

1 **ADOPTION OF**

2 **SUBCHAPTER C. LICENSES, GENERALLY**

3 **43 TAC §215.89**

4 **REPEAL OF**

5 **43 TAC §215.88**

6 **INTRODUCTION.** The Texas Department of Motor Vehicles (department) adopts the repeal of 43 TAC
7 §215.88 and amendments to 43 TAC §215.89 to update licensing fitness rules under Occupations Code
8 §2301.651 and Transportation Code §503.034, including implementation of Senate Bill 604, 86th
9 Legislature, Regular Session, (2019). The department adopts the repeal of §215.88 and amendments to
10 §215.89 to be effective October 31, 2020.

11 The department adopts the repeal of §215.88 without changes to the proposed text as published
12 in the June 26, 2020, issue of the *Texas Register* (45 *TexReg* 4303). The department adopts amendments
13 to §215.89 with changes to the proposed text as published in the June 26, 2020, issue of the *Texas Register*
14 (45 *TexReg* 4303). The section will be republished.

15 In conjunction with this proposal, the department has adopted new §§211. 1 - 211. 5, concerning
16 criminal offense and action on licenses, and amendments to §§221.15, 221.19, 221.111, and 221.112, and
17 repeal of §221.113 and §221.114, concerning salvage vehicle dealer licenses, in this issue of the *Texas*
18 *Register*.

19 **EXPLANATION.** Occupations Code §2301.651 and Transportation Code §503.034 and §503.038 require
20 the department and its board to review the fitness of applicants for new and renewal licenses, and license
21 holders. The amendments to §215.89 update the requirements related to review of criminal history
22 information, affiliations, and conform with statute. The repeal of §215.88 is necessary because the

1 determination of an offense that directly relates to the duties or responsibilities of the licensed occupation
2 has been moved to adopted new Chapter 211.

3 The amendment to §215.89(b)(2) changes the reference from §215.88(j) to adopted new §211.3.
4 The department has adopted new Chapter 211 in this issue of the *Texas Register*. As stated in response
5 to a comment, the department considers it necessary to clarify that what is considered to be a conviction
6 results from statute. Occupations Code §53.021(d) provides that a licensing authority may consider a
7 person to have been convicted of an offense for purposes of this section regardless of whether the
8 proceedings were dismissed and the person was discharged as described in Occupations Code §53.021(c),
9 which is referred to in the proposal as a "deemed" conviction. To clarify this reference, §215.89(b)(2) has
10 been changed to substitute "or considered convicted under Occupations Code §53.021(d)" for the two
11 uses of "or deemed convicted." The change does not affect persons not on notice of the proposal or add
12 additional costs.

13 The amendment to §215.89(b)(3) eliminates the reference to "criminal history information." The
14 amendment conforms the requirement to Occupations Code §2301.651(a)(2) and Transportation Code
15 §503.038(6), which do not limit consideration of material misstatements just to statements regarding
16 criminal history information.

17 The amendment to §215.89(b)(7) modifies the consideration to include assessments or penalties
18 addressing the acquisition, sale, repair, rebuild, or reconstruction of a salvage motor vehicle or
19 nonrepairable motor vehicle. The change is to conform review to the expansion of the license authority
20 in SB 604.

21 The amendment to §215.89(b)(8) changes the reference from §215.88 to adopted new §211.2.

22 The amendments to §215.89(b)(9) and (10) clarify that the department is concerned with
23 affiliations that allow for control of the license holder, and describe control as "the power to direct or

1 cause the direction of the management, policies, and activities, of an applicant or license holder, whether
2 directly or indirectly."

3 **SUMMARY OF COMMENTS.**

4 The department received one written comment requesting a change in the proposed text from
5 the Texas Automobile Dealers Association.

6 **§215.89**

7 **Comment:**

8 The commenter asserts that to "deem" a conviction is to have an opinion or belief that a person
9 will be convicted of an offense. Because the decision affects the applicant or license holder's livelihood,
10 the commenter requests that the agency not act upon a belief or opinion that a conviction is about to
11 occur, but only act to deny, revoke or suspend a person's license when a local, state, federal, or foreign
12 authority has actually convicted the applicant or license holder.

13 **Agency Response:**

14 The department agrees with the commenter and does not intend to base a decision on a possible
15 outcome. The department considers it necessary to clarify that what is considered to be a conviction
16 results from statute. Occupations Code §53.021(d) provides that a licensing authority may consider a
17 person to have been convicted of an offense for purposes of this section regardless of whether the
18 proceedings were dismissed and the person was discharged as described Occupations Code §53.021(c). It
19 applies to cases involving deferred adjudication or deferred prosecution following a plea of guilty or nolo
20 contendere. This is what the department referred to in the proposal as a "deemed" conviction. To clarify
21 this reference, §215.89(b)(2) has been changed to substitute "considered convicted under Occupations
22 Code §53.021(d)" for the two uses of "or deemed convicted." The change does not affect persons not on
23 notice of the proposal or add additional costs.

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2 **STATUTORY AUTHORITY.** The department adopts new §215.89 under Occupations Code §2301.155. and
3 Transportation Code §503.002 and §1002.001.

4 Occupations Code §2301.155 authorizes the board of the Texas Department of Motor Vehicles to
5 adopt rules as necessary or convenient to administer this chapter and to govern practice and procedure
6 before the board.

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

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

11 **CROSS REFERENCE TO STATUTE.** Occupations Code §2301.651, and Transportation Code §503.034 and
12 §503.038.

13 **TEXT.**

14 **SUBCHAPTER C. LICENSES, GENERALLY**

15 **43 TAC §215.89**

16 §215.89. Fitness.

17 (a) In determining a person's fitness for a license issued or to be issued by the department under
18 Transportation Code, Chapter 503 or Occupations Code, Chapter 2301, the board or department will
19 consider:

- 20 (1) the requirements of Occupations Code, Chapter 53;
21 (2) the provisions of Occupations Code, §2301.651;
22 (3) any specific statutory licensing criteria or requirements;
23 (4) mitigating factors; and

1 (5) other evidence of a person's fitness, as allowed by law, including the standards identified
2 in subsection (b) of this section.

3 (b) The board or department may determine that a person is unfit to perform the duties and
4 discharge the responsibilities of a license holder and may, following notice and an opportunity for hearing,
5 deny a person's license application or revoke or suspend a license if the person:

6 (1) fails to meet or maintain the qualifications and requirements of licensure;

7 (2) is convicted, or considered convicted under Occupations Code §53.021(d), by any local,
8 state, federal, or foreign authority of an offense that directly relates to the duties or responsibilities of the
9 licensed occupation as described in §211.3 [listed in §215.88(j)] of this title (relating to Criminal Offense
10 Guidelines [~~and Action on License~~]) or is convicted, or considered convicted under Occupations Code
11 §53.021(d), of an offense that is independently disqualifying under Occupations Code §53.021 [containing
12 elements that are substantially similar to the elements in the offenses in §215.88(j)];

13 (3) omits information or provides false, misleading, or incomplete information [~~regarding a~~
14 ~~criminal conviction~~] on an initial application, renewal application, or application attachment, for a license
15 or other authorization issued by the department or by any local, state, or federal regulatory authority;

16 (4) is found to have violated an administrative or regulatory requirement based on action
17 taken on a license, permit, or other authorization, including disciplinary action, revocation, suspension,
18 denial, corrective action, cease and desist order, or assessment of a civil penalty, administrative fine, fee,
19 or similar assessment, by the board, department, or any local, state, or federal regulatory authority;

20 (5) is insolvent or fails to obtain or maintain financial resources sufficient to meet the financial
21 obligations of the license holder;

22 (6) is a corporation that fails to maintain its charter, certificate, registration, or other authority
23 to conduct business in Texas;

1 (7) is assessed a civil penalty, administrative fine, fee, or similar assessment, by the board,
2 department, or a local, state, or federal regulatory authority, for violation of a requirement governing or
3 impacting the distribution or sale of a vehicle or a motor vehicle, or the acquisition, sale, repair, rebuild,
4 reconstruction, or other dealing of a salvage motor vehicle or nonrepairable motor vehicle, and fails to
5 comply with the terms of a final order or fails to pay the penalty pursuant to the terms of a final order;

6 (8) was or is a person described in §211.2 of this title (relating to Application of Subchapter) [a
7 person defined by §215.88(c) or identified in §215.88(d), or a manager or affiliate of a sole proprietorship,
8 partnership, corporation, association, trust, estate, or other legal entity] whose actions or omissions could
9 be considered unfit, who is ineligible for licensure, or whose current or previous license, permit, or other
10 authorization issued by any local, state, or federal regulatory authority has been subject to disciplinary
11 action including suspension, revocation, denial, corrective action, cease and desist order, or assessment
12 of a civil penalty, administrative fine, fee, or similar assessment;

13 (9) has an ownership, organizational, managerial, or other business arrangement, that would
14 allow a person the power to direct or cause the direction of the management, policies, and activities, of
15 an applicant or license holder, whether directly or indirectly, when the [interest with a] person [whose
16 actions or omissions] could be considered unfit, [who is] ineligible for licensure, or whose current or
17 previous license, permit, or other authorization issued by any local, state, or federal regulatory authority,
18 has been subject to disciplinary action, including suspension, revocation, denial, corrective action, cease
19 and desist order, or assessment of a civil penalty, administrative fine, fee, or similar assessment, by the
20 board, department, or any local, state, or federal regulatory authority;

21 (10) [is a business entity that is operated, managed, or otherwise controlled by a relative or
22 family member and that person could be considered unfit, is ineligible for licensure, or whose current or
23 previous license, permit, or other authorization issued by any local, state, or federal regulatory authority

1 ~~has been subject to disciplinary action, including suspension, revocation, denial, corrective action, cease~~
2 ~~and desist order, or assessment of a civil penalty, administrative fine, fee, or similar assessment; or]~~

3 [(11)] is found in an order issued through a contested case hearing to be unfit or acting in a
4 manner detrimental to the system of distribution or sale of motor vehicles in Texas, the economy of the
5 state, the public interest, or the welfare of Texas citizens.

7 **REPEAL OF**

8 **43 TAC §215.88**

9 [~~§215.88. Criminal Offense and Action on License.~~]

10 [(a) This section describes board or department action on a license application or an existing
11 license issued by the department under Transportation Code, Chapter 503 or Occupations Code, Chapter
12 2301, including denial, revocation, and suspension, and identifies the types of criminal offenses that
13 directly relate to the duties and responsibilities of the occupations licensed under Transportation Code,
14 Chapter 503 or Occupations Code, Chapter 2301.]

15 [(b) Except as provided by subsection (e) of this section, the board or department will consider
16 denial of an application for a license or revocation or suspension of a license in accordance with the
17 requirements of:]

18 [(1) Occupations Code, Chapter 53;]

19 [-2) Occupations Code, Chapter 2301, Subchapter N;]

20 [(3) Government Code, Chapter 2001; and]

21 [(4) board rules.]

22 [(c) The terms "applicant" or "person" as used in this section includes:]

23 [(1) an applicant for a license or other authorization issued by the department;]

- 1 ~~[(2) the holder of a license or other authorization issued by the department;]~~
- 2 ~~[(3) a person's spouse with a community property interest in the entity licensed or to be~~
3 ~~licensed by the department;]~~
- 4 ~~[(4) a controlling shareholder of a business entity licensed by the department;]~~
- 5 ~~[(5) a person holding 50% or more ownership interest in a business entity licensed by the~~
6 ~~department;]~~
- 7 ~~[(6) a person acting in a representative capacity for the applicant or license holder,~~
8 ~~including an owner, president, vice-president, member of the board of directors, chief executive officer,~~
9 ~~chief financial officer, chief information officer, chief managing officer, treasurer, controller, director,~~
10 ~~principal, manager of business affairs, or similar position of a business entity; or]~~
- 11 ~~[(7) any person who becomes a person described in this subsection.]~~
- 12 ~~[(d) An action taken by the board or department under this section may be based on an act or~~
13 ~~omission by an officer, director, partner, trustee, or other person acting in a representative capacity for~~
14 ~~the applicant or license holder.]~~
- 15 ~~[(e) Upon receipt of an order or notice regarding an applicant or license holder issued under~~
16 ~~Family Code, Chapter 232, the board or department will deny an application for issuance of a license, will~~
17 ~~not renew an existing license, or will suspend a license or other authorization issued by the department.~~
18 ~~The board's or department's action, based upon receipt of an order or notice issued under Family Code,~~
19 ~~Chapter 232, on the application for a license or existing license is not subject to the provisions of~~
20 ~~Government Code, Chapter 2001, including notice, hearing, or opportunity for hearing. Upon receipt of~~
21 ~~an order vacating or staying an order suspending a license issued under Family Code, Chapter 232, the~~
22 ~~board or department will issue the affected license to the applicant or license holder if the applicant or~~
23 ~~license holder is otherwise qualified for the license.]~~

1 ~~[(f) No person currently imprisoned for conviction of a felony under any state or federal law is~~
2 ~~eligible for or may retain a license or authorization issued by the department.]~~

3 ~~[(g) The board or department will revoke a license issued by the department upon the license~~
4 ~~holder's imprisonment following a felony conviction, felony community supervision revocation,~~
5 ~~revocation of parole, or revocation of mandatory supervision.]~~

6 ~~[(h) The board or department may revoke a license issued by the department upon the license~~
7 ~~holder's imprisonment for a felony conviction, felony community supervision revocation, revocation of~~
8 ~~parole, or revocation of mandatory supervision, of a person defined by subsection (c) of this section or~~
9 ~~identified in subsection (d) of this section.]~~

10 ~~[(i) The board or department may suspend a license, revoke a license, or disqualify a person from~~
11 ~~receiving a license issued by the department if:]~~

12 ~~[(1) a person has been convicted of an offense that directly relates to the duties and~~
13 ~~responsibilities of the licensed occupation. Any such action shall be made after consideration of the~~
14 ~~factors listed in Occupations Code, §53.022 and §53.023, and the guidelines issued by the department~~
15 ~~pursuant to Occupations Code, §53.025;]~~

16 ~~[(2) a person has been convicted of an offense that does not directly relate to the duties~~
17 ~~and responsibilities of the licensed occupation and that was committed less than five years before the~~
18 ~~date the person applies for the license;]~~

19 ~~[(3) a person has been convicted of an offense listed in Code of Criminal Procedure,~~
20 ~~Article 42.12, Section 3g; or]~~

21 ~~[(4) a person has been convicted of a sexually violent offense, as defined by Code of~~
22 ~~Criminal Procedure, Article 62.001.]~~

- 1 ~~[(j) For purposes of Occupations Code, §53.021, the following criminal offenses directly relate to~~
2 ~~the duties and responsibilities of the occupations licensed by the department:]~~
- 3 ~~[(1) Penal Code, Chapter 15, Preparatory Offenses;]~~
- 4 ~~[(2) Penal Code, Chapter 16, Criminal Instruments, Interception of Wire or Oral~~
5 ~~Communication, and Installation of Tracking Device;]~~
- 6 ~~[(3) Penal Code, Chapter 19, Criminal Homicide;]~~
- 7 ~~[(4) Penal Code, Chapter 20, Kidnapping, Unlawful Restraint, and Smuggling of Persons;]~~
- 8 ~~[(5) Penal Code, Chapter 20A, Trafficking of Persons;]~~
- 9 ~~[(6) Penal Code, Chapter 21, Sexual Offenses;]~~
- 10 ~~[(7) Penal Code, Chapter 22, Assaultive Offenses;]~~
- 11 ~~[(8) Penal Code, Chapter 25, Offenses Against the Family;]~~
- 12 ~~[(9) Penal Code, Chapter 28, Arson, Criminal Mischief, and Other Property Damage or~~
13 ~~Destruction;]~~
- 14 ~~[(10) Penal Code, Chapter 29, Robbery;]~~
- 15 ~~[(11) Penal Code, Chapter 30, Burglary and Criminal Trespass;]~~
- 16 ~~[(12) Penal Code, Chapter 31, Theft;]~~
- 17 ~~[(13) Penal Code, Chapter 32, Fraud;]~~
- 18 ~~[(14) Penal Code, Chapter 33, Computer Crimes;]~~
- 19 ~~[(15) Penal Code, Chapter 33A, Telecommunications Crimes;]~~
- 20 ~~[(16) Penal Code, Chapter 34, Money Laundering;]~~
- 21 ~~[(17) Penal Code, Chapter 35, Insurance Fraud;]~~
- 22 ~~[(18) Penal Code, Chapter 36, Bribery and Corrupt Influence;]~~
- 23 ~~[(19) Penal Code, Chapter 37, Perjury and Other Falsification;]~~

- 1 ~~[(20) Penal Code, Chapter 38, Obstructing Governmental Operation;]~~
- 2 ~~[(21) Penal Code, Chapter 71, Organized Crime;]~~
- 3 ~~[(22) Code of Criminal Procedure, Chapter 62, Sex Offender Registration Program,~~
4 ~~involving an offense for which the person has been required to register as a sex offender;]~~
- 5 ~~[(23) Transportation Code, Chapter 501, Certificate of Title Act;]~~
- 6 ~~[(24) Transportation Code, Chapter 502, Registration of Vehicles;]~~
- 7 ~~[(25) Transportation Code, Chapter 503, Dealer's and Manufacturer's Vehicle License~~
8 ~~Plates;]~~
- 9 ~~[(26) Transportation Code, Chapter 504, License Plates;]~~
- 10 ~~[(27) Transportation Code, Chapter 520, Miscellaneous Provisions;]~~
- 11 ~~[(28) Transportation Code, Chapter 547, Vehicle Equipment;]~~
- 12 ~~[(29) Transportation Code, Chapter 548, Compulsory Inspection of Vehicles;]~~
- 13 ~~[(30) Transportation Code, Chapter 727, Modification of, Tampering with, and Equipment~~
14 ~~of Motor Vehicles;~~
- 15 ~~[(31) Transportation Code, Chapter 728, Subchapter B, Sale of Master Key for Motor~~
16 ~~Vehicle Ignitions;]~~
- 17 ~~[(32) Occupations Code, Chapter 2301, Subchapter R, Regulation of Certain Commercial~~
18 ~~Uses of Motor Vehicles;]~~
- 19 ~~[(33) Tax Code, Chapter 23, Appraisal Methods and Procedures;]~~
- 20 ~~[(34) Tax Code, Chapter 152, Taxes on Sale, Rental, and Use of Motor Vehicles;]~~
- 21 ~~[(35) Business and Commerce Code, Chapter 17, Deceptive Trade Practices;]~~
- 22 ~~[(36) Health and Safety Code, Chapter 365, Litter;]~~
- 23 ~~[(37) Health and Safety Code, Chapter 481, Texas Controlled Substances Act;]~~

