

INITIAL STATEMENT OF REASONS
TITLE 13. ARTICLE 6.1.
OCCUPATIONAL LICENSING AND DISCIPLINARY GUIDELINES

The Department of Motor Vehicles Occupational Licensing (OL) Branch is responsible for licensing and monitoring a wide range of motor vehicle related businesses and individuals.

The automobile industry is one of the largest in the United States. There are currently over 33 million vehicles on the road in California today. The sale and use of automobiles in California has resulted in widely diversified industries that address the various needs of California drivers. The industries range from the initial sale of automobiles, boats, and other vehicles, training of drivers, traffic violator schools, and vehicle dismantlers.

For consumer protection the Department of Motor Vehicles (DMV) has been given the responsibility of regulating these industries. The Administrative Procedure Act, Government Code Section 11400, et seq., and Vehicle Code Division 5 (Chapters 1 through 4) authorize the department to adopt regulations to govern administrative adjudication proceedings of occupational licensees.

Vehicle Code sections 11100 through 11909 provide for the Occupational Licensing Operations and Inspections Program to license, monitor and control a wide range of motor vehicle related businesses and individuals to ensure that consumers are dealing with reputable individuals and receiving the product that is represented to them. The department oversees close to 130,000 business firms and individuals for licensing compliance of laws, rules and regulations. Oversight is performed by inspectors located throughout the state.

The department may refuse to issue a license to any applicant who has been convicted of a crime or committed any act or engaged in any conduct involving moral turpitude which is substantially related to the qualifications or duties of the licensed activity. When a license is refused or discipline is imposed on an occupational licensee, the action is taken on an administrative level and taken before an administrative law judge if necessary.

This regulatory action is proposed to amend Section 440.04, Article 4.2, Chapter 1, Division 1, Title 13 of the California Code of Regulations in order to update the Occupational Licensing and Disciplinary Guidelines. The Occupational Licensing and Disciplinary Guidelines are intended for use in determining whether to issue, reinstate, refuse to issue, suspend or revoke an occupational license on the basis of criminal offenses and prior department actions.

§440.04. Occupational Licensing and Disciplinary Guidelines.

Existing Section 440.04 of Title 13, California Code of Regulations, specifies that in reaching a decision on a licensing or disciplinary action the Director of Motor Vehicles or his or her designee shall consider the guidelines entitled "Occupational Licensing and Disciplinary Guidelines" (Rev. 3/98), and any and all other sanctions provided by relevant statutes and regulations. Deviation from these guidelines and orders, including standard terms of probation, is appropriate where the Director or his or her designee, in his or her sole discretion, determines that the facts of the particular case warrant such a deviation, for example, the presence of mitigating factors, the age of the case, and evidentiary problems.

The guidelines which are incorporated by reference in Section 440.04, are being amended to reflect current changes in law, policy and procedure. This is necessary because California codes cited in the guidelines have become outdated and need to encompass equivalent out-of-state and federal laws. The revision date has been amended to 11/2006 and mailing addresses updated. Formatting changes have been made but the overall content of the guidelines remains intact.

The department proposes to change the first Chapter title from Disciplinary Guidelines to Guidelines Criteria, a more descriptive title. The first of two chapters has been reorganized. Chapter I currently includes six sections. The first section has been renamed Use of Occupational Licensing Guidelines and is now the third of three sections.

The second section, Criteria of Substantial Relationship, is now the first of three sections, and the third and fourth sections have been condensed and placed in the second of three sections.

The most significant change in content is a switch from referring to crimes that have been committed as *convictions* instead of *offenses*. This is necessary because an *offense* does not necessarily constitute a criminal conviction. Existing language referred to Type A, B, and C offenses, while the proposed language makes reference to Class A, B, and C crimes instead.

Attachment 1, in columnar form, cites the California codes with a description of the crimes, arranged according to the severity of the crime. This attachment has been updated to reflect changes in law. Under Class A crimes, Penal Code section 203, Mayhem, has been added. The description of Penal Code section 209 has been amended to include Rape in the crime of Kidnapping.

Penal Code section 236, False Imprisonment, has been deleted because it is not significantly related to occupational licensee duties as a Class A crime and has been moved into the category of Class B crimes.

Penal Code section 288, Lewd or Lascivious Acts with a Child Under 14, had a clarifying statement that has been deleted. The statement refers to classification of

the crime as a Class A crime only when applied to specified occupational licensees. This statement has been deleted because the crime is being applied to all occupational licensees.

Penal Code section 332, Obtaining Money or Property by Fraudulent Game or Trick, has been deleted because it is not significantly related to occupational licensee duties as a Class A crime and has been moved into the category of Class B crimes.

Penal Code section 466, Possession of Burglary Tools, has been deleted because it is not significantly related to occupational licensee duties as a Class A crime and has been moved to the category of Class B crimes.

Penal Code section 476, Non-Sufficient Funds or Checks, has been deleted from the Class A crime list because Class A crimes are considered serious crimes.

Penal Code section 484, Theft, has been deleted from the Class A crime list and has been moved into the category of Class B crimes. Penal Code 487, Grand Theft, will remain in the Class A crime list to encompass serious crimes.

Penal Code section 530, Unauthorized Use of Personal Identifying Information (Identity Theft), has been added as a new crime in the Class A category.

Penal Code section 532, Make False Financial Statement, has been deleted because it is not significantly related to occupational licensee duties as a Class A crime and has been moved into the category of Class B crimes.

Penal Code section 537, Defrauding an Innkeeper, has been deleted because it is not significantly related to occupational licensee duties as a Class A crime. It remains in the category of Class B crimes.

Penal Code section 666, Petty Theft with a Prior, has been added as a Class A crime because it is significantly related to occupational licensee duties.

Penal Code section 422, Making Terrorist Threats, has been added to the Class B category of crimes and deleted from the Class C category. A statement in parenthesis has been added indicating the crime may also fall under the Class A category.

Penal Code section 653 has been amended to include Threat in the crime of Annoying Telephone Calls.

Technical non-substantial, re-numbering and grammatical changes have also been made throughout the guidelines.