

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 ~~striethrough~~.
Omitted text is indicated by (* * * *)

(1) Amend Article 6, Chapter 1, Division 33, Title 16, California Code of Regulations, to read as follows:

§ 3351.7_Negligence_

(a) An automotive repair dealer shall not commit negligence in the maintenance of and/or repairs to a motor vehicle.

(b) "Negligence" means deviation from an ordinary standard of care that could foreseeably result in injury or harm to a consumer, personal property, or the public during or as a result of repairing a motor vehicle.

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

(2) Amend Article 7, Chapter 1, Division 33, Title 16, California Code of Regulations, to read as follows:

§ 3356.1 Inaccurate Invoices.

An automotive repair dealer shall not create an invoice that is inaccurate in the recording of service and repair work performed, and/or parts supplied.

Note: Authority cited: Sections 9882, 9884.8, Business and Professions Code. Reference: Sections 9884.8, Business and Professions Code.

§ 3358 Maintenance of Records.

Pursuant to Section 9884.11 of the Business and Professions Code, each automotive repair dealer shall maintain, in either written or electronic form, legible copies of the following records for at least three years:

(a) All invoices relating to automotive repair including invoices received from other sources for parts and/or labor.

(b) All estimates pertaining to work performed, including all records created to obtain the authorization from the customer for the initial estimate.

(c) All work orders and/or contracts for repairs, parts and labor, including all records supplementing the work order and created to obtain additional authorization from the customer for any additional repairs estimated.

(d) All such records shall be open for reasonable inspection and/or reproduction by the Bureau or other law enforcement officials during normal business hours.

(1) Failure to maintain and make such records open for reasonable inspection and/or reproduction when requested by the Bureau as part of a consumer complaint investigation may be grounds for disciplinary action or issuance of a citation.

(e) All records as specified in this section associated with an individual transaction shall have a unique identifier linking the records to that specific transaction.

Note: Authority cited: Sections 9882 and 9884.11, Business and Professions Code. Reference: Section 9884.11, Business and Professions Code.

Note: Authority cited: Sections 9882 and 9884.19, Business and Professions Code. Reference: Sections 9884.7 and 9884.19, 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. Administrative Citations and Administrative Fines for Smog Check Violations Licensees

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

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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 Licensee Violations.

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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 Issued to Smog Check Licensees.

(a) If a ~~cited~~ person cited pursuant to section 3394.25 who has been issued an order of abatement is unable to complete the correction within the time set forth in the citation because of conditions beyond his or her control after the exercise of reasonable diligence, the cited person may request an extension of time in which to complete the correction from the director or his/her designee. Such a request is subject to approval by the director or his/her designee and shall be in writing and made within the time set forth for abatement.

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

(4) 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.

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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 for unlicensed activity shall be issued whenever any fine is levied or any order of abatement is issued. 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.

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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.

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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.

(a) If a ~~cited~~ person cited pursuant to section 3394.40 who has been issued an order of abatement is unable to complete the correction within the time set forth in the citation because of conditions beyond his or her control after the exercise of reasonable diligence, the cited person may request an extension of time in which to complete the correction from the bureau chief. Such a request shall be in writing and made within the time set forth for abatement.

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.

(a) In addition to requesting an administrative hearing as provided ~~for~~ in subdivision

(b)(4) of Section 125.9 of Business and Professions Code, the ~~cited~~ person cited pursuant to section 3394.40 may request an informal conference to review the acts charged in the citation. A request for an informal conference shall be made in writing, within ten (10) days after service of the citation, to the bureau chief or his/her designee.

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

§ 3394.46 Disconnection of Telephone Service.

Nothing in this section shall preclude the Bureau from using the provisions of Section 149 of Business and Professions Code in addition to any citation for unlicensed activity issued to any person.

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

(5) Add new Article 11.3, Section 3394.50, Chapter 1, Division 33, Title 16, California Code of Regulations, to read as follows:

ARTICLE 11.3. Administrative Citations and Fines for Automotive Repair Act Violations

§ 3394.50. Authority to Issue Citations, Fines, and Orders of Abatement to Automotive Repair Dealers.

(a) The bureau chief 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 a violation by licensees of Chapter 20.3 of Division 3 of the California Automotive Repair Act (Business and Professions Code section 9880, et seq.) or any regulation adopted by the Bureau.

(b) 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.

§ 3394.51 Administrative Fine Amounts, Orders of Abatement, and Citable Offenses for Licensed Auto Repair Dealer Violations.

(a) The Chief or his/her designee may issue a citation containing an order of abatement without issuing a fine for the first violation of any provision set forth below in subsection (b). A citation may include a fine from one hundred dollars (\$100) to five thousand dollars (\$5000). In assessing a fine or an order of abatement, the Bureau shall consider the following:

(1) Gravity of the violation,

(2) Good faith of the licensee,

(3) Violation history, and

(4) “Factors in Aggravation and In Mitigation” of the “Guidelines For Disciplinary Orders and Terms of Probation” as referenced in section 3395.4.

(b) The Chief or his/her designee may issue a citation for violation of any of the following provisions:

(1) Business and Professions Code section 9882.14

(2) Business and Professions Code section 9884.11

(3) Title 16 California Code of Regulations section 3351.5

(4) Title 16 California Code of Regulations sections 3351.6

(5) Title 16 California Code of Regulations section 3351.7

(6) Title 16 California Code of Regulations section 3356.1

(7) Title 16 California Code of Regulations section 3358

(8) Title 16 California Code of Regulations section 3360.2

(9) Title 16 California Code of Regulations section 3361.1

(10) Title 16 California Code of Regulations section 3362.1

(11) Title 16 California Code of Regulations section 3363.4

(12) Title 16 California Code of Regulations section 3364

(13) Title 16 California Code of Regulations section 3365

(14) Title 16 California Code of Regulations section 3365.1

(15) Title 16 California Code of Regulations section 3366

(16) Title 16 California Code of Regulations section 3367

(17) Title 16 California Code of Regulations section 3368

(c) A citation that lists multiple violations shall not exceed five thousand dollars (\$5000) as specified by Business and Professions Code section 125.9. A citation issued under this section shall be separate from and in addition to any other administrative, civil, or criminal remedies.

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

§ 3394.52 Compliance with Citation/Order of Abatement for Auto Repair Dealers.

(a) If a person cited pursuant to section 3394.50 who has been issued an order of abatement is unable to complete the correction within the time set forth in the citation because of conditions beyond his or her control after the exercise of reasonable diligence, the cited person may request an extension of time in which to complete the correction from the bureau chief. Such a request shall be in writing and made within the time set forth for abatement.

(b) If a citation is not contested, or if the citation is contested and the cited person does not prevail, failure to abate the violation or to pay the assessed fine within the time allowed shall constitute a violation and a failure to comply with the citation or order of abatement.

(c) Failure to timely comply with an order of abatement or pay an assessed fine may result in disciplinary action being taken by the bureau or other judicial action being taken against the cited person.

(d) If a fine is not paid after a citation has become final, the fine shall be added to the cited person's license or registration renewal fee. A license or registration shall not be renewed without payment of the renewal fee and fine.

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

§ 3394.53 Contested Citations and Request for Formal Citation Hearing for Auto Repair Dealers.

(a) If a person cited 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 as specified by Business and Professions Code section 125.9.

(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.

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