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ADOPTION OF
SUBCHAPTER A. CRIMINAL OFFENSE AND ACTION ON LICENSE
43 TAC §§211.1-211.5

INTRODUCTION. The Texas Department of Motor Vehicles (department) adopts new 43 TAC §§211.1 - 211.5, concerning the review of criminal offenses and their effect on a license. The new sections implement licensing requirements in Occupations Code Chapters 53, 2301, and 2302, and Transportation Code Chapter 503, including amendments in House Bill (HB) 1342, 86th Legislature, Regular Session (2019); Senate Bill (SB) 604, 86th Legislature, Regular Session (2019); and SB 1217, 86th Legislature, Regular Session (2019). The department adopts §§211.1 - 211.5 to be effective October 31, 2020.

The department adopts new §211.5 without changes to the proposed text as published in the June 26, 2020, issue of the *Texas Register* (45 *TexReg* 4298) and in the Notice of Correction published in the July 10, 2020, issue of the *Texas Register* (45 *TexReg* 4840). This section will not be republished. The department adopts new §§211.1 - §211.4 with changes to the proposed text as published in the June 26, 2020, issue of the *Texas Register* (45 *TexReg* 4298) and in the Notice of Correction published in the July 10, 2020 issue of the *Texas Register* (45 *TexReg* 4840). These sections will be republished.

In conjunction with this proposal, the department has adopted amendments to §215.89 and §221.15, §221.19, §221.111, and §221.112, and the repeal of §215.88, §221.113, and §221.114, concerning licenses under Occupations Code Chapter 2301 and Chapter 2302 and Transportation Code Chapter 503 in this issue of the *Texas Register*.

EXPLANATION. Occupations Code Chapter 53 and §2301.651, §2302.104 and §2302.108, and Transportation Code §503.034 and §503.038 authorize the department and its board to act on an application for a license, or on a license, when a person has committed a criminal offense. New Chapter 211 creates a unified process to promote consistency, efficiency, and predictability in board and

1 department decisions concerning the effect of a criminal offense on licensure and implements the Sunset
2 Advisory Commission's Management Action 4.6, as stated in the Sunset Staff Report with Commission
3 Decisions, 2018-2019, 86th Legislature (2019). The Sunset report directed the department to adopt
4 criminal history evaluation rules consistent with Occupations Code Chapter 53, for salvage industry
5 regulation.

6 The new sections allow the department to maintain fitness standards related to license holders
7 with prior criminal convictions while implementing the legislature's stated statutory intent in Occupations
8 Code §53.003 to enhance opportunities for a person to obtain gainful employment after the person has
9 been convicted and discharged the sentence for the offense. The department has changed in this adoption
10 the term "licensee" to "license holder" to be consistent with current department practice.

11 The department must follow the requirements of Occupations Code Chapter 53 in evaluating
12 whether a person's past criminal history can be considered in evaluating the person's fitness for licensing.
13 Occupations Code §53.021 provides that a licensing authority may suspend or revoke a license, disqualify
14 a person from receiving a license, or deny a person the opportunity to take a licensing examination on the
15 grounds that the person has been convicted of: (1) an offense that directly relates to the duties and
16 responsibilities of the licensed occupation; (2) an offense listed in Article 42A.054, Code of Criminal
17 Procedure; or (3) a sexually violent offense, as defined by Article 62.001, Code of Criminal Procedure. An
18 offense's inclusion in Occupations Code §53.021(a)(2) and (3) applies to all license applications. It is the
19 department's duty to determine those offenses that directly relate to the duties and responsibilities of a
20 particular licensed occupation.

21 Based on a comment received concerning proposed amendments to 43 TAC §215.89, the
22 department considers it necessary to clarify that what is considered to be a conviction results from
23 Occupations Code §53.021(d). Occupations Code §53.021(d) provides that a licensing authority may

1 consider a person to have been convicted of an offense for purposes of this section regardless of whether
2 the proceedings were dismissed and the person was discharged as described in Occupations Code
3 §53.021(c), which is referred to in the proposal as a "deemed" conviction. To clarify this reference,
4 §211.2(b) has been changed to substitute the word "considered" for "deemed" and add "(d)" after
5 §53.021. The change does not affect persons not on notice of the proposal or add additional costs.

6 Occupations Code §53.022 sets out criteria for consideration in determining whether an offense
7 directly relates to the duties and responsibilities of the licensed occupation. Based on those criteria, the
8 department has determined that certain offenses directly relate to the duties and responsibilities of the
9 licensed occupations. However, conviction of an offense that directly relates to the duties and
10 responsibilities of the licensed occupations or is listed in Occupations Code §53.021(a)(2) and (3) is not an
11 automatic bar to licensing. The department must consider the factors listed under Occupations Code
12 §53.023 in making its fitness determination. The factors include, among other things, the person's age
13 when the crime was committed, rehabilitative efforts, and overall criminal history.

14 New §211.1 establishes definitions for terms used in new subchapter A.

15 New §211.2(a) establishes the persons to whom the subchapter applies. The list mirrors the list
16 of persons currently subject to criminal history review under §215.88(c), which is proposed for repeal in
17 a separate proposal published in this issue of *the Texas Register*.

18 New §211.2(b) establishes that the convictions in this subchapter include deferred adjudications
19 and prosecutions considered convictions under Occupations Code §53.021(d).

20 New §211.3 publishes the department's criminal history guidelines as required under Occupations
21 Code §53.025 and addressing the requirements of Occupations Code §§53.021, 53.022, and 53.023.

22 The licenses issued by the department create positions of trust. The department has defined in
23 §211.1 "retail license types." These license holders interact directly with the public, and include salvage

1 dealers, converters, independent mobility motor vehicle dealers, lease facilitators, and general
2 distinguishing number holders for the following vehicle categories: all-terrain vehicle, light truck,
3 motorcycle, motorhome, moped/motor scooter, medium duty truck, neighborhood vehicle, other,
4 passenger auto recreational off-highway vehicle, and towable recreational vehicle. The term does not
5 include manufacturers, distributors, and general distinguishing number holders for the following vehicle
6 categories: ambulance, axle, bus, engine, fire truck/fire fighting vehicle, heavy duty truck, transmission,
7 wholesale motor vehicle dealer, and wholesale motor vehicle auction, and other license types that do not
8 usually interact directly with the public.

9 The adoption changes the definition of retail license types in §211.1(3) to add "wholesale motor
10 vehicle dealer" and "wholesale motor vehicle auction" GDN holders to the list of types that are not
11 included within the scope of retail license types. These two types do not usually interact directly with the
12 public. This change does not affect persons not on notice of the proposal or add additional costs. The
13 department has also removed the word "and" between §211.3(e)(5) and (6) as a typographical error.

14 The department has determined that retail license types, and the individuals who serve in
15 representative capacities for them, also have as an occupation interaction with the public, and access to
16 confidential information, conveyance, titling, and registration of private property, possession of monies
17 belonging to or owed to private individuals, creditors, and governmental entities, and must comply with
18 federal and state environmental and safety regulations. The department concluded that the activities
19 these license holders engage in would involve the same categories of crimes directly related to the
20 occupation.

21 The department has determined that other license types that do not usually interact directly with
22 the public, including manufacturers, distributors, and general distinguishing number holders for the
23 following vehicle categories: ambulance, axle, bus, engine, fire truck/fire fighting vehicle, heavy duty

1 truck, transmission, wholesale motor vehicle dealer, and wholesale motor vehicle auction, and the
2 individuals who serve in representative capacities for them, have as an occupation access to confidential
3 information, conveyance, titling, and registration of private property, and must comply with federal and
4 state environmental and safety regulations.

5 The department considers the following offenses directly relate to all license types:

6 (1) Offenses involving fraud, theft, deceit, misrepresentation, or that otherwise reflect poorly on
7 the person's honesty or trustworthiness, including an offense defined as moral turpitude, because
8 honesty, integrity, trustworthiness, and a willingness to comply with the law are characteristics necessary
9 for a license holder. A person with a predisposition for crimes involving such activities would have the
10 opportunity to engage in further similar conduct.

11 (2) Offenses involving forgery, falsification of records, or perjury, because honesty, integrity,
12 trustworthiness, and a willingness to comply with the law are characteristics necessary for a license
13 holder. A person with a predisposition for crimes involving such activities would have the opportunity to
14 engage in further similar conduct.

15 (3) Offenses involving the offering, paying, or taking of bribes, kickbacks, or other illegal
16 compensation, because they violate the trust inherent in the license and allow a person with a
17 predisposition the opportunity to commit further offenses.

18 (4) Felony offenses against public administration, because honesty, integrity, trustworthiness, and
19 a willingness to comply with the law are characteristics necessary for a license holder. Offenses of this
20 nature reflect a lack of honesty, integrity, trustworthiness, and a willingness to comply with the law.
21 Further, person involved in offenses of this nature would have an opportunity to impede investigations
22 into unlawful or improper activities.

1 (5) Felony offenses under a state or federal statute or regulation involving the manufacture, sale,
2 finance, distribution, repair, salvage, or demolition, of motor vehicles, because these statutes regulate
3 the industry that the license holder is involved in and would present a person predisposed to such
4 violations an opportunity to commit an offense.

5 (6) Felony offenses under a state or federal statute or regulation related to emissions standards,
6 waste disposal, water contamination, air pollution, or other environmental offenses because license
7 holders have access to, store, use and dispose of hazardous materials and must maintain facilities in
8 compliance with federal and state environmental and safety regulations presenting a person predisposed
9 to such violations an opportunity to commit an offense.

10 (7) Offenses committed while engaged in a licensed activity or on a licensed premise, because the
11 person has shown disregard for the license and a person with a predisposition for crimes involving such
12 activities would have the opportunity to engage in further similar conduct.

13 (8) Felony offenses involving the possession, manufacture, delivery, or intent to deliver controlled
14 substances, simulated controlled substances, dangerous drugs, or organized criminal activity; because
15 license holders have access to unregistered vehicles and are in a unique position to receive, sell or
16 otherwise distribute illegal goods or substances. A person with a predisposition for crimes involving such
17 activities would have the opportunity to engage in further similar conduct.

18 The department considers the following offenses directly related to retail license types only:

19 (9) Felony offenses against real or personal property belonging to another, because license
20 holders can affect property rights presenting a person predisposed to such violations an opportunity to
21 commit an offense.

1 (10) Offenses involving the sale or disposition of another person's real or personal property,
2 because license holders can affect property rights presenting a person predisposed to such violations an
3 opportunity to commit an offense.

4 (11) A reportable felony offense conviction under Chapter 62, Texas Code of Criminal Procedure
5 for which the person must register as a sex offender because license holders have direct contact with
6 members of the public often in settings with no one else present and access to an individual's motor
7 vehicle records, including the individual's address. A person with a predisposition for crimes involving
8 prohibited sexual conduct would have the opportunity to engage in further similar conduct.

9 (12) A felony stalking offense as described by Penal Code §42.072 because license holders have
10 direct contact with members of the public and access to an individual's motor vehicle records, including
11 the individual's address. A person with a predisposition for crimes involving stalking would have the
12 opportunity to engage in further similar conduct.

13 (13) An offense against the family as described by Penal Code §§25.02, 25.07, 25.072, or 25.11,
14 because license holders have direct contact with members of the public often in settings with no one else
15 present and access to an individual's motor vehicle records, including the individual's address. A person
16 with a predisposition for crimes involving prohibited sexual conduct or violence in violation of a court
17 order would have the opportunity to engage in further similar conduct.

18 (14) Felony offenses against the person because license holders have direct contact with members
19 of the public often in settings with no one else present and access to an individual's motor vehicle records,
20 including the individual's address. A person with a predisposition for violence would have the opportunity
21 to engage in further similar conduct.

22 (15) Felony offenses against public order and decency as described by Penal Code §§43.24, 43.25,
23 43.251, 43.26, 43.261, or 43.262, because license holders have direct contact with members of the public

1 including and access to an individual's motor vehicle records, including the individual's address. A person
2 with a predisposition for crimes involving prohibited sexual conduct or acts with children would have the
3 opportunity to engage in further similar conduct.

4 (16) Offenses of attempting or conspiring to commit any of the foregoing offenses applicable to
5 the license type, because the offense was intended.

6 New §211.3(a) - (c) list the reasons the department has determined that certain offenses directly
7 relate to the duties and responsibilities of the licensed occupation.

8 New §211.3(d) lists offenses that directly relate to the duties and responsibilities of the licensed
9 occupation. The list is not exclusive; the department may determine, based on the factors set forth in
10 Occupations Code §53.022, that an unlisted offense directly relates to the duties and responsibilities of
11 the licensed occupation.

12 New §211.3(e) lists the factors that the department must consider in making its evaluation of the
13 applicant's fitness for licensing.

14 New §211.3(f) states the requirement in new Occupations Code §53.0231(b)(2)(B) that it is the
15 applicant's responsibility to provide evidence concerning the factors listed in §211.3(e).

16 New §211.4 addresses imprisonment of an applicant, license holder, or person otherwise listed in
17 §211.2(a)(2). Occupations Code §53.021(b) requires an agency to revoke a license holder's license on the
18 license holder's imprisonment following a felony conviction, felony community supervision revocation,
19 revocation of parole, or revocation of mandatory supervision. Because the department also licenses
20 persons based on individuals serving in representative capacities, the department will also consider the
21 effect of imprisonment of those persons on the license holder. Because the revocation is mandatory, the
22 factors and determinations listed in §211.3 do not apply to a person under this section.

1 New §211.5 implements Occupations Code §53.102 that allows a person to request that a
2 licensing authority issue a criminal history evaluation letter regarding the person's eligibility for a license
3 issued by that authority. As authorized in Occupations Code §53.105, §211.5 also proposes a fee in the
4 amount of \$100 to cover the cost of the review. This provision applies to applicants for certain
5 independent motor vehicle dealer general distinguishing number licenses.

6

7 **SUMMARY OF COMMENTS.**

8 The department received written comments requesting clarifications in the proposed text from:
9 Lubbock County Tax Assessor-Collector and Tax Assessor-Collectors Association of Texas.

10

11 **Comment.**

12 Two commenters raised concerns about subsequent convictions and inquired as to the frequency
13 of the criminal history background checks.

14 **Agency Response.**

15 The department agrees with the comment that subsequent criminal history background checks
16 are necessary. Currently, background checks are performed on all new and renewal applications, and for
17 all license amendments that include a change in ownership or control. The additional checks are to
18 discover new offenses, or offenses that were not previously reported as required.

19

20 **Comment.**

21 A commenter requested clarification as to the time frame will the person be held responsible for
22 a disqualifying criminal offense? Will the criminal convictions history go back over the last 5 years, 10
23 years, or a lifetime?

1 **Agency Response.**

2 The department disagrees with the comment that further clarification is necessary. All convictions
3 related to the occupation being licensed are considered. The department evaluates the conviction, or
4 pattern of convictions, based on the factors in Occupations Code §53.023 and listed in §211.3(e). The
5 factors include consideration of the individual's age at the time of the offense and the amount of time
6 that has elapsed since the person's last criminal activity.

7
8 **STATUTORY AUTHORITY.** The department adopts new §§211.1 - 211.5 under Occupations Code
9 §2301.155 and §2302.051, and Transportation Code §503.002 and §1002.001.

10 Occupations Code §2301.155 authorizes the board to adopt rules as necessary or convenient to
11 administer Occupations Code Chapter 2301 and to govern practice and procedure before the board.

12 Occupations Code §2302.051 authorizes the board to adopt rules as necessary to administer
13 Occupations Code Chapter 2302.

14 Transportation Code §503.002 authorizes the board to adopt rules that are necessary to
15 administer Transportation Code Chapter 503.

16 Transportation Code §1002.001, authorizes the board to adopt rules that are necessary and
17 appropriate to implement the powers and the duties of the department.

18
19 **CROSS REFERENCE TO STATUTE.** Occupations Code §§53.021, 53.022-53.025, 53.102, 53.104, 2301.651;
20 2301.651, §2302.104 and §2302.108, and Transportation Code §503.034 and §503.038.

21
22 **TEXT.**

23 **SUBCHAPTER A. CRIMINAL OFFENSE AND ACTION ON LICENSE**

1 **43 TAC §§211.1 - 211.5**

2 211.1 Definitions.

3 When used in this chapter, the following words and terms have the following meanings, unless
4 the context clearly indicates otherwise.

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

6 (2) "License" means any license, registration, or authorization, issued by the department
7 under:

8 (A) Transportation Code, Chapter 503;

9 (B) Occupations Code, Chapter 2301;

10 (C) Occupations Code, Chapter 2302; or

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

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

22

23 211.2. Application of Subchapter.

1 (a) This chapter applies to the following persons:

2 (1) applicants and holders of any license; and

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

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

8
9 211.3. Criminal Offense Guidelines.

10 (a) The licenses issued by the department create positions of trust. License holders provide
11 services to members of the public. License holder services involve access to confidential information,
12 conveyance, titling, and registration of private property, possession of monies belonging to or owed to
13 private individuals, creditors, and governmental entities, and compliance with federal and state
14 environmental and safety regulations. License holders are provided with opportunities to engage in fraud,
15 theft, money laundering, and related crimes and to engage in environmental and safety violations that
16 endanger the public. In addition, licensure provides persons predisposed to commit assaultive or sexual
17 crimes with greater opportunities to engage in such conduct.

18 (b) Under Occupations Code Chapter 53 the department may suspend or revoke an existing
19 license or disqualify an applicant from receiving a license because of a person's conviction of a felony or
20 misdemeanor if the crime directly relates to the duties and responsibilities of the licensed occupation.
21 The department shall consider the factors listed in the Occupations Code §53.022 in determining whether
22 a criminal conviction directly relates to the duties and responsibilities of a license holder.

1 (c) The department has determined under the factors listed in Occupations Code §53.022 that
2 offenses detailed in subsection (d) of this section directly relate to the duties and responsibilities of license
3 holders, either because the offense entails a violation of the public trust; issuance of a license would
4 provide an opportunity to engage in further criminal activity of the same type; or the offense
5 demonstrates the person's inability to act with honesty, trustworthiness, and integrity. Such offenses
6 include crimes under the laws of another state, the United States, or a foreign jurisdiction, if the offense
7 contains elements that are substantially similar to the elements of an offense under the laws of this state.
8 The list of offenses in subsection (d) of this section is in addition to those that are independently
9 disqualifying under Occupations Code §53.021, including:

10 (1) an offense listed in Article 42A.054, Code of Criminal Procedure; or

11 (2) a sexually violent offense, as defined by Article 62.001, Code of Criminal Procedure.

12 (d) The list of offenses in this subsection is intended to provide guidance only and is not exhaustive
13 of the offenses that may relate to a particular regulated occupation. After due consideration of the
14 circumstances of the criminal act and its relationship to the position of trust involved in the particular
15 licensed occupation, the department may find that an offense not described below also renders a person
16 unfit to hold a license based on the criteria listed in Occupations Code §53.022. Paragraphs (1) - (8) of this
17 subsection apply to all license types. Paragraphs (9) - (15) of this subsection apply only to retail license
18 types. Paragraph (16) of this subsection applies to offenses applicable to a license type.

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

21 (2) offenses involving forgery, falsification of records, or perjury;

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

- 1 (4) felony offenses against public administration;
- 2 (5) felony offenses under a state or federal statute or regulation involving the
3 manufacture, sale, finance, distribution, repair, salvage, or demolition, of motor vehicles;
- 4 (6) felony offenses under a state or federal statute or regulation related to emissions
5 standards, waste disposal, water contamination, air pollution, or other environmental offenses;
- 6 (7) offenses committed while engaged in a licensed activity or on licensed premises;
- 7 (8) felony offenses involving the possession, manufacture, delivery, or intent to deliver
8 controlled substances, simulated controlled substances, dangerous drugs, or engaging in an organized
9 criminal activity;
- 10 (9) felony offenses against real or personal property belonging to another;
- 11 (10) offenses involving the sale or disposition of another person's real or personal
12 property;
- 13 (11) a reportable felony offense conviction under Chapter 62, Texas Code of Criminal
14 Procedure for which the person must register as a sex offender;
- 15 (12) an offense against the family as described by Penal Code §§25.02, 25.07, 25.072, or
16 25.11;
- 17 (13) felony offenses against the person;
- 18 (14) a felony stalking offense as described by Penal Code §42.072;
- 19 (15) a felony offense against public order and decency as described by Penal Code
20 §§43.24, 43.25, 43.251, 43.26, 43.261, or 43.262; and
- 21 (16) offenses of attempting or conspiring to commit any of the foregoing offenses
22 applicable to the license type.

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

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

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

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

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

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

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

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

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

16
17 §211.4. Imprisonment.

18 (a) Section 211.3 of this Chapter does not apply to persons who are imprisoned at the time the
19 department considers the conviction.

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

