



GOVERNOR GREG ABBOTT

To: Guillermo Treviño, Chair  
Whitney Brewster, Executive Director  
Tracey Beaver, General Counsel  
Texas Department of Motor Vehicles

From: Erin Bennett, Director  
Regulatory Compliance Division, Office of the Governor

Date: September 25, 2020

Subject: Proposed Title 43 Texas Administrative Code Sections 211.1-211.5 (RCD Rule Review #2020-013)

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**I. Preface**

The Texas Department of Motor Vehicles (“department”) proposed new 43 TAC §§211.1-211.5 to create a unified criminal history review process across all department occupational license types.<sup>1</sup> The department submitted the proposed rules to the Regulatory Compliance Division (“division”) for review on June 29, 2020. The division invited public comments on the proposed rules for a 28-day period ending August 3, 2020, but received no comments. The department supplemented its submission to the division on September 21, 2020, with a change to proposed §211.2(b) clarifying when a person may be considered convicted of an offense. Consequently, the division analyzed this amended version of the proposed rule.

**II. Analysis**

In accordance with Section 53.025, Texas Occupations Code, proposed §§211.1-211.5 comprise a new chapter in department rules that provides uniform guidelines for the department’s evaluation of applicants’ and license holders’ criminal histories. To begin, proposed §211.1 sets out definitions for use throughout the new chapter. Proposed §211.1(2) defines “license” to include licenses issued under Chapter 503, Texas Transportation Code, Chapter 2301, Texas Occupations Code, and Chapter 2302, Texas Occupations Code, as well as “any other license, registration, or authorization, that the department may deny or revoke because of a criminal offense of the applicant or license holder.” The department’s authority to deny, suspend, or

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<sup>1</sup> Rule Submission Memorandum from the Texas Department of Motor Vehicles (June 29, 2020), at 1 (on file with the Regulatory Compliance Division of the Office of the Governor); 45 Tex. Reg. 4298 (2020) (to be codified at 43 TAC §§211.1-211.5) (proposed June 26, 2020) (Tex. Dep’t. Motor Vehicles); 45 Tex. Reg. 4840 (2020) (notice of correction to 43 TAC Chapter 211 proposed new chapter) (proposed July 10, 2020) (Tex. Dep’t. Motor Vehicles).

revoke any of the license types under its jurisdiction due to an applicant's or license holder's criminal history is well established in Section 53.021. Moreover, by establishing a criminal history review process for salvage dealer licenses issued under Chapter 2302, the department is fulfilling a recent directive of the Texas Sunset Advisory Commission to adopt criminal history evaluation rules consistent with Chapter 53 for the salvage industry.<sup>2</sup>

Proposed §211.2(a)(2) expands the applicability of the chapter to not only applicants and license holders, but also those who act in a representative capacity for applicants and license holders. The inclusion of these persons is consistent with Sections 2301.651(b) and 2302.104(a)(5), (b)(3), and (c)(2). In addition, the applicability of the new chapter to deferred adjudications considered to be convictions in proposed §211.2(b) reflects Section 53.021(d), as identified in the rule itself. Thus, because the scope of the new chapter as established in proposed §§211.1 and 211.2 clearly aligns with state statute, these rules are consistent with state policy.

At the center of the new chapter, proposed §211.3 identifies the categories of criminal offenses that may result in the department denying, suspending, or revoking a license. Consistent with Section 53.021(a)(1), proposed §211.3(b) authorizes the department to disqualify an application or take action against a license if the applicant or license holder has been convicted of a crime that directly relates to the duties and responsibilities of the licensed occupation. Using the factors listed in Section 53.022, and having explained its reasoning as required in Section 53.025(a), the department sets out a non-exhaustive list of those criminal offenses in proposed §211.3(d). Other provisions of proposed §211.3 mirror Chapter 53, including the restatement in proposed §211.3(c) of the independently disqualifying offenses in Section 53.021(a)(2) and (3) and the requirements relating to evidence of fitness in proposed §211.3(e) and (f) that reflect Sections 53.023(a) and 53.0231(b)(2)(B).

Next, proposed §211.4 addresses in more detail the specific impact of imprisonment on department licensure. Consistent with Section 53.021(b), proposed §211.4(b) mandates revocation of a department license upon the imprisonment of the license holder for certain felony convictions and revocations. Proposed §211.4(c) allows the department to revoke a license because of the imprisonment of a person acting in a representative capacity for the license holder in furtherance of Sections 2301.651(b) and 2302.104(a)(5), (b)(3), and (c)(2). Although proposed §§211.3 and 211.4 constitute barriers to market participation for applicants and license holders with criminal histories, they are a clear application of the general framework in Chapter 53 to the department's specific license types and are, consequently, consistent with state policy.

Finally, proposed §211.5 allows any person to request from the department an evaluation of the person's eligibility for a department license upon the submission of the appropriate form and a \$100 fee. As identified in the rule itself, this service is required by Subchapter D, Chapter 53,

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<sup>2</sup> Sunset Advisory Commission Staff Report with Final Results: Texas Department of Motor Vehicles, *Recommendation 4.6* (2019), available at <https://www.sunset.texas.gov/public/uploads/files/reports/DMV%20Staff%20Report%20with%20Final%20Results.pdf>.

and the fee is authorized by Section 53.105. Thus, this rule, too, is consistent with state policy as established in state statute.

### **III. Determination**

Based on the reasoning set forth above, proposed §§211.1-211.5, with the change submitted to the division, are approved by the division and may be finally adopted.