

CONCURRENCE IN SENATE AMENDMENTS

AB 398 (Fong and Chau)

As Amended May 26, 2021

Majority vote

SUMMARY

Limits Department of Motor Vehicles' (DMV) ability to recover costs for document requests to the actual cost of providing such documents.

Senate Amendments

Make technical, non-substantive changes to the bill.

COMMENTS

On November 25, 2019, Vice News ran a sensational story entitled "The California DMV is Making \$50 million a Year Selling Drivers' Personal Information." The article states that "In a public record acts request, Motherboard asked the California DMV for the total dollar amounts paid by commercial requesters of data for the past six years. The responsive document shows the total revenue in fiscal year 2013-14 as \$41.6 million before steadily climbing to \$52.1 million in fiscal year 2017-18."

The Vice News article is accurate in terms of the amount of money received, but misleading. DMV does not sell personal information except for legitimate business purposes explicitly authorized by the Legislature. The transactions the article talks about are fees DMV charges for legitimate business inquiries that the Legislature permits. Insurance companies are permitted to request data from DMV when collisions occur and they need to find out the address of the other driver, or to get driving records for the purposes of determining insurance rates. DMV charges them for accessing the records as a means of recovering their costs for retrieving the data. Prospective employers pay a fee to access accident records as required for certain transportation-related jobs. Vehicle manufacturers are allowed to request addresses for the purposes of sending out a safety recall. Otherwise, Vehicle Code 1808.21 prohibits DMV from sharing personal addresses.

As a result of the Vice News Story, DMV created a webpage detailing what limited circumstances DMV records can be requested. <https://www.dmv.ca.gov/portal/driver-education-and-safety/educational-materials/fast-facts/how-your-information-is-shared-ffdmv-17/>.

Until 1989, DMV records were considered public records unless state law specifically made them confidential, as was the case for the addresses of peace officers and certain other officials thought to be at risk. Because home addresses were not considered confidential, any person who gave a reason that DMV deemed legitimate and could present to DMV a person's driver's license number or license plate number could obtain address information on that individual.

In 1989, actress Rebecca Schaeffer was stalked and killed. The murderer obtained her address from a private investigation agency doing business in Arizona. The private investigation agency acquired her address through a subcontractor agent in California, who obtained it from DMV. In response, the Legislature enacted AB 1779 (Roos), Chapter 1213, Statutes of 1989, which made all home addresses in DMV records confidential, with limited exceptions. Congress passed and

the President signed identical legislation in 1994, placing similar requirements on all DMVs across the country (also inspired by what happened to Rebecca Schaeffer).

The fee for requesting someone's driving record is \$2, or \$5 for a mail request.

According to the Author

"AB 398 stops the DMV from profiting off of the public's personal information. When an individual requests basic information like driving or vehicle registration records, they deserve access to their data at a reasonable cost. State agencies should work for the public good by providing services to individuals without imposing inconsistent service taxes across the state to generate revenue. This bill is also an important step in removing prohibitive cost barriers for the public to obtain driver's licenses, access their personal information, and submitting Public Records Act (PRA) requests."

Arguments in Support

According to the Howard Jarvis Taxpayers Association, Government is a public service, not a for-profit enterprise and the ability of a state agency to potentially generate revenue off of information provided to the department at the expense of the public creates a possibly dangerous incentive. AB 398 would increase uniformity, clarity, transparency and accountability by ensuring that the public's information, and the public's access to information, is not for sale.

Arguments in Opposition

No opposition on file.

FISCAL COMMENTS

According to Assembly Appropriations Committee, "This bill should have no fiscal effect. This is because DMV contends its existing charges (\$2 for an electronic request to review vehicle registration "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. "

VOTES:

ASM TRANSPORTATION: 15-0-0

YES: Friedman, Fong, Berman, Mathis, Daly, Davies, Gipson, Kalra, Lee, Medina, Nazarian, Nguyen, O'Donnell, Ward, Wicks

ASM APPROPRIATIONS: 16-0-0

YES: Lorena Gonzalez, Bigelow, Bloom, Calderon, Carrillo, Chau, Megan Dahle, Davies, Fong, Gabriel, Eduardo Garcia, Kalra, Levine, Nazarian, Quirk, Robert Rivas

ASSEMBLY FLOOR: 77-0-1

YES: Aguiar-Curry, Arambula, Bauer-Kahan, Bennett, Berman, Bigelow, Bloom, Boerner Horvath, Burke, Calderon, Carrillo, Cervantes, Chau, Chen, Chiu, Choi, Cooley, Cooper, Cunningham, Megan Dahle, Daly, Davies, Flora, Fong, Frazier, Friedman, Gabriel, Gallagher, Cristina Garcia, Eduardo Garcia, Gipson, Lorena Gonzalez, Gray, Grayson, Holden, Irwin, Jones-Sawyer, Kalra, Kiley, Lackey, Lee, Levine, Low, Maienschein, Mathis, Mayes, McCarty, Medina, Muratsuchi, Nazarian, Nguyen, O'Donnell, Patterson, Petrie-Norris, Quirk, Quirk-Silva, Ramos, Reyes, Luz Rivas, Robert Rivas, Rodriguez, Blanca Rubio, Salas, Santiago, Seyarto, Smith, Stone, Ting, Valladares, Villapudua, Voepel, Waldron, Ward, Akilah Weber, Wicks, Wood, Rendon

ABS, ABST OR NV: Mullin

SENATE FLOOR: 39-0-1

YES: Allen, Archuleta, Atkins, Bates, Becker, Borgeas, Bradford, Cortese, Dahle, Dodd, Durazo, Eggman, Glazer, Gonzalez, Grove, Hertzberg, Hueso, Hurtado, Jones, Kamlager, Laird, Leyva, Limón, McGuire, Melendez, Min, Newman, Nielsen, Ochoa Bogh, Pan, Portantino, Roth, Rubio, Skinner, Stern, Umberg, Wieckowski, Wiener, Wilk

ABS, ABST OR NV: Caballero

UPDATED

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