

## **BACKGROUND PAPER FOR THE BUREAU OF AUTOMOTIVE REPAIR**

**Joint Sunset Review Oversight Hearing, March 14, 2023  
Assembly Committee on Business and Professions and the  
Senate Committee on Business, Professions and Economic Development**

### **BACKGROUND, IDENTIFIED ISSUES, AND RECOMMENDATIONS REGARDING THE BUREAU OF AUTOMOTIVE REPAIR**

#### **BRIEF OVERVIEW OF THE BUREAU OF AUTOMOTIVE REPAIR**

The Bureau of Automotive Repair (Bureau or BAR) was established within the California Department of Consumer Affairs (DCA) in 1972 following the enactment of the Automotive Repair Act (Act) pursuant to Senate Bill (SB) 51 (Beilenson), Chapter 1578, Statutes of 1971.<sup>1</sup> The Act authorized the Bureau to regulate the automotive repair industry in California and mandated among other things that automotive repair dealers (ARD) be registered by the Bureau and subject to specific requirements such as providing customers with written estimates that must be authorized by the customer prior to performing any work on the vehicle and invoices for the repairs performed.

In 1984, the Bureau implemented a vehicle emissions inspection and maintenance (Smog Check) program, pursuant to SB 33 (Presley), Chapter 892, Statutes of 1982. The program is administered by the Bureau in consultation with the Department of Motor Vehicles (DMV) and the California Air Resources Board (CARB), with the Bureau being responsible for licensing Smog Check stations, inspectors, and technicians. The Bureau also administers financial assistance programs that make repairing or retiring high polluting vehicles more affordable for Californians.

Today the Bureau issues eleven license, registration, and certificate types. As of fiscal year (FY) 2021-22, the Bureau is responsible for overseeing 34,093 registered ARDs, of which 6,397 are licensed Smog Check stations and 1,577 are licensed brake and lamp stations, as well 20,773 Smog Check inspectors, repair technicians, and brake and lamp adjusters.<sup>2</sup>

The Bureau mediates consumer complaints, investigates violations of the Act and related laws and regulations, and takes disciplinary action against registrants and licensees as authorized.

**According to BAR's 2023-2027 Strategic Plan, its mission is to *"protect Californians through effective oversight of the automotive repair industry and administration of vehicle emissions reduction and safety programs."*<sup>3</sup>**

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<sup>1</sup> Business and Professions Code §§ 9880-9889.68

<sup>2</sup> Bureau of Automotive Repair. (n.d.). *Home Page*. Bureau of Automotive Repair. Retrieved from <https://bar.ca.gov/>

<sup>3</sup> Bureau of Automotive Repair. (n.d.). *Strategic Plan 2023-2027*. Bureau of Automotive Repair. Retrieved from <https://bar.ca.gov/strategic-plan>

To fulfill its mission, BAR has set the following goals related to licensing, enforcement, emissions and vehicle safety, communication and education, and organizational effectiveness:<sup>4</sup>

- **Licensing:** Provide access to the workforce through timely licensure of qualified businesses and individuals.
  - Modernize existing systems to expand the availability of online services, create operational efficiencies, and expand business continuity strategies.
  - Update licensure options to support marketplace needs.
  - Enhance communication channels to improve customer service and communication between applicants/licensees and Bureau staff.
- **Enforcement:** Protect consumers from unethical and/or illegal practices.
  - Modernize existing systems to expand the availability of online services, create operational efficiencies, and expand business continuity strategies.
  - Expand consumer protection efforts by deterring actions that pose significant risks.
  - Utilize technology and data to identify compliance issues and develop strategies to prevent misconduct.
  - Analyze industry trends and enforcement outcomes to educate licensees on violations and improve statewide compliance.
  - Develop training options for disciplined licensees to achieve compliance and protect consumers in future transactions.
  - Review business operations to streamline investigation timelines, provide greater consistency, and improve overall efficiencies.
- **Emissions and Vehicle Safety:** Innovate strategies to achieve the emissions reduction goals of the Smog Check Program and incorporate a new vehicle safety systems inspection program.
  - Develop new strategies and tools to identify and combat fraudulent inspections.
  - Implement security and authentication measures to prevent unauthorized use of inspection equipment.
  - Update inspection hardware specifications to enhance fraud detection capabilities and support the inspection of vehicles equipped with new communication protocols.
  - Assess and update technician training resources to help improve the overall quality of inspections.
  - Explore funding options to promote and increase the retirement of high-polluting vehicles.
  - Develop and implement new emissions reduction strategies.
  - Develop and implement a vehicle safety systems inspection program.
- **Communication and Education:** Inform, engage, and empower stakeholders.
  - Develop outreach campaigns to increase public awareness and connect consumers to Bureau programs and services.
  - Enhance online tools and resources to help consumers make informed decisions about the maintenance and repair of their vehicles.

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<sup>4</sup> Bureau of Automotive Repair. (n.d.). *Our goals for 2023-2027*. Bureau of Automotive Repair. Retrieved from <https://bar.ca.gov/strategic-plan/goals>

- Increase outreach and education to licensees to achieve compliance and improve understanding of regulatory and program changes.
- Engage stakeholder groups to foster collaborative partnerships and promote opportunities for public participation.
- **Organizational Effectiveness:** Support successful operations through effective leadership, responsible management, and staff development.
  - Refine key performance indicators and workload metrics to manage staffing allocations, improve program operations, and meet performance measures.
  - Leverage technology and continue to support a hybrid work environment to improve organizational efficiencies, increase staff productivity, and expand business continuity strategies.
  - Promote operational consistency across remote offices through regular opportunities for collaboration, communication, and training.
  - Continue initiatives that increase staff awareness of Bureau programs, heighten organizational transparency, and support cross-divisional engagement.
  - Promote staff development and training to increase recruitment and support employee performance, advancement, and retention.

### **Bureau Staff and Advisory Groups**

The Bureau is led by a chief appointed by the Governor and confirmed by the Senate. The chief serves at the pleasure of the Governor and acts under the direction and supervision of the Director of DCA.

The Bureau's current executive leadership team is currently comprised of the following staff:

- Patrick Dorais, Chief  
Appointed November 8, 2013
- *Vacant*, Assistant Chief
- Linda Janssen, Deputy Chief  
Licensing, Administration, and Consumer Assistance Division  
Appointed August 2, 2021
- Bill Thomas, Deputy Chief  
Field Operations and Enforcement Division  
Appointed April 18, 2022
- *Vacant*, Deputy Chief  
Smog Check Engineering and Information Services Division
- Clay Leek, Information Technology Manager II  
Smog Check Engineering and Information Services Division  
Appointed August 1, 2018

The Bureau employs approximately 610 people and experiences an average annual vacancy rate under 14 percent, with the most frequent vacancies among entry-level clerical support classifications. Since 2017, the Bureau has had approximately 98 vacancies due to retirements within the Program Representative (PR) series. During the COVID-19 pandemic and resulting shift to telework, the Bureau had many PRs who were eligible for retirement and elected to do so. Other factors impacting the PR series include competitive industry compensation levels and vacancies in hard-to-recruit areas with a higher cost of living such as Southern California and the Bay Area.

The Bureau has established two informal advisory groups.

The Bureau established an Educational Advisory Group (EAG) in 1997 to discuss and advise the Bureau on the education and training requirements of Smog Check inspectors and repair technicians. The EAG has eight members, including five educators, two Smog Check shop owners, and one technician, all of whom are appointed by the Bureau chief. The EAG meets once or twice a year, as needed. The EAG is comprised of the following members:

Member Name	Membership Type
Phil Fournier	Educator
Gary Houseman	Technician
Craig Johnson	Station Owner
Mike Morse	Educator
Ruben Parra	Educator
Bud Rice	Station Owner
Kevin Rogers	Educator
Steve Tomory	Educator

Source: Bureau of Automotive Repair Sunset Review Report 2022

The BAR Advisory Group (BAG) was established in 2001 to enhance communication and coordination between the Bureau, industry stakeholders, educators, and consumers. The BAG meets quarterly and is comprised of representatives from 14 associations and organizations, all of whom are appointed by the Bureau chief. Current members of the BAG include:

Association/Organization	Current Representative(s) Name	Membership Type
AAA Northern California	Jason Mangels	Consumer
Automobile Club of Southern California	Megan McKernan	Consumer
Automotive Maintenance and Repair Association/Motorist Assurance Program	Jeff Cox	Consumer/Repair Industry
Automotive Oil Change Association	Mathew Webb	Repair Industry
Automotive Service Councils of California	David Kusa	Repair Industry
California Autobody Association	Jack Molodanof	Repair Industry
California Automotive Business Coalition	Johan Gallo	Repair Industry

California Automotive Teachers	Andrew McGee Ruben Parra	Education
California Automotive Wholesalers' Association	Gary Conover	Parts Industry
California New Car Dealers Association	Brian Maas	Repair Industry
California Automotive Business Coalition	Nikki Ayers	Repair Industry
Inter-Industry Conference on Auto Collision Repair	David Robinette	Education
Knox, Lemmon & Anapolsky, LLP	Louis J. Anapolsky	Repair Industry
Personal Insurance Federation of California	Seren Taylor	Insurance Industry

Source: Bureau of Automotive Repair Sunset Review Report 2022

EAG and BAG meetings are listed on the Bureau's website along with the relevant materials at least 10 days beforehand and are open to the public—although they are not subject to the Bagley-Keene Open Meeting Act. Throughout the pandemic, EAG and BAG meetings were held remotely, pursuant to Governor Gavin Newsom's Executive Order N-29-20. Following the enactment of SB 189 (Committee on Budget and Fiscal Review), Chapter 48, Statutes of 2022, the Bureau began holding the meetings in hybrid fashion, offering both in-person and remote participation.

## Licensing

*License Types:* The Bureau issues both business and individual licenses. Any business that repairs and/or diagnoses malfunctions of motor vehicles for compensation must be *registered* as an ARD. An ARD may additionally be *licensed* as a:

- *Smog Check test-and-repair station*, which inspects, diagnoses, and repairs vehicles subject to the Smog Check Program;
- *Smog Check test-only station*, which inspects vehicles subject to the Smog Check Program;
- *Smog Check repair-only station*, which diagnoses and repairs vehicles subject to the Smog Check Program;
- *Brake station*, which tests, inspects, adjusts, and repairs vehicle brakes and brake systems; or
- *Lamp station*, which tests, inspects, adjusts, and repairs lamps and related electrical systems on vehicles.

Licensed Smog Check stations who meet higher performance standards established in regulation by the Bureau may receive STAR certification, authorizing the business to administer Smog Check inspections and repairs of high-polluting vehicles that cannot be inspected or repaired by non-STAR certified Smog Check stations.

Individuals may be licensed as a:

- *Smog Check inspector* to inspect and certify the emissions control systems on vehicles subject to the Smog Check Program;
- *Smog Check repair technician* to diagnose and repair the emissions control systems on vehicles subject to the Smog Check Program;
- *Brake adjuster* to test, inspect, adjust, and repair the brakes and brake systems on vehicles; or

- *Lamp adjuster* to test, inspect adjust, or repair the lamps and related electrical systems on vehicles.

The number of ARDs decreased from 36,893 in FY 2017-18 to 34,093 in FY 2021-22. The number of licensed Smog Check stations decreased from 7,265 in FY 2017-18 to 6,397 in FY 2021-22. This decline may be due to various factors such as economic impacts to businesses during the COVID-19 pandemic or situations where a licensee chooses to close its business due to the declining population of older vehicles and shift to more advanced vehicle technologies. The Bureau reports that it has not received any queries or complaints from licensees or the automotive repair industry concerning this issue. However, the Bureau has said that it will continue to monitor its license population and work with stakeholders to address significant changes.

License Type/Status	FY 2017-18	FY 2018-19	FY 2019-20	FY 2020-21	FY 2021-22
Automotive Repair Dealer <sup>5</sup> – Active <sup>6</sup>	36,893	36,304	35,186	35,468	34,093
Automotive Repair Dealer – Delinquent/Expired <sup>7</sup>	4,981	5,676	6,529	6,423	7,261
Automotive Repair Dealer – Inactive <sup>8</sup>	143	142	148	151	149
Automotive Repair Dealer – Other <sup>9</sup>	956	835	690	419	434
Smog Check Test-and-Repair Station – Active	5,109	4,901	4,683	4,616	4,425
Smog Check Test-and-Repair Station – Delinquent/Expired	507	528	566	564	603
Smog Check Test-and-Repair Station – Inactive	413	443	471	517	565
Smog Check Test-and-Repair Station – Other	360	391	184	127	135
Smog Check Test-Only Station – Active	2,114	2,042	1,987	1,971	1,937
Smog Check Test-Only Station – Delinquent/Expired	229	192	178	174	204
Smog Check Test-Only Station – Inactive	192	187	201	202	230
Smog Check Test-Only Station – Other	659	462	195	169	167
Smog Check Repair-Only Station – Active	42	42	38	41	35
Smog Check Repair-Only Station – Delinquent/Expired	7	6	6	2	4
Smog Check Repair-Only Station – Inactive	35	34	37	37	38
Smog Check Repair-Only Station – Other	0	0	0	0	0
Brake Station – Active	1,063	1,004	954	891	790
Brake Station – Delinquent/Expired	148	130	132	122	121
Brake Station – Inactive	428	456	498	533	559

<sup>5</sup> Registration

<sup>6</sup> Active status is defined as able to practice. This includes licensees that are renewed, current, and active.

<sup>7</sup> A license is delinquent/expired if not renewed by its expiration date. If the license remains delinquent/expired past the delinquency period (which varies by license type), the license is canceled.

<sup>8</sup> A license is placed on inactive status in situations where a license is pending an inspection for an initial Smog Check station application or change in physical address of a business location. A license may also be placed on inactive status if an initial application or renewal has been processed but the fee payment cannot be processed due to insufficient funds (e.g., bounced checks).

<sup>9</sup> Other is defined as a status type that does not allow practice in California, other than inactive.

License Type/Status	FY 2017-18	FY 2018-19	FY 2019-20	FY 2020-21	FY 2021-22
Brake Station – Other	101	119	92	46	52
Lamp Station – Active	1,002	964	881	836	787
Lamp Station – Delinquent/Expired	139	125	122	114	120
Lamp Station – Inactive	403	438	460	500	522
Lamp Station – Other	101	123	83	47	56
Smog Check Inspector – Active	15,200	14,866	13,883	13,685	13,244
Smog Check Inspector – Delinquent/Expired	4,527	5,386	6,613	7,291	8,216
Smog Check Inspector – Inactive	0	1	0	0	0
Smog Check Inspector – Other	1013	899	387	301	312
Smog Check Repair Technician – Active	8,542	8,054	7,059	6,786	6,030
Smog Check Repair Technician – Delinquent/Expired	5,026	5,620	6,676	7,104	7,960
Smog Check Repair Technician – Inactive	0	0	0	0	0
Smog Check Repair Technician – Other	462	481	224	166	146
Brake Adjuster – Active	1,563	1,527	1,228	1,048	809
Brake Adjuster – Delinquent/Expired	991	954	965	1,028	1,051
Brake Adjuster – Inactive	15	15	14	15	15
Brake Adjuster – Other	89	104	87	29	44
Lamp Adjuster – Active	1,414	1,355	1,156	930	690
Lamp Adjuster – Delinquent/Expired	896	847	909	912	932
Lamp Adjuster – Inactive	14	13	14	13	13
Lamp Adjuster – Other	85	96	87	30	42
STAR Station <sup>10</sup> – Active	4,453	4,035	3,832	3,832	3,744
STAR Station – Other	692	898	909	823	549

Source: Bureau of Automotive Repair Sunset Review Report 2022

**Application Processing:** In FY 2021-22, the Bureau’s average processing time for all license types was 37 days for completed applications and 59 days for incomplete applications. The Bureau’s goals are to process completed applications within 30 days and to notify applicants of incomplete applications within 14 days. The Bureau reports that it processes complete applications much faster than required by regulation and does not have a backlog of applications to be processed. The Bureau expects processing times to improve having recently implemented new electronic processes and an information technology (IT) modernization project to be rolled out in the next several months.

**Denial Based on Criminal History:** The Bureau does not have the authority to fingerprint applicants, but applicants are requested to disclose all prior criminal convictions. Individuals who have previously been licensed by the Bureau and re-apply for a license are also required to provide information related to

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<sup>10</sup> Certification

prior administrative discipline by the Bureau. If the applicant reports a prior criminal conviction, the Bureau's Licensing Program requests more information from the applicant prior to referring the application to the Bureau's Enforcement Operations Branch (EOB). EOB reviews the information provided by the applicant and determines whether or not an initial or renewal license should be granted. EOB, in consultation with the Office of the Attorney General, considers whether the applicant has been rehabilitated and whether the crime was substantially related to the qualifications, functions, or duties of a licensee.<sup>11</sup> Over the past five fiscal years, the Bureau has denied seven applications due to the applicant's criminal history.

*Military Applicants:* In the past five fiscal years, the Bureau received and accepted 38 requests from applicants to apply military education, training, or experience towards licensing requirements. The Bureau has not received any requests to waive renewal fees or requirements for a licensee or registrant called to active duty as a member of the United States Armed Forces or the California National Guard or to expedite review of eligible applications as authorized in statute.<sup>12</sup>

*Smog Check Training Institutions:* The Bureau certifies all Smog Check training institutions, instructors, and courses. In the past five fiscal years, the Bureau has received 12 applications from institutions, eight of which were approved, with four others pending approval. In total, there are currently 89 institutions approved by the Bureau. Prior to Bureau certification, institutions must also receive approval to operate by (or an exemption from) the Bureau for Private Postsecondary Education. Each institution must re-certify annually with the Bureau, with the Bureau auditing them biennially to ensure compliance with Bureau-established requirements. The Bureau may deny a school's recertification or suspend certification until the school is compliant with certification requirements.

The Bureau certifies instructors in consultation with subject matter experts. In the last five fiscal years, the Bureau received 194 Smog Check training instructor applications, 111 of which were approved.

Training courses are developed by Bureau-certified instructors and reviewed by subject matter experts to ensure that each course meets industry standards prior to Bureau certification. Over the last five fiscal years, the Bureau has received requests to approve 12 courses, eight of which were approved, with two others pending approval.

*Examination Requirements:* Examinations are required only for individual licenses. Examinations are developed by the Bureau in coordination with DCA's Office of Professional Examination Services (OPES) and paid subject matter experts. The computer-based examinations are multiple choice and offered in English only. Applicants contact DCA's contracted vendor, Psychological Services Incorporated, directly to schedule examinations. The examinations are administered throughout California every day of the week except Sundays and major holidays. The Bureau reports that applicants are usually able to take the examination within two days of their request.

The skill, knowledge, and experience requirements an applicant must meet to qualify to take the examination vary by license type.

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<sup>11</sup> AB 2138 (Chiu and Low), Chapter 995, Statutes of 2018, limited the discretion of every board, bureau, commission, and committee under DCA to deny a license based on an applicant's criminal history to cases where the applicant was formally convicted of a substantially related crime or subjected to formal discipline by a licensing board, with offences older than seven years no longer eligible for license denial, with several exemptions.

<sup>12</sup> Business and Professions Code § 114.3 and Business and Professions Code § 115.5.

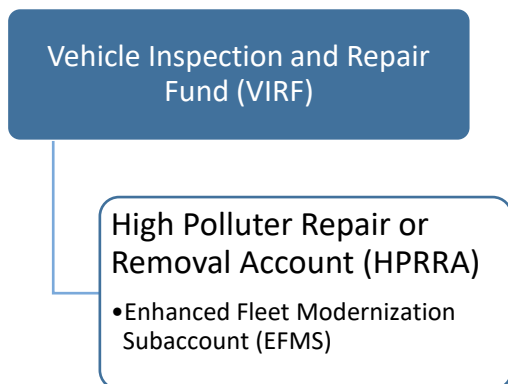


*Continuing Education (CE):* Every two years, Smog Check inspectors are required to complete 4 hours of online CE provided by the Bureau. Smog Check repair technicians are required to complete 16 hours of CE provided by Bureau-certified institutions every two years. The CE covers a range of topics including new automotive technology, updated inspection procedures and/or repair practices, and changes to the laws and regulations specific to each license type. Bureau-certified instructors report course completion in the California Automotive Resources Center database, which the Bureau cross-references before renewing a Smog Check inspector or Smog Check repair technician license. The Bureau notifies licensees if they are out of compliance.

Brake adjusters and lamp adjusters are not subject to CE requirements, but must demonstrate competency by passing an examination every four years.

## Fiscal and Fund Analysis

*Fund Condition:* The Bureau receives no support from the General Fund (GF) and relies solely on annual appropriations by the Legislature from three special funds: the Vehicle Inspection and Repair Fund (VIRF), the High Polluter Repair or Removal Account (HPRRA) within the VIRF, and the Enhanced Fleet Modernization Subaccount (EFMS) within the HPRRA. Each fund has a dedicated revenue source to support its annual expenditures.



The VIRF supports the licensing and enforcement of the automotive repair industry, including all licensed Smog Check, brake, and lamp stations and individual Smog Check inspectors and repair technicians, and brake and lamp adjusters.

The main sources of revenue to support these activities, which amount to 91% of VIRF's annual revenue, are:

- **Smog Certification Fee** - \$8.25 (65% of VIRF's annual revenue)
- **Portion of the Annual Smog Abatement Fee**<sup>13</sup> - \$2 per exempt vehicle (Years 2-6 of smog exemption), \$4 per exempt vehicle (Years 7-8 of smog exemption) (26% of VIRF's annual revenue)

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<sup>13</sup> A fee collected for eight years after the purchase of a new vehicle, during which time the vehicle is exempt from Smog Check inspections. Year 1 \$6 is deposited into the HPRRA. Years 2 through 6 the fee is split between the VIRF (\$2) and HPRRA (\$4). Years 7 and 8 \$4 is deposited into the VIRF.

The remainder of the VIRF's revenue is made up of various registration and licensure fees.

#### VIRF Fund Condition<sup>14</sup>

(Dollars in Thousands)

Item	FY 2017-18	FY 2018-19	FY 2019-20	FY 2020-21	FY 2021-22 <sup>15</sup>	FY 2022-23 <sup>16</sup>	FY 2023-24 <sup>17</sup>
Beginning Balance <sup>18</sup>	\$119,039	\$121,252	\$115,856	\$227,284	\$190,118	\$140,747	\$117,100
Revenues and Transfers	\$130,629	\$128,282	\$256,333	\$135,626	\$129,133	\$135,181	\$134,783
<b>Total Resources</b>	<b>\$249,668</b>	<b>\$249,534</b>	<b>\$372,189</b>	<b>\$332,910</b>	<b>\$298,251</b>	<b>\$275,928</b>	<b>\$251,883</b>
Budget Authority	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Expenditures <sup>19</sup>	\$137,396	\$133,984	\$150,824	\$142,792	\$148,504	\$158,828	\$163,250
Loans to General Fund	\$0	\$0	\$0	-\$30,000	\$0	\$0	\$0
Accrued Interest, Loans to General Fund <sup>20</sup>	\$0	\$0	\$38,179	\$0	\$0	\$0	\$0
Loans Repaid from General Fund	\$0	\$0	\$90,000	\$0	\$0	\$0	\$0
<b>Fund Balance</b>	<b>\$112,272</b>	<b>\$115,550</b>	<b>\$221,365</b>	<b>\$190,118</b>	<b>\$140,747</b>	<b>\$117,100</b>	<b>\$88,633</b>
<b>Months in Reserve</b>	<b>9.9</b>	<b>9.2</b>	<b>18.5</b>	<b>15.4</b>	<b>10.6</b>	<b>8.6</b>	<b>6.3</b>

Source: Bureau of Automotive Repair Sunset Review Report 2022

#### VIRF Expenditures by Program Component

(Dollars in Thousands)

Unit	FY 2017-18 Personnel Services	FY 2017-18 OE&E	FY 2018-19 Personnel Services	FY 2018-19 OE&E	FY 2019-20 Personnel Services	FY 2019-20 OE&E	FY 2020-21 Personnel Services	FY 2020-21 OE&E	FY 2021-22 Personnel Services	FY 2021-22 OE&E <sup>21</sup>
Administration <sup>22</sup>	\$17,064	\$11,261	\$20,445	\$13,801	\$21,277	\$16,907	\$18,845	\$17,016	\$20,735	\$15,336
Licensing	\$2,628	\$1,762	\$3,589	\$2,456	\$3,747	\$3,010	\$3,330	\$3,029	\$3,663	\$2,730
Enforcement	\$35,284	\$23,642	\$33,367	\$22,831	\$34,823	\$27,972	\$30,950	\$28,153	\$34,044	\$25,373
DCA Pro Rata <sup>23</sup>	\$0	\$13,357	\$0	\$14,989	\$0	\$15,745	\$0	\$15,111	\$0	\$17,472
Total PS & OE&E	\$0	\$104,998	\$0	\$111,478	\$0	\$123,480	\$0	\$116,434	\$0	\$119,353
<b>TOTALS<sup>24</sup></b>	<b>\$54,976</b>	<b>\$50,022</b>	<b>\$57,401</b>	<b>\$54,077</b>	<b>\$59,846</b>	<b>\$6,363</b>	<b>\$53,125</b>	<b>\$63,309</b>	<b>\$58,417</b>	<b>\$60,911</b>

Source: Bureau of Automotive Repair Sunset Review Report 2022

The HPRR supports BAR's Consumer Assistance Program (CAP). BAR has two CAP programs which are the:

<sup>14</sup> Figures reflected in this table are from final year-end financial statements that are provided to the State Controller's Office. Due to transitional challenges with FISCAL, final year-end statements may not match figures displayed in the Governor's budget.

<sup>15</sup> FY 2021-22 amounts are projected.

<sup>16</sup> FY 2022-23 amounts are projected based on full expenditure appropriation.

<sup>17</sup> FY 2023-24 amounts are projected based on full expenditure appropriation.

<sup>18</sup> Beginning balance includes prior year adjustments.

<sup>19</sup> Expenditures include direct appropriations to State Controller's Office, FISCAL, and CARB.

<sup>20</sup> Accrued interest from loans to general fund is included in revenues and transfers.

<sup>21</sup> FY 2021-22 amounts are projected from fiscal month 11.

<sup>22</sup> Administration includes costs for executive staff, Bureau, administrative support, and fiscal services.

<sup>23</sup> DCA Pro Rata included in OE&E (Operating Expense and Equipment).

<sup>24</sup> Collected reimbursements are not included in expenditures.

- **Repair Assistance Program (RA)** – provides income-eligible consumers (low-income) financial assistance up to \$1,200 for CAP authorized emission related repairs for vehicles that fail a Smog Check inspection.
- **Vehicle Retirement Program** – provides financial assistance up to \$1,000 for non-income eligible consumers and \$1,500 for income-eligible consumers (low-income) to voluntarily retire an operational vehicle that fails a Smog Check inspection at a BAR-contracted dismantler site.

The main source of revenue that supports BAR's CAP programs is a portion of the Annual Smog Abatement Fee:

- **Portion of the Annual Smog Abatement Fee** - \$6 per exempt vehicle (Year 1 of smog exemption), \$4 per exempt vehicle (Years 2-6 of smog exemption) (99% of HPPRA's annual revenue)

#### HPPRA Fund Condition<sup>25</sup>

(Dollars in Thousands)

Item	FY 2017-18	FY 2018-19	FY 2019-20	FY 2020-21	FY 2021-22 <sup>26</sup>	FY 2022-23 <sup>27</sup>	FY 2023-24 <sup>28</sup>
Beginning Balance <sup>29</sup>	\$47,880	\$59,932	\$71,334	\$81,501	\$18,915	\$28,733	\$21,539
Revenues and Transfers	\$47,567	\$49,142	\$48,168	-\$14,132	\$41,832	\$47,016	\$47,165
<b>Total Resources</b>	\$95,447	\$109,074	\$119,502	\$67,369	\$60,747	\$75,749	\$68,704
Budget Authority	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Expenditures <sup>30</sup>	\$38,960	\$37,657	\$37,745	\$42,855	\$32,014	\$54,210	\$55,811
Loans to General Fund	\$0	\$0	\$0	-\$60,000	\$0	\$0	\$0
Accrued Interest, Loans to General Fund <sup>31</sup>	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Loans Repaid from General Fund	\$0	\$0	\$0	\$0	\$0	\$0	\$0
<b>Fund Balance</b>	\$54,635	\$72,667	\$81,757	\$18,915	\$28,733	\$21,539	\$12,893
<b>Months in Reserve</b>	18.0	23.1	19.7	7.1	6.4	4.6	2.7

Source: Bureau of Automotive Repair Sunset Review Report 2022

<sup>25</sup> Figures reflected in this table are from final year-end financial statements that are provided to the State Controller's Office. Due to transitional challenges with FISCAL, final year-end statements may not match figures displayed in the Governor's budget.

<sup>26</sup> FY 2021-22 amounts are projected.

<sup>27</sup> FY 2022-23 amounts are projected based on full expenditure appropriation. This projection may be high if recent increases in used car prices continue.

<sup>28</sup> FY 2023-24 amounts are projected based on full expenditure appropriation. This projection may be high if recent increases in used car prices continue.

<sup>29</sup> Beginning balance includes prior year adjustments.

<sup>30</sup> Expenditures include direct appropriations to State Controller's Office, FISCAL, and CARB. FY 2020-21 expenditures include prior year adjustment based on decrease to previously included encumbrances.

<sup>31</sup> Accrued interest from loans to general fund is included in revenues and transfers.

## HPRRA Expenditures by Program Component

(Dollars in Thousands)

Unit	FY 2017-18 Personnel Services	FY 2017-18 OE&E	FY 2018-19 Personnel Services	FY 2018-19 OE&E	FY 2019-20 Personnel Services	FY 2019-20 OE&E	FY 2020-21 Personnel Services	FY 2020-21 OE&E	FY 2021-22 Personnel Services	FY 2021-22 OE&E <sup>32</sup>
Program	\$5,265	\$30,194	\$5,598	\$28,574	\$5,914	\$29,593	\$5,353	\$37,502	\$6,217	\$23,271
DCA Pro Rata <sup>33</sup>	\$0	\$1,306	\$0	\$1,585	\$0	\$1,569	\$0	\$1,508	\$0	\$1,772
Total PS & OE&E	\$0	\$36,765	\$0	\$35,757	\$0	\$37,076	\$0	\$42,855	\$0	\$31,260
<b>TOTALS<sup>34</sup></b>	\$5,265	\$31,500	\$5,598	\$30,159	\$5,914	\$31,162	\$5,353	\$37,502	\$6,217	\$25,043

Source: Bureau of Automotive Repair Sunset Review Report 2022

The EFMS supports a programs that provides financial assistance to consumers who choose to voluntarily retire their vehicle without having to fail a Smog Check inspection as well as a retire and replace program that is administered by CARB, specifically:

- **Off-Cycle Vehicle Retirement Program** – provides financial assistance up to \$1,000 for non-income eligible consumers and \$1,500 for income-eligible (low-income) consumers who choose to voluntarily retire their vehicle at a BAR-contracted dismantler site.
- **Scrap and Replace Program (Clean Cars 4 All, administered by CARB)** – provides financial assistance up to \$9,500 towards the retirement of a vehicle and purchase of a new or used plug-in hybrid electric (PHEV), battery electric (BEV), or fuel cell electric vehicle (FCEV); or choose up to \$7,500 in incentives to access public, private, and shared mobility options.

The main source of revenue to support these programs is a vehicle registration fee which consumers pay at the time of vehicle registration:

- **Portion of the Vehicle Registration Fee** – \$1 (makes up 99% of EFMS' annual revenue)

## EFMS Fund Condition<sup>35</sup>

(Dollars in Thousands)

Item	FY 2017-18	FY 2018-19	FY 2019-20	FY 2020-21	FY 2021-22 <sup>36</sup>	FY 2022-23 <sup>37</sup>	FY 2023-24 <sup>38</sup>
Beginning Balance <sup>39</sup>	\$29,625	\$25,746	\$21,181	\$15,774	\$13,972	\$25,438	\$26,143
Revenues and Transfers	\$33,672	\$33,724	\$33,672	\$31,129	\$33,591	\$34,115	\$34,290
<b>Total Resources</b>	\$63,297	\$59,470	\$54,853	\$46,903	\$47,563	\$59,553	\$60,433
Budget Authority	\$0	\$0	\$0	\$0	\$0	\$0	\$0

<sup>32</sup> Collected reimbursements are not included in expenditures.

<sup>33</sup> Administration includes costs for executive staff, Bureau, administrative support, and fiscal services.

<sup>34</sup> DCA Pro Rata included in OE&E (Operating Expense and Equipment).

<sup>35</sup> Figures reflected in this table are from final year-end financial statements that are provided to the State Controller's Office. Due to transitional challenges with FISCAL, final year-end statements may not match figures displayed in the Governor's budget.

<sup>36</sup> FY 2021-22 amounts are projected.

<sup>37</sup> FY 2022-23 amounts are projected based on full expenditure appropriation. This projection may be high if recent increases in used car prices continue.

<sup>38</sup> FY 2023-24 amounts are projected based on full expenditure appropriation. This projection may be high if recent increases in used car prices continue.

<sup>39</sup> Beginning balance includes prior year adjustments.

Expenditures <sup>40</sup>	\$35,335	\$39,136	\$39,053	\$32,931	\$22,125	\$34,410	\$34,409
Loans to General Fund	\$0	\$0	\$0	-\$3,400	\$0	\$0	\$0
Accrued Interest, Loans to General Fund <sup>41</sup>	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Loans Repaid from General Fund	\$0	\$0	\$0	\$0	\$0	\$0	\$0
<b>Fund Balance</b>	\$27,962	\$20,334	\$15,800	\$13,972	\$25,438	\$26,143	\$26,024
<b>Months in Reserve</b>	8.6	6.2	5.8	7.6	9.1	9.1	8.8

Source: Bureau of Automotive Repair Sunset Review Report 2022

## EFMS Expenditures by Program Component

(Dollars in Thousands)

Unit	FY 2017-18 Personnel Services	FY 2017-18 OE&E	FY 2018-19 Personnel Services	FY 2018-19 OE&E	FY 2019-20 Personnel Services	FY 2019-20 OE&E	FY 2020-21 Personnel Services	FY 2020-21 OE&E	FY 2021-22 Personnel Services	FY 2021-22 OE&E <sup>42</sup>
Program	\$496	\$34,521	\$560	\$35,517	\$510	\$35,437	\$556	\$29,269	\$694	\$18,278
DCA Pro Rata <sup>43</sup>	\$0	\$181	\$0	\$210	\$0	\$245	\$0	\$235	\$0	\$269
Total PS & OE&E	\$0	\$35,198	\$0	\$36,287	\$0	\$36,192	\$0	30,060	\$0	\$19,241
<b>TOTALS<sup>44</sup></b>	\$496	\$34,702	\$560	\$35,727	\$510	\$35,682	\$556	\$29,504	\$694	\$18,547

Source: Bureau of Automotive Repair Sunset Review Report 2022

The Bureau's entire fund balance is indicated below:

(Dollars in Thousands)

Fund	FY 2017-18	FY 2018-19	FY 2019-20	FY 2020-21	FY 2021-22 <sup>45</sup>	FY 2022-23 <sup>46</sup>	FY 2023-24 <sup>47</sup>
VIRF	\$112,272	\$115,550	\$221,365	\$190,118	\$140,747	\$117,100	\$88,633
HPRRRA	\$54,635	\$72,667	\$81,757	\$18,915	\$28,733	\$21,539	\$12,893
EFMS	\$27,962	\$20,334	\$15,800	\$13,972	\$25,438	\$26,143	\$26,024
<b>Total</b>	\$201,636	\$205,300	\$213,106	\$254,252	\$244,289	\$188,429	\$156,017

Source: Bureau of Automotive Repair Sunset Review Report 2022

**Licensing Fee Schedule and Revenue:** The following registrations and licenses are renewed annually: ARDs; Smog Check test-and-repair, test-only, and repair-only stations; and brake and lamp stations. The following licenses are renewed biennially: Smog Check inspector and Smog Check repair technician. The following licenses are renewed every four years: brake and lamp adjuster.

The Bureau has not adjusted licensing or renewal fees for 10 years.

<sup>40</sup> Expenditures include direct appropriations to State Controller's Office, FI\$Cal, and CARB.

<sup>41</sup> Accrued interest from loans to general fund is included in revenues and transfers.

<sup>42</sup> FY 2021-22 amounts are projected from fiscal month 11.

<sup>43</sup> DCA Pro Rata included in OE&E (Operating Expense and Equipment).

<sup>44</sup> Collected reimbursements are not included in expenditures.

<sup>45</sup> FY 2021-22 amounts are projected from fiscal month 11.

<sup>46</sup> FY 2022-23 amounts are projected.

<sup>47</sup> FY 2023-24 amounts are projected.

## Fee Schedule and Revenue

Fee	Current Fee Amount	Statutory Limit	FY 2017/18 Revenue	FY 2018/19 Revenue	FY 2019/20 Revenue	FY 2020/21 Revenue	FY 2021/22 Revenue <sup>48</sup>	% of Total Revenue
Automotive Repair Dealer <sup>49</sup> (Initial)	\$200	\$200	\$855,800	\$764,800	\$636,142	\$686,800	\$660,296	7.99%
Automotive Repair Dealer (Renewal)	\$200	\$200	\$6,777,274	\$6,964,125	\$6,658,069	\$6,807,125	\$6,695,315	81.04%
Smog Check Station <sup>50</sup> (Initial)	\$100	\$100	\$97,250	\$86,000	\$76,010	\$66,100	\$40,110	.49%
Smog Check Station (Renewal)	\$100	\$100	\$686,405	\$681,895	\$638,050	\$638,800	\$630,565	7.63%
Brake and Lamp Station (Initial)	\$10	\$10	\$3,600	\$3,705	\$2,760	\$1,990	\$1,440	.02%
Brake and Lamp Station (Renewal)	\$5	\$5	\$9,465	\$9,545	\$8,880	\$8,700	\$7,925	0.10%
Smog Check Inspector and Repair Technician (Initial)	\$20	\$20	\$50,080	\$47,720	\$34,660	\$39,180	\$41,110	0.50%
Smog Check Inspector and Repair Technician (Renewal)	\$20	\$20	\$209,212	\$205,495	\$189,000	\$187,520	\$172,710	2.09 %
Brake and Lamp Adjuster (Initial) <sup>51</sup>	\$10	\$10	\$13,752	\$12,682	\$10,710	\$12,337	\$12,284	0.15%

Source: Bureau of Automotive Repair Sunset Review Report 2022

## Enforcement

**Enforcement Trends:** In 2015, the Bureau implemented the BAR On-Board Diagnostic (OBD) Inspection System (BAR-OIS) for conducting Smog Check inspections. The data collected by the BAR-OIS enables the Bureau to identify when Smog Checks are performed improperly using the wrong testing platform and to block the issuance of a smog certificate for vehicles that are fraudulently inspected by clean plugging. Clean plugging refers to when another vehicle or source is used to generate passing results to fraudulently issue smog certificates for vehicles that are not in compliance and/or not present for the Smog Check. As a result of these changes, the number of disciplinary actions, particularly those resulting in revocation of a license or probation for a licensee, increased. The number of disciplinary actions resulting in revocation or probation increased from 317 and 170, respectively, in FY 2016-17 to 1,424 and 272, respectively in FY 2018-19. In FY 2019-20, the number of probation orders increased to 500. Since then, however, the number of licenses revoked and probation orders issued have normalized and are consistent with pre-2015 levels. The increase in enforcement resulted in greater compliance and as such, the number of citations issued and the number of cases referred to and pending in the Office of the Attorney General decreased over the past five fiscal years. Although enforcement has leveled out, the Bureau reports that it is now facing a new wave of fraudulent activity as unlicensed individuals and nefarious Smog Check licensees develop new ways to evade the law and related regulations.

**Complaints:** Over the past five fiscal years, the Bureau has consistently assigned complaint investigations within three days, well before the DCA's Enforcement Performance Measures (EPM) target of 10 days. The Bureau also closed investigations that were not referred to the Office of the Attorney General for disciplinary action within an average of 42 days, well within DCA's 60-day EPM target.

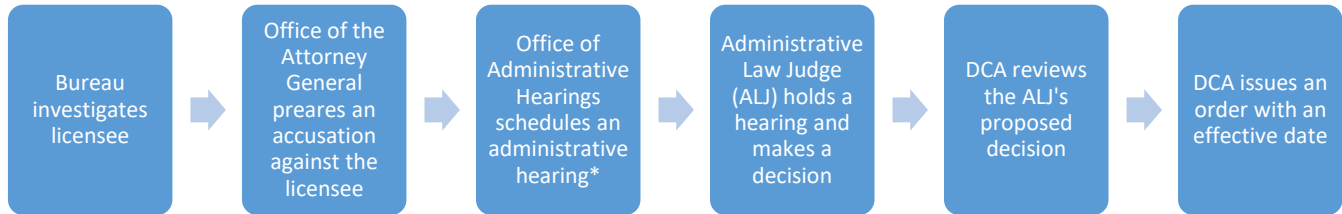
<sup>48</sup> FY 2021-22 amounts are projected from fiscal month 11.

<sup>49</sup> Registration

<sup>50</sup> Test-and-repair, test-only, and repair-only stations

<sup>51</sup> Licenses for brake and lamp adjusters are valid for four years.

### Formal Discipline Process:



\*In cases where a settlement is reached between the Bureau and a licensee without a hearing, DCA must approve the agreement and issue an order with an effective date.

The Bureau has reduced the length of time it takes to complete formal discipline investigations year over year for the past five fiscal years. In FY 2021-22, the average length of investigation was 94 days, down from 160 days in FY 2017-18.

Further, in situations involving egregious business behavior that poses substantial risk to the public, the Bureau may file an accusation based on a single event found while investigating a consumer complaint or following an undercover operation conducted by the Bureau. These investigations help expedite the formal discipline process and the availability of this information to the public. Additionally, the Bureau began transmitting cases to the Office of the Attorney General electronically and assigned Bureau staff to track the progress of each case and follow up with the assigned Deputy Attorney General after 90 days. As a result, the length of time it takes the Office of Attorney General to prepare an accusation has halved from 200 days, on average, to 100 days, on average, in the past five fiscal years.

The Bureau and a licensee may settle a case, which often includes required revocation of ARD registration and/or a license. In other cases, the Bureau may only require probation. Cases cannot be settled prior to filing an accusation. Over the past five fiscal years, the Bureau settled nearly half of its cases without an administrative hearing.

Since FY 2017-18, the total length of time to complete the formal discipline process has decreased by nearly 300 days. In FY 2021-22, the average length of time to complete the formal discipline process was shorter (509 days) than the target established by DCA (540 days) for the first time in at least the last five fiscal years.

*Statute of Limitations:* All accusations against a licensee must be filed within three years of the alleged act or omission that is grounds for disciplinary action.<sup>52</sup> If, however, the act or omission constitutes fraud or misrepresentation, an accusation may be filed with two years of the Bureau becoming aware of the activity.<sup>53</sup> The Bureau reports that the statute of limitations has not prevented the Bureau from pursuing any cases, except that it was forced to settle a case involving Smog Check fraud which extended beyond the statute of limitations.

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<sup>52</sup> Business and Professions Code § 9884.20 and Business and Professions Code § 9889.8

<sup>53</sup> Ibid.

## Disciplinary Actions

Disciplinary Actions	FY 2017-18	FY 2018-19	FY 2019-20	FY 2020-21	FY 2021-22
Proposed Decisions	88	285	400	107	121
Default Decisions	145	424	257	146	86
Stipulations	392	594	621	292	140
Stipulated Settlement Percentage	63%	46%	49%	54%	40%

Source: Bureau of Automotive Repair Sunset Review Report 2022

*Cost Recovery and Restitution:* The Bureau seeks cost recovery in all formal discipline cases. Since FY 2017-18, the Bureau has secured orders for cost recovery in approximately 1,237 cases (roughly 60 percent of formal discipline cases). Of the approximately \$10.78 million owed to the Bureau, only \$4.74 million was ordered to be paid upon the effective date of the decision or during probation. The remaining \$6.04 million is only to be paid if and when registrants/licensees reapply for registration and/or licensure.

The Bureau sends collection notices for costs owed immediately and refers delinquent accounts to the FTB Intercept Program. The Bureau may also pursue cost recovery through its contracted debt collector, although needing to do so is uncommon as failure to pay is a violation of probation and may result in registration/license revocation.

Restitution for consumer harm may be included in an accusation for improper, illegal, or incompetent business practices by a licensee. Over the past five fiscal years, the Bureau has secured more than \$27 million for consumers via direct refunds, correction of inadequate vehicle repairs, and modification to consumers' final bills.

Local district attorneys may also pursue court-ordered restitution as part of a civil or criminal case, in which case collection is handled by the courts, not the Bureau.

*Unlicensed Activity and the Underground Economy:* To combat unlicensed activity, the Bureau reports that it is a member of the Governor's Joint Enforcement Strike Force and collaborates with other members to perform compliance sweeps, conducts sting operations, and monitors advertisements. In November 2017, the Bureau adopted regulations requiring all mobile ARDs to include identifying information, including their license number, on advertising materials and vehicles.

The Bureau reports that the total number of citations issued has increased since October 2011 when the Bureau began issuing citations for unlicensed activity.

*Cite and Fine:* At this time, the Bureau issues citations and fines up to \$5,000 to licensed Smog Check stations and inspectors who violate provisions of the Smog Check Program as well as individuals engaged in unlicensed activity. A licensee may request an informal review by the Bureau chief or their designee, or a licensee may formally appeal the citation by requesting a hearing before an Administrative Law Judge (ALJ). The Bureau reports that the number of appeals has decreased over the



past three fiscal years due to changes to the citation program for Smog Check stations and fewer citations being issued during the COVID-19 pandemic.

Citation Appeal Type	FY 2017-18	FY 2018-19	FY 2019-20	FY 2020-21	FY 2021-22
Informal Conference	292	344	117	37	41
Administrative Hearing	288	391	136	44	48

Source: Bureau of Automotive Repair Sunset Review Report 2022

### Most Common Violations

Code/Section	Description
1. Health and Safety Code section 44012	Improper test procedures (station)
2. Health and Safety Code section 44032	Improper test procedures (inspector)
3. Business and Professions Code section 9884.6	Requirement to register to perform automotive repairs for compensation (station)
4. Title 16, California Code of Regulations section 3340.15(a)	Approved work area for Smog Check inspections (station)
5. Health and Safety Code section 44036.5(b)	Unapproved calibration gases (station)

Source: Bureau of Automotive Repair Sunset Review Report 2022

### Average Citation Fines Pre- and Post-Appeal

Citation Appeal Status	FY 2017-18 Average Fine	FY 2018-19 Average Fine	FY 2019-20 Average Fine	FY 2020-21 Average Fine	FY 2021-22 Average Fine
Pre-Appeal	\$1,177	\$1,284	\$1,244	\$1,184	\$1,128
Post-Appeal	\$946	\$1,248	\$1,206	\$1,111	\$1,080

Source: Bureau of Automotive Repair Sunset Review Report 2022

The Bureau is able to collect unpaid fines through the Franchise Tax Board (FTB) Intercept Program, although doing so is rarely necessary because the Bureau has the authority to suspend or revoke a Smog Check station's license and to block the issuance of smog certificates. The Bureau may issue a citation with a fine to an individual engaged in unlicensed activity, but rarely does so as unlicensed individuals are first given an opportunity to become licensed by the Bureau and come into compliance. The Bureau also contracts with a third party for debt collection.

The Bureau is currently in the process of developing regulations that would expand the Bureau's cite and fine authority for violations of the Automotive Repair Act and related regulations that would have previously resulted in revocation of a license. Pursuant to Assembly Bill (AB) 471 (Low), Chapter 372, Statutes of 2021, the proposed rulemaking would allow the Bureau to issue a citation and/or fine for minor violations that do not warrant revocation of an ARD registration and create an informal appeal process for ARD citations, whereby a three-member panel comprised of one representative each from the Bureau, automotive repair industry, and the public reviews appeals. Moreover, the regulations would, until July 1, 2026, allow an ARD who completes remedial training for a minor violation to prevent the disclosure of the related citation once every 18-months.

## **Workforce Development**

*Data:* The Bureau tracks several industry and marketplace metrics, including technician salary and inspection costs, which are then provided to Bureau-certified training institutions to ensure that industry best practices and marketplace trends are reflected in the institution's training courses. The Bureau reports that it is not currently aware of any significant barriers to licensure or employment, and the time and cost associated with licensure are appropriate and minimal.

*Outreach and Opportunities:* The Bureau conducts outreach at educational and industry-sponsored workshops and training forums such as those hosted by the Automotive Teachers Association, Automotive Service Councils of California, California Autobody Association, and public and private high schools and colleges. The forums provide the Bureau the opportunity to meet with industry associations and provide guidance on issues impacting their members and the automotive repair industry. For example, on January 25, 2023, Chief Dorais gave a presentation to the California Automotive Business Coalition at their quarterly Lunch & Learn board meeting. The presentation focused on the upcoming expansion of the Bureau's citation program to address ARD violations of the Act and associated regulations, the status of the Bureau's sunset review, and the role of and support for the BAG.

Outreach is also intended to promote jobs in the automotive repair industry and to educate potential applicants about the requirements for licensure. The Bureau also ensures that information on licensing requirements and processes is available on its website and through the Bureau-sponsored California Automotive Resource Center.

In 2019, the Bureau created the Cars for Schools program, which provides retired vehicles to public high schools, community colleges, and Regional Occupational Centers and Programs throughout the state to support hands-on training in preparation for careers in the automotive repair industry. The Bureau also runs a student technician training program at its Referee facilities. Referees are employed by the Bureau to help settle inspection disputes, perform inspections of unusual vehicles, and assist with locating hard-to-find emissions parts.

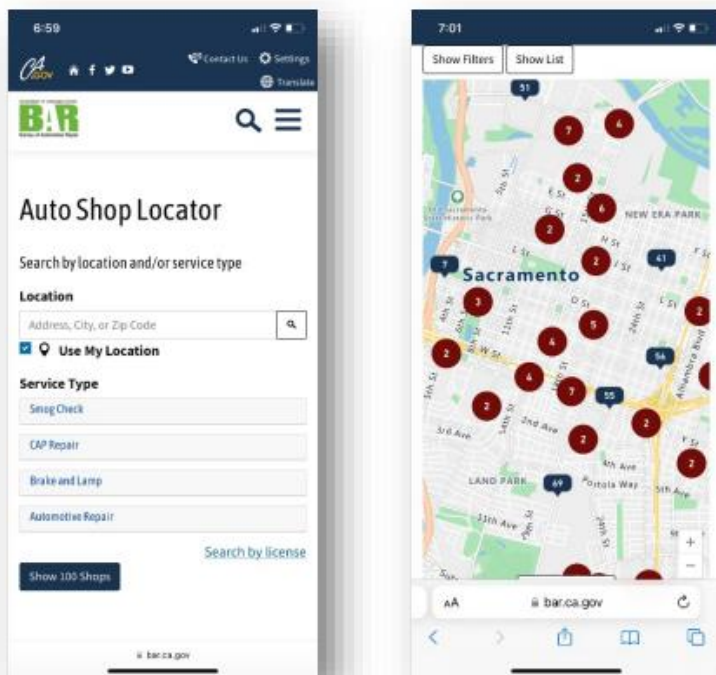
The Bureau also promotes scholarship opportunities on its website as well as organizations seeking grants and funding for programs that bolster the workforce.

## **Public Information Policies**

*Bureau Website:* The Bureau communicates with consumers and industry stakeholders primarily through its website. The website hosts information about the Bureau's programs and activities as well as information regarding licensing, training, and equipment requirements. Announcements, resources, and public records such as meeting agendas, forms and publications, reports, rulemakings, laws and regulations, and enforcement actions are also available on the Bureau's website.

The Bureau also offers mobile-friendly web services that allow consumers to locate an ARD and/or Smog Check station, verify license status and disciplinary history of registrants and licensees, and file complaints. The Bureau's Auto Shop Locator allows consumers to search for nearby ARDs and identifies

which registrants and licensees are on probation or the subject of pending disciplinary action by the Bureau. The Bureau reports that by the end of the year, it anticipates that the Auto Shop Locator tool will also report whether licensees have elected to obtain additional certifications, pursuant to AB 471 (Low), Chapter 372, Statutes of 2021.



Source: Bureau of Automotive Repair Sunset Review Report 2022

*Meetings and Relevant Materials:* The Bureau maintains on its website an annual meeting calendar with the dates, times, and locations of advisory group meetings, public workshops, and regulatory hearings. Advisory group meetings, public workshops, and regulatory hearings are announced on the Bureau's website at least 10 days in advance. Meeting materials are posted in advance and made available on the Bureau's website for at least four years. Meetings, workshops, and hearings are webcast and the recordings are posted on the Bureau's website as well. Webcasts are archived for five years on DCA's YouTube page.<sup>54</sup>

*Complaint Disclosure and Enforcement Action:* The Bureau's complaint disclosure and posting of accusations and disciplinary actions on its website are consistent with DCA policy.

*Consumer Outreach:* In addition to its website, the Bureau conducts consumer outreach via the DMV (e.g., registration renewal notices, field office posters, and brochures), DCA's Consumer Information Center, community-based organizations, consumer fairs and industry-sponsored events, local news, social media, and its email listserv. Additionally, ARDs are required by law to display, or provide a copy of, a Bureau-approved sign that includes information on consumer rights and how to contact the Bureau if needed. Smog Check stations are similarly required to post a Bureau-provided sign that

<sup>54</sup> California Department of Consumer Affairs. (n.d.). *California Department of Consumer Affairs*. YouTube. Retrieved from <https://www.youtube.com/@CaliforniaDCA>

includes information on various Smog Check assistance programs and preventative measures to try to deter catalytic converter theft.

As part of a nationwide consumer outreach effort led by the National Highway Traffic Safety Administration, the Bureau, in January 2020, partnered with auto-manufacturers to notify over 1.2 million Californians of air bag safety recalls and steps to take to have them repaired. Since April 2020, the Bureau has also partnered with CARFAX and the Alliance for Automotive Innovation to include vehicle safety recall information in vehicle inspection reports provided to consumers after a Smog Check.

## **COVID-19 Pandemic Response**

*Telework:* In March 2020, the Bureau authorized teleworking to protect the health and safety of staff. Bureau staff were able to process applications and licenses, conduct investigations, and perform other essential functions electronically and used remote meeting applications such as Microsoft Teams and WebEx to communicate and collaborate. The Bureau reports that the shift to telework created opportunities to modernize business practices. For example, the Bureau is now considering a hoteling strategy which would allow the Bureau to reduce office space and operating costs while supporting employee hybrid work schedules.

*Executive Orders:* In accordance with Governor Gavin Newsom's Executive Order N-29-20, the Bureau began hosting all public meetings and workshops via teleconference in March 2020.<sup>55</sup> After the enactment of SB 189 (Committee on Budget and Fiscal Review), Chapter 48, Statutes of 2022, the Bureau allowed both in-person and remote participation at public meetings.

In response to the COVID-19 pandemic, the Bureau developed emergency regulations to modify its CAP programs, which provide eligible Californians with financial assistance to repair or retire their high-polluting vehicles.<sup>56 57</sup> The emergency rulemaking was approved by the Office of Administrative Law and took effect on August 31, 2020. In part, the emergency rulemaking allowed the Bureau to increase financial assistance for Californians needing to make emissions-related repairs to their vehicles. Various executive orders extended the emergency regulations and the deadline to complete the regular rulemaking process.<sup>58 59</sup> Since the regular rulemaking package was filed and effective January 20, 2022, the CAP regulatory changes to assist more consumers with emissions repairs are now permanent.

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<sup>55</sup> Office of Governor Gavin Newsom. (2020, March 18). *Governor Newsom Issues Executive Order to Protect Ongoing Safety Net Services for Most Vulnerable Californians during COVID-19 Outbreak*. Office of Governor Gavin Newsom. Retrieved from <https://www.gov.ca.gov/2020/03/18/governor-newsom-issues-executive-order-to-protect-ongoing-safety-net-services-for-most-vulnerable-californians-during-covid-19-outbreak/>

<sup>56</sup> State of California Office of Administrative Law. (2020, August 31). *CAP Emergency Regulations Notice of Approval*. Retrieved from <https://bar.ca.gov/pdf/cap-emergency-regulations-notice-of-approval.pdf>

<sup>57</sup> Bureau of Automotive Repair. (n.d.). *Consumer Assistance Program*. Bureau of Automotive Repair. Retrieved from <https://bar.ca.gov/consumer/consumer-assistance-program>

<sup>58</sup> Office of Governor Gavin Newsom. (2020, March 30). *Governor Newsom Signs Executive Order Providing Relief to California Small Businesses*. Office of Governor Gavin Newsom. Retrieved from <https://www.gov.ca.gov/2020/03/30/governor-newsom-signs-executive-order-providing-relief-to-california-small-businesses/>

<sup>59</sup> Office of Governor Gavin Newsom. (2021, May 29). *Governor Newsom Signs executive order on actions in response to COVID-19 5.29.20*. Office of Governor Gavin Newsom. Retrieved from <https://www.gov.ca.gov/2020/05/29/governor-newsom-signs-executive-order-on-actions-in-response-to-covid-19-5-29-20/>

During the State of Emergency, the Bureau received requests from consumers to waive the biennial Smog Check requirement. In response, the Bureau offered eligible consumers the opportunity to have a free Smog Check inspection performed at a Referee facility.

During the COVID-19 pandemic, the Bureau implemented the following actions and policies impacting consumers or licensees:

- Adopted emergency regulations to increase the state’s contribution toward emissions-related repairs under the CAP from a maximum of \$500 to \$1,200 for eligible consumers. The regulations improve access to needed repairs and ensure critical workers and individuals reentering the workforce have reliable and safe transportation.
- Extended CAP eligibility dates to allow participants additional time to retire their vehicle at a Bureau-contracted auto dismantler.
- Transitioned public meetings and workshops to virtual teleconferencing platforms.
- Transitioned face-to-face meetings involving Bureau representatives and licensees, such as educational presentations and disciplinary conferences, to virtual teleconferencing platforms.
- Deferred cost recovery payments for respondents in administrative discipline cases experiencing financial hardship.
- Extended the training course completion date for respondents impacted by the closure of Bureau-certified training institutions.
- Extended the 90-day license examination window for brake and lamp adjuster applicants impacted by testing center closures.
- Postponed the July 2020 Bureau Certified Instructor Update training to October 2020.

### **PRIOR SUNSET REVIEW: CHANGES AND IMPROVEMENTS**

The Bureau last underwent a sunset review by the Legislature in 2018. In 2021, SB 607 (Min), Chapter 367, Statutes of 2021, extended the sunset review date of the Bureau from January 1, 2023, to January 2, 2024. During the prior sunset review, the Assembly Business and Professions Committee and Senate Business, Professions and Economic Development Committee staff raised a number of issues and provided recommendations. Below is a summary of actions that have been taken over the last five years to address these issues. Previous issues that were not completely addressed or may otherwise still be of concern are further discussed under “Current Sunset Review Issues.”

**Prior Issue #1: Bureau Licensing Exams.** The Bureau, in collaboration with DCA’s OPES, develops and offers six exams for licensing, including: Smog Check inspector, Smog Check repair technician, brake adjuster (A), brake adjuster (B), brake adjuster (c), and lamp adjuster. Every exam is offered in English only. In 2018, the Assembly Business and Professions Committee and Senate Business, Professions and Economic Development Committee indicated that “it is unclear how the Bureau and OPES evaluate the efficacy of its exams [and]...whether offering these exams solely in English is sufficient for maintaining access to the professions, especially in light of the diverse licensing population in California.”<sup>60</sup> In 2018, the Bureau reported that it had not received any questions or complaints from prospective licensees.

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<sup>60</sup> Assembly Business and Professions Committee and Senate Business, Professions and Economic Development Committee. (2018). (publication). *Background Paper for the Bureau of Automotive Repair*. Retrieved from <https://abp.assembly.ca.gov/sites/abp.assembly.ca.gov/files/hearings/BAR%20Background%20Paper%202018.pdf>

In its 2022 sunset report, the Bureau said that it would work with applicants, industry representatives, and members of its advisory groups to evaluate the need to offer testing in other languages.

During the Bureau's prior sunset review, the Assembly Business and Professions Committee and Senate Business, Professions and Economic Development Committee also questioned the Bureau's ability to evaluate the efficacy of its exams without collecting data on exam passage rates. The Bureau has indicated examination statistics do not report first-time versus retest pass rates, but that the Bureau is currently considering the feasibility of adding this reporting functionality.

**Prior Issue #2: Enforcement Workloads.** In 2015, the Bureau began requiring Smog Check testing using the BAR-OIS for a majority of model year 2000 and newer gas-powered vehicles, most model year 1998 and newer diesel vehicles, and all hybrids. This BAR-OIS testing platform enables the Bureau to improve detection of fraudulent inspections. Together, the implementation of the new Smog Check testing platform and the ability to detect fraudulent activity resulted in a substantial increase in the number of citations issued and cases referred to the Office of the Attorney General. However, the Bureau reports that their enforcement workload has stabilized since the Bureau has addressed the bulk of inappropriate testing procedures resulting from the transition to BAR-OIS testing and the Bureau began certificate blocking in 2017.

**Prior Issue #3: Display of License Numbers in Advertising.** In 2017, the Bureau adopted regulations requiring mobile ARDs to include specific identifying information in all advertisements and on their vehicles as a means to combat unlicensed activity. The Bureau reports that the regulations have made it easier for consumers to identify and verify a mobile ARD's license before hire and for the Bureau to detect unlicensed activity. The number of citations issued for unlicensed activity decreased from 871 in FY 2017-18 to 484 in FY 2020-21. The number of ARDs performing mobile repairs as their primary service category increased from 1,003 in FY 2017-18 to 1,862 in FY 2021-22.

**Prior Issue #4: Disciplinary Guidelines.** The Bureau adopted new disciplinary guidelines via regulation in 2016.<sup>61</sup> During the Bureau's prior sunset review, the Bureau was asked whether the new disciplinary guidelines were working effectively or if there was a need for further updates. The Bureau responded that it was developing a rulemaking package that included a minor change to the disciplinary guidelines to provide for training on Bureau laws and regulations in disciplinary orders, stipulated settlement agreements, and other administrative resolutions to its cases. Moreover, pursuant to AB 471 (Low), Chapter 372, Statutes of 2021, the Bureau adopted additional regulations, effective April 1, 2022, amending the disciplinary guidelines to allow additional training to be offered to individuals who have demonstrated an insufficient understanding of either transaction requirements or technical aspects of automotive repair.

**Prior Issue #5: BreEZe.** In 2009, DCA began an IT project to replace the antiquated standalone IT systems used by boards, bureaus, and committees within its jurisdiction with one fully integrated system, commonly referred to as BreEZe. The BreEZe system was to be implemented in three phases, and the Bureau was scheduled to transition to BreEZe in the final phase. Ultimately, numerous

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<sup>61</sup> § 3395.4. *Disciplinary Guidelines*. California Code of Regulations. (n.d.). Retrieved from <https://govt.westlaw.com/calregs/Document/I330DF540F3AC11ECB120E701AE548B1A?viewType=FullText&originationContext=documenttoc&transitionType=CategoryPageItem&contextData=%28sc.Default%29&bhcp=1>

technical delays and problems resulted in cancelling phase three of the project in 2015. Although the Bureau never adopted the BreEZe system, the Bureau was required to contribute annually to BreEZe costs until FY 2018-19. In lieu of BreEZe, the Bureau, in consultation with DCA and the California Department of Technology, launched the BAR Enforcement and Licensing Modernization project to replace the Bureau's outdated IT systems. The Bureau reports that the licensing portion of the new system is expected to be implemented by the middle of 2023.

## **CURRENT SUNSET REVIEW ISSUES FOR THE BUREAU OF AUTOMOTIVE REPAIR**

### **ADMINISTRATIVE ISSUES**

#### **ISSUE #1: BAR Advisory Group (BAG). Should the Legislature codify the BAG?**

**Background:** The Bureau currently has two informal, voluntary advisory committees: EAG and BAG. BAG was created to facilitate communication between the Bureau, the automotive repair industry, and other stakeholders. BAG, which meets quarterly with Bureau staff including the Bureau chief, is comprised of representatives from the following associations and organizations:

- AAA Northern California
- Automobile Club of Southern California
- Automotive Maintenance and Repair Association/Motorist Assurance Program
- Automotive Oil Change Association
- Automotive Service Councils of California
- California Autobody Association
- California Automotive Business Coalition
- California Automotive Teachers
- California Automotive Wholesalers' Association
- California New Car Dealers Association
- California Automotive Business Coalition
- Inter-Industry Conference on Auto Collision Repair
- Knox, Lemmon & Anapolsky, LLP
- Personal Insurance Federation of California<sup>62</sup>

Stakeholders have expressed interest in ensuring that a future Bureau chief could not eliminate the BAG. However, the same stakeholders have expressed concerns about codifying the BAG, which could result in more administrative hurdles and limitations for Bureau staff and member stakeholders.

**Staff Recommendation:** *The Bureau should opine on the merits of codifying BAG versus keeping it as an informal, voluntary membership group.*

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<sup>62</sup> Bureau of Automotive Repair. (n.d.). *Bar Advisory Group*. Bureau of Automotive Repair. Retrieved from <https://bar.ca.gov/bar-advisory-group#bag-members>



## **FISCAL ISSUES**

**ISSUE #2: Status of the Long-Term Fund Condition. Are the Bureau's special funds stable and sufficient to avoid programming cuts or fee increases? Should BAR continue to make loans to the General Fund (GF) and other entities under the Department of Consumer Affairs (DCA)?**

**Background:** The Bureau receives no GF support and relies on an annual appropriation from the following three special funds: VIRF, HPRRA, and EFMS.

**VIRF:** Data provided by the Bureau indicates that the reserve balance of the VIRF fund has been declining steadily since FY 2019-20. The Bureau reports that the primary reason for the projected fund balance decline is that the VIRF currently displays an annual structural fund imbalance where expenditures exceed revenue intake each year. This is, in part, due to increasing costs resulting from annual general salary and benefit increases (approximately a \$3-4 million increase) as well as the fund condition document assuming full expenditure of the VIRF's authorized appropriation in fiscal years 2022-23 and 2023-24. Based on historical data, the Bureau reverts around 8-10% of the VIRF's appropriation which helps to maintain a sufficient fund reserve.

In FY 2020-21, the Bureau loaned the General Fund \$30 million from its VIRF fund, which is scheduled to be repaid in 2024-25. In addition, two Control Section 14.00 loans were executed from the VIRF in FY 2021-22. These are loans between special funds within DCA that are required to be paid back, with interest, within 24 months of the loan being taken. The two loans initiated were as follows:

- \$10 million to the Medical Board of California
- \$12 million to the Bureau for Private Postsecondary Education

**HPRRA:** The Bureau reports that the HPRRA fund has a structural deficit and that full appropriation expenditure of the fund would exceed annual revenue. However, the Bureau reports that expenditures have declined over the past two years because fewer people are retiring their vehicles in light of increased used-car prices and does not expect actual expenditures to exceed revenue in FY 2022-23. Moreover, the HPRRA fund currently has a \$60 million GF loan outstanding which is scheduled to be paid back by FY 2024-25 and which is anticipated to keep the fund solvent for the foreseeable future. However, the Bureau notes that in the event that the HPRRA is projecting a fund insolvency after repayment of the GF loan, the Bureau could, through the regulatory process, reevaluate consumer eligibility requirements, as well as the monetary amounts of its financial payouts, for its repair assistance and vehicle retirement programs. This would limit consumer participation and financial assistance for each program, thus maintaining a sufficient fund reserve in the HPRRA to continue operations.

**EFMS:** The Bureau reports that the EFMS fund is stable. However, the \$1 vehicle registration fee, which makes up 99% of EFMS' annual revenue, is only authorized through January 1, 2024. Without an extension, the EFMS vehicle retirement option would need to be scaled back beginning in FY 2023-24. Notably, however, the California Energy Commission and CARB, who are responsible for reauthorizing the fee, have a Budget Change Proposal which requests the extension of various fees including the \$1



Vehicle Registration Fee for the EFMS.<sup>63</sup> Additionally, in FY 2020-21, the Bureau loaned the GF \$3.4 million from its EFMS fund, which is expected to be repaid by FY 2024-25.

AB 630 (Cooper), Chapter 636, Statutes of 2017, allows VIRF, HPRRA, and EFMS funds to be redirected to CARB's Clean Cars 4 All Program as needed. CARB is currently authorized to spend \$2.8 million from the EFMS fund to support their Scrap and Replace program. CARB would need to pursue a budget change proposal if they wanted to adjust their annual appropriation from the EFMS fund. Bureau executive staff meet with CARB quarterly to review CARB's planned expenditures each FY to help manage the EFMS fund.

*Fees:* The Bureau has not adjusted licensing or renewal fees for 10 years.

***Staff Recommendation:*** *The Bureau should identify necessary statutory changes to address current and future fund deficits and provide recommended language to the Committees for consideration.*

### **ENFORCEMENT ISSUES**

#### **ISSUE #3: Use of Certificate Blocking to Deter Illegal Activity. What is the status of certificate blocking to deter fraudulent Smog Check inspections?**

**Background:** This issue is a continuation of Issue #4 from the Bureau's 2018 sunset review. Fraud is a significant issue in the Smog Check industry. To combat fraudulent activity, AB 2289 (Eng), Chapter 258, Statutes of 2010, enabled the Bureau to block—in real time—the issuance of a certificate of compliance if the OBD data collected during the Smog Check is irregular.<sup>64</sup> When a vehicle's certificate of compliance is blocked, the Vehicle Inspection Report notifies the motorist of the failed inspection and instructs the motorist to have a second inspection performed by a Bureau Referee.<sup>65</sup>

The Bureau implemented its certificate blocking program in February 2017 and reports that certificate blocking has been an effective way to deter fraudulent Smog Checks of OBD II-equipped vehicles.<sup>66</sup> Since February 2017, the Bureau reports that over 32,000 vehicles have been subject to certificate blocking due to suspected fraud.

However, the Bureau reports that certificate blocking has not deterred all fraud. In response, the Bureau adopted new regulations, effective October 1, 2022, that require Smog Check inspectors to use a biometric palm scanner in lieu of a password for BAR-OIS inspections to prevent unauthorized use of Smog Check equipment. The regulations also require Smog Check stations to give the Bureau access to the station when Smog Checks are conducted and to allow the Bureau remote inspection access via cameras installed in the Smog Check station.

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<sup>63</sup> *State of California Budget Change Proposal*. (n.d.). Retrieved from [https://esd.dof.ca.gov/Documents/bcp/2324/FY2324\\_ORG1111\\_BCP6731.pdf](https://esd.dof.ca.gov/Documents/bcp/2324/FY2324_ORG1111_BCP6731.pdf)

<sup>64</sup> *Automotive Repair and Smog Check News - Spring 2018*. Bureau of Automotive Repair. (2018). Retrieved from <https://www.bar.ca.gov/arsc/newsletters/newsletter/spring-2018/certificate-blocking>

<sup>65</sup> *Ibid.*

<sup>66</sup> OBD is the original generation of On-Board Diagnostic systems implemented to control vehicle emissions. Beginning in 1996, all light-duty vehicles were required to transition to the second generation, OBD II, making it an industry standard. The most significant improvement from OBD I to OBD II is that all OBD II cars have the same connection port that sends standardized data in a consistent manner across all vehicle manufacturers.

Moreover, the Bureau is currently undertaking a second rulemaking that would replace current OBD equipment with an updated version that has the ability to detect newer, more advanced OBD-simulator devices used to perform fraudulent inspections.

**Staff Recommendation:** *The Bureau should continue to update the Committees on both the implementation of the October 2022 regulations and the ongoing rulemaking.*

**ISSUE #4:** *Biometric Palm Scans to Replace Passwords for BAR-OIS Smog Inspections. What security practices has the Bureau employed to protect the confidentiality of smog inspectors' biometric palm scans?*

**Background:** On August 15, 2022, the Office of Administrative Law approved and filed with the Secretary of State the Bureau's regulatory action concerning Smog Check equipment security and fraud prevention. The new regulations require, in part, that Smog Check inspectors use a biometric palm scanner instead of a password to log in and perform a BAR-OIS Smog Check. The mandatory start date for palm scanner usage is expected this year. In anticipation of this new requirement, every licensed Smog Check inspector is required to complete biometric enrollment at a BAR field office to establish a palm data profile. To date, over 7,900 inspectors (92%) have completed the enrollment process. Additionally, Smog Check stations are required to purchase or lease biometric equipment kits, including a palm scanner device, hand cradle, and USB cable. In practice, the BAR-OIS software will prompt inspectors to scan their palm at the beginning and end of every inspection and in real time cross reference the Bureau's database of palm data to verify the licensee.

**Staff Recommendation:** *The Bureau should identify for the Committees any measures it has taken or will take to ensure that licensees' personally identifiable information, including biometric palm scans, are stored securely and protected from disclosure to the public and other local, state, or federal agencies and departments.*

**ISSUE #5:** *Automotive Repair Service Writers. Should the Bureau have greater oversight of automotive service writers, including the authority to require automotive service writers to take remedial training?*

**Background:** The Bureau is currently authorized to conduct investigations and discipline licensees—including by issuing citations and, in some cases, fines—who violate the Act and related regulations. Information on citations issued by the Bureau is posted on the Bureau's website. AB 471 (Low), Chapter 372, Statutes of 2021, authorized the Bureau to establish a remedial training program for ARDs. Under the program, licensees who commit minor violations that do not constitute fraud such as insufficient recordkeeping may, until July 1, 2026, be allowed to take a remedial training course in lieu of having their citation disclosed on the Bureau's website. A licensee would be ineligible if they had taken a remedial training course in the prior 18 months or the citation was for fraud.

Industry representatives have expressed concerns that the Bureau's proposed regulations to implement AB 471 require the owner or managing employee of an automotive repair business to take the remedial training even when the violation is committed by a service writer. Whereas owners and managing employees must be listed on the business license application, service writers are not listed and are not

required to be licensed by the Bureau. However, while owners and managing employees may not have any direct interaction with customers, service writers engage with customers regularly by providing estimates, obtaining customer authorization, and furnishing invoices for repair services. Consequently, some industry representatives have opined that service writers should be subject to more oversight by the Bureau or, at the very least, be designated by the owner or managing employee to attend remedial training when the service writer commits a violation for which remedial training is a remedy.

**Staff Recommendation:** *The Bureau should notify the Committees of the pros and cons of subjecting service writers to increased scrutiny by the Bureau and, if statutory changes would be necessary, provide recommended language to the Committees for consideration.*

#### **ISSUE #6: Confidential Investigative Information. How should the Bureau respond when confidential investigative information is compromised?**

**Background:** Undercover investigative operations, which often include the use of undercover vehicles and operators, are integral to the Bureau's efforts to investigate alleged violations of the Act and related regulations, and to take disciplinary actions against unlawful businesses and licensees. The Bureau reports that it has identified a network of nefarious actors who reveal identifying information about undercover vehicles and operators on social media, thereby undermining the Bureau's investigative ability and jeopardizing the safety of operators.

**Staff Recommendation:** *The Bureau should identify potential solutions to this problem.*

#### **ISSUE #7: Storage Fees and Insurer Referrals. Should the Bureau have more oversight to expand consumer protections?**

**Background:** Existing law requires all towing and storage fees resulting from an accident or recovery of a stolen vehicle to be reasonable.<sup>67</sup> Towing and storage fees are considered reasonable if they do not exceed the fees and rates charged for similar services provided upon the request of the California Highway Patrol or local police department.<sup>68</sup> Storage rates and fees are also considered reasonable if they are comparable to the storage fees charged by other businesses in the area.<sup>69</sup> Administrative or filing fees (with exception), security fees, dolly fees, load and unload fees, pull-out fees, and gate fees, except when the owner or insurer of the vehicle requests that the vehicle be released outside of regular business hours, are presumptively unreasonable.<sup>70</sup>

If a claimant's automobile insurance policy includes coverage for ordinary and reasonable towing and storing charges then the insurer is responsible for paying the towing and storage charges resulting from an accident or the recovery of the vehicle if it was stolen. The insurer may pay the ARD directly or the insured or on behalf of the insured to the claimant (if the claimant was not the at-fault party).

In January 2022, the Bureau created a specific email account for insurance companies to notify the Bureau when they believe an ARD is charging unreasonable or excessive storage fees. As of February

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<sup>67</sup> Vehicle Code § 22524.5(c)(1)

<sup>68</sup> Vehicle Code § 22524.5(c)(2)(a)

<sup>69</sup> Vehicle Code § 22524.5(c)(2)(b)

<sup>70</sup> Vehicle Code § 22524.5(c)(3)

14, 2023, the Bureau has received over 290 referrals, with a majority resulting from a dispute between the insurer, ARD, and or/the customer due to a misunderstanding or lack of communication. Upon referral, the Bureau helps negotiate a fair resolution for all parties in an expedient manner.

Similarly, ARDs can file complaints with the California Department of Insurance if they have an issue with an insurance company. Some stakeholders have suggested that insurance companies have delayed vehicle inspections and/or removal of total-loss vehicles from the ARD, resulting in hefty storage fees. However, the Bureau does not have any authority over insurance companies. Moreover, the Bureau only has authority to enforce laws in the Business and Professions Code and therefore, cannot enforce the provisions of law related to the reasonableness of towing and storage fees, which are located in the Vehicle Code (unless there is also a violation of the Business and Professions Code).

Although the Bureau currently has limited oversight over storage fees, it has covered the topic in its newsletters and at several public meetings and workshops. The Bureau has stated new oversight may be warranted to improve consumer protections.

**Staff Recommendation:** *The Bureau should continue to educate ARDs about the reasonableness of storage rates and identify opportunities to improve communication between parties. Additionally, the Bureau, California Department of Insurance, and the Committees may wish to consider possibilities for expanding oversight over towing and storage fees.*

#### **ISSUE #8: Automotive Repair Shop Management Software. Should the Bureau have more oversight over automotive repair shop management software?**

**Background:** Bureau regulations currently allow ARDs to provide estimates and receive authorization for repair services electronically.<sup>71</sup> Since the regulations were adopted in 2018, several vendors, whose automotive repair shop management software is not subject to Bureau oversight, have marketed their software to ARDs. The Bureau does not review, recommend, or approve automotive repair shop management software and reports that some software programs put ARDs at risk of violating the regulations. ARDs are liable for non-compliance and have been advised by the Bureau to verify the software's compliance before use and to override or overwrite the software as needed to ensure compliance. The Bureau presented potential solutions to common software issues at the BAG meeting in October 2022, in a fall 2022 newsletter article, and at a public workshop in January 2023.<sup>72 73 74</sup>

**Staff Recommendation:** *The Bureau should advise the Committees on opportunities to support licensee use of automotive repair shop management software.*

### **PRACTICE ISSUES**

#### **ISSUE #9: Minor Services Exemption. What is the status of the minor services exemption?**

<sup>71</sup> Bureau of Automotive Repair. (n.d.). *Write It Right*. Bureau of Automotive Repair. Retrieved from <https://www.bar.ca.gov/pdf/WriteltRight.pdf>

<sup>72</sup> Wright, B. (2022, October 20). *Electronic Transaction Observations*. Bureau of Automotive Repair. Retrieved from <https://www.bar.ca.gov/pdf/bag/202210/electronic-transactions.pdf>

<sup>73</sup> Bureau of Automotive Repair. (2022). *Automotive Repair and Smog Check News - Fall 2022*. Bureau of Automotive Repair. Retrieved from <https://www.bar.ca.gov/arsc/newsletters/newsletter/fall-2022/estimating-and-invoicing-software>

<sup>74</sup> McHenry, G. (2023, January 26). *Automotive Repair Transaction Requirements*. Bureau of Automotive Repair. Retrieved from <https://bar.ca.gov/pdf/workshops/202301-automotive-repair-transactions/presentation.pdf>

**Background:** This issue stems from Issue #8 from the Bureau’s 2018 Sunset Review. At the time, minor vehicle services that do not require mechanical expertise or do not affect a part of the vehicle necessary for its safe operation (e.g., tire, oil, and battery changes) could be done without oversight from the Bureau. However, growing concerns about the technological advancement of vehicles led to legislative and regulatory efforts to amend the “minor services” exemption in 2016 and 2017, respectively, both of which were unsuccessful.<sup>75</sup> During the Bureau’s 2018 sunset review, the Bureau reiterated that some services that traditionally fell under the “minor services” exemption could no longer be performed without specialized training, and AB 3141 (Low), Chapter 503, Statutes of 2018, the Bureau’s prior sunset bill, ultimately deleted the statutory list of services that were previously exempt Bureau oversight, effective January 1, 2019. The Bureau reports that no regulations were required to implement the new law.

**Staff Recommendation:** *The Bureau should update the Committees on the effects of deleting the minor services exemption from statute.*

**ISSUE #10: Online Automotive Repair Referral Businesses. Should the Bureau have regulatory oversight over advertising for automotive repair work by unlicensed automotive repair referral businesses?**

**Background:** In an effort to curb unlicensed activity, the Bureau adopted regulations in 2017 requiring mobile ARDs to include specific identifying information in all advertisements and on mobile ARD vehicles. Although the regulations have made it easier for consumers to identify and verify a mobile ARD’s license before hire and for the Bureau to detect unlicensed activity, the Bureau reports that online advertising by unlicensed automotive repair *referral* businesses is a new issue. Automotive repair referral businesses, which refer customers to licensed ARDs in exchange for a portion of the repair costs, are not subject to oversight by the Bureau. The Bureau reports that consumers often do not know whom they are authorizing to repair their vehicle.

**Staff Recommendation:** *The Bureau should provide the Committees with data indicating the prevalence of online advertising by unlicensed automotive repair referral businesses. If statutory changes are necessary, the Bureau should provide language for inclusion in the Bureau’s sunset bill.*

**ISSUE #11: Smog Check Inspection of Model Year 1976-1995 Vehicles. Should the Bureau create a centralized Smog Check testing network to inspect model year 1995 and older vehicles?**

**Background:** Of the approximately 10 million Smog Check inspections performed annually in California, just seven percent are of model year 1995 and older vehicles.<sup>76</sup> As the population of model year 1995 and older vehicles requiring inspection declines, the cost of maintaining the necessary equipment (the BAR-97 Emissions Inspection System) and inspecting model year 1995 and older vehicles continues to increase.

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<sup>75</sup> Cal. Assemb. B. 873 (2015-2016), Chapter 849 (Cal. Stat. 2016). \*Although AB 873 was signed by Governor Jerry Brown, it was never enacted because a bill that is was conjoined with, SB 778 (Allen), was vetoed.

<sup>76</sup> Vehicles that are model year 1975 and older do not require a Smog Check.

In 2013, the Bureau established the STAR program, a voluntary certification for Smog Check stations that meet inspection-based performance standards and maintain equipment to test all vehicles.<sup>77 78</sup> In response to the aforementioned cost pressures and the declining number of Smog Check stations offering inspections of model year 1995 and older vehicles, BAR currently requires all model year 1976 to 1999 vehicles to be inspected at STAR-certified stations.<sup>79 80 81</sup> Even so, on average, over 90 percent of STAR-certified stations perform one or less inspection on model year 1995 or older vehicles each day.

The Bureau suggests establishing a centralized texting network to inspect model year 1995 and older vehicles, which the Bureau indicates would improve air quality and the cost-effectiveness of the Smog Check Program.

**Staff Recommendation:** *The Bureau should explain to the Committees how such a centralized testing network would differ from the current use of STAR-certified stations.*

**ISSUE #12: Smog Check Performance Reporting. Should the current annual Smog Check performance reporting requirement be changed to a biennial reporting requirement?**

**Background:** Pursuant to AB 2289 (Eng), Chapter 258, Statutes of 2010, the Bureau, in cooperation with the California Air Resources Board, is required to annually evaluate the Smog Check Program and the performance of Smog Check stations and report its findings in the Smog Check Performance Report.<sup>82</sup> Specific data is required to be included in the report, including but not limited to the percentage of vehicles that initially passed, or initially failed and then passed, a smog check that later fail a roadside inspection.<sup>83</sup> The Bureau is also required to provide an estimate of the excessive emissions from these vehicles and recommend changes to the program to reduce excess emissions. Excess emissions refers to the “additional benefits that could be realized if all vehicles were inspected at ‘high-performing’ Smog Check stations.”<sup>84</sup>

The Bureau reports that the annual reporting requirement is challenging because vehicles subject to the Smog Check program are only required to be inspected every other year. Therefore, it takes two years for all vehicles to be tested. The Bureau notes that a comprehensive evaluation of the Smog Check Program over two years would be a more effective way to assess the effectiveness of the program and recent changes.

Moreover, the Bureau’s evaluation of the Smog Check Program is based largely on data collected from the Bureau’s roadside inspection program. However roadside assistance data is arduous and time-consuming to collect. Currently half of the data reported in the annual Smog Check Performance Report

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<sup>77</sup> Bureau of Automotive Repair. (n.d.). *Star Program FAQ*. Bureau of Automotive Repair. Retrieved from <https://bar.ca.gov/star/faq>

<sup>78</sup> Bureau of Automotive Repair. (n.d.). *Smog Check Reference Guide Version 3.0*. Bureau of Automotive Repair. Retrieved from <https://bar.ca.gov/pdf/smog-check-reference-guide.pdf>

<sup>79</sup> Ibid.

<sup>80</sup> Bureau of Automotive Repair. (n.d.). *2022 Smog Check Performance Report*. Bureau of Automotive Repair. Retrieved from <https://bar.ca.gov/pdf/bag/202207/smog-check-report.pdf>

<sup>81</sup> Model year 1996-1999 vehicles are tested using the BAR-97 system but are OBD-II equipped and compatible with the BAR-OIS system.

<sup>82</sup> Bureau of Automotive Repair. (n.d.). *2022 Smog Check Performance Report*. Bureau of Automotive Repair. Retrieved from <https://bar.ca.gov/pdf/bag/202207/smog-check-report.pdf>

<sup>83</sup> Ibid.

<sup>84</sup> Ibid.

is duplicative because two years' worth of roadside data is necessary to curate a statistically significant sample size.

The Bureau proposes requiring the Smog Check Performance Report to be completed biennially rather than annually.

**Staff Recommendation:** *The Bureau and Committees should identify and consider any disadvantages to requiring Smog Check performance reporting biennially.*

### **COVID-19 PANDEMIC ISSUES**

**ISSUE #13:** *COVID-19. Are any statutory revisions, updates, or changes necessary in the aftermath of the COVID-19 pandemic?*

**Background:** SB 189 (Committee on Budget and Fiscal Review), Chapter 28, Statutes of 2022, authorized public meetings subject to the Bagley-Keene Open Meeting Act to be held both in-person and via teleconference until July 1, 2023. Although the Bureau's two advisory groups are not required to adhere to the Bagley-Keene Open Meeting Act, they strive to. Consequently, an extension or permanent statutory change is necessary for the Bureau to continue conducting advisory group meetings in a hybrid format, which the Bureau argues is important to public access.

During the COVID-19 pandemic, the Bureau received requests from consumers to waive the biennial Smog Check requirement. The Bureau, unable to waive the requirement, allowed consumers facing a hardship due to the State of Emergency to have a free Smog Check performed by a Bureau Referee. The Bureau reports that it will consider opportunities to issue Smog Check inspection waivers during a future State of Emergency.

**Staff Recommendation:** *If a statutory change is required for the Bureau to waive a Smog Check during a State of Emergency then the Bureau should provide the Committees with proposed language for consideration. The Bureau should also identify potential fiscal and environmental impacts.*

### **TECHNICAL CLEANUP**

**ISSUE #14:** *Technical Cleanup. Is there a need for technical cleanup?*

**Background:** The Bureau has identified several technical, non-substantive amendments that are necessary in the Business and Professions Code, Health and Safety Code, and Vehicle Code. The amendments modernize various statutory provisions to reflect recent policy changes, update outdated references, and clarify terms.

**Staff Recommendation:** *The Committees should review and consider the Bureau's recommended amendments and the Bureau should continue to advise the Committees of any additional cleanup amendments for inclusion in the Bureau's sunset bill.*

### **CONTINUED REGULATION OF THE BUREAU**

**ISSUE #15: Continued Regulation. Should the licensing and regulation of the automotive repair industry continued to be regulated by the Bureau?**

**Background:** The Bureau's oversight of the automotive repair industry and administration of vehicle emissions reduction and safety programs are integral to the welfare of California motorists and to meeting California's ambitious climate goals. The Bureau provides numerous services to protect consumers and the environment, including:

- Licensing ARDs; Smog Check stations, repair technicians, and inspectors; and brake and lamp stations and adjusters.
  - Pursuant to AB 471 (Low), Chapter 372, Statutes of 2021, vehicle safety systems licenses will replace lamp and brake licenses, effective January 1, 2024.
- Mediating automotive repair complaints, saving consumers millions of dollars each year in the form of direct refunds, rework, and bill adjustments.
- Investigating and taking disciplinary action against licensees who violate the law.
- Performing no-cost inspections of collision-related repairs to help ensure the safety of consumers and their vehicles.
- Administering and enforcing the Smog Check Program, which helps keep California's air clean by reducing air pollution produced by motor vehicles.<sup>85</sup>

**Staff Recommendation:** *The Bureau's oversight of the automotive repair industry should be continued, with potential reforms, to be reviewed again on a future date to be determined to ensure that the issues and recommendations in this Background Paper have been addressed.*

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<sup>85</sup> Bureau of Automotive Repair. (n.d.). *We are committed to consumer protection*. Bureau of Automotive Repair. Retrieved from <https://bar.ca.gov/strategic-plan/consumer-protection>