

Date of Hearing: April 22, 2021

ASSEMBLY COMMITTEE ON PRIVACY AND CONSUMER PROTECTION

Ed Chau, Chair

AB 984 (Luz Rivas) – As Amended April 7, 2021

SUBJECT: Vehicle identification and registration: alternative devices

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

- 1) Authorize the DMV to issue digital or decal license plates or digital registration cards so long as they meet the following restrictions:
 - The alternative device is subject to the approval of the California Highway Patrol (CHP).
 - Data exchanged between the DMV and the device, or the provider of the device, is limited to the data deemed necessary by the DMV to display evidence of registration compliance.
 - Data generated by the alternative license plate is the property of the vehicle owner and shall not be shared without express permission of the vehicle owner.
 - 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.
 - Use of the alternative devices shall not be mandated by the DMV.
- 2) Restrict the use of a digital plate to the rear license plate and the use of a decal plate to be used in lieu of a front license plate.
- 3) Require any alternative device intended to serve in lieu of a license plate to be readable by automated license plate readers used by the CHP and any other automated enforcement system.
- 4) Require an entity seeking approval to issue an alternative device to submit an administrative oversight plan, a product support plan, and information technology security, privacy and cybersecurity evaluations if applicable.
- 5) Clarify that any device is subject to the California Consumer Privacy Act of 2018 (CCPA).
- 6) Authorize the DMV to establish reasonable fees to reimburse the DMV for the costs of implementing the program.
- 7) Provide that any alternative device intended to serve in lieu of a license plate issued pursuant to the DMV under the pilot program is authorized for continued use until the device is authorized under the new provisions of this bill.

EXISTING LAW:

- 1) Authorizes DMV to conduct a pilot program to evaluate alternatives to vehicle license plates, registration stickers, and registration cards until no later than January 1, 2020, and requires DMV to report on the results of the pilot program to the Legislature no later than July 1, 2020. (Veh. Code Sec. 4853.)
- 2) Requires the CHP to approve any DMV-selected alternative to license plates or registration stickers and cards.
- 3) Establishes the CCPA and provides various rights to consumers pursuant to the act. Subject to various exemptions, a consumer has, among other things:
 - the right to know what personal information (PI) a business collects about consumers, as specified, including the categories of third parties with whom the business shares PI, and the specific pieces of information collected about the consumer;
 - the right to know what PI a business sells about consumers, as specified, including the categories of PI that the business sold about the consumer and the categories of third parties to whom the PI was sold, by category or categories of PI for each third party to whom the PI was sold;
 - the right to access the specific pieces of information a business has collected about the consumer;
 - the right to delete information that a business has collected from the consumer; and
 - the right to opt-out of the sale of the consumer's PI if over 16 years of age, and the right to opt-in, as specified, if the consumer is a minor; and,
 - the right to equal service and price, despite exercising any of these rights. (Civ. Code Sec. 1798.100 et seq.)
- 4) Establishes the California Privacy Rights Act of 2020 (CPRA), which amends 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 Sec. 798.100 et seq.; Proposition 24 (2020).)

FISCAL EFFECT: Unknown

COMMENTS:

- 1) **Purpose of this bill:** This bill seeks to make permanent a pilot program that authorized the use of alternatives to license plates, including digital license plates, in California. This bill is sponsored by Reviver.
- 2) **Author's statement:** According to the author:

AB 984 will give DMV the authority to move forward with new vehicle registration technologies. After testing several products during the pilot program, the Department

issued the required report 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 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

- 3) **History of digital license plates in California:** In 2013, the Legislature passed and Governor Brown signed SB 806 (Hueso, Ch. 569, Stats. 2013) authorizing the DMV to establish a pilot program to evaluate the use of alternatives to license plates, registration stickers, and registration cards. SB 806 required DMV to complete the pilot by January 1, 2017, and report its findings to the Legislature by July 1, 2018. At the time, the author sought to facilitate the DMV's ability to explore alternatives to the traditional metal license plate, plastic-coated registration stickers, and paper registration cards in order to improve efficiency and lower the cost of the DMV vehicle registration services.

The pilot program was extended three times, and sunsets January 1, 2023. The extensions were primarily because of low participation both by companies making the alternative products and by users of the products. Three companies ultimately participated in the pilot: one for a digital plate, one for a vinyl frontal plate, and one for a digital registration card.

Reviver was the only company to bid for a digital plate during the pilot program. The plate is expensive, costing consumers \$799 plus installation and an annual \$99 in fees. More recently the company has begun offering a monthly subscription service for the plate at a cost of approximately \$18 a month.

In 2019, the DMV released the "Report on Alternative Registration Products Pilot Program. According to DMV, "The pilot largely remained at approximately five vehicles from late 2015 to 2016. In 2017, it rose to approximately 28 vehicles. The pilot participation started to increase rapidly in March 2018 to 1,400 vehicles. For the remainder of the pilot, the participation continued to increase up to approximately 1,500 vehicles."

There were 5 reported instances where law enforcement pulled over a driver with a digital plate believing it was an unauthorized plate, two of which the officer issued a ticket. The DMV reissued memos to law enforcement and the courts about the pilot after these incidents.

Another company participating in the pilot program, Lice Plate Wrap, produced a vinyl decal plate. Finally, the pilot program tested a digital registration card offered by the Motor Vehicle Software Corporation (now called Vitu). The Vitu registration card is available for mobile devices using IOS and Android. All of the pilot participants were employees of the company and it was not made available to the wider public. In total, 110 vehicles used the electronic registration cards in the pilot.

The DMV report recommended all three pilot program plates and the registration card devices be made permanent. This bill allows the three participants in the pilot program to continue offering their products, and additional alternative registration and plate products can apply to DMV to offer their product, subject to CHP approval.

In support of this bill, Reviver writes, “[a]mong the primary goals of digital license plate utilization is to create operational and cost efficiencies for the Department (DMV). Digital license plates eliminate the need for annual stickers, or tags. The DMV will be able to cease two physical mailings annually to owners of vehicles with digital plates and instead manage vehicle registration renewal entirely online. Owners of digital plates can process renewals through the company website or mobile device application and vehicle license fees are immediately remitted electronically to the Department. This process allows the DMV another mechanism to eliminate the need for a customer field office visit for registration renewal.”

- 4) **Author has agreed to increase privacy protections in the bill:** This bill contains a number of provisions designed to ensure that the PI of residents of California who choose to use a digital license plate is protected. For example, the bill requires any vendor seeking approval to introduce a digital license plate to have information technology security, privacy, and cybersecurity evaluations and measures to protect against unauthorized access to information and the device, and procedures to comply with applicable privacy and security requirements, including, but not limited to, the CCPA. The bill would limit any data exchanged between the DMV and the device, or provider of the device to data that is deemed necessary by the DMV to display evidence of registration. Importantly, the bill also prohibits the DMV from receiving any location data or data indicating when a person with a digital license plate is using the device.

The American Civil Liberties Union California Action (ACLU) and Privacy Rights Clearinghouse (PRC) oppose this bill unless amended to address a number of additional concerns. The author has agreed to a number of suggestions from the ACLU and PRC, including:

- Ensuring that the use of a digital license plate is optional, and that users must affirmatively opt-in to using a digital license plate instead of a conventional license plate, sticker, tab, and/or registration card.
- Ensuring that digital license plate failure or malfunction is not 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; and similarly requiring the DMV to provide users of digital license plates proof of registration that is not subject to technological failures to be used in the event of the alternative device malfunctioning or failing.
- Prohibiting a provider of a digital license plate from selling or sharing any information obtained to provide the digital license plate or using that information for any purpose other than as strictly necessary to provide the device.

These amendments, however, do not address the entirety of the points raised by these groups. The ACLU and PRC continue to express concern over what information a digital license plate vendor could collect. The ACLU and PRC write:

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. From a privacy standpoint, the ideal solution would be an amendment stating that the vendor shall not collect any information other

than what is necessary to display evidence of registration compliance. We have heard from the vendor of digital license plates, however, that at times the vehicle owner may request the digital license plate collect GPS information, particularly when the vehicle is owned by a business. To address that concern, we suggest amending the bill to require opt-in consent from for prior to the digital license plate tracking GPS information and that such consent must come from the vehicle driver – as opposed to the fleet owner – and not be coerced either by negative repercussions for denying consent or by incentives for granting consent.

In response to this concern, Reviver notes that it currently offers two digital license plate products: one that is GPS-enabled, and one that is not. Further, the GPS-enabled option has been designed to allow the holder of the account to turn off location services through the Reviver app. Reviver further explains that many customers actually want GPS-enabled plates. The technology can help locate stolen cars, and, as noted by the ACLU, businesses can use the GPS function to manage fleets. The request by the ACLU and PRC, to have employees opt into location data collection while driving an *employer*-owned vehicle that has a digital license plate would certainly be privacy protective for the employee, but would treat digital license plates differently than other methods by which employers currently manage fleets, such as GPS-enabled vehicles or employer provided cell phones. In other words, the issue that the ACLU and PRC raise is a problem that is much broader than digital license plates and would arguably be better addressed in a comprehensive bill addressing employee privacy issues specifically.

While employee privacy is surely a concern, staff notes that at the time of this writing, employees enjoy limited protections under the CCPA and CPRA. Absent legislative action, employees will be granted all rights guaranteed to individual consumers under the CCPA/CPRA beginning in January 1, 2023. While those rights do not allow individuals to prohibit the collection of PI, they do allow individuals to know what information is collected about them and additionally request that their PI be deleted. Individuals also have the right to request that their PI not be sold. Additionally, under the CPRA, location information is considered “sensitive information” which grants individuals rights beyond those guaranteed by the CCPA. Specifically, individuals will have the right to direct a company that collects their location information to not use that information other than for the specific good or service requested by the individual.

Despite the request by the opposition to prohibit the collection of location information, requiring a vendor who is providing digital license plates to provide a non-GPS enabled option would give individuals with more choice in how to manage the collection of their PI. In other words, privacy conscious individuals could opt for the non-GPS enabled plate, whereas others could elect a plate with location-based services. The author has agreed to add an amendment to the bill which would require this option. It is included in the mock up below.

Finally, to further address the opposition’s concerns, the author offered to include a provision in this bill that would require any employer that uses a device that is capable of generating vehicle movement and location data to notify the employee of the device prior to its usage. While that amendment did not fully address the oppositions’ concerns, this Committee may wish to consider such an amendment, as disclosure seems like a low burden for an employer to be able to permit their employees to make informed decisions with regard to their performance. Additionally, such an amendment would extend beyond digital license plates to provide a baseline privacy protection for all employees in California.

- 5) **Automated license plate reader compatibility:** This bill was recently amended, at the request of the Assembly Transportation Committee, to ensure that any digital license plate is:

1) readable during daylight hours at a distance of no less than 75 feet; and 2) readable by automated license plate readers (ALPR) used by CHP and any other automated enforcement system.

This Committee has long expressed privacy concerns related to the use of ALPR (*see, e.g.*, this Committee's analyses of AB 10076 (Kiley, 2021), AB 1782 (Chau, 2019), and SB 34 (Hill, Ch. 532, Stats. 2015)). While concerning to see the use of ALPR expanded to new technologies, it would arguably be more concerning to have a class of vehicles (driven by owners who can afford the more costly option of a digital license plate) that could evade a reality to which all other California drivers are subject. In fact, this Committee has consistently rejected "pay for privacy" schemes. To this end, this bill prohibit the GPS-enabled license plate from being offered at a lower price than the non-GPS plate. Such a clarification would be consistent with the non-discrimination provisions of the CCPA. Staff additionally notes that there are multiple bills moving through the Legislature this year (*See, e.g.*, SB 250 (Weiner) and AB 1076 (Kiely)), and if any of them are enacted, the amendment recently requested by the Assembly Transportation Committee will ensure that any regulations of ALPR apply to all California drivers uniformly.

- 6) **Unintended consequences related to connected devices and domestic violence should be addressed:** Domestic violence is a problem that affects millions of people regardless of race, gender, ethnic group, socioeconomic status, sexual orientation, or age. In the United States, an estimated 23% of adult women and 14% of men have experienced an act of severe physical intimate partner violence within their lifetime. In California, the numbers are even higher.

At the same time, technology is becoming an increasingly integral component of everyday life. Not only does technology shape and inform the way we work, shop, and carry out daily activities, it also affects the way we interact with one another and build relationships. With the increase of new communication, surveillance, and internet-connected technologies, it is increasingly easy to contact and monitor the whereabouts and actions of an intimate partner or family member. While this can enhance convenience and personal connection, it also presents a new and complex set of challenges and dangers.

An recent article from the New York Times describes how abusers are using technology and connected devices to harass and exert control over their victims:

One woman had turned on her air-conditioner, but said it then switched off without her touching it. Another said the code numbers of the digital lock at her front door changed every day and she could not figure out why. Still another told an abuse help line that she kept hearing the doorbell ring, but no one was there.

Their stories are part of a new pattern of behavior in domestic abuse cases tied to the rise of smart home technology. Internet-connected locks, speakers, thermostats, lights and cameras that have been marketed as the newest conveniences are now also being used as a means for harassment, monitoring, revenge and control.

In more than 30 interviews with The New York Times, domestic abuse victims, their lawyers, shelter workers and emergency responders described how the technology was becoming an alarming new tool. Abusers — using apps on their smartphones, which are connected to the internet-enabled devices — would remotely control everyday objects in

the home, sometimes to watch and listen, other times to scare or show power. Even after a partner had left the home, the devices often stayed and continued to be used to intimidate and confuse. (Bowles, *Thermostats, Locks and Lights: Digital Tools of Domestic Abuse*, New York Times (Jun. 23, 2018).)

In 2018, this Committee and the Select Committee on Domestic Violence held a joint informational hearing that examined the intersection between technology and domestic violence. Testimony from advocates, experts, law enforcement and survivors detailed how emerging technologies provide new avenues for abuse. AB 455 (Kiley, 2019) was introduced in response to that hearing, which would have authorized a court to prohibit a restrained party from controlling any connected device in the home of a protected party.

Similarly, AB 1407 (Atkins, Ch. 415, Stats. 2015) authorized a court to issue an order directing a wireless telephone service provider to transfer the billing responsibility and rights to the wireless telephone number to the requesting party, if the requesting party is not an account holder. (*See*, Family Code Sec. 6347.)

GPS-enabled license plates raise similar concerns as those expressed above. In fact, allowing an abuser to track the location of a victim is likely more concerning than an abuser controlling appliances around the home. That is not to say that there are not legitimate reasons to have GPS-enabled license plates on a family car. Parents of minor drivers may like to know that their children are safe, and GPS enabled plates can help locate a stolen car. However, given the real possibility that an abuser could also use the GPS function of a digital license plate to stalk or track an intimate partner or family member, the author should consider, as this bill moves through the legislative process, amending the bill so that a survivor of domestic violence can protect him or herself from their abuser.

- 7) **Mockup of author's amendments:** The following mockup includes author's amendments which include suggestions from the ACLU and PRC, in addition to suggestions from the Committee, and other technical amendments.

SECTION 1.

Section 4854 is added to the Vehicle Code, to read:

4854.

(a) The department shall establish a program authorizing an entity to issue devices as alternatives to the conventional license plates, stickers, tabs, and registration cards authorized by this code, subject to all of the following requirements:

- (1) The alternative device is subject to the approval of the department and the Department of the California Highway Patrol and shall not be used in lieu of a device issued by the Department of Motor Vehicles until that approval has been granted.
- (2) **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.**

- (3) Data exchanged between the department and the device, or the provider of the device, is limited to that data ~~deemed~~ necessary ~~by the department~~ to display evidence of registration compliance.
- (4) 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.
- (5) Except if the physical differences between the stickers, tabs, or devices and license plates by their nature render the provisions of this code inapplicable, all provisions of this code relating to license plates shall apply to the devices.
- (6) *Use of the alternative device is optional, and users must affirmatively opt-in to using the alternative device instead of a conventional license plate, sticker, tab, and/or registration card.*
- (7) *The department provides 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.*

(b) (1) An alternative device intended to serve in lieu of a license plate shall be subject to all of the following requirements:

- (A) Be limited to an electronic device in lieu of a 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.
 - (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).
 - (E) Display only information and images approved by the department or deemed necessary by the department.
 - (F) Be readable by automated license plate readers used by the Department of the California Highway Patrol and any other automated enforcement system.
 - (G) Be readable during daylight hours at a distance of no less than 75 feet.
- (2) An alternative device intended to serve in lieu of a registration card is subject to both of the following requirements:
- (A) Meet the requirements of Section 4453.
 - (B) May be used to comply with Section 4462.
- (3) The department may establish additional requirements it deems necessary to implement this subdivision.

(c) An entity seeking approval to issue an alternative device under this section shall submit a business plan for the device to the department for approval that includes, but is not limited to, all of the following:

(1) An administrative oversight plan.

(2) A product support plan.

(3) Information technology security, privacy, and cybersecurity evaluations and measures to protect against unauthorized access to information and the device, ~~if the device provides electronic communications or location-based services.~~

(4) Procedures to comply with applicable privacy and security requirements, including, but not limited to, the California Consumer Privacy Act of 2018 (Title 1.81.5 (commencing with Section 1798.100) of Part 4 of Division 3 of the Civil Code). *For purposes of this section, a provider of the device shall not share or sell the information obtained to provide the device, nor shall it use the information for any purpose other as strictly necessary to provide the device.*

(d) The department may adopt regulations to carry out this program, including establishing reasonable fees to reimburse the department for the costs to implement the program.

(e) An alternative device intended to serve in lieu of a license plate issued by the department pursuant to the pilot program established in Section 4853 is authorized for continued use until the device authorized under this section is approved or disapproved by the department.

(f) An alternative device failure or malfunction shall 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.

- 8) **Prior legislation:** AB 2285 (Transportation Committee, Ch. 100, Stats. 2020), extended the sunset on the DMV pilot program evaluating alternatives to license plates, registration stickers, and registration cards from January 1, 2021 to January 1, 2023, amongst other things.

AB 2770 (Gipson, 2020) was nearly identical to this bill. That bill died in Assembly Transportation Committee.

AB 1614 (Gipson, Ch. 319, Stats. 2019) extended the sunset on the DMV pilot program evaluating alternatives to license plates, registration stickers, and registration cards from January 1, 2010 to January 1, 2021.

SB 1387 (Beall, Ch. 520, Stats. 2018) extended the sunset on the DMV pilot program evaluating alternatives to license plates, registration stickers, and registration cards from January 1, 2019 to January 1, 2020.

SB 1399 (Hueso, Ch. 155, Stats. 2016) extended the sunset on the DMV pilot program evaluating alternatives to license plates, registration stickers, and registration cards to January 1, 2019, and the deadline for DMV to report on the pilot to July 1, 2020.

SB 806 (Hueso, Ch. 569, Stats. 2013) authorized DMV to conduct a pilot program to evaluate alternatives to license plates, registration stickers, and registration cards.

- 9) **Double referral:** This bill was double-referred to the Assembly Transportation Committee where it was heard on April 5, 2021 and passed out 12-0.

REGISTERED SUPPORT / OPPOSITION:

Support

Revivermx
Silicon Valley Leadership Group

Opposition

ACLU California Action (unless amended)
Privacy Right Clearinghouse (unless amended)

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