

Date of Hearing: April 18, 2016

ASSEMBLY COMMITTEE ON TRANSPORTATION

Jim Frazier, Chair

AB 1685 (Gomez) – As Amended April 11, 2016

**SUBJECT:** New motor vehicles: emission standards: civil penalties

**SUMMARY:** Updates civil penalties for violations of California Air Resources Board (ARB) regulations, orders, or rules, to bring penalty assessments into alignment with those of the United States Environmental Protection Agency (U.S. EPA). Specifically, **this bill:**

- 1) Increases civil penalties for violations of certain air quality orders, rules, or regulations adopted by ARB from a maximum amount of \$500 to a maximum of \$37,500 per action and requires, for violations committed by a manufacturer or distributor, that payment of penalties be a condition for further sales by the manufacturer or distributor.
- 2) Provides that violations involving portable fuel containers or small off-road engines remain subject to civil penalties of \$500 per unit.
- 3) Expands penalties for selling motor vehicles or engines in the state that do not meet ARB requirements to include businesses or persons who reside outside the state and includes activities such as advertising and introducing commerce into the state.
- 4) Deletes provisions defining an established place of business as a place actually occupied either continuously or at regular periods in order to include internet-based businesses.
- 5) Expands penalties from a maximum of \$5,000 to \$37,000 per action for violations of ARB regulations committed by a manufacturer or distributor and requires that payment of penalties be a condition to further motor vehicle sales by the manufacture or distributor in California.
- 6) Increases from \$5,000 to \$37,500, per action, the penalty for any manufacturer who sells, as specified, any new motor vehicle that fails to meet applicable emissions standards.
- 7) Authorizes ARB to order a manufacturer to bring its vehicles into emissions configuration to which they were certified and compliance with this requirement be a condition of further sale of motor vehicles in California.
- 8) Authorizes ARB to adjust the maximum penalties for failure to comply with specified regulations for inflation based on the California Consumer Price Index without the requirement to go through rulemaking procedures.
- 9) Makes related, clarifying amendments.

**EXISTING LAW:**

- 1) Requires that persons who violates any ARB order, rule, or regulation, where there is not a penalty described for the specific violation, shall be subject to a civil penalty not to exceed \$500 per vehicle, portable fuel container, spout, engine, or other unit subject to regulation and that the penalty be collected by the State Treasurer and deposited into the Air Pollution Control Fund.

- 2) Provides that manufacturers or distributors who do not comply with emission standards or test procedures adopted by ARB may be subject to civil penalties of \$50 per vehicle that is not in compliance and that no further sales of the vehicles can take place until the penalty is paid.
- 3) Prohibits residents or businesses from importing, delivering, purchasing, renting, leasing, acquiring, or receiving a new motor vehicle or vehicle engine for use or resale in the state unless the engine has been certified compliant with ARB standards, as specified, with violations set at \$5,000 per vehicle.
- 4) Prohibits new vehicles from being sold in California that do not meet the emissions standard adopted by ARB.
- 5) Provides penalties of \$5,000 per action, for manufacturers who sell, attempt to sell, or offer for sale, a new vehicles that does not meet ARB emission standards.
- 6) Requires that any manufacturer or distributor who fails to comply with ARB emissions standards or the test procedures adopted by ARB be subject to a civil penalty of \$50 for each vehicle that does not comply with the standards or procedures, and that penalties must be paid as a condition of further sale by the manufacturer or distributor in California.
- 7) Provides, pursuant to federal law, that violators be subject to civil penalties up to \$37,500 per non-compliant vehicle or engine, \$3,750 per tampering event or sale of defeat device, and \$37,500 per day for reporting and recordkeeping violations.

**FISCAL EFFECT:** Unknown

**COMMENTS:** Both nationally and statewide, the transportation sector is known to be a major contributor of criteria pollutants and climate change emissions. To address transportation sector emissions, both ARB and U.S. EPA regulations require that, prior to introducing a vehicle for sale, a manufacturer must demonstrate that the vehicle meets certain emissions standards. In California, manufacturers must additionally demonstrate compliance with state air-quality standards and manufacturers who fail to comply are subject to civil penalties and other enforcement actions.

As with the federal program, vehicles are not legal for sale in California until they are certified to be compliant with state emissions standards. To be certified by ARB, a vehicle must demonstrate that its exhaust and emission-control systems are durable and comply with the emission standards for the vehicle's useful life. This is done through durability and certification testing of the prototype certification vehicles.

In California, an application for certification must be submitted to, and approved by, both the ARB and U.S. EPA concurrently. ARB's In-Use Compliance Program aims to ensure that manufacturers' vehicles meet emissions standards throughout their useful lives. The program obtains a limited sample of vehicles from a given test group or engine family and duplicates the manufacturers' vehicle emissions certification tests.

On September 3, 2015, representatives of Volkswagen (VW) admitted to the U.S. EPA and ARB that a large number of their vehicle engines had been designed and manufactured with a "defeat

device” designated to bypass, or render inoperative, elements of the vehicles’ emissions control system. As a result, these vehicles were able to pass emissions tests despite exceeding federal emissions standards by up to 40 times. According to vehicle sales data, there are estimated to be 617,000 of these vehicles nationally, 79,400 of which are in California.

In a joint hearing entitled *Volkswagen's "Defeat Device:" Update and Implications for California* held by the Senate Transportation and Housing and Environmental Quality Committees on Tuesday March 8, 2016, the Legislature was updated with regard to how the defeat device was discovered, VW's admissions, ARB and U.S. EPA's actions, the status of federal litigation, and the overall effect of the issue on California's air quality, among other things. In the background paper for the hearing, the Committees encouraged the Legislature to consider creating stronger penalties to discourage non-compliance by automobile manufacturers, particularly given that federal penalties are substantially higher and that penalties for non-compliance in California were set in the 1970 and have not been indexed to inflation. The Committees suggested that existing ARB penalties do not provide sufficient deterrent, particularly for egregious actions to circumvent emissions requirements, such as in case of VW.

To ensure that California's air quality laws and regulations are followed, and to better align fines with federal penalties, the author has introduced AB 1685 which would increase the maximum penalties for mobile source violations. By increasing ARB's fines, the author believes that overall compliance will be improved. Specifically, this bill would increase the maximum penalty for mobile source violations from \$500 to \$37,500, while retaining the current lower penalty amount for smaller, less egregious, violations and violations for lower-value equipment such as off-road engines and fuel containers. Additionally, AB 1685 would modernize statutes to allow penalties to be extended to manufacturers outside of the state to better reflect modern business practices whereby vehicles are advertised and sold over the internet (from locations outside of California). Lastly, this bill would allow ARB to periodically update mobile source penalties by indexing them to inflation thereby ensuring that penalties maintain their deterrent effect over time.

*Committee comments:* While increasing penalties will no doubt provide a deterrent to violating state air quality laws and regulations, increasing penalties from what are now \$500-\$5,000 to \$37,500 could, if not judiciously applied, be overly punitive. This concern, was highlighted by the Legislature with the passage of SB 1402 (Dutton), Chapter 413, Statutes of 2010, which required ARB to provide a written explanation prior to imposing administrative or civil penalties for a violation of air pollution laws and to make those explanations available to the public.

In a report developed pursuant to SB 1402, ARB outlined its penalty policy explaining the process by which they work to consistently reach swift and fair resolution of violations. In their report, ARB notes that to be fair, they take into account the specific circumstances for each enforcement case when reaching a penalty determination. ARB also notes in the report, that while there is not a "mathematical formula" that is applied when calculating penalties, they do weigh individual circumstances, make comparisons between individual cases, and take into account individual circumstances. ARB also provides that penalty determinations are designed specifically to prevent harm to the public and the environment and are tailored so as not to create undue financial hardship.

ARB's Enforcement Penalty Policy also describes the process whereby ARB's Enforcement Division consistently engages regulated industries and business in developing, understanding,

and complying with regulations adopted by ARB. This ensures that the regulated community is aware of and has the ability to comply with pertinent air quality and emissions-related laws and regulations.

*Related legislation:* ACR 112 (Hadley), thanks ARB for its exemplary work and tenacity in uncovering emissions control defeat devices on certain diesel-fueled VW motor vehicles. ACR 112 is scheduled to be heard in the Assembly Natural Resources Committee on May 2, 2016.

*Previous legislation:* SB 1402 (Dutton), Chapter 413, Statutes of 2010, required ARB to provide a specified written explanation prior to imposing an administrative or civil penalty for a violation of air pollution law, make these explanations available to the public, annually report specified administrative penalties imposed, and publish a penalty policy pertaining to vehicular air pollution control.

AB 1085 (Mendoza), Chapter 384, Statutes of 2009, required the ARB to release all technical data that is used to develop regulations prior to the comment period of any proposed regulation.

SB 163 (Johannessen), Chapter 966, Statutes of 1995, expanded ARB's authority to assess and enforce administrative penalties by allowing them to adopt rules and regulations pertaining to fuel requirements and standards.

**REGISTERED SUPPORT / OPPOSITION:**

**Support**

American Lung Association in California  
Bay Area Air Quality Management District  
Breathe California  
Clean Power Campaign  
Coalition for Clean Air  
Natural Resources Defense Council  
Sierra Club California

**Opposition**

None on file

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