

AMENDED IN ASSEMBLY MAY 28, 2010

AMENDED IN ASSEMBLY APRIL 21, 2010

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2289**

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**Introduced by Assembly Member Eng**

February 18, 2010

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An act to amend Sections 44010.5, 44012, 44014, 44014.2, 44014.5, 44024.5, 44036, 44052, 44055, and 44056 of, to add ~~Section 44001.1~~ *Sections 44001.1 and 44014.6* 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 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 *inspection-based* 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 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 *identify funding mechanisms that* encourage the  
9 development of innovative training programs for motor vehicle  
10 technicians that focus on reducing air pollution from vehicles

1 needing repair and that increase the number and skill level of motor  
2 vehicle technicians.

3 SEC. 2. Section 44010.5 of the Health and Safety Code is  
4 amended to read:

5 44010.5. (a) The department shall implement a program with  
6 the capacity to commence, by January 1, 1995, the testing at  
7 test-only facilities, in accordance with this chapter, of 15 percent  
8 of that portion of the total state vehicle fleet consisting of vehicles  
9 subject to inspection each year in the biennial program and that  
10 are registered in the enhanced program area, as established pursuant  
11 to paragraph (1) of subdivision (a) of Section 44003.

12 (b) (1) The department shall increase the capacity of the  
13 program so that the capacity exists to commence, by January 1,  
14 1996, the testing at test-only facilities of that portion of the state  
15 vehicle fleet that is subject to inspection and is registered in the  
16 enhanced program area, which is sufficient to meet the emission  
17 reduction performance standards established by the United States  
18 Environmental Protection Agency in regulations adopted pursuant  
19 to the Clean Air Act Amendments of 1990, taking into account  
20 the results of the pilot demonstration program established pursuant  
21 to Section 44081.6.

22 (2) Upon increasing the capacity of the program pursuant to  
23 paragraph (1), the department shall afford smog check stations  
24 that are licensed and certified pursuant to Sections 44014 and  
25 44014.2 the initial opportunity to perform the required inspections.  
26 The department shall adopt, by regulation, the requirements to  
27 provide that initial opportunity.

28 (3) If the department determines that there is an insufficient  
29 number of licensed test-only smog check stations operating in an  
30 enhanced area to meet the increased demand for test-only  
31 inspections, the department may increase the capacity of the  
32 program by utilizing existing contracts.

33 (c) The program shall utilize the testing procedures described  
34 in Section 44012. ~~Vehicles Beginning January 1, 2013, vehicles~~  
35 selected for testing pursuant to this section shall include vehicles  
36 equipped without second generation on-board diagnostic systems  
37 (OBD II) and vehicles with emission problems that may not be  
38 adequately detected by the vehicle's OBD II, as determined by the  
39 department in consultation with the state board. *The department,*  
40 *in consultation with the state board, may also select for testing*

1 *pursuant to this section any other vehicles necessary in order to*  
2 *meet the requirement described in paragraph (1) of subdivision*  
3 *(b).*

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

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

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

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

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

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

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

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

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

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

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

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

28 (j) The department shall ensure an effective transition to the  
29 new program by implementing an effective public education  
30 program and may specify in the request for proposal a dollar  
31 amount that bidders are required to include in their bids for public  
32 education activities, to be implemented pursuant to Section  
33 44070.5.

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

37 (l) The department shall ensure and facilitate the effective  
38 transition of employees of businesses that are licensed or otherwise  
39 substantially participating in the smog check program and may  
40 specify in the request for proposal that test-only facility

1 management be Automotive Service Excellence (ASE) certified,  
 2 or be certified by a comparable program as determined by the  
 3 department.

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

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

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

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

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

35 44012. The test at the smog check stations shall be performed  
 36 in accordance with procedures prescribed by the department and  
 37 may require loaded mode dynamometer testing in enhanced areas,  
 38 two-speed testing, testing utilizing a vehicle’s onboard diagnostic  
 39 system, or other appropriate test procedures as determined by the  
 40 department in consultation with the state board. If the department

1 implements testing using only on-board diagnostic systems, this  
2 testing shall be implemented only on model year 2000 and newer  
3 vehicles. The department shall ensure, as appropriate to the test  
4 method, the following:

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

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

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

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

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

30 (f) A visual or functional check is made of emission control  
31 devices specified by the department, including the catalytic  
32 converter in those instances in which the department determines  
33 it to be necessary to meet the findings of Section 44001. The visual  
34 or functional check shall be performed in accordance with  
35 procedures prescribed by the department.

36 (g) A determination as to whether the motor vehicle complies  
37 with the emission standards for that vehicle's class and model-year  
38 as prescribed by the department.

39 (h) The test procedures may authorize smog check stations to  
40 refuse the testing of a vehicle that would be unsafe to test, or that

1 cannot physically be inspected, as specified by the department by  
 2 regulation. The refusal to test a vehicle for those reasons shall not  
 3 excuse or exempt the vehicle from compliance with all applicable  
 4 requirements of this chapter.

5 SEC. 4. Section 44014 of the Health and Safety Code is  
 6 amended to read:

7 44014. (a) Except as otherwise provided in this chapter, the  
 8 testing and repair portion of the program shall be conducted by  
 9 smog check stations licensed by the department, and by smog  
 10 check technicians who have qualified pursuant to this chapter.

11 (b) A smog check station may be licensed by the department as  
 12 a smog check test-only station and, when so licensed, need not  
 13 comply with the requirement for onsite availability of current  
 14 service and adjustment procedures specified in paragraph (3) of  
 15 subdivision (b) of Section 44030. A smog check technician  
 16 employed by a smog check test-only station shall be qualified in  
 17 accordance with this section.

18 (c) (1) The department shall supply a network of referees. A  
 19 referee shall have no ownership interest in, or business or economic  
 20 interest with, a smog check station. Referees may issue repair cost  
 21 waivers, certificates of compliance or noncompliance, and hardship  
 22 extensions, in accordance with regulations adopted by the  
 23 department, and ~~issue exhaust system certificates of compliance~~  
 24 ~~in accordance with Section 27150.2 of the Vehicle Code~~ *promote*  
 25 *automotive training through community colleges and other training*  
 26 *institutions certified by the department pursuant to Section 44030.5.*  
 27 Referees shall ~~make inspections of~~ *provide inspection services for*  
 28 *specially constructed vehicles pursuant to Section 44017.4 and*  
 29 *Section 9565 of the Vehicle Code and issue exhaust system*  
 30 *certificates of compliance in accordance with Section 27150.2 of*  
 31 *the Vehicle Code.*

32 (2) The department may adopt regulations to establish  
 33 qualification standards and any special administrative, operational,  
 34 and licensure standards that the department determines to be  
 35 necessary for the provision of referee services.

36 (3) The department may adopt, by regulation, a process by which  
 37 vehicles that present prohibitive or unusual inspection  
 38 circumstances are inspected by referees, including, but not limited  
 39 to, the inspection of vehicles in which the manufacturer's physical  
 40 or operational design presents inspection incompatibilities, vehicles

1 equipped with emission control configurations that do not match  
2 United States Environmental Protection Agency or state board  
3 certified configurations, including direct import vehicles and  
4 vehicles with engine changes, and vehicles equipped with retrofit  
5 alternative fuel conversion kits.

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

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

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

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

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

39 (f) The consumer protection-oriented quality assurance portion  
40 of the program, including the provision of referee services, may

1 be conducted by one or more private entities pursuant to contracts  
2 with the department.

3 SEC. 5. Section 44014.2 of the Health and Safety Code is  
4 amended to read:

5 44014.2. (a) The department shall develop a program for the  
6 voluntary certification of licensed smog check stations, or the  
7 department may accept a smog check station certification program  
8 proposed by accredited industry representatives. The certification  
9 program, which may be called a “gold shield” program, shall be  
10 for the purpose of providing consumers, whose vehicles fail an  
11 emissions test at a test-only facility, an option of services at a single  
12 location to prevent the necessity for additional trips back to the  
13 test-only facility for vehicle certification. The department may  
14 establish ~~performance standards~~ *inspection-based performance*  
15 *standards consistent with Section 44014.6* for stations certified  
16 under this program that the stations would be required to meet to  
17 be eligible to issue certificates of compliance or noncompliance  
18 for vehicles selected pursuant to Sections 44010.5 and 44014.7,  
19 or vehicles identified by the department as gross polluters.

20 (b) The department shall adopt regulations that apply to all  
21 enhanced areas of the state, including those areas subject to the  
22 enhanced program pursuant to Section 44003.5, that permit both  
23 of the following:

24 (1) Any vehicle that fails a required smog test at a test-only  
25 facility may be repaired, retested, and certified at a facility licensed  
26 pursuant to Section 44014, and certified pursuant to subdivision  
27 (a).

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

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

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

38 SEC. 6. Section 44014.5 of the Health and Safety Code is  
39 amended to read:

1 44014.5. (a) The enhanced program shall provide for the  
2 testing and retesting of vehicles in accordance with Sections  
3 44010.5 and 44014.2 and this section.

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

11 (c) The department shall provide for the distribution to  
12 consumers by test-only facilities of a list, compiled by region, of  
13 smog check stations licensed to make repairs of vehicular emission  
14 control systems. A test-only facility ~~may~~ shall not refer a vehicle  
15 owner to any particular provider of vehicle repair services *in which*  
16 *the test-only facility has a financial interest.*

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

19 (2) (A) The department ~~may establish performance standards~~  
20 *inspection-based performance standards consistent with Section*  
21 *44014.6* that test-only stations would be required to meet to be  
22 eligible to issue certificates of compliance or noncompliance for  
23 vehicles selected pursuant to Section 44010.5 or 44014.7, or  
24 vehicles identified by the department as gross polluters. Failure at  
25 any time to meet these standards shall result in an automatic  
26 suspension by operation of law of the certification to test these  
27 vehicles granted by the department. A test-only station not meeting  
28 the performance standards may continue to issue certificates of  
29 compliance and noncompliance for other vehicles. The department  
30 shall adopt measures to ensure the requirements of this  
31 subparagraph are met, including through the use of the computer  
32 database and computer network authorized by Section 44037.1.

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

36 (C) A test-only station whose certification has been suspended  
37 pursuant to subparagraph (A) may apply to the department for a  
38 hearing to contest the evidence supporting the certification  
39 suspension. The application for a hearing shall be in writing and  
40 shall be received by the department within 30 days after the date

1 of suspension. The department shall set the matter for a hearing  
2 within 30 days of receipt of the written request. The hearing  
3 requirements of Section 44072 shall not apply.

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

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

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

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

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

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

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

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

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

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

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

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

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

14 *SEC. 7. Section 44014.6 is added to the Health and Safety*  
15 *Code, to read:*

16 *44014.6. (a) The inspection-based performance standards*  
17 *created pursuant to subdivision (a) of Section 44014.2 and the*  
18 *inspection-based performance standards created pursuant to*  
19 *paragraph (2) of subdivision (d) of Section 44014.5 shall be based*  
20 *on the same criteria.*

21 *(b) The performance standards described in subdivision (a), if*  
22 *established, shall be applied to smog check technicians licensed*  
23 *pursuant to this chapter, if the department determines that is*  
24 *feasible.*

25 *(c) Beginning no later than January 1, 2012, if the performance*  
26 *standards described in subdivision (a) are established, the*  
27 *department shall provide to all licensed smog check stations and*  
28 *technicians, if technicians are included pursuant to subdivision*  
29 *(b), a preliminary report on the station's and the technician's*  
30 *performance applying the performance standards. The preliminary*  
31 *report shall include the criteria that is the basis of the performance*  
32 *standards and an assessment of the station's and the technician's*  
33 *potential eligibility to issue certificates of compliance or*  
34 *noncompliance for vehicles selected pursuant to Sections 44010.5*  
35 *and 44014.7, or vehicles identified by the department as gross*  
36 *polluters.*

37 ~~SEC. 7.~~

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

1 44024.5. (a) The department shall compile and maintain  
 2 statistical and emissions profiles and data from motor vehicles that  
 3 are subject to the motor vehicle inspection program. The  
 4 department may use data from any source, including remote sensing  
 5 data, in use data, and other motor vehicle inspection program data,  
 6 to develop and confirm the validity of the profiles, to evaluate the  
 7 program, and to assess the performance of smog check stations.  
 8 The department shall undertake these requirements directly or seek  
 9 a qualified vendor for these services.

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

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

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

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

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

25 (5) *A best-efforts explanation regarding the reasons vehicles*  
 26 *identified in paragraphs (2) and (3) inappropriately failed or*  
 27 *passed an inspection.*

28 ~~(5)~~

29 (6) Recommended changes to the smog check program to reduce  
 30 to a minimum the excess emissions identified in paragraph (4). In  
 31 developing the recommended changes, the department and the  
 32 state board shall undertake a thorough evaluation of the best  
 33 practices of other state smog check inspection programs, and shall  
 34 include in the recommendations how these other state best practices  
 35 can be incorporated into California's program. Program  
 36 recommendations pertaining to contracting with one or more  
 37 entities to manage smog check stations shall not be implemented  
 38 unless the Legislature, by statute, authorizes that contracting.

39 ~~(6)~~

1 (7) A comparison to the findings of the report “Evaluation of  
2 the California Smog Check Program Using Random Roadside  
3 Data” dated March 12, 2009.

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

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

25 (e) For vehicles four model years old or less, the department  
26 shall use test data generated pursuant to Section 44014.7 to develop  
27 statistical and emissions profiles. The department may use data  
28 from any source, including remote sensing data, warranty repair  
29 and recall data, and other motor vehicle inspection program data,  
30 to develop and confirm the validity of the data. If the department  
31 and state board jointly determine that the emissions from a class  
32 of motor vehicles would potentially compromise the emission  
33 reduction objectives set forth in the SIP, the state board shall  
34 consider appropriate corrective action, including, but not limited  
35 to, recall pursuant to Section 43105.

36 ~~SEC. 8.~~

37 *SEC. 9.* Section 44036 of the Health and Safety Code is  
38 amended to read:

39 44036. (a) The consumer protection-oriented quality assurance  
40 portion of the motor vehicle inspection program shall ensure

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

5 (b) (1) All licensed smog check stations shall utilize original  
6 equipment and replacement parts that are certified by the  
7 department. The department may enter into a contract for the  
8 supply or service of certified equipment with the manufacturers  
9 and service providers of this equipment. The department shall  
10 afford to the smog check station the option to purchase the  
11 equipment or service directly from the contractor or any other  
12 provider of certified equipment or service, as determined by the  
13 department. A contract executed pursuant to this paragraph may  
14 authorize compensation to the contractor as provided in subdivision  
15 (c) of Section 44037.2.

16 (2) The department shall charge a fee for certification testing  
17 of the equipment or the replacement parts. The fee for certification  
18 testing of equipment shall be fixed by the department based upon  
19 its actual costs of certification testing, shall be calculated from the  
20 time that the equipment is submitted for certification testing until  
21 the time that the certification testing is complete, and shall not  
22 exceed ten thousand dollars (\$10,000). The fee for certification  
23 testing of replacement parts shall be determined by the department  
24 based upon its actual costs of certification testing, shall be  
25 calculated from the time that the replacement part is submitted for  
26 certification testing until the time that the certification testing is  
27 complete, and shall not exceed two thousand five hundred dollars  
28 (\$2,500).

29 (3) The department shall adopt, and may revise, standards for  
30 certification and decertification of the equipment, that may include  
31 a device for testing of emissions of oxides of nitrogen. The  
32 department shall adopt, and update as necessary, equipment  
33 standards that may include a test analyzer system containing any  
34 or all of the following components:

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

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

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

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

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

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

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

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

26 (I) One or more communications ports conforming to the  
27 specifications established by the department as necessary to provide  
28 real time communication, or communication that is consistent with  
29 maintaining a superior quality assurance program and efficient  
30 information transfer, between the test equipment and the centralized  
31 computer database through the computer network maintained by  
32 the department pursuant to Section 44037.1.

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

36 (K) Any other features that the department determines are  
37 necessary to increase the effectiveness of the program, including,  
38 but not limited to, a loaded mode dynamometer for purposes of  
39 oxides of nitrogen detection, and other equipment necessary to  
40 detect nonexhaust-related volatile organic compound emissions,

1 such as those found in fuel system evaporative emissions and  
2 crankcase ventilation emissions.

3 ~~(e) The department shall require in regulation the date by which~~  
4 ~~all smog check stations are required to use equipment meeting the~~  
5 ~~requirements of subdivision (b)~~

6 (c) (1) *If the department revises standards for certification and*  
7 *decertification of equipment pursuant to subdivision (b) of Section*  
8 *44036, the department shall not require smog check stations to*  
9 *use equipment that meets these revised requirements earlier than*  
10 *January 1, 2013.* ~~However, the~~

11 (2) *If existing smog check stations licenced pursuant to this*  
12 *chapter or training institutions certified pursuant to Section*  
13 *44030.5 are required to make investments of more than ten*  
14 *thousand dollars (\$10,000) to acquire equipment to meet the*  
15 *requirements of this subdivision, the department shall submit*  
16 *recommendations to the Governor and the Legislature for any*  
17 *appropriate mitigation measures, including, but not limited to,*  
18 *subsidies, equipment leases, grants, or loans.*

19 (3) *The department may defer the requirement for any*  
20 *equipment, external to the chassis of the test analyzer system,*  
21 *needed to read bar code information, until a substantial portion of*  
22 *the vehicles subject to this chapter are equipped with bar code*  
23 *labels.* ~~Prior~~

24 (4) *Prior to the imposition of a requirement for equipment*  
25 *meeting the requirements of subdivision (b), every smog check*  
26 *station shall use equipment meeting the specifications of the*  
27 *department in effect on January 1, 1996.*

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

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

39 (f) (1) *Equipment manufacturers shall furnish to the department,*  
40 *and shall install, software and hardware updates as specified by*

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

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

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

30 (4) The citations shall be served pursuant to subdivision (c) of  
31 Section 11505 of the Government Code. The manufacturer may  
32 request a hearing in accordance with Chapter 5 (commencing with  
33 Section 11500) of Part 1 of Division 3 of Title 2 of the Government  
34 Code. A request for a hearing shall be submitted in writing within  
35 30 days of service of the citation, and shall be delivered to the  
36 office of the department in Sacramento. Hearings and related  
37 procedures under this paragraph shall be conducted in the same  
38 manner as proceedings for adjudication of an accusation under  
39 that Chapter 5, except as otherwise specified in this article.

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

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

9 ~~SEC. 9.~~

10 *SEC. 10.* Section 44050 of the Health and Safety Code is  
11 repealed.

12 ~~SEC. 10.~~

13 *SEC. 11.* Section 44050 is added to the Health and Safety Code,  
14 to read:

15 44050. (a) In addition to or in lieu of any other remedy or  
16 penalty, including, but not limited to, education, training, or an  
17 office conference, the department may issue a citation to a licensee,  
18 contractor, or fleet owner for a violation of the requirements of  
19 this chapter or a regulation adopted pursuant to this chapter. The  
20 citation may contain an order of abatement or the assessment of  
21 an administrative fine, or both.

22 (b) An administrative fine issued pursuant to this section shall  
23 be at least one hundred dollars (\$100) but not more than five  
24 thousand dollars (\$5,000) for each violation. In assessing a fine,  
25 the department shall give due consideration to the appropriateness  
26 of the amount of the fine, including an evaluation of all of the  
27 following:

- 28 (1) The nature, gravity, severity, and seriousness of the violation.
- 29 (2) The persistence of the violation.
- 30 (3) The good faith or willfulness of the violator.
- 31 (4) The history of previous violations by that violator, including  
32 the commission of numerous and repeated violations.
- 33 (5) The failure to perform work for which money was received.
- 34 (6) The making of any false or misleading statement in order  
35 to induce a person to authorize repair work or pay money.
- 36 (7) The failure to make restitution to consumers affected by the  
37 violation.
- 38 (8) The extent to which the violator has mitigated or attempted  
39 to mitigate any damage or injury caused by the violation.

1 (9) The degree of incompetence or negligence in the  
2 performance of duties and responsibilities.

3 (10) The purposes and goals of this chapter and other matters  
4 as may be appropriate.

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

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

13 (2) The smog check technician to successfully complete one or  
14 more retraining courses prescribed by the department pursuant to  
15 subdivision (c) of Section 44031.5, or successfully complete one  
16 or more advanced retraining courses prescribed by the department,  
17 or both.

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

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

38 (e) Failure to comply with an order of abatement or payment  
39 of an administrative fine issued by the department pursuant to this

1 section is grounds for suspension or revocation of the license, or  
 2 placing the licensee on probation.

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

6 ~~SEC. 11.~~

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

9 ~~SEC. 12.~~

10 *SEC. 13.* Section 44051 of the Health and Safety Code is  
 11 repealed.

12 ~~SEC. 13.~~

13 *SEC. 14.* Section 44051 is added to the Health and Safety Code,  
 14 to read:

15 44051. (a) If a person cited pursuant to Section 44050 wishes  
 16 to contest the citation, that person shall, within 30 days after service  
 17 of the citation, file in writing a request for an administrative hearing  
 18 to the chief of the bureau or a designee.

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

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

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

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

8 ~~SEC. 14.~~

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

11 ~~SEC. 15.~~

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

14 44052. (a) If a citation lists more than one violation, the  
15 amount of the civil penalty or administrative fine assessed shall  
16 be stated separately for each statute and regulation violated.

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

20 ~~SEC. 16.~~

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

23 ~~SEC. 17.~~

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

26 ~~SEC. 18.~~

27 *SEC. 19.* Section 44055 of the Health and Safety Code is  
28 amended to read:

29 44055. (a) Any failure by an applicant for a license or for the  
30 renewal of a license, or by any partner, officer, or director thereof,  
31 to comply with the final order of the department for the payment  
32 of an administrative fine, or to pay the amount specified in a  
33 settlement executed by the applicant and the Director of the  
34 Department of Consumer Affairs, shall result in denial of a license  
35 or of the renewal of the license. The department shall not allow  
36 the issuance of any certificate of compliance or noncompliance  
37 by a licensee until all civil penalties and administrative fines which  
38 have become final, or amounts agreed to in a settlement, have been  
39 paid by the licensee.

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

5 ~~SEC. 19.~~

6 *SEC. 20.* Section 44056 of the Health and Safety Code is  
7 amended to read:

8 44056. (a) In addition to an administrative fine pursuant to  
9 Section 44050, any person who violates this chapter, or any order,  
10 rule, or regulation of the department adopted pursuant to this  
11 chapter, is liable for a civil penalty of not more than five thousand  
12 dollars (\$5,000) for each day in which each violation occurs. Any  
13 action to recover civil penalties shall be brought by the Attorney  
14 General in the name of the state on behalf of the department, or  
15 may be brought by any district attorney, city attorney, or attorney  
16 for a district. *In assessing a civil penalty pursuant to this*  
17 *subdivision due consideration shall be given to the factors*  
18 *identified in subdivision (b) of Section 44050.*

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