ASSEMBLY BILL No. 2289

Introduced by Assembly Member Eng

February 18, 2010

An act to amend Sections 44010, 44010.5, 44012, 44014, 44014.2, 44014.5, 44024.5, 44036, 44052, 44055, and 44056 of, to add Section 44001.1 to, to repeal Sections 44050.5, 44051.5, 44053, and 44054 of, and to repeal and add Sections 44050 and 44051 of, the Health and Safety Code, relating to air pollution.

LEGISLATIVE COUNSEL’S DIGEST

AB 2289, as introduced, Eng. Smog check program: testing: penalties.

(1) Existing law establishes a motor vehicle inspection and maintenance (smog check) program, developed, implemented, and administered by the Department of Consumer Affairs. The smog check program provides for the inspection of a motor vehicle, among other circumstances, upon its initial registration, upon transfer of ownership, and for vehicles registered in certain areas of the state, biennially upon renewal of registration. Existing law requires the smog tests to include, at minimum, loaded mode dynamometer testing in enhanced areas, and 2-speed testing in all other program areas, and a visual or functional check of emission control devices specified by the department.

This bill would authorize the department, in consultation with the State Air Resources Board, to determine the appropriate test procedures, as specified.

The bill would authorize the department to contract with one or more entities that would assist the department to manage smog check stations.

The bill would authorize the department to adopt, by regulation, a process by which vehicles that present prohibitive or unusual inspection...
circumstances are inspected by referees, as provided. A referee would be authorized to charge a fee sufficient to cover the costs of providing certain referee services.

The bill would authorize the department to issue performance standards that stations would be required to meet to be eligible to issue certificates of compliance or noncompliance for certain vehicles.

The bill would make other changes to the department’s authority with respect to the smog check program, including requirements relating to testing equipment and motor vehicle emission data.

(2) Existing law authorizes the Department of Consumer Affairs to issue a citation to a smog check station or technician that may specify certain civil penalties.

This bill would repeal this provision and related provisions specifying the circumstances in which such a citation may be issued and certain minimum and maximum amounts for civil penalties. It would, instead, authorize the department to issue a citation to a licensee, contractor, or fleet owner for a violation of smog check requirements. The citation could contain an order of abatement or the assessment of an administrative fine up to $5,000, or both, meeting specified requirements. The bill would make other changes to smog check penalty provisions, including authorizing civil penalties up to $5,000 for a violation of smog check requirements.


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

SECTION 1. Section 44001.1 is added to the Health and Safety Code, to read:

44001.1. (a) The Legislature finds and declares that additional reductions of motor vehicle emissions could be achieved by effective repairs to motor vehicle emission control components.

(b) It is the intent of the Legislature that the department work with the California Community Colleges and other training institutions to encourage the development of innovative training programs for motor vehicle technicians that focus on reducing air pollution from vehicles needing repair and that increase the number and skill level of motor vehicle technicians.

SEC. 2. Section 44010 of the Health and Safety Code is amended to read:
The motor vehicle inspection program shall provide for privately operated stations which shall be referred to as smog check stations and are authorized pursuant to Section 44015 to issue certificates of compliance or noncompliance to vehicles which that meet the requirements of this chapter.

(b) The department may contract with one or more entities to provide assistance to the department to manage smog check stations. If the implementation of this subdivision reduces state costs, the department shall reduce the fee described in subdivision (c) of Section 44060, as appropriate.

SEC. 3. Section 44010.5 of the Health and Safety Code is amended to read:

44010.5. (a) The department shall implement a program with the capacity to commence, by January 1, 1995, the testing at test-only facilities, in accordance with this chapter, of 15 percent of that portion of the total state vehicle fleet consisting of vehicles subject to inspection each year in the biennial program and that are registered in the enhanced program area, as established pursuant to paragraph (1) of subdivision (a) of Section 44003.

(b) (1) The department shall increase the capacity of the program so that the capacity exists to commence, by January 1, 1996, the testing at test-only facilities of that portion of the state vehicle fleet that is subject to inspection and is registered in the enhanced program area, which is sufficient to meet the emission reduction performance standards established by the United States Environmental Protection Agency in regulations adopted pursuant to the Clean Air Act Amendments of 1990, taking into account the results of the pilot demonstration program established pursuant to Section 44081.6.

(2) Upon increasing the capacity of the program pursuant to paragraph (1), the department shall afford smog check stations that are licensed and certified pursuant to Sections 44014 and 44014.2 the initial opportunity to perform the required inspections. The department shall adopt, by regulation, the requirements to provide that initial opportunity.

(3) If the department determines that there is an insufficient number of licensed test-only smog check stations operating in an enhanced area to meet the increased demand for test-only inspections, the department may increase the capacity of the program by utilizing existing contracts.
(c) The program shall utilize the testing procedures described in Section 44012. Vehicles selected for testing pursuant to this section shall include vehicles equipped without second generation on-board diagnostic systems (OBD II) and vehicles with emission problems that may not be adequately detected by the vehicle’s OBD II, as determined by the department in consultation with the state board.

(d) Vehicles that are not diesel-powered in the enhanced program area which are not subjected to the program established by this section may be tested at smog check stations licensed pursuant to Section 44014 that use loaded mode dynamometers. Diesel-powered vehicles in the enhanced program area that are not subjected to the program established by this section may be tested at smog check stations licensed pursuant to Section 44014 using appropriate testing procedures as determined by the department.

(e) (1) The department may implement the program established pursuant to subdivision (a) through a network of privately operated test-only facilities established pursuant to contracts to be awarded pursuant to this section.

(2) The initial contracts awarded pursuant to this section shall terminate not later than seven years from the date that the contracts were executed.

(f) No person shall be a contractor of the department for test-only facilities in all air basins, exclusively, where the enhanced program is in effect unless the department determines, after a public hearing, that there is not more than one qualified contractor. The South Coast Air Basin shall have at least two contractors, and the combined enhanced program area that includes Bakersfield, Fresno, and Sacramento shall have at least two contractors. The department may operate test-only facilities on an interim basis while contractors are being sought.

(g) (1) In awarding contracts under this section, the department shall request bids through the issuance of a request for proposal.

(2) The department shall first determine which bidders are qualified, and then award the contract to the qualified bidder, giving priority to the test cost and convenience to motorists.

(3) The department shall provide a contractual preference, as determined by the department, not to exceed 10 percent of the total proposal evaluation score, based on the following factors:
(A) Up to 5 percent to bidders providing firm commitments to employ businesses that are licensed or otherwise substantially participating in the smog check program after January 1, 1994.

(B) Up to 5 percent to bidders based on the extent to which bidders maximize the potential economic benefit of the smog check program on this state over the term of the contract. That potential economic benefit shall include the percentage of work performed by California-based firms, the potential of the total project workforce who will be California residents, and the percentage of subcontracts that will be awarded to California-based firms.

(4) Any contract executed by the department for the operation of a test-only facility shall expressly require compliance with this chapter and any regulations adopted by the department pursuant to this chapter.

(h) The department shall ensure that there is a sufficient number of test-only facilities, and that they are properly located, to ensure reasonable accessibility and convenience to all persons within an enhanced program area, and that the waiting time for consumers is minimized. The department may operate test-only facilities on an interim basis to ensure convenience to consumers. The department shall specify in the request for proposal the minimum number of test-only facilities that are required for the program. Any contracts initially awarded pursuant to this section shall ensure that the contractors are capable of fulfilling the requirements of subdivision (a).

(i) Any data generated at a test-only facility shall be the property of the state, and shall be fully accessible to the department at any time. The department may set contract specifications for the storage of that data in a central data storage system or facility designated by the department.

(j) The department shall ensure an effective transition to the new program by implementing an effective public education program and may specify in the request for proposal a dollar amount that bidders are required to include in their bids for public education activities, to be implemented pursuant to Section 44070.5.

(k) The department shall ensure the effective management of the test-only facilities and shall specify in the request for proposal that a manager be present during all hours of station operation.
The department shall ensure and facilitate the effective transition of employees of businesses that are licensed or otherwise substantially participating in the smog check program and may specify in the request for proposal that test-only facility management be Automotive Service Excellence (ASE) certified, or be certified by a comparable program as determined by the department.

As part of the contracts to be awarded pursuant to subdivision (e), the department may require contractors to perform functions previously undertaken by referee stations throughout the state, as determined by the department, at some or all of the affected stations in enhanced areas, and at additional stations outside enhanced areas only to the extent necessary to provide appropriate access to referee functions.

Notwithstanding any other provision of law, to avoid delays to the program implementation timeline required by this chapter or the Clean Air Act, the Department of General Services, at the request of the department, may exempt contracts awarded pursuant to this section from existing laws, rules, resolutions, or procedures that are otherwise applicable, including, but not limited to, restrictions on awarding contracts for more than three years. The department shall identify any exemptions requested and granted pursuant to this subdivision and report thereon to the Legislature.

The department shall implement the program established in this section only in urbanized areas classified by the United States Environmental Protection Agency as a serious, severe, or extreme nonattainment area for ozone or a moderate or serious nonattainment area for carbon monoxide with a design value greater than 12.7 ppm, and shall not implement the program in any other area.

If existing smog check stations, in order to participate in the enhanced program, have been required to make additional investments of more than ten thousand dollars ($10,000), the department shall submit recommendations to the Governor and the Legislature for any appropriate mitigation measures.

SEC. 4. Section 44012 of the Health and Safety Code, as added by Section 5 of Chapter 739 of the Statutes of 2007, is amended to read:

44012. The test at the smog check stations shall be performed in accordance with procedures prescribed by the department;
pursuant to Section 44013, and shall may require, at a minimum, for all vehicles that are not diesel-powered, loaded mode dynamometer testing in enhanced areas, and two-speed testing in all other program areas, testing utilizing a vehicle’s on-board diagnostic system, or other appropriate test procedures as determined by the department in consultation with the state board. The department shall ensure all of, as appropriate to the test method, the following:

(a) Emission control systems required by state and federal law are reducing excess emissions in accordance with the standards adopted pursuant to subdivisions (a) and (c) of Section 44013.

(b) Motor vehicles are preconditioned to ensure representative and stabilized operation of the vehicle’s emission control system.

(c) For other than diesel-powered vehicles, the vehicle’s exhaust emissions of hydrocarbons, carbon monoxide, carbon dioxide, and oxides of nitrogen in an idle mode or loaded mode are tested in accordance with procedures prescribed by the department. In determining how loaded mode and evaporative emissions testing shall be conducted, the department shall ensure that the emission reduction targets for the enhanced program are met.

(d) For other than diesel-powered vehicles, the vehicle’s fuel evaporative system and crankcase ventilation system are tested to reduce any nonexhaust sources of volatile organic compound emissions, in accordance with procedures prescribed by the department.

(e) For diesel-powered vehicles, a visual inspection is made of emission control devices and the vehicle’s exhaust emissions are tested in accordance with procedures prescribed by the department, that may include, but are not limited to, on-board diagnostic testing. The test may include testing of emissions of any or all of the pollutants specified in subdivision (c) and, upon the adoption of applicable standards, measurement of emissions of smoke or particulates, or both.

(f) A visual or functional check is made of emission control devices specified by the department, including the catalytic converter in those instances in which the department determines it to be necessary to meet the findings of Section 44001. The visual or functional check shall be performed in accordance with procedures prescribed by the department.
(g) A determination as to whether the motor vehicle complies
with the emission standards for that vehicle’s class and model-year
as prescribed by the department.
(h) The test procedures may authorize smog check stations to
refuse the testing of a vehicle that would be unsafe to test, or that
cannot physically be inspected, as specified by the department by
regulation. The refusal to test a vehicle for those reasons shall not
excuse or exempt the vehicle from compliance with all applicable
requirements of this chapter.
(i) This section shall become operative on January 1, 2010.
SEC. 5. Section 44014 of the Health and Safety Code is
amended to read:
44014. (a) Except as otherwise provided in this chapter, the
testing and repair portion of the program shall be conducted by
smog check stations licensed by the department, and by smog
check technicians who have qualified pursuant to this chapter.
(b) (1) A smog check station may be licensed by the department
as a smog check test-only station and, when so licensed, need not
comply with the requirement for onsite availability of current
service and adjustment procedures specified in paragraph (3) of
subdivision (b) of Section 44030. A smog check technician
employed by a smog check test-only station shall be qualified in
accordance with this section.
(2) The department may authorize the placement of referees in
qualified test-only stations to provide referee services as a matter
of convenience to the public. The
c (1) The department shall supply those referees directly or
through a network of referees. A referee shall have
no ownership interest in the facility at which the referee is located,
or business or economic interest with, a smog check station.
Referees shall be solely responsible for issuing repair
cost waivers, certificates of compliance or noncompliance, and
hardship extensions, in accordance with regulations adopted by
the department, and for issuing exhaust system certificates
of compliance in accordance with Section 27150.2 of the Vehicle
Code. Referees shall make inspections of specially constructed
vehicles pursuant to Section 44017.4 and Section 9565 of the
Vehicle Code.
(2) The department may adopt regulations to establish qualification standards and any special administrative, operational, and licensure standards that the department determines to be necessary for test-only stations that perform the provision of referee services.

(3) The department may adopt, by regulation, a process by which vehicles that present prohibitive or unusual inspection circumstances are inspected by referees, including, but not limited to, the inspection of vehicles in which the manufacturer’s physical or operational design presents inspection incompatibilities, vehicles equipped with emission control configurations that do not match United States Environmental Protection Agency or state board certified configurations, including direct import vehicles and vehicles with engine changes, and vehicles equipped with retrofit alternative fuel conversion kits.

(4) (A) A referee may charge a fee sufficient to cover the costs of providing referee services for inspections of specially constructed vehicles pursuant to Section 44017.4 and Section 9565 of the Vehicle Code, inspections pursuant to Section 27150.2 of the Vehicle Code, and other appropriate categories of referee services as determined by the department. Requirements applicable to the fee, including its amount, shall be established by the department by regulation and the amount may be adjusted to reflect changes in the Consumer Price Index, as published by the United States Bureau of Labor Statistics. The fee may be collected by either a contracted referee or by the department, if the department is providing the referee service.

(B) If the fee is imposed and collected by a contracted referee, the contracted referee shall deposit the fees collected from the vehicle owner into a separate trust account that the referee shall account for and manage in accordance with generally accepted accounting practices.

(C) If the fee is imposed and collected by the department, the fees shall be deposited into the Vehicle Inspection and Repair Fund.

(d) A smog check station may also be licensed as a repair-only station, and if so licensed, may perform repairs to reduce excessive emissions on vehicles which have failed the smog check test. Repair procedures and equipment requirements shall be established
by the department. Technicians employed by a smog check repair-only station shall be qualified in accordance with this section.

(e) Smog check technicians are qualified to test and repair only those classes and categories of vehicles for which they have passed a qualification test administered by the department. The department shall provide for smog check technicians to be qualified for different categories of motor vehicle inspection based on vehicle classification and model-year.

(f) The consumer protection-oriented quality assurance portion of the program, including the provision of referee services, may be conducted by one or more private entities pursuant to contracts with the department.

SEC. 6. Section 44014.2 of the Health and Safety Code is amended to read:

44014.2. (a) The department shall develop a program for the voluntary certification of licensed smog check stations, or the department may accept a smog check station certification program proposed by accredited industry representatives. The certification program, which may be called a “gold shield” program, shall be for the purpose of providing consumers, whose vehicles fail an emissions test at a test-only facility, an option of services at a single location to prevent the necessity for additional trips back to the test-only facility for vehicle certification. The department may establish performance standards for stations certified under this program that the stations would be required to meet to be eligible to issue certificates of compliance or noncompliance for vehicles selected pursuant to Sections 44010.5 and 44014.7, or vehicles identified by the department as gross polluters.

(b) As soon as is practicable, but not later than January 1, 2004, the department shall adopt regulations that apply to all enhanced areas of the state, including those areas subject to the enhanced program pursuant to Section 44003.5, that permit both of the following:

(1) Any vehicle that fails a required smog test at a test-only facility may be repaired, retested, and certified at a facility licensed pursuant to Section 44014, and certified pursuant to subdivision (a).
(2) Any vehicle that is identified as a gross polluter may be repaired, retested, and certified at a facility licensed pursuant to Section 44014, and certified pursuant to subdivision (a).

(c) Smog check stations that seek voluntary certification under this section shall enter into an agreement with the department to provide repair services pursuant to Section 44062.1.

(d) An agreement made pursuant to this section shall not be deemed to be a contract subject to the requirements of Part 2 (commencing with Section 10100) of Division 2 of the Public Contract Code.

SEC. 7. Section 44014.5 of the Health and Safety Code is amended to read:

44014.5. (a) The enhanced program shall provide for the testing and retesting of vehicles in accordance with Sections 44010.5 and 44014.2 and this section.

(b) The repair of vehicles at test-only facilities shall be prohibited, except that the minor repair of components damaged by station personnel during inspection at the station, any minor repair that is necessary for the safe operation of a vehicle while at a station, or other minor repairs, such as the reconnection of hoses or vacuum lines, may be undertaken at no charge to the vehicle owner or operator if authorized in advance in writing by the department.

(c) The department shall provide for the distribution to consumers by test-only facilities of a list, compiled by region, of smog check stations licensed to make repairs of vehicular emission control systems. A test-only facility may not refer a vehicle owner to any particular provider of vehicle repair services.

(d) (1) The department shall establish standards for training, equipment, performance, or data collection for test-only facilities.

(2) (A) The department may establish performance standards that test-only stations would be required to meet to be eligible to issue certificates of compliance or noncompliance for vehicles selected pursuant to Section 44010.5 or 44014.7, or vehicles identified by the department as gross polluters. Failure at any time to meet these standards shall result in an automatic suspension by operation of law of the certification to test these vehicles granted by the department. A test-only station not meeting the performance standards may continue to issue certificates of compliance and noncompliance for other vehicles. The department shall adopt
measures to ensure the requirements of this subparagraph are met, including through the use of the computer database and computer network authorized by Section 44037.1.

(B) The department shall provide the test-only station with notice, written or electronic, of the suspension pursuant to subparagraph (A) within 24 hours of the suspension.

(C) A test-only station whose certification has been suspended pursuant to subparagraph (A) may apply to the department for a hearing to contest the evidence supporting the certification suspension. The application for a hearing shall be in writing and shall be received by the department within 30 days after the date of suspension. The department shall set the matter for a hearing within 30 days of receipt of the written request. The hearing requirements of Section 44072 shall not apply.

(e) The department shall prohibit test-only facilities from engaging in other business activities that represent a conflict of interest, as determined by the department.

(f) The test-only facility may charge a fee, established by the department, sufficient to cover the facility’s cost to perform the tests or services, including, but not limited to, referee services and the issuance of waivers and hardship extensions required by this chapter. In addition, the station shall charge and collect the certificate fee established pursuant to Section 44060. This subdivision shall apply only to facilities contracted for pursuant to subdivision (e) of Section 44010.5.

(g) The department shall ensure that there is a sufficient number of test-only facilities to provide convenient testing for the following vehicles:

1. All vehicles identified and confirmed as gross polluters pursuant to Section 44081 and Section 27156 of the Vehicle Code.
2. (A) Vehicles initially identified as gross polluters by a smog check station licensed as a test-and-repair station may be issued a certificate of compliance by a test-only facility or by a licensed smog check station certified pursuant to Section 44014.2.
   (B) For purposes of this section, the department shall implement a program that allows vehicles initially identified as gross polluters to be repaired and issued a certificate of compliance by a facility licensed and certified pursuant to Section 44014.2.
3. (3) All vehicles designated by the department pursuant to Sections 44014.7 and 44020.
(4) Vehicles issued an economic hardship extension in the previous biennial inspection of the vehicle.

(h) The department shall provide a sufficient number of test-only facilities authorized to perform referee functions to provide convenient testing for those vehicles that are required to report to, and receive a certificate of compliance from, a test-only facility by this chapter, including all of the following:

1. All vehicles seeking to utilize state-operated financial assistance or inclusion in authorized scrap programs.

2. All vehicles unable to obtain a certificate of compliance from a licensed smog check station pursuant to subdivision (c) of Section 44015.

3. Any other vehicles that may be designated by the department.

(i) Gross polluters shall be referred to a test-only facility, or a test-and-repair station that is both licensed and certified pursuant to Sections 44014 and 44014.2, for a postrepair inspection and retest pursuant to subdivision (g). Simply passing the emissions test shall not be a sufficient condition for receiving a certificate of compliance. A certificate of compliance shall only be issued to a vehicle that does not have any defects with its emission control system or any defects that could lead to damage of its emission control system, as provided in regulations adopted by the department.

SEC. 8. Section 44024.5 of the Health and Safety Code is amended to read:

44024.5. (a) The department shall compile and maintain statistical and emissions profiles of and data from motor vehicles that are subject to the motor vehicle inspection program. The department may use data from any source, including remote sensing data, in use data, and other motor vehicle inspection program data, to develop and confirm the validity of the profiles, to evaluate the program, and to assess the performance of smog check stations. The department shall undertake these requirements directly or seek a qualified vendor for these services.

(b) The department, in cooperation with the state board, shall perform periodic analyses of the statistical and emissions profiles created data collected pursuant to subdivision (a) and report the results to the public annually, beginning no later than July 1, 2011. The report shall include, at a minimum, all of the following:
An independent validation of the evaluation methods, findings, and conclusions presented in the report. The percentage of vehicles that initially passed a smog check inspection and then failed a subsequent inspection as indicated by the data collected pursuant to subdivision (a). The percentage of vehicles that initially failed a smog check inspection and then failed a subsequent inspection as indicated by the data collected pursuant to subdivision (a). An estimate of excessive emissions resulting from vehicles identified in paragraphs (2) and (3).

(c) The department and the state board, in consultation with the Inspection and Maintenance Review Committee, may determine that, in addition to the vehicles excepted pursuant to Section 44011, certain other motor vehicles may be excepted from the biennial certification requirements of this chapter without significantly compromising the emission reduction objectives set forth in the State Implementation Plan (SIP).

(d) The department may conduct a pilot program to except from the biennial certification requirement those vehicles that may be jointly determined by the department and the state board, after consultation with the Inspection and Maintenance Review Committee, to warrant exception. The department shall provide written notification to the Legislature specifying the number of vehicles to be exempted as well as the geographic location and duration of the pilot program not less than 30 days prior to the implementation of the pilot program. The department shall submit the results of the pilot program to the state board and the Inspection and Maintenance Review Committee for review. Subject to the approval of the United States Environmental Protection Agency as an amendment to the SIP, the department may establish the exception program as a permanent program.

(e) For vehicles four model years old or less, the department shall use test data generated pursuant to Section 44014.7 to develop statistical and emissions profiles. The department may use data from any source, including remote sensing data, warranty repair and recall data, and other motor vehicle inspection program data, to develop and confirm the validity of the data. If the department and state board jointly determine that the emissions from a class
of motor vehicles would potentially compromise the emission
reduction objectives set forth in the SIP, the state board shall
consider appropriate corrective action, including, but not limited
to, recall pursuant to Section 43105.
SEC. 9. 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) (1) All licensed smog check stations shall utilize original
equipment and replacement parts that are certified by the
department. The department may enter into a contract for the
supply or service of certified equipment with the manufacturers
and service providers of this equipment. The department shall
afford to the smog check station the option to purchase the
equipment or service directly from the contractor or any other
provider of certified equipment or service, as determined by the
department. A contract executed pursuant to this paragraph may
authorize compensation to the contractor as provided in
subdivision (c) of Section 44037.2.
(2) 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
(3) 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, and
update as necessary, equipment standards that may include a test analyzer system containing any or all of the following components:

(A) 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.

(B) 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.

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

(D) 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.

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

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

(G) 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.

(H) 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 in regulation the date by which all smog check stations are required 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. 10. Section 44050 of the Health and Safety Code is
repealed.

44050. (a) If, upon investigation, the department has probable
cause to believe that a licensed smog check station, a test-only
station contractor, or a fleet owner licensed under Section 44020
has violated this chapter, or any regulation adopted pursuant to
this chapter, the department may issue a citation to the licensee,
contractor, or fleet owner. The citation shall specify the nature of
the violation and may specify a civil penalty assessed by the
department pursuant to Section 44051 or 44051.5.
(b) If, upon investigation, the department has probable cause
to believe that a qualified smog check technician has violated
Section 44012, 44015, 44016, or 44032, or any regulation of the
department adopted pursuant to this chapter, the department may
issue a citation to the technician. The citation shall specify the
nature of the violation and, in addition, whichever of the following
applies:
(1) For a first citation, the smog check technician shall
successfully complete one or more retraining courses prescribed
by the department pursuant to subdivision (c) of Section 44031.5.
(2) For a second citation, the smog check technician shall
successfully complete one or more retraining courses prescribed
by the department pursuant to subdivision (c) of Section 44031.5
and the technician shall perform inspections or repairs pursuant
to this chapter under the direction of a technician in good standing,
as defined by the department.
(3) For a third citation, the smog check technician shall
successfully complete an advanced retraining course prescribed
by the department and shall perform no inspection or repair
pursuant to this chapter until that completion.
(4) For a fourth citation, the smog check technician’s
qualification may be permanently revoked.
(c) The citation shall be served pursuant to subdivision (c) of
Section 11505 of the Government Code.
SEC. 11. Section 44050 is added to the Health and Safety Code,
to read:
44050. (a) In addition to or in lieu of any other remedy or
penalty, the department may issue a citation to a licensee,
contractor, or fleet owner for a violation of the requirements of
this chapter or a regulation adopted pursuant to this chapter. The
citation may contain an order of abatement or the assessment of
an administrative fine, or both.
(b) An administrative fine issued pursuant to this section shall
not exceed five thousand dollars ($5,000) for each violation. The
department shall base its assessment of the administrative fine on
all of the following:
(1) The nature and seriousness of the violation.
(2) The persistence of the violation.
(3) The good faith of the violator.
(4) The history of previous violations by that violator, including
the commission of numerous and repeated violations.
(5) The failure to perform work for which money was received.
(6) The making of any false or misleading statement in order
to induce a person to authorize repair work or pay money.
(7) The failure to make restitution to consumers affected by the
violation.
(8) The extent to which the violator has mitigated or attempted
to mitigate any damage or injury caused by the violation.
(9) The purposes and goals of this chapter.
(c) An order of abatement issued pursuant to this section shall
fix a reasonable time for abatement of the violation. An order of
abatement may require any or all of the following:
(1) The licensee, contractor, or fleet owner to whom the citation
is issued to demonstrate how future compliance with this chapter,
and regulations adopted pursuant to this chapter, will be
accomplished. This demonstration may include, but is not limited
to, submission of a corrective action plan.
(2) The smog check technician to successfully complete one or more retraining courses prescribed by the department pursuant to subdivision (c) of Section 44031.5, or successfully complete one or more advanced retraining courses prescribed by the department, or both.

(3) The smog check technician to perform no inspection or repair pursuant to this chapter until training courses prescribed by the department are successfully completed.

(d) A citation issued pursuant to this section shall be in writing and shall describe the nature of the violation and the specific provision of law determined to have been violated. The citation shall inform in writing the licensee, contractor, or fleet owner of the right to request a hearing, as described in Section 44051. If a hearing is not requested, payment of the administrative fine shall not constitute an admission of the violation charged. If a hearing is requested, the department shall provide a hearing in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, except insofar as those provisions are inconsistent with the provisions of this article. Payment of the administrative fine shall be due 30 days after the citation was issued if a hearing is not requested, or when a final order is entered if a hearing is requested. The department may enforce the administrative fine as if it were a money judgment pursuant to Title 9 (commencing with Section 680.010) of Part 2 of the Code of Civil Procedure.

(e) Failure to comply with an order of abatement or payment of an administrative fine issued by the department pursuant to this section is grounds for suspension or revocation of the license, or placing the licensee on probation.

(f) Administrative fines collected pursuant to this section shall be deposited in the High Polluter Repair or Removal Account within the Vehicle Inspection and Repair Fund.

SEC. 12. Section 44050.5 of the Health and Safety Code is repealed.

44050.5. In assessing a civil penalty pursuant to Section 44050 against a person who has not previously been cited for a violation of the same statute or regulation, the department shall fix the penalty at an amount within the minimum and maximum penalties specified in Section 44051 or 44051.5, as the case may be, for each violation:
SEC. 13. Section 44051 of the Health and Safety Code is repealed.

44051. The civil penalty for a violation of the specified provisions of this chapter is as follows:

<table>
<thead>
<tr>
<th>Section</th>
<th>Short Description of Violation</th>
<th>Civil Penalty</th>
</tr>
</thead>
<tbody>
<tr>
<td>44002</td>
<td>Smog-check estimates and invoices</td>
<td>$50 $500</td>
</tr>
<tr>
<td>44012</td>
<td>No emission control system inspection, no emissions test, or inspection test procedures</td>
<td>$250 1,500</td>
</tr>
<tr>
<td>44014</td>
<td>Unlicensed smog-check station</td>
<td>$250 1,500</td>
</tr>
<tr>
<td>44015</td>
<td>Improper issuance of certificate, including economic hardship extension certificate</td>
<td>$150 1,000</td>
</tr>
<tr>
<td>44016</td>
<td>Failure to follow established repair procedures</td>
<td>$150 1,000</td>
</tr>
<tr>
<td>44017</td>
<td>Cost limit or economic hardship extension requirement</td>
<td>$150 1,000</td>
</tr>
<tr>
<td>44031.5</td>
<td>Test/repair by unlicensed smog-check station or nonqualified smog-check technician</td>
<td>$250 1,500</td>
</tr>
<tr>
<td>44032</td>
<td>Qualified smog-check technician required</td>
<td>$250 500</td>
</tr>
<tr>
<td>44033</td>
<td>Smog-check station requirement, test on condition of mandatory repair, written estimate requirements</td>
<td>$250 1,500</td>
</tr>
<tr>
<td>44036</td>
<td>Smog-check station certified equipment requirement</td>
<td>$150 1,500</td>
</tr>
</tbody>
</table>
SEC. 14. Section 44051 is added to the Health and Safety Code, to read:

44051. (a) If a person cited pursuant to Section 44050 wishes to contest the citation, that person shall, within 30 days after service of the citation, file in writing a request for an administrative hearing to the chief of the bureau or a designee.

(b) (1) In addition to, or instead of, requesting an administrative hearing pursuant to subdivision (a), the person cited pursuant to Section 44050 may, within 30 days after service of the citation, contest the citation by submitting a written request for an informal citation conference to the chief of the bureau or a designee.

(2) Upon receipt of a written request for an informal citation conference, the chief of the bureau or a designee shall, within 60 days of the request, hold an informal citation conference with the person requesting the conference. The cited person may be accompanied and represented by an attorney or other authorized representative.

(3) If an informal citation conference is held, the request for an administrative hearing shall be deemed withdrawn and the chief of the bureau, or designee, may affirm, modify, or dismiss the citation at the conclusion of the informal citation conference. If so affirmed or modified, the citation originally issued shall be considered withdrawn and an affirmed or modified citation, including reasons for the decision, shall be issued. The affirmed or modified citation shall be mailed to the cited person and that person’s counsel, if any, within 10 days of the date of the informal citation conference.

(4) If a cited person wishes to contest a citation affirmed or modified pursuant to paragraph (3), the person shall, within 30 days after service of the modified or affirmed citation, contest the affirmed or modified citation by submitting a written request for
an administrative hearing to the chief of the bureau or a designee. An informal citation conference shall not be held on affirmed or modified citations.

SEC. 15. Section 44051.5 of the Health and Safety Code is repealed.

44051.5. The civil penalty for a violation of the specified sections of Title 16 of the California Code of Regulations is as follows:

<table>
<thead>
<tr>
<th>Section</th>
<th>Short Description of Violation</th>
<th>Civil Penalty</th>
</tr>
</thead>
<tbody>
<tr>
<td>3340.10</td>
<td>Unlicensed operation of smog check station</td>
<td>$250–$1,500</td>
</tr>
<tr>
<td>3340.15</td>
<td>Smog check station general requirements</td>
<td>$500–$500</td>
</tr>
<tr>
<td>3340.16</td>
<td>Smog check station equipment and testing procedures</td>
<td>$500–$1,000</td>
</tr>
<tr>
<td>3340.16.5</td>
<td>Smog check station equipment and testing procedures</td>
<td>$500–$1,000</td>
</tr>
<tr>
<td>3340.17</td>
<td>Smog check station equipment maintenance and calibration</td>
<td>$500–$1,000</td>
</tr>
<tr>
<td>3340.22</td>
<td>Smog check station sign requirement</td>
<td>$500–$500</td>
</tr>
<tr>
<td>3340.22.1</td>
<td>Sign restrictions</td>
<td>$500–$500</td>
</tr>
<tr>
<td>3340.23</td>
<td>Smog check cease operations</td>
<td>$500–$1,500</td>
</tr>
<tr>
<td>3340.25</td>
<td>Licensed inspector requirement</td>
<td>$500–$1,000</td>
</tr>
<tr>
<td>3340.30</td>
<td>Qualified mechanic’s training and certification requirement</td>
<td>$500–$500</td>
</tr>
<tr>
<td>3340.35</td>
<td>Certification of compliance and noncompliance requirement</td>
<td>$500–$1,500</td>
</tr>
<tr>
<td>3340.37</td>
<td>NOx device/sticker requirement</td>
<td>$500–$500</td>
</tr>
<tr>
<td>3340.41</td>
<td>Inspection/test/repair requirement</td>
<td>$500–$1,000</td>
</tr>
<tr>
<td>3340.41.3</td>
<td>Invoice requirements</td>
<td>$500–$500</td>
</tr>
<tr>
<td>3340.42</td>
<td>Inspection standards, test procedures, and exhaust emissions requirement</td>
<td>$500–$500</td>
</tr>
</tbody>
</table>

SEC. 16. Section 44052 of the Health and Safety Code is amended to read:
44052. (a) When a citation lists more than one violation, the amount of the civil penalty or administrative fine assessed shall be stated separately for each statute and regulation violated.

(b) When a citation lists more than one violation arising from a single motor vehicle inspection or repair, the total penalties assessed shall not exceed two thousand five hundred dollars ($2,500) five thousand dollars ($5,000).

SEC. 17. Section 44053 of the Health and Safety Code is repealed.

44053. (a) Any person issued a citation pursuant to Section 44050 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 section 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.

(b) If, within 30 days from service of the citation, the licensee or fleet owner licensed pursuant to Section 44020 or qualified mechanic fails to request a hearing, the citation shall be deemed the final order of the department.

(c) As it applies to this article, the service required in Section 11505 of the Government Code includes service personally, by registered mail, or by courier with receipt of delivery.

SEC. 18. Section 44054 of the Health and Safety Code is repealed.

44054. In assessing a civil penalty pursuant to a citation issued pursuant to Section 44050, the director shall give due consideration to the gravity of the violation, including, but not limited to, a consideration of whether any of the following apply to the licensee:

(a) A failure to perform work for which money was received.

(b) The making of any false or misleading statement in order to induce a person to authorize repair work or pay money.

(c) The commission of numerous or repeated violations.

(d) A failure to make restitution to customers affected by the licensee’s violation.

SEC. 19. Section 44055 of the Health and Safety Code is amended to read:
44055. (a) Any failure by an applicant for a license or for the
renewal of a license, or by any partner, officer, or director thereof,
to comply with the final order of the department for the payment
civil penalties an administrative fine, or to pay the amount
specified in a settlement executed by the applicant and the Director
of the Department of Consumer Affairs, shall result in denial of a
license or of the renewal of the license. The department shall not
allow the issuance of any certificate of compliance or
noncompliance by a licensee until all civil penalties and
administrative fines which have become final, or amounts agreed
to in a settlement, have been paid by the licensee.
(b) The department may deny an application for the renewal
of a test station or repair station license if the applicant, or any
partner, officer, or director thereof, has failed to pay any civil
penalty or administrative fine in accordance with this article.
SEC. 20. Section 44056 of the Health and Safety Code is
amended to read:
44056. (a) Except as otherwise provided in Sections 44051
and 44051.5, any In addition to an administrative fine pursuant
to Section 44050, any person who violates this chapter, or any
order, rule, or regulation of the department adopted pursuant to
this chapter, is liable for a civil penalty of not less than one hundred
fifty dollars ($150) and not more than two thousand five hundred
dollars ($2,500) five thousand dollars ($5,000) for each day in
which each violation occurs. Any action to recover civil penalties
shall be brought by the Attorney General in the name of the state
on behalf of the department, or may be brought by any district
attorney, city attorney, or attorney for a district.
(b) The penalties specified in subdivision (a) do not apply to an
owner or operator of a motor vehicle, except an owner or operator
who does any of the following:
(1) Obtains, or who attempts to obtain, a certificate of
compliance or noncompliance, a repair cost waiver, or an economic
hardship extension without complying with Section 44015.
(2) Obtains, or attempts to obtain, a certificate of compliance,
repair cost waiver, or an economic hardship extension by means
of fraud, including, but not limited to, offering or giving any form
of financial or other inducement to any person for the purpose of
obtaining a certificate of compliance for a vehicle that has not been
tested or has been tested improperly.
(3) Registers a motor vehicle at an address other than the owner’s or operator’s residence address for the purpose of avoiding the requirements of this chapter.

(4) Obtains, or attempts to obtain, a certificate of compliance by other means when required to report to the test-only facility after being identified as a tampered vehicle or gross polluter pursuant to Section 44015 or 44081.

(c) Any person who obtains or attempts to obtain a repair cost waiver, or economic hardship extension pursuant to this chapter by falsifying information shall be subject to a civil penalty of not less than one hundred fifty dollars ($150) and not more than one thousand dollars ($1,000), five thousand dollars ($5,000), and shall be made ineligible for receiving any repair assistance of any kind pursuant to this chapter.

(d) Any person who obtains or attempts to obtain a certificate of compliance pursuant to this chapter by falsifying information shall be subject to a civil penalty of not more than five thousand dollars ($5,000).