. Maintained by agencies concerning persons required by law to be licensed in the Commonwealth
113 to engage in the practice of any profession, in which case the names and addresses of persons applying
114 for or possessing the license may be disseminated upon written request to a person engaged in the
115 profession or business of offering professional educational materials or courses for the sole purpose of
116 providing the licensees or applicants for licenses with informational materials relating solely to available
117 professional educational materials or courses, provided the disseminating agency is reasonably assured
118 that the use of the information will be so limited;

119 6. Maintained by the Parole Board, the Crime Commission, the Judicial Inquiry and Review
120 Commission, the Virginia Racing Commission, and the Virginia Alcoholic Beverage Control Authority;

121 7. Maintained by any of the following and that deal with investigations and intelligence gathering

related to criminal activity:

- a. The Department of State Police;
- b. The police department of the Chesapeake Bay Bridge and Tunnel Commission;
- c. Police departments of cities, counties, and towns;
- d. Sheriff's departments of counties and cities;
- e. Campus police departments of public institutions of higher education as established by Article 3 (§ 23.1-809 et seq.) of Chapter 8 of Title 23.1; and
- f. The Division of Capitol Police.

Nothing in this subdivision 7 shall be construed to apply to personal information collected without a warrant by any such law-enforcement agency through the use of license plate readers in a manner where such personal information is of unknown relevance and will not be promptly evaluated and potentially used to investigate suspected criminal activity, civil and regulatory violations, or terrorism by any person.

8. Maintained by local departments of social services regarding alleged cases of child abuse or neglect while such cases are also subject to an ongoing criminal prosecution;

9. Maintained by the Virginia Port Authority as provided in § 62.1-132.4 or 62.1-134.1;

10. Maintained by the Virginia Tourism Authority in connection with or as a result of the promotion of travel or tourism in the Commonwealth, in which case names and addresses of persons requesting information on those subjects may be disseminated upon written request to a person engaged in the business of providing travel services or distributing travel information, provided the Virginia Tourism Authority is reasonably assured that the use of the information will be so limited;

11. Maintained by the Division of Consolidated Laboratory Services of the Department of General Services and the Department of Forensic Science, which deal with scientific investigations relating to criminal activity or suspected criminal activity, except to the extent that § 9.1-1104 may apply;

12. Maintained by the Department of Corrections or the Office of the State Inspector General that deal with investigations and intelligence gathering by persons acting under the provisions of Chapter 3.2 (§ 2.2-307 et seq.);

13. Maintained by (i) the Office of the State Inspector General or internal audit departments of state agencies or institutions that deal with communications and investigations relating to the Fraud, Waste and Abuse Hotline or (ii) an auditor appointed by the local governing body of any county, city, or town or a school board that deals with local investigations required by § 15.2-2511.2;

14. Maintained by the Department of Social Services or any local department of social services relating to public assistance fraud investigations;

15. Maintained by the Department of Social Services related to child welfare or public assistance programs when requests for personal information are made to the Department of Social Services. Requests for information from these systems shall be made to the appropriate local department of social services that is the custodian of that record. Notwithstanding the language in this section, an individual shall not be prohibited from obtaining information from the central registry in accordance with the provisions of § 63.2-1515; and

16. Maintained by the Department for Aging and Rehabilitative Services related to adult services, adult protective services, or auxiliary grants when requests for personal information are made to the Department for Aging and Rehabilitative Services. Requests for information from these systems shall be made to the appropriate local department of social services that is the custodian of that record.

§ 52-48. Confidentiality and immunity from service of process; penalties.

A. Papers, records, documents, reports, materials, databases, or other evidence or information relative to criminal intelligence or any terrorism investigation in the possession of the Virginia Fusion Intelligence Center shall be confidential and shall not be subject to the Virginia Freedom of Information Act (§ 2.2-3700 et seq.) or the Government Data Collection and Dissemination Practices Act (§ 2.2-3800 et seq.). Every three years, the Department shall conduct a review of information contained in any database maintained by the Virginia Fusion Intelligence Center. Data that has been determined to not have a nexus to terrorist activity shall be removed from such database. A reasonable suspicion standard shall be applied when determining whether or not information has a nexus to terrorist activity.

B. No person, having access to information maintained by the Virginia Fusion Intelligence Center, shall be subject to subpoena in a civil action in any court of the Commonwealth to testify concerning a matter of which he has knowledge pursuant to his access to criminal intelligence information maintained by the Virginia Fusion Intelligence Center.

C. No person or agency receiving information from the Virginia Fusion Intelligence Center shall release or disseminate that information without prior authorization from the Virginia Fusion Intelligence Center.

D. Any person who knowingly disseminates information in violation of this section is guilty of a Class 1 misdemeanor. If such unauthorized dissemination results in death or serious bodily injury to

183 another person, such person is guilty of a Class 4 felony.

184 E. For purposes of this chapter:

185 "Criminal intelligence information" means data that has been evaluated and determined to be relevant
186 to the identification and criminal activity of individuals or organizations that are reasonably suspected of
187 involvement in criminal activity. "Criminal intelligence information" ~~shall~~ *does* not include criminal
188 investigative files *or personal information collected without a warrant by any law-enforcement or*
189 *regulatory agency through use of license plate readers in a manner where such personal information is*
190 *of unknown relevance and will not be promptly evaluated and potentially used to investigate suspected*
191 *criminal activity, civil and regulatory violations, or terrorism by any person.*