

AMENDED IN SENATE MAY 28, 2009

AMENDED IN SENATE APRIL 13, 2009

**SENATE BILL**

**No. 435**

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**Introduced by Senator Pavley**  
*(Coauthor: Senator Lowenthal)*

February 26, 2009

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An act to amend Sections 44010.5, 44011, ~~and 44012~~ 44012, and 44062.3 of, and to add Section 44012.5 to, the Health and Safety Code, and to amend Section 4000.1 of the Vehicle Code, relating to air pollution.

LEGISLATIVE COUNSEL'S DIGEST

SB 435, as amended, Pavley. Smog check program: motorcycles.

(1) Existing law establishes a motor vehicle inspection and maintenance program (smog check), administered by the Department of Consumer Affairs, that provides for the inspection of motor vehicles upon registration, biennially upon renewal of registration, upon transfer of ownership, and in certain other circumstances. Existing law exempts from biennial inspection all motorcycles until the department implements test procedures applicable to motorcycles. Violations of smog check requirements are a crime.

This bill would require the department to include Class III model-year 2000 and newer motorcycles in the smog check program beginning January 1, 2012. *The bill would require the department to pay a motor vehicle owner that retires a motorcycle that fails a smog check inspection up to \$500.*

Because violations of smog checks for motorcycles would be a crime, this bill would impose a state-mandated local program.

The bill would make various conforming, clarifying, and technical changes to the smog check program.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 44010.5 of the Health and Safety Code  
2 is amended to read:

3 44010.5. (a) The department shall implement a program with  
4 the capacity to commence, by January 1, 1995, the testing at  
5 test-only facilities, in accordance with this chapter, of 15 percent  
6 of that portion of the total state vehicle fleet consisting of vehicles  
7 subject to inspection each year in the biennial program and that  
8 are registered in the enhanced program area, as established pursuant  
9 to paragraph (1) of subdivision (a) of Section 44003.

10 (b) (1) The department shall increase the capacity of the  
11 program so that the capacity exists to commence, by January 1,  
12 1996, the testing at test-only facilities of that portion of the state  
13 vehicle fleet that is subject to inspection and is registered in the  
14 enhanced program area, which is sufficient to meet the emission  
15 reduction performance standards established by the Environmental  
16 Protection Agency in regulations adopted pursuant to the Clean  
17 Air Act Amendments of 1990, taking into account the results of  
18 the pilot demonstration program established pursuant to Section  
19 44081.6.

20 (2) Upon increasing the capacity of the program pursuant to  
21 paragraph (1), the department shall afford smog check stations  
22 that are licensed and certified pursuant to Sections 44014 and  
23 44014.2 the initial opportunity to perform the required inspections.  
24 The department shall adopt, by regulation, the requirements to  
25 provide that initial opportunity.

26 (3) If the department determines that there is an insufficient  
27 number of licensed test-only smog check stations operating in an  
28 enhanced area to meet the increased demand for test-only

1 inspections, the department may increase the capacity of the  
2 program by utilizing existing contracts.

3 (c) The program shall utilize the testing procedures described  
4 in Section 44012.

5 (d) Vehicles that are neither diesel-powered nor motorcycles in  
6 the enhanced program area and that are not subjected to the  
7 program established by this section may be tested at smog check  
8 stations licensed pursuant to Section 44014 that use loaded mode  
9 dynamometers. Diesel-powered vehicles and motorcycles in the  
10 enhanced program area that are not subjected to the program  
11 established by this section may be tested at smog check stations  
12 licensed pursuant to Section 44014 using appropriate testing  
13 procedures as determined by the department.

14 (e) (1) The department may implement the program established  
15 pursuant to subdivision (a) through a network of privately operated  
16 test-only facilities established pursuant to contracts to be awarded  
17 pursuant to this section.

18 (2) The initial contracts awarded pursuant to this section shall  
19 terminate not later than seven years from the date that the contracts  
20 were executed.

21 (f) No person shall be a contractor of the department for  
22 test-only facilities in all air basins, exclusively, where the enhanced  
23 program is in effect unless the department determines, after a public  
24 hearing, that there is not more than one qualified contractor. The  
25 South Coast Air Basin shall have at least two contractors, and the  
26 combined enhanced program area that includes Bakersfield, Fresno,  
27 and Sacramento shall have at least two contractors. The department  
28 may operate test-only facilities on an interim basis while  
29 contractors are being sought.

30 (g) (1) In awarding contracts under this section, the department  
31 shall request bids through the issuance of a request for proposal.

32 (2) The department shall first determine which bidders are  
33 qualified, and then award the contract to the qualified bidder, giving  
34 priority to the test cost and convenience to motorists.

35 (3) The department shall provide a contractual preference, as  
36 determined by the department, not to exceed 10 percent of the total  
37 proposal evaluation score, based on the following factors:

38 (A) Up to 5 percent to bidders providing firm commitments to  
39 employ businesses that are licensed or otherwise substantially  
40 participating in the smog check program after January 1, 1994.

1 (B) Up to 5 percent to bidders based on the extent to which  
2 bidders maximize the potential economic benefit of the smog check  
3 program on this state over the term of the contract. That potential  
4 economic benefit shall include the percentage of work performed  
5 by California-based firms, the potential of the total project  
6 workforce who will be California residents, and the percentage of  
7 subcontracts that will be awarded to California-based firms.

8 (4) Any contract executed by the department for the operation  
9 of a test-only facility shall expressly require compliance with this  
10 chapter and any regulations adopted by the department pursuant  
11 to this chapter.

12 (h) The department shall ensure that there is a sufficient number  
13 of test-only facilities, and that they are properly located, to ensure  
14 reasonable accessibility and convenience to all persons within an  
15 enhanced program area, and that the waiting time for consumers  
16 is minimized. The department may operate test-only facilities on  
17 an interim basis to ensure convenience to consumers. The  
18 department shall specify in the request for proposal the minimum  
19 number of test-only facilities that are required for the program.  
20 Any contracts initially awarded pursuant to this section shall ensure  
21 that the contractors are capable of fulfilling the requirements of  
22 subdivision (a).

23 (i) Any data generated at a test-only facility shall be the property  
24 of the state, and shall be fully accessible to the department at any  
25 time. The department may set contract specifications for the storage  
26 of that data in a central data storage system or facility designated  
27 by the department.

28 (j) The department shall ensure an effective transition to the  
29 new program by implementing an effective public education  
30 program and may specify in the request for proposal a dollar  
31 amount that bidders are required to include in their bids for public  
32 education activities, to be implemented pursuant to Section  
33 44070.5.

34 (k) The department shall ensure the effective management of  
35 the test-only facilities and shall specify in the request for proposal  
36 that a manager be present during all hours of station operation.

37 (l) The department shall ensure and facilitate the effective  
38 transition of employees of businesses that are licensed or otherwise  
39 substantially participating in the smog check program and may  
40 specify in the request for proposal that test-only facility

1 management be Automotive Service Excellence (ASE) certified,  
2 or be certified by a comparable program as determined by the  
3 department.

4 (m) As part of the contracts to be awarded pursuant to  
5 subdivision (e), the department may require contractors to perform  
6 functions previously undertaken by referee stations throughout the  
7 state, as determined by the department, at some or all of the  
8 affected stations in enhanced areas, and at additional stations  
9 outside enhanced areas only to the extent necessary to provide  
10 appropriate access to referee functions.

11 (n) Notwithstanding any other provision of law, to avoid delays  
12 to the program implementation timeline required by this chapter  
13 or the Clean Air Act, the Department of General Services, at the  
14 request of the department, may exempt contracts awarded pursuant  
15 to this section from existing laws, rules, resolutions, or procedures  
16 that are otherwise applicable, including, but not limited to,  
17 restrictions on awarding contracts for more than three years. The  
18 department shall identify any exemptions requested and granted  
19 pursuant to this subdivision and report thereon to the Legislature.

20 (o) The department shall implement the program established in  
21 this section only in urbanized areas classified by the Environmental  
22 Protection Agency as a serious, severe, or extreme nonattainment  
23 area for ozone or a moderate or serious nonattainment area for  
24 carbon monoxide with a design value greater than 12.7 ppm, and  
25 shall not implement the program in any other area.

26 (p) If existing smog check stations, in order to participate in the  
27 enhanced program, have been required to make additional  
28 investments of more than ten thousand dollars (\$10,000), the  
29 department shall submit recommendations to the Governor and  
30 the Legislature for any appropriate mitigation measures.

31 SEC. 2. Section 44011 of the Health and Safety Code, as added  
32 by Section 3 of Chapter 739 of the Statutes of 2007, is amended  
33 to read:

34 44011. (a) All motor vehicles powered by internal combustion  
35 engines that are registered within an area designated for program  
36 coverage shall be required biennially to obtain a certificate of  
37 compliance or noncompliance, except for the following:

38 (1) All motorcycles not subject to inspection pursuant to Section  
39 44012.5.

1 (2) All motor vehicles that have been issued a certificate of  
2 compliance or noncompliance or a repair cost waiver upon a change  
3 of ownership or initial registration in this state during the preceding  
4 six months.

5 (3) All motor vehicles manufactured prior to the 1976  
6 model-year.

7 (4) (A) Except as provided in subparagraph (B), all motor  
8 vehicles four or less model-years old.

9 (B) Beginning January 1, 2005, all motor vehicles six or less  
10 model-years old, unless the state board finds that providing an  
11 exception for these vehicles will prohibit the state from meeting  
12 the requirements of Section 176(c) of the federal Clean Air Act  
13 (42 U.S.C. Sec. 7401 et seq.) or the state's commitments with  
14 respect to the state implementation plan required by the federal  
15 Clean Air Act.

16 (C) All motor vehicles excepted by this paragraph shall be  
17 subject to testing and to certification requirements as determined  
18 by the department, if any of the following apply:

19 (i) The department determines through remote sensing activities  
20 or other means that there is a substantial probability that the vehicle  
21 has a tampered emission control system or would fail for other  
22 cause a smog check test as specified in Section 44012.

23 (ii) The vehicle was previously registered outside this state and  
24 is undergoing initial registration in this state.

25 (iii) The vehicle is being registered as a specially constructed  
26 vehicle.

27 (iv) The vehicle has been selected for testing pursuant to Section  
28 44014.7 or any other provision of this chapter authorizing  
29 out-of-cycle testing.

30 (D) This paragraph does not apply to diesel-powered vehicles  
31 or motorcycles.

32 (5) In addition to the vehicles exempted pursuant to paragraph  
33 (4), any motor vehicle or class of motor vehicles exempted pursuant  
34 to subdivision (b) of Section 44024.5. It is the intent of the  
35 Legislature that the department, pursuant to the authority granted  
36 by this paragraph, exempt at least 15 percent of the lowest emitting  
37 motor vehicles from the biennial smog check inspection.

38 (6) All motor vehicles that the department determines would  
39 present prohibitive inspection or repair problems.

1 (7) Any vehicle registered to the owner of a fleet licensed  
2 pursuant to Section 44020 if the vehicle is garaged exclusively  
3 outside the area included in program coverage, and is not primarily  
4 operated inside the area included in program coverage.

5 (8) (A) All diesel-powered vehicles manufactured prior to the  
6 1998 model-year.

7 (B) All diesel-powered vehicles that have a gross vehicle weight  
8 rating of 8,501 to 10,000 pounds, inclusive, until the department,  
9 in consultation with the state board, pursuant to Section 44012,  
10 implements test procedures applicable to these vehicles.

11 (C) All diesel-powered vehicles that have a gross vehicle weight  
12 rating from 10,001 pounds to 14,000 pounds, inclusive, until the  
13 state board and the Department of Motor Vehicles determine the  
14 best method for identifying these vehicles, and until the department,  
15 in consultation with the state board, pursuant to Section 44012,  
16 implements test procedures applicable to these vehicles.

17 (D) All diesel-powered vehicles that have a gross vehicle weight  
18 rating of 14,001 pounds or greater.

19 (b) Vehicles designated for program coverage in enhanced areas  
20 shall be required to obtain inspections from appropriate smog  
21 check stations operating in enhanced areas.

22 (c) For purposes of subdivision (a), a collector motor vehicle,  
23 as defined in Section 259 of the Vehicle Code, is exempt from  
24 those portions of the test required by subdivision (f) of Section  
25 44012 if the collector motor vehicle meets all of the following  
26 criteria:

27 (1) Submission of proof that the motor vehicle is insured as a  
28 collector motor vehicle, as shall be required by regulation of the  
29 bureau.

30 (2) The motor vehicle is at least 35 model-years old.

31 (3) The motor vehicle complies with the exhaust emissions  
32 standards for that motor vehicle's class and model-year as  
33 prescribed by the department, and the motor vehicle passes a  
34 functional inspection of the fuel cap and a visual inspection for  
35 liquid fuel leaks.

36 SEC. 3. Section 44012 of the Health and Safety Code, as added  
37 by Section 5 of Chapter 739 of the Statutes of 2007, is amended  
38 to read:

39 44012. The test at the smog check stations shall be performed  
40 in accordance with procedures prescribed by the department,

1 pursuant to Section 44013, and shall require, at a minimum, for  
2 all vehicles that are neither diesel-powered nor motorcycles, loaded  
3 mode dynamometer testing in enhanced areas, and two-speed  
4 testing in all other program areas. The department shall ensure all  
5 of the following:

6 (a) Emission control systems required by state and federal law  
7 are reducing excess emissions in accordance with the standards  
8 adopted pursuant to subdivisions (a) and (c) of Section 44013.

9 (b) Motor vehicles are preconditioned to ensure representative  
10 and stabilized operation of the vehicle's emission control system.

11 (c) For other than diesel-powered vehicles, the vehicle's exhaust  
12 emissions of hydrocarbons, carbon monoxide, carbon dioxide, and  
13 oxides of nitrogen in an idle mode or loaded mode are tested in  
14 accordance with procedures prescribed by the department. In  
15 determining how loaded mode and evaporative emissions testing  
16 shall be conducted, the department shall ensure that the emission  
17 reduction targets for the enhanced program are met.

18 (d) For other than diesel-powered vehicles, the vehicle's fuel  
19 evaporative system and crankcase ventilation system are tested to  
20 reduce any nonexhaust sources of volatile organic compound  
21 emissions, in accordance with procedures prescribed by the  
22 department.

23 (e) For diesel-powered vehicles, a visual inspection is made of  
24 emission control devices and the vehicle's exhaust emissions are  
25 tested in accordance with procedures prescribed by the department,  
26 that may include, but are not limited to, on-board diagnostic testing.  
27 The test may include testing of emissions of any or all of the  
28 pollutants specified in subdivision (c) and, upon the adoption of  
29 applicable standards, measurement of emissions of smoke or  
30 particulates, or both.

31 (f) A visual or functional check is made of emission control  
32 devices specified by the department, including the catalytic  
33 converter in those instances in which the department determines  
34 it to be necessary to meet the findings of Section 44001. The visual  
35 or functional check shall be performed in accordance with  
36 procedures prescribed by the department.

37 (g) A determination as to whether the motor vehicle complies  
38 with the emission standards for that vehicle's class and model-year  
39 as prescribed by the department.



1 (h) The test procedures may authorize smog check stations to  
2 refuse the testing of a vehicle that would be unsafe to test, or that  
3 cannot physically be inspected, as specified by the department by  
4 regulation. The refusal to test a vehicle for those reasons shall not  
5 excuse or exempt the vehicle from compliance with all applicable  
6 requirements of this chapter.

7 SEC. 4. Section 44012.5 is added to the Health and Safety  
8 Code, to read:

9 44012.5. (a) Beginning January 1, 2012, the department shall  
10 include model-year 2000 and newer Class III motorcycles,  
11 registered for on-road use in California, in the inspection and  
12 maintenance program established pursuant to this chapter. The  
13 department, in cooperation with the state board, shall adopt  
14 regulations to implement this section, including prescribing test  
15 procedures for motorcycles, by July 1, 2011.

16 (b) Motorcycles subject to testing under this section shall be  
17 inspected using appropriate procedures as determined by the  
18 department in consultation with the state board.

19 (c) As used in this section, "Class III motorcycle" means a  
20 motorcycle containing an engine with a displacement of 280 cubic  
21 centimeters or greater.

22 SEC. 5. Section 44062.3 of the Health and Safety Code is  
23 amended to read:

24 44062.3. The owner of a motor vehicle that has failed its most  
25 recent smog check inspection may retire the vehicle from operation  
26 at a dismantler under contract with the Bureau of Automotive  
27 Repair. The department shall pay a person who retires his or her  
28 vehicle under this section up to one thousand five hundred dollars  
29 (\$1,500), *except the department shall pay up to five hundred dollars*  
30 *(\$500) to a person who retires a motorcycle subject to inspection*  
31 *pursuant to Section 44012.5.* The department may pay an owner  
32 of a motor vehicle who elects to retire the vehicle more than ~~one~~  
33 ~~thousand five hundred dollars~~ *(\$1,500) these amounts*, if the  
34 department determines that this payment is cost effective.

35 ~~SEC. 5.~~

36 SEC. 6. Section 4000.1 of the Vehicle Code is amended to  
37 read:

38 4000.1. (a) Except as otherwise provided in subdivision (b),  
39 (c), or (d) of this section, or subdivision (b) of Section 43654 of  
40 the Health and Safety Code, the department shall require upon

1 initial registration, and upon transfer of ownership and registration,  
2 of any motor vehicle subject to Part 5 (commencing with Section  
3 43000) of Division 26 of the Health and Safety Code, a valid  
4 certificate of compliance or a certificate of noncompliance, as  
5 appropriate, issued in accordance with Section 44015 of the Health  
6 and Safety Code.

7 (b) With respect to new motor vehicles certified pursuant to  
8 Chapter 2 (commencing with Section 43100) of Part 5 of Division  
9 26 of the Health and Safety Code, the department shall accept a  
10 statement completed pursuant to subdivision (b) of Section 24007  
11 in lieu of the certificate of compliance.

12 (c) For purposes of determining the validity of a certificate of  
13 compliance or noncompliance submitted in compliance with the  
14 requirements of this section, the definitions of new and used motor  
15 vehicle contained in Chapter 2 (commencing with Section 39010)  
16 of Part 1 of Division 26 of the Health and Safety Code shall control.

17 (d) Subdivision (a) does not apply to a transfer of ownership  
18 and registration under any of the following circumstances:

19 (1) The initial application for transfer is submitted within the  
20 90-day validity period of a smog certificate as specified in Section  
21 44015 of the Health and Safety Code.

22 (2) The transferor is the parent, grandparent, sibling, child,  
23 grandchild, or spouse of the transferee.

24 (3) A motor vehicle registered to a sole proprietorship is  
25 transferred to the proprietor as owner.

26 (4) The transfer is between companies the principal business of  
27 which is leasing motor vehicles, if there is no change in the lessee  
28 or operator of the motor vehicle or between the lessor and the  
29 person who has been, for at least one year, the lessee's operator  
30 of the motor vehicle.

31 (5) The transfer is between the lessor and lessee of the motor  
32 vehicle, if there is no change in the lessee or operator of the motor  
33 vehicle.

34 (6) The motor vehicle was manufactured prior to the 1976  
35 model-year.

36 (7) The transfer is for a motor vehicle four or less model-years  
37 old that is neither diesel-powered nor a motorcycle *subject to*  
38 *inspection pursuant to Section 44012.5*. The department shall  
39 impose a fee of eight dollars (\$8) on the transferee of a motor  
40 vehicle that is exempt from subdivision (a) pursuant to this

1 paragraph. Revenues generated from the imposition of that fee  
2 shall be deposited into the Vehicle Inspection and Repair Fund.

3 (e) The State Air Resources Board, under Part 5 (commencing  
4 with Section 43000) of Division 26 of the Health and Safety Code,  
5 may exempt designated classifications of motor vehicles from  
6 subdivision (a) as it deems necessary, and shall notify the  
7 department of that action.

8 (f) Subdivision (a) does not apply to a motor vehicle when an  
9 additional individual is added as a registered owner of the motor  
10 vehicle.

11 (g) For purposes of subdivision (a), any collector motor vehicle,  
12 as defined in Section 259, is exempt from those portions of the  
13 test required by subdivision (f) of Section 44012 of the Health and  
14 Safety Code, if the collector motor vehicle meets all of the  
15 following criteria:

16 (1) Submission of proof that the motor vehicle is insured as a  
17 collector motor vehicle, as shall be required by regulation of the  
18 Bureau of Automotive Repair.

19 (2) The motor vehicle is at least 35 model-years old.

20 (3) The motor vehicle complies with the exhaust emissions  
21 standards for that motor vehicle's class and model year as  
22 prescribed by the Department of Consumer Affairs, and the motor  
23 vehicle passes a functional inspection of the fuel cap and a visual  
24 inspection for liquid fuel leaks.

25 ~~SEC. 6.~~

26 *SEC. 7.* No reimbursement is required by this act pursuant to  
27 Section 6 of Article XIII B of the California Constitution because  
28 the only costs that may be incurred by a local agency or school  
29 district will be incurred because this act creates a new crime or  
30 infraction, eliminates a crime or infraction, or changes the penalty  
31 for a crime or infraction, within the meaning of Section 17556 of  
32 the Government Code, or changes the definition of a crime within  
33 the meaning of Section 6 of Article XIII B of the California  
34 Constitution.

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