



ers. Legal counsel Greg Gorges explained that it is common for a boxer and promoter to enter into a long-term, exclusive arrangement under which the promoter will promote and control the boxer's career; according to Gorges, the Commission previously approved a form for this purpose, and any such promotional contract must be attached to and made a part of the standard contract between the parties. [10:2&3 CRLR 69; 9:4 CRLR 43] Gorges also noted that a second type of agreement is called an option agreement; however, the Commission has not adopted any guidelines or form regarding such agreements. Following discussion, the Commission passed a motion stating that the Commission may approve a standard contract with an addendum which may be either an option or promotional contract; any such approval given by the Commission will be subject to the approval of the Commission's staff and legal counsel, which will be completed within five working days of the Commission's action.

■ FUTURE MEETINGS

September 17 (location undecided).
November 5 (location undecided).

BUREAU OF AUTOMOTIVE REPAIR

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Established in 1971 by the Automotive Repair Act (Business and Professions Code section 9880 *et seq.*), the Department of Consumer Affairs' (DCA) Bureau of Automotive Repair (BAR) registers automotive repair facilities; official smog, brake and lamp stations; and official installers/inspectors at those stations. The Bureau's regulations are located in Division 33, Title 16 of the California Code of Regulations (CCR). The Bureau's other duties include complaint mediation, routine regulatory compliance monitoring, investigating suspected wrongdoing by auto repair dealers, oversight of ignition interlock devices, and the overall administration of the California Smog Check Program.

The Smog Check Program was created in 1982 in Health and Safety Code section 44000 *et seq.* The Program provides for mandatory biennial emissions testing of motor vehicles in federally designated urban nonattainment areas, and districts bordering a nonattainment area which re-

quest inclusion in the Program. BAR licenses approximately 16,000 smog check mechanics who will check the emissions systems of an estimated nine million vehicles this year. Testing and repair of emissions systems is conducted only by stations licensed by BAR.

Approximately 80,000 individuals and facilities—including 40,000 auto repair dealers—are registered with the Bureau. Registration revenues support an annual Bureau budget of nearly \$34 million. BAR employs approximately 600 staff members to oversee the Automotive Repair Program and the Vehicle Inspection Program.

■ MAJOR PROJECTS

Battle Continues Over New I/M Standards. Last November, in compliance with 1990 amendments to the federal Clean Air Act, the U.S. Environmental Protection Agency (EPA) published new regulatory guidelines setting specific air quality goals and performance standards; included in these goals are enhanced requirements for state inspection and maintenance (I/M) programs. [13:1 CRLR 22] Specifically, the EPA's rules promulgate a two-level system of I/M testing, including a basic system (unchanged from current standards) for less polluted areas and a new enhanced testing regime for serious, severe, and extreme ozone nonattainment areas with urbanized populations of 200,000 or more; carbon monoxide areas that exceed a 12.7 ppm design value with urbanized populations of 200,000 or more; and all metropolitan statistical areas with a population of 100,000 or more in the Northeast Ozone Transport Region. The rules adopted by EPA establish, as part of the enhanced I/M program, a high-tech emissions test able to accurately analyze today's high-tech cars. The regulations require states to submit detailed implementation plans for enhanced I/M testing programs by November 15; failure to comply could result in the reduction or elimination of federal highway funds or federal funding for industry expansion. The EPA standards provide states with some latitude in their implementation; for example, a state may choose annual or biennial testing, as long as overall emissions standards for the state are met. However, this flexibility does not appear to extend to the structure of the testing services; EPA has stated that it knows of no way to make a decentralized test-and-repair program—such as California's—as effective as a centralized test-only program.

Three legislative packages have been introduced in an attempt to bring California's

Smog Check Program into compliance with the federal regulations. The primary bill, SB 119 (Presley), is based on the report of BAR's I/M Review Committee and calls for an enhanced system of centralized test-only stations in the state's most polluted areas, and a basic, decentralized system in the rest of the state. SB 119, generally popular with environmental and public interest groups such as the Sierra Club and the American Lung Association of California, is opposed by the California Service Station and Automotive Repair Association. In response, SB 1195 (Russell) would largely retain the current decentralized system, expand coverage to the entire state, test the fuel evaporative and crankcase ventilation systems, and add a centralized computer database for the Smog Check Program. SB 1195 has widespread support in the auto repair industry. The third bill, AB 1119 (Ferguson), also proposes a two-level testing system, with enhanced testing at test-only stations and electronic filing of certificates of compliance. (See LEGISLATION for more information.)

On April 15, Secretary of Transportation Federico Pena and EPA Administrator Carol Browner, in a joint letter, informed Governor Wilson that none of the bills currently under consideration would satisfy EPA's standards; the officials warned that unless the state approves a program acceptable to the EPA by November 15, the Clinton administration would impose sanctions on California that would be "costly to industry, jobs and the economic growth of [the] state." Thus, the legislature appears to be in the position of having to choose between imposing—at least in part—a centralized testing system with stricter regulations on automobiles, which may result in lost jobs and require millions of dollars to be invested in start-up costs, or facing the loss of millions of dollars in federal funding.

DA Targets Purchasers of Fraudulent Smog Certificates. While the future of the Smog Check Program is being debated, enforcement of the current program continues. For example, the Los Angeles County District Attorney's office has, for the first time, targeted for detection consumers who purchase fraudulent smog certificates rather than the sellers of such certificates. In May, the DA's office filed a civil lawsuit against Bell Cab Co., alleging that half of its cabs are gross-polluting vehicles. Many of Bell's taxis have been documented spewing more than ten times the allowable level of pollutants into the air; others have emission systems that have been disconnected or stripped out. The DA acted on information that many of



the smog certificates under which the cabs operated were issued under fraudulent circumstances; District Attorney Gil Garcetti commented that "[y]ou can go after the businesses that issue the smog control certificates. But if you really want to go after [pollution] you have to seek out the businesses that buy the certificates." At a June 4 hearing, prosecutors are expected to ask that Bell be fined an estimated \$250,000 and that all of the company's vehicles that have been tampered with or have been issued invalid smog certificates be taken off the road until they are shown to comply with the law.

LEGISLATION

SB 119 (Presley) is a comprehensive proposal for bringing California's I/M program into compliance with the EPA's new requirements (see MAJOR PROJECTS). As amended April 26, the bill would do the following:

- declare that the current Smog Check Program has been beneficial, but its emission reductions have fallen short of expected targets, the program is incapable of identifying and repairing enough vehicles to meet emission reduction targets, and the I/M Review Committee has identified a program to correct the current deficiencies;

- declare that an "enhanced" inspection program is established in urbanized areas classified as serious, severe, or extreme nonattainment areas for ozone or moderate or serious nonattainment areas for carbon monoxide, and continue the existing "basic" program in other areas where it currently operates;

- authorize any air district to join the enhanced or basic program if DCA concurs; DCA could decline a request if not cost-effective or feasible;

- authorize the Air Resources Board to direct either program's implementation in ozone transport regions or commute corridors, as defined;

- repeal the January 1, 1999 sunset date on the Smog Check Program;

- revise emission reduction standards;

- require implementation of the enhanced program on January 1, 1995, with full phase-in within one year;

- require enhanced programs to separate test and repair functions, having test-only stations operated privately under contract, if feasible, or by the state;

- require a sufficient number of test-only stations for public convenience, and set a ten-mile limit on the average driving distance to the closest test-only station;

- set a maximum waiting time of fifteen minutes for 90% of inspections;

- add a loaded mode (versus idle) dy-

namometer test, a functional test of specified elements of the vehicle's emissions control system, and other elements;

- authorize "Gold Shield" (GS) smog check stations which combine test and repair, and provide that GS stations may test and repair failed vehicles if previously tested at a test-only station, provided that tampered or gross-polluting vehicles are excluded;

- subject GS stations to stricter licensing standards, allow GS stations to issue certificates of compliance, and authorize vehicle dealers to act as GS stations and sell vehicles they have tested, subject to specified procedures, disclosure requirements, and responsibility for repairs to vehicles which subsequently fail a smog inspection;

- set new repair cost limits for both programs after January 1, 1994, and raise limits by \$25 to \$150 (to a new range of \$75 to \$375), depending on the age of a vehicle;

- establish a vehicle buy-back program in enhanced areas for failed vehicles, with prices to be determined by DCA;

- activate the federal \$450 repair cost minimum if the buy-back program is delayed or if funding is inadequate;

- require an on-road audit of the inspection program in at least one enhanced area, and authorize an audit in one or more basic areas as a means of detecting gross polluters and tampered vehicles, and authorize the use of remote sensing equipment and pullovers for random roadside emission testing;

- continue the smog certificate fee of up to \$7 per vehicle inspected;

- establish authority for extensive regulatory, training, and licensing requirements, including program quality assurances, multi-tiered licensing and certification standards, remedial training, audits, recordkeeping, evaluations, revocation and suspension of licenses, and equipment;

- establish a penalty for late certification of \$50 if over ten days and \$200 if more than thirty days late;

- make it unlawful to obtain or seek fraudulently, through financial or other inducement, a certificate of compliance; and

- make miscellaneous and related changes to vehicle inspection provisions to implement the bill's requirements and make them consistent with current law. [*S. Trans*]

SB 1195 (Russell), as amended April 20, is another comprehensive proposal which seeks to bring California into compliance with EPA's new standards. Among other things, this bill would:

- declare legislative intent that the current Smog Check Program has provided beneficial and reasonable emissions reductions; that its required equipment has been designed to accommodate future program enhancements; and that it has achieved greater reductions than any other I/M program in use today, and is more convenient and economical for the public than centralized systems elsewhere;

- expand the I/M program statewide, with provisions for exempting an attainment area if not economically feasible to implement;

- revise emission reduction standards, to be met no later than January 1, 1998;

- raise vehicle repair cost limits by \$25 to \$150 (to a new range of \$75 to \$375), depending on the age of a vehicle;

- provide for no cost limit on gross polluters and authorize regulatory requirements for the expenditure of a minimum repair amount;

- authorize a smog inspection certificate charge of up to \$10 for the state's program and administrative costs;

- add to the testing procedures a functional test of the fuel evaporative and crankcase ventilation systems, use of a loaded mode dynamometer for nitrogen oxides, and other equipment to detect non-exhaust-related volatile organic compound emissions;

- require DCA to design and establish a centralized computer database and network which is accessible on a real time basis, to provide vehicle-specific information, prior test information, test failure rates by vehicle class and station, and related program information;

- require a program for roadside emissions audits to detect gross polluters, including remote sensing of emissions and vehicle pullovers for testing and inspection, and impose a \$1,000 fine for violations;

- direct DCA to establish higher licensure and training standards for Smog Check "technicians" (currently "mechanics"), including provisions for incentives and remedial training; provide for inspection station or technician license suspensions for up to sixty days for specified offenses; and establish grounds for refusing to renew a license for improper testing or repair;

- create an inspection waiver option, extending from two to four years the Smog Check exemption period upon payment of \$50 at the time of a new vehicle's purchase;

- establish a Motor Vehicle Replacement Program, to purchase (up to \$500) gross-polluting vehicles and replace them with new low-emitting vehicles;



—require various agencies to undertake specific actions related to the inspection program, such as requiring the I/M Committee to examine tampering problems, ways to remove gross-polluting vehicles, implementation of the federal \$450 repair cost waiver and improvements to decentralized testing, and requiring DCA to investigate on-board diagnostic systems in vehicles for detecting excess emissions and identifying needed repairs; and

—make other miscellaneous and related changes to vehicle inspection provisions to implement the bill's requirements and make them consistent with existing law. [S. Trans]

AB 1119 (Ferguson). Existing law establishes the motor vehicle inspection program, which provides for smog checks and repairs to be made by smog check station mechanics. As introduced March 2, this bill would designate those mechanics as technicians, designate that program as the basic program, and require an enhanced program of testing and retesting at test-only stations. The bill would delete provisions for a fee to be charged for a certificate of compliance or noncompliance, and instead provide for the electronic filing of a certificate of compliance. [A. Trans]

SJR 10 (Committee on Transportation), as introduced March 11, would memorialize President Clinton and the EPA to give California increased flexibility in assessing the effectiveness of its current I/M program, redesigning the program, and meeting new federal performance standards for vehicle emission reduction; the measure would also request that EPA not impose a specified discount factor on the potential effectiveness of enhancements and design elements in the California program. [A. Floor]

SB 8 (Lockyer). Existing law makes it unlawful for any automobile repair dealer to offer to any insurance agent, broker, or adjuster any fee, commission, profit sharing, or other form of direct or indirect consideration for referring an insured to that automobile repair dealer for vehicle repairs covered under a policyholder's automobile physical damage coverage or automobile collision coverage. As amended April 13, this bill would make it a public offense for any automobile repair dealer or its employees or agents to knowingly offer or give any discount intended to offset a deductible required by a policy of insurance covering a motor vehicle for making repairs to the motor vehicle. [A. F&I]

SB 341 (Craven). Existing law authorizes the DCA Director to direct BAR to create an advisory committee to conduct a

study on auto body repair; existing law also requires the Director to report findings and recommendations to the legislature by December 1, 1993. As introduced February 18, this bill would instead require the Director to report findings and recommendations to the legislature by January 1, 1994. [A. CPGE&ED]

SB 521 (Presley), as amended April 27, would make failure in any material respect to comply with specified Smog Check Program laws an act or omission which is cause for refusal to validate or invalidation, temporarily or permanently, of the registration of an automotive repair dealer. The bill would also make any violation of the Automotive Repair Act or the Smog Check laws grounds for refusal to validate, or to invalidate temporarily or permanently, licenses issued pursuant to these provisions. [S. Floor]

SB 575 (Rogers). Existing law requires a certificate of compliance or noncompliance with motor vehicle emission standards upon, among other things, the transfer of registration of a vehicle, except in certain instances. As amended April 26, this bill would exempt from this requirement a transfer if a valid certificate of compliance or a certificate of noncompliance, as appropriate, was obtained within 60 days prior to the most recent transfer of ownership and registration. The bill would also require the transferor of a motor vehicle that is subject to emission certification requirements to sign a statement, under penalty of perjury, that he/she has not modified the emission system and does not have personal knowledge of anyone else modifying the emission system in a manner that causes the emission system to fail to qualify for the issuance of a certificate of compliance. The bill would also require the transferor to deliver the completed statement to the Department of Motor Vehicles. [S. Floor]

AB 2358 (Farr), as amended April 12, would require vehicles, trains, and commercial or other nonresidential facilities at fixed locations, if they have air-conditioning systems containing CFC-based refrigerants, to undergo inspection, biennially or upon transfer of ownership, for leaks of the air-conditioning system. The bill would require the removal of the refrigerant from, and would prohibit the addition of any refrigerant to, an air-conditioner that is in a status of noncompliance due to refrigerant leakage, and would prohibit the Department of Motor Vehicles from registering or reregistering a vehicle that is not in compliance. [A. NatRes]

SB 574 (Boatwright), as amended May 17, would delete certain references to BAR's Advisory Board, which was elim-

inated by ABX 66 (Vasconcellos) (Chapter 21X, Statutes of 1992). [12:4 CRLR 59] [A. CPGE&ED]

BOARD OF BARBERING AND COSMETOLOGY

Executive Officer: Olivia Guebara (916) 445-7061

On July 1, 1992, pursuant to AB 3008 (Eastin) (Chapter 1672, Statutes of 1990), the enabling statutes of the Board of Barber Examiners (BBE) and the Board of Cosmetology (BOC) were repealed and replaced with an enabling act creating the Board of Barbering and Cosmetology (BBC); that act is found at Business and Professions Code section 7301 *et seq.* BBC licenses and regulates persons engaged in the practice of barbering, cosmetology, and electrolysis. The Board is also authorized to conduct and administer examinations, adopt regulations governing public health and safety, and discipline persons in violation of its statutes or regulations. BBC represents the first merger of two California regulatory agencies. The Board, which consists of five public members and four members representing the professions, holds meetings at least four times per year.

In March, Governor Wilson appointed Joan Joseff of Toluca Lake to fill a public member seat on BBC; Joseff chairs the board of directors of Joseff-Hollywood, an international supplier of aircraft and missile castings. In addition, Joseff-Hollywood is an international distribution company for the rental of costume jewelry to the television and film industry. Also in March, Wilson appointed Philip Taylor of Studio City to fill an industry member seat on BBC; Taylor, co-owner of Papillons, a beauty supply store, received his cosmetology license in 1959. At this writing, the Governor has yet to fill one remaining industry member seat on BBC.

MAJOR PROJECTS

Board Adopts New Fee Regulations. Existing law (Chapter 10, Division 3 of Business and Professions Code) provides for the regulation of the practices of barbering, cosmetology, and electrolysis, but does not include a set fee schedule for BBC. On January 8, BBC published notice of its intent to repeal section 990, Title 16 of the CCR, which established fees for the now-defunct Board of Cosmetology, and adopt new section 998, to provide a schedule of fees to be charged for all BBC licenses. The proposed fees are within stat-