

Date of Hearing: April 28, 2021

ASSEMBLY COMMITTEE ON APPROPRIATIONS

Lorena Gonzalez, Chair

AB 398 (Fong) – As Amended March 10, 2021

Policy Committee: Transportation

Vote: 15 - 0

Urgency: No

State Mandated Local Program: No

Reimbursable: No

**SUMMARY:**

This bill modifies existing law so that the Department of Motor Vehicles (DMV) may allow inspection of vehicle registration (VR) information or driver license (DL) information in DMV records, as permitted by existing law, at a charge that shall not exceed the actual cost to DMV to provide the inspection. Current law allows DMV's director to set a charge for such an inspection that is "sufficient to pay at least" DMV's actual costs to provide the information. The bill also removes the word "sell" from the description in statute providing DMV's authority for inspection of VR and DL information.

**FISCAL EFFECT:**

This bill should have no fiscal effect. This is because DMV contends its existing charges (\$2 for an electronic request to review VR and DL records and \$5 for a request by mail) do not generate revenue in excess of DMV's costs to provide the service.

Arguably, this bill prevents the DMV director from increasing the charge for inspecting VR and DL records to an amount that substantially exceeds DMV's administrative costs, and, therefore, represents a loss of potential DMV revenue. Indeed, a plain reading of statute appears to give the DMV director the authority to set the charge at any amount the director wants. However, it is likely a court would find the director exceeded their authority, were such a charge increase challenged. This is because rules of statutory construction direct a court to interpret a statute in a way that renders the statute legal and valid. Arguably, were the director to increase the charge to an amount beyond what is reasonably necessary to enable inspection of VR and DL records, the court would find the action arbitrary and capricious. However, absent a final court decision on the topic, the parameters on the DMV director's authority are open to interpretation.

**COMMENTS:**

- 1) **Background.** This bill changes current law so that, in the words of the author, DMV would no longer be able to impose "inconsistent service taxes across the state to generate revenue." State law specifies the limited circumstances under which DMV may allow access to vehicle registration information or to a person's driving record. For example, statute allows an insurance agency to access the record of one of its insured who has been in an accident. To access a person's driving record, DMV charges the requesting entity \$2, if the request is made electronically, and \$5, if the request is made by mail. DMV asserts the charge it set at the time of its last regulatory proceeding was of an amount sufficient, at least, to cover DMV's administrative costs at that time.

The author has introduced this bill based, in part, on the premise the \$2 charge for an electronic request may not be justified and the amount is a prohibitive cost barrier. The author's office contends it costs DMV no more than a few cents to process each electronic request to access VR or DL records. DMV, in response, notes that statute requires DMV to round partial dollar amounts up to the next whole-dollar increment, so DMV administrative costs of between \$1.01 and \$2.00 would justify a fee of \$2.00 (though, at the time this analysis was prepared, DMV was unable to cite the statutory or regulatory authority that requires it to round the charge in question up the next whole dollar amount). In addition, DMV refers to the fees charged for similar services by several other large states, each of which exceeds the DMV's charge several times over, as shown in the following table.

Driver Records Access Fees in Select States	
California	\$2 (\$5 by mail)
Texas	\$4
New York	\$7
Florida	\$8 ("an additional \$6.25 tax collector fee may apply")
Illinois	\$12

Of course, the preceding information does not demonstrate DMV's charges generate revenue no greater than DMV's administrative costs. But it does show DMV's charges to be comparatively low.

As written, statute does not limit DMV to charging only the amount it needs to administer the program by which an entity may access VR or DL information. Specifically, statute allows DMV to levy a charge "sufficient at least," as determined by the department director. This language seems to permit the DMV director to charge an amount in excess of DMV's administrative costs (as a recent media report alleges). However, as noted above, in this analysis' discussion of the bill's likely fiscal effects, arguably, a court would not allow the DMV director to increase the charge by an amount beyond what is reasonably necessary to provide access to VR and DL information.

In any case, the author contends it is inappropriate to give the DMV director authority to set the charge at an amount beyond what is required to cover DMV's administrative costs, and it is similarly inappropriate for statute to authorize DMV to "sell" sensitive public information. In that sense—assuming the Legislature shares the author's contention—this bill would seem simply to be an effort to clean up the code.