



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 215.88 and 215.89 (RCD Rule Review #2020-014)

I. Preface

The Texas Department of Motor Vehicles (“department”) proposed the repeal of 43 TAC §215.88 and proposed amended 43 TAC §215.89 to update rules relating to criminal history evaluations and fitness for licenses issued under Chapter 2301, Texas Occupations Code, or Chapter 503, Texas Transportation Code.¹ 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 changes to proposed §215.89(b)(2) clarifying when a person may be considered convicted of an offense. Consequently, the division analyzed this amended version of the proposed rule.

II. Analysis

Current §215.88 details the department’s authority to take an action against a license or deny a license application for violations of statute or board rules, including Chapter 53, Texas Occupations Code. Pursuant to that chapter, the current rule also lists the criminal offenses that the department has determined directly relate to the duties or responsibilities of occupations licensed under Chapters 2301 or 503. The department submitted proposed new 43 TAC §§211.1-211.5 to the division for review and intends for those rules to provide a more uniform approach

¹ Rule Submission Memorandum from the Texas Department of Motor Vehicles (June 29, 2020), at 1-2 (on file with the Regulatory Compliance Division of the Office of the Governor); 45 Tex. Reg. 4303 (2020) (to be codified at 43 TAC §215.89) (proposed June 26, 2020) (Tex. Dep’t. Motor Vehicles).

to evaluating criminal history for all licensed occupations under the department's jurisdiction.² Because the division has found proposed §§211.1-211.5 to be consistent with state policy, the repeal of §215.88 eliminates an unnecessarily duplicative and potentially conflicting rule identifying criminal offenses that could affect licensure under Chapters 2301 or 503.³ Thus, the repeal of §215.88 is consistent with state policy.

Pursuant to Section 2301.651(a)(1), Texas Occupations Code, and Sections 503.034 and 503.038, Texas Transportation Code, current and proposed §215.89 more generally govern the department's consideration of a person's fitness for a license. Proposed §215.89(b) expands on the specific factors that the department considers when determining a person's fitness for licensure, and contains multiple updates to the standards for qualifications, criminal background, and disciplinary history that could affect licensure.

First, proposed §215.89(b)(2) reflects legislative updates to refer to criminal offenses that directly relate to the duties or responsibilities of the specific licensed occupation, described in proposed §211.3, and certain statutorily disqualifying offenses in Section 53.021(a), Texas Occupations Code.⁴ That provision's new reference to punishment that is considered a conviction also aligns with Section 53.021(d). Proposed §215.89(b)(3) clarifies that the provision of any false, misleading, or incomplete information on an application, not just that regarding a criminal conviction, may be evidence that a person is unfit for licensure, thereby furthering Sections 2301.651(a)(2), 503.034(a)(1), and 503.038(a)(6). The extension of proposed §215.89(b)(7) regarding noncompliance with civil or administrative penalties accounts for the department's recently expanded authority over activities involving salvage motor vehicles and nonrepairable motor vehicles.⁵ Finally, the changes to proposed §215.89(b)(8)-(10) make clear that the department's consideration of fitness includes an assessment of the conduct and history of not only applicants and license holders, but also those who act in a representative capacity for or exert control over applicants or license holders through a business arrangement, consistent with Section 2301.651(b). The division finds these standards to be a measured exercise of the department's authority to determine fitness for licensure. Thus, proposed §215.89 is consistent with state policy.

III. Determination

Based on the reasoning set forth above, the proposed repeal of §215.88 and proposed §215.89, with the changes submitted to the division, are approved by the division and may be finally adopted.

² 45 Tex. Reg. 4298 (2020) (preamble to proposed 43 TAC §§211.1-211.5) (proposed June 26, 2020) (Tex. Dep't. Motor Vehicles).

³ Regulatory Compliance Division Determination Letter for Proposed Title 43 Texas Administrative Code Sections 211.1-211.5 (RCD Rule Review #2020-013) (Sept. 25, 2020) (on file with the Regulatory Compliance Division of the Office of the Governor).

⁴ Acts of 2019, 86th Leg., R.S., ch. 765 (H.B. 1342).

⁵ Acts of 2019, 86th Leg., R.S., ch. 594 (S.B. 604).