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HEALTH AND SAFETY CODE - HSC

DIVISION 26. AIR RESOURCES [39000 - 44475.3] (*Division 26 repealed and added by Stats. 1975, Ch. 957.*)

PART 5. VEHICULAR AIR POLLUTION CONTROL [43000 - 44299.91] (*Part 5 added by Stats. 1975, Ch. 957.*)

CHAPTER 5. Motor Vehicle Inspection Program [44000 - 44127] (*Chapter 5 added by Stats. 1982, Ch. 892, Sec. 2.*)

ARTICLE 4. Penalties [44050 - 44059] (*Article 4 added by Stats. 1982, Ch. 892, Sec. 2.*)

44050. (a) In addition to or in lieu of any other remedy or penalty, including, but not limited to, education, training, or an office conference, the department may issue a citation to a licensee, contractor, or fleet owner for a violation of the requirements of this chapter or a regulation adopted pursuant to this chapter. The citation may contain an order of abatement or the assessment of an administrative fine, or both.

(b) An administrative fine issued pursuant to this section shall be at least one hundred dollars (\$100) but not more than five thousand dollars (\$5,000) for each violation. In assessing a fine, the department shall give due consideration to the appropriateness of the amount of the fine, including an evaluation of all of the following:

- (1) The nature, gravity, severity, and seriousness of the violation.
- (2) The persistence of the violation.
- (3) The good faith or willfulness of the violator.
- (4) The history of previous violations by that violator, including the commission of numerous and repeated violations.
- (5) The failure to perform work for which money was received.
- (6) The making of any false or misleading statement in order to induce a person to authorize repair work or pay money.
- (7) The failure to make restitution to consumers affected by the violation.
- (8) The extent to which the violator has mitigated or attempted to mitigate any damage or injury caused by the violation.
- (9) The degree of incompetence or negligence in the performance of duties and responsibilities.
- (10) The purposes and goals of this chapter and other matters as may be appropriate.

(c) An order of abatement issued pursuant to this section shall fix a reasonable time for abatement of the violation. An order of abatement may require any or all of the following:

- (1) The licensee, contractor, or fleet owner to whom the citation is issued to demonstrate how future compliance with this chapter, and regulations adopted pursuant to this chapter, will be accomplished. This demonstration may include, but is not limited to, submission of a corrective action plan.
- (2) The smog check technician to successfully complete one or more retraining courses prescribed by the department pursuant to subdivision (c) of Section 44031.5, or successfully complete one or more advanced retraining courses prescribed by the department, or both.
- (3) The smog check technician to perform no inspection or repair pursuant to this chapter until training courses prescribed by the department are successfully completed.

(d) A citation issued pursuant to this section shall be in writing and shall describe the nature of the violation and the specific provision of law determined to have been violated. The citation shall inform in writing the licensee, contractor, or fleet owner of the right to request a hearing, as described in Section 44051. If a hearing is not requested, payment of the administrative fine shall not constitute an admission of the violation charged. If a hearing is requested, the department shall provide a hearing in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, except insofar as those provisions are inconsistent with the provisions of this article. Payment of the administrative fine shall be due 30 days after the citation was issued if a hearing is not requested, or when a final order is entered if a hearing is requested. The department may enforce the administrative fine as if it were a money judgment pursuant to Title 9 (commencing with Section 680.010) of Part 2 of the Code of Civil Procedure.

(e) Failure to comply with an order of abatement or payment of an administrative fine issued by the department pursuant to this section is grounds for suspension or revocation of the license, or placing the licensee on probation.

(f) The department shall adopt regulations to establish procedures, including a penalty schedule, for assessing fines or penalties for violations of a requirement of this chapter or a regulation adopted pursuant to this chapter.

(g) Administrative fines collected pursuant to this section shall be deposited in the High Polluter Repair or Removal Account within the Vehicle Inspection and Repair Fund.

(Repealed and added by Stats. 2010, Ch. 258, Sec. 12. (AB 2289) Effective January 1, 2011.)

44051. (a) If a person cited pursuant to Section 44050 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 chief of the bureau or a designee.

(b) (1) In addition to, or instead of, requesting an administrative hearing pursuant to subdivision (a), the person cited pursuant to Section 44050 may, within 30 days after service of the citation, contest the citation by submitting a written request for an informal citation conference to the chief of the bureau or a designee.

(2) Upon receipt of a written request for an informal citation conference, the chief of the bureau or a designee shall, within 60 days of the request, hold an informal citation conference with the person requesting the conference. The cited person may be accompanied and represented by an attorney or other authorized representative.

(3) If an informal citation conference is held, the request for an administrative hearing shall be deemed withdrawn and the chief of the bureau, or designee, may affirm, modify, or dismiss the citation at the conclusion of the informal citation conference. If so affirmed or modified, the citation originally issued shall be considered withdrawn and an affirmed or modified citation, including reasons for the decision, shall be issued. The affirmed or modified citation shall be mailed to the cited person and that person's counsel, if any, within 10 days of the date of the informal citation conference.

(4) If a cited person wishes to contest a citation affirmed or modified pursuant to paragraph (3), the person shall, within 30 days after service of the modified or affirmed citation, contest the affirmed or modified citation by submitting a written request for an administrative hearing to the chief of the bureau or a designee. An informal citation conference shall not be held on affirmed or modified citations.

(Repealed and added by Stats. 2010, Ch. 258, Sec. 15. (AB 2289) Effective January 1, 2011.)

44052. (a) If a citation lists more than one violation, the amount of the civil penalty or administrative fine assessed shall be stated separately for each statute and regulation violated.

(b) If a citation lists more than one violation arising from a single motor vehicle inspection or repair, the total penalties assessed shall not exceed five thousand dollars (\$5,000).

(Amended by Stats. 2010, Ch. 258, Sec. 17. (AB 2289) Effective January 1, 2011.)

44055. (a) Any failure by an applicant for a license or for the renewal of a license, or by any partner, officer, or director thereof, to comply with the final order of the department for the payment of an administrative fine, or to pay the amount specified in a settlement executed by the applicant and the Director of the Department of Consumer Affairs, shall result in denial of a license or of the renewal of the license. The department shall not allow the issuance of any certificate of compliance or noncompliance by a licensee until all civil penalties and administrative fines which have become final, or amounts agreed to in a settlement, have been paid by the licensee.

(b) The department may deny an application for the renewal of a test station or repair station license if the applicant, or any partner, officer, or director thereof, has failed to pay any civil penalty or administrative fine in accordance with this article.

(Amended by Stats. 2010, Ch. 258, Sec. 20. (AB 2289) Effective January 1, 2011.)

44056. (a) In addition to an administrative fine pursuant to Section 44050, any person who violates this chapter, or any order, rule, or regulation of the department adopted pursuant to this chapter, is liable for a civil penalty of not more than five thousand dollars (\$5,000) for each day in which each violation occurs. Any action to recover civil penalties shall be brought by the Attorney General in the name of the state on behalf of the department, or may be brought by any district attorney, city attorney, or attorney for a district. In assessing a civil penalty pursuant to this subdivision, due consideration shall be given to the factors identified in subdivision (b) of Section 44050.

(b) The penalties specified in subdivision (a) do not apply to an owner or operator of a motor vehicle, except an owner or operator who does any of the following:

(1) Obtains, or who attempts to obtain, a certificate of compliance or noncompliance, a repair cost waiver, or an economic hardship extension without complying with Section 44015.

(2) Obtains, or attempts to obtain, a certificate of compliance, a repair cost waiver, or an economic hardship extension by means of fraud, including, but not limited to, offering or giving any form of financial or other inducement to any person for the purpose of obtaining a certificate of compliance for a vehicle that has not been tested or has been tested improperly.

(3) Registers a motor vehicle at an address other than the owner's or operator's residence address for the purpose of avoiding the requirements of this chapter.

(4) Obtains, or attempts to obtain, a certificate of compliance by other means when required to report to the test-only facility after being identified as a tampered vehicle or gross polluter pursuant to Section 44015 or 44081.

(c) Any person who obtains or attempts to obtain a repair cost waiver, or economic hardship extension pursuant to this chapter by falsifying information shall be subject to a civil penalty of not more than five thousand dollars (\$5,000), and shall be made ineligible for receiving any repair assistance of any kind pursuant to this chapter.

(d) Any person who obtains or attempts to obtain a certificate of compliance pursuant to this chapter by falsifying information shall be subject to a civil penalty of not more than five thousand dollars (\$5,000).

(Amended by Stats. 2010, Ch. 258, Sec. 21. (AB 2289) Effective January 1, 2011.)

44057. A continuing violation of any provision of this chapter, or any order, rule, or regulation of the department adopted pursuant to this chapter, may be enjoined by the superior court of the county in which the violation is occurring. The action shall be brought by the attorney general in the name of the state on behalf of the department, or may be brought by any district attorney, city attorney, or attorney for a district. An action brought under this section shall conform to the requirements of Chapter 3 (commencing with Section 525) of Title 7 of Part 2 of the Code of Civil Procedure, except that it shall not be necessary to show lack of an adequate remedy at law or to show irreparable damage or loss.

In addition, if it is shown that the respondent continues, or threatens to continue, to violate any provision of this chapter, or any order, rule, or regulation of the department adopted pursuant to this chapter, it shall be sufficient proof to warrant the immediate granting of a temporary restraining order.

(Added by renumbering Section 44051 by Stats. 1985, Ch. 703, Sec. 2.)

44058. Any person who violates this chapter, or any order, rule, or regulation of the department adopted pursuant to this chapter, is guilty of a misdemeanor and shall be punished by a fine of not more than one thousand dollars (\$1,000) or by imprisonment for not more than six months, or by both, in lieu of the imposition of the civil penalties.

(Added by Stats. 1985, Ch. 703, Sec. 11.)

44059. The willful making of any false statement or entry with regard to a material matter in any oath, affidavit, certificate of compliance or noncompliance, or application form which is required by this chapter or Chapter 20.3 (commencing with Section 9880) of Division 3 of the Business and Professions Code, constitutes perjury and is punishable as provided in the Penal Code.

(Added by renumbering Section 44052 (as added by Stats. 1986, Ch. 951) by Stats. 1987, Ch. 850, Sec. 23.)