



1-1-2008

Keeping Cheaters Honest: Banning Products Designed to Evade Image Capture by Automated Enforcement Systems

Oona Mallett

Pacific McGeorge School of Law

Follow this and additional works at: <http://digitalcommons.mcgeorge.edu/greensheet>

Recommended Citation

39 McGeorge L. Rev. 655

This Article is brought to you for free and open access by the Law Review at Pacific McGeorge Scholarly Commons. It has been accepted for inclusion in Greensheets by an authorized administrator of Pacific McGeorge Scholarly Commons. For more information, please contact msharum@pacific.edu.

Keeping Cheaters Honest: Banning Products Designed to Evade Image Capture by Automated Enforcement Systems

Oona Mallett

Code Sections Affected

Vehicle Code § 5201.1 (new), § 5201 (amended).
AB 801 (Walters & Solorio); 2007 STAT. Ch. 273.

I. INTRODUCTION

Sixteen motorists have filed a class action lawsuit against the operators of express lanes in Orange County disputing the lawfulness of the \$336,000 in fines they are being assessed for failing to pay tolls amounting to \$2,500.¹ Toll operators across the state, including the Orange County Transportation Authority, which operates the express lanes in question, lose hundreds of thousands of dollars each year to toll evaders whose license plates cannot be read by automated enforcement cameras.² In an effort to decrease this financial loss, the Legislature has prohibited the use and sale of products designed to mask license plates from such cameras.³

Toll roads in Orange County, as a whole, purportedly lose approximately \$400,000 each month due to toll evasion by vehicles with unreadable plates.⁴ The Orange County Transportation Authority alone estimates lost toll revenues amounting to \$26,304 per month in 2006 “due to the use of devices that obscure

1. Phil Pitchford, *Drivers Strike Back at 91 Toll Fines*, PRESS-ENTER. (Riverside, Cal.), Mar. 7, 2007, http://www.pe.com/localnews/transportation/stories/PE_News_Local_D_tollroad08.3f2c316.html (on file with the *McGeorge Law Review*).

2. *Id.*; see Letter from Carolyn V. Cavecche, Chairman, Orange County Transp. Auth. (OCTA), to Assembly Member Mimi Walters, Cal. State Assembly (May 29, 2007) [hereinafter OCTA Letter] (on file with the *McGeorge Law Review*) (“OCTA has experienced a loss in toll revenue estimated to be an average of \$26,304 per month in calendar year 2006 . . . due to the use of devices that obscure the reading of license plate numbers.”); see also *infra* notes 4-6 and accompanying text (laying out the financial losses suffered on a monthly basis by several toll operators).

3. See CAL. VEH. CODE § 5201(g) (amended by Chapter 273) (prohibiting the use of such products); *id.* § 5201.1 (enacted by Chapter 273) (adding a misdemeanor penalty for the sale of such products); see also ASSEMBLY COMMITTEE ON TRANSPORTATION, COMMITTEE ANALYSIS OF AB 801, at 1-2 (Apr. 16, 2007) (indicating that the author introduced the bill to limit some of the loss suffered by toll operators as a result of toll evasion).

4. Letter from Christopher J. Walker, Attorney, Nossaman, Guthner, Knox & Elliott, LLP on behalf of Transp. Corridor Agencies (TCA) of Orange County, to Assembly Member Mark Leno, Cal. State Assembly (Apr. 29, 2007) [hereinafter TCA Letter] (on file with the *McGeorge Law Review*). The TCA uses the tolls collected on fifty-one miles of toll roads to pay back the bonds that financed the construction of the roads and the tolls will be removed once the bonds are repaid; the continual loss of revenue that results from toll evaders prolongs the maintenance of the toll facilities on the roads. *Id.*

the reading of license plate numbers.”⁵ Every month, Bay Area toll operators lose \$100,000 in fees, ostensibly because of toll evaders whose license plates are not identifiable.⁶ Banning the use and sale of products and devices that impair the reading and recognition of license plates by electronic monitoring devices at such tolls should curb a substantial portion of this financial loss, thus lessening the burden on local governments.⁷

II. EXISTING LAW

A. Current California Law

Current law provides that toll violators, both drivers and registered owners of vehicles involved in the violation, are liable for a toll evasion penalty.⁸ If a violator is captured by an automated device, the penalty also applies.⁹ Current law prohibits the covering of a license plate with limited exceptions,¹⁰ as well as the installation of devices, such as casings, shields, and frames, that impede license plate recognition by remote emission sensing devices used to identify gross polluters.¹¹ However, existing law does not ban the use, sale, or advertising of products that prevent electronic monitoring devices from reading license plates.¹²

5. OCTA Letter, *supra* note 2. This amount is “up from \$19,569 per month in calendar year 2005.” *Id.*

6. See Jim Sanders, *Products are Designed to Thwart Enforcement Cameras*, SACRAMENTO BEE, May 21, 2007, at A3 (“Roughly [eleven] million vehicles cross the seven Bay Area bridges each month. Tolls are not collected from 25,000 drivers whose license plates are not visible in photos.”).

7. See TCA Letter, *supra* note 4 (“[T]oll violations by those vehicles with unreadable plates result in a loss in collections of \$400 thousand per month or \$4.8 million per year. These losses reduce the ability to re-pay the bonds and forestall the removal of the toll collection facilities.”); CAL. VEH. CODE § 40251 (West 2000) (stating that penalties for toll violations are to be paid to the issuing agency or to the city or county where the violation occurred with any excess amount deposited with State Transportation Fund at the end of the year).

8. CAL. VEH. CODE § 40250(b)-(c) (West 2000 & Supp. 2008). The registered owner and driver are jointly and severally liable for toll evasion penalties, unless the owner can show that the driver was using the vehicle without his or her consent. *Id.* § 40250(b).

9. *Id.* § 40254(a) (West 2000 & Supp. 2007). Penalties for toll violations range from one hundred to five hundred dollars, depending on the number of violations. *Id.* § 40258(a) (West 2000).

10. *Id.* § 5201(f) (West 2000 & Supp. 2008) (explaining that (1) a lawfully parked vehicle may be covered to protect it from weather and the elements, and (2) a license plate security cover can be installed as long as the cover does not obstruct the view of the information on the license plate).

11. *Id.* § 5201(g); see also CAL. HEALTH & SAFETY CODE § 44081 (West 2006) (providing the procedures that will be instituted to identify gross polluter vehicles, including remote sensing); *id.* § 44081.6 (explaining that a pilot demonstration program will “[q]uantify the emission reductions . . . achievable from a remote sensing-based program that identifies gross polluting” vehicles).

12. See ASSEMBLY COMMITTEE ON TRANSPORTATION, COMMITTEE ANALYSIS OF AB 801, at 1 (Apr. 16, 2007) (listing the provisions of current law and noting that this is a new regulation that would be added by Chapter 273).

B. *Transponder Technology*

Agencies that operate toll facilities use transponder technology to automatically collect tolls from drivers who have an electronic transponder in their vehicle.¹³ To catch those drivers who pass through the selected tolls without a transponder, the agencies use cameras to photograph the license plates of toll violators.¹⁴ The agency then sends a bill for the toll, and any applicable penalties, to the registered owner of the vehicle as determined by the photograph of the license plate.¹⁵

C. *Spray Technology*

The products prohibited by Chapter 273, such as PhotoBlocker, are developed to mask license plates from traffic camera detection.¹⁶ Presumably, such products would also be effective in masking license plates from toll facility cameras, since both use similar enforcement strategies.¹⁷ According to PhantomPlate, a manufacturer of the product,

[a] majority of red light & speed cameras utilize strong flash to photograph the license plate on your car. Once sprayed on your license plate, [the] special formula produces a high-powered gloss that reflects the flash back towards the camera. This overexposes the image of your license plate, rendering the picture unreadable.¹⁸

According to product manufacturers, a thirty dollar can of spray will permanently protect four license plates from capture by photographic image and act as an insurance policy against traffic cameras.¹⁹ However, the manufacturers'

13. *Id.* at 1-2. One example of a toll operator that uses the transponder technology is FasTrak® in the Bay Area.

As your vehicle enters the toll lane, the toll tag . . . that is mounted on your vehicle's windshield is read by the antennae As your vehicle passes through, your FasTrak® account is charged the proper amount. Feedback is provided to you on an electronic display If your vehicle does not have a toll tag, the system classifies you as a violator and cameras take photos of your vehicle and your license plate for processing.

FasTrak®, How It Works, <http://www.bayareafastrak.org/static/about/howit.shtml> (last visited Sept. 18, 2007) (on file with the *McGeorge Law Review*).

14. ASSEMBLY COMMITTEE ON TRANSPORTATION, COMMITTEE ANALYSIS OF AB 801, at 2 (Apr. 16, 2007).

15. ASSEMBLY COMMITTEE ON APPROPRIATIONS, COMMITTEE ANALYSIS OF AB 801, at 2 (May 2, 2007).

16. *Id.*

17. See ASSEMBLY COMMITTEE ON TRANSPORTATION, COMMITTEE ANALYSIS OF AB 801, at 1-2 (Apr. 16, 2007) (stating that these products would "similarly foil the use of red light cameras or the photo enforcement of speed limits").

18. PhantomPlate.com, PhotoBlocker Spray, <http://www.phantomplate.com> (last visited Sept. 18, 2007) (on file with the *McGeorge Law Review*).

19. Sanders, *supra* note 6.

websites also warn against using the product to escape toll payment and indicate that users should make sure that use of the product does not violate state law.²⁰

III. CHAPTER 273

Chapter 273 amends current law by prohibiting any product that “obstructs or impairs” law enforcement agencies from reading or recognizing license plates.²¹ Chapter 273 also prohibits the use of any products that interfere with the recognition of license plates by electronic devices operated in connection with toll facilities, including toll roads, high-occupancy toll lanes, and toll bridges.²² Finally, Chapter 273 adds an infraction with “a fine of two hundred and fifty dollars . . . per item sold,” for any person convicted of “sell[ing] a product or device that obscures, or is intended to obscure, the reading or recognition of a license plate.”²³

IV. ANALYSIS

A. *Arguments in Support: Addressing a Pressing Problem*

According to the Metropolitan Transportation Commission, “[l]icense plate obstruction, while not the most pressing traffic enforcement issue in California, is a very real problem.”²⁴ Throughout the state, obstructed license plates prevent toll collection by authorities employing automated enforcement systems.²⁵ Currently, motorists who wish to avoid paying tolls, or avoid being penalized for not paying tolls, can purchase commercial products in order to obscure their license plates.²⁶ According to the Transportation Corridor Agencies of Orange County, the sponsor of Chapter 273, the availability of commercial products designed to

20. *See id.* (explaining that the PhantomPlate website “carries a disclaimer that it does not condone toll-booth evasion and accepts no liability for illegal use of its products”); PhantomPlate.com, PhantomPlate Inc. Limited Liability Policy, http://www.phantomplate.com/policy_liability.html (last visited Feb. 7, 2008) (on file with the *McGeorge Law Review*).

The manufacturer and retailer assume no responsibility for any use or application of this product in violation of any applicable law. Before installing this product, please check your state and local laws and regulations. In some states it is unlawful to display on any vehicle a registration plate which is obscured in any manner which inhibits the proper operation of an automated red light enforcement system.

Id.

21. CAL. VEH. CODE § 5201(g) (amended by Chapter 273).

22. *Id.* (amended by Chapter 273).

23. *Id.* § 5201.1 (enacted by Chapter 273).

24. Letter from Steve Heminger, Executive Dir., Metro. Transp. Comm’n, to Senator Alan Lowenthal, Cal. State Senate (May 30, 2007) [hereinafter MTC letter] (on file with the *McGeorge Law Review*).

25. *See id.* (“Obstructed license plates . . . hinder toll collection . . .”).

26. TCA Letter, *supra* note 4.

avoid automated enforcement systems “contributes to the increase of scofflaws and applauds their success.”²⁷

Because of the financial impact caused by toll violators, commercial products must be banned so the evasion of tolls does not continue to increase as it has in recent years.²⁸ Chapter 273 attempts to remedy an ambiguity in state law that allows toll violators to “evade red-light cameras and electronic toll booths.”²⁹ According to many supporters, Chapter 273 is necessary because “both public safety and taxpayer resources are challenged as the number . . . of toll evaders increase[s].”³⁰

Chapter 273 is expected to add “[m]inor costs, if any, to the Bureau of Automotive Repair . . . , local air districts, and local toll facility agencies to initiate enforcement of the expanded prohibition.”³¹ Agencies that operate toll roads, lanes, and bridges can also expect increased revenues since the prohibitions will reduce the number of persons passing undetected through the facilities without paying the toll.³²

B. Arguments in Opposition: Unnecessary Legislation

While many argue that these products do not work, the manufacturers, of course, disagree.³³ Given this, there is reason to question the effort expended in enacting Chapter 273. Supporters of Chapter 273 argue that the bill is still

27. *Id.*

28. See OCTA Letter, *supra* note 2 (indicating an increase in the number of toll evaders employing the use of products prohibited by Chapter 273).

29. See Sanders, *supra* note 6 (stating that lawmakers are pushing legislation to close the loophole in state law that “[c]heating motorists hoping to evade red-light cameras and electronic toll booths . . . have found”); see also ASSEMBLY COMMITTEE ON TRANSPORTATION, COMMITTEE ANALYSIS OF AB 801, at 1-2 (Apr. 16, 2007) (stating that the author put forth the bill “to combat the use of products or devices that are used by vehicle owners to avoid being billed for their use of toll road facilities” and that the products “block the visibility of license plates so that automated cameras typically used by toll facility operators are unable to read the license plate of a [violating] vehicle”).

30. TCA Letter, *supra* note 4; see also Sanders, *supra* note 6 (noting arguments that the legislation is necessary to ensure that further toll losses are not suffered as a result of newly developed products); OCTA Letter, *supra* note 2 (indicating that existing law, which lacks the Chapter 273 prohibition on products, “is especially problematic because of the recent, noticeable increase in toll evasion through the use of products that conceal a driver’s license plate by leaving a glossy finish on the plate that reflects any flash from a vehicle detection camera”).

31. ASSEMBLY COMMITTEE ON APPROPRIATIONS, COMMITTEE ANALYSIS OF AB 801, at 1 (May 2, 2007).

32. See *id.* (stating that toll agencies could expect “[m]oderate potential toll revenue increases”). The contention is that by eliminating the possibility of using such products to avoid tolls, would-be toll evaders will be forced to pay the tolls if they are unable to use or purchase the product. *Id.*

33. See PhantomPlate.com, Customer Testimonials, <http://www.phantomplate.com/customertestimonial.html> (last visited Sept. 18, 2007) (on file with the *McGeorge Law Review*) (including, on the company website, a number of customer testimonials regarding the effectiveness of the product as well as a number of independent reports demonstrating the product at work). However, the “Deputy Director . . . of the Transportation Corridor Agencies of Orange County [the bill’s sponsor] said his agency has tested various cameras and found glossy sprays ineffective on all of them.” Sanders, *supra* note 6.

beneficial because it will keep law enforcement and the state law ahead of the technological advances that may make more effective products available.³⁴ The argument is that by prohibiting such products now, when their effectiveness is questionable, the problem of increased toll violations can be avoided before more losses are suffered by agencies relying on the collection of toll revenue.³⁵

However, because there is no proof that the products are even effective, there is no evidence that the prohibition on the merchandising and use of such a product will help to curb toll evasion, which is the purported goal of Chapter 273.³⁶ While there are a number of statements indicating that products such as PhotoBlocker are ineffective, no conclusive evidence has been put forth to suggest that the use of such products prevent toll enforcement cameras from capturing license plate images of toll violators.³⁷

C. In the End . . .

While concerns that Chapter 273 is not necessary may call its enactment into question, the attempt may at least remedy a portion of the losses toll operators allegedly suffer as a result of toll evasion.³⁸ Furthermore, among those negatively affected are those who evade tolls and encourage others to do the same.³⁹ Even if the only actual result is that companies are deterred from developing more effective toll evasion devices, the legislation will be worthwhile.

V. CONCLUSION

Chapter 273 attempts to increase toll revenues by eliminating some of the losses toll collection agencies supposedly suffer at the hands of toll evaders.⁴⁰

34. See Sanders, *supra* note 6 (according to the Deputy Director of the Transportation Corridor Agencies of Orange County, "AB 801 is needed to discourage future camera-cheating products . . . 'We just hope to stay one step ahead of those guys . . .'").

35. *Id.*

36. See ASSEMBLY COMMITTEE ON TRANSPORTATION, COMMITTEE ANALYSIS OF AB 801, at 1-2 (Apr. 16, 2007) (stating that the author put forth the bill "to combat the use of products or devices that are used by vehicle owners to avoid being billed for their use of toll road facilities").

37. See Sanders, *supra* note 6 ("Deputy Director . . . of the Transportation Corridor Agencies of Orange County [the bill's sponsor] said his agency has tested various cameras and found glossy sprays ineffective on all of them. . . . Former California Highway Patrol Commissioner Maury Hannigan, who recently oversaw photo enforcement programs for Affiliated Computer Services, described photo-blocking spray as a shellac-like product that fails perhaps [ninety-five] percent of the time.").

38. See *supra* Part IV.B (noting the arguments that Chapter 273 is unnecessary); see also ASSEMBLY COMMITTEE ON APPROPRIATIONS, COMMITTEE ANALYSIS OF AB 801, at 1 (May 2, 2007) (citing the positive fiscal impact Chapter 273 will have on toll revenues).

39. See CAL. VEH. CODE § 5201(g) (amended by Chapter 273) (prohibiting the use of products that impair the recognition of a license plate); *id.* § 5201.1 (applying the penalty to those who sell products to obstruct the recognition of a license plate).

40. See ASSEMBLY COMMITTEE ON TRANSPORTATION, COMMITTEE ANALYSIS OF AB 801, at 2 (Apr. 16, 2007) ("[T]he author and her sponsor cite the availability of spray-on products that block the visibility of

While the law does not deal with all of the losses incurred by toll facilities, it addresses those violators who use products, such as PhotoBlocker, to prevent their license plate image from being captured by automated enforcement systems.⁴¹ While it is unclear how many toll evaders actually use such products to evade tolls, an increase in toll revenues is expected by prohibiting their use and sale.⁴²

license plates so that automated cameras typically used by toll facility operators are unable to read the license plate of a vehicle using the facility without having paid the appropriate fee.”).

41. Not all toll violators whose license plate image is not captured by the toll enforcement cameras use the product; sometimes the image is just not captured by the camera without the use of a product like PhotoBlocker. *See, e.g.*, TCA Letter, *supra* note 4 (explaining that “millions of dollars in toll revenue are lost each year due to unreadable license plates,” but not indicating how much is lost because the violator used specialized products to evade tolls).

42. *See* ASSEMBLY COMMITTEE ON APPROPRIATIONS, COMMITTEE ANALYSIS OF AB 801, at 1 (May 2, 2007) (including as a fiscal effect of AB 801 (Chapter 273) “[m]oderate potential toll revenue increases to agencies that operate toll roads, high-occupancy toll (HOT) lanes, and toll bridges”).