

Date of Hearing: April 8, 2024

ASSEMBLY COMMITTEE ON TRANSPORTATION

Lori D. Wilson, Chair

AB 3138 (Wilson) – As Amended April 1, 2024

SUBJECT: Vehicle identification and registration: alternative devices

SUMMARY: Reauthorizes alternative license plates with vehicle location technology, and authorizes the Department of Motor Vehicles (DMV) to approve an alternative device that displays banner messages. Specifically, **this bill**:

- 1) Provides that DMV has the sole ability to approve an alternative license plate, stickers, tabs and registration codes, in consultation with the California Highway Patrol (CHP).
- 2) Authorizes an alternative device to have vehicle location technology if it does the following:
 - a) The vehicle location technology is capable of being permanently disabled by means of a nonreversible method that cease all vehicle location functionality and tracking information capabilities.
 - b) The vehicle location technology is capable of being manually disabled and enabled by a driver of the vehicle while that driver is inside the vehicle.
- 3) Authorizes DMV to authorize an alternative device to replicate a specialized license plate or a license plate requiring an occupational license that DMV has approved pursuant to law instead of authorizing DMV to permit an approved environmental license plate or specialized license plate.
- 4) Authorizes DMV to approve an alternative device that allows banner messages to appear on the bottom of the alternate device.

EXISTING LAW:

- 1) Requires DMV to issue two reflectorized license plates for vehicles and specifies that:
 - a) Each plate must display the word “California,” the vehicle's registration number, and the year for which the vehicle's registration is valid; and,
 - b) For license plates other than motorcycles, the license must be rectangular in shape, 12 inches in length, and six inches in width. (Vehicle Code Section (VEH) 4850)
- 2) Prohibits DMV from contracting with any non-governmental entity for purposes of manufacturing license plates. (VEH 4850)
- 3) Requires the DMV to establish a program authorizing an entity to issue devices as alternatives to conventional license plates, stickers, tabs, and registration cards that meet specified criteria (henceforth, "alternative devices"); and establishes requirements for piloting and adopting new alternative devices. (VEH 4853 and 4854)

- 4) Prohibits an alternative device from including vehicle location technology, except for fleet vehicles; and requires the DMV to, no later than January 1, 2024, to recall any devices with vehicle location technology that have been issued pursuant to the existing pilot program. (VEH 4854)
- 5) Provides that vehicle location technology may be offered for vehicles registered as fleet vehicles, commercial vehicles, and those operating under an occupational license, and that such devices need not be recalled from these vehicles. (VEH 4854)
- 6) Requires that vehicle location technology, if any, be capable of being disabled by the user; provide that vehicle location technology, if any, may be capable of being manually disabled by a driver of the vehicle while that driver is in the vehicle; and require that the alternative device display a visual indication that vehicle location technology is in active use. (VEH 4854)
- 7) Requires the DMV to conduct hearings with the opportunity for public comment and to adopt specified regulations to carry out the program, including pertaining to, among other things, introduction of new products through a pilot program; transitioning pilot products to a statewide product offering; determining data sharing, privacy, and security protocols; and requirements to ensure users of a device are aware of GPS capability and usage and can deactivate the function. (VEH 4854)
- 8) Requires the business plan submitted by an entity seeking approval to issue an alternative device or electronic vehicle registration card for pilot or statewide use to include, among other things, assurance that the information transmitted between the alternative device, the DMV, and the provider is encrypted and protected to the highest reasonable security standards broadly available. (VEH 4854)
- 9) Prohibits the provider of an alternative device from sharing or selling any information obtained by virtue of contracting with the department to provide the device, including, but not limited to, information collected by the device itself. (VEH 4854)
- 10) Requires that an alternative device intended to serve in lieu of a license plate be subject to specified visibility and readability requirements, and be readable by automated license plate readers used by the CHP and any other automated enforcement system. (VEH 4854)
- 11) Require that an alternative device intended to serve in lieu of a registration card meet existing requirements pertaining to evidence of registration and be capable of being presented as evidence of registration for examination upon demand of a peace officer. (VEH 4854)
- 12) Permit the DMV to authorize the display of approved environmental license plates and approved specialized license plates to be displayed on alternative devices. (VEH 4854)
- 13) Provide that an alternative device failure or malfunction may be deemed a correctable violation under specified circumstances; and require the provider of the device, if the device has digital capabilities, to build into the device a process for frequent notification if the device becomes defective, and to seek to replace defective devices as soon as possible. (VEH 4854)

- 14) Prohibit an employer, or person acting on behalf of the employer, from using an alternative device to monitor employees except during work hours, and unless strictly necessary for the performance of the employee's duties; prohibit an employer from retaliating against an employee for removing or disabling an alternative device's monitoring capabilities outside of work hours; and authorize an employee who believes they have been subject to a violation of this provision to file a complaint with the Labor Commissioner as specified, and to receive specified penalties, remedies, and compensation. (VEH 4854)
- 15) Require an employer, or person acting on behalf of the employer, to provide an employee with a notice stating that monitoring will occur before conducting any monitoring with an alternative device that includes specified information pertaining to the nature of that monitoring. (VEH 4854)
- 16) Authorize the Labor Commissioner to enforce the provisions specified in 14) and 15), above; and subject an employer who violates those provisions to a civil penalty of \$250 for an initial violation and \$1,000 per employee for each subsequent violation. (VEH 4854)
- 17) Require an employer, and any third-party vendor that contracts with an employer to provide GPS tracking of vehicles through an alternative device to furnish upon request any report or information that the Labor Commissioner or the Division of Labor Standards Enforcement requires to carry out the provisions in 14) and 15), above. (VEH 4854)
- 18) Requires the CHP to approve any DMV-selected alternative to license plates or registration stickers and cards. (VEH 4854)

FISCAL EFFECT: Unknown

COMMENTS: License plates have been used in the United States since 1901 when New York required individuals to make their plates of any size or material showcasing the owner's initials. Massachusetts became the first state to issue manufactured license plates in 1903. California followed suit in 1913. In 1956, the U.S. Government came to an agreement with the auto manufacturers to have a fixed size for plates with standardized mounting holes and a 6-digit registration number format.

California's plates have changed slightly over the years with different colors and backgrounds and the number of digits on the plate increased to seven. As we entered the digital age, a new idea emerged to completely reimagine the license plate: digital license plates. In 2013, the Legislature passed and Governor Brown signed SB 806 (Hueso), Chapter 569, Statutes of 2013, authorizing 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 DMV's ability to explore alternatives to traditional metal license plates, plastic-coated registration stickers, and paper registration cards to improve efficiency and lower the cost of DMV vehicle registration services. The pilot program was extended three times, and sunset on January 1, 2023. The program was made permanent in 2022 with the passage of AB 984 (Wilson), Chapter 746. 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 costs consumers \$599 and the company has begun offering a monthly subscription service for the plate at a cost of nearly \$29 a month.

According to the author “AB 3138 will provide consumers with the choice of opting into and purchasing GPS-enabled alternative registration devices or digital license plates. The bill will also provide privacy protections above and beyond those that exist in current law for comparable GPS-enabled products, including cars themselves. These protections include that all devices must be both capable of being permanently disabled, immediately stopping all location and tracking functionality and capable of being manually disabled and enabled by the driver while inside the vehicle.”

When AB 984 became law, several features that were permitted for the alternative devices under the pilot program were removed. Under the pilot program, alternative devices were authorized to use GPS technology for passenger vehicles and plates were permitted to display banners at the bottom, subject to DMV approval. The ability to use GPS technology on the plates was ultimately removed by an amendment taken on the Senate floor, while the ability to display banners was removed by an amendment made in this committee.

Reviver, the sponsors of this bill argue “California leads the way in technology and innovation, but as the Legislature works to further our advancement and modernization technologically, the privacy of residents must remain top of mind. AB 3138 – Digital License Plates – will help to do this by improving the parameters around vehicle location technology in alternative devices. It will do this by requiring compliance of these devices to ensure they are capable of the following:

- Being permanently disabled, immediately stopping all location and tracking functionality; and,
- Being manually disabled and enabled by the driver while inside the vehicle.

The language of the bill clearly states, if the alternative device fails to meet these requirements, vehicle location technology shall not be included in the device.”

The California Partnership to End Domestic Violence, writing in opposition to this bill, argues “GPS surveillance trackers in personal vehicle license plates can be used by abusers to track domestic violence survivors. Survivors may not know how to disable the GPS tracker or may fear the consequences of doing so, and removing an electronic license plate all together may result in a survivor being pulled over by law enforcement.

Fundamentally, California needs to prevent domestic violence and restrict those tools, such as vehicle location technology, that can be used by those who exert coercive control over their intimate partners in exercising and maintaining that control. Technologies such as vehicle location technology obviously are useful in certain contexts, but they also can be tools of abuse and control. It is the government’s responsibility to ensure that appropriate safeguards are put into place to limit potential misuse of these technologies, especially when those technologies are enabled in something that is required by the state government, such as a license plate.”

This bill is double referred to the Assembly Privacy and Consumer Protection Committee which will analyze the provisions of the bill reinstating the ability to use GPS technology on non-fleet vehicles.

Banners and the First Amendment: the U.S. Supreme Court, in *Walker v. Texas Division, Sons of Confederate Veterans*, determined that specialized license plates are government speech, not private speech, and upheld a Texas law that was similar to California's previous process of establishing specialized license plates. That case was intentionally silent on the issue of whether personalized plates were government speech or private speech.

A 2020 federal court case in the United States District Court Northern District of California has brought this decision into question. *Ogilvie v. Gordon* made the determination that personalized plates are not government speech and therefore the DMV cannot place restrictions on plates that may carry connotations offensive to good taste and decency, or which would be misleading. *Walker v. Texas Division, Sons of Confederate Veterans* explicitly placed aside the issue of whether personalized plates are government speech. DMV did not appeal this decision. Instead, the DMV is currently proposing a change to its regulations to more narrowly tailor what types of configurations for personalized plates it will and will not allow. It may not be possible for DMV to write a regulation and enforce a regulation that would conform with the court ruling.

Committee Comments: DMV is currently in the process of trying to come up with restrictions on personal license plates that would comport with the ruling in *Ogilvie v. Gordon*. The new regulations may be also struck down on First Amendment grounds. By opening up banners to be permitted on license plates, it is within the realm of possibility a court determines the state created a new public forum for free speech and is unable to restrict what is stated on that forum. The Legislature should weigh in on if it is comfortable permitting messages they may find offensive or disagree with on a California license plate.

The vast majority of the banners submitted to DMV for approval during the pilot stage were approved. Most of them were innocuous, with many simply listing a company name or website, expressing love for their parents, or inspirational quotes. Others may imply a government endorsement of religion like "Bayside is my church...Jesus Christ is my Savior." Others included political messages like "Defend Don't Defund" or "#Reopen California." One approved message was "#saveourchildren", an internet hashtag popular at the time with Qanon, a conspiracy-based group whose core belief is that there is a cabal of satanic, cannibalistic child molesters operating a global child sex trafficking ring that conspired against former President Donald Trump.

Related Legislation: SB 1394 (Min) requires a vehicle manufacturer to terminate a person's access to remote vehicle technology upon a completed request from a driver who establishes legal possession of the vehicle or a domestic violence restraining order naming the person whose access is sought to be terminated. The bill would prohibit a vehicle manufacturer from charging a fee to a driver for completing their request to terminate a person's access to remote vehicle technology. That bill is pending before Senate Transportation Committee.

Previous Legislation: AB 984 (Wilson), Chapter 746, Statutes of 2022, required DMV to establish a program authorizing an entity to issue devices as alternatives to conventional license plates, stickers, tabs, and registration cards that meet specified criteria (henceforth, "alternative devices"); and establishes requirements for piloting and adopting new alternative devices.

AB 2285 (Transportation Committee), Chapter 100, Statutes of 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 1614 (Gipson), Chapter 319, Statutes of 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), Chapter 520, Statutes of 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), Chapter 155, Statutes of 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), Chapter 569, Statutes of 2013, authorized DMV to conduct a pilot program to evaluate alternatives to license plates, registration stickers, and registration cards.

REGISTERED SUPPORT / OPPOSITION:

Support

Reviver (sponsor)
California Black Chamber of Commerce
North Bay Landscape Management, Inc.

Opposition

American Civil Liberties Union California Action
Anti Police-Terror Project
California Partnership to End Domestic Violence
Electronic Frontier Foundation
National Center for Youth Law
Oakland Privacy
Privacy Rights Clearinghouse
Secure Justice

Analysis Prepared by: David Sforza / TRANS. / (916) 319-2093