

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2021-2022 Regular Session

AB 984 (Luz Rivas)
Version: July 1, 2021
Hearing Date: July 13, 2021
Fiscal: Yes
Urgency: No
CK

SUBJECT

Vehicle identification and registration: alternative devices

DIGEST

This bill would make permanent a pilot program authorizing the Department of Motor Vehicles (DMV) to issue alternative license plates and registration cards.

EXECUTIVE SUMMARY

SB 806 (Hueso, Ch. 569, Stats. 2013) provided the DMV authorization to establish a pilot program to evaluate the use of alternatives to the stickers, tabs, license plates, and registration cards that were already authorized by the Vehicle Code, subject to specified requirements. Any pilot program so established was to be completed by January 1, 2017 with required reporting due July 1, 2018. Those dates have been pushed back by a series of bills over the years and the reporting deadline was July 1, 2020 and the expiration of the authorization is currently set for January 1, 2023.

This bill requires the DMV to establish an indefinite program authorizing an entity to issue alternative devices subject to specified requirements. This allows digital license plates and registration cards to be voluntarily purchased by vehicle owners in lieu of traditional plates and documentation. There will be an option for plates that include GPS-tracking technology.

The bill is sponsored by Reviver, one of the companies that manufactures digital license plates and that participated in the pilot program. It is supported by the Silicon Valley Leadership Group. The bill is opposed by a coalition of privacy, consumer, and grassroots groups that raise privacy, security, and equitability concerns with the bill. The bill passed out of the Senate Transportation Committee on a 13 to 0 vote.

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Authorizes the DMV to issue one or more stickers, tabs, or other suitable devices in lieu of the license plates provided for under the Vehicle Code. Except when the physical differences between the stickers, tabs, or devices and license plates by their nature render the provisions of the Vehicle Code inapplicable, all provisions relating to license plates may apply to stickers, tabs, or devices. (Veh. Code § 4853(a).)
- 2) Authorizes the DMV to establish a pilot program to evaluate the use of alternatives to the stickers, tabs, license plates, and registration cards authorized by the Vehicle Code, subject to all of the following requirements:
 - a) the alternative products shall be approved by the Department of the California Highway Patrol (CHP);
 - b) the pilot program shall be limited to no more than 0.5 percent of registered vehicles for the purpose of road testing and evaluation;
 - c) the alternative products to be evaluated shall be provided at no cost to the state;
 - d) any pilot program shall be completed no later than January 1, 2023; and
 - e) any pilot program shall be limited to vehicle owners who have voluntarily chosen to participate in the pilot program. (Veh. Code § 4853(b).)
- 3) Limits any data exchanged between the DMV and any electronic device or the provider of any electronic device in the pilot program to those data necessary to display evidence of registration compliance. The DMV shall not receive or retain any information generated during the pilot program regarding the movement, location, or use of a vehicle participating in the pilot program. (Veh. Code § 4853(c).)
- 4) Requires the DMV, no later than July 1, 2020, to submit a report regarding the pilot program to the Legislature to include all of the following:
 - a) an evaluation of the cost-effectiveness of the alternatives used in the pilot program when compared to the department's current use of stickers, tabs, license plates, and registration cards;
 - b) a review of all products evaluated in the pilot program and of the features of those products. The report shall note if the devices evaluated in the pilot program are available with the ability to transmit and retain information relating to the movement, location, or use of a vehicle, and if a product contains that feature, the report shall also note if the product includes any security features to protect against unauthorized access to information; and

- c) recommendations for subsequent actions, if any, that should be taken with regard to alternatives evaluated in the pilot program. (Veh. Code § 4853(e).)
- 5) Provides the criteria for the issuance of a notice to correct violation and the disqualifying conditions for such violations. (Veh. Code § 40610.)
- 6) Establishes the California Consumer Privacy Act of 2018 (CCPA), which grants consumers certain rights with regard to their personal information, including enhanced notice, access, and disclosure; the right to deletion; the right to restrict the sale of information; and protection from discrimination for exercising these rights. It places attendant obligations on businesses to respect those rights. (Civ. Code § 1798.100 et seq.)
- 7) Establishes the California Privacy Rights Act of 2020 (CPRA), which amends the CCPA and creates the California Privacy Protection Agency (PPA), which is charged with implementing these privacy laws, promulgating regulations, and carrying out enforcement actions. (Civ. Code § 798.100 et seq.; Proposition 24 (2020).)
- 8) Permits amendment of the CPRA by a majority vote of each house of the Legislature and the signature of the Governor provided such amendments are consistent with and further the purpose and intent of this act as set forth therein. (Proposition 24 § 25 (2020).)

This bill:

- 1) Requires the DMV to establish a program authorizing an entity to issue devices as alternatives to the conventional license plates, stickers, tabs, and registration cards authorized by the Vehicle Code, subject to all of the following requirements:
 - a) the alternative device is subject to the approval of the DMV and CHP and may be used in lieu of a device issued by the DMV;
 - b) the alternate device shall be made available to vehicle owners with an option that does not include vehicle location technology. Vehicle location technology is an additional service and may be offered at a higher price;
 - c) the alternative device must display some visual indication that vehicle location technology is in active use;
 - d) data exchanged between the DMV and the device, or the provider of the device, is limited to that data necessary to display evidence of registration compliance;
 - e) the DMV shall not receive or retain any electronic information regarding the movement, location, or use of a vehicle or person with an alternative device;

- f) except if the physical differences between the stickers, tabs, or devices and license plates by their nature render the provisions of the Vehicle Code inapplicable, all provisions relating to license plates shall apply;
 - g) use of the alternative device is optional, and users shall affirmatively opt in to using the alternative device instead of a conventional license plate, sticker, tab, or registration card; and
 - h) the DMV shall provide users of alternative devices proof of registration that is not subject to technological failures to be used in the event of the alternative device malfunctioning or failing.
- 2) Requires an alternative device intended to serve in lieu of a license plate to be subject to the following requirements:
- a) be limited to an electronic device in lieu of a front or rear license plate or a decal in lieu of a front license plate;
 - b) have a minimum effective viewable area that meets the size specifications of Section 4852 of the Vehicle Code;
 - c) provide legibility and visibility according to standards consistent with those applied to license plates;
 - d) be displayed in a manner consistent with Article 9 (commencing with Section 5200) of the Vehicle Code;
 - e) display only information and images approved by the DMV or deemed necessary by the DMV;
 - f) the device must be capable of and must actually display the alphanumeric characters assigned to the vehicle by the DMV and evidence of valid registration whenever the vehicle is in motion, stationary, parked on or off of a road or highway, or unoccupied;
 - g) be readable by automated license plate readers used by CHP and any other automated enforcement system; and
 - h) be readable by the human eye during daylight hours at a distance of no less than 75 feet.
- 3) Requires an alternative device intended to serve in lieu of a registration card to meet the requirements of Section 4453 of the Vehicle Code and to be eligible to be used to comply with Section 4462 of the Vehicle Code.
- 4) Authorizes the DMV to establish additional requirements it deems necessary and to adopt regulations to carry out this program, including establishing reasonable fees to reimburse the DMV for the costs to implement the program.
- 5) Requires an entity seeking approval to issue an alternative device or electronic vehicle registration card to submit a business plan for the device to the DMV for approval that includes, but is not limited to, all of the following:
- a) an administrative oversight plan;
 - b) a product support plan;

- c) information technology security, privacy, and cybersecurity evaluations and measures to protect against unauthorized access to information and the device;
 - d) procedures to comply with applicable privacy and security requirements, including, but not limited to, the CCPA. For purposes of this section, a provider of the device shall not share or sell the information obtained to provide the device, or any other information obtained by virtue of contracting with the DMV to provide the device, including information collected by the device itself, nor shall it use the information for any purpose other than as strictly necessary to provide the device and show proof of vehicle registration; and
 - e) ensuring that the information transmitted between the alternative device or electronic vehicle registration card, the DMV, and the provider, as well as any mobile application required, including storage, is encrypted and protected to the highest reasonable security standards broadly available.
- 6) Authorizes the continued use of an alternative device issued by the DMV through the pilot program until the device authorized under this bill is approved or disapproved by the DMV.
- 7) Provides that an alternative device failure or malfunction may be deemed a correctable violation if all of the provisions of Section 40610 of the Vehicle Code are met. The provider of the device shall build into the device a process for frequent notification if the device becomes defective. The provider of the device shall seek to replace defective devices as soon as possible.
- 8) Authorizes the DMV to approve alternative banner messages to appear on the bottom of the license plate in lieu of "dmv.ca.gov" that are consistent with specified regulations.
- 9) Permits the DMV to also authorize approved environmental license plates and approved specialized license plates to be displayed on an alternative device. The DMV may establish an approval process for the use of specialized license plates specified in subdivision (a) of Section 5155 on alternative devices. The DMV may specify a minimum number of specialized license plate orders and application periods for authorization of new specialized license plates for display, as provided.
- 10) Prohibits the DMV from permitting advertising on an alternative device intended to serve in lieu of a license plate.
- 11) Provides that an alternative device is not included within the definition of "theft deterrent device."

COMMENTS

1. The pilot program

As indicated, the DMV was authorized and did establish a pilot program to evaluate alternative devices. In conjunction with CHP, the DMV tested three products, an electronic registration card, a license plate wrap, and a digital license plate.

Participation in the pilot for the first two devices only grew to approximately 100 and 300 vehicles, respectively, from the start of the program to the cutoff for the DMV's required report. The digital license plate pilot started with five vehicles and only reached 85 by 2017. However, over the following two years the pilot expanded to 1,500 vehicles.

According to the author:

AB 984 will give the Department of Motor Vehicles the authority to move forward with new vehicle registration technologies. After testing several products during the pilot program, the Department issued the required report in August 2019 to the Legislature, which recommended the DMV be able to move forward with the various products and devices. Some of these products will serve to reduce internal DMV workloads and allow vehicle registration renewal to become a completely remote transaction. Given the workload challenges facing the Department in order to comply with the federal REAL ID requirements, AB 984 will provide long-term workload relief for other essential functions of the Department. As the use of these devices grows over time, the efficiencies of DMV operations will also increase.

2. Establishing permanent alternative device and registration card programs

This bill provides authority for the permanent establishment of such alternative device programs. It lays out a series of requirements that the program will need to comply with. To start, the DMV and CHP must approve the devices, and the bill limits what can be displayed on the plates to information and images approved by the DMV or deemed necessary by it.

The alternative license plates must also abide by all provisions of the Vehicle Code relating to license plates, except where physical differences render them inapplicable. The digital registration cards must also comply with the laws currently applying to registration cards. The bill additionally applies various visibility and legibility requirements on the devices intended to serve in lieu of license plates. Where there is an identified need, the DMV is authorized to establish additional requirements and regulations to implement the program.

One concern is the possibility of technical malfunction and the consequences of that. The bill requires the DMV to provide users of these devices proof of registration that is not subject to technological failures to be used in the event of the device malfunctioning or failing. In order to track such issues, providers are required to build into the device a process for frequent notification if the device becomes defective and must seek to replace defective devices as soon as possible. Before even issuing such devices, an entity must submit a business plan for the device to the DMV for approval, which must include an administrative oversight plan and a product support plan.

What happens when the device malfunctions on the road has led to dueling amendments to the bill. Responding to concerns that this will lead to unnecessary police encounters and place the onus on users when the technology falters, the bill previously provided that a device failure or malfunction could not be the basis for any government action relating to the user, including stopping or detaining the user or subjecting the user to any criminal or civil fines, fees, or punishments. However, responding to concerns from CHP, the bill currently provides that an alternative device failure or malfunction may be deemed a “correctable violation” if the conditions in Section 40610 of the Vehicle Code are met.

A coalition in opposition, including ACLU California Action, Oakland Privacy, and the Electronic Frontier Foundation, expresses concern with the change:

We are also concerned with a recent amendment regarding repercussions if the device fails or malfunctions. We had previously negotiated language with the author and sponsors that ensured that a device that malfunctioned or failed could not be the basis for any government action relating to the user, including stopping or detaining the user or subjecting the user to any criminal or civil fines, fees, or punishments. Recent amendments, however, undo that agreement and instead make a device malfunction or failure subject to a fix-it ticket. This raises several concerns for us. If the vehicle registration is current, the driver should not be penalized for a failure on the vendor or device’s part. Additionally, traffic stops like these can have implications far beyond the cost of a fix it tickets – which itself is cost prohibitive to low-income drivers – including serving as the basis for a pretextual stop, which are disparately used against drivers of color, and the risk of a potentially deadly encounter with police. Additionally, because a fix-it ticket can be issued to the driver of a car rather than the vehicle owner, the driver would be responsible for the full cost of the fine and any penalties if the driver refuses to fix the problem with the device. We therefore suggest that the bill be amended back to the previous language in (f).

One recent amendment authorizes alternative banner messages to appear on the bottom of the license plate. Due to concerns that have been raised, the author has agreed to remove this provision:

Amendment

Remove Section 4854(d)

3. Privacy concerns with the program

Given that the bill authorizes the widespread use of digital devices on vehicles capable of gathering sensitive personal information, concerns have arisen that the bill lacks adequate safeguards for the privacy and security of the information.

The bill expressly allows devices to contain vehicle location technology. It also requires that the devices be readable by automated license plate readers used by CHP and any other automated enforcement system. This raises concerns about the state and the providers tracking users' movements and the host of issues that have arisen in the context of ALPR readers. A recent report published by the California State Auditor laid out a bleak assessment of the use of this technology in California. The report found that public agencies "have risked individuals' privacy by not making informed decisions about sharing ALPR images with other entities, by not considering how they are using ALPR data when determining how long to keep it, by following poor practices for granting their staff access to the ALPR systems, and by failing to audit system use."¹

The author argues that there are numerous checks in place. For instance, the bill requires that alternative devices be made available that do not include vehicle location technology. To ensure there is some warning that location tracking is occurring, an alternative device must have some visual indication that vehicle location technology is in active use.

Recent amendments to the bill also more tightly restrict what can be done with the data. The provider of a device is prohibited from sharing or selling the information obtained to provide the device, or any other information obtained by virtue of contracting with the DMV to provide the device, including, but not limited to, information collected by the device itself. The provider is also restricted from using the information for any purpose other than as strictly necessary to provide the device and show proof of registration. This thus limits any disclosure by providers of any information collected as

¹ *Automated License Plate Readers, To Better Protect Individuals' Privacy, Law Enforcement Must Increase Its Safeguards for the Data It Collects* (February 2020) California State Auditor, <https://www.auditor.ca.gov/pdfs/reports/2019-118.pdf> [as of July 1, 2021]. For a more in depth discussion of issues raised by ALPR technology, please see this Committee's analysis of SB 210 (Wiener, 2021).

part of the program. It also restricts the provider from using the data for other purposes, such as advertising to users.

Furthermore, the bill limits the data that can be exchanged between the DMV and the device, or the provider of the device, to that data necessary to display evidence of registration compliance. The DMV is expressly prohibited from receiving or retaining any electronic information regarding the movement, location, or use of a vehicle or person with an alternative device.

Issues have been raised by tolling agencies that the restriction on DMV receiving the information could hinder certain, currently authorized data sharing. The author has agreed to take an amendment that allows for limited sharing where expressly authorized by the law:

Amendment

“The department shall not receive or retain any electronic information regarding the movement, location, or use of a vehicle or person with an alternative device, unless state or federal law expressly authorizes a transportation agency to share the information with the department.”

Ultimately, the author points to the fact that use of these devices is voluntary. The opposition coalition argues this is insufficient and elaborates on their concerns:

Because electronic devices can gather extremely sensitive information, such as location data, it is important that the bill put clear limitations on what information the vendor may collect and under what circumstances. While the use of a [digital license plate and digital vehicle registration card (DLP/DVRC)] device is optional for the vehicle owner, that does not mean that all users of the vehicle have consented to GPS tracking. This tracking impacts not only employees but also other vulnerable populations. For example, ICE could locate undocumented Californians based on the tracking in their DLP/DVRC device as they have with other surveillance technologies, and people in domestic violence situations could be tracked by their abuser without their knowledge. The bill’s requirement that the vehicle owner must be provided with a DLP/DVRC option that does not include vehicle location technology is insufficient because it does not address location tracking of drivers who may not be the vehicle owner and it ignores the other invasive tracking and surveillance that these technologies could include. The bill’s silence on what form digital vehicle registration cards could take is especially troubling as it leaves open the door for phone apps that display the digital vehicle registration card, and which could track the location of employees not only at work but at all times, as well as potentially any other activity

or personal information stored on the phone. To address these concerns, the bill should be amended to prohibit the vendor or devices from collecting any information other than what is necessary to display evidence of registration compliance.

The bill further authorizes increased surveillance of drivers by requiring that alternative license plates be readable by automated license plate readers (ALPRs). ALPR cameras, mounted on top of patrol cars and on city streets, can scan as many as 1,800 license plate per minute, day or night, allowing one squad car to record more than 14,000 plates during the course of a single shift. When that data of where a vehicle was at a particular time is put into a database, combined with other scans of that same plate on other public roads, it can reveal not only where a person lives and works, but also their political and religious beliefs, social and sexual habits, visits to the doctor, and associations with others. Multiple studies have shown that more than 99% of license plate scans collected have no relation to any law enforcement matter. Yet this information is shared all over the country - including with ICE - and kept for years despite having no connection to illegal activity. Standard license plates are not required to be read by this surveillance technology, and alternative license plates should not be required to be readable either.

As for the tracking of employees specifically, the bill does implicate the CCPA. The CCPA as amended by the CPRA provides an exemption for personal information that is collected by a business about an employee of that business to the extent that the employee's personal information is collected and used by the business solely within the context of their role as an employee. (Civ. Code § 1798.145.) However, as pointed out by opposition, these devices could track employees even outside of the employment context. In addition, this exemption expires as of January 1, 2023, meaning the full protections of the CCPA as amended by the CPRA will attach to this collection of information. Therefore, employees would then have rights with regard to how these devices are used. The bill does require, as part of the mandated business plan, that the provider lay out procedures to comply with applicable privacy and security requirements, including the CCPA. However, the program does raise serious employee privacy concerns that the author may wish to address.

4. Security of the devices and the data

Concerns have also been raised about the security of these devices and the transfer of data to and from them. The bill responds by requiring, again as part of the business plan, information technology security, privacy, and cybersecurity evaluations and measures to be implemented to protect against unauthorized access to information and the device. Recent amendments add an element to the business plan, requiring providers to detail how they plan to ensure that the information transmitted between

the alternative device or electronic vehicle registration card, the DMV, and the provider, as well as any mobile application required for the alternative device or electronic vehicle registration card, including storage, is encrypted and protected to the highest reasonable security standards broadly available.

SUPPORT

Revivermx (sponsor)
California New Car Dealers Association
Silicon Valley Leadership Group

OPPOSITION

ACLU California Action
Anti Police-Terror Project
Consumer Federation of America
Consumer Federation of California
Electronic Frontier Foundation
Justice Teams Network
Oakland Privacy
Privacy Rights Clearinghouse
Safer Streets LA
Secure Justice
Youth Justice Coalition

RELATED LEGISLATION

Pending Legislation:

SB 210 (Wiener, 2021) provides greater transparency and accountability with respect to automated license plate recognition systems (“ALPR system”). It requires ALPR operators and end-users to conduct annual audits to review ALPR searches. If the operator or end-user is a public agency, the bill further requires them to destroy all ALPR data that does not match information on a hot list within 24 hours. This bill was held in the Senate Appropriations Committee.

AB 917 (Bloom, 2021) expands a limited authorization statewide to enforce parking violations in specified transit-only traffic lanes and transit stops through the use of video imaging and to install automated forward facing parking control devices on city-owned public transit vehicles for the purpose of video imaging parking violations. AB 917 is currently in this Committee and is set to be heard the same day as this bill.

Prior Legislation:

AB 2285 (Assembly Transportation Committee, Ch. 100, Stats. 2020) extended the sunset date on the pilot program.

AB 1614 (Gipson, Ch. 319, Stats. 2019) extended the sunset on the pilot program and authorizes the DMV, if it conducts any pilot program, to evaluate the inclusion of participants in the Business Partner Automation Program.

SB 1387 (Beall, Ch. 520, Stats. 2018) extended the sunset date on the pilot program.

SB 1399 (Hueso, Ch. 155, Stats. 2016) extended the sunset date on the pilot program and pushed backed the date for the required reporting by two years to July 1, 2020.

SB 806 (Hueso, Ch. 569, Stats. 2013) *See Executive Summary.*

PRIOR VOTES:

Senate Transportation Committee (Ayes 13, Noes 0)

Assembly Floor (Ayes 59, Noes 2)

Assembly Appropriations Committee (Ayes 13, Noes 0)

Assembly Privacy and Consumer Protection Committee (Ayes 9, Noes 0)

Assembly Transportation Committee (Ayes 12, Noes 0)
