

**TITLE 16. BUREAU OF AUTOMOTIVE REPAIR
DEPARTMENT OF CONSUMER AFFAIRS**

INITIAL STATEMENT OF REASONS

Hearing Date: No hearing scheduled.

Subject Matter of Proposed Regulations: Storage Fees Charged by Automotive Repair Dealers

Section(s) Affected: 3303, 3351, 3351.8.1, 3351.8.2, and 3351.8.3 of Division 33 of Title 16 of the California Code of Regulations (CCR)

Background/Statement of the Problem:

The Bureau of Automotive Repair (Bureau/BAR), within the Department of Consumer Affairs, is the state agency authorized to adopt, amend, repeal, and enforce regulations necessary for the regulatory oversight of licensees.

The laws governing the authority and process for charging vehicle storage fees are spread across the Business and Professions, Civil, and Vehicle Codes and there are no unifying regulations about how and when vehicle storage fees should be charged or how much should be charged.

This has led to confusion and abuse when charging vehicle storage fees by the automotive repair industry. Additionally, since the statutes are in three different Codes of California law, there is confusion about which statutes apply when charging vehicle storage fees.

BAR, as the regulatory authority overseeing the automotive repair industry, is exercising its rulemaking authority to draft regulations to clarify how and when vehicle storage fees may be charged.

Assembly Bill 1263 ("AB 1263"; Berman, Chapter 681, Statutes of 2023) amended section 9884.16 of the Business and Professions Code to read:

(a) A person required to have a valid registration under the provisions of this chapter shall not have the benefit of any lien for labor or materials, including the ability to charge storage fees in accordance with applicable laws, or the right to sue on a contract for motor vehicle repairs unless the person possesses a valid registration.

(b) The bureau may adopt regulations, as necessary, in accordance with Chapter 6.5 (commencing with Section 3067) of Title 14 of Part 4 of Division 3 of the Civil Code and Section 22524.5 of the Vehicle Code, and any regulations of the Insurance Commissioner pertaining to vehicle towing or

storage fees, or both, adopted pursuant to Sections 758.5 and 790.03 of the Insurance Code, to carry out the provisions of this section.

As a result, the Bureau proposes (1) amending existing section 3303 of Article 1 of Chapter 1 of Division 33 of Title 16 of the CCR; (2) amending existing section 3351 of Article 6 of Chapter 1 of Division 33 of Title 16 of the CCR; and (3) adding Article 6.2, sections 3351.8.1, 3351.8.2, and 3351.8.3 of Chapter 1 of Division 33 of Title 16 of the CCR as follows:

- Amend section 3303 to add a definition for “Vehicle Storage”.
- Amend section 3351 to include on the Automotive Repair Dealer (ARD) Registration Application that an applicant shall provide the Bureau with the ARD’s maximum daily rate charged for storing a non-electric passenger vehicle, and that the registrant may make a change to their reported maximum daily storage rate once per registration cycle, and shall notify the Bureau in writing if the registrant makes a rate change.
- Add section 3351.8.1 to provide that:
 - An ARD charging storage fees shall display their daily storage rate(s), in a conspicuous place and storage rate(s) shall be based on their costs associated with storing vehicles.
 - Where a vehicle may be stored and that an ARD storing a vehicle shall permit the customer or the customer’s third-party payor access to that vehicle for inspection.
 - What forms of payment an ARD shall accept (at a minimum).
 - One year after the effective date of the regulations, the Bureau shall create a search tool on its website as a reference for the public, third-party payors, and other stakeholders to identify average and median daily storage rates for a locale.
 - When an ARD receives a vehicle for the purposes of repair, but the customer does not authorize the repairs, or the ARD declines to repair the vehicle, the ARD shall notify the customer if the ARD intends to begin charging for storage.
 - An ARD that maintains a motor carrier permit shall conspicuously display the Towing and Storage Fees Access Notice and have copies available to the public.
- Add section 3351.8.2 to provide that:
 - After an ARD obtains authorization to perform repairs, an ARD charging storage fees for a vehicle received as a result of an accident, or one that was recovered after being stolen, shall charge rates that are comparable to those charged by other ARDs in the same locale unless the rates are otherwise determined to be reasonable.
 - When obtaining authorization to perform a tear down, the ARD shall inform the customer—on the initial tear down estimate—1) the number of business days (to be no less than three business days) the customer has

- to authorize repairs or remove the vehicle prior to the accrual of storage fees, and 2) the daily storage rate.
- An ARD shall not charge storage fees while the vehicle is undergoing repairs.
- To charge for vehicle storage incurred after completion of repairs, an ARD shall have obtained customer authorization for the specific repair(s) being performed, generated an itemized invoice, and notified the customer that the repairs are complete.
- Upon completion of authorized repairs, the ARD shall not dismantle, disengage, remove, or strip from the vehicle any of the parts used to complete the repairs without customer authorization.
- An ARD that charges storage fees shall include the daily storage rate and number of days charged, along with any other storage related fees or services, on the invoice.
- Add section 3351.8.3 to provide that: Unless notifying a customer that the ARD is declining to repair the vehicle pursuant to section 3351.8.1(h).
 - If an ARD receives a vehicle and the registered owner or their representative is not present at the time of vehicle delivery, the ARD shall attempt to contact the registered owner to notify them of receipt of the vehicle and obtain authorization to repair the vehicle.
 - After three unsuccessful attempts (each of which shall be documented as specified in the section) to contact the registered owner on three separate business days, storage fees for the vehicle may accrue.

Anticipated benefits from this regulatory action:

The Bureau has determined that this regulatory proposal will have the following benefits to the welfare of California residents.

The proposed regulations will clarify laws regarding storage fees as well as protect and inform consumers.

Currently, the laws governing the authority and process for charging vehicle storage fees are spread across the Business and Professions, Civil, and Vehicle Codes. This proposal would create a unifying set of regulations about how and when vehicle storage fees should be charged and how much should be charged. Having unifying regulations will put all necessary information in one place, making it easier to locate and understand the requirements for charging vehicle storage fees.

These regulations will inform consumers of an ARD's vehicle storage rate by ensuring that an ARD displays their maximum daily storage rate. These regulations will also help avoid inflated storage rates by requiring that ARDs determine their storage rate(s) based on their costs associated with storing vehicles. An ARD must include on an invoice all fees associated with storing a vehicle so that there is no confusion or ambiguity about what a customer is being charged for.

These regulations further benefit consumers by requiring an ARD to attempt to contact a registered owner if a vehicle is received and the registered owner or their representative is not present at the time of delivery of the vehicle.

Additionally, this proposal creates a search tool, on the Bureau's website, that consumers and the public may utilize as a reference to identify average and median daily storage rates for a given locale.

This regulatory proposal does not affect the health of California residents, worker safety, or the state's environment.

Specific purpose of, and rationale for, each adoption, amendment, or repeal:

(1) Amend section 3303 of Article 1 of Division 33 of Title 16 of the CCR

Add subdivision (x)

"Vehicle Storage" means an automotive repair dealer having possession of a customer's vehicle upon completion of or without having performed repairs, as defined in section 9880.1(k) of the Business and Professions Code.

Purpose: Define the term "vehicle storage".

Rationale: This definition is necessary to clarify that in Division 33 of Title 16, the term vehicle storage applies to an ARD having possession of a customer's vehicle and when. The sections in this proposed regulation define when an ARD may charge for vehicle storage and other requirements of storing a vehicle.

(2) Amend section 3351 of Article 6 of Division 33 of Title 16 of the CCR

Add subdivision (a)(2)(U)

An applicant that will charge vehicle storage fees after performing repairs to a vehicle as a result of an accident or recovery of a stolen vehicle shall provide the Bureau their maximum daily rate charged for storing a non-electric passenger vehicle.

Purpose: Provide that if an ARD plans on charging storage fees after performing repairs to a motor vehicle as a result of an accident or recovery of a stolen vehicle, the ARD shall provide (to the Bureau) on the ARD application the maximum daily storage rate the ARD will charge for storing a non-electric passenger vehicle.

Rationale: This is necessary so that the Bureau can include the rate when compiling data for the search tool on its website. This search tool will enable the public, third-party payors, and other stakeholders to identify daily storage rates for a locale. This is further explained in section 3351.8.1(f) below. This only applies to non-electric passenger vehicles because storing electric vehicles is more costly and has different requirements. Additionally, large commercial type vehicles such as busses and big rigs require more

space and would consequently cost more to store. By specifically requesting information for non-electric passenger vehicles, the Bureau is standardizing the data gathered from ARDs, allowing that data to be used to calculate an average storage rate for a locale. If an ARD reports their maximum charge for storing an electric vehicle or larger commercial type vehicles, it could disproportionately skew the rate for this type of vehicle's storage.

Daily storage rates shall be determined in accordance with section 3351.8.1(b) of this Chapter.

Purpose: The rate the ARD will charge shall be determined in accordance with section 3351.8.1(b) as described below.

Rationale: When the ARD determines the rate they charge, it shall be established based on their costs associated with storing the vehicle as recorded in section 3351.8.1(b). This will result in each shop having to make a determination of their costs to store a vehicle, which will lead to a more accurate storage rate for a given locale when it is combined into an average storage rate. Additionally, it will protect the consumer from the ARD overcharging for vehicle storage based on factors that are not associated with the costing of storing the vehicle.

If an automotive repair dealer charges varied storage rates, the automotive repair dealer shall report their maximum daily storage rate.

Purpose: To require that, if an ARD charges varied storage rates, the ARD shall report to the Bureau the ARD's maximum daily storage rate.

Rationale: This change is necessary because ARDs may charge varied rates based on different circumstances, such as indoor storage versus outdoor storage. The Bureau wants to standardize the information requested to the highest rate charged for storing a non-electric passenger vehicle and in so doing allow that data to be used to calculate an average storage rate for a locale.

An automotive repair dealer may make a change to their reported maximum daily storage rate once per registration cycle and shall provide the Bureau with written notice of that change pursuant to subdivision (e) of this section.

Purpose: To allow an ARD to make a change to their reported maximum daily storage rate once per registration cycle while ensuring the ARD provides the Bureau with written notice of that change.

Rationale: This change is necessary to ensure the ARD only changes their storage rate at the time of registration renewal and, at most, once during the subsequent registration cycle, all the while reporting each storage rate to the Bureau. Allowing ARDs to adjust their storage rates during registration renewal and once during the registration cycle allows ARDs to adjust to changing circumstances such as lease or employee obligations or other potential varying changes that would impact their daily storage rate.

Allowing them to adjust their storage rate and report that new rate to the Bureau will keep the search tool accurate. Allowing for more storage rate changes above and beyond these two times during the registration cycle would create storage rates that fluctuates so much that customers never really know what the daily storage rate for a locale actually is, and a search tool that would struggle to provide an accurate average for a locale.

Add subdivision (e)(9)

A change to their maximum daily storage rate.

Purpose: Ensure that an ARD notifies the Bureau if they change their maximum daily storage rate.

Rationale: By adding this subdivision, changing a reported daily storage rate will be considered a material change to the registration application and the ARD will be required to notify the Bureau of that change within 30-days of doing so. This change is necessary to allow the Bureau to keep the search tool updated, which aids in increasing transparency to consumers.

(3) Adopt Article 6.2. Storage Fees Charged by Automotive Repair Dealers. to Chapter 1 of Division 33 of Title 16 of the CCR

Purpose: Add a new Article to Title 16 specifically for storage fee regulations.

Rationale: AB 1263 amended section 9884.16 of the Business and Professions Code (BPC) enabling the Bureau to adopt regulations pertaining to vehicle storage fees. Adding this Article allows the Bureau to add the new regulations in a place that aligns with the existing regulations. This addition is necessary to ensure regulations relating to storage fees are housed in a place in the CCR where their incorporation make senses to readers and the regulations will therefore be easy to find. This is done for organizational purposes. The title is necessary because it identifies the subject matter enclosed in the sections to come, aiding readers in knowing the content of the article and the sections within the article.

Adopt section 3351.8.1. General Requirements for Vehicle Storage.

Subdivision (a)

An automotive repair dealer charging storage fees shall display their daily storage rate(s), including their maximum daily rate, as reported to the Bureau pursuant to section 3351(a)(2)(U) of this Chapter, in a conspicuous place where the storage rate(s) are visible, legible, and adjacent to where customers are served.

Purpose: Ensure that each ARD displays their daily storage rate so the customer knows what the daily storage rate is.

Rationale: This addition is necessary for transparency. When a customer knows the daily storage rate, they can make an educated decision on whether to pay storage rates at a certain ARD, as they know what they may be charged. Placing the rates in a conspicuous place where the storage rate(s) is visible, legible, and adjacent to where customers are served makes it easy for the customer to see and identify.

Subdivision (b)

An automotive repair dealer charging for the storage of a vehicle shall establish a daily storage rate(s) based on their costs associated with storing vehicles and shall not include an automotive repair dealer's negotiated storage rate with a third-party payor.

Purpose: Ensure that the ARD only charges the customer what it costs the ARD to store the vehicle, excluding an ARDs negotiated storage rate with a third-party payor.

Rationale: This addition is necessary so that the ARD doesn't unnecessarily or unfairly overcharge or take advantage of the customer. It is necessary to exclude an ARDs negotiated storage rate with a third-party provider because those rates are outside the scope of the purpose of these regulations. The Bureau wants the ARD to make a determination of their actual costs to store a vehicle and set the storage fee based on that determination. If a negotiated rate is not based on the actual cost of storing a vehicle, the Bureau does not want that factored into the maximum storage rate reported by the ARD because it could skew the amounts reported for the purposes of the search tool.

Subdivision (c)

An automotive repair dealer storing a vehicle shall permit the customer or the customer's third-party payor access to that vehicle for inspection during normal business hours, which are Monday through Friday from 8:00 a.m. to 5:00 p.m., inclusive, except state holidays.

Purpose: Ensure that the customer or their third-party payor have access to the vehicle during normal business hours.

Rationale: This provision of the regulations aligns with the Vehicle Code. Pursuant to Vehicle Code 22651.07, a vehicle owner or his or her agent shall have the right to inspect the vehicle without paying a fee, and normal business hours are defined as "Monday through Friday from 8:00 a.m. to 5:00 p.m., inclusive, except state holidays".

Subdivision (c)(1)

The vehicle shall be stored at the automotive repair dealer's primary business address as registered with the Bureau;

Purpose: Ensure that the vehicle is stored at the ARDs primary business address as registered with the Bureau.

Rationale: This is necessary to ensure that the owner of the vehicle and/or their representative knows where the vehicle is so that they may access it during normal business hours, as provided for in subdivision (c). This will also ensure that if there is a complaint or inquiry that needs to be made by the Bureau, it will know where the vehicle is being stored.

Subdivision (c)(2)

If necessary for the vehicle to be stored at a location other than the automotive repair dealer's primary business address, the automotive repair dealer shall, prior to moving the vehicle to a different location, notify the customer of the storage location by either electronic or oral means, as defined in section 3352 of this Chapter; and

Purpose: Allow the ARD to store the vehicle at an alternative location if necessary, so long that they notify the customer of the storage location prior to moving the vehicle.

Rationale: This is necessary to ensure that the owner and/or their representative knows in advance that the vehicle is no longer going to be at the location where it was delivered and they are provided with the location where the vehicle will now be located. This will keep the owner informed and allow the owner (or their third-party payor) access to the vehicle during normal business hours as provided for in subdivision (c).

Subdivision (c)(3)

The automotive repair dealer shall not charge the customer for moving the vehicle between locations unless the customer authorizes the charge to transfer the vehicle to a different location, and the automotive repair dealer documents that authorization in accordance with section 3353.1 of this Chapter.

Purpose: Ensure that the ARD does not charge the customer if the ARD needs to move the vehicle to a different storage location unless the customer authorizes the transfer charge.

Rationale: This is necessary to ensure that if the ARD wants to charge the customer to move the vehicle from the primary business address to another location, they must obtain the customer's authorization for that charge. Additionally, that authorization must be obtained and documented in accordance with CCR section 3351.1. If the customer does not authorize the charge, the repair facility shall not charge for moving the vehicle. The ARD is still permitted to move the vehicle as long as they notify the consumer of the vehicle's new location in accordance with subdivision (c)(2).

Subdivision (d)

An automotive repair dealer charging storage fees for a vehicle shall, at a minimum, accept all of the following forms of payment for storing a vehicle: cash, a valid bank credit card, insurer's check.

Purpose: Ensure that the ARD accepts cash, a valid bank credit card, insurer's check (at minimum).

Rationale: This provision of the regulations aligns with the Vehicle Code. Pursuant to Vehicle Code 22651.07, it is necessary to make sure that the ARD won't deny those forms of payment. This also prohibits an ARD from only accepting cash. This allows the customer to pay in a way that is convenient for them while ensuring the ARD is paid.

Subdivision (e)

When charging storage fees, an automotive repair dealer shall comply with the provisions of Chapter 6.5 (commencing with section 3067) of Title 14 of Part 4 of Division 3 of the Civil Code.

Purpose: Ensure the ARD is aware of and complies with Chapter 6.5 (commencing with section 3067) of Title 14 of Part 4 of Division 3 of the Civil Code.

Rationale: Chapter 6.5 deals with liens on vehicles, specifically Civil Code section 3068, which provides that a lien arises upon written notification to the customer that the repairs are complete. It is necessary to include this addition to remind the industry that the Civil Code goes into more depth regarding when a lien arises in an automotive repair transaction and provides information on how long an ARD has to file for authorization to conduct a lien sale with the Department of Motor Vehicle before their lien becomes extinguished.

Subdivision (f)

Utilizing the daily storage rates reported pursuant to subdivision (b) of this section and section 3351(a)(2)(U) of this Chapter, the Bureau shall create a search tool on its website as a reference for the public, third-party payors, and other stakeholders to identify average and median daily storage rates for a locale, charged pursuant to Vehicle Code section 22524.5(c)(2)(B).

Purpose: To provide a tool for consumers/users to view average and median daily storage rates for a given locale. These average and median storage rates will be determined based on the rates reported to the Bureau.

Rationale: This addition is necessary to allow a person to view daily storage rate averages and medians and see if the rate they are or may be charged is comparable to other rates charged in the same locale. This will allow consumers to make an educated decision on whether to pay storage rates at a certain ARD based on the average and median rates reported for the locale within which the ARD is located. Additionally, this tool will permit an ARD to reference the average and median storage rate for their locale if a third-party payor offers to pay a storage rate the ARD believes is not reasonable. Conversely, this tool will permit a third-party payor to reference the average and median storage rate for an ARD's locale if an ARD is trying to charge a storage rate the third-party payor does not believe is reasonable.

Subdivision (f)(1)

For the purposes of this Article, locale is defined as a geographic radius around each reporting automotive repair dealer that is sufficient to identify average and median daily storage rates within that locale, as follows:

Purpose: To lead into how the Bureau determines what constitutes a given locale.

Rationale: This is necessary to introduce the different criteria the Bureau will use to determine different size geographic radiuses that will make up an ARD's given locale.

Subdivision (f)(1)(A)

All reporting automotive repair dealers within a two (2) mile radius of each individual reporting automotive repair dealer.

Purpose: Describe the first "locale" option, which is a 2-mile radius.

Rationale: This addition is necessary to show that the locale for the average and mean daily storage rates starts at a 2-mile radius of all individual reporting ARDs. In major metropolitan areas, this 2-mile radius will include enough reporting ARDs to create accurate average and median daily storage rates for that locale.

Subdivision (f)(1)(B)

If there are fewer than twenty (20) reporting automotive repair dealers within a two (2) mile radius, the locale shall expand to a five (5) mile radius of each individual reporting automotive repair dealer.

Purpose: Describe the second "locale" option, which is a 5-mile radius if there are fewer than 20 reporting automotive repair dealers within a 2-mile radius.

Rationale: This addition is necessary because if there are fewer than 20 reporting ARDs within a 2-mile radius, the search tool might not accurately reflect true and fair average and median daily storage rates. Increasing the radius from 2-miles to 5-miles will include more reporting ARDs in the geographic radius, leading to more accurate average and median daily storage rates. In less densely populated areas, such as suburbs, this 5-mile radius will include enough reporting ARDs to create accurate average and median daily storage rates for that locale.

Subdivision (f)(1)(C)

If there are fewer than ten (10) reporting automotive repair dealers within a five (5) mile radius, the locale shall expand to a twenty (20) mile radius of each individual reporting automotive repair dealer.

Purpose: Describe the third "local" option, which is a 20-mile radius if there are fewer than 10 reporting automotive repair dealers within a 5-mile radius.

Rationale: This addition is necessary because if there are fewer than 10 reporting ARDs within a 5-mile radius, the search tool might not accurately reflect true and fair average and median daily storage rates. Increasing the radius from 5-miles to 20-miles will include more reporting ARDs in the geographic radius, leading to more accurate average and median daily storage rates. In less populated rural or exurban communities, this 20-mile radius will include enough reporting ARDs to create accurate average and median daily storage rates for that locale.

Subdivision (f)(1)(D)

If there are fewer than five (5) reporting automotive repair dealers within a twenty (20) mile radius, the locale shall expand to the entire county in which the individual reporting automotive repair dealer is located.

Purpose: Describe the fourth “local” option, which is the entire county if there are fewer than 5 reporting automotive repair dealers within a 20-mile radius.

Rationale: This addition is necessary because if there are fewer than 5 reporting ARDs within a 20-mile radius it might not accurately reflect true and fair average and median daily storage rates. Increasing the radius from 20-miles to the entire county will include more reporting ARDs in the geographic radius, leading to more accurate average and median daily storage rates. In rural areas the with less than five reporting ARDs in a 20-mile radius, the only way to obtain fair average and median daily storage rates for that locale is to include the average and median of the daily storage rates for every reporting ARD located in that county

Subdivision (f)(2)

Published average and median storage rates shall not be used to establish or otherwise influence an automotive repair dealer’s storage rate(s) and shall not be used to limit or suppress an automotive repair dealer’s storage rate(s).

Purpose: To establish and confirm that the published storage rate averages and means are not meant to establish, influence, limit, or suppress an ARDs storage rate.

Rationale: This addition is necessary because by displaying the average and median storage rates, BAR is simply providing a reference point and does not intend to establish that the average rate is the maximum that any ARD can charge in a given locale, or that either the average or median rate is somehow a more reasonable rate that should influence ARDs to change their rates. The average and median rates will simply provide a reference point for a local to the public, third-party payors, and other stakeholders.

Subdivision (f)(3)

This subdivision shall become operative one-year after the effective date of these regulations.

Purpose: To let the public know that the search tool will become available one year after the regulations take effect.

Rationale: This addition is necessary to allow time for the Bureau to gather the data and add it to the website search tool. The Bureau will not have all of the storage rate information right away, as the ARDs only have to supply their rate(s) once per year when they apply for or renew their registration (or twice per year if they change their rate).

Subdivision (g)

When an automotive repair dealer receives a vehicle for repair(s), but the customer does not authorize the repairs, the automotive repair dealer shall notify the customer if the automotive repair dealer intends to begin charging for storage of the vehicle pursuant to Vehicle Code section 22524.5(c)(2)(B).

Purpose: To alert the customer and the ARD that when an ARD has possession of the customer's vehicle, and the customer does not provide authorization for the ARD to repair the vehicle, the ARD may begin to charge storage fees if the ARD provides notification to the customer.

Rationale: This addition is necessary to allow ARDs storing vehicles they do not have authorization to repair to be compensated for storing the vehicle. If an ARD has received possession of a vehicle to perform repairs, but the customer does not give authorization for the ARD to repair the vehicle, the ARD may charge storage fees (if they have notified the owner) because the ARD would otherwise just be holding the vehicle for the customer when the ARD is not permitted to repair the vehicle, and would not be compensated for storage, thereby providing potentially endless storage for free. The ARD is permitted to charge storage fees that are comparable to other repair facilities in the same locale, as permitted by Vehicle Code section 22524.5(c)(2)(B).

Subdivision (h)

- (a) Except as provided in section 3351.8.3(a) of this Article, an automotive repair dealer shall notify a customer within one business day after receiving a vehicle for repair(s) if the automotive repair dealer declines to repair the vehicle. The notification shall also include whether the automotive repair dealer intends to begin charging for storage of the vehicle pursuant to Vehicle Code section 22524.5(c)(2)(B), and the automotive repair dealer's daily storage rate.

Purpose: To notify a customer within one business day if an ARD receives a vehicle but declines to repair that vehicle. The notification shall also include whether the ARD intends to charge storage fees, and the daily storage rate.

Rationale: This addition is necessary to allow ARDs storing vehicles they will not be repairing to be compensated for storing the vehicle, as long as they notify the customer.

There are several different scenarios where an ARD might receive a vehicle but cannot or will not repair it. For example, if an ARD is not certified by the vehicle manufacturer to repair the vehicle, the ARD may not be able to purchase collision repair parts as some vehicle manufacturers require certification with the manufacturer to purchase those parts. Another example is if the ARD finds that the type or level of damage is not something the ARD feels able to repair or comfortable performing repairs on, so they may choose not to repair the vehicle. If the ARD decides to charge storage fees, the ARD shall notify the customer within one business day so that the customer may remove their vehicle prior to accruing storage fees.

The ARD may charge storage fees because they would otherwise just be holding the vehicle for the customer when the ARD has no intention of repairing the vehicle, and would not be compensated for storage, thereby providing potentially endless storage for free.

In these situations, the ARD is permitted to charge storage fees at a rate that is deemed reasonable if it is comparable to storage-related rates and fees charged by other facilities in the same locale, as permitted by Vehicle Code section 22524.5(c)(2)(B).

Subdivision (i)

An automotive repair dealer that maintains a motor carrier permit under Vehicle Code section 34620 shall display the Towing and Storage Fees Access Notice in a conspicuous place where it is visible, legible, and adjacent to where customers are served, and have copies available to the public.

Purpose: Ensure that an ARD conspicuously displays the Towing and Storage Fees Access Notice if they have a motor carrier permit.

Rationale: This addition is necessary to ensure the notice is visible to consumers and that copies of the notice are available. A motor carrier permit allows a commercial vehicle operator, such as a tow truck/towing company, to transport property or passengers for hire. Pursuant to Vehicle Code section 22651.07, an ARD that provides towing services shall post the Towing and Storage Fees Access Notice in the office area in plain view of the public and have copies available to the public.

Adopt § 3351.8.2. Storage Fees Resulting from a Repair Transaction.

Subdivision (a)

When an automotive repair dealer obtains authorization to perform repairs, as defined in Business and Professions Code section 9880.1(k), including a tear down as defined in section 3352 of this Chapter, as a result of an accident or recovery of a stolen vehicle and upon completion of the contracted repairs charges for vehicle storage, the following shall apply:

Purpose: To lead into what shall apply when an ARD obtains authorization to perform repairs, including a tear down as a result of an accident or recovery of a stolen vehicle and upon completion of the contracted repairs charges for vehicle storage.

Rationale: This addition is necessary to introduce the remainder of the subdivision.

Subdivision (a)(1)

Storage rates shall be comparable to those charged by other automotive repair dealers in the same locale as defined in section 3351.8.1(g)(1) of this Article, and in accordance with Vehicle Code section 22524.5(c)(2)(B).

Purpose: To ensure that storage rates charged are comparable to those charged by other ARDs in the same locale when the storage fee results from a repair transaction.

Rationale: This addition is necessary to prohibit ARDs from unfairly or unreasonably charging customers for vehicle storage or taking advantage of customers financially. There will be varying storage rates across each locale, but they should be comparable to those in the same locale for fairness to the customer.

Subdivision (a)(2)

Storage rates that are not comparable to the daily storage rates reported as specified in section 3351.8.1(g) of this Article may be permitted if determined reasonable by the Bureau.

Purpose: To make an exception to (a)(1) above, that if the storage rate charged is not comparable to rates charged by other ARDs in the same locale, it may still be permitted if determined reasonable by the Bureau.

Rationale: This addition is necessary because if it is found that there is some reason that storage rates are not comparable to others in the same locale and there is a justifiable reason based on the ARD's actual costs to store the vehicle, the ARD will be allowed by the Bureau to charge that non-comparable rate. For example, if the ARD also repairs electric vehicles that have different storage requirements than other passenger vehicles and require more space. Or the ARD repairs commercial vehicles and class A motorhomes that requires much more space than passenger vehicle, it would cost that ARD more to store that vehicle, and therefore would charge a higher rate for storage, even though it is in the same locale. In this instance, the Bureau would permit that higher rate if it is determined to be reasonable.

Subdivision (a)(3)

Any storage fee for an item or service identified by a term or expression of like meaning to the presumptively unreasonable fees listed in Vehicle Code section 22524.5(c)(3)

shall also be deemed presumptively unreasonable. An automotive repair dealer may present evidence to demonstrate that a presumptively unreasonable fee is reasonable.

Purpose: To expand on unreasonable fees, to state that in addition to the presumptively unreasonable fees listed in Vehicle Code section 22524.5(c)(3), any term or expression that has like meaning to the ones in that list are also presumptively unreasonable. To make clear that any presumptively unreasonable fee may be deemed reasonable based upon evidence substantiating the fee.

Rationale: Adding language that clarifies that any term or expression that has like meaning to the ones in that list are also presumptively unreasonable is necessary to avoid loopholes. For example, one of the terms listed in Vehicle Code section 22524.5(c)(3) as being presumptively unreasonable is “pull-out fees”; if on the invoice an ARD lists that as a “take-out fee”, that expression has like meaning, and may be presumed unreasonable. In addition, adding language that any presumptively unreasonable fee may be deemed reasonable based upon evidence substantiating the fee is necessary in the event that the fee is reasonable. For example, if an ARD uses a dolly to move a vehicle that is immobile due to collision damage, a “dolly fee” may be reasonable, even though that fee is on the list of presumptively unreasonable fees.

Subdivision (b)

When obtaining authorization to perform a tear down, the automotive repair dealer shall include the following information on the initial tear down estimate:

Purpose: To lead into what is required on an initial tear down estimate.

Rationale: This addition is necessary to introduce the remainder of the subdivision.

Subdivision (b)(1)

The number of business days, not to be less than three business days, the customer has to authorize repairs or remove the vehicle prior to the accrual of storage fees after receipt of notification that the tear down has been completed and receipt of an itemized estimate containing the estimated price for parts and labor to repair the vehicle; and

Purpose: To ensure that the invoice contains the number of business days the customer has to authorize repairs or remove the vehicle prior to the accrual of storage fees. This is the number of business days after receipt of notification that the tear down has been completed and the customer received an itemized estimate containing the estimated price for parts and labor to repair the vehicle. This also ensures that the customer has a minimum of three business days to determine if they want to authorize repairs or remove the vehicle prior to the accrual of storage fees.

Rationale: This addition is necessary for transparency, so the customer knows when storage fees may begin to accrue. The minimum of three-days is necessary to allow the

customer time to think about whether they want to repair or remove the vehicle. This will give them time to consult with their insurance company or anyone else to decide what to do with the vehicle. In addition, if the ARD makes a good faith effort and still cannot get in contact with the customer within three business days (especially in cases when it is through no fault of the ARD, or of either party), there would likely be consequences for the ARD.

Subdivision (b)(2)

The daily storage rate.

Purpose: To ensure that the invoice contains the daily storage rate.

Rationale: This addition is necessary for transparency, to inform the customer of what the daily storage rate will be if storage fees begin to accrue.

Subdivision (c)

An automotive repair dealer shall not charge storage fees while the vehicle is undergoing repairs, including the tear down of a vehicle or part in accordance with section 3353 of this Chapter.

Purpose: To ensure that an ARD does not charge storage fees while the vehicle is undergoing repairs.

Rationale: This addition is necessary so that if a vehicle is undergoing repairs or a teardown, the ARD does not charge storage fees because the ARD is actively working on the vehicle, not storing it for the customer. An ARD could unfairly take advantage of a customer by charging them for the repair as well as holding the vehicle while they work on it. This is reinforced by *Owens v. Pyeatt*, 248 Cal. App. 2d 845, 845 (1967), which states, “No charge for storage is implied during the period of time [the vehicle] was undergoing repairs.”

Subdivision (d)

To charge for vehicle storage incurred after completion of repairs, an automotive repair dealer shall have:

Purpose: To lead into what an ARD shall have done in order to charge for vehicle storage incurred after completion of repairs.

Rationale: This addition is necessary to introduce the remainder of the subdivision.

Subdivision (d)(1)

Obtained customer authorization as specified in section 3353.1 of this Chapter for the specific repair(s) being performed;

Purpose: To ensure that the ARD obtained customer authorization for the specific repair(s) being performed.

Rationale: This is the first step an ARD is required to take to enter into a contract with a consumer to perform automotive repairs. This is necessary to ensure that the customer is only paying for a repair that they approved, and the ARD cannot add extra work and charge the customer without their knowledge and authorization.

Subdivision (d)(2)

Generated an itemized invoice with all repair work performed and parts supplied upon completion of the authorized repairs; and

Purpose: To ensure that the ARD, upon completion of the authorized repairs, generated an itemized invoice with all repair work performed and parts supplied.

Rationale: Upon completion of the contracted repairs, the ARD is required to generate an invoice that is provided to the consumer and that details the work performed and parts replaced as well as the amount due for the contracted repairs. This addition is necessary because this document memorializes the completion of the contract.

Subdivision (d)(3)

Notified the customer that the repairs are complete.

Purpose: To ensure that the ARD notifies the customer that the repairs are complete.

Rationale: This addition is necessary so that the customer knows that their vehicle is repaired, and when they go back to the repair facility, they receive a copy of the final invoice, pay the repair bill, and retrieve the vehicle. This addition is also necessary so that the ARD doesn't start charging storage fees without letting the customer know that they can get their vehicle.

Subdivision (e)

Upon completion of authorized repairs, an automotive repair dealer shall not dismantle, disengage, remove, or strip from the vehicle any of the parts used to complete the repairs without customer authorization.

Purpose: To ensure that, upon completion of authorized repairs, an ARD does not dismantle, disengage, remove, or strip from the vehicle any of the parts used to complete the repairs without the customer's authorization.

Rationale: This addition is necessary because if an ARD takes or alters anything that is part of the repair to a vehicle, that would defeat the purpose of repairing the vehicle.

This addition is also necessary to prevent an ARD from installing a part, and replacing it with a different part (maybe a cheaper one) after the repair had been completed.

Subdivision (f)

An automotive repair dealer who charges storage fees shall include the daily storage rate and number of days charged, along with any other storage related fees or services, on the invoice as required pursuant to section 3356 of this Chapter.

Purpose: To ensure that an ARD includes on the invoice the daily storage rate, number of days charged, and any other storage related fees or services.

Rationale: This addition is necessary so that, in situations where a consumer is charged storage related fees, the customer knows what they were charged for and how much for each itemized fee or service. This also provides documentation in the event of a dispute or claim.

Adopt § 3351.8.3. Registered Owner Notification Requirements.

Subdivision (a) and (a)(1)

(a) Unless notifying a customer that the automotive repair dealer is declining to repair pursuant to section 3351.8.1(h) of this Article,

(a)(1) If an automotive repair dealer receives a vehicle and the registered owner or their representative is not present at the time of delivery of the vehicle, the automotive repair dealer shall attempt to contact the registered owner, by either electronic or oral means as defined in section 3352 of this Chapter. Upon contacting the registered owner, an automotive repair dealer shall obtain authorization to repair the vehicle.

Purpose: To ensure that ARDs attempt to contact the registered owner or their representative if the ARD receives a vehicle and the registered owner or their representative is not present at the time of delivery, in order to notify them of receipt of the vehicle and obtain authorization to repair the vehicle (unless the ARD is declining to repair the vehicle and is therefore subject to the notification requirements into section 3351.8.1(h)).

Rationale: It is necessary to contact the registered owner when their vehicle is received to verify the registered owner knows where the vehicle is located, and so the ARD can obtain authorization and begin performing a diagnosis and corrective repairs. (However, if the ARD declines to repair the vehicle, they must notify the registered owner pursuant to section 3351.8.1(h) so that the registered owner may remove the vehicle.) This way, the registered owner is also informed that the ARD may charge storage fees based on Vehicle Code section 22524.5(c)(2)(B) before the storage fees can begin to accrue.

Subdivision (a)(2)

After three unsuccessful attempts to contact the registered owner on three separate business days, storage fees for the vehicle may accrue in accordance with Vehicle Code section 22524.5(c)(2)(A). Each contact attempt shall be documented, including the date and time each attempt was made, and the telephone number or electronic mail address contacted.

Purpose: To make clear that an ARD may begin charging storage fees after three unsuccessful attempts to contact the vehicle's owner over a minimum of three business days. This also ensures that the ARD documents each attempt made to contact the registered owner.

Rationale: This addition is necessary to ensure the ARD attempts to contact the vehicle's owner before storage fees accrue so the owner is not blindsided if they do not know where their vehicle is and that storage fees are accruing. This is also necessary to ensure the attempts are documented. Three contact attempts to a consumer over three business days is a reasonable number of attempts, as two might not be enough to reach the registered owner, and four or more may be too burdensome on the ARD. The documented attempts may be used for proof that contact was attempted if needed for a complaint investigation. After the third attempt to contact the registered owner over a minimum of three business days, the ARD may charge storage fees because they are left holding a vehicle that they are unable to do anything with other than store. In these situations, the ARD is permitted to charge storage fees at a rate that does not exceed "fees and rates charged for similar services provided in response to requests initiated by a public agency" such as the CHP or local police department, as permitted by Vehicle Code section 22524.5(c)(2)(A).

Underlying Data:

1. Assembly Bill 1263 (Berman, Chapter 681, Statutes of 2023)
https://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=202320240AB1263

Business Impact:

The Bureau made the initial determination that the proposed regulations will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

This proposal is designed to create a unifying set of regulations regarding storage fees, as the laws governing the authority and process for charging vehicle storage fees are currently spread between the Business and Professions, Civil, and Vehicle Codes. The proposed regulations are intended to clarify current law regarding storage fees, and protect and inform the industry and consumers.

The Bureau will not be charging any fees for ARDs to access and provide information to the search tool and anticipates registrants will be able to comply with the regulations within normal business operations. As a result, no additional costs are anticipated.

Economic Impact Assessment:

The Bureau has determined that this regulatory proposal will not:

- (1) Create jobs within California;
- (2) Eliminate jobs within California;
- (3) Create new businesses within California;
- (4) Eliminate existing businesses within California;
- (5) Expand businesses currently doing business in the State of California;
- (6) Affect worker safety;
- (7) Affect the state's environment.

The regulatory amendments will bring together and clarify existing laws governing storage fees, under one unified regulatory section, as the laws governing the authority and process for charging vehicle storage fees are currently spread across the Business and Professions, Civil, and Vehicle Codes.

Specific Technologies or Equipment:

This regulation does not mandate the use of specific technologies or equipment.

Consideration of Alternatives:

No reasonable alternative which was 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, as effective and less burdensome to affected private persons, or more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law than the adopted regulation.

Set forth below is the alternative that was considered and the reason the alternative was rejected:

Alternative 1: The Bureau considered taking no action. However, with no action, confusion and abuse when charging vehicle storage fees by the automotive repair industry may continue. Additionally, failing to bring together existing laws governing storage fees from the Business and Professions, Civil, and Vehicle Codes under one unified regulatory section will lead to continued uncertainty about which statutes to apply when charging vehicle storage fees.

Description of reasonable alternatives to the regulation that would lessen any adverse impact on small business: No such alternatives have been proposed, however, the Bureau welcomes comments from the public.