

BUREAU OF AUTOMOTIVE REPAIR
PROPOSED LANGUAGE
CITATION PROGRAM FOR AUTOMOTIVE REPAIR DEALERS

Legend: Added text is indicated by underlining.
 Deleted text is indicated by ~~striethrough~~.
 Omitted text is indicated by (* * * *)

(1) Amend Article 6, Chapter 1, Division 33, Title 16, California Code of Regulations, to read as follows:

§ 3351.7 Negligence.

(a) An automotive repair dealer shall not commit negligence in the maintenance of and/or repairs to a motor vehicle.

(b) "Negligence" means deviation from the standard of care of an automotive repair dealer that could foreseeably result in injury or harm to a consumer, personal property, or the public during or as a result of maintenance and/or repair of a motor vehicle.

Note: Authority cited: Sections 9882, Business and Professions Code. Reference: Sections 9880.1, 9884.7, and 9884.19, Business and Professions Code.

(2) Amend Article 7, Chapter 1, Division 33, Title 16, California Code of Regulations, to read as follows:

§ 3358 Maintenance of Records.

Pursuant to Section 9884.11 of the Business and Professions Code, each automotive repair dealer shall maintain, in either written or electronic form, legible copies of the following records for at least three years:

(a) All invoices relating to automotive repair including invoices received from other sources for parts and/or labor.

(b) All estimates pertaining to work performed, including all records created to obtain the authorization from the customer for the initial estimate.

(c) All work orders and/or contracts for repairs, parts and labor, including all records supplementing the work order and created to obtain additional authorization from the customer for any additional repairs estimated.

(d)(1) All such records shall be open for reasonable inspection and/or reproduction by the Bureau or other law enforcement officials during normal business hours.

(2) Records requested by the Bureau in response to a specific consumer complaint shall be made available for inspection and/or reproduction by the Bureau within five business days.

(e) All records as specified in this section associated with an individual transaction shall have a unique identifier linking the records to that specific transaction.

Note: Authority cited: Sections 9882 and 9884.11, Business and Professions Code. Reference: Section 9884.11, Business and Professions Code.

(3) Amend Article 11.1, Chapter 1, Division 33, Title 16, California Code of Regulations, to read as follows:

ARTICLE 11.1. Administrative Citations and Administrative Fines for Motor Vehicle Inspection Program (“Smog Check”) Violations-Licensees

§ 3394.25 Authority to Issue Administrative Citations and Administrative Fines for Smog Check Violations.

The director or his/her ~~their~~ designee is authorized to determine when and against whom a citation will be issued and to issue citations containing orders of abatement and/or administrative fines for violations by a licensee or contractor of Health and Safety Code section 44000 et seq. and any regulations adopted pursuant thereto.

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Note: Authority cited: Section 9882, Business and Professions Code. Reference: Sections 44002 and 44050, Health and Safety Code.

§ 3394.26 Administrative Fine Amounts for Violations by Smog Check Licensees.

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Note: Authority cited: Section 9882, Business and Professions Code. Reference: Sections 44002, 44050 and 44052, Health and Safety Code.

§ 3394.27 Compliance with Citations/Orders of Abatement Issued to Smog Check Licensees.

(a) If a ~~cited~~ person cited pursuant to section 3394.25 who has been issued an order of abatement is unable to complete the correction within the time set forth in the citation because of conditions beyond his or her control after the exercise of reasonable diligence, the cited person may request an extension of time in which to complete the correction from the director or his/her designee. Such a request is subject to approval by the director or his/her designee and shall be in writing and made within the time set forth for abatement.

(b) If administrative fine(s) are not paid after a citation has become final, the administrative fine(s) shall be added to the cited person’s license or registration renewal fee. A license or registration shall not be renewed without payment of the renewal fee and all administrative fines.

Note: Authority cited: Sections 9882, Business and Professions Code. Reference: Sections 44002, 44031.5 and 44050, Health and Safety Code.

(4) Amend Article 11.2, Chapter 1, Division 33, Title 16, California Code of Regulations, to read as follows:

§ 3394.40. Authority to Issue Citations and Fines for Unlicensed Practice- Activity.

The bureau chief or ~~his/her~~ their designee is authorized to determine when and against whom a citation will be issued and to issue citations containing orders of abatement and fines for violations by any unlicensed person who is acting in the capacity of a licensee or registrant.

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Note: Authority cited: Section 9882, Business and Professions Code. Reference: Sections 125.9, 148, 149, and 302(d), Business and Professions Code.

§ 3394.41 Citation Format.

A citation for unlicensed activity shall be issued whenever any fine is levied or any order of abatement is issued. Each citation shall be in writing and shall describe with particularity the nature and facts of each violation, including a reference to the statute(s) and/or regulation(s) alleged to have been violated. The citation shall inform the cited person of the right to contest the citation. The citation shall be served upon the cited person personally or by registered mail pursuant to Section 11505(c) of the Government Code.

Note: Authority cited: Section 9882, Business and Professions Code. Reference: Sections 125.9, 148, 149, and 302(d), Business and Professions Code; Section 11505(c), Government Code.

§ 3394.42 Citations for Unlicensed Practice- Activity.

The bureau chief or ~~his/her~~ their designee is authorized to determine when and against whom a citation will be issued and to issue citations containing orders of abatement and fines against persons, as defined in Section 302(d) of Business and Professions Code, who are performing or who have performed services for which a license or registration is required under the statutes and regulations enforced by the Bureau of Automotive Repair. Each citation shall contain an order of abatement. Where appropriate, the bureau chief or his/her designee shall levy a fine against any unlicensed person who is acting in the capacity of a licensee or registrant. Sanctions authorized under Article 11.2 Administrative Citations and Fines for Unlicensed Activity shall be separate from and in addition to any other civil or criminal actions.

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Note: Authority cited: Section 9882, Business and Professions Code. Reference: Sections 125.9, 148, 149, and 302(d), Business and Professions Code.

§ 3394.43 Fine Amounts for Unlicensed Practice- Activity.

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Note: Authority cited: Section 9882, Business and Professions Code. Reference: Sections 125.9, 148, 149, and 302(d), Business and Professions Code.

§ 3394.44 Compliance with Citation/Order of Abatement for Unlicensed Activity.

(a) If a ~~cited~~ person cited pursuant to section 3394.40 who has been issued an order of abatement is unable to complete the correction within the time set forth in the citation because of conditions beyond his or her control after the exercise of reasonable diligence, the cited person may request an extension of time in which to complete the correction from the ~~B~~bureau chief. Such a request shall be in writing and made within the time set forth for abatement.

(b) If a citation is not contested, or if the citation is contested and the cited person does not prevail, failure to abate the violation or to pay the assessed fine within the time allowed shall constitute a violation and a failure to comply with the citation or order of abatement.

(c) Failure to timely comply with an order of abatement or pay an assessed fine may result in disciplinary action being taken by the bureau or other appropriate judicial action being taken against the cited person.

(d) If a fine is not paid after a citation has become final, the fine shall be added to the cited person's license or registration renewal fee. A license or registration shall not be renewed without payment of the renewal fee and fine.

(e) Nothing in this section shall be construed as permission for any person to operate or continue to operate without a valid license or registration.

Note: Authority cited: Section 9882, Business and Professions Code. Reference: Sections 125.9, 148, 149, and 302(d), Business and Professions Code.

§ 3394.45 Contested Citations and Request for a Hearing or Informal Citation Conference for Unlicensed Activity.

(a) In addition to requesting an administrative hearing as provided ~~for~~ in subdivision (b)(4) of Section 125.9 of Business and Professions Code, the ~~cited~~ person cited pursuant to section 3394.40 may request an informal conference to review the acts charged in the citation. A request for an informal conference shall be made in writing, within ten (10) days after service of the citation, to the ~~B~~bureau chief or ~~his/her~~ their designee.

(b) The bureau chief or ~~his/her~~ their designee shall hold, within sixty (60) days from the receipt of the request, an informal conference with the cited person. At the conclusion of the informal conference, the bureau chief or his/her designee may affirm, modify or dismiss the citation, including any fine levied, order of abatement or order of correction issued. The bureau chief or his/her designee shall state in writing the reasons for his or her action and transmit within fifteen (15) days a copy of his or her findings and decision to the cited person. Unless an administrative hearing as provided for in subdivision (b)(4) of Section 125.9 of Business and Professions Code was requested in a timely manner, an informal conference decision which affirms the citation shall be deemed to be a final order with regard to the citation issued, including the fine levied and the order of abatement.

(c) If the citation, including any fine levied or order of abatement or correction, is modified, the citation originally issued shall be considered withdrawn and a new citation issued. If the cited person desires a hearing to contest the new citation, he or she shall make a request in writing, within ten (10) days of receipt of the informal conference decision, to the bureau chief or ~~his/her~~ their designee. The hearing shall be conducted as provided for in subdivision (b)(4) of Section

125.9 of Business and Professions Code. A cited person may not request an informal conference for a citation which has been modified following an informal conference.

Note: Authority cited: Section 9882, Business and Professions Code. Reference: Sections 125.9, 148, 149, and 302(d), Business and Professions Code.

§ 3394.46 Disconnection of Telephone Service.

Nothing in this section shall preclude the Bureau from using the provisions of Section 149 of Business and Professions Code in addition to any citation for unlicensed activity issued to any person.

Note: Authority cited: Section 9882, Business and Professions Code. Reference: Sections 125.9, 148, 149 and 302(d), Business and Professions Code.

(5) Add new Article 11.3, Section 3394.50, Chapter 1, Division 33, Title 16, California Code of Regulations, to read as follows:

ARTICLE 11.3. Administrative Citations and Fines for Automotive Repair Act Violations by Registrants

§ 3394.50. Authority to Issue Citations, Fines, and Orders of Abatement to Automotive Repair Dealers and Citation Format.

(a) The Bureau chief or their designee is authorized to determine when and against whom a citation will be issued and to issue citations containing orders of abatement and fines for violations by registrants of the Act or any regulation adopted pursuant thereto in this Division.

(b) Each citation shall be in writing and shall describe with particularity the nature and facts of each violation, including a reference to the statute(s) and/or regulation(s) alleged to have been violated. The citation shall inform the cited person of the right to contest the citation, the requirements for requesting an informal citation review conference or administrative hearing in section 3394.53, and the compliance requirements set forth in section 3394.52. The citation shall be served upon the cited person personally or by registered mail pursuant to Section 11505(c) of the Government Code.

Note: Authority cited: Sections 12.5, 125.9, 148, 9882, 9884.19, Business and Professions Code. Reference: Sections 10, 125.9, 148, 9882, 9882.3, and 9884.7 Business and Professions Code.

§ 3394.51 Administrative Fine Amounts, Orders of Abatement, and Citation Factors for Licensed Automotive Repair Dealer Violations.

(a) The citation shall include an order of abatement and may include a fine not to exceed the amount specified in Section 125.9 of the Code.

(b) In assessing a fine, the Bureau shall consider the following factors, as applicable:

(1) The nature and gravity of the violation.

(2) The registrant's history of violations and/or the number of violations found in the investigation.

(3) The good or bad faith of the registrant.

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

(5) The failure to make restitution to consumers affected by the violation.

(6) The extent to which the registrant has mitigated or attempted to mitigate any damage or injury caused by the violation.

(7) The degree of negligence in the maintenance and/or repair of a motor vehicle.

(8) Evidence that the violation was or was not willful.

(9) The extent to which the licensee has cooperated with the Bureau's investigation.

Note: Authority cited: Sections 12.5, 125.9, 148, 9882, 9884.19, Business and Professions Code. Reference: Sections 125.9, 148, and 9884.7, Business and Professions Code.

§ 3394.52 Compliance with Citation/Order of Abatement for Automotive Repair Dealers; Remedies for Non-Compliance

(a) If a person cited pursuant to section 3394.50 who has been issued an order of abatement is unable to complete the correction within the time set forth in the citation because of conditions beyond his or her control after the exercise of reasonable diligence, the cited person may request an extension of time in which to complete the correction from the Bureau chief. Such a request shall be in writing and made within the time set forth for abatement.

(b) If a citation is not contested as provided in section 3394.53, or if the citation is contested and the cited person does not prevail, failure to abate the violation or to pay the assessed fine within the time allowed shall constitute a material failure to comply with the provisions of the Act or regulations for which the person was cited. If a hearing is not requested pursuant to this article, payment of any fine shall not constitute an admission of the violation charged.

(c) In addition to any other fines, penalties, and other remedies available to the Bureau, failure to timely comply with an order of abatement or pay an assessed fine as provided in subsection (b) shall constitute a ground for disciplinary action.

(d) An assessed fine shall be paid within 30 days of the date of receipt of a citation, or as applicable, a final affirmed or modified citation as provided in section 3394.53. If a fine is not paid after a citation has become final, the fine shall be added to the cited person's license or registration renewal fee. A license or registration shall not be renewed without payment of the renewal fee and fine. "Final" for the purposes of this section shall mean: the Bureau's decision has become effective, the cited person did not submit a written request to contest the citation as required by section 3394.53, and the timeframe for submitting such a request per 3394.53 has passed.

Note: Authority cited: Sections 9882 and 9884.7, Business and Professions Code. Reference: Sections 125.9, 148, 149, 302(d) and 9884.7 Business and Professions Code.

§ 3394.53 Contested Citations; Informal Citation Review Conferences; and Hearings for Automotive Repair Dealers.

(a) Prior to [OAL insert earliest quarterly effective date on or after July 1, 2023], if the cited person desires to contest the citation and to request an administrative hearing, a request must be made in writing, within thirty days (30) days of receipt of the citation, to the Bureau Chief or the Bureau Chief's designee. The hearing shall be held pursuant to Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(b) On or after [OAL insert earliest quarterly effective date on or after July 1, 2023], a cited person may contest the citation, request an informal citation review conference or administrative hearing, and obtain a decision on their appeal according to the procedures set forth in subsections (c)-(g).

(c) The person cited may, within 30 days from the receipt of the citation, contest the citation by submitting a written request for an informal citation review conference to the Bureau Chief or their designee.

(d) Upon receipt of a written request for an informal citation review conference, the Bureau Chief or their designee, shall within 60 days of receipt of the request, hold an informal citation review conference with the cited person. The cited person may be accompanied and represented by legal counsel and/or an authorized representative. The hearing shall be limited in scope to the time period, facts, and allegations specified in the citation served by the Bureau.

(e) When an informal citation review conference is held, the Bureau Chief or their designee, may affirm, modify, or dismiss the citation, including any fine levied, order of abatement, or order of correction issued, at the conclusion of the informal citation review conference.

(1) If affirmed or dismissed, the Bureau Chief or their designee shall state in writing the reasons for the findings and transmit within ten (10) days a copy of the decision to the cited person and the person's counsel and/or authorized representative, if any.

(2) If modified, the citation originally issued shall be considered withdrawn and a new citation issued. The new citation, including reasons for the decision, shall be mailed within ten (10) days to the cited person and the person's counsel and/or authorized representative, if any.

(f) If the cited person wishes to contest the decision or the new citation pursuant to Section 125.9 of the Code, the person shall, within 30 days after service of the decision or new citation, contest the decision or the new citation by submitting a written request for an administrative hearing to the Bureau chief or their designee. An informal citation review conference shall not be held on affirmed or modified citations.

(g) If the decision or new citation is not contested, then the informal citation review conference decision shall be deemed to be the final order with regard to the citation issued.

Note: Authority cited: Sections 12.5, 125.9, 148, 9882, and 9884.7 Business and Professions Code. Reference: Sections 125.9, 148, and 9884.7, Business and Professions Code.

§ 3394.54 Citation Review Conference Panel

(a) For the purposes of conducting the informal citation review conference and rendering a decision pursuant to section 3394.53, the Chief's "designee" may be a panel of three representatives ("panel") appointed by the Chief to conduct the informal citation review conferences. The panel shall be composed of one representative each from the Bureau, the public, and the automotive repair industry, which shall render a decision by majority vote. The members of the panel shall serve at no expense to the Bureau.

(b) Once a request for informal citation review conference has been received, the Bureau shall notify the cited person of the composition of the panel, including the name of each appointed panel member, within 14 days of the date of receipt of the request. The cited person may provide a written objection to the appointment of any panel member for any of the reasons set forth in subsection (e) within 14 days of the date of receipt of the Bureau's panel appointment notice. The objection shall include all of the following: the reason for the objection, copies of all evidence and argument on which the cited person relies when the written objection is filed, and the authorized signature, title, and contact information (telephone, email, or mailing address) of the person submitting the objection on behalf of the cited person.

(c) All evidence and argument regarding the objection shall be considered by the Chief. The Chief shall make the final decision on the composition of the panel before the informal citation review conference is held and shall send written notice of their decision at least 14 days before the date set for the informal citation review conference. There shall be no oral hearing or further administrative review of this decision.

(d) The Bureau chief may establish multiple panels as necessary to carry out the informal citation review conference process within the timeframes specified in section 3394.53.

(e) A panel member shall be subject to disqualification from participating in any informal citation review conference in which the member cannot accord a fair and impartial decision, including for the following reasons:

(1) for bias, prejudice, or interest in the proceeding as provided by Government Code section 11425.40 or Government Code section 87100;

(2) for receipt of an impermissible ex-parte communication as provided in Government Code section 11430.10, the effect of which cannot be eliminated as provided in Government Code section 11430.40 and as determined by the Chief;

(3) to maintain the separation of the adjudicative function from the investigative, prosecutorial, and advocacy functions as required by Government Code section 11425.30; or,

(4) for any of the grounds specified in Code of Civil Procedure section 170.1.

(f) A panel member who is subject to disqualification shall voluntarily disqualify themselves from a proceeding. If a panel member is absent or unable to serve before an informal citation review conference is held, another panel member shall be assigned to the panel by the Chief in order to maintain the composition of the panel as provided in this section. If the panel member is unable to participate after an informal citation review conference is held, but before a decision is rendered, the matter shall be reheard with a new panel appointed by the Chief.

(g) For the purposes of this section “impermissible ex parte communication” shall include direct or indirect communication between any panel member and/or any party to the proceeding including investigative or prosecutorial staff of the Bureau and/or the cited person’s legal counsel and/or authorized representative regarding any pending issue to be decided during the citation review conference without notice and opportunity for all parties to participate in the communication. As used herein, “pending” shall mean between the time the Bureau receives a written request for an informal citation review conference and the time the informal citation review panel affirms, modifies, or dismisses the citation. Communications involving matters not in controversy as specified in Government Code sections 11430.20 and 11430.30 shall not be considered impermissible.

(h) The Chief has discretion to remove any member of the panel at any time and for any reason, including for absence or unavailability, failure to proceed in the manner required by this article, or for any of the reasons set forth in subsection (e).

(i) This section shall become operative on [OAL Insert earliest quarterly effective date on or after July 1, 2023].

Note: Authority cited: Sections 12.5, 9882, and 9884.7 Business and Professions Code. Reference: Sections 125.9, 148, 9882, and 9884.7, Business and Professions Code; Sections 11430.10, 11430.20, 11430.30, 11430.40, 11425.30, 11425.40, and 87100, Government Code.

§ 3394.55 Nondisclosure of Citation for Automotive Repair Dealers

(a) The Bureau shall offer an eligible automotive repair dealer remedial training to prevent the Bureau’s public disclosure on the Internet of a citation that has become effective, as required by Section 27 of the Code, if the requirements in subsection (b) are met.

(b) For an automotive repair dealer to be eligible as specified in subsection (a) the following apply:

(1) The citation must be for violation of:

(A) Sections 9882.14 or 9884.8 of the Code; or,

(B) Any of the following sections: 3351.5, 3351.6, 3358(d)(2), 3360.2, 3361.1, 3362.1, 3363.4, 3364, 3365, 3365.1, 3366, 3367 or 3368.

(2) The automotive repair dealer meets the requirements for remedial training pursuant to Section 9882(a)(2)(B)(ii) and the cited person shall fall within the categories of eligible persons set forth in Section 9884.7(d)(1). The registrant and/or other persons who directly or indirectly controls or conducts the business as provided in Section 9884 of the Code and section 3351 shall attend and successfully complete the remedial training; and,

(c) An automotive repair dealer provides proof to the Bureau of attending and successfully completing remedial training that is provided by a Bureau certified provider. Proof shall mean a certificate of completion showing the person's name, date of completion, name of the course, and the course provider's name.

(d) Registrants and/or other persons identified pursuant to Section 9884 of the Code with more than one automotive repair dealer registration shall have the benefit of the nondisclosure provision for each of the automotive repair dealers registered with the Bureau.

(e) The registrant may not use the same remedial training course certification of completion for multiple automotive repair dealers.

Note: Authority cited: Sections 12.5, and 9882, 9884.7, Business and Professions Code.
Reference: Sections 27, 125.9, 148, 9882, 9884, and 9884.7, Business and Professions Code