

BUREAU OF AUTOMOTIVE REPAIR
PROPOSED LANGUAGE OF REGULATIONS
Citation Program for Automotive Repair Dealers

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

(1) Amend Section 3303, Article 1, Chapter 1, Division 33, Title 16, California Code of Regulations, to read as follows:

§ 3303. Definitions

(r) "Gross Negligence" means deviation from a standard of care that could foreseeably result in injury or significant harm to a consumer, personal property, or the public during or as a result of the repairs to a motor vehicle.

Note: Authority cited: Sections 9882, 9884.9, 9884.19, and 9887.1, Business and Professions Code. Reference: 9880.1(a), 9880.1(e), 9880.1(f), 9882, 9884.7(a)(2), 9884.7(a), 9884.9, 9889.50, 9889.51, and 9889.52, Business and Professions Code.

(2) Amend Section 3371, Article 9, Chapter 1, Division 33, Title 16, California Code of Regulations, to read as follows:

§ 3371. ~~False Untrue~~ or Misleading Statements or Advertising.

Note: Authority cited: Sections 9882 and 9884.19, Business and Professions Code. Reference: Sections 9884.19 and 17500, Business and Professions Code.

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

ARTICLE 11.1.1. Citations and Administrative Fines for Smog Check Licensees

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

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

§ 3394.26 Administrative Fine Amounts for Smog Check Licensees

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

§ 3394.27 Compliance with Citations/Orders of Abatement for Smog Check Licensees

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

- (4) **Add Section 3394.30, Article 11.1.2, Chapter 1, Division 33, Title 16, California Code of Regulations, to read as follows:**

ARTICLE 11.1.2. Citations and Administrative Fines for Automotive Repair Dealers (ARD)

§ 3394.30. Authority to Issue Citations and Fines for ARDs

(a) The director or his/her designee is authorized to determine when and against whom a citation will be issued and to issue citations containing orders of abatement and fines for violations by licensees of the statutes and regulations referred to in Business and Professions Code section 125.9.

(b) A citation shall be issued whenever any fine is issued. Each citation shall be in writing and shall describe with particularity the nature and facts of the violation, including a reference to the statute or regulations alleged to have been violated. The citation shall be served upon the individual personally or by certified mail.

Note: Authority cited: Sections 12.5, 125.9, 148, 9882, 9884.19, Business and Professions Code. Reference: Sections 125.9, 148, 9884.7, and 9884.11, Business and Professions Code

§ 3394.31 Citation Fine Amounts for ARDs

(a) The minimum and maximum fine amounts are established in Table I, Citation Fine Schedule for ARDs. A citation that lists multiple violations arising from an investigation/inspection shall not exceed five thousand dollars (\$5000) pursuant to Business and Professions Code section 125.9. In assessing a fine, the Bureau shall consider the following:

- (1) Gravity of the violation
- (2) Good faith of the licensee
- (3) History of previous violation

(b) A citation may include a fine up to \$5000 if one or more of the following circumstances apply:

- (1) The cited person or establishment has received two or more prior citations for the same or similar violations;
- (2) The violation demonstrates a willful disregard for the law.
- (3) The violation could result in foreseeable injury or significant harm to the consumer, consumer's property, or public.

(c) The citation issued under this section shall be separate from and in addition to any other administrative, civil, or criminal remedies.

Table 1: Citation Fine Schedule

Violation Section	Violation Name	Minimum Citation	Maximum Citation
BPC §9884.7(a)(1) specifically relating to CCR §§3371, 3372.1 and/or 3373	False or Misleading Advertising	\$100	\$5000
BPC §9884.7(a)(1) specifically relating to CCR 3373	Generating False or Misleading Invoice	\$100	\$5000
BPC §9884.7(a)(5)	Conduct Constituting Gross Negligence	\$500	\$5000
BPC §9884.7(a)(7) specifically relating to §§CCR 3360 - 3367	Disregard of Accepted Trade Standards	\$100	\$5000
BPC §9884.11 CCR §3358	Failure to Produce Records for Inspection	\$100	\$5000
CCR §3351.5	Failure to Possess Required Equipment: Auto Body Repair	\$100	\$5000
CCR §3368	Payment of Referral Fee for Towing Delivery	\$100	\$5000

Note: Authority cited: Sections 12.5, 125.9, 148, 9882, 9884.19, Business and Professions Code. Reference: Sections 125.9, 148, 9884.7, and 9884.11, Business and Professions Code; 12110 Vehicle Code

§ 3394.32 Contested Citations and Request for formal Citation Hearing for ARDs

(a) If a person cited pursuant to Section 125.9 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 Bureau.

(b) If a hearing is not requested pursuant to this section, payment of any fine shall not constitute an admission of the violation charged. Hearings shall be held pursuant to Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(c) Failure of a licensee to pay a fine or comply with an order of abatement, or both, within 30 days of the date of assessment or order, unless the citation is being appealed, may result in disciplinary action being taken by the board, bureau, or commission. Where a citation is not contested and a fine is not paid, the full amount of the assessed fine shall be added to the fee for renewal of the license. A license shall not be renewed without payment of the renewal fee and fine.

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

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

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

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

§ 3394.41 Citation Format.

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

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

§ 3394.42 Citations for Unlicensed ~~Practice~~ Activity

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

§ 3394.43 Fine Amounts for Unlicensed ~~Practice~~ Activity

Note: Authority cited: Section 9882, Business and Professions Code. Reference: Sections 1259.9, 148, 149, and 302(d), Business and Professions Code.

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

Note: Authority cited: Section 9882, Business and Professions Code. Reference: Sections 1259.9, 148, 149, and 302(d), Business and Professions Code.

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

Note: Authority cited: Section 9882, Business and Professions Code. Reference: Sections 1259.9, 148, 149, and 302(d), Business and Professions Code.