

**BUREAU OF AUTOMOTIVE REPAIR
NOTICE OF PROPOSED REGULATORY ACTION CONCERNING
CITATION AND REMEDIAL TRAINING PROGRAMS FOR
AUTOMOTIVE REPAIR DEALERS**

NOTICE IS HEREBY GIVEN that the Department of Consumer Affairs, Bureau of Automotive Repair (hereinafter “Bureau” or “BAR”) is proposing to take the action described in the Informative Digest/Policy Statement Overview below, after considering all comments, objections, and recommendations regarding the proposed action. Any person interested may present statements or arguments relevant to the action proposed in writing. Written comments, including those sent by mail, facsimile, or e-mail to the addresses listed under Contact Person in this Notice, must be received by the Board at its office on **Monday, November 21, 2022**.

The Bureau has not scheduled a public hearing on this proposed action. The Bureau will, however, hold a hearing if it receives a written request for a public hearing from any interested person, or his or her authorized representative, no later than 15 days prior to the close of the written comment period.

The Bureau may, after considering all timely and relevant comments, adopt the proposed regulations substantially as described in this notice, or may modify the proposed regulations if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this Notice as the contact person and will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

AUTHORITY AND REFERENCE

Pursuant to the authority vested by Business and Professions Code (BPC) sections 12.5, 125.9, 148, 9882, 9884.7, and 9884.19 and to implement, interpret, or make specific BPC sections 10, 27, 30, 31, 114.5, 115.4, 118, 125.9, 135.4, 141, 142, 148, 149, 163.5, 302(d), 480, 9882, 9882.3, 9884, 9884.7, 9884.8, 9884.9, 9884.10, 9884.11, Health and Safety Code (HSC) sections 44002, 44031.5, 44050, and 44052, and Government Code sections 87100, 11430.10, 11430.20, 11430.30, 11430.40, 11425.30, 11425.40, 11445.10, 11445.20, 11505, and 11522, the Bureau is considering amending Article 11.1, sections 3394.25, 3394.26, and 3394.27, sections 3394.40, 3394.41, 3394.42, 3394.43, 3394.44, 3394.45, and 3394.46 of Article 11.2, adding sections 3394.50, 3394.51, 3394.52, 3394.53, 3394.54, and 3394.55 to a new Article 11.3, and adding sections 3395.7, 3395.8, 3395.9, and 3395.10 to a new Article 12.5 to the California Code of Regulations (CCR).

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The Department of Consumer Affairs (DCA), Bureau of Automotive Repair (BAR or Bureau) is the state agency charged with licensing automotive repair dealers (ARDs), smog check stations, STAR stations, brake and lamp stations, and their respective inspectors, repair technicians, and adjusters. The Bureau is responsible for issuing citations to licensees who conduct smog checks for violations of Health & Safety Code (HSC) 44000 et seq. The Bureau, as a designee of the Director of DCA, 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 HSC section 44000 et seq. and any regulations adopted pursuant those statutes. (Cal. Code Regs., tit. 16, § 3394.25.)

In the event of misconduct such as negligent acts, violations of trade standards, or other violations of concern, the Bureau may issue a citation to an ARD for applicable violations under Business and Professions Code (BPC) section 9882. Though BPC section 125.9 authorizes the Bureau to establish an ARD citation program, the Bureau has not yet implemented this statute in regulation. Currently, when these violations do not rise to a level warranting discipline through an administrative action, the Bureau addresses these violations with the ARD through education efforts such as notification on a Station Inspection Report, and/or various conferences with Bureau representatives. The Bureau needs a tool to address more serious violations of the Automotive Repair Act (Act) that do not rise to the level of an administrative action. When BAR issues a citation, consumers will be able to access this information when BAR posts information to the internet pursuant to BPC section 27. This information will assist consumers in making a more informed decision when choosing a repair facility.

Assembly Bill (AB) 471 (Low, Chapter 372, Statutes of 2021), enacted in 2021, authorizes the Bureau, on or after July 1, 2023, to establish an informal citation appeal process for citations issued to ARDs for violations of the Act. The bill authorizes BAR to create a three-member panel appointed by the Bureau chief to conduct informal citation review conferences. The panel must consist of three members, one representative from the Bureau, one from the public, and one from the automotive repair industry. (Bus. & Prof. Code, § 9882 subd. (a)(2)(A).)

Additionally, AB 471 authorizes the Bureau to create a remedial training program, and process for certifying providers of remedial training, for ARDs that receive a citation for a violation of the Act the Bureau defines as minor in nature. (Bus. & Prof. Code, § 9884.7, subd. (d)(2).) An ARD that successfully completes the remedial training will be able to prevent disclosure of the citation on the internet. (Bus. & Prof. Code, § 9882, subd. (a)(2)(B)(i).) This non-disclosure may be used once every 18 months. (Bus. & Prof. Code, § 9882, subd. (a)(2)(B)(ii).)

In this rulemaking proposal, the Bureau proposes to: (1) amend Article 11.1 and existing sections 3394.25, 3394.26, and 3394.27 of Article 11.1 of Division 33 of Title 16 of the California Code of Regulations (CCR) and sections 3394.40, 3394.41, 3394.42, 3394.43, 3394.44, 3394.45, and 3394.46 of Article 11.2 of the CCR; and (2) adopt sections 3394.50, 3394.51, 3394.52, 3394.53, 3394.54, and 3394.55 in a new Article 11.3, and adopt sections 3395.7, 3395.8, 3395.9, and 3395.10 in a new Article 12.5 of Title 16 to the CCR, as follows:

- Article 11.1 and sections 3394.25, 3394.26, and 3394.27 (Article 11.1). Existing law provides for the issuance of citations for violations of the smog check inspection program. The Bureau will correct gendered pronouns and make clarifying changes to differentiate the smog check citation program in Article 11.1 from the unlicensed activity citation program, and the proposed ARD citation program.

- Sections 3394.40, 3394.41, 3394.42, 3394.43, 3394.44, 3394.45, and 3394.46 (Article 11.2). Existing law provides for the issuance of citations to those performing automotive repair for compensation without a valid ARD registration. The Bureau will correct gendered pronouns and make clarifying changes to differentiate the unlicensed activity citation program in Article 11.2 from the smog check citation program, and the proposed ARD citation program.
- The Bureau will create a new Article 11.3 to establish a citation program for Act violations by registrants.
- New section 3394.50 will establish the Bureau's authority to issue fines and orders of abatement for violations of the Act and establish the required contents of citations.
- New section 3394.51 will establish the factors the Bureau will consider when issuing a fine and the amount thereof if a fine is issued.
- New section 3394.52 will establish how registrants shall comply with citations and orders of abatement.
- New section 3394.53 will establish how registrants may contest citations and detail the process for requesting an informal citation review conference.
- New section 3394.54 will establish how the informal citation conference panel is appointed, the process for objecting to members of the panel, disqualification of panel members, and the informal citation review conference hearing process.
- New section 3394.55 will establish registrants' eligibility for nondisclosure of citations on the internet.
- The Bureau will create a new Article 12.5 to establish the remedial training program for cited registrants.
- New section 3395.7 will establish the required elements of the remedial training course required to prevent citation Internet disclosure for eligible registrants.
- New section 3395.8 will establish the application requirements to obtain Bureau certification to teach remedial training courses.
- New section 3395.9 will establish the general course requirements for courses taught by certified remedial training course providers.
- New section 3395.10 will establish the grounds for denial or revocation of certification of remedial training providers.

ANTICIPATED BENEFITS OF THE PROPOSED REGULATION

The Bureau's establishment of an ARD citation program for violations of the Act will enhance public protection of the by incentivizing good behavior by registrants. It will deter violations and educate violators of the act when registrants attend remedial training. The establishment of an informal citation conference review process will add a second layer of review for citations and will eliminate unnecessary administrative appeals.

The Bureau's establishment of a remedial training program will enhance public protection by incentivizing violators to obtain additional training on the Bureau's laws and regulations. The Bureau expects training to result in greater adherence to the Bureau's laws and regulations. To ensure the training is effective and beneficial, the Bureau will establish a training provider certification process to make sure that only those with the appropriate expertise offer remedial training.

CONSISTENCY AND COMPATIBILITY WITH EXISTING STATE REGULATIONS

During the process of developing these regulations and amendments, BAR has conducted a search of any similar regulations on this topic and has concluded that these regulations are neither duplicative, nor inconsistent, nor incompatible with existing state regulations.

DISCLOSURES REGARDING THE PROPOSED ACTION

FISCAL IMPACT ESTIMATES

The Bureau has made the following determinations:

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State:

The Bureau anticipates workload and costs related to the issuance citations and fines, as well as for certifying remedial training course providers. Total workload and costs are estimated at approximately \$848,000 per year and up to \$8.5 million over a ten-year period.

Citation and Fines: The Bureau estimates 1,200 citations and fines will be issued per year and anticipates workload costs of approximately \$400 per citation, which results in workload costs of approximately \$493,200 per year and up to \$4.9 million over a ten-year period.

Citation Extension: The Bureau estimates 25 ARDs issued a citation will seek an extension each year, which will result in workload and costs estimated at \$280 per extension request with total costs of \$7,000 per year and up to \$70,000 over a ten-year period.

Citation Appeals: The Bureau estimates 15 percent (or 180) of citations issued per year will be appealed, beginning with an informal conference held by the Informal Citation Review Conference Panel to affirm, modify, or dismiss the citation. However, because the citation (issuance) process includes multiple internal levels of review and approval, the Bureau does not anticipate significant numbers of modifications or dismissals of citations or fines.

Based on the Bureau's experience with its two other citation programs, the Bureau estimates 54 appealed cases will be referred onto the Attorney General and Office of Administration (AG/OAH) with 18 percent (32) of cases resulting in a stipulated settlement agreement and 12 percent (22) of cases resulting in a hearing default settlement. Appeals workload and costs are estimated at \$340,360 per year and up to \$3.4 million over a ten-year period.

Registration: The Bureau estimates 25 attorneys will apply for registration to provide remedial training courses with workload costs of \$289 per registration, which results in workload costs of approximately \$7,250 per year and up to \$72,250 over a ten-year period.

The Bureau notes, no registration fees are being assessed because current law does not authorize a fee to be charged. Any workload costs will be offset by penalty revenues and/or absorbed within existing resources.

Nondiscretionary Costs/Savings to Local Agencies: None

Local Mandate: None

Cost to Any Local Agency or School District for Which Government Code Sections 17500 – 17630 Require Reimbursement: None

Effect on Housing Costs: None

Business Impact:

The Bureau has made an initial determination the proposed regulatory action would have no significant statewide adverse economic impact directly affecting businesses, including small businesses and the ability of California businesses to compete with businesses in other states. These proposed regulations establish a citation program for automotive repair dealers. Should a licensee or an employee of a licensee violate the laws and regulations of the Bureau that warrant a citation, the citation and fine issued is not sufficient to eliminate a particular job or ARD. The fine issued is avoidable if the licensee or employee of the licensee complies with the Bureau's rules and regulations.

Cost Impact on Representative Private Person or Business:

These proposed regulations establish a citation program for automotive repair dealers. Should a licensee or an employee of a licensee violate the laws and regulations of the Bureau that warrant a citation, the citation and fine issued is not sufficient to eliminate a particular job or ARD. The fine issued is avoidable, should the licensee or employee of the licensee comply with the rules and regulations of the Bureau.

It is paramount ARDs follow the appropriate repair procedures and business processes in accordance with the laws. The purpose of the proposed regulations is to ensure safe automotive repairs and promote best business practices for California consumers.

The Bureau estimates up to 1,200 citations will be issued to ARDs per year with an average fine amount of \$500, which would result in penalty payments of \$600,000 per year and up to \$6 million over a ten-year period.

The Bureau notes, ARDs issued a citation will be required to pay the fine amount but may enroll in a remedial training program to mitigate public disclosure of that citation on the internet. The average cost to enroll and complete the remedial training is estimated at \$120 per training course.

The Bureau does not have an estimate of the number of ARDs being issued a citation (1,200), which may opt to complete remedial training, but anticipates some ARDs issued a citation will participate in remedial training. As a result, training costs are estimated to range from \$0 to \$144,000 per year and up to \$1.44 million over a ten-year period.

Business Reporting Requirements:

The regulatory action does not require businesses to file a report with the Board.

Effect on Housing Costs: None

RESULTS OF ECONOMIC IMPACT ASSESSMENT/ANALYSIS

This regulatory proposal will have the following effects:

- Insofar as it creates a new remedial training program, it may create jobs for those who become certified remedial training providers within the State of California. Insofar as it creates a citation program for ARDs, it is not anticipated that it will create jobs.
- Insofar as it creates a new remedial training program, it may create new businesses for those who become certified remedial training providers within the State of California and establish businesses. Insofar as it creates a citation program for ARDs, it is not anticipated that it will create businesses.
- Insofar as it creates a new remedial training program, it may expand businesses for those who become certified remedial training providers within the State of California and expand their businesses. Insofar as it creates a citation program for ARDs, it is not anticipated that it will expand businesses.
- This regulatory proposal will have a positive impact on the health and welfare of California citizens to the extent remedial training and the prospect of being cited for violations promotes safer automotive repairs, auto body repairs, and ethical behavior of ARDs and their workers.
- This regulatory proposal may have a positive impact on worker safety to the extent remedial training and the prospect of being cited for violations promotes safer automotive repairs, auto body repairs, and ethical behavior of ARDs and their workers.
- This regulatory proposal has no effect on the environment because it does not involve factors affecting the environment

EFFECT ON SMALL BUSINESS

BAR has determined that the proposed regulatory action will not have an effect on small businesses as ARDs are already required to comply with the Bureau's laws and regulations. The fine issued is easily avoidable if the licensee or employee of the licensee complies with the Bureau's laws and regulations.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5(a)(13), the Bureau must determine that no reasonable alternative that it considered or that has otherwise been identified and brought to the attention of the Bureau would be more effective in carrying out the purpose for which it was proposed or would be as effective and less burdensome to affected private persons than the adopted regulation or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

Any interested person may present statements orally or in writing relevant to the above determinations at any requested hearing.

AVAILABILITY OF STATEMENT OF REASONS AND RULEMAKING FILE

The Bureau has compiled a record for this regulatory action, which includes the Initial Statement of Reasons (ISOR), proposed regulatory text, and all the information on which this proposal is based. This material is contained in the rulemaking file and is available for public inspection upon request to the contact persons named in this notice.

TEXT OF PROPOSAL

Copies of the exact language of the proposed regulations, any document incorporated by reference, the Initial Statement of Reasons, and all of the information upon which the proposal is based, may be obtained upon request from the Bureau of Automotive Repair at 10949 North Mather Boulevard, Rancho Cordova, California 95670.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After considering all timely and relevant comments, the Bureau, upon its own motion or at the request of any interested party, may thereafter adopt the proposals substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal, with the modifications clearly indicated, will be available for review and written comment for 15 days prior to its adoption from the person designated in this Notice as the Contact Person and will be mailed to those persons who submit written comments or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

AVAILABILITY AND LOCATION OF THE RULEMAKING FILE AND THE FINAL STATEMENT OF REASONS

All the information upon which the proposed regulations are based is contained in the rulemaking file, which is available for public inspection by contacting the person named above.

You may obtain a copy of the Final Statement of Reasons, once it has been prepared, by making a written request to the contact person named above, or by accessing the website listed below.

CONTACT PERSON

Inquiries or comments concerning the proposed administrative action may be addressed to:

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The backup contact person is:

Mathew Gibson
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WEBSITE ACCESS

Materials regarding this proposal can also be found on BAR's Web site at [https://www.bar.ca.gov/About BAR/Regulatory Actions.aspx](https://www.bar.ca.gov/About_BAR/Regulatory_Actions.aspx).