

Date of Hearing: April 20, 2021

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS

Evan Low, Chair

AB 471 (Low) – As Amended March 25, 2021

SUBJECT: Bureau of Automotive Repair: administration: citations: safety inspections.

SUMMARY: This bill is a multi-faceted piece of legislation to address consumer protection and transparency within the automotive repair industry.

EXISTING LAW:

- 1) Regulates the business of automotive repair under the Automotive Repair Act (Act). (BPC §§ 9880-9889.68)
- 2) Establishes the BAR within the Department of Consumer Affairs (DCA), places the BAR under the supervision and control of the director of the DCA, and vests the duty of enforcing and administering the Act in the BAR's bureau chief. (Business and Professions Code (BPC) § 9882)
- 3) Defines "automotive repair dealer" (ARD) as a person who, for compensation, engages in the business of repairing or diagnosing malfunctions of motor vehicles.
- 4) Makes it unlawful for any person to be an ARD unless that person is currently registered with the BAR. (BPC § 9884.6)
- 5) Authorizes the BAR to deny, suspend, revoke, or place on probation an ARD's registration for specified acts or omissions, including failure to comply with the Act, negligence, and fraudulent conduct. (BPC § 9884.7)
- 6) Requires all denial, revocation, and enforcement proceedings to comply with specified due process requirements, including the right to a formal hearing. (BPC §§ 9884.12, 9884.22, 9889.1 - 9889.10)
- 7) Requires the BAR to design and approve a sign that contains specified consumer notices, including the BAR's website, and must be placed in all ARD locations in a place and manner conspicuous to the public. (BPC § 9884.17)
- 8) Authorizes the BAR to investigate violations of the Act, requires the BAR to establish procedures for accepting complaints from the public, and authorizes the BAR to mediate complaints between consumers and ARDs. (BPC § 9882.5)
- 9) Makes any person who fails to comply with the provisions of the Act guilty of a misdemeanor and punishable by a fine not exceeding one thousand dollars (\$1,000), or by imprisonment not exceeding six months, or by both that fine and imprisonment, except as specified. (BPC § 9889.21)

- 10) Authorizes the BAR to file charges with the district attorney or city attorney against an ARD who violates the provisions of the Act or the BAR's regulations. (BPC § 9884.15)
- 11) Whenever a licensed adjuster in a licensed station upon an inspection or after an adjustment, made in conformity with the instructions of the bureau, determines that the lamps or the brakes upon any vehicle conform with the requirements of the Vehicle Code, the adjuster shall, when requested by the owner or driver of the vehicle, issue a certificate of adjustment on a form prescribed by the director, which certificate shall contain the date of issuance, the make and registration number of the vehicle, the name of the owner of the vehicle, and the official license of the station. (BPC §9889.16)
- 12) Allows the Bureau of Real Estate (BRE) to access full face photographs of individuals directly from the Department of Motor Vehicles (DMV) for the purposes of enforcing real estate law. (Vehicle Code (VC) § 1808.51)
- 13) Establishes the Motor Vehicle Inspection Program for the purpose of meeting or exceeding air quality standards set by the federal Clean Air Act in 1990. (Health and Safety Code (HSC) § 44000)

THIS BILL:

- 1) Authorizes the director to include in the citation system a process for informal review of and recommendation on citations, including the establishment of an informal citation conference, as specified.
- 2) Requires the director to appoint at least one administrative law judge for each regional office of the bureau to conduct proceedings under the act, and to appoint a chief administrative law judge to organize, coordinate, supervise, and direct the operations of the administrative law judges.
- 3) Requires the director to employ legal counsel, legal assistants, and other personnel that may be necessary for the administration and enforcement of the act.
- 4) The bill would require the director to take one of specified actions within 10 days of receiving a proposed decision from an administrative law judge in a contested case.
- 5) This bill would authorize the director to establish a process for an automotive repair dealer, upon successful completion of a specified remedial training, to prevent disclosure of the citation on the internet, but would preclude the use of remedial training if the violation constitutes fraud. The bill would require the director to establish through regulation a program to certify providers of that training.
- 6) This bill would specify that the benefit of any lien for labor or materials includes the ability to charge storage fees.
- 7) This bill would recast and revise those provisions to additionally require the forms to include, among other things, the automotive repair dealer's telephone number, email address, and motor vehicle license plate number if engaged in mobile automotive repairs. By requiring an

automotive repair dealer to provide additional items of information to the director under penalty of perjury, this bill would expand the crime of perjury, thereby imposing a state-mandated local program.

- 8) This bill would require the director to issue vehicle safety systems inspection licenses to stations and technicians to conduct inspections of, and repairs to, safety systems of vehicles. The bill would require the director to develop inspection criteria and standards for specific safety systems and components of the vehicle in order to promote the safe and uniform installation, maintenance, and servicing of vehicle safety systems and components. The bill would require the director to adopt regulations by January 1, 2023, including, but not limited to, the application process for licensees and the certification process for vehicles, as specified.
- 9) This bill would provide that the vehicle safety systems inspection license replaces licenses issued pursuant to the existing provisions governing the licensure of lamp and brake adjusting stations and adjusters and would repeal those provisions on the effective date of the new regulations. The bill would also provide that licenses and certificates issued pursuant to those repealed provisions would remain valid for 6 months thereafter. Because a violation of these provisions would be an infraction, the bill would create a state-mandated local program.

FISCAL EFFECT: Unknown. This bill is keyed fiscal by Legislative Counsel.

COMMENTS:

Purpose. This bill is Author sponsored. According to the Author, “Bringing a car into a repair shop for repairs or service can sometimes be an intimidating experience. Often times, the customer knows far less about cars than the technicians and might be worried that the shop will take advantage of the consumer out of hard-earned money. Fortunately, the State of California has put into place a series of automotive repair laws and regulations to protect customers of the automotive repair industry. These car repair laws provide oversight to the industry, as well as rules that give the consumer protection, and more information and control over the repair process. Many of these current consumer protections can be improved upon.”

Background. *Bureau of Automotive Repair.* The BAR is the state agency tasked with enforcing the Automotive Repair Act. Both the Automotive Repair Act and the BAR were established by SB 51 (Beilenson), Chapter 1578, Statutes of 1971. The purpose of the Act is to provide an additional layer of consumer protection from unsafe and unethical automotive repair practices and improve consumer confidence.

The Act protects consumers by establishing various notice and technician competency requirements that ARDs must follow. Those who wish to perform automotive repairs for a fee must register with the BAR and comply with the requirements, which include providing various notices and prohibit incompetent, negligent, and fraudulent practices. The Act makes it a crime, usually a misdemeanor, for failing to register or otherwise fail to comply with the requirements if performing repairs as defined by the Act.

The Act authorizes the BAR to mediate complaints, investigate violations, and take disciplinary action against ARDs and technicians that fail to comply with the Act or the BAR's regulations. The BAR can be viewed as a first line of defense against unfair, deceptive, and harmful practices. The BAR's broad investigatory authority includes the ability to perform interviews, inspect premises, and utilize sting operations.

However, the BAR is an administrative and regulatory agency, not a law enforcement agency. The BAR's statutory authority is limited to administrative fines and various actions related to an ARD's registration. Further, as a state agency, it is required to comply with the due process rights of its registrants, and all registrants are entitled to notice and a hearing when being deprived of a registration. Still, operating without a registration when required by the Act is a crime. If the BAR finds an egregious case, it is authorized to refer the case to a district attorney or city attorney for prosecution. In addition, consumers may sue for damages.

Bureau of Automotive Repair (BAR) Cite and Fine Program. BAR currently can issue citation and fines to automotive repair dealers who are licensed smog check stations and those who are performing unlicensed repairs. Under current authority established in Health and Safety Code section 44014.5(d)(2) and Title 16, CA Code of Regulations (CCR) section 3392.6.1 (Star Program) and CCR section 3394.45 (Unlicensed Activity) the BAR has established an informal citation conference (ICC) process to hear appeals. The current process allows for informal appeals but is heard before a single BAR representative. This bill takes the current ICC process and expands it for automotive repair dealers that receive citations and establishes an independent panel to hear these informal appeals. The panel shall consist of three members, with one from the BAR, the public and the automotive repair industry all appointed by the BAR Chief.

Remedial Training/"Traffic School" Model. Current law does not provide the ability for BAR to have a citation for minor record keeping violation removed from the internet. The bill provides an opportunity for an automotive repair shop that receives a citation for documentation, record keeping or other minor types of violations, not fraud related, to attend remedial training (certified by BAR) and upon successful completion, would prevent the disclosure of the citation on internet, similar to attending traffic school under Vehicle Code section 1808.7. To be eligible, the automotive repair dealer shall not have attended remedial training in the prior 18-month period.

Training/Educational Certifications. Current law limits the amount of information that can be collected by the BAR from automotive repair dealers. The bill allows BAR to collect information from automotive repair dealer application, including email addresses and educational and training certifications that are nationally recognized and generally accepted by the auto repair industry (e.g., ASE, I-CAR, etc.) or any BAR-approved educational certificates. This information would be collected voluntarily from the automotive repair dealers. After this information is collected, BAR would be able to provide to consumers through the BAR *Auto Shop Locator* Program, a new mobile-friendly search tool that allows consumers to perform location-based searches for automotive repair dealers.

BAR Discipline Case Overview. Based on the DCA Annual Report FY 2019/20, it took an average 721 days to impose discipline from the initiation of investigation to decision effect date.

Some disciplinary cases took over three (3) years to conclude. See DCA Annual Report pp. 27-30. https://www.dca.ca.gov/publications/2020_annrpt.pdf.

The BAR discipline case process involves many steps, including the initiation of the investigation by the BAR field office to determine if a violation of the Automotive Repair Act occurred; evidence gathering detailing violations resulting in a report which is reviewed by BAR headquarters. Once the report is finalized, it is submitted to the Attorney General Office licensing section, which is reviewed, and an Accusation and other legal documents are prepared for BAR to review and approve. The Accusation is served upon the Respondent. If the Respondent wishes to defend the action, then a hearing is scheduled and the parties present evidence before the Administrative Law Judge (ALJ). The ALJ submits a proposed decision to the DCA for adoption, modification or rejection.

The bill allows BAR to hire legal assistants (who would be overseen by a supervising attorney) that would draft the Accusation after the internal BAR investigation and review process is completed. This could result in earlier service of process to the automotive repair dealer and earlier public notification via web-posting of the Accusation. The supervising attorney would also oversee the service of the pleading documents, handle default decisions, and prepare stipulated settlement agreements possibly resulting in faster resolution of cases.

The bill also allows ALJs to be appointed and preassigned to conduct and hear cases at BAR regional offices and render proposed decisions that would be reviewed and adopted by DCA. The Office of Administrative Hearings (OAH) has six offices throughout the State in which hearings are conducted by the ALJ. BAR has 12 regional offices throughout the State, all of which have a conference rooms that could possibly be used for hearings. This bill would allow BAR control over scheduling hearings instead of waiting on OAH for a hearing date and conference room availability, resulting in earlier adjudication of the disciplinary matter. The additional location options could possibly expedite the process and make hearings more convenient for all parties.

Currently, the DCA timeframe to adopt/non-adopt/modify a ALJs decision or approve a stipulated settlement agreement or default decision is 100 days. This bill will shorten the time frame to 10 business days which will expedite the final disposition of the case.

Other state agencies that have similar models such as: Alcohol and Beverage Control (ABC), California Air Resources Board (CARB), California Department of Insurance (DOI), California Public Utilities Commission (PUC) and Department of Real Estate (DRE).

Salvage Vehicle Safety Inspection. Generally, when a consumer's vehicle is involved in accident, it is repaired by a licensed repair shop in a good and workmanlike manner which meets all safety requirements of the original equipment manufacturer. Basically, it's brought back to pre-accident condition. However, if it is determined that the vehicle is not economically feasible to repair due to extensive damage, it is declared a "total loss" and towed to the auction to be sold as "junk" and gets a "salvage" certificate.

Most of these salvage vehicles are purchased for parts and are dismantled. Some of these vehicles are purchased by "rebuilders" who repair the car as cheap as possible and then sell these vehicles via Craigslist, etc. In order to legally revive the salvage for use on public roads, they

must simply pass brake and lamp inspection, smog check, and obtain a California Highway Patrol inspection to make sure there are no stolen parts. Unfortunately, many of these revived total loss salvage vehicles could have safety issues such as cracked windshield, illuminated air bag light, no seat belts yet still pass inspection and are sold to unsuspecting consumers who think they're buying a safe vehicle.

The Bureau of Automotive Repair has recognized this as a consumer safety issue. This bill combines the current brake and lamp program and re-names it the "vehicle safety inspection program" and provides BAR the authority to develop additional inspection criteria standards for safety systems through regulations and allows for electronic transmittal of the brake and lamp certificates to DMV.

Current Related Legislation. AB 294 (Santiago) Vehicle Tow and Storage Act. Would establish the Vehicle Towing and Storage Board in the Department of Consumer Affairs and would empower the board to, among other things, regulate and resolve disputes involving vehicle towing businesses. *This bill is currently in the Assembly Business and Professions Committee and not yet set for a hearing.*

Prior Related Legislation. AB 3141 (Low) Chapter 503, Statutes of 2018, extends the Bureau until January 1, 2023.

SB 1242 (Lieu) Chapter 255, Statutes of 2014, extended the Bureau until January 1, 2019.

ARGUMENTS IN SUPPORT:

The registered support is represented by a coalition, which states, "[This bill] is multi-faceted legislation that would, among other things, enhance the Bureau of Automotive Repair ("BAR") programs for consumers, protect consumers from unsafe salvage vehicle repairs, improve the current citation and fine regulatory program and allow for a more efficient and expedited disciplinary process.

Enhance BAR Auto Shop Locator Program: Last year, AB 2454 (Low) was introduced but stalled in order to allow BAR to address the Trusted Dealer Certification portion of that bill. The BAR has successfully developed the Auto Shop Locator, a new mobile-friendly search tool that allows consumers to perform location-based searches for automotive repair dealers, filter results by the type of services needed and quickly verify if a licensee is subject of a disciplinary action. The bill enhances the Auto Shop Locator program by helping consumers to also easily identify automotive repair dealers that have proper training and certification credentials.

Protect Consumers who Purchase Revived Salvage Vehicles: This bill will protect consumers from unsafe, revived, total loss salvage vehicles (e.g. vehicles damaged and not economically feasible to repair) by establishing a vehicle safety inspection program and allowing BAR to develop the safety inspection criteria standards. Currently to revive a total loss salvage vehicle for use on public roads only requires a brake and lamp inspection, smog check and a CHP inspection to make sure there are no stolen parts – nothing else.

Improve BAR Citation and Fine Program: The legislation will improve the current BAR citation and fine regulatory program by creating an independent citation panel to review citations;

provide opportunity for automotive repair shops to attend compliance and remedial training for minor record keeping and documentation citation violations, similar to traffic school and allows BAR to certify the training providers.

Expedite BAR Disciplinary and Hearing Process: Allows BAR to hire in-house legal assistants to prepare complaint accusations and pre-assigns administrative law judges to hear BAR cases which will allow for more efficient and expedited disciplinary process while preserving the automotive repair dealers right to due process.”

REGISTERED SUPPORT:

Auto Care Association
Automotive Oil Change Association
Automotive Service Councils of America
Automotive Service Councils of California
California Autobody Association
California Automotive Business Coalition
Coalition for Automotive Repair Equality
California Automotive Wholesalers' Association
Independent Automotive Professionals Association
Motor & Equipment Manufacturers

REGISTERED OPPOSITION:

None on file.

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