

**Office of the Governor  
Regulatory Compliance Division  
Rule Submission Memorandum**

To: Regulatory Compliance Division Director

From: Laura Moriaty  
General Counsel, Texas Department of Motor Vehicles

Date: January 10, 2025

Subject: 43 TAC Chapter 211 Proposed Rule Revisions

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The Texas Department of Motor Vehicles (TxDMV or department) has proposed rule amendments, new rules, and repeals in 43 Texas Administrative Code (TAC) Chapter 211, as published in the July 12, 2024, issue of the *Texas Register*. The department requests Regulatory Compliance Division review of the proposed revisions to the following section:

- New §211.10, Criminal Offense Guidelines.

This rule was published as part of a comprehensive rule review. The PDF version of the preamble and text of the entire proposal as published in the *Texas Register* are attached to this memorandum.

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To facilitate the Regulatory Compliance Division's review of the proposed rule, TxDMV provides answers to the following questions.

1. Briefly describe the proposed rule.  
The proposed rule describes the crimes that relate to the duties and responsibilities of license holders, which can be a basis for the department to suspend, revoke or deny a license under Texas Occupations Code §53.021. The proposed rule includes a list of crimes that relate to all license holders and additional crimes that relate to retail license holders because these license holders regularly interact with the public.
2. What is the purpose of the proposed rule?  
The primary purpose of the rule package is to clean up and reorganize the existing rules into two subchapters for consistency with other chapters in TAC Title 43. This includes clarifying the types of licenses to which the chapter applies and describing the crimes which relate to the duties and responsibilities of license holders.
3. Describe any relevant factual background to the proposed rule and the impetus for the state agency to consider rulemaking.

The department first adopted this chapter in 2020 and then amended the chapter significantly in 2022 to add fingerprint requirements for certain license holders. During this time, the department has applied these rules and uncovered opportunities to clarify and improve rule language.

4. Describe the legal authority for the proposed rule.

- a. Is the proposed rule specifically required or authorized by state statute? If so, list the statute(s).

Yes, the department proposes §211.10 under:

- Government Code, §2001.054, which specifies the requirements regarding the grant, denial, renewal, revocation, suspension, annulment, or withdrawal of a license;
- Occupations Code, §2301.651, which gives the Board of the Texas Department of Motor Vehicles (board) authority to deny an application for a license, revoke or suspend a license, place on probation a person whose license has been suspended, or reprimand a license holder;
- Occupations Code, §53.025, which requires a licensing authority to issue criminal history guidelines.

- b. Is the proposed rule within the scope of the state agency's general authority to regulate in a given occupation or industry? If so, describe how the proposed rule is within the scope, and reference the applicable state statute(s).

Yes, the proposed rules are within the scope of the department's authority to regulate the motor vehicle industry. The department proposes changes to Chapter 211 under:

- Government Code, §2001.004, which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures;
- Occupations Code, §2301.151, which gives the board authority to regulate the distribution, sale, and lease of motor vehicles and the authority to take any action that is necessary or convenient to exercise that authority;
- Occupations Code, §2301.152, which authorizes the board to establish the qualifications of license holders; ensure that the distribution, sale, and lease of motor vehicles is conducted as required by statute and board rules; prevent fraud, unfair practices, discrimination, impositions, and other abuses in connection with the distribution and sale of motor vehicles; and enforce and administer Occupations Code, Chapter 2301 and Transportation Code, Chapter 503;

- Occupations Code, §2301.155, which authorizes the board to adopt rules as necessary or convenient to administer Occupations Code, Chapter 2301 and to govern practice and procedure before the board;
  - Occupations Code, §2302.051, which authorizes the board to adopt rules as necessary to administer Occupations Code, Chapter 2302;
  - Transportation Code, §503.002, which authorized the board to adopt rules that are necessary and appropriate to implement the powers and the duties of the department; and
  - Transportation Code, §1002.001, which authorizes the board to adopt rules that are necessary and appropriate to implement the powers and the duties of the department.
5. Describe the process that the state agency followed in developing the proposed rule, including any public hearings held, public comments invited, studies conducted, and data collected or analyzed.

In drafting the proposed revisions, TxDMV legal counsel reviewed statutory authority and incorporated staff input from across the department.

TxDmv's board considered the proposed rule revisions in an open meeting during which stakeholders had the opportunity to comment, and authorized the department to publish the proposed rule for public comment in the *Texas Register*.

6. Describe the harm that the proposed rule is intended to address and how the proposed rule will address the harm.

The proposed rules are designed to protect consumers, including law enforcement, from fraud and crimes. The explanation section of the preamble contains a description of each proposed rule revision and the purpose of the revision.

7. Do any less restrictive alternatives to the proposed rule exist for addressing the same harm? If so, include a comparison of the proposed rule to the alternatives and a justification for not pursuing a less restrictive alternative. If no less restrictive alternatives exist, explain why.

Less-restrictive alternatives would not provide the same level of protection for the public. The proposed rule provisions set minimum standards to protect public health and safety. Please see the explanation section of the preamble and the regulatory flexibility analysis in the attached rule proposal.

8. Indicate how the proposed rule affects market competition (See Section 57.105(d), Texas Occupations Code).

It creates a barrier to market participation in the state.

- It results in higher prices or reduced competition for a product or service provided by or to a license holder in the state.
- It both creates a barrier to market participation in the state and results in higher prices or reduced competition for a product or service provided by or to a license holder in the state.

9. Describe the specific impact that the proposed rule will have on market competition and how that effect is consistent with state policy as established by the Legislature in state statute.

The proposal affects market competition to the extent that it sets minimum standards to hold a license in the motor vehicle industry.

10. Does the proposed rule relate to a question that is the subject of an opinion request pending before the Office of the Attorney General? Does the proposed rule relate to an opinion previously issued by the Office of the Attorney General?

No, an Attorney General opinion is not pending nor has one been issued related to these proposed rule revisions to our knowledge.

11. Does the proposed rule relate to a matter on which there is pending litigation or a final court order?

No, the proposed rule revisions do not relate to a matter on which there is pending litigation. The department's enforcement division pursues administrative penalties against applicants and license holders on an on-going basis, and final orders issued by the board, or a board delegate may be appealed through the court system.

12. Is there anything else that the state agency would like the Regulatory Compliance Division to know about the proposed rule?

A copy of the executive summary for the proposal that was submitted to the department's board is attached. The department did not receive any public comment. The board plans to consider whether to adopt the rules at its meeting on April 10, 2025.

***Note: In addition to this memorandum and its required attachments, the state agency must provide copies of the state agency's administrative records regarding the proposed rule, including any information or comments that the state agency received from the public regarding the proposed rule. A state agency is not required to submit any privileged or confidential information to the Regulatory Compliance Division.***

## CHAPTER 211. CRIMINAL HISTORY OFFENSE AND ACTION ON LICENSE

**INTRODUCTION.** The Texas Department of Motor Vehicles (department) proposes amendments to 43 Texas Administrative Code, (TAC) §211.1 and §211.2; repeal of §§211.3, 211.4, 211.5, and 211.6; and new sections §§211.10, 221.11, 221.12, and 211.13. The proposed amendments, repeals, and new sections are necessary to organize the rules into two subchapters for consistency with other chapters in TAC Title 43, to clarify the types of licenses to which the chapter applies, to clarify which crimes relate to the duties and responsibilities of these license holders, to delete duplicative language found in statute, to conform rule language with statutory changes; to clarify existing requirements, and to modernize language and improve readability. Proposed language also conforms with Senate Bill (SB) 224, 88th Legislature, Regular Session (2023), which amended the Penal Code to add felony offenses involving damage to motor vehicles during the removal or attempted removal of a catalytic converter.

**EXPLANATION.** The department is conducting a review of its rules under Chapter 211 in compliance with Government Code, §2001.039. Notice of the department's plan to conduct this review is also published in this issue of the *Texas Register*. As a part of the review, the department is proposing necessary amendments, repeals, and new sections as detailed in the following paragraphs.

Occupations Code, Chapter 53 and §§2301.651, 2302.104, 2301.105, and 2302.108, and Transportation Code, §503.034 and §503.038 authorize the department and its board to investigate and act on a license application, or on a license, when a person has committed a criminal offense. Chapter 211 allows the department to maintain fitness standards for license holders with prior criminal convictions while implementing the legislature's stated statutory intent in Occupations Code, §53.003 to enhance opportunities for a person to obtain gainful employment after the person has been convicted of an offense and discharged the sentence for the offense.

The department must follow the requirements of Occupations Code, Chapter 53 to determine whether a person's past criminal history can be considered in evaluating the person's fitness for licensing.

Occupations Code, §53.021 gives a licensing authority the power to suspend or revoke a license, to disqualify a person from receiving a license, or to deny a person the opportunity to take a licensing examination on the grounds that the person has been convicted of: (1) an offense that directly relates to the duties and responsibilities of the licensed occupation; (2) an offense listed in Article 42A.054, Code of Criminal Procedure; or (3) a sexually violent offense, as defined by Article 62.001, Code of Criminal Procedure. The department's evaluation of past criminal history applies to all license applications. Under Occupations Code, §53.021(a)(1), the department is responsible for determining which offenses directly relate to the duties and responsibilities of a particular licensed occupation.

Occupations Code, §53.022 sets out criteria for consideration in determining whether an offense directly relates to the duties and responsibilities of the licensed occupation. Based on those criteria, the department has determined that certain offenses directly relate to the duties and responsibilities of an occupation licensed by the department. However, conviction of an offense that directly relates to the duties and responsibilities of the licensed

occupation or is listed in Occupations Code, §53.021(a)(2) and (3) is not an automatic bar to licensing; the department must consider the factors listed under Occupations Code, §53.023 in making its fitness determination. The factors include, among other things, the person's age when the crime was committed, rehabilitative efforts, and overall criminal history. The department is required to publish guidelines relating to its practice under this chapter in accordance with Occupations Code, §53.025.

### Proposed New Subchapter A, General Provisions

Chapter 211 currently contains only one subchapter. The proposed amendments would divide Chapter 211 into two subchapters. A proposed amendment would retitle Subchapter A "General Provisions," consistent with the organization and naming conventions found in Chapters 215 and 221 of this title. This proposed amendment would provide consistency and improve readability because Chapter 211 applies to the same applicants and license holders as Chapters 215 and 221. Sections 211.1 and 211.2 are proposed for inclusion in retitled Subchapter A for consistency and ease of reference.

A proposed amendment to the title of §211.1 would add "Purpose and" to the section title to indicate that proposed amendments to this section include the purpose for the chapter in addition to definitions. This proposed change would place the chapter purpose description in the same subchapter and in the same order as similar language in Chapters 215 and 221 of this title for improved understanding and readability. Proposed new §211.1(a) would describe the purpose of Chapter 211 by incorporating existing language in current §211.3(a). The proposed amendments would add at the end of the paragraph the obligation for the department to review criminal history of license applicants before issuing a new or renewal license and the option for the department to act on the license of an existing license holder who commits an offense during the license period, consistent with Occupations Code, Chapter 53 and §§2301.651, 2302.104, 2302.105, and 2302.108, and Transportation Code, §503.034 and §503.038, and existing department procedures.

A proposed amendment to §211.1 would reorganize the current definitions into a subsection (b). Proposed amendments to §211.1(2) would delete references to "registration, or authorization," add an "or" to §211.1(2)(B), delete an "or" and add sentence punctuation in §211.1(2)(C), and delete §211.1(2)(D). These proposed amendments would clarify that Chapter 211 only applies to licenses issued by the department under Transportation Code, Chapter 503 and Occupations Code, Chapters 2301 and 2302, and does not apply to registrations the department may issue under the authority of another Transportation Code chapter. Registrations or permits that the department issues under other Transportation Code chapters do not currently require a review of an applicant's criminal history. Proposed amendments to §211.1(3) would delete the current list of specific retail license types and define the term "retail" by listing only those license types that are not considered to be retail. This proposed amendment would shorten the sentence to improve readability without changing the meaning or scope of the definition. Additionally, this proposed amendment would eliminate the need to update the rule if a future statutory change created a new type of vehicle or changed the name of an existing vehicle type.

A proposed amendment to the title of §211.2 would substitute "Chapter" for "Subchapter" for consistency with the rule text. A proposed amendment in §211.2(b) would add a comma after Occupations Code for consistency in punctuation.

The remaining sections in Subchapter A are proposed for repeal as each of these sections are proposed for inclusion in new Subchapter B.

#### Proposed New Subchapter B, Criminal History Evaluation

A proposed amendment would add a new subchapter, Subchapter B. Criminal History Evaluation Guidelines and Procedures. Proposed for inclusion in new Subchapter B are new sections §§211.10- 211.13. These new proposed sections would contain the guidelines and procedures rule language currently found in §§211.3-211.6 with the addition of the proposed changes described below.

Proposed new §211.10 would include the rule text of current §211.3 with changes as follows. Current §211.3(a) would be deleted because that language has been incorporated into proposed new §211.1(a), which describes the purpose of Chapter 211. Proposed new §211.10(a) would incorporate the language of current §211.3(b), except for the two paragraphs at the end of that subsection which duplicate a statutory requirement in Occupations Code, §53.022 and do not need to be repeated in rule. Proposed new §211.10(b) would reify language that is currently in §211.3(c), except for §§211.3(c)(1) and (2), which are redundant and unnecessary statutory references.

Proposed new §211.10(c) would incorporate §211.3(d) with the following changes. Proposed new §211.10(c) would add a comma to correct missing punctuation after "Occupations Code" and would delete three sentences that specify which offenses apply to a license type. Proposed new §211.10(c) would include clarifying paragraph numbers: paragraph (1) would identify offenses that apply to all license types, and paragraph (2) would separate and identify additional offenses that apply only to retail license types. The proposed new language would add clarity and improve readability. Proposed new language would divide the offense categories currently in §211.3(d)(1) - (16) between the new paragraphs as relettered subparagraphs of §§211.10(c)(1) and (2).

Proposed new §211.10(c)(1)(B), would incorporate language currently in §211.3(d)(2) and add language to clarify that offenses involving forgery, falsification of records, or perjury include the unauthorized sale, manufacturing, alteration, issuance, or distribution of a license plate or temporary tag. This proposed clarifying language provide additional notice to applicants and license holders that the department considers forging or falsification of license plates or temporary tags to be a serious and potentially disqualifying offense.

Proposed new §211.10(c)(1)(E) would incorporate language currently in §211.3(d)(5) and add possession and dismantling of motor vehicles to the list of felony offenses under a state or federal statute or regulation that could potentially be disqualifying. Proposed new §211.10(c)(1)(E) would also include "motor vehicle parts" to clarify that disqualifying felony offenses include crimes related to motor vehicle parts as well as to motor vehicles. These proposed clarifications are important due to the increasing frequency of motor vehicle parts theft, including catalytic converters, tailgates, batteries, and wheel rims and tires.

Proposed new §211.10(c)(1)(G) would incorporate language currently in §211.3(d)(7) and would clarify that an offense committed while engaged in a licensed activity or on a licensed premises includes falsification of a motor vehicle inspection required by statute. This clarification is important because emissions inspections in certain counties are required by law and harm the health and safety of Texas citizens if not performed.

Proposed new §211.10(c)(1)(I) would add that offenses of attempting or conspiring to commit any of the foregoing offenses are potentially disqualifying offenses because the person intended to commit an offense. This proposed new language incorporates language from current §211.3(d)(16) and is necessary to add because the offenses that apply to all license holders and the additional offenses that only apply to retail license types are proposed to be reorganized into separate paragraphs to improve readability, so the language regarding conspiracies or attempts to commit the offenses must be repeated in each paragraph to provide notice of these potentially disqualifying offenses.

Proposed new §211.10(c)(2)(E) would make felony offenses under Penal Code, §28.03 potentially disqualifying when a motor vehicle is damaged, destroyed, or tampered with during the removal or attempted removal of a catalytic converter. This new amendment aligns with Senate Bill (SB) 224, 88th Legislature, Regular Session (2023), which amended Penal Code, §28.03 to create a state jail felony for damage to a motor vehicle because of removal or attempted removal of the catalytic converter. Proposed new §211.10(c)(2)(D) would incorporate §211.3(d)(12) and would add two additional offenses against the family: Penal Code, §25.04 and §25.08. Penal Code, §25.04 includes offenses involving the enticement of a child away from the parent or other responsible person, and Penal Code, §25.08 includes offenses related to the sale or purchase of a child. These offenses are relevant to the retail professions licensed by the department because parents frequently bring children to a dealership when considering a vehicle purchase, and a retail license holder may have unsupervised access to a child while a parent test-drives a vehicle or is otherwise engaged in viewing or inspecting a vehicle offered for sale. License holders also have access to the parent's motor vehicle records, including the family's home address. A person with a predisposition to commit these types of crimes would have the opportunity to engage in further similar conduct.

Proposed new §211.10(c)(2)(F) would incorporate the language of current §211.3(d)(13), and clarify that the department would consider any offense against the person to be potentially be disqualifying, would add a reference to Penal Code, Title 5, and would further clarify that an offense in which use of a firearm resulted in fear, intimidation, or harm of another person would be included in the list of potentially disqualifying crimes. Additionally, proposed new §211.10(c)(2)(F) would clarify that a felony offense of driving while intoxicated which resulted in harm to another person may also be potentially disqualifying. The department considers these offenses to be related to the occupations of retail license holders because these license holders have direct contact with members of the public during vehicle test drives or other settings in which no one else is present, and retail license holders have access to an individual's motor vehicle records, including the individual's home address. A person with a predisposition for violence would have the opportunity in these situations to engage in further similar conduct. These proposed amendments would further clarify which offenses against a person the department considers directly related to the licensed occupation and therefore potentially disqualifying. The department's consideration of these crimes is subject to certain limitations in Occupations Code, Chapter 53.

Proposed new §211.11 would incorporate language from current §211.4, with the addition of proposed new §211.11(a), which would clarify that the department will deny a pending application if an applicant or an applicant's representative as defined in

§211.2(a)(2) is imprisoned. Occupations Code, §53.021(b) requires an agency to revoke a license holder's license on the license holder's imprisonment following a felony conviction, felony community supervision revocation, revocation of parole, or revocation of mandatory supervision. Because the department also determines licensure eligibility based on individuals serving as representatives for the license holder, the department also considers the effect of imprisonment of those persons on a license holder. Because the revocation for a felony conviction is mandatory in Occupations Code, §53.021(b), the department must also deny a pending application. An applicant who is imprisoned may reapply once the applicant is no longer imprisoned and an applicant whose application is denied based on an imprisoned individual serving in a representative capacity may choose a different representative and reapply for licensure. Proposed new §211.11(b) would substitute "of" for "or" to correct a typographical error made at adoption of §211.4. Proposed new §211.11(c) incorporates language from current §211.4(d). Proposed new §211.11(d) incorporates language from current §211.4(c).

Proposed new §211.12 would incorporate without change the language in current §211.5 that addresses the procedure for a person to obtain a criminal history evaluation letter from the department. This process allows a person to request an evaluation prior to applying for a license if the person so desires.

Proposed new §211.13(a) would incorporate the current language of §211.6(a) and would clarify that fingerprint requirements apply to "an applicant for a new or renewal license" to improve readability without changing meaning. Proposed new §211.13(b)(1) would incorporate the language of current §211.6(b)(1) and would clarify that a trust beneficiary is a person who may be required by the department to submit a set of fingerprints to the Texas Department of Public Safety as part of the application process for those license types. This is a clarification rather than an extension of the existing requirements for the fingerprinting of owner applicants, because a trust beneficiary is an equitable owner of the trust's assets. It is necessary for the department to fingerprint trust beneficiaries along with other owners because doing so will prevent a bad actor with a history of criminal offenses that directly relate to the duties and responsibilities of a license holder from obtaining a license from the department by using a trust to hide the bad actor's identity and then using that license to perpetrate, or benefit from, fraudulent and criminal actions, or otherwise take advantage of the position of trust created by the license.

**FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT.** Glenna Bowman, Chief Financial Officer, has determined that for each year of the first five years the proposal will be in effect, there will be no significant fiscal impact to state or local governments as a result of the enforcement or administration of the proposal. Monique Johnston, Director of the Motor Vehicle Division, has determined that there will be no significant impact on local employment or the local economy as a result of the proposal.

**PUBLIC BENEFIT AND COST NOTE.** Ms. Johnston also determined that, for each year of the first five years the proposal is in effect, public benefits are anticipated, and that applicants and license holders will not incur costs to comply with the proposal. The anticipated public benefits include reduced opportunity for fraud and related crime, and improved public safety. Requiring fingerprints for a trust beneficiary will benefit the public by preventing bad actors with a history of criminal offenses that directly relate to the duties and responsibilities of a license holder from

obtaining licenses by using a trust to hide their identity and then using those licenses to perpetrate, or benefit from, fraud and criminal actions, or otherwise take advantage of the position of trust created by the license.

Ms. Johnston anticipates that there will be no additional costs on regulated persons to comply with the submission and evaluation of information under this proposal because the rules do not establish any new requirements or costs for regulated persons unless the person commits a crime. The proposed requirement in §211.13(b)(1) for the fingerprinting of trust beneficiaries is a clarification of the existing requirement that applicant owners must be fingerprinted, as trust beneficiaries are equitable owners of the trust's assets. It therefore does not create a new fingerprinting requirement. Additionally, Ms. Johnston anticipates that there will be no additional costs on regulated persons to comply with the fingerprint requirements under this proposal as the new section does not establish fees for fingerprinting or processing criminal background checks. Fees for fingerprinting and access to criminal history reports are established by DPS under the authority of Texas Government Code, Chapter 411.

**ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS.** As required by Government Code, §2006.002, the department has determined that this proposal will not have an adverse economic effect or disproportionate economic impact on small or micro businesses. The department has also determined that the proposed amendments will not have an adverse economic effect on rural communities because rural communities are exempt from the requirement to hold a license under Transportation Code, §503.024. Therefore, under Government Code, §2006.002, the department is not required to perform a regulatory flexibility analysis.

**TAKINGS IMPACT ASSESSMENT.** The department has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking or require a takings impact assessment under Government Code, §2007.043.

**GOVERNMENT GROWTH IMPACT STATEMENT.** The department has determined that each year of the first five years the proposed repeal and amendments are in effect the amendments will not create or eliminate a government program; will not require the creation of new employee positions and will not require the elimination of existing employee positions; will not require an increase or decrease in future legislative appropriations to the department; will not require an increase in fees paid to the department; will create new regulations and expand existing regulations, as described in the explanation section of this proposal; will repeal existing regulations in §§211.3 - 211.6; will increase the number of individuals subject to the rule's applicability regarding fingerprinting of trust beneficiaries; and will not significantly benefit or adversely affect the Texas economy.

**REQUEST FOR PUBLIC COMMENT.**

If you want to comment on the proposal, submit your written comments by 5:00 p.m. Central Standard Time on December 9, 2024. A request for a public hearing must be sent separately from your written comments. Send written comments or hearing requests by email to [rules@txdmv.gov](mailto:rules@txdmv.gov) or by mail to Office of General Counsel, Texas Department of Motor Vehicles, 4000 Jackson Avenue, Austin, Texas 78731. If a hearing is held, the

department will consider written comments and public testimony presented at the hearing.

## SUBCHAPTER A. GENERAL PROVISIONS

### 43 TAC §211.1. §211.2

**STATUTORY AUTHORITY.** The department proposes amendments to Chapter 211 under Government Code, §411.122(d), which authorizes department access to criminal history record information maintained by DPS; Government Code, §411.12511, which authorizes the department to obtain criminal history record information from DPS and the FBI for license applicants, license holders, and representatives whose act or omission would be cause for denying, revoking, or suspending a general distinguishing number or license issued under Transportation Code, Chapter 503, or Occupations Code, Chapters 2301 and 2302; Occupations Code, §2301.151, which gives the board authority to regulate the distribution, sale, and lease of motor vehicles and the authority to take any action that is necessary or convenient to exercise that authority; Occupations Code, §2301.152, which authorizes the board to establish the qualifications of license holders, ensure that the distribution, sale, and lease of motor vehicles is conducted as required by statute and board rules, to prevent fraud, unfair practices, discrimination, impositions, and other abuses in connection with the distribution and sale of motor vehicles, and to enforce and administer Occupations Code, Chapter 2301 and Transportation Code, Chapter 503; Occupations Code, §2301.155, which authorizes the board to adopt rules as necessary or convenient to administer Occupations Code, Chapter 2301 and to govern practice and procedure before the board; Occupations Code, §2301.651, which gives the board authority to deny an application for a license, to revoke or suspend a license, to place on probation, or to reprimand a license holder if the applicant or license holder is unfit, makes a material misrepresentation, violates any law relating to the sale, distribution, financing, or insuring of motor vehicles, willfully defrauds a purchaser, or fails to fulfill a written agreement with a retail purchaser of a motor vehicle; Occupations Code, §2302.051, which authorizes the board to adopt rules as necessary to administer Occupations Code, Chapter 2302; Transportation Code, §503.002, which authorizes the board to adopt rules for the administration of Transportation Code, Chapter 503; and Transportation Code, §1002.001, which authorizes the board to adopt rules that are necessary and appropriate to implement the powers and the duties of the department.

**CROSS REFERENCE TO STATUTE.** Government Code, Chapter 411; Occupations Code, Chapters 53, 2301 and 2302; Transportation Code, Chapters 503 and 1002; Penal Code, Chapters 25, 28, 43, 49 and Title 5; and Code of Criminal Procedure, Article 42A and 62.

#### §211.1. *Purpose and Definitions.*

(a) The licenses issued by the department create positions of trust. License holder services involve access to confidential information; conveyance, titling, and registration of private property; possession of monies belonging to or owed to private individuals, creditors, and governmental entities; and compliance with federal and state environmental and safety regulations. License holders are provided with opportunities to engage in fraud, theft, money laundering, and related crimes, and to endanger the public through violations of environmental and safety regulations. Many license holders provide services directly to the public, so licensure provides persons predisposed to commit assaultive or sexual crimes with greater opportunities to engage in such conduct. To protect the public from these harms, the department shall review the criminal history of license applicants before issuing a new

or renewal license and may take action on a license holder who commits an offense during the license period based on the guidelines in this chapter.

(b) When used in this chapter, the following words and terms have the following meanings, unless the context clearly indicates otherwise.

(1) "Department" means the Texas Department of Motor Vehicles.

(2) "License" means any license [~~; registration, or authorization;~~] issued by the department under:

(A) Transportation Code, Chapter 503;

(B) Occupations Code, Chapter 2301; or

(C) Occupations Code, Chapter 2302. [~~; or~~]

~~[(D) any other license, registration, or authorization, that the department may deny or revoke because of a criminal offense of the applicant or license holder.]~~

(3) "Retail license types" means those license [~~holder~~] types which require holders to [that] interact directly with the public, [including salvage dealers, converters, independent mobility motor vehicle dealers, lease facilitators, and general distinguishing number holders for the following vehicle categories: all-terrain vehicle, light truck, motorcycle, motorhome, moped /motor scooter, medium duty truck, neighborhood vehicle, other, passenger auto, recreational off-highway vehicle, and towable recreational vehicle,] but does not include other license types that do not generally interact directly with the public, including manufacturers, distributors, and general distinguishing number holders for the following vehicle categories: ambulance, axle, bus, engine, fire truck/fire fighting vehicle, heavy duty truck, transmission, wholesale motor vehicle dealer, and wholesale motor vehicle auction.

#### §211.2. *Application of Chapter [Subchapter].*

(a) This chapter applies to the following persons:

(1) applicants and holders of any license; and

(2) persons who are acting at the time of application, or will later act, in a representative capacity for an applicant or holder of a license, including the applicant's or holder's officers, directors, members, managers, trustees, partners, principals, or managers of business affairs.

(b) In this chapter a "conviction" includes a deferred adjudication that is considered to be a conviction under Occupations Code, §53.021(d).

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 24, 2024.

TRD-202404979

Laura Moriaty

General Counsel

Texas Department of Motor Vehicles

Earliest possible date of adoption: December 8, 2024

For further information, please call: (512) 465-4160



43 TAC §§211.3 - 211.6



STATUTORY AUTHORITY. The department proposes repeals to Chapter 211 under Government Code, §411.122(d), which authorizes department access to criminal history record information maintained by DPS; Government Code, §411.12511, which authorizes the department to obtain criminal history record information from DPS and the FBI for license applicants, license holders, and representatives whose act or omission would be cause for denying, revoking, or suspending a general distinguishing number or license issued under Transportation Code, Chapter 503, or Occupations Code, Chapters 2301 and 2302; Occupations Code, §2301.151, which gives the board authority to regulate the distribution, sale, and lease of motor vehicles and the authority to take any action that is necessary or convenient to exercise that authority; Occupations Code, §2301.152, which authorizes the board to establish the qualifications of license holders, ensure that the distribution, sale, and lease of motor vehicles is conducted as required by statute and board rules, to prevent fraud, unfair practices, discrimination, impositions, and other abuses in connection with the distribution and sale of motor vehicles, and to enforce and administer Occupations Code, Chapter 2301 and Transportation Code, Chapter 503; Occupations Code, §2301.155, which authorizes the board to adopt rules as necessary or convenient to administer Occupations Code, Chapter 2301 and to govern practice and procedure before the board; Occupations Code, §2301.651, which gives the board authority to deny an application for a license, to revoke or suspend a license, to place on probation, or to reprimand a license holder if the applicant or license holder is unfit, makes a material misrepresentation, violates any law relating to the sale, distribution, financing, or insuring of motor vehicles, willfully defrauds a purchaser, or fails to fulfill a written agreement with a retail purchaser of a motor vehicle; Occupations Code, §2302.051, which authorizes the board to adopt rules as necessary to administer Occupations Code, Chapter 2302; Transportation Code, §503.002, which authorizes the board to adopt rules for the administration of Transportation Code, Chapter 503; and Transportation Code, §1002.001, which authorizes the board to adopt or rules that are necessary and appropriate to implement the powers and the duties of the department.

CROSS REFERENCE TO STATUTE. Government Code, Chapter 411; Occupations Code, Chapters 53, 2301 and 2302; Transportation Code, Chapters 503 and 1002; Penal Code, Chapters 25, 28, 43, 49 and Title 5; and Code of Criminal Procedure, Article 42A and 62.

§211.3. *Criminal Offense Guidelines.*

§211.4. *Imprisonment.*

§211.5. *Criminal History Evaluation Letters.*

§211.6. *Fingerprint Requirements for Designated License Types.*

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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SUBCHAPTER B. CRIMINAL HISTORY  
EVALUATION GUIDELINES AND  
PROCEDURES

43 TAC §§211.10 - 211.13

STATUTORY AUTHORITY. The department proposes new sections to Chapter 211 under Government Code, §411.122(d), which authorizes department access to criminal history record information maintained by DPS; Government Code, §411.12511, which authorizes the department to obtain criminal history record information from DPS and the FBI for license applicants, license holders, and representatives whose act or omission would be cause for denying, revoking, or suspending a general distinguishing number or license issued under Transportation Code, Chapter 503, or Occupations Code, Chapters 2301 and 2302; Occupations Code, §2301.151, which gives the board authority to regulate the distribution, sale, and lease of motor vehicles and the authority to take any action that is necessary or convenient to exercise that authority; Occupations Code, §2301.152, which authorizes the board to establish the qualifications of license holders, ensure that the distribution, sale, and lease of motor vehicles is conducted as required by statute and board rules, to prevent fraud, unfair practices, discrimination, impositions, and other abuses in connection with the distribution and sale of motor vehicles, and to enforce and administer Occupations Code, Chapter 2301 and Transportation Code, Chapter 503; Occupations Code, §2301.155, which authorizes the board to adopt rules as necessary or convenient to administer Occupations Code, Chapter 2301 and to govern practice and procedure before the board; Occupations Code, §2301.651, which gives the board authority to deny an application for a license, to revoke or suspend a license, to place on probation, or to reprimand a license holder if the applicant or license holder is unfit, makes a material misrepresentation, violates any law relating to the sale, distribution, financing, or insuring of motor vehicles, willfully defrauds a purchaser, or fails to fulfill a written agreement with a retail purchaser of a motor vehicle; Occupations Code, §2302.051, which authorizes the board to adopt rules as necessary to administer Occupations Code, Chapter 2302; Transportation Code, §503.002, which authorizes the board to adopt rules for the administration of Transportation Code, Chapter 503; and Transportation Code, §1002.001, which authorizes the board to adopt rules that are necessary and appropriate to implement the powers and the duties of the department.

CROSS REFERENCE TO STATUTE. Government Code, Chapter 411; Occupations Code, Chapters 53, 2301 and 2302; Transportation Code, Chapters 503 and 1002; Penal Code, Chapters 25, 28, 43, 49 and Title 5; and Code of Criminal Procedure, Article 42A and 62.

§211.10. *Criminal Offense Guidelines.*

(a) Under Occupations Code, Chapter 53, the department may suspend or revoke an existing license or disqualify an applicant from receiving a license because of a person's conviction of a felony or misdemeanor if the crime directly relates to the duties and responsibilities of the licensed occupation.

(b) The department has determined under the factors listed in Occupations Code, §53.022 that offenses detailed in subsection (c) of this section directly relate to the duties and responsibilities of license holders, either because the offense entails a violation of the public trust,

issuance of a license would provide an opportunity to engage in further criminal activity of the same type, or the offense demonstrates the person's inability to act with honesty, trustworthiness, and integrity. Such offenses include crimes under the laws of another state, the United States, or a foreign jurisdiction, if the offense contains elements that are substantially similar to the elements of an offense under the laws of this state. The list of offenses in subsection (c) of this section is in addition to offenses that are independently disqualifying under Occupations Code, §53.021.

(c) The list of offenses in this subsection is intended to provide guidance only and is not exhaustive of the offenses that may relate to a particular regulated occupation. After due consideration of the circumstances of the criminal act and its relationship to the position of trust involved in the particular licensed occupation, the department may find that an offense not described below also renders a person unfit to hold a license based on the criteria listed in Occupations Code, §53.022.

(1) the following offenses apply to all license types:

(A) offenses involving fraud, theft, deceit, misrepresentation, or that otherwise reflect poorly on the person's honesty or trustworthiness, including an offense defined as moral turpitude;

(B) offenses involving forgery, falsification of records, perjury, or the unauthorized sale, manufacturing, alteration, issuance, or distribution of a license plate or temporary tag;

(C) offenses involving the offering, paying, or taking of bribes, kickbacks, or other illegal compensation;

(D) felony offenses against public administration;

(E) felony offenses under a state or federal statute or regulation involving the manufacture, sale, finance, distribution, repair, salvage, possession, dismantling, or demolition, of motor vehicles or motor vehicle parts;

(F) felony offenses under a state or federal statute or regulation related to emissions standards, waste disposal, water contamination, air pollution, or other environmental offenses;

(G) offenses committed while engaged in a licensed activity or on licensed premises, including the falsification of a motor vehicle inspection required by statute;

(H) felony offenses involving the possession, manufacture, delivery, or intent to deliver controlled substances, simulated controlled substances, dangerous drugs, or engaging in an organized criminal activity; and

(I) offenses of attempting or conspiring to commit any of the foregoing offenses.

(2) the following additional offenses apply to retail license types:

(A) felony offenses against real or personal property belonging to another;

(B) offenses involving the sale or disposition of another person's real or personal property;

(C) a reportable felony offense conviction under Chapter 62, Texas Code of Criminal Procedure for which the person must register as a sex offender;

(D) an offense against the family as described by Penal Code, §§25.02, 25.04, 25.07, 25.072, 25.08, or 25.11;

(E) felony offenses under Penal Code, §28.03 involving a motor vehicle that is damaged, destroyed, or tampered with during the removal or attempted removal of a catalytic converter;

(F) offenses against the person under Penal Code, Title 5, including offenses in which use of a firearm resulted in fear, intimidation, or harm of another person, and in Penal Code, Chapter 49, a felony offense of driving while intoxicated that resulted in the harm of another person;

(G) a felony stalking offense as described by Penal Code, §42.072;

(H) a felony offense against public order and decency as described by Penal Code §§43.24, 43.25, 43.251, 43.26, 43.261, or 43.262; and

(I) offenses of attempting or conspiring to commit any of the foregoing offenses.

(d) When determining a person's present fitness for a license, the department shall also consider the following evidence:

(1) the extent and nature of the person's past criminal activity;

(2) the age of the person when the crime was committed;

(3) the amount of time that has elapsed since the person's last criminal activity;

(4) the conduct and work activity of the person before and after the criminal activity;

(5) evidence of the person's rehabilitation or rehabilitative effort while incarcerated or after release;

(6) evidence of the person's compliance with any conditions of community supervision, parole, or mandatory supervision; and

(7) other evidence of the person's present fitness, including letters of recommendation.

(e) It is the person's responsibility to obtain and provide to the licensing authority evidence regarding the factors listed in subsection (d) of this section.

#### §211.11. *Imprisonment.*

(a) The department shall deny a license application if the applicant or a person described by §211.2(a)(2) of this chapter (relating to Application of Chapter) is imprisoned while a new or renewal license application is pending.

(b) The department shall revoke a license upon the imprisonment of a license holder following a felony conviction or revocation of felony community supervision, parole, or mandatory supervision.

(c) A person currently imprisoned because of a felony conviction may not obtain a license, renew a previously issued license, or act in a representative capacity for an application or license holder as described by §211.2(a)(2).

(d) The department may revoke a license upon the imprisonment for a felony conviction, felony community supervision revocation, revocation of parole, or revocation of mandatory supervision of a person described by §211.2(a)(2) of this chapter who remains employed with the license holder.

#### §211.12. *Criminal History Evaluation Letters.*

(a) Pursuant to Texas Occupations Code, Chapter 53, Subchapter D, a person may request that the department evaluate the person's eligibility for a specific occupational license regulated by the department by:

(1) submitting a request on a form approved by the department for that purpose; and