

Assembly Bill No. 2289

CHAPTER 258

An act to amend 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 of, the Health and Safety Code, relating to air pollution.

[Approved by Governor September 23, 2010. Filed with
Secretary of State September 24, 2010.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2289, 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 require the department to implement testing using onboard diagnostic systems, in lieu of loaded mode dynamometer or 2-speed idle testing, only on model year 2000 and newer vehicles, beginning no earlier than January 1, 2013, and otherwise 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 require 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.

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

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

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

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

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

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

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

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

(3) If the department determines that there is an insufficient number of licensed test-only smog check stations operating in an enhanced area to

meet the increased demand for test-only inspections, the department may increase the capacity of the program by utilizing existing contracts.

(c) The program shall utilize the testing procedures described in Section 44012. Vehicles selected for testing pursuant to this section shall include vehicles equipped without second generation onboard diagnostic systems (OBD II) and vehicles with emission problems that may not be adequately detected by the vehicle's OBD II, as determined by the department in consultation with the state board. The department, in consultation with the state board, may also select for testing pursuant to this section any other vehicles necessary in order to meet the requirement described in paragraph (1) of subdivision (b).

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

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

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

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

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

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

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

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

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

and the percentage of subcontracts that will be awarded to California-based firms.

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

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

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

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

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

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

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

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

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

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

44012. The test at the smog check stations shall be performed in accordance with procedures prescribed by the department and may require loaded mode dynamometer testing in enhanced areas, two-speed idle testing, testing utilizing a vehicle's onboard diagnostic system, or other appropriate test procedures as determined by the department in consultation with the state board. The department shall implement testing using onboard diagnostic systems, in lieu of loaded mode dynamometer or two-speed idle testing, on model year 2000 and newer vehicles only, beginning no earlier than January 1, 2013. However, the department, in consultation with the state board, may prescribe alternative test procedures that include loaded mode dynamometer or two-speed idle testing for vehicles with onboard diagnostic systems that the department and the state board determine exhibit operational problems. The department shall ensure, as appropriate to the test method, the following:

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

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

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

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

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

(f) A visual or functional check is made of emission control devices specified by the department, including the catalytic converter in those instances in which the department determines it to be necessary to meet the

findings of Section 44001. The visual or functional check shall be performed in accordance with procedures prescribed by the department.

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

(h) An analysis of pass and fail rates of vehicles subject to an onboard diagnostic test and a tailpipe test to assess whether any vehicles passing their onboard diagnostic test have, or would have, failed a tailpipe test, and whether any vehicles failing their onboard diagnostic test have or would have passed a tailpipe test.

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

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

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

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

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

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

(3) The department may adopt, by regulation, a process by which vehicles that present prohibitive or unusual inspection circumstances are inspected by referees, including, but not limited to, the inspection of vehicles in which the manufacturer's physical or operational design presents inspection incompatibilities, vehicles equipped with emission control configurations that do not match United States Environmental Protection Agency or state

board certified configurations, including direct import vehicles and vehicles with engine changes, and vehicles equipped with retrofit alternative fuel conversion kits.

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

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

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

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

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

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

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

44014.2. (a) The department shall develop a program for the voluntary certification of licensed smog check stations, or the department may accept a smog check station certification program proposed by accredited industry representatives. The certification program, which may be called a “gold shield” program, shall be for the purpose of providing consumers, whose vehicles fail an emissions test at a test-only facility, an option of services at a single location to prevent the necessity for additional trips back to the test-only facility for vehicle certification. The department shall establish inspection-based performance standards consistent with Section 44014.6 for stations certified under this program that the stations would be required to meet to be eligible to issue certificates of compliance or noncompliance

for vehicles selected pursuant to Sections 44010.5 and 44014.7, or vehicles identified by the department as gross polluters.

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

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

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

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

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

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

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

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

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

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

(2) (A) The department shall establish inspection-based performance standards consistent with Section 44014.6 that test-only stations would be required to meet to be eligible to issue certificates of compliance or noncompliance for vehicles selected pursuant to Section 44010.5 or 44014.7, or vehicles identified by the department as gross polluters. Failure at any time to meet these standards shall result in suspension of the certification to test these vehicles granted by the department. A test-only station not meeting the performance standards may continue to issue certificates of compliance and noncompliance for other vehicles. The department shall adopt measures to ensure the requirements of this subparagraph are met,

including through the use of the computer database and computer network authorized by Section 44037.1.

(B) The department shall provide the test-only station with written or electronic notice, prior to the suspension pursuant to subparagraph (A). The notice shall specify the grounds for the suspension and provide that the station within five days of receipt of the notice may request a hearing before the chief of the bureau or his or her designee to contest the suspension. The request for hearing shall be in writing or shall be made electronically. Receipt of this hearing request shall stay the suspension pending the outcome of the hearing. If a request for hearing is not made, the chief of the bureau shall issue a final written decision of suspension within 10 days of the last date that a hearing could have been requested.

(C) The hearing conducted by the chief of the bureau or his or her designee shall be held not later than 10 days from the date that the request for a hearing is received by the chief of the bureau. The hearing requirements of Section 44072 shall not apply. The chief of the bureau shall render a written decision within 10 days of the hearing. The decision may rescind the suspension, affirm the suspension, or order any other appropriate action. Administrative review, before an administrative law judge, of the decision of the chief of the bureau may be sought within 30 days of the date of the decision.

(D) The department may adopt regulations to implement this paragraph.

(e) The department shall prohibit test-only facilities from engaging in other business activities that represent a conflict of interest, as determined by the department. Upon implementation of the performance standards described in paragraph (2) of subdivision (d), ownership of a test-and-repair station by an owner of a test-only facility shall not be considered a conflict of interest.

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

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

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

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

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

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

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

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

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

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

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

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

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

44014.6. (a) The inspection-based performance standards created for the certification program established pursuant to subdivision (a) of Section 44014.2 and subdivision (d) of Section 44014.5 shall be based on the same criteria.

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

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

SEC. 8. Section 44015 of the Health and Safety Code is amended to read:

44015. (a) A licensed smog check station shall not issue a certificate of compliance, except as authorized by this chapter, to any vehicle that meets the following criteria:

(1) A vehicle that has been tampered with.

(2) A vehicle identified pursuant to subparagraph (K) of paragraph (3) of subdivision (b) of Section 44036. A vehicle identified pursuant to

subparagraph (K) of paragraph (3) of subdivision (b) of Section 44036 shall be directed to the department to determine whether an inadvertent error can explain the irregularity, or whether the vehicle otherwise meets smog check requirements, allowing the certificate for compliance to be issued, or the vehicle shall be reinspected by a referee or another smog check station.

(3) A vehicle that, prior to repairs, has been initially identified by the smog check station as a gross polluter. Certification of a gross polluting vehicle shall be conducted by a designated test-only facility, or a test-and-repair station that is both licensed and certified pursuant to Sections 44014 and 44014.2.

(4) A vehicle described in subdivision (c).

(b) If a vehicle meets the requirements of Section 44012, a smog check station licensed to issue certificates shall issue a certificate of compliance or a certificate of noncompliance.

(c) (1) A repair cost waiver shall be issued, upon request of the vehicle owner, by an entity authorized to perform referee functions for a vehicle that has been properly tested but does not meet the applicable emission standards when it is determined that no adjustment or repair can be made that will reduce emissions from the inspected motor vehicle without exceeding the applicable repair cost limit established under Section 44017 and that every defect specified by paragraph (2) of subdivision (a) of Section 43204, and by paragraphs (2) and (3) of subdivision (a) of Section 43205, has been corrected. A repair cost waiver issued pursuant to this paragraph shall be accepted in lieu of a certificate of compliance for the purposes of compliance with Section 4000.3 of the Vehicle Code. No repair cost waiver shall exceed two years' duration. No repair cost waiver shall be issued until the vehicle owner has expended an amount equal to the applicable repair cost limit specified in Section 44017.

(2) An economic hardship extension shall be issued, upon request of a qualified low-income motor vehicle owner, by an entity authorized to perform referee functions, for a motor vehicle that has been properly tested but does not meet the applicable emission standards when it is determined that no adjustment or repair can be made that will reduce emissions from the inspected motor vehicle without exceeding the applicable repair cost limit, as established pursuant to Section 44017.1, that every defect specified in paragraph (2) of subdivision (a) of Section 43204, and in paragraphs (2) and (3) of subdivision (a) of Section 43205, has been corrected, that the low-income vehicle owner would suffer an economic hardship if the extension is not issued, and that all appropriate emissions-related repairs up to the amount of the applicable repair cost limit in Section 44017.1 have been performed.

(d) No repair cost waiver or economic hardship extension shall be issued under any of the following circumstances:

(1) If a motor vehicle was issued a repair cost waiver or economic hardship extension in the previous biennial inspection of that vehicle. A repair cost waiver or economic hardship extension may be issued to a motor vehicle owner only once for a particular motor vehicle belonging to that

owner. However, a repair cost waiver or economic hardship extension may be issued for a motor vehicle that participated in a previous waiver or extension program prior to January 1, 1998, as determined by the department. For waivers or extensions issued in the program operative on or after January 1, 1998, a waiver or extension may be issued for a motor vehicle only once per owner.

(2) Upon initial registration of all of the following:

(A) A direct import motor vehicle.

(B) A motor vehicle previously registered outside this state.

(C) A dismantled motor vehicle pursuant to Section 11519 of the Vehicle Code.

(D) A motor vehicle that has had an engine change.

(E) An alternate fuel vehicle.

(F) A specially constructed vehicle.

(e) Except as provided in subdivision (f), a certificate of compliance or noncompliance shall be valid for 90 days.

(f) Excluding any vehicle whose transfer of ownership and registration is described in subdivision (d) of Section 4000.1 of the Vehicle Code, and except as otherwise provided in Sections 4000.1, 24007, 24007.5, and 24007.6 of the Vehicle Code, a licensed motor vehicle dealer shall be responsible for having a smog check inspection performed on, and a certificate of compliance or noncompliance issued for, every motor vehicle offered for retail sale. A certificate issued to a licensed motor vehicle dealer shall be valid for a two-year period, or until the vehicle is sold and registered to a retail buyer, whichever occurs first.

(g) A test may be made at any time within 90 days prior to the date otherwise required.

SEC. 9. Section 44024.5 of the Health and Safety Code is amended to read:

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

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

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

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

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

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

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

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

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

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

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

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

SEC. 10. Section 44036 of the Health and Safety Code is amended to read:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(K) A real-time computer data program that would prevent a certificate of compliance from being issued if a vehicle is identified as having an excessive variance from computer data for that vehicle, mismatched information, or other irregularities.

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

(c) (1) The department shall not require smog check stations to use equipment that meets revised standards for certification and decertification of equipment pursuant to subdivision (b) earlier than January 1, 2013.

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

(3) The department may defer the requirement for any equipment, external to the chassis of the test analyzer system, needed to read barcode information, until a substantial portion of the vehicles subject to this chapter are equipped with barcode labels.

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

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

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

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

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

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

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

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

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

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

SEC. 12. Section 44050 is added to the Health and Safety Code, to read:

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

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

- (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.
- (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.

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

- (1) The licensee, contractor, or fleet owner to whom the citation is issued to demonstrate how future compliance with this chapter, and regulations adopted pursuant to this chapter, will be accomplished. This demonstration may include, but is not limited to, submission of a corrective action plan.
- (2) The smog check technician to successfully complete one or more retraining courses prescribed by the department pursuant to subdivision (c) of Section 44031.5, or successfully complete one or more advanced retraining courses prescribed by the department, or both.

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

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

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

(f) The department shall adopt regulations to establish procedures, including a penalty schedule, for assessing fines or penalties for violations of a requirement of this chapter or a regulation adopted pursuant to this chapter.

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

SEC. 13. Section 44050.5 of the Health and Safety Code is repealed.

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

SEC. 15. Section 44051 is added to the Health and Safety Code, to read:

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

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

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

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

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

SEC. 16. Section 44051.5 of the Health and Safety Code is repealed.

SEC. 17. Section 44052 of the Health and Safety Code is amended to read:

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

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

SEC. 18. Section 44053 of the Health and Safety Code is repealed.

SEC. 19. Section 44054 of the Health and Safety Code is repealed.

SEC. 20. Section 44055 of the Health and Safety Code is amended to read:

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

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

SEC. 21. Section 44056 of the Health and Safety Code is amended to read:

44056. (a) In addition to an administrative fine pursuant to Section 44050, any person who violates this chapter, or any order, rule, or regulation of the department adopted pursuant to this chapter, is liable for a civil penalty of not more than five thousand dollars (\$5,000) for each day in which each

violation occurs. Any action to recover civil penalties shall be brought by the Attorney General in the name of the state on behalf of the department, or may be brought by any district attorney, city attorney, or attorney for a district. In assessing a civil penalty pursuant to this subdivision, due consideration shall be given to the factors identified in subdivision (b) of Section 44050.

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

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

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

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

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

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

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