

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2021-2022 Regular Session

AB 471 (Low)
Version: July 1, 2021
Hearing Date: July 13, 2021
Fiscal: Yes
Urgency: No
AWM

SUBJECT

Bureau of Automotive Repair: administration: citations: safety inspections

DIGEST

This bill makes a number of changes to the Automotive Repair Act intended to provide more protections for consumers of automotive repair services.

EXECUTIVE SUMMARY

Current law authorizes the Bureau of Automotive Repair (Bureau) to regulate the business of automotive repair, including by licensing and regulating automotive repair dealers, smog-check stations and technicians, and brake and lamp inspection stations. The Bureau's authority includes investigating violations and initiating disciplinary actions against potential violators. This bill is intended to update some of the existing statutes relating to the Bureau's regulation and enforcement of violations, by (1) creating an informal citation panel with the authority to allow dealers with certain low-level citations to complete a remedial training course and, upon completion, avoid having the citation listed on the Bureau's dealer-locator website; (2) providing the Bureau with more information about repair dealers' certifications; and (3) establishing a more thorough vehicle safety inspection program for salvage vehicles before they return to the road. To ensure that the Bureau's informal citation panel is withholding from the public only the inadvertent, recordkeeping-level types of citations contemplated by this bill, the author has agreed to add a three-year sunset provision so that the Legislature can review how the informal panel is using its authority in practice.

This bill is sponsored by the author and supported by a number of automotive industry associations. There is no known opposition. This bill was passed by the Senate Business, Professions and Economic Development Committee with a vote of 12-0.

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Establishes the Automotive Repair Act (Act), which regulates the business of automotive repair in this state. (Bus. & Prof. Code, div. 3, ch. 20.3, §§ 9880 et seq.)
- 2) Establishes the Bureau of Automotive Repair (Bureau) within the Department of Consumer Affairs (DCA), which is tasked with enforcing and administering the Act by, among other things, adopting regulations and implementing a system for the issuance of citations for violations of the Act. (Bus. & Prof. Code, § 9882.)
- 3) Defines the following relevant terms:
 - a) "Automotive repair dealer" is a person who, for compensation, engages in the business of repairing or diagnosing malfunctions of motor vehicles.
 - b) "Automotive technician" is an employee of an automotive repair dealer or that dealer, if the employer or dealer repairs motor vehicles and who, for salary or wage, performs repairs of motor vehicles.
 - c) "Repair of motor vehicles" is all maintenance of and repairs to motor vehicles performed by an automotive repair dealer, including automotive body repair work, but excluding those repairs made pursuant to a commercial business agreement and roadside services. (Bus. & Prof. Code, § 9880.1.)
- 4) Authorizes the Bureau to, on its own initiative or in response to complaints, investigate and gather evidence of violations of the Act, and establish procedures to accept complaints from the public against any dealer automotive technician. (Bus. & Prof. Code, § 9882.5.)
- 5) Makes it unlawful for a person to be an automotive repair dealer unless that person has registered as required by the Act. (Bus. & Prof. Code, § 9884.6.)
- 6) Provides that no person required to have a valid registration under the Act shall have the benefit of any lien for labor or materials or the right to sue on a contract for motor vehicle repairs unless they have such a valid registration. (Bus. & Prof. Code, § 9884.16.)
- 7) Requires an automotive repair dealer, in order to register with the Bureau, to pay a registration fee and provide certain identifying information, including the dealer's name, address of each location, and a statement that the dealer is operating in an area zoned for automotive repair. (Bus. & Prof. Code, § 9884.)
- 8) Authorizes the Bureau to deny, suspend, revoke, or place on probation the registration of an automotive repair dealer for specified acts and omission related to the dealer's conduct, including fraudulent or grossly negligent conduct, a willful

departure from the accepted trade standards for repair, and failing to comply with the provisions and regulations of the Act. (Bus. & Prof. Code, §§ 9884.7, 9889.2.)

- 9) Requires that all proceedings to deny, suspend, revoke, or place on probation a registration comply with specified due process requirements, including the right to a formal hearing and a statement of reasons from the Bureau. (Bus. & Prof. Code, §§ 9884.12, 988.22, 9889.1-9889.10; Gov. Code, §§ 11500 et seq.)
- 10) Requires the Bureau to post on the internet information regarding the status of every license it issues, including information on suspensions and revocations of licenses and other related enforcement actions. (Bus. & Prof. Code, § 27.)
- 11) Requires the Bureau to design and approve a sign that gives notice that inquiries concerning service may be made to the Bureau, includes the Bureau's telephone number and website, and notice that the consumer is entitled to a return of replaced parts upon request at the time the work order is taken. The sign must be placed in all automotive repair dealer locations in a place and manner conspicuous to the public. (Bus. & Prof. Code, § 9884.17.)
- 12) Requires lamp and brake adjusting stations to be licensed or certified by the Bureau, subject to specified conditions. (Bus. & Prof. Code, div. 3, ch. 20.3, arts. 5, 6, & 8, §§ 9887.1-9888.4, 9889.15-9889.19.)
- 13) Provides that a violation of the Act is a misdemeanor, except for a violation of the licensed lamp and brake adjusting station requirements, which is an infraction. (Bus. & Prof. Code, §§ 9889.20-9889.21.)

This bill:

- 1) Authorizes the Bureau to include in its citation system a process for informal review of, and recommendations on, citations, including establishment of an informal citation conference conducted by three-member a panel of independent representatives appointed by the chief, consisting of one representative each from the bureau, the public, and the automotive repair industry.
- 2) Authorizes the Bureau, as part of the citation system, to develop a process for an automotive repair dealer, upon successful completion of remedial training conducted by a provider certified pursuant to this bill, to prevent disclosure of the citation on the internet as part of the Bureau's online licensing disclosures. To be eligible for citation nondisclosure following completion of the remedial training, the automotive repair dealer shall not have attended remedial training in the prior 18-month period from the effective date of citation.

- 3) Expands the identifying information that an automotive repair dealer must provide in order to register with the Bureau to include:
 - a) The dealer's telephone number.
 - b) The dealer's email address.
 - c) Whether the dealer holds any nationally recognized and industry-certified and/or Bureau-certified educational certifications.
- 4) Requires the Board to establish, through regulation, a program to certify providers of remedial training for automotive repair dealers, employees of automotive repair dealers who have violated this chapter, and persons identified as directly or indirectly controlling or conducting an automotive repair dealer business who have violated the Act. The remedial training shall be available only for violations involving documentation or recordkeeping, or that the Bureau determines to be minor in nature. Remedial training shall not be available if the violation constitutes fraud, which the bill defines as:
 - a) Violations of the Automotive Repair Act involving misrepresentations.
 - b) Any act or omission that is included within the definitions of "actual fraud" and "constructive fraud" under Civil Code sections 1572 and 1573.
 - c) A misrepresentation in any manner, whether intentionally false or due to gross negligence, of a material fact.
 - d) A promise or representation made not honestly and in good faith.
 - e) An intentional failure to disclose a material fact.
 - f) Any act of theft as defined in Penal Code section 484.
- 5) Clarifies that, to the extent a person required to have a valid registration does not have the benefit of a lien for labor or materials unless the person has such a valid registration, a registration is required before the person may charge storage fees.
- 6) Requires the Bureau 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, and issue vehicle safety inspection licenses to stations and technicians to conduct inspections of, and repairs to, safety systems of vehicles.
 - a) The Bureau must adopt regulations for the implementation of those criteria and standards, and related licenses, by January 1, 2024.
 - b) This licensing structure replaces the existing licensing and certification regimes for lamp and brake adjusting stations.
- 7) Requires a vehicle safety inspection licensee to issue to the owner or driver of a vehicle a certificate of compliance on a form prescribed by the Bureau if, after conducting an inspection of, and any necessary repair to, the safety systems of the vehicle, the licensee determines that the safety systems conform with the inspection criteria and standards adopted by the Bureau.

- a) The Bureau may require a licensee to transmit to the DCA a record of each certificate of compliance issued.
 - b) The Bureau may transmit certificates of compliance to the Department of Motor Vehicles.
 - c) The Bureau must evaluate the feasibility of augmenting existing electronic database systems to support the certification system, and may enter into a contract for services as necessary to maintain and operate the electronic database.
- 8) Makes a violation of the vehicle safety inspection license provisions an infraction.

COMMENTS

1. Author's comment

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.

2. This bill modifies the Automotive Repair Act to provide additional consumer protections and enforcement mechanisms

The Bureau was established to protect the public from potentially unscrupulous automotive repair practices.¹ As set forth in the Act, the Bureau protects consumers by establishing various licensing and technician competence requirements, and ensuring that the Bureau is in a position to conduct oversight and, if necessary, take enforcement actions against automotive repair businesses that are in violation of the Act.² This bill modifies the Act in several ways.

Informal citation program. This bill authorizes the Bureau to create an informal citation system in addition to its formal system of citations and fines. The program would allow the Chief of the Bureau to appoint a three-member panel – comprised of one representative each from the Bureau, the public, and the automotive repair industry –

¹ Bus. & Prof. Code, § 9880.3.

² Bus. & Prof. Code, div. 3, ch. 20.3, §§ 9880 et seq.

which would have the authority to make recommendations on citations. The Bureau could also empower the panel to recommend that, for certain violations, a repair provider be given the option to complete a Bureau-approved training course; if the provider timely completes the course, the violation will not be posted on the Bureau's licensing website. For the provider to be eligible for this informal citation/remedial training option, the violation must be related to documentation or recordkeeping, or another type of violation the Bureau determines to be minor in nature, and (2) the provider must not have attended another remedial training course in the previous 18 months. This provision's limitation on publicly available information is discussed further in Part 3.

Increased publicly available service provider information. The Bureau maintains a website, the *Auto Shop Locator*, where consumers can perform location-based searches for automotive repair dealers and receive certain information, including whether the dealer has been subject to disciplinary action.³ This bill allows the Bureau to collect additional information from dealers, including whether the dealers have certain nationally recognized and industry-accepted certifications, to provide to consumers who are trying to choose a repair service provider.

Requiring a license to charge storage fees. Existing law provides that an unlicensed automotive repair dealer may not seek recovery for the cost of repairs, including obtaining a lien on the vehicle for the cost of labor and materials or seeking payment on a contract. This bill also prohibits an unlicensed contractor from charging storage fees for a vehicle.

Expanded vehicle salvage safety requirements. Under current law, when a totaled vehicle is salvaged and refurbished for sale, the Bureau inspects only the brakes, the lights, and the vehicle's smog emissions. This bill requires the Bureau to adopt regulations for salvaged vehicles and establish a vehicle-safety inspection program for those vehicles to provide greater oversight into vehicles that are being returned to the road.

3. This bill allows some violations of the Act to be kept off of the internet, if the violation is deemed minor and the automotive repair dealer completes a remedial training program

As discussed above, this bill authorizes the Bureau to establish, as part of its citation process, a means for automotive repair dealers to keep their low-level citations private. Specifically, the bill authorizes the Bureau to propound regulations establishing a program to certify providers of remedial training programs for automotive repair dealers and their employees who have violated requirements relating to documentation or recordkeeping, or other violations the Bureau believes are minor. The Bureau may

³ See Bureau of Automotive Repair, Auto Shop Locator, <https://www.bar.ca.gov/services/ARD/Search> [last visited Jul. 9, 2021].

not provide remedial training for violations constituting fraud; the author recently amended the bill to define “fraud” more specifically and very expansively to include a range of misrepresentations, and even theft, in order to ensure that the Bureau does not apply this informal citation procedure to bad acts. If the automotive repair dealer or the employee completes the training, and has not completed another violation-related training within the last 18 months, the Bureau’s informal citation panel may opt not to disclose the violation on the Bureau’s website.

The author compares this provision to provisions allowing drivers to avoid points on their drivers’ licenses by attending traffic school. The author’s intention – to prevent well-intentioned automotive repair dealers from losing business due to inadvertent, minor errors when the dealer has taken a remedial course to prevent similar errors in the future – is understandable. For many automotive repair dealers, the presence of *any* citation on the Bureau’s website could significantly harm their chances of getting new customers; providing a mechanism for non-repeat offenders to fix low-level violations without having their records dinged could be a reasonable approach to giving the public information about citations likely to affect their repair experience without tarring inadvertent violators with the same brush. Nevertheless, even with the expansive definition of “fraud,” the bill still leaves space for the Bureau’s informal panel to interpret the scope of “minor” violations too broadly and conceal violations that ought to be disclosed. In order to give the Bureau the opportunity to test this program, while giving the Legislature another opportunity to review how the program works in practice and determine whether the informal panel is first and foremost acting in the public’s best interest, the author has agreed to amend the bill to add a three-year sunset to the provision allowing the informal panel to keep certain citations off of the Bureau’s website.

4. Amendments

As noted above, the author has agreed to amend the bill to add a three-year sunset to the provision being added to Business and Professions Code section 9982(a)(2), allowing the Bureau’s informal panel to keep certain minor, non-fraud-based citations off of the Bureau’s Auto Locator internet website. The bill will be amended to have that particular provision (but not the portion of the provision establishing the informal panel) effective only until January 1, 2025, and be repealed as of that date, subject to formatting and nonsubstantive changes by Legislative Counsel.

5. Arguments in support

According to a coalition of automotive industry members:

AB 471 is multi-faceted legislation that would, among other things, enhance the [Bureau’s] programs for consumers, protect consumers from unsafe salvage repairs, and improve the current citation and fine regulatory program.

Enhance the Bureau's *Auto Shop Locator* Program: Last year, AB 2454 (Low) was introduced but stalled in order allow the Bureau to address the Trusted Dealer Certification portion of that bill The Bureau 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 the 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 salvaged vehicles (i.e., vehicles damaged and not economically feasible to repair) by establishing a vehicle safety inspection program and allowing the Bureau 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 Bureau Citation and Fine Program: The legislation will improve the current Bureau 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 recordkeeping and documentation citation violations, similar to traffic school; and allows the Bureau to certify the training providers.

SUPPORT

Auto Care Association
Automotive Oil Change Association
Automotive Service Association
Automotive Service Councils of California
California Autobody Association
California Automotive Business Coalition
California Tire Dealers Association
CAWA—Representing the Automotive Parts Industry
Coalition for Auto Repair Equality
Independent Automotive Professionals
Motor & Equipment Manufacturers Association
Worldwide Environmental Products

OPPOSITION

None known

RELATED LEGISLATION

Pending Legislation:

AB 294 (Santiago, 2021) establishes 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. AB 294 is pending before the Assembly Transportation Committee.

Prior Legislation:

AB 2454 (Low, 2020) would have required the DCA 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; required the Bureau to employ legal counsel, legal assistants, and other personnel that may be necessary for the administration and enforcement of the act; and required the Bureau to take one of specified actions within 10 days of receiving a proposed decision from an administrative law judge in a contested case. AB 2454 died in the Assembly Business and Professions Committee.

AB 3141 (Low, Ch. 503, Stats. 2018) extended the sunset provision granting authority to the Bureau of Automotive Repair to implement the Automotive Repair Act, to January 1, 2023.

AB 873 (Jones, Ch. 849, Stats. 2016) recast the definition of “repair of motor vehicles” to delete the listing of the various types of excluded minor services and to specify that minor services do not include the changing of propulsive batteries, and also would exclude roadside services, as defined.

AB 1174 (Bonilla, 2015) would have required the Bureau to establish, by regulation, a system for the issuance to a licensee of a citation when the licensee is in violation of the applicable licensing act or any regulation adopted pursuant thereto, and to adopt regulations regarding its procedures for handling investigations and complaints. AB 1174 was vetoed by Governor Brown, who stated in his veto message that the bill was duplicative of existing requirements.

PRIOR VOTES:

Senate Business, Professions and Economic Development Committee (Ayes 12, Noes 0)

Assembly Floor (Ayes 77, Noes 1)

Assembly Appropriations Committee (Ayes 12, Noes 0)

Assembly Business and Professions Committee (Ayes 19, Noes 0)
