

AB 2289 Enforcement

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Citations and Penalties

Legislation and Regulation

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- AB 2289 (Chapter 258) Enacted in 2010 and authored by Assemblyman Michael Eng.
- New legislation and adopted regulations improved the Smog Check Program and will help meet our clean air goals
- Provided amendments to Health and Safety Codes Sections 44010.5, 44012, 44014, 44014.2, 44014.5, 44015, 44024.5, 44036, 44052, 44055, and 44056 of, to add 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
- California Code of Regulations 3394.25 through 3394.27 were adopted.

AB 2289 Revisions

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BAR is authorized to issue administrative citations and abatement orders to:

- Smog Check stations, technicians, contractors or fleet owners
- Unlicensed businesses and delinquent Automotive Repair Dealers (ARD)

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- A citation may contain an order of abatement or an order of abatement with a monetary fine
- Smog Check technicians may receive a citation with an order of abatement that includes an order of training and/or a monetary fine.
- Citation amounts can range from \$100 to \$5000 per occurrence
- BAR must consider 10 aggravating /mitigating factors

10 Factors of Aggravation & Mitigation

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#1	The nature, gravity, severity, and seriousness of the violation
#2	The persistence of the violation
#3	The good faith or willfulness of the violator
#4	The history of previous violations by that violator, including the commission of numerous and repeated violations
#5	The failure to perform work for which money was received
#6	The making of any false or misleading statement in order to induce a person to authorize repair work or pay money

10 Factors of Aggravation & Mitigation

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#7	The failure to make restitution to consumers affected by the violation
#8	The extent to which the violator has mitigated or attempted to mitigate any damage or injury caused by the violation
#9	The degree of incompetence or negligence in the performance of duties and responsibilities
#10	The purposes and goals of this chapter and other matters as may be appropriate

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- Citation must be in writing and describe the nature of the violation
- Regulations define H&S and CCR fine schedule
- If the citation lists more than one violation the fine must be itemized separately
- \$5,000 maximum limit for multiple violations from the same inspection or repair
- All fines are assessed in BAR HQ

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- Orders of abatement may order the smog technician not perform inspections until training has been completed
- Training criteria established with the assistance of BAR approved subject matter experts (SMEs)
- The department shall not allow the issuance of any certificate compliance/noncompliance until all civil fines, final administrative fines or amounts agreed upon in a settlement have been paid

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- Smog Check technicians have 30 days to make payment and/or schedule training and 60 days to complete the training, unless BAR approves an extension.
- Smog Check licensees issued a citation must requests an informal or administrative appeal within 30 days
- BAR must hold the informal hearing within 60 days and provide a written response within 10 days

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- Smog Check licensees issued a citation must request an informal or administrative appeal within 30 days
- BAR must hold the informal hearing within 60 days and provide a written response within 10 days
- An informal hearing is conducted by the Chief of the Bureau of Automotive Repair or his designee.

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- Unlicensed and delinquent activity citations must appeal within 10 days to receive an informal hearing. BAR must render a decision within 15 days
- Unlicensed and delinquent activity citations must appeal within 30 days after any informal hearing decision to receive an administrative hearing

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- Payment for fines are due within 30 days
- Failure to comply with an order of abatement or payment of an administrative fine is grounds for suspension or revocation of a license
- Provides for denial of an application or renewal for failure to pay an amount agreed upon in any settlement with the department
- Allows the department to enforce administrative fines as if it were a money judgment pursuant to Title 9, Part 2 of the Code of Civil Procedure

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Citation Appeals

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- If the citation originally issued is affirmed or modified after an informal hearing, the citation shall be re-issued, including reasons for the decision
- The cited person may contest the informal hearing decision within 30 days and request an administrative hearing