

BUREAU OF AUTOMOTIVE REPAIR

INITIAL STATEMENT OF REASONS

HEARING DATE(S):

NORTHERN CALIFORNIA

Monday, March 14, 2016 at 10:00am

**SUBJECT MATTER OF THE
PROPOSED REGULATIONS:**

MOBILE AUTOMOTIVE REPAIR DEALER
ADVERTISING REQUIREMENTS

SECTIONS AFFECTED:

Within Chapter 1, Division 33, Title 16,
California Code of Regulations: (1) Creating
Article 6.1 and, within that article, Sections
3351.7.1 and 3351.7.2; and (2) Amending
Section 3371.1

SPECIFIC PURPOSE OF THE REGULATORY PROPOSAL:

The Bureau of Automotive Repair (BAR or Bureau) regulates approximately 35,000 automotive repair dealers (ARDs), in the State of California. The Bureau ensures persons operating as automotive repair dealers are registered with the Bureau and comply with laws and regulations established to protect consumers in repair transactions. The Bureau is proposing to adopt new regulations specific to mobile automotive repair dealers. These regulations are necessary to adequately ensure persons operating mobile automotive repair businesses are registered with the Bureau and comply with consumer protection laws and regulations.

Mobile automotive repair dealers travel to their customers to perform repairs and typically find customers through advertisements on popular websites such as Craigslist. These businesses offer some benefits to consumers, such as the convenience of not traveling or transporting their vehicle to a repair shop and potential savings from avoiding towing costs. Mobile repair businesses also present certain risks. Although not all mobile repair dealers engage in fraudulent practices, those who do are often difficult to find for enforcement purposes, as many do not have repair facilities and are not registered with the Bureau. For example, in a May 2014 sting operation investigating advertisements for automotive repairs on Craigslist, the Bureau found that 44 out of 48 advertisements were placed by persons unregistered with the Bureau.

The proposed regulations establish definitions pertaining to and requirements of mobile automotive repair dealers. These regulations would make it easier for consumers to determine whether a mobile repair dealer is registered with the Bureau and to access the repair dealer's disciplinary history. They also improve the Bureau's ability to identify and bring enforcement actions against mobile repair dealers who may be violating consumer rights.

I. Adopt §3351.7.1. Definitions pertaining to mobile automotive repair dealers

- A. New text is added to define mobile automotive repair and mobile automotive repair dealer for purposes of the proposed regulations.

Problem: All businesses performing automotive repairs must register with the Bureau, regardless whether such services are performed in a facility or via a mobile service. However, existing regulations do not clearly spell out that mobile ARDs are subject to regulation or that certain advertising requirements apply to mobile ARDs. The Bureau cannot apply regulations clarifying these requirements without first defining this population of repair dealers and the service they provide.

Anticipated benefit(s): Defining the category of repair dealers and mobile repair service provided by such dealers enables the Bureau to apply regulations needed to curb the performance of unlicensed repair by mobile ARDs.

Mobile automotive repair is defined to mean the repair of motor vehicles which relies on a motor vehicle to transport an automotive technician and any tools and equipment necessary to perform the repair. The proposed definition relies on the terms “repair of motor vehicles” and “automotive technician” as they are defined in Business and Professions Code (BPC) §9880.1. This definition ensures the regulations apply only to mobile repair services which are essentially the same services consumers could receive at a repair facility, and for which repair facilities would be required to register. Mobile repair services could include, for example, tune-ups and replacement of parts such as timing and drive belts, starters, or alternators.

A mobile automotive repair dealer is defined to mean a person who, for compensation, engages in the business of mobile automotive repair and does not operate a currently registered physical place of business where the diagnosis or repair of motor vehicles is performed. This definition ensures the regulations apply to mobile repair dealers who perform repairs for profit and do not also operate a currently registered repair facility. The latter ensures repair dealers who are already registered with the Bureau to perform repairs at a facility are not unfairly burdened by additional registration requirements.

II. Adopt §3351.7.2. Requirements of mobile automotive repair dealers

- A. Requirement that any person operating as a mobile automotive repair dealer must have a currently valid registration with the Bureau.

Problem: Automotive repair businesses that are registered to perform repairs are held accountable for a range of requirements which protect consumers. They must provide written estimates, obtain customer authorization prior to performing estimated repairs, and adhere to accepted trade standards for specified repairs, among other things. When dishonest repair dealers conduct fraudulent transactions or perform faulty repairs while unregistered, they often cannot be located by the Bureau because they do not have a

business address or contact information on file. Automotive repair businesses that are exclusively mobile are especially difficult to find if unregistered because they do not have a fixed place of business.

Anticipated benefit(s): The registration requirement ensures mobile ARDs are subject to the consumer disclosure requirements applicable to all ARDs in automotive repair transactions. It also ensures if a mobile repair dealer commits fraud or damages a car as a result of a repair the dealer may be found and investigated by the Bureau. Finally, the requirement makes it easier for both consumers and the Bureau to identify the registration status of mobile repair dealers at the outset.

- B. Requirement that a mobile automotive repair dealer separately register each motor vehicle used to perform automotive repair.

Problem: Automotive repair businesses that perform repairs at a fixed physical location must separately register each business address at which they engage in the business of automotive repair. This requirement applies even if a business owns a repair facility and decides to also set up a tent in a parking lot and conduct repairs at that location. In such case, the business would have to additionally register the tent location. Allowing a primarily mobile automotive repair business to operate multiple motor vehicles engaged in automotive repair and maintain only one registration for all such vehicles would provide an unfair advantage to mobile businesses vis à vis “brick and mortar” businesses. To the extent a motor vehicle used to perform the business of automotive repair provides the same services offered at a given repair facility, the vehicle must be subject to the same registration requirements.

Anticipated benefit(s): The proposed requirement ensures mobile automotive repair dealers do not gain an unfair advantage over brick and mortar businesses by requiring separate registration for each vehicle engaged in automotive repair.

- C. Requirement that a mobile automotive repair dealer clearly display on a motor vehicle used to perform automotive repair or any Internet-based advertising, the firm name, business telephone number, and registration number.

Problem: Existing regulations regarding ARD advertising requirements are not optimal for mobile repair dealers.

First, ARDs are required to display their business address on signs and in advertising. However, mobile repair dealers do not operate in buildings and are likely to register with the Bureau using a residential or other non-business related address. Requiring mobile repair dealers to publicly display such an address could infringe on their privacy rights and would not be necessary to aid consumers in determining whether a business is registered.

Second, ARDs must comply with certain requirements which ensure a business’ registration is displayed in a repair facility such that it is clearly visible to consumers.

While mobile ARDs should similarly ensure their registration numbers are clearly identifiable, existing signage regulations are not appropriate for mobile ARDs.

Currently, all registered ARDs are required to conspicuously display a current and valid certificate of registration and a sign containing consumer rights notifications as specified in §3351.4. The sign must meet specifications which ensure the sign is sufficiently durable and its contents are sufficiently visible to customers.¹ In the event an ARD with a registered business address is conducting business at a different location, the ARD must provide customers a paper copy of the sign as specified in §3351.3(b). Existing regulations also provide in the event an ARD has multiple repair facilities, the sign must be conspicuously displayed at each facility.

Unlike regular ARDs, mobile ARDs do not interface with customers at facilities subject to signage requirements. Requiring mobile ARDs to display signs on their vehicles in accordance with the specifications in existing regulation would conflict with the Bureau's mandate to adopt the least restrictive regulations consistent with the public health, safety, and welfare. *See BPC §9882.*

Third, mobile automotive repair dealers typically solicit customers by running advertisements on popular websites such as Craigslist; however, existing regulations do not require ARDs to display their registration numbers in advertising. The internet is an essential part of many consumers' search for goods and services. As such the Bureau monitors internet advertisements to identify potentially unregistered ARDs. When scanning advertisements, it is difficult for both consumers and the Bureau to gauge whether an ARD is registered if registered and unregistered ARDs alike may neglect to list their registration numbers. And without an ARD's registration number, consumers cannot easily verify the business' registration and disciplinary history prior to engaging its services.

Anticipated benefit(s): The proposed requirements regarding what business information a mobile repair dealer must display and where it must be displayed are better suited to the mobile repair business model than existing requirements applicable to all ARDs. The proposed regulation does not require mobile repair dealers to display their registered business address on vehicles or Internet advertising. This protects the privacy of business owners where doing so does not harm the interests of consumer protection. Requiring mobile repair dealers to display registration numbers on their vehicles subjects them to a critical consumer protection requirement applicable to regular repair dealers. Also, requiring mobile repair dealers to display registration numbers in any Internet-based advertising allows the proposed regulations to target a form of advertising common to mobile repair dealers.

In general, the proposed requirements ensure the Bureau can find and investigate mobile repair dealers that perform faulty repairs and can more easily identify those that are unregistered. They also ensure consumers will notice, and know to look for, a mobile repair dealer's registration number. This information allows consumers to verify prior to

¹ See Section 3351.4, Article 6, Division 33, Title 16, California Code of Regulations

contracting for repair services whether a given registration number is valid, to view the dealer's disciplinary history, and to have the assurance a substandard repair can be investigated by the Bureau.

- D. Requirement that mobile repair dealers must provide to each customer a copy of an official automotive repair dealer's sign that is worded as specified in §3351.4(a)(1) and that meets the specifications of §3351.3(b)(1)-(4).

Problem: Existing regulations provide when ARDs are conducting business at a location other than their principal business address, they must provide customers with a paper copy of the official ARD sign as specified in §3351.3(b)(1)-(4). This requirement ensures the same consumer notifications and identifying business information (e.g. business address and telephone and registration numbers) are imparted to a customer as if the transaction occurred at the main facility. Similarly, mobile businesses that have no registered facility must be subject to the same customer disclosure requirements as apply to registered ARD facilities.

Benefit: The requirement to provide consumers a copy of the official ARD sign meeting the above-mentioned requirements ensures consumers are aware of their right to written estimates and invoices; how to contact the Bureau if a problem occurs; and a business' contact and registration information. Consumers would thus receive the same disclosures in transactions with mobile ARDs as in transactions with regular ARDs.

- E. Requirement that mobile repair dealers are subject to customer estimate and invoice requirements, and all other regulations applicable to regular automotive repair dealers, to the extent they do not conflict with requirements specific to mobile repair dealers.

Problem: Mobile automotive repair dealers by definition perform automotive repairs for compensation, and therefore must be subject to the same consumer protection regulations as regular repair dealers to the extent they perform regulated repairs. Certain advertising regulations need to be adapted to the mobile repair business model to ensure such businesses can comply with the regulations.

Anticipated benefit(s): The proposed regulations ensure all automotive repair businesses performing repairs, including mobile businesses, adequately communicate their registration status and other information to potential customers.

III. Amend §3371.1. Presumption As Automotive Repair Dealer.

- A. Amendment to add the Internet as one of the advertising media listed in section 3371.1(a).

Problem: Section 3371.1 provides a person who holds himself or herself out to be an automotive repair dealer by, among other things, advertising in specified forms of media, is presumed to be an automotive repair dealer for purposes of regulation by the Bureau.

Section 3371.1(a) does not include the Internet as an advertising medium. Since 1990, the year section 3371.1 was adopted, advertising and shopping for goods and services on the Internet has become commonplace. Further, section 3371.1(a) complements existing and proposed regulations requiring transparency in ARD advertising. Continued omission of Internet advertising from section 3371.1(a) would render it somewhat inconsistent with the proposed section 3351.7.2.

Anticipated benefit(s): Inclusion of the Internet as a specified advertising medium in section 3371.1(a) ensures the regulations recognize modern advertising practices and are consistent with other regulations related to ARD advertising.

FACTUAL BASIS/RATIONALE:

The Bureau was established within the California Department of Consumer Affairs in 1971 with the enactment of the Automotive Repair Act (Business and Professions Code (BPC) §9880 et seq.). Pursuant to the Automotive Repair Act, the Bureau issues registrations and/or licenses to, and enforces laws and regulations against, automotive repair dealers, lamp and brake stations and adjusters, and Smog Check stations and technicians.

BPC §9880.1 defines an automotive repair dealer as one who performs the repair of motor vehicles, as repair is defined in that section, for compensation. BPC §9884.6 requires a person constituting an automotive repair dealer to be registered with the Bureau. Since 1971, the Bureau has sought to curb automotive repair by unregistered automotive repair dealers through its enforcement efforts.

As exclusively mobile automotive repair businesses have become increasingly common, so too has their practice of advertising repair services on the Internet. The Bureau must ensure repairs performed in a mobile setting carry the same consumer protections as those performed at facilities which have historically been regulated by the Bureau. Existing regulations do not adequately capture mobile repair businesses and their advertising practices, which makes it difficult for consumers to guard against fraudulent or faulty repairs, and for the Bureau to enforce consumer protection regulations against such businesses.

The proposed regulation adapts the advertising requirements for ARDs to the mobile ARD business model by: (1) not requiring mobile ARDs to display their registered business address; (2) requiring registration numbers to be displayed on vehicles used for the business of mobile repair and in Internet advertisements; and (3) requiring mobile ARDs to provide customers a copy of an official ARD sign which includes the business' registration number and other information in accordance with §3351.3(b) and §3351.4(a)(1). These requirements ensure a mobile business' registration information is readily available, which makes it easier for consumers and the Bureau to verify registration as well as locate mobile technicians in the event of a dispute.

The proposed regulation also clarifies mobile automotive repair dealers must, like any other business performing automotive repairs, register with the Bureau and be subject to

regulations relating to automotive repair. Finally, the proposed regulation updates the forms of advertising a repair dealer may use, and by such use be deemed an ARD for purposes of regulation, to include the Internet. This amendment modernizes and makes consistent a regulatory provision which complements the proposed additional sections.

UNDERLYING DATA:

1. Exclusive: 16 Cited for Illegal Auto Repair. Rick Montanez, ABC 30, Fresno. May 21, 2014.
2. Call Kurtis Investigates: Unlicensed Mobile Mechanics. Kurtis Ming, CBS 13, West Sacramento. May 16, 2011.
3. 2014 BAR Craigslist sting operations. Rick McLarty (Northern California Field Operations and Enforcement Branch) and Jaime Ramos (Southern California Field Operations and Enforcement Branch), Bureau of Automotive Repair.

BUSINESS IMPACT

BAR has made an initial determination the proposed regulatory action will not have a significant adverse impact on businesses.

First, the proposal does not result in adverse impacts associated with registration or renewal fees. Under existing regulations, all businesses performing automotive repair must be registered with the Bureau. This regulation clarifies mobile ARDs must comply with the registration requirement. It is unknown how many mobile repair businesses will apply to be registered ARDs as a result of the regulation.

Businesses that do register as a result of the regulation are not likely to incur significant costs. A newly registered automotive repair business must pay a fee of \$200 for the initial registration and annually thereafter to renew the registration. This fee is likely to be a nominal proportion of the amount a repair business may earn as profit, even when taking into account operating expenses and the variation in types and prices of repairs by business and/or vehicle. For example, a brake pad replacement can be charged at around \$200 for approximately two hours of labor, depending on the make, model, and year of a vehicle.

Second, the proposal does not result in adverse impacts associated with its advertising requirements. The cost of adding information to an internet advertisement or placing a decal on a company vehicle to display such information is minor and absorbable.

Third, the proposed regulation will help to level the playing field for currently registered ARDs. By ensuring compliance with ARD registration requirements, the regulation promotes compliance with labor, licensing, and payroll tax laws, which in turn reduces unfair competition. ARD applicants must provide their seller permit number, city/county business license, hazardous waste number, and federal employee identification number to be registered as an ARD. As a consequence, ARDs coming under the Bureau's

jurisdiction must comply with a range of state and local laws governing areas such as labor, hazardous waste, and business taxes and fees. The Bureau's cooperation with other state agencies to target unlicensed activity, such as through the Joint Enforcement Strike Force on the Underground Economy, reinforces compliance with these laws.

Fourth, the proposal benefits businesses that register to comply, since operating with a valid registration affords businesses the legal right to receive compensation for automotive repairs. Pursuant to BPC §9880.1 and §9884.6, if an automotive repair business is not registered with the Bureau, it is not entitled to compensation and cannot pursue a mechanic's lien to collect on an unpaid repair job.

ECONOMIC IMPACT ASSESSMENT:

This regulatory proposal will have the following effects:

- It will not create or eliminate jobs within the State of California. For businesses already registered with the Bureau, the proposed regulation imposes relatively minor requirements and is thus not likely to result in any significant amount of new hiring or layoffs. For businesses which register as a result of the regulation, the Bureau estimates the cost of registration would not be so insurmountable as to put repair dealers out of business and cause an increase in unemployment.
- It will not create new business or eliminate existing businesses within the State of California. The proposed regulation relates to advertising practices and does not impact the core service provided by mobile repair businesses, so it neither creates nor eliminates businesses. Further, existing businesses will not be eliminated as the advertising requirements and fees imposed on businesses are minor and absorbable.
- It may affect the expansion of businesses currently doing business within the State of California. This assumes the regulation contributes to a reduction in unlicensed activity and thereby reduces unfair competition for currently registered automotive repair businesses.
- This regulatory proposal benefits the health and welfare of California residents. The proposal protects consumers by helping to ensure all businesses are properly registered and adhere to consumer protection regulations related to automotive repair. The Bureau enforces regulations addressing customer disclosure requirements, false or misleading statements made to customers, and accepted trade standards for specified repairs, among other things.
- This regulatory proposal may benefit worker safety. To the extent the regulation promotes compliance with labor laws relating to worker safety, it will have a positive impact on worker safety.
- This regulatory proposal may benefit the state's environment. To the extent the regulation promotes compliance with environmental regulations, such as those relating to the handling of hazardous waste related to the automotive repair industry, it will have a positive impact on the state's environment.

SPECIFIC TECHNOLOGIES OR EQUIPMENT:

This regulation does not mandate the use of specific technologies or equipment.

CONSIDERATION OF ALTERNATIVES:

No reasonable alternative to the regulatory proposal would be either more effective in carrying out the purpose for which the action is proposed or would be as effective or less burdensome to affected private persons and equally effective in achieving the purposes of the regulation in a manner that ensures full compliance with the law being implemented or made specific.