

1 **ADOPTION OF**

2 **SUBCHAPTER E. GENERAL DISTINGUISHING NUMBERS**

3 **43 TAC §215.133 and §215.161**

4 **REPEAL OF**

5 **SUBCHAPTER D. FRANCHISED DEALERS, MANUFACTURERS,**

6 **DISTRIBUTORS, AND CONVERTERS**

7 **43 TAC §215.102**

8
9 **INTRODUCTION.** The Texas Department of Motor Vehicles adopts the repeal of §215.102,
10 Representatives; amendments to §215.133, General Distinguishing Number; and new §215.161, Licensing
11 Education Course Requirements. The department adopts amendments to §215.133 with a change to the
12 proposed text as published in the August 23, 2019, issue of the *Texas Register* (44 TexReg 4462). A comma
13 in §215.133(j)(1) was changed to a semicolon. New §215.161 is adopted with changes to the proposed
14 text as published in the same issue of the *Texas Register*. Section 215.161(c) has been amended to reduce
15 the minimum number of training hours required to 3 for renewal applicants not exempted from the
16 training requirement. Sections 215.133 and 215.161 will be republished.

17
18 **REASONED JUSTIFICATION.** The repeal, amendments, and new section are necessary to implement
19 statutory changes made by the 86th Legislature, Regular Session (2019) in House Bill (HB) 3842, HB 1667;
20 and Senate Bill (SB) 604, 86th Legislature, Regular Session.

21 The repeal of §215.102, Representatives, implements SB 604, which eliminates the
22 "representative" license.

1 Amended §215.133(a) implements Transportation Code §503.027(a), as amended by HB 3842.
2 House Bill 3842 removed the exception under Transportation Code §503.027(a), that provided a dealer is
3 not required to hold a general distinguishing number (GDN) for a location from which the dealer consigns
4 five or fewer vehicles in a calendar year. The phrase "unless the consignment location is a wholesale motor
5 vehicle auction" was added to conform to Transportation Code §503.027(a).

6 New §215.133(j) implements HB 1667. House Bill 1667 added Occupations Code §2302.009, and
7 amended §2302.101, to provide that a person holding an independent motor vehicle GDN is exempt from
8 the requirement that the person also hold a salvage dealer license to act as a salvage vehicle dealer or
9 rebuilder, or store or display a motor vehicle as an agent or escrow agent of an insurance company.

10 New §215.133(k) implements SB 604 that added new Transportation Code §503.0296 to require
11 an applicant for an original or renewal general distinguishing number complete web-based education and
12 training developed or approved by the department. New §215.133(k) requires that a person must
13 complete licensing training developed or approved by the department to be eligible for an independent
14 motor vehicle GDN. Persons who have completed the required training will not have to retake the training
15 for subsequent renewals. Persons who have held an independent motor vehicle distinguishing number
16 for at least ten years as of September 1, 2019, are exempt from the licensing training requirement.

17 New §215.161, Licensing Education Course Requirements, implements SB 604 by adding licensing
18 education course requirements applicable to course providers.

19 **SUMMARY OF COMMENTS AND AGENCY RESPONSE.**

20 **Commenters:** The department received 15 written comments. Dallas County Tax Assessor-Collector,
21 Lubbock County Tax Assessor-Collector, Milam County Tax Assessor-Collector, Brewster County Tax
22 Assessor-Collector, Denton County Tax Assessor-Collector, Lampasas County Tax Assessor-Collector,
23 Zavala County Tax Assessor-Collector, El Paso County Tax Assessor-Collector, Scurry County Tax Assessor-

1 Collector, Jackson County Tax Assessor-Collector, Lavaca County Tax Assessor-Collector, Comal County
2 Tax Assessor-Collector, Grimes County Tax Assessor-Collector, the Tax Assessor-Collector Association of
3 Texas, and the Texas Independent Automobile Dealers Association (TIADA) were in support of the
4 proposal with changes.

5 **Comment on §215.133(a).**

6 One commenter supports the clarifying amendment in which "a dealer must also hold a GDN for
7 a consignment location, unless the consignment location is a wholesale motor vehicle auction."

8 **Agency Response.**

9 The department thanks the commenter for its support.

10 **Comment on §215.133(j).**

11 One commenter supports adoption of new section (j), which will allow an independent motor
12 vehicle dealer to also act as a salvage dealer or rebuilder without the need for an additional license.

13 **Agency Response.**

14 The department thanks the commenter for its support.

15 **Comment on §215.133(k).**

16 One commenter supports new section (k), relating to educational requirements for persons or
17 entities seeking to obtain a motor vehicle general distinguishing number license.

18 **Agency Response.**

19 The department thanks the commenter for its support.

20 **Comment on §215.133(k)(2).**

21 One commenter asks for clarification regarding subsection (k)(2) for persons or independent auto
22 dealerships seeking renewal of a GDN license, but are not otherwise exempt (10 year). The commenter
23 asks that a renewal license holder not be required to take the same class as a prospective licensee as it is

1 redundant. The commenter also requests that alternative curriculum be made available for approval by
2 the Department that is narrower in scope and shorter in duration, for example 30 minutes to an hour.

3 **Agency Response.**

4 The department agrees that current license holders with established businesses do not need
5 training on how to set up a new dealership and do not need the same number of training hours as new
6 applicants, but disagrees with changing the duration to 30 minutes to an hour. The department amended
7 §215.161(c) in response to the comment to reduce the minimum requirement to 3 hours of training for
8 renewal applicants not exempted from the training requirement.

9 **Comment on §215.133(k)(2).**

10 One commenter requests that state motor vehicle trade associations be allowed to present
11 renewal education or training opportunities with classroom equivalent if such classroom sessions are
12 approved by the Department in advance.

13 **Agency Response.**

14 The department declines to make the suggested change. Senate Bill 604, 86th Legislature, Regular
15 Session (2019) provides that the department must require web-based education and training. Allowing
16 renewal education or training opportunities to have a classroom equivalent would not be consistent with
17 SB 604.

18 **Comment on §215.161.**

19 Commenters offer support for proposed §215.161. Pre-licensing training has been an item long
20 supported by many different parties, including County Tax Assessor-Collectors. By implementing this
21 training, commenters believe the department will see a drop off in the number of dealers that obtain
22 licenses for one year or less and close their doors because they are not prepared for the regulatory
23 compliance requirements and responsibilities.

1 **Agency Response.**

2 The department appreciates the supportive comment.

3 **Comment on §215.161.**

4 A commenter supports the department offering pre-licensing educational training prior to the
5 issuance of dealer licenses to ensure a proper knowledge base in the laws and regulations governing the
6 motor vehicle industry. Protecting the public from deceptive business practices and other issues related
7 to the motor vehicle industry is in the best interest of the motoring public as well as the tax assessor-
8 collectors of Texas.

9 **Agency Response.**

10 The department appreciates the supportive comment.

11 **Comment on §215.161.**

12 Commenters request that the department work with the Auto Dealer Trade Associations and Tax
13 Assessor-Collector Association of Texas to develop meaningful training that provides the best content
14 possible for services performed and required by an independent motor vehicle dealer. Commenters
15 request that the training include content on how dealers can work effectively with the county offices to
16 title and register vehicles properly, accurately, and timely.

17 **Agency Response.**

18 The department agrees that an important outcome of the training is educating potential and
19 current license holders on how to work effectively with the county tax offices to efficiently and correctly
20 process motor vehicle titles and registrations. The department will provide the County Tax Assessor-
21 Collectors an opportunity to review the proposed training and provide feedback prior to department
22 course approval.

23 **Comment on §215.161.**

1 One commenter requested that the training include the proper processing of VTR-136 forms to
2 ensure county taxes go to the buyer's choice of county.

3 **Agency Response.**

4 The department agrees that this issue is an important one, especially to rural counties, and that
5 topic will be included in the training.

6 **STATUTORY AUTHORITY.**

7 The amendments, new section, and repeal are adopted under Transportation Code §503.002, which
8 authorizes the board of the Texas Department of Motor Vehicles to adopt rules for the administration of
9 Transportation Code Chapter 503; under Transportation Code §1002.001, which requires and authorizes
10 the department to administer and enforce the provisions of Occupations Code Chapter 2301; under
11 Transportation Code §1002.001, which authorizes the board to adopt rules necessary and appropriate to
12 implement the powers and duties of the department under the Transportation Code and other Texas laws;
13 under Occupations Code §§2301.151 - 2301.153 and 2301.155, which provide the board's jurisdiction,
14 require the board to ensure that the regulation of motor vehicles in Texas is conducted as required by
15 board rules, empower, authorize, and require the board to adopt rules under Occupations Code Chapter
16 2301, necessary or convenient to administer Chapter 2301, and govern practice and procedure before the
17 board; and under Occupations Code §2301.351, which prohibits a dealer from violating a board rule.

18 **CROSS REFERENCE TO STATUTE.**

19 Occupations Code §§2301.251, 2301.258, 2301.264, 2301.304, 2302.009 and §2302.101; and
20 Transportation Code §503.027 and §503.0296.

21 **TEXT.**

22 **SUBCHAPTER E. GENERAL DISTINGUISHING NUMBERS**

23 **43 TAC §215.133 and §215.161**

1 §215.133. General Distinguishing Number.

2 (a) No person may engage in business as a dealer unless that person has a currently valid general
3 distinguishing number assigned by the department for each location from which the person engages in
4 business. A dealer must also hold a general distinguishing number for a consignment location, unless the
5 consignment location is a wholesale motor vehicle auction.

6 (b) The provisions of subsection (a) of this section do not apply to:

7 (1) a person who sells or offers for sale fewer than five vehicles of the same type as herein
8 described in a calendar year and such vehicles are owned by him and registered and titled in his name;

9 (2) a person who sells or offers to sell a vehicle acquired for personal or business use if
10 the person does not sell or offer to sell to a retail buyer and the transaction is not held for the purpose of
11 avoiding the provisions of Transportation Code, §503.001 et seq., and this subchapter;

12 (3) an agency of the United States, this state, or local government;

13 (4) a financial institution or other secured party selling a vehicle in which it holds a security
14 interest, in the manner provided by law for the forced sale of that vehicle;

15 (5) a receiver, trustee, administrator, executor, guardian, or other person appointed by
16 or acting pursuant to the order of a court;

17 (6) an insurance company selling a vehicle acquired from the owner as the result of paying
18 an insurance claim;

19 (7) a person selling an antique passenger car or truck that is at least 25 years old or a
20 collector selling a special interest motor vehicle as defined in Transportation Code, §683.077, if the special
21 interest vehicle is at least 12 years old;

22 (8) a licensed auctioneer who, as a bid caller, sells or offers to sell property to the highest
23 bidder at a bona fide auction if neither legal nor equitable title passes to the auctioneer and if the auction

1 is not held for the purpose of avoiding another provision of Transportation Code, §503.001 et seq., and
2 this subchapter; and provided that if an auction is conducted of vehicles owned, legally or equitably, by a
3 person who holds a general distinguishing number, the auction may be conducted only at a location for
4 which a general distinguishing number has been issued to that person or at a location approved by the
5 department as provided in §215.135 of this subchapter (relating to More than One Location); and

6 (9) a person who is a domiciliary of another state and who holds a valid dealer license and
7 bond, if applicable, issued by an agency of that state, when the person buys a vehicle from, sells a vehicle
8 to, or exchanges vehicles with a person who:

9 (A) holds a current valid general distinguishing number issued by the department,
10 if the transaction is not intended to avoid the terms of Transportation Code, §503.001 et seq.; or

11 (B) is a domiciliary of another state if the person holds a valid dealer license and
12 bond, if applicable, issued by that state, and if the transaction is not intended to avoid the terms of
13 Transportation Code, §503.001 et seq.

14 (c) Application for a general distinguishing number shall be on a form prescribed by the
15 department properly completed by the applicant showing all information requested thereon and shall be
16 submitted to the department accompanied by the following:

17 (1) proof of a \$25,000 surety bond as provided in §215.137 of this title (relating to Surety
18 Bond);

19 (2) the fee for the general distinguishing number as prescribed by law for each type of
20 license requested;

21 (3) the fee as prescribed by law for each metal dealer plate requested as prescribed by
22 law;

1 (4) a copy of each assumed name certificate on file with the Office of the Secretary of
2 State or county clerk; and

3 (5) a photocopy of at least one of the following documents for the owner, president, or
4 managing partner of the dealership:

5 (A) current driver's license;

6 (B) current Department of Public Safety identification;

7 (C) current concealed handgun license or license to carry a handgun issued by the
8 Texas Department of Public Safety under Government Code, Chapter 411, Subchapter H;

9 (D) current passport; or

10 (E) current United States armed forces identification.

11 (d) A person who applies for a general distinguishing number and will operate as a dealer under
12 a name other than the name of that person shall use the name under which that person is authorized to
13 do business, as filed with the Office of the Secretary of State or county clerk, and the assumed name of
14 such legal entity shall be recorded on the application using the letters "DBA."

15 (e) If the general distinguishing number is issued to a corporation, the dealer's name and assumed
16 name used by the dealer, as on file with the Office of the Secretary of State, shall be recorded on the
17 application.

18 (f) A wholesale dealer license holder may buy, sell, or exchange vehicles with licensed dealers. A
19 wholesale dealer license holder may not sell or exchange vehicles at retail.

20 (g) An independent mobility motor vehicle dealer shall retain and produce for inspection all
21 records relating to the license requirements under Occupations Code, §2301.002(17-a) and all
22 information and records required under Transportation Code §503.0295.

1 (h) An application for a general distinguishing number may be denied if an applicant for such
2 license has committed any act that could result in license cancellation or revocation under Transportation
3 Code, §503.001 et seq.; Occupations Code, §2301.001 et seq.; or any rule or regulation of the department.

4 (i) Upon request by the department, the applicant shall submit documents demonstrating that
5 the applicant owns the real property on which the business is situated or has a written lease for the
6 property that has a term of not less than the term of the license.

7 (j) A person holding an independent motor vehicle general distinguishing number license does not
8 have to hold a salvage dealer license to:

9 (1) act as a salvage vehicle dealer or rebuilder, or

10 (2) store or display a motor vehicle as an agent or escrow agent of an insurance company.

11 (k) To be eligible for an independent motor vehicle general distinguishing number license, a
12 person must complete licensing training specified by the department, except as provided herein:

13 (1) once a person has completed the required training, the person will not have to retake
14 the training for subsequent license renewals, but may be required to provide proof of training completion
15 as part of the license renewal process; and

16 (2) a person holding an independent motor vehicle general distinguishing number license
17 for at least 10 years as of September 1, 2019, is exempt from the licensing training requirement.

18

19 §215.161. Licensing Education Course Requirements.

20 (a) A motor vehicle dealer licensing education course provider must be a Texas institution of
21 higher education, as defined by Education Code, §61.003, or a motor vehicle trade association domiciled
22 in this state.

1 (b) The licensing education course must be approved by the department and must include
2 information on the laws and rules applicable to motor vehicle dealers and the consequences of violating
3 those laws and rules.

4 (c) The licensing education course must consist of at least 6 hours of online instruction for new
5 applicants and 3 hours of online instruction for renewal applicants.

6 (d) The cost for the licensing education course must not exceed \$150 per person. A trade
7 association course provider may not charge a different rate to a nonmember.

8 (e) The course provider must issue a certificate of completion to each person who successfully
9 completes the licensing education course.

10

11 **SUBCHAPTER D. FRANCHISED DEALERS, MANUFACTURERS, DISTRIBUTORS, AND CONVERTERS**

12

REPEAL OF

13

43 TAC §215.102

14 [~~§215.102. Representatives~~]

15

16

17

18

19

20

21

22

23

~~[(a) To effectuate Occupations Code, §2301.002(29), the definition of the term "representative" is construed to be sufficiently broad to include regional, zone, or district executive personnel whose area of responsibility includes Texas, and whose duties include contacting motor vehicle dealers or dealership personnel, and every other person employed by a motor vehicle manufacturer, distributor or converter, directly or indirectly, to call upon or contact motor vehicle dealers or dealership employees concerning new motor vehicle sales, advertising, service, parts, business management, used motor vehicle sales, and for any other purpose.]~~

~~[(b) The statutory definition is construed to not include office or clerical personnel, production personnel, etc., whose duties do not include contacting motor vehicle dealers or dealership employees.]~~

1 ~~[(c) A "person" who meets the definition of representative can also be other than a natural person~~
2 ~~such as a corporation. Employees of an entity licensed as a representative that perform representative~~
3 ~~functions in the scope of their employment for the licensed representative are required to obtain a~~
4 ~~representative's license in their individual capacity, except for the president/chief executive officer of the~~
5 ~~corporation. A licensed representative may identify and perform representative functions~~
6 ~~for more than one manufacturer, distributor, or converter.]~~

7

8 **CERTIFICATION.** The agency certifies that legal counsel has reviewed the adoption and found it to be
9 avald exercise of the agency's legal authority.

10 Issued at Austin, Texas, on 2/10/2020.

11
12

 /s/Tracey Beaver
Tracey Beaver, General Counsel