

## FINDING OF EMERGENCY

Assembly Bill 60 (Stats.2013, c. 524) adopted, among other things, Vehicle Code sections 12801.9 and 12801.11, requiring the Department of Motor Vehicles (department) to adopt regulations to permit the issuance of an original driver's license to a person who is unable to submit satisfactory proof that his or her presence in the United States is authorized under federal law by January 1, 2015, or earlier if the department's Director issues a declaration stating that the department is prepared to begin issuing the licenses. AB 60 includes an explicit legislative mandate in Vehicle Code section 12801.9 requiring the department to adopt the regulations on an emergency basis and made legislative findings indicating that the emergency action is necessary for the immediate preservation of the public peace, health and safety, and general welfare.

The California Office of Traffic Safety's *Annual Report of Fatal Injury Motor Vehicle Accidents* (2012) indicates that in California in 2011, there were 2,758 fatal car crashes in which 2,995 people were killed and 159,696 traffic injuries. AB 60's Legislative findings declare that "approximately one in five fatal crashes in the United States involved an unlicensed or invalidly licensed driver." In enacting AB 60 the Legislature cited a 1997 department study entitled *Estimating the Exposure and Fatal Crash Rates of Suspended/Revoked and Unlicensed Drivers in California* which "estimates that approximately 12 percent" of people who drive on California's streets and highways do not have valid driver's licenses. The department's more recent report entitled *Estimation of Fatal Crash Rates for Suspended/Revoked and Unlicensed Drivers in California* (2012), examines crash data from the National Highway Traffic Safety Administration and the Fatality Analysis Reporting System and concludes that for the 22 year period from 1987 to 2009, "[c]ompared to licensed drivers, those who drive without a valid license are nearly three times more likely to cause a fatal crash relative to their exposure." The statistics from these reports related to unlicensed driving are staggering: 12% of the people driving do not have licenses, unlicensed drivers are three times more likely to be at fault in a fatality crash, and in 2011 almost 3,000 people were killed in car crashes. With this backdrop the Legislature concluded in AB 60 that, "[I]t is our responsibility to ensure that all California drivers are properly trained, tested, and insured in order to make our roads safer." The Legislature found further that to "meet the operative date established in this act, it is necessary for the California Department of Motor Vehicle to promulgate regulations pursuant to the emergency rulemaking process."

The Legislative findings for AB 60 note that the department "currently issues approximately 900,000 original driver's licenses annually, and estimates that there will be an additional 1.4 million original driver's license applicants over a three year period" applying under the provisions of AB 60. The Legislative findings specifically noted the difficulties that the department would face in implementing requirements of AB 60 stating:

"To provide services to this added volume of original driver license applicants, the California Department of Motor Vehicles must undertake significant and costly activities, including, among others, the hiring of additional temporary staff, the training of existing and additional temporary staff, and obtaining and preparing new temporary facilities to process the applications... The California Department of Motor Vehicles must also

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modify driver licenses issued under this act to satisfy the requirements of Section 37.71 of Title 6 of the Code of Federal Regulations, adopted pursuant to paragraph (11) of subdivision (d) of Section 202 of the REAL ID Act (REAL ID) of 2005 (Public Law 109-13).

As noted above, unlicensed drivers represent a daily and immediate threat to public health and safety; however the department could not immediately address this threat until it established the physical infrastructure to support the issuance of driver's licenses for potentially 1.4 million new customers. Key milestones that were necessary for the department to enact the regulations have only recently been achieved including:

- On September 18, 2014 the U.S. Department of Homeland Security (DHS) notified the department that California's proposed design of the AB 60 driver's license card "would satisfy the requirement that a noncompliant license state on its face and in the machine readable zone that it is not acceptable for official purposes." Absent that determination, all California drivers' licenses would have been deemed non-REAL ID compliant with the consequence that California licenses would not be acceptable for federal purposes, such as entering a federal facility or boarding commercial airplanes.
- Vehicle Code section 12801.9 subdivision (b), requires that the department's emergency regulations include procedures for the department to verify the authenticity of identity documents. To meet this requirement the department had to complete the following: negotiate, establish, and test electronic interfaces with foreign governments that will allow the department to electronically verify the authenticity of foreign documents including consular cards, voter identification cards, and passports; upgrade the department's website infrastructure to increase the website's capacity and enhance the department's ability to schedule appointments for the influx of new customers and enhance its Identity Access Management, which allows the department to capture, store, and monitor the identity of the individuals using its computer systems and the information those users allowed to access and alter; and, follow the rules and regulations in the state procurement process for the purchase of document authentication machines that will allow the department to determine whether a document is fraudulent.
- The legislature directed the department in Vehicle Code Section 12801.9 subdivision (c) to develop the emergency regulations in consultation with appropriate interested parties, including, among others, immigration rights advocates (advocates) and law enforcement. The Department continued to consult with those advocates throughout the development of the regulations and consulted with other stakeholders, including law enforcement.
- As originally enacted Vehicle Code Section 12801, subdivision (c)(1), required applicants to sign an affidavit attesting that they were both ineligible for a social security account number and unable to submit satisfactory proof that their presence in the United States is authorized under federal law. At the department's public workshops, conducted pursuant to Government Code Section 11346.45, and in meetings, the advocates expressed concern that the inclusion of an affidavit in which an applicant admits that they are in the United States illegally would be used against applicants in legal proceedings. The advocates encouraged the department to address this concern in the proposed regulations; however, on June 20, 2014, the Governor signed Senate Bill (SB) 853 (Stats. 2014, c. 27), which deleted the affidavit requirement and amended subdivision (c)(1) to allow applicants to indicate that they have never been issued a

social security account number and they are not presently eligible for a social security account number. This late amendment of a key provision of the law being implemented in the regulations impacted the final drafting of the regulations and the department's ability to revise, print, and distribute to all of its facilities, the driver's license application form that would be used by all applicants for a driver's license.

- The department is now on schedule to open additional driver's license processing centers in Lompoc, Los Angeles, Stanton, and San Jose. These centers are critical to the department's ability to service the influx of new customers without a falloff in service to existing customers while at the same time complying with the longstanding legislative intent that no customer should wait in line for service at the department longer than 30 minutes.<sup>1</sup>
- The department has nearly completed the process of hiring and training 1000 additional employees. The hiring process includes complying with Government Code Section 1040's requirement that employees who have access to confidential information undergo a background check to make a final determination of the applicant's fitness to perform the duties of the position.
- The department is completing cultural, diversity, and sensitivity training for approximately 6,000 employees to facilitate employees dealing with new customers who are not previously experienced with the licensing process.

#### **EXPRESS STATEMENT OF EXISTENCE OF EMERGENCY**

As explained above, ample statistical information establishes that untrained, untested, uninsured, unlicensed drivers disproportionately contribute to the approximate 3,000 annual traffic fatalities in California. In recognition of the immediate threat to public safety the Legislature commanded the department to enact emergency regulations; however, the department could not propose those regulations until it had the physical infrastructure to actually begin issuing licenses to the approximately 1.4 million additional customers, while at the same time complying with federal mandates that impact California's existing 23 million licensed driver and other legislative direction about the implementation of AB 60.

Although AB 60 authorized the adoption of regulations on an emergency basis, the department has provided public notice of proposed non-emergency regulations and has completed extensive public hearings and received many comments on those non-emergency regulations, which has informed the content of the present emergency regulations. On May 9, 2014 the department noticed a non-emergency rulemaking proceeding. The department completed public hearings on the non-emergency proposal on July 29, 2014. Those proceedings have informed the content of the present emergency regulations. The department's ability to complete the non-emergency rulemaking has been compounded by the uncertainty of whether DHS would approve the proposed driver's license card design, SB 853's amendment of the social security account number requirement, and the department's ability to complete all of the required hiring, training,

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<sup>1</sup> "It is the intent of the Legislature that the department implement procedures to ensure, to the fullest extent permitted by the resources made available to it, that any person who is requesting services relating to registration of vessels or vehicles, or who is applying for an original or renewal of a driver's license or identification card, will not be required under normal circumstances to wait in any one line for service longer than one-half hour during the department's published hours of operation. Every office of the department shall have posted, at or near the entrance thereto, its hours of operation." Vehicle Code §1669.

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equipment and facility acquisitions, and computer systems modifications necessary to actually begin issuing the licenses. Any additional delay caused by waiting for the completion of the non-emergency rulemaking process unnecessarily exposes Californians to the daily danger presented by untrained, untested, uninsured, and unlicensed drivers.

Moreover, AB 60 specifically states in Vehicle Code section 12801.9, subdivision (b), that the “department shall adopt emergency regulations to carry out the purpose of this section...” Vehicle Code section 15 states that, as used in the Vehicle Code, “shall” is a mandatory word; consequently under AB 60 the legislature has made a determination that it is mandatory that the department issue emergency regulations to take immediate action to ensure the public health, safety and welfare.

### **Necessity**

This regulation is necessary to implement, interpret and make specific Article 2.0 of the California Code of Regulations, related to the issuance of driver’s licenses under Assembly Bill 60 (Stat. 2013, c. 524).

### **Authority and Reference**

Authority: Sections 1651 and 12801.9, Vehicle Code.

Vehicle Code section 1651 authorizes the Director of Motor Vehicles to adopt and enforce rules and regulations as may be necessary to carry out the provisions of the Vehicle Code as they relate to the department.

AB 60 adopted Vehicle Code section 12801.9, requiring the department to issue an original driver’s license to a person who is unable to submit satisfactory proof that his or her presence in the United States is authorized under federal law, if he or she meets all other qualifications for licensure and provides satisfactory proof of his or her identity and California residency.

Additionally, Vehicle Code section 12801.9 requires the department to identify those documents that the department deems acceptable for purposes of proving identity and California residency and establish procedures for verifying the authenticity of those documents.

Reference: Sections 12800, 12800.7, 12801, and 12801.9, Vehicle Code.

These emergency regulations implement, interpret and make specific Vehicle Code section 12800, specifying the requirements for an application for a driver’s license; Vehicle Code section 12800.7, allowing the department require applicants to produce documentation to establish their true, full name, and residence address; Vehicle Code section 12801 requiring applicants to provide their social security account number or to indicate that they have never been issued a social security account number and are not presently eligible to obtain an account number; and 12801.9, requiring the department to issue an original driver’s license to a person who is unable to submit satisfactory proof that his or her presence in the United States is authorized under federal law, if he or she meets all other qualifications for licensure and provides satisfactory proof of his or her identity and California residency.

### **Informative Digest**

The Department of Motor Vehicles (department) is adopting Sections 16.00, 16.02, 16.04, 16.06, 16.08, 16.10, 16.12, 16.14, and 16.16, in Article 2.0, Chapter 1, Division 1, of Title 13, California Code of Regulations, related to driver licenses.

Assembly Bill 60 (Chapter 524; Statutes of 2013) adopted Vehicle Code section 12801.9, requiring the department to issue an original driver license to a person that is unable to submit satisfactory proof that his or her presence in the United States is authorized under federal law, if he or she meets all other qualifications for licensure and provides satisfactory proof of his or her identity and California residency.

Additionally, AB 60 requires the department to identify those documents that it deems acceptable for purposes of proving identity and California residency and establish procedures for verifying the authenticity of those documents. Vehicle Code section 12801.9, subsection (b)(2), requires the department to describe the procedures it will use to verify and approve foreign documents that are submitted by an applicant to provide satisfactory proof of the applicant's identity.

The department conducted two public workshops in an effort to discuss with the affected individuals those documents that they believe could establish identity and/or residency.

The first public workshop was held on January 28, 2014 in Sacramento, California, where the conversation focused largely on documents acceptable to provide proof of identity or residency. A second workshop was held on February 13, 2014 in Bell, California and was attended by many interested parties and much of the conversation was related to documentation.

After meeting at length with affected parties and advocacy groups, the department determined that the best way to implement the provisions of AB 60 is to provide the standards that the department determines are sufficient to provide identity and residency. Section 15.00 of Title 13, establishes documentation that the department has determined sufficient to establish an applicant's legal presence in the United States for purposes of determining eligibility for driver license issuance. When an applicant is unable to provide the documentation provided in Section 15.00, he or she will be required to meet the documentation requirements in Section 16.04 subsection (a) of this proposed action which, as specified, establishes foreign documents acceptable as the sole proof of identity.

When an applicant is unable to meet the requirements of Section 15.00 and Section 16.04 subsection (a), he or she will be required to meet the documentation requirements established in Section 16.04 subsection (b), which allows the applicant to present the following documents:

- Two valid foreign documents approved by the department pursuant to proposed Section 16.08 but that cannot be electronically verified by the department with the document's country of origin, or
- One valid foreign document approved pursuant to proposed Section 16.08 but that cannot be electronically verified by the department with the document's country of origin that is accompanied by a foreign birth certificate that either contains an embedded picture of the applicant at the time of issuance and issued by a national civil registry within the prior six months, or is accompanied by an Apostille authentication and translated into English by the consulate of the applicant's country of origin.

Stakeholders and immigrant rights advocates have pointed out to the department that some applicants may not have documents from a foreign government accepted under Section 16.04 that can be used to establish identity. The department has determined that it will utilize another process for applicants who are unable to comply with any of the requirements established in Section 16.04; those applicants will be able to submit as many as possible of the documents specified in Section 16.06, which will be subject to a secondary review conducted by the department's investigative division. The department is concerned that the documents identified in section 16.06 do not provide the same level of security as those accepted under Section 16.04, therefore requiring an additional review by trained department personnel to verify the identity of the applicant.

Section 16.08 specifies standards that are identical to the security features that the department requires for determining the security of specific foreign documents. They are identical to the security features that the department requires for its current driver's licenses and are similar to the standards that other states have adopted for the acceptance of foreign identification documents. In meeting with foreign consulates, the department had an opportunity to discuss the standards they use to verify the identity of a person prior to issuing documents. The department has used the information received in those meetings, the security criteria it has implemented in the production of current driver's licenses, as well as the International Civil Aviation Organization standards to establish a list of those entities which, to the satisfaction of the department, require proof and utilize document production standards that ensure a secure, validated identity.

Section 16.10 establishes proof of residency requirements. Vehicle Code section 12800.7 allows the department to require an applicant to produce identification that the department determines verifies an applicant's residence address provided on the application is the applicant's true California residence address and Vehicle Code section 12801.9 requires the emergency regulations also address the documents acceptable to prove residency. Section 16.10 allows a parent, legal guardian, child, spouse, or domestic partner to use birth certificates, marriage licenses, or domestic partner certifications to trace their relationship to the individual named in a residency document specified in the section.

Section 16.12 requires an applicant to present a valid social security number (SSN) or a waiver and specifies that any SSN will be verified with the Social Security Administration.

### **Policy Statement Overview**

(Government Code section 11346.5(a)(3)(C))

This proposed regulatory action will likely have nonmonetary benefits such as the protection of public health and safety, as they will allow people who currently are unable to get licenses because they could not meet the prior requirement that they provide proof of legal presence, to be trained, tested, licensed, and insured. Unlicensed undocumented immigrants face the real threat that a simple traffic stop will result in the impoundment of their vehicle and imposition of expensive storage fees. The proposed regulatory action may prevent discrimination and promote fairness or social equity by allowing undocumented immigrants to drive with a license and register and insure their vehicles, thereby reducing the risk of impoundment.

**Other Matters Prescribed by Statutes Applicable to the Specific State Agency or to any Specific Regulation or Class of Regulations**

No other matters are prescribed by statute applicable to the department or to any specific regulation or class of regulation pursuant to Government Code section 11346.1(b) or 11346.5(a)(4), pertaining to these emergency regulations or to the department.

**Comparable Federal and State Regulations**

The department has determined that this proposed regulation is not incompatible with existing regulations and there are no related federal regulations.

The department conducted a review of other agencies and found that the states of Colorado, Connecticut, Illinois, Maryland, New Mexico, Nevada, Oregon, Vermont, Utah, Washington, and the District of Columbia currently have laws/regulations governing the issuance of a card granting driving privileges to an applicant who is unable to submit satisfactory proof that the applicant's presence in the United States is authorized under federal law if he or she meets all other qualifications for licensure.

**Consistency and Compatibility with Other State Regulations**

The department has conducted an evaluation for any regulations on this area and has concluded that these are the only regulations dealing with driver's license issuance, as specified in Vehicle Code section 12801.9. Therefore, the proposed regulations are neither inconsistent nor incompatible with existing state regulations.

**Mandate on Local Agencies or School Districts**

The department has determined that these emergency regulations do not impose a mandate on local agencies or school districts.

**Fiscal Impact**

The department has determined that the emergency amendments will not create costs or savings, as defined in Government Code section 11346.5(a)(6), to any state agency or in federal funding to the state, costs or mandate to any local agency or school district whether or not reimbursable by the state pursuant to Part 7 (commencing with section 17500), Division 4, Title 2 of the Government Code, or other nondiscretionary costs or savings to local agencies.

**Documents Incorporated by Reference**

The Secondary Review Referral Notice, form DL 209A (NEW 6/2014) is incorporated by reference in Section 16.06.

The form is being made available to the public during the comment period and is available on the department's website at <http://www.dmv.ca.gov/portal/dmv/dmv/dmvhomes/regulatoryactions>.