

AMENDED IN ASSEMBLY APRIL 21, 2010

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

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 amended, 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~~ *between \$100 and \$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.

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

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

- 1 SECTION 1. Section 44001.1 is added to the Health and Safety
- 2 Code, to read:
- 3 44001.1. (a) The Legislature finds and declares that additional
- 4 reductions of motor vehicle emissions could be achieved by
- 5 effective repairs to motor vehicle emission control components.
- 6 (b) It is the intent of the Legislature that the department work
- 7 with the California Community Colleges and other training
- 8 institutions to encourage the development of innovative training
- 9 programs for motor vehicle technicians that focus on reducing air
- 10 pollution from vehicles needing repair and that increase the number
- 11 and skill level of motor vehicle technicians.

1 ~~SEC. 2. Section 44010 of the Health and Safety Code is~~
2 ~~amended to read:~~

3 ~~44010. (a) The motor vehicle inspection program shall provide~~
4 ~~for privately operated stations which shall be referred to as smog~~
5 ~~check stations and are authorized pursuant to Section 44015 to~~
6 ~~issue certificates of compliance or noncompliance to vehicles that~~
7 ~~meet the requirements of this chapter.~~

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

13 ~~SEC. 3.~~

14 ~~SEC. 2. Section 44010.5 of the Health and Safety Code is~~
15 ~~amended to read:~~

16 ~~44010.5. (a) The department shall implement a program with~~
17 ~~the capacity to commence, by January 1, 1995, the testing at~~
18 ~~test-only facilities, in accordance with this chapter, of 15 percent~~
19 ~~of that portion of the total state vehicle fleet consisting of vehicles~~
20 ~~subject to inspection each year in the biennial program and that~~
21 ~~are registered in the enhanced program area, as established pursuant~~
22 ~~to paragraph (1) of subdivision (a) of Section 44003.~~

23 ~~(b) (1) The department shall increase the capacity of the~~
24 ~~program so that the capacity exists to commence, by January 1,~~
25 ~~1996, the testing at test-only facilities of that portion of the state~~
26 ~~vehicle fleet that is subject to inspection and is registered in the~~
27 ~~enhanced program area, which is sufficient to meet the emission~~
28 ~~reduction performance standards established by the United States~~
29 ~~Environmental Protection Agency in regulations adopted pursuant~~
30 ~~to the Clean Air Act Amendments of 1990, taking into account~~
31 ~~the results of the pilot demonstration program established pursuant~~
32 ~~to Section 44081.6.~~

33 ~~(2) Upon increasing the capacity of the program pursuant to~~
34 ~~paragraph (1), the department shall afford smog check stations~~
35 ~~that are licensed and certified pursuant to Sections 44014 and~~
36 ~~44014.2 the initial opportunity to perform the required inspections.~~
37 ~~The department shall adopt, by regulation, the requirements to~~
38 ~~provide that initial opportunity.~~

39 ~~(3) If the department determines that there is an insufficient~~
40 ~~number of licensed test-only smog check stations operating in an~~

1 enhanced area to meet the increased demand for test-only
2 inspections, the department may increase the capacity of the
3 program by utilizing existing contracts.

4 (c) The program shall utilize the testing procedures described
5 in Section 44012. Vehicles selected for testing pursuant to this
6 section shall include vehicles equipped without second generation
7 on-board diagnostic systems (OBD II) and vehicles with emission
8 problems that may not be adequately detected by the vehicle's
9 OBD II, as determined by the department in consultation with the
10 state board.

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

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

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

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

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

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

1 (3) The department shall provide a contractual preference, as
2 determined by the department, not to exceed 10 percent of the total
3 proposal evaluation score, based on the following factors:

4 (A) Up to 5 percent to bidders providing firm commitments to
5 employ businesses that are licensed or otherwise substantially
6 participating in the smog check program after January 1, 1994.

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

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

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

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

34 (j) The department shall ensure an effective transition to the
35 new program by implementing an effective public education
36 program and may specify in the request for proposal a dollar
37 amount that bidders are required to include in their bids for public
38 education activities, to be implemented pursuant to Section
39 44070.5.

1 (k) The department shall ensure the effective management of
2 the test-only facilities and shall specify in the request for proposal
3 that a manager be present during all hours of station operation.

4 (l) The department shall ensure and facilitate the effective
5 transition of employees of businesses that are licensed or otherwise
6 substantially participating in the smog check program and may
7 specify in the request for proposal that test-only facility
8 management be Automotive Service Excellence (ASE) certified,
9 or be certified by a comparable program as determined by the
10 department.

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

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

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

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

1 ~~SEC. 4.~~

2 ~~SEC. 3.~~ Section 44012 of the Health and Safety Code, as added
3 by Section 5 of Chapter 739 of the Statutes of 2007, is amended
4 to read:

5 44012. The test at the smog check stations shall be performed
6 in accordance with procedures prescribed by the department and
7 may require loaded mode dynamometer testing in enhanced areas,
8 two-speed testing, testing utilizing a vehicle's onboard diagnostic
9 system, or other appropriate test procedures as determined by the
10 department in consultation with the state board. *If the department*
11 *implements testing using only on-board diagnostic systems, this*
12 *testing shall be implemented only on model year 2000 and newer*
13 *vehicles.* The department shall ensure, as appropriate to the test
14 method, the following:

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

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

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

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

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

1 (f) A visual or functional check is made of emission control
 2 devices specified by the department, including the catalytic
 3 converter in those instances in which the department determines
 4 it to be necessary to meet the findings of Section 44001. The visual
 5 or functional check shall be performed in accordance with
 6 procedures prescribed by the department.

7 (g) A determination as to whether the motor vehicle complies
 8 with the emission standards for that vehicle’s class and model-year
 9 as prescribed by the department.

10 (h) The test procedures may authorize smog check stations to
 11 refuse the testing of a vehicle that would be unsafe to test, or that
 12 cannot physically be inspected, as specified by the department by
 13 regulation. The refusal to test a vehicle for those reasons shall not
 14 excuse or exempt the vehicle from compliance with all applicable
 15 requirements of this chapter.

16 ~~SEC. 5.~~

17 *SEC. 4.* Section 44014 of the Health and Safety Code is
 18 amended to read:

19 44014. (a) Except as otherwise provided in this chapter, the
 20 testing and repair portion of the program shall be conducted by
 21 smog check stations licensed by the department, and by smog
 22 check technicians who have qualified pursuant to this chapter.

23 (b) A smog check station may be licensed by the department as
 24 a smog check test-only station and, when so licensed, need not
 25 comply with the requirement for onsite availability of current
 26 service and adjustment procedures specified in paragraph (3) of
 27 subdivision (b) of Section 44030. A smog check technician
 28 employed by a smog check test-only station shall be qualified in
 29 accordance with this section.

30 (c) (1) The department shall supply a network of referees. A
 31 referee shall have no ownership interest in, or business or economic
 32 interest with, a smog check station. Referees may issue repair cost
 33 waivers, certificates of compliance or noncompliance, and hardship
 34 extensions, in accordance with regulations adopted by the
 35 department, and issue exhaust system certificates of compliance
 36 in accordance with Section 27150.2 of the Vehicle Code. Referees
 37 shall make inspections of specially constructed vehicles pursuant
 38 to Section 44017.4 and Section 9565 of the Vehicle Code.

39 (2) The department may adopt regulations to establish
 40 qualification standards and any special administrative, operational,

1 and licensure standards that the department determines to be
2 necessary for the provision of referee services.

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

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

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

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

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

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

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

11 ~~SEC. 6.~~

12 *SEC. 5.* Section 44014.2 of the Health and Safety Code is
 13 amended to read:

14 44014.2. (a) The department shall develop a program for the
 15 voluntary certification of licensed smog check stations, or the
 16 department may accept a smog check station certification program
 17 proposed by accredited industry representatives. The certification
 18 program, which may be called a “gold shield” program, shall be
 19 for the purpose of providing consumers, whose vehicles fail an
 20 emissions test at a test-only facility, an option of services at a single
 21 location to prevent the necessity for additional trips back to the
 22 test-only facility for vehicle certification. The department may
 23 establish performance standards for stations certified under this
 24 program that the stations would be required to meet to be eligible
 25 to issue certificates of compliance or noncompliance for vehicles
 26 selected pursuant to Sections 44010.5 and 44014.7, or vehicles
 27 identified by the department as gross polluters.

28 (b) The department shall adopt regulations that apply to all
 29 enhanced areas of the state, including those areas subject to the
 30 enhanced program pursuant to Section 44003.5, that permit both
 31 of the following:

32 (1) Any vehicle that fails a required smog test at a test-only
 33 facility may be repaired, retested, and certified at a facility licensed
 34 pursuant to Section 44014, and certified pursuant to subdivision
 35 (a).

36 (2) Any vehicle that is identified as a gross polluter may be
 37 repaired, retested, and certified at a facility licensed pursuant to
 38 Section 44014, and certified pursuant to subdivision (a).

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

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

8 ~~SEC. 7.~~

9 *SEC. 6.* Section 44014.5 of the Health and Safety Code is
10 amended to read:

11 44014.5. (a) The enhanced program shall provide for the
12 testing and retesting of vehicles in accordance with Sections
13 44010.5 and 44014.2 and this section.

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

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

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

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

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

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

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

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

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

26 (1) All vehicles identified and confirmed as gross polluters
27 pursuant to Section 44081 and Section 27156 of the Vehicle Code.

28 (2) (A) Vehicles initially identified as gross polluters by a smog
29 check station licensed as a test-and-repair station may be issued a
30 certificate of compliance by a test-only facility or by a licensed
31 smog check station certified pursuant to Section 44014.2.

32 (B) For purposes of this section, the department shall implement
33 a program that allows vehicles initially identified as gross polluters
34 to be repaired and issued a certificate of compliance by a facility
35 licensed and certified pursuant to Section 44014.2.

36 (3) All vehicles designated by the department pursuant to
37 Sections 44014.7 and 44020.

38 (4) Vehicles issued an economic hardship extension in the
39 previous biennial inspection of the vehicle.

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

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

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

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

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

21 ~~SEC. 8.~~

22 *SEC. 7.* Section 44024.5 of the Health and Safety Code is
23 amended to read:

24 44024.5. (a) The department shall compile and maintain
25 statistical and emissions profiles and data from motor vehicles that
26 are subject to the motor vehicle inspection program. The
27 department may use data from any source, including remote sensing
28 data, in use data, and other motor vehicle inspection program data,
29 to develop and confirm the validity of the profiles, to evaluate the
30 program, and to assess the performance of smog check stations.
31 The department shall undertake these requirements directly or seek
32 a qualified vendor for these services.

33 (b) The department, in cooperation with the state board, shall
34 perform analyses of data collected pursuant to subdivision (a) and
35 report the results to the public annually, beginning no later than
36 July 1, 2011. The report shall include, at a minimum, all of the
37 following:

38 (1) An independent validation of the evaluation methods,
39 findings, and conclusions presented in the report.

1 (2) The percentage of vehicles that initially passed a smog check
2 inspection and then failed a subsequent inspection as indicated by
3 the data collected pursuant to subdivision (a).

4 (3) The percentage of vehicles that initially failed a smog check
5 inspection and then failed a subsequent inspection as indicated by
6 the data collected pursuant to subdivision (a).

7 (4) An estimate of excessive emissions resulting from vehicles
8 identified in paragraphs (2) and (3).

9 (5) *Recommended changes to the smog check program to reduce*
10 *to a minimum the excess emissions identified in paragraph (4). In*
11 *developing the recommended changes, the department and the*
12 *state board shall undertake a thorough evaluation of the best*
13 *practices of other state smog check inspection programs, and shall*
14 *include in the recommendations how these other state best*
15 *practices can be incorporated into California's program. Program*
16 *recommendations pertaining to contracting with one or more*
17 *entities to manage smog check stations shall not be implemented*
18 *unless the Legislature, by statute, authorizes that contracting.*

19 (6) *A comparison to the findings of the report "Evaluation of*
20 *the California Smog Check Program Using Random Roadside*
21 *Data" dated March 12, 2009.*

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

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

1 as an amendment to the SIP, the department may establish the
2 exception program as a permanent program.

3 (e) For vehicles four model years old or less, the department
4 shall use test data generated pursuant to Section 44014.7 to develop
5 statistical and emissions profiles. The department may use data
6 from any source, including remote sensing data, warranty repair
7 and recall data, and other motor vehicle inspection program data,
8 to develop and confirm the validity of the data. If the department
9 and state board jointly determine that the emissions from a class
10 of motor vehicles would potentially compromise the emission
11 reduction objectives set forth in the SIP, the state board shall
12 consider appropriate corrective action, including, but not limited
13 to, recall pursuant to Section 43105.

14 ~~SEC. 9.~~

15 *SEC. 8.* Section 44036 of the Health and Safety Code is
16 amended to read:

17 44036. (a) The consumer protection-oriented quality assurance
18 portion of the motor vehicle inspection program shall ensure
19 uniform and consistent tests and repairs by all qualified smog check
20 technicians and licensed smog check stations throughout the state,
21 and shall include a number of stations providing referee functions
22 available to consumers.

23 (b) (1) All licensed smog check stations shall utilize original
24 equipment and replacement parts that are certified by the
25 department. The department may enter into a contract for the
26 supply or service of certified equipment with the manufacturers
27 and service providers of this equipment. The department shall
28 afford to the smog check station the option to purchase the
29 equipment or service directly from the contractor or any other
30 provider of certified equipment or service, as determined by the
31 department. A contract executed pursuant to this paragraph may
32 authorize compensation to the contractor as provided in subdivision
33 (c) of Section 44037.2.

34 (2) The department shall charge a fee for certification testing
35 of the equipment or the replacement parts. The fee for certification
36 testing of equipment shall be fixed by the department based upon
37 its actual costs of certification testing, shall be calculated from the
38 time that the equipment is submitted for certification testing until
39 the time that the certification testing is complete, and shall not
40 exceed ten thousand dollars (\$10,000). The fee for certification

1 testing of replacement parts shall be determined by the department
2 based upon its actual costs of certification testing, shall be
3 calculated from the time that the replacement part is submitted for
4 certification testing until the time that the certification testing is
5 complete, and shall not exceed two thousand five hundred dollars
6 (\$2,500).

7 (3) The department shall adopt, and may revise, standards for
8 certification and decertification of the equipment, that may include
9 a device for testing of emissions of oxides of nitrogen. The
10 department shall adopt, and update as necessary, equipment
11 standards that may include a test analyzer system containing any
12 or all of the following components:

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

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

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

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

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

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

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

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

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

11 (J) An interface capable of monitoring equipment used with
12 loaded mode testing, idle testing, onboard diagnostic testing, or
13 other tests prescribed by the department.

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

21 (c) The department shall require in regulation the date by which
22 all smog check stations are required to use equipment meeting the
23 requirements of subdivision (b). However, the department may
24 defer the requirement for any equipment, external to the chassis
25 of the test analyzer system, needed to read bar code information,
26 until a substantial portion of the vehicles subject to this chapter
27 are equipped with bar code labels. Prior to the imposition of a
28 requirement for equipment meeting the requirements of subdivision
29 (b), every smog check station shall use equipment meeting the
30 specifications of the department in effect on January 1, 1996.

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

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

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

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

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

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

34 (4) The citations shall be served pursuant to subdivision (c) of
35 Section 11505 of the Government Code. The manufacturer may
36 request a hearing in accordance with Chapter 5 (commencing with
37 Section 11500) of Part 1 of Division 3 of Title 2 of the Government
38 Code. A request for a hearing shall be submitted in writing within
39 30 days of service of the citation, and shall be delivered to the
40 office of the department in Sacramento. Hearings and related

1 procedures under this paragraph shall be conducted in the same
2 manner as proceedings for adjudication of an accusation under
3 that Chapter 5, except as otherwise specified in this article.

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

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

12 ~~SEC. 10.~~

13 *SEC. 9.* Section 44050 of the Health and Safety Code is
14 repealed.

15 ~~SEC. 11.~~

16 *SEC. 10.* Section 44050 is added to the Health and Safety Code,
17 to read:

18 44050. (a) In addition to or in lieu of any other remedy or
19 penalty, *including, but not limited to, education, training, or an*
20 *office conference*, the department may issue a citation to a licensee,
21 contractor, or fleet owner for a violation of the requirements of
22 this chapter or a regulation adopted pursuant to this chapter. The
23 citation may contain an order of abatement or the assessment of
24 an administrative fine, or both.

25 (b) An administrative fine issued pursuant to this section shall
26 ~~not exceed~~ *be at least one hundred dollars (\$100) but not more*
27 *than* five thousand dollars (\$5,000) for each violation. ~~The~~
28 ~~department shall base its assessment of the administrative fine on~~
29 *In assessing a fine, the department shall give due consideration*
30 *to the appropriateness of the amount of the fine, including an*
31 *evaluation of* all of the following:

32 (1) The nature ~~and~~, *gravity, severity, and* seriousness of the
33 violation.

34 (2) The persistence of the violation.

35 (3) The good faith *or willfulness* of the violator.

36 (4) The history of previous violations by that violator, including
37 the commission of numerous and repeated violations.

38 (5) The failure to perform work for which money was received.

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

1 (7) The failure to make restitution to consumers affected by the
2 violation.

3 (8) The extent to which the violator has mitigated or attempted
4 to mitigate any damage or injury caused by the violation.

5 (9) *The degree of incompetence or negligence in the*
6 *performance of duties and responsibilities.*

7 ~~(9)~~

8 (10) The purposes and goals of this chapter *and other matters*
9 *as may be appropriate.*

10 (c) An order of abatement issued pursuant to this section shall
11 fix a reasonable time for abatement of the violation. An order of
12 abatement may require any or all of the following:

13 (1) The licensee, contractor, or fleet owner to whom the citation
14 is issued to demonstrate how future compliance with this chapter,
15 and regulations adopted pursuant to this chapter, will be
16 accomplished. This demonstration may include, but is not limited
17 to, submission of a corrective action plan.

18 (2) The smog check technician to successfully complete one or
19 more retraining courses prescribed by the department pursuant to
20 subdivision (c) of Section 44031.5, or successfully complete one
21 or more advanced retraining courses prescribed by the department,
22 or both.

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

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

1 pursuant to Title 9 (commencing with Section 680.010) of Part 2
2 of the Code of Civil Procedure.

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

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

10 ~~SEC. 12.~~

11 *SEC. 11.* Section 44050.5 of the Health and Safety Code is
12 repealed.

13 ~~SEC. 13.~~

14 *SEC. 12.* Section 44051 of the Health and Safety Code is
15 repealed.

16 ~~SEC. 14.~~

17 *SEC. 13.* Section 44051 is added to the Health and Safety Code,
18 to read:

19 44051. (a) If a person cited pursuant to Section 44050 wishes
20 to contest the citation, that person shall, within 30 days after service
21 of the citation, file in writing a request for an administrative hearing
22 to the chief of the bureau or a designee.

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

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

34 (3) If an informal citation conference is held, the request for an
35 administrative hearing shall be deemed withdrawn and the chief
36 of the bureau, or designee, may affirm, modify, or dismiss the
37 citation at the conclusion of the informal citation conference. If
38 so affirmed or modified, the citation originally issued shall be
39 considered withdrawn and an affirmed or modified citation,
40 including reasons for the decision, shall be issued. The affirmed

1 or modified citation shall be mailed to the cited person and that
2 person’s counsel, if any, within 10 days of the date of the informal
3 citation conference.

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

11 ~~SEC. 15.~~

12 *SEC. 14.* Section 44051.5 of the Health and Safety Code is
13 repealed.

14 ~~SEC. 16.~~

15 *SEC. 15.* Section 44052 of the Health and Safety Code is
16 amended to read:

17 44052. (a) If a citation lists more than one violation, the
18 amount of the civil penalty or administrative fine assessed shall
19 be stated separately for each statute and regulation violated.

20 (b) If a citation lists more than one violation arising from a
21 single motor vehicle inspection or repair, the total penalties
22 assessed shall not exceed five thousand dollars (\$5,000).

23 ~~SEC. 17.~~

24 *SEC. 16.* Section 44053 of the Health and Safety Code is
25 repealed.

26 ~~SEC. 18.~~

27 *SEC. 17.* Section 44054 of the Health and Safety Code is
28 repealed.

29 ~~SEC. 19.~~

30 *SEC. 18.* Section 44055 of the Health and Safety Code is
31 amended to read:

32 44055. (a) Any failure by an applicant for a license or for the
33 renewal of a license, or by any partner, officer, or director thereof,
34 to comply with the final order of the department for the payment
35 of an administrative fine, or to pay the amount specified in a
36 settlement executed by the applicant and the Director of the
37 Department of Consumer Affairs, shall result in denial of a license
38 or of the renewal of the license. The department shall not allow
39 the issuance of any certificate of compliance or noncompliance
40 by a licensee until all civil penalties and administrative fines which

1 have become final, or amounts agreed to in a settlement, have been
2 paid by the licensee.

3 (b) The department may deny an application for the renewal
4 of a test station or repair station license if the applicant, or any
5 partner, officer, or director thereof, has failed to pay any civil
6 penalty or administrative fine in accordance with this article.

7 ~~SEC. 20.~~

8 *SEC. 19.* Section 44056 of the Health and Safety Code is
9 amended to read:

10 44056. (a) In addition to an administrative fine pursuant to
11 Section 44050, any person who violates this chapter, or any order,
12 rule, or regulation of the department adopted pursuant to this
13 chapter, is liable for a civil penalty of not more than five thousand
14 dollars (\$5,000) for each day in which each violation occurs. Any
15 action to recover civil penalties shall be brought by the Attorney
16 General in the name of the state on behalf of the department, or
17 may be brought by any district attorney, city attorney, or attorney
18 for a district.

19 (b) The penalties specified in subdivision (a) do not apply to an
20 owner or operator of a motor vehicle, except an owner or operator
21 who does any of the following:

22 (1) Obtains, or who attempts to obtain, a certificate of
23 compliance or noncompliance, a repair cost waiver, or an economic
24 hardship extension without complying with Section 44015.

25 (2) Obtains, or attempts to obtain, a certificate of compliance,
26 a repair cost waiver, or an economic hardship extension by means
27 of fraud, including, but not limited to, offering or giving any form
28 of financial or other inducement to any person for the purpose of
29 obtaining a certificate of compliance for a vehicle that has not been
30 tested or has been tested improperly.

31 (3) Registers a motor vehicle at an address other than the
32 owner's or operator's residence address for the purpose of avoiding
33 the requirements of this chapter.

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

38 (c) Any person who obtains or attempts to obtain a repair cost
39 waiver, or economic hardship extension pursuant to this chapter
40 by falsifying information shall be subject to a civil penalty of not

1 more than five thousand dollars (\$5,000), and shall be made
2 ineligible for receiving any repair assistance of any kind pursuant
3 to this chapter.

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

O