

AMENDED IN ASSEMBLY APRIL 16, 2001

CALIFORNIA LEGISLATURE—2001–02 REGULAR SESSION

ASSEMBLY BILL

No. 1560

Introduced by Assembly Member Nation

February 23, 2001

An act to amend Sections 146, 146.5, and 9889.8 of the Business and Professions Code, and to amend ~~Section 44072.7~~ Sections 44036, 44072.7, and 44072.10 of the Health and Safety Code, relating to automotive repair.

LEGISLATIVE COUNSEL'S DIGEST

AB 1560, as amended, Nation. Automotive repairs : *emissions*.

Existing

(1) *Existing* law provides that it is an infraction for an individual to act as an automotive repair dealer unless that person has a properly issued and valid registration. Existing law also provides, with certain exceptions, that any person who fails to comply with any automotive repair provision is guilty of a misdemeanor.

This bill would delete the provision that makes a violation *of that provision* an infraction and *thus, under existing law*, any violation would therefore be a misdemeanor.

Existing

(2) *Existing* law relating to the ~~Motor Vehicle Inspection Program~~ *motor vehicle inspection and maintenance (smog check) program* specifies a statute of limitations period for filing accusations against licensees for conduct involving fraud or misrepresentation that could result in disciplinary action.

This bill would revise this provision to allow any act involving fraud or misrepresentation resulting in injury to be filed within 2 years after the discovery of the facts constituting the fraud or misrepresentation.

(3) Existing law, the Automotive Repair Act, specifies a statute of limitations period for filing accusations against licensees for conduct involving fraud or misrepresentation that could result in disciplinary action.

This bill would revise this provision to allow any act involving fraud or misrepresentation resulting in injury to be filed within 2 years after discovery of the facts constituting the fraud or misrepresentation.

Because this bill would increase penalties for existing crimes, it would impose a state-mandated local program.

(4) Existing law requires the smog check program to be administered by the Department of Consumer Affairs and the State Air Resources Board. The smog check program is required to provide for inspection of motor vehicles upon registration, biennially upon renewal of registration, upon transfer of ownership, and in certain other circumstances. Existing law requires all smog check stations to utilize monitoring equipment certified by the department.

Existing law also requires manufacturers of monitoring equipment used at smog check stations to furnish to the department and install software updates on monitoring equipment used at smog check stations, and provides that the failure to furnish or install software updates is cause for the department to decertify the equipment or to issue a citation to the manufacturer, which may include a penalty of up to \$1,000.

This bill would expand that requirement to require equipment manufacturers to also install hardware updates on monitoring equipment and furnish those updates to the department. The bill would also permit the department to establish hardware specifications, performance standards, and operational requirements for the certification of monitoring equipment, and would provide that a failure to meet those specifications, standards, or requirements is also cause for the department to decertify the equipment or to issue a citation to the manufacturer, including a penalty of up to \$1,000.

(5) Existing law prescribes the area of the state in which the smog check program is to be implemented, requires vehicles subject to the program to have a biennial inspection, requires the department to ensure that vehicle emissions of specified pollutants are reduced by specified percentages through the program, and establishes a review committee to analyze the effect of the program. Existing law requires the



department to issue a citation to a smog check station licensee if any fraudulent certification of vehicles occurs on the premises of the station. Existing law also requires the department, pending a hearing, to temporarily suspend any smog check station or technician’s license for a period not to exceed 60 days, if, within 2 years of the issuance of a citation, any fraudulent certification of vehicles occurs at the station.

This bill would repeal those provisions.

Existing law also requires the department to revoke the license of any smog check technician or station licensee who participates in the fraudulent certification of vehicles, as specified.

This bill instead would require that the department revoke the license of those licensees if they participate in the fraudulent inspection, rather than fraudulent certification, of vehicles, and would add an additional ground as the basis for that revocation.

This bill would revise this provision to allow any act involving fraud or misrepresentation resulting in injury to be filed within 2 years after discovery of the facts constituting the fraud or misrepresentation.

(6) *The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.*

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 146 of the Business and Professions
2 Code is amended to read:

3 146. (a) Notwithstanding any other provision of law, a
4 violation of any code section listed in subdivision (c) or (d) is an
5 infraction subject to the procedures described in Sections 19.6 and
6 19.7 of the Penal Code when:

7 (1) A complaint or a written notice to appear in court pursuant
8 to Chapter 5c (commencing with Section 853.5) of Title 3 of Part
9 2 of the Penal Code is filed in court charging the offense as an
10 infraction unless the defendant, at the time he or she is arraigned,
11 after being advised of his or her rights, elects to have the case
12 proceed as a misdemeanor, or



1 (2) The court, with the consent of the defendant and the
2 prosecution, determines that the offense is an infraction in which
3 event the case shall proceed as if the defendant has been arraigned
4 on an infraction complaint.

5 (b) Subdivision (a) does not apply to a violation of the code
6 sections listed in subdivisions (c) and (d) if the defendant has had
7 his or her license, registration, or certificate previously revoked or
8 suspended.

9 (c) The following sections require registration, licensure,
10 certification, or other authorization in order to engage in certain
11 businesses or professions regulated by this code:

- 12 (1) Sections 2052 and 2054.
- 13 (2) Section 2630.
- 14 (3) Section 2903.
- 15 (4) Sections 3760 and 3761.
- 16 (5) Section 4080.
- 17 (6) Section 4825.
- 18 (7) Section 4935.
- 19 (8) Section 4980.
- 20 (9) Section 4996.
- 21 (10) Section 5536.
- 22 (11) Section 6704.
- 23 (12) Section 6980.10.
- 24 (13) Section 7317.
- 25 (14) Section 7502 or 7592.
- 26 (15) Section 7520.
- 27 (16) Section 7617 or 7641.
- 28 (17) Subdivision (a) of Section 7872.
- 29 (18) Section 8016.
- 30 (19) Section 8505.
- 31 (20) Section 8725.
- 32 (21) Section 9681.
- 33 (22) Section 9840.
- 34 (23) Subdivision (c) of Section 9891.24.
- 35 (24) Section 19049.

36 (d) Institutions that are required to register with the Bureau for
37 Private Postsecondary and Vocational Education pursuant to
38 Section 94931 of the Education Code.

39 (e) Notwithstanding any other provision of law, a violation of
40 any of the sections listed in subdivision (c) or (d), which is an



1 infraction, is punishable by a fine of not less than two hundred fifty
2 dollars (\$250) and not more than one thousand dollars (\$1,000).
3 No portion of the minimum fine may be suspended by the court
4 unless as a condition of that suspension the defendant is required
5 to submit proof of a current valid license, registration, or
6 certificate for the profession or vocation which was the basis for
7 his or her conviction.

8 SEC. 2. *Section 146.5 of the Business and Professions Code*
9 *is amended to read:*

10 146.5. (a) Notwithstanding any other provision of law, a
11 violation of any code section listed in subdivision (c) is an
12 infraction subject to the procedures described in Sections 19.6 and
13 19.7 of the Penal Code when either of the following occur:

14 (1) A complaint or a written notice to appear in court pursuant
15 to Chapter 5c (commencing with Section 853.5) of Title 3 of Part
16 2 of the Penal Code is filed in court charging the offense as an
17 infraction unless the defendant, at the time he or she is arraigned,
18 after being advised of his or her rights, elects to have the case
19 proceed as a misdemeanor.

20 (2) The court, with the consent of the defendant and the
21 prosecution, determines that the offense is an infraction in which
22 event the case shall proceed as if the defendant has been arraigned
23 on an infraction complaint.

24 (b) Subdivision (a) does not apply to a violation of the code
25 sections listed in subdivision (c) if the defendant has had his or her
26 license, registration, or certificate previously revoked or
27 suspended.

28 (c) The following sections require registration, licensure,
29 certification, or other authorization in order to engage in certain
30 businesses or professions regulated by this code:

- 31 (1) Section 2630.
- 32 (2) Section 2903.
- 33 (3) Sections 3760 and 3761.
- 34 (4) Section 4825.
- 35 (5) Section 4980.
- 36 (6) Section 4996.
- 37 (7) Section 5536.
- 38 (8) Section 6704.
- 39 (9) Section 6980.10.
- 40 (10) Section 7317.

1 (11) Section 7502 or 7592.
 2 (12) Section 7617 or 7641.
 3 (13) Subdivision (a) of Section 7872.
 4 (14) Section 8016.
 5 (15) Section 8505.
 6 (16) Section 8725.
 7 (17) Section 9681.
 8 (18) Section 9840.
 9 (19) Section 9855.1.
 10 (20) ~~Section 9884.6.~~
 11 ~~(21)~~ Subdivision (c) of Section 9891.24.
 12 ~~(22)~~
 13 (21) Section 19049.
 14 (d) Notwithstanding any other provision of law, a violation of
 15 any of the sections listed in subdivision (c), which is an infraction,
 16 is punishable by a fine of not less than two hundred fifty dollars
 17 (\$250) and not more than one thousand dollars (\$1,000). No
 18 portion of the minimum fine may be suspended by the court unless
 19 as a condition of that suspension the defendant is required to
 20 submit proof of a current valid license, registration, or certificate
 21 for the profession or vocation that was the basis for his or her
 22 conviction.
 23 ~~This~~
 24 (e) *This* section shall remain in effect only until January 1,
 25 2003, and as of that date is repealed, unless a later enacted statute,
 26 that is enacted before January 1, 2003, deletes or extends that date.
 27 *SEC. 3.* Section 9889.8 of the Business and Professions Code
 28 is amended to read:
 29 9889.8. All accusations against licensees shall be filed within
 30 three years after the act or omission alleged as the ground for
 31 disciplinary action, except that with respect to an accusation
 32 alleging a violation of subdivision (d) of Section 9889.3, the
 33 accusation may be filed within two years after the discovery by the
 34 bureau of the alleged facts constituting the fraud or
 35 misrepresentation prohibited by that section.
 36 ~~SEC. 3.—~~
 37 *SEC. 4.* Section 44036 of the Health and Safety Code is
 38 amended to read:
 39 44036. (a) The consumer protection-oriented quality
 40 assurance portion of the motor vehicle inspection program shall



1 ensure uniform and consistent tests and repairs by all qualified
2 smog check technicians and licensed smog check stations
3 throughout the state, and shall include a number of stations
4 providing referee functions available to consumers.

5 (b) All licensed smog check stations shall utilize original
6 equipment and replacement parts that are certified by the
7 department. The department shall charge a fee for certification
8 testing of the equipment or the replacement parts. The fee for
9 certification testing of equipment shall be fixed by the department
10 based upon its actual costs of certification testing, shall be
11 calculated from the time that the equipment is submitted for
12 certification testing until the time that the certification testing is
13 complete, and shall not exceed ten thousand dollars (\$10,000). The
14 fee for certification testing of replacement parts shall be
15 determined by the department based upon its actual costs of
16 certification testing, shall be calculated from the time that the
17 replacement part is submitted for certification testing until the time
18 that the certification testing is complete, and shall not exceed two
19 thousand five hundred dollars (\$2,500). The department shall
20 adopt, and may revise, standards for certification and
21 decertification of the equipment, which may include a device for
22 testing of emissions of oxides of nitrogen. As expeditiously as
23 possible, the department shall adopt equipment standards that
24 include a test analyzer system containing all of the following:

25 (1) A microprocessor to control test sequencing, selection of
26 proper test standards, the automatic pass or fail decision, and the
27 format for the test report and the recorded data file. The
28 microprocessor shall be capable of using a standardized
29 programming language specified by the department.

30 (2) An exhaust gas analysis portion with an analyzer for
31 hydrocarbons, carbon monoxide, and carbon dioxide that is
32 designed to accommodate an optional oxides of nitrogen analyzer.
33 An oxides of nitrogen analyzer shall be required in the enhanced
34 program areas.

35 (3) Equipment necessary to perform visual and functional tests
36 of emission control devices required by the department.

37 (4) A device to accept and record motor vehicle identification
38 information, including a device capable of reading bar code
39 information pursuant to regulations of the state board. The device
40 shall have the ability to identify, with the cooperation of the



1 Department of Motor Vehicles, smog inspections performed on
2 vehicles sold by used car dealers.

3 (5) A device to provide a printed record of the test process and
4 diagnostic information for the motorist.

5 (6) A mass storage device capable of storing not less than the
6 minimum amount of program software and data specified by the
7 department.

8 (7) A device to provide for the periodic modification of all
9 program and data files contained on the mass storage device, using
10 a standardized form of removable media conforming to
11 specifications of the department.

12 (8) A device that provides for the storage of test records on a
13 standardized form of removable media conforming to
14 specifications of the department.

15 (9) One or more communications ports conforming to the
16 specifications established by the department as necessary to
17 provide real time communication, or communication that is
18 consistent with maintaining a superior quality assurance program
19 and efficient information transfer, between the test equipment and
20 the centralized computer data base through the computer network
21 maintained by the department pursuant to Section 44037.1.

22 (10) An interface capable of monitoring equipment used with
23 loaded mode testing, idle testing, on board diagnostic testing, or
24 other tests prescribed by the department.

25 (11) Any other features that the department determines are
26 necessary to increase the effectiveness of the program, including,
27 but not limited to, a loaded mode dynamometer for purposes of
28 oxides of nitrogen detection, and other equipment necessary to
29 detect nonexhaust-related volatile organic compound emissions,
30 such as *those* found in fuel system evaporative emissions and
31 crankcase ventilation emissions.

32 (c) The department shall require all smog check stations to use
33 equipment meeting the requirements of subdivision (b) as soon as
34 possible, but not later than January 1, 1996. However, the
35 department may defer the requirement for any equipment, external
36 to the chassis of the test analyzer system, needed to read bar code
37 information, until a substantial portion of the vehicles subject to
38 this chapter are equipped with bar code labels. Prior to the
39 imposition of a requirement for equipment meeting the
40 requirements of subdivision (b), every smog check station shall



1 use equipment meeting the specifications of the department in
2 effect on January 1, 1988.

3 (d) The quality assurance portion shall provide for inspections
4 of licensed smog check stations, data collection and forwarding,
5 equipment accuracy checks, operation of referee stations, and
6 other necessary functions. If the services are contracted for
7 pursuant to subdivision (e) of Section 44014, the department shall
8 prepare detailed specifications and solicit bids from private
9 entities for the implementation of the quality assurance functions.

10 (e) The department may revise the specifications for equipment
11 annually if the cost thereof is less than 20 percent of the total
12 system cost. A more comprehensive revision to the specifications
13 may be required not more often than every five years.

14 (f) (1) Equipment manufacturers shall furnish to the
15 department, and shall install, software *and hardware* updates as
16 specified by the department. The department shall allow
17 equipment manufacturers six months, from the date the
18 department issues its proposed specifications for periodic software
19 *and hardware* updates, to obtain department approval that the
20 updates meet the proposed specifications and to install the updates
21 in all equipment subject to the updates. During the first 30 days of
22 the six-month period, the manufacturers shall be permitted to
23 review and to comment upon the proposed specifications.
24 However, notwithstanding any other provision of this section, the
25 department may order manufacturers to install software *and*
26 *hardware* changes in a shorter period of time upon a finding by the
27 department that a previously installed update does not meet current
28 specifications. A

29 (2) *The department may establish hardware specifications,*
30 *performance standards, and operational requirements for the*
31 *certification and continuing certification of the equipment*
32 *specified in subdivision (b).*

33 (3) A manufacturer's failure to furnish or install *required*
34 ~~software updates as so specified~~ *or to meet the specifications,*
35 *standards, or requirements established pursuant to paragraph (2),*
36 is cause for the department to decertify the manufacturer's test
37 analyzer system or to issue a citation to the manufacturer. The
38 citation shall specify the nature of the violation and may specify
39 a civil penalty not to exceed one thousand dollars (\$1,000) for each
40 day the manufacturer fails to furnish or install the specified



1 software updates by the specified period. In assessing a civil
2 penalty pursuant to this ~~subdivision~~ *paragraph*, the department
3 shall give due consideration, in determining the appropriateness of
4 the amount of the civil penalty, to factors such as the gravity of the
5 violation, the good faith of the manufacturer, and the history of
6 previous violations.

7 ~~(2)~~

8 (4) The citations shall be served pursuant to subdivision (c) of
9 Section 11505 of the Government Code. The manufacturer may
10 request a hearing in accordance with Chapter 5 (commencing with
11 Section 11500) of Part 1 of Division 3 of Title 2 of the Government
12 Code. A request for a hearing shall be submitted in writing within
13 30 days of service of the citation, and shall be delivered to the
14 office of the department in Sacramento. Hearings and related
15 procedures under this ~~subdivision~~ *paragraph* shall be conducted
16 in the same manner as proceedings for adjudication of an
17 accusation under that Chapter 5, except as otherwise specified in
18 this article.

19 ~~(3)~~

20 (5) If within 30 days from the date of service of the citation, the
21 manufacturer fails to request a hearing, the citation shall be
22 deemed the final order of the department.

23 ~~(4)~~

24 (6) Any failure to comply with the final order of the department
25 for payment of a civil penalty, or to pay the amount specified in any
26 settlement executed by the licensee and the Director of Consumer
27 Affairs, is cause for decertification of the manufacturer’s test
28 analyzer system.

29 *SEC. 5.* Section 44072.7 of the Health and Safety Code is
30 amended to read:

31 44072.7. All accusations against licensees shall be filed
32 within three years after the act or omission alleged as the ground
33 for disciplinary action, except that with respect to an accusation
34 alleging a violation of subdivision (d) of Section 44072.2, the
35 accusation may be filed within two years after the discovery by the
36 bureau of the alleged facts constituting the fraud or
37 misrepresentation prohibited by that section.

38 ~~SEC. 4.~~

39 *SEC. 6.* Section 44072.10 of the Health and Safety Code is
40 amended to read:



1 44072.10. (a) Notwithstanding Sections 44072 and 44072.4,
2 the director, or the director's designee, ~~may~~, pending a hearing
3 conducted pursuant to subdivision ~~(f)~~-(e), *may* temporarily
4 suspend any smog check station or technician's license issued
5 under this chapter, for a period not to exceed 60 days, if the
6 department determines that the licensee's conduct would endanger
7 the public health, safety, or welfare before the matter could be
8 heard pursuant to subdivision ~~(f)~~-(e), based upon reasonable
9 evidence of any of the following:

10 (1) Fraud.

11 (2) Tampering.

12 (3) Intentional or willful violation of this chapter or any
13 regulation, standard, or procedure of the department
14 implementing this chapter.

15 (4) A pattern or regular practice of violating this chapter or any
16 regulation, standard, or procedure of the department
17 implementing this chapter.

18 (b) If a motor vehicle dealer sells any used vehicle, knowing
19 that the vehicle has been fraudulently certified, that act shall be
20 additional grounds for suspension or revocation pursuant to
21 Section 11705 of the Vehicle Code. A dealer's license ~~is~~ revoked
22 *pursuant to this subdivision* shall not be reinstated for any reason
23 for a period of at least five years.

24 ~~(c) The department shall issue a citation to a smog check station~~
25 ~~licensee if any fraudulent certification of vehicles occurs on the~~
26 ~~premises of the station. If, within two years of the issuance of a~~
27 ~~citation, any fraudulent certification of vehicles occurs at the~~
28 ~~station, the department shall revoke the station's license. The~~
29 ~~department shall, pending any hearing on revocation under this~~
30 ~~section, temporarily suspend any smog check station's or~~
31 ~~technician's license for not more than 60 days.~~

32 ~~(d)~~The department shall revoke the license of any smog check
33 technician or station licensee who fraudulently certifies vehicles
34 or participates in the fraudulent ~~certification~~-*inspection* of
35 vehicles. A fraudulent ~~certification~~ *inspection* includes, but is not
36 limited to, all of the following:

37 (1) Clean piping, as defined by the department.

38 (2) Tampering with a vehicle emission control system or test
39 analyzer system.



1 (3) *Tampering with a vehicle in a manner that would cause the*
2 *vehicle to falsely pass or falsely fail an inspection.*

3 (4) Intentional or willful violation of this chapter or any
4 regulation, standard, or procedure of the department
5 implementing this chapter.

6 ~~(e)~~

7 (d) Once a license has been revoked for a smog check station
8 or technician under subdivision (a); *or* (c), ~~or (d)~~, the license shall
9 not be reinstated for any reason. A hearing shall be held and a
10 decision issued within 60 days after the date on which the notice
11 of the temporary suspension was provided unless the time for the
12 hearing has been extended, or the right to a hearing has been
13 waived, by the licensee.

14 ~~(f)~~

15 (e) The hearing shall be conducted in accordance with Chapter
16 5 (commencing with Section 11500) of Part 1 of Division 3 of Title
17 2 of the Government Code, or by court order.

18 ~~(g)~~

19 (f) The department shall adopt, by regulation, procedures to
20 ensure that any affected licensee is provided adequate notice and
21 opportunity to be heard, *except as otherwise provided in*
22 *subdivision (a)*, prior to issuing an order temporarily suspending
23 a license under this section.

24 SEC. 7. No reimbursement is required by this act pursuant to
25 Section 6 of Article XIII B of the California Constitution because
26 the only costs that may be incurred by a local agency or school
27 district will be incurred because this act creates a new crime or
28 infraction, eliminates a crime or infraction, or changes the penalty
29 for a crime or infraction, within the meaning of Section 17556 of
30 the Government Code, or changes the definition of a crime within
31 the meaning of Section 6 of Article XIII B of the California
32 Constitution.

