

Date of Hearing: April 23, 2018

ASSEMBLY COMMITTEE ON TRANSPORTATION

Jim Frazier, Chair

AB 2381 (Carrillo) – As Introduced February 14, 2018

SUBJECT: Vehicles: emissions: certification, auditing, and compliance

SUMMARY: Requires the California Air Resources Board (ARB) to enhance its emissions surveillance of new motor vehicles to better detect software that may be used to evade the surveillance of emissions and authorizes ARB to impose a fee on vehicle manufacturers to cover implementation costs. Specifically, **this bill:**

- 1) Defines “real-world conditions emissions testing” to include both new and used motor vehicles being driven on-road, outside of normal laboratory testing conditions.
- 2) Requires ARB to enhance its certification, audit, and compliance activities including, but not be limited to, the increased utilization of in-use and real-world conditions emissions testing, for new motor vehicles to detect defeat devices or other software used to evade emissions testing.
- 3) Authorizes ARB to consult or partner with academic institutions and laboratories to develop new surveillance methods and test cycles, perform emissions testing on behalf of ARB, and conduct research on vehicle emissions testing.
- 4) Authorizes ARB, by regulation, to impose fees on manufacturers of new motor vehicles to recover ARB’s reasonable costs in implementing the enhanced surveillance required in this bill while, capping the total amount of fees collected at \$5 million in the 2019–20 fiscal year and limiting subsequent fee increases to inflation, operational and labor costs.
- 5) Requires a manufacturer who fails to pay this fee within 60 days to pay ARB a penalty equal to 10% of the fee. Provides an additional 90 days for payment if the manufacturer informs ARB that additional information is needed to honor the invoice. Requires a manufacturer who fails to pay all fees within one year to pay a penalty fee equal to 100% of all fees imposed and imposes a subsequent 100% penalty for each year the fees go unpaid.

EXISTING LAW:

- 1) Requires ARB to achieve the maximum degree of emission reductions possible from vehicular and other mobile sources in order to achieve attainment of state ambient air quality standards.
- 2) Requires ARB to adopt and implement emission standards for new motor vehicles that are necessary and technologically feasible.
- 3) Prohibits a new motor vehicle or new motor vehicle engine from being certified by ARB unless the vehicle or engine meets certain emission standards adopted by ARB.
- 4) Prohibits a new motor vehicle from being sold and registered in the state unless the manufacturer allows ARB to conduct surveillance testing on the vehicle.

- 5) Authorizes ARB to impose a fee, by regulation, on manufacturers of new motor vehicles to recover the costs of conducting surveillance of new motor vehicles prior to retail sales and to impose penalties if the fees are not paid.
- 6) Requires ARB to establish criteria for the evaluation of the effectiveness of motor vehicle pollution control devices.
- 7) Prohibits a person from installing, selling, or offering for sale any device, apparatus, or mechanism intended for use with, or as a part of, a required motor vehicle pollution control device or system that alters or modifies the original design or performance of the motor vehicle pollution control device or system.
- 8) Establishes civil penalties for violations of new motor vehicle emission standards or altering or modifying the motor vehicle pollution control device.

FISCAL EFFECT: Unknown

COMMENTS: Nationally and statewide, the transportation sector is responsible for a major portion of air pollution and emissions. To address this, the United States Environmental Protection Agency (EPA) has established regulations requiring that, prior to introducing a vehicle for sale in the United States, manufacturers must demonstrate that the vehicle meets federal emissions standards. In California, manufacturers must additionally demonstrate compliance with state air quality standards. Manufacturers who fail to comply with both state and federal requirements are subject to civil penalties and other enforcement actions.

In September 2015, EPA issued a notice of violation of the federal Clean Air Act to Volkswagen after it was found that the company had intentionally programmed certain diesel engines in model years 2009 to 2015 to activate emission controls only during laboratory emissions testing. The software (also called defeat device) caused the vehicles' nitrous oxide (NOx) output to meet EPA standards during regulatory testing but to emit up to 40 times more NOx in real-world driving conditions. More than 500,000 of these vehicles were sold in the U.S., of which approximately 85,000 were sold in California.

The federal Clean Air Act defines a defeat device as an auxiliary emission control device (AECD) that reduces the effectiveness of the emission control system under conditions which may reasonably be expected to be encountered in normal vehicle operation and use. A manufacturer may equip a vehicle with a defeat device if it can justify the need for it in terms of preventing damage, provided the AECD does not go beyond the requirements of engine starting and the manufacturer discloses this information in its application to EPA for its certificate of conformity. Volkswagen failed to disclose the defeat device in any of its applications.

California has made great strides in improving air quality, but despite these efforts, many regions in the state continue to experience poor air quality. For example, 10 million Californians live in the nation's most severe non-attainment areas for ozone pollution, and 12 million Californians live in areas with extremely high levels of fine particle pollution. These pollutants cause lung disease, heart disease, and premature death, especially among the most vulnerable populations.

According to the author, current procedures have not been sufficient to stop vehicle manufacturers from dodging emissions standards. The author has introduced this bill to enhance testing to seek out bad actors and keep ARB at the forefront of protecting California's air.

While ARB was instrumental in discovering that a vehicle manufacturer was cheating the system, many years went by before the issue was discovered. While it is hoped that the billions of dollars in air quality mitigation, investments, and penalties that have been imposed on Volkswagen will serve as a deterrent to other vehicle manufactures, this has not been the case. As a result of ARB's expanded testing program, developed during the Volkswagen case, ARB found undeclared emission control devices on Fiat-Chrysler vehicles. In 2017, both ARB and the EPA filed a notice of violation to Fiat-Chrysler. The violation covers about 104,000 cars and pickups nationally and there are about 14,000 of these vehicles on the road in California. The notice of violation claimed that Fiat-Chrysler failed to disclose it had AECD on certain vehicles and failed to comply with laws related to emission standards. Shortly thereafter, investigations continued and the initiated litigation. According to the EPA's website "EPA and ARB are continuing in their discussions with Fiat-Chrysler to bring the subject vehicles into compliance with the Clean Air Act and California law. The nature and timing of any resolution of this issue are uncertain."

California has one of the most stringent standards when it comes to vehicular pollution. This bill provides the framework and resources to help ARB ensure that every manufacturer complies with these standards and that our standards are not undermined by those who "cheat the system".

Double Referral: This bill passed out of the Assembly Natural Resources Committee on April 9, 2018 with a 10-0 vote.

Previous Legislation: AB 582 (C. Garcia) of 2017, was nearly identical to this bill and was held on the Senate Appropriations Committee suspense file.

AB 1685 (Gomez), Chapter 604, Statutes of 2016, updated civil penalties for violations of ARB regulations, orders, or rules, to bring penalty assessments into alignment with those of the EPA.

ACR 112 (Hadley), Chapter 117, Statutes of 2016, thanked ARB for its exemplary work and tenacity in uncovering the emissions control defeat devices on certain diesel-fueled Volkswagen motor vehicles and expressed the Legislature's support for specified future emissions test-related actions by ARB.

SB 1402 (Dutton), Chapter 413, Statutes of 2010, required ARB to provide a specified written explanation prior to imposing an administrative or civil penalty for a violation of air pollution law, make these explanations available to the public, annually report specified administrative penalties imposed, and publish a penalty policy pertaining to vehicular air pollution control.

REGISTERED SUPPORT / OPPOSITION:

Support

American Lung Association
Coalition for Clean Air
Valley Clean Air Now

Opposition

None on file

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