

## Assembly Bill No. 1560

### CHAPTER 357

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

[Approved by Governor September 26, 2001. Filed with Secretary of State September 27, 2001.]

#### LEGISLATIVE COUNSEL'S DIGEST

AB 1560, Nation. Automotive repairs: emissions.

(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.

(2) Existing law relating to the 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.

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

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

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

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

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

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

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

- (1) Sections 2052 and 2054.
- (2) Section 2630.
- (3) Section 2903.
- (4) Sections 3760 and 3761.
- (5) Section 4080.
- (6) Section 4825.
- (7) Section 4935.
- (8) Section 4980.
- (9) Section 4996.
- (10) Section 5536.
- (11) Section 6704.
- (12) Section 6980.10.
- (13) Section 7317.
- (14) Section 7502 or 7592.
- (15) Section 7520.



- (16) Section 7617 or 7641.
- (17) Subdivision (a) of Section 7872.
- (18) Section 8016.
- (19) Section 8505.
- (20) Section 8725.
- (21) Section 9681.
- (22) Section 9840.
- (23) Subdivision (c) of Section 9891.24.
- (24) Section 19049.

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

(e) Notwithstanding any other provision of law, a violation of any of the sections listed in subdivision (c) or (d), which is an infraction, is punishable by a fine of not less than two hundred fifty dollars (\$250) and not more than one thousand dollars (\$1,000). No portion of the minimum fine may be suspended by the court unless as a condition of that suspension the defendant is required to submit proof of a current valid license, registration, or certificate for the profession or vocation which was the basis for his or her conviction.

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

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

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

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

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

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

- (1) Section 2630.
- (2) Section 2903.



- (3) Sections 3760 and 3761.
- (4) Section 4825.
- (5) Section 4980.
- (6) Section 4996.
- (7) Section 5536.
- (8) Section 6704.
- (9) Section 6980.10.
- (10) Section 7317.
- (11) Section 7502 or 7592.
- (12) Section 7617 or 7641.
- (13) Subdivision (a) of Section 7872.
- (14) Section 8016.
- (15) Section 8505.
- (16) Section 8725.
- (17) Section 9681.
- (18) Section 9840.
- (19) Section 9855.1.
- (20) Subdivision (c) of Section 9891.24.
- (21) Section 19049.

(d) Notwithstanding any other provision of law, a violation of any of the sections listed in subdivision (c), which is an infraction, is punishable by a fine of not less than two hundred fifty dollars (\$250) and not more than one thousand dollars (\$1,000). No portion of the minimum fine may be suspended by the court unless as a condition of that suspension the defendant is required to submit proof of a current valid license, registration, or certificate for the profession or vocation that was the basis for his or her conviction.

(e) This section shall remain in effect only until January 1, 2003, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2003, deletes or extends that date.

SEC. 3. Section 9889.8 of the Business and Professions Code is amended to read:

9889.8. All accusations against licensees shall be filed within three years after the act or omission alleged as the ground for disciplinary action, except that with respect to an accusation alleging a violation of subdivision (d) of Section 9889.3, the accusation may be filed within two years after the discovery by the bureau of the alleged facts constituting the fraud or misrepresentation prohibited by that section.

SEC. 4. Section 44036 of the Health and Safety Code is amended to read:

44036. (a) The consumer protection-oriented quality assurance portion of the motor vehicle inspection program shall ensure uniform and consistent tests and repairs by all qualified smog check technicians



and licensed smog check stations throughout the state, and shall include a number of stations providing referee functions available to consumers.

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

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

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

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

(4) A device to accept and record motor vehicle identification information, including a device capable of reading bar code information pursuant to regulations of the state board. The device shall have the ability to identify, with the cooperation of the Department of Motor Vehicles, smog inspections performed on vehicles sold by used car dealers.

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

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



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

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

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

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

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

(c) The department shall require all smog check stations to use equipment meeting the requirements of subdivision (b) as soon as possible, but not later than January 1, 1996. However, the department may defer the requirement for any equipment, external to the chassis of the test analyzer system, needed to read bar code information, until a substantial portion of the vehicles subject to this chapter are equipped with bar code labels. Prior to the imposition of a requirement for equipment meeting the requirements of subdivision (b), every smog check station shall use equipment meeting the specifications of the department in effect on January 1, 1988.

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

(e) The department may revise the specifications for equipment annually if the cost thereof is less than 20 percent of the total system cost.



A more comprehensive revision to the specifications may be required not more often than every five years.

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

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

(3) A manufacturer's failure to furnish or install required software updates or to meet the specifications, standards, or requirements established pursuant to paragraph (2), is cause for the department to decertify the manufacturer's test analyzer system or to issue a citation to the manufacturer. The citation shall specify the nature of the violation and may specify a civil penalty not to exceed one thousand dollars (\$1,000) for each day the manufacturer fails to furnish or install the specified software updates by the specified period. In assessing a civil penalty pursuant to this paragraph, the department shall give due consideration, in determining the appropriateness of the amount of the civil penalty, to factors such as the gravity of the violation, the good faith of the manufacturer, and the history of previous violations.

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



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

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

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

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

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

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

- (1) Fraud.
- (2) Tampering.

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

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

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

(c) The department shall revoke the license of any smog check technician or station licensee who fraudulently certifies vehicles or participates in the fraudulent inspection of vehicles. A fraudulent inspection includes, but is not limited to, all of the following:

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



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

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

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

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

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

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

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

