

1 The new sections allow the department to maintain fitness standards related to licensees with
2 prior criminal convictions while implementing the legislature's stated statutory intent in Occupations
3 Code §53.003 to enhance opportunities for a person to obtain gainful employment after the person has
4 been convicted of an offense and discharged the sentence for the offense.

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

15 Occupations Code §53.022 sets out criteria for consideration in determining whether an offense
16 directly relates to the duties and responsibilities of the licensed occupation. Based on those criteria, the
17 department has determined that certain offenses directly relate to the duties and responsibilities of the
18 licensed occupation. However, conviction of an offense that that directly relates to the duties and
19 responsibilities of the licensed occupation or is listed in Occupations Code §53.021(a)(2) and (3) is not an
20 automatic bar to licensing. The department must consider the factors listed under Occupations Code
21 §53.023 in making its fitness determination. The factors include, among other things, the person's age
22 when the crime was committed, rehabilitative efforts, and overall criminal history. The department must

1 publish guidelines relating to its practice under this chapter in accordance with Occupations Code
2 §53.025.

3 Proposed new §211.1 establishes definitions for terms used in new subchapter A.

4 Proposed new §211.2(a) establishes the persons to whom subchapter applies. The list mirrors the
5 list of persons currently subject to criminal history review under §215.88(c), which is proposed for repeal
6 in a separate proposal published in this issue of the Texas Register.

7 Proposed new §211.2(b) establishes that the convictions in this subchapter include deferred
8 adjudications deemed convictions under Occupations Code §53.0231.

9 Proposed new §211.3 publishes the department's criminal history guidelines as required under
10 Occupations Code §53.025 and addressing the requirements of Occupations Code §§53.021, 53.022, and
11 53.023.

12 The licenses issued by the department create positions of trust. The department has defined in
13 §211.1 "retail license types" that those licensee types that interact directly with the public, including
14 salvage dealers, converters, independent mobility motor vehicle dealers, lease facilitators, and general
15 distinguishing number holders for the following vehicle categories: all-terrain vehicle, light truck,
16 motorcycle, motorhome, moped/motor scooter, medium duty truck, neighborhood vehicle, other,
17 passenger auto recreational off-highway vehicle, and towable recreational vehicle. The term does not
18 include manufacturers, distributors, and general distinguishing number holders for the following vehicle
19 categories: ambulance, axle, bus, engine, fire truck/fire fighting vehicle, heavy duty truck, and
20 transmission, and other license types that do not generally interact directly with the public.

21 The department has determined that retail license types, and the individuals who serve in
22 representative capacities for them, also have as an occupation interaction with the general public, and
23 access to confidential information, conveyance, titling, and registration of private property, possession of

1 monies belonging to or owed to private individuals, creditors, and governmental entities, and must
2 comply with federal and state environmental and safety regulations. The department concluded that the
3 types of activities these licensees engage in would involve the same categories of crimes related directly
4 to the occupation.

5 The department has determined that other license types that do not generally interact directly
6 with the public, including manufacturers, distributors, and general distinguishing number holders for the
7 following vehicle categories: ambulance, axle, bus, engine, fire truck/fire fighting vehicle, heavy duty
8 truck, and transmission, and the individuals who serve in representative capacities for them, have as an
9 occupation access to confidential information, conveyance, titling, and registration of private property,
10 and must comply with federal and state environmental and safety regulations.

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

12 (1) Offenses involving fraud, theft, deceit, misrepresentation, or that otherwise reflect
13 poorly on the person's honesty or trustworthiness, including an offense defined as moral turpitude,
14 because honesty, integrity, trustworthiness, and a willingness to comply with the law are characteristics
15 necessary for a licensee. A predisposition the opportunity to commit further offenses.

16 (2) Offenses involving forgery, falsification of records, or perjury, because honesty,
17 integrity, trustworthiness, and a willingness to comply with the law are characteristics necessary for a
18 licensee. A predisposition the opportunity to commit further offenses.

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

22 (4) Felony offenses against public administration, because honesty, integrity,
23 trustworthiness, and a willingness to comply with the law are characteristics necessary for a licensee.

1 Offenses of this nature reflect a lack of honesty, integrity, trustworthiness, and a willingness to comply
2 with the law. Further, person involved in offenses of this nature would have an opportunity to impede
3 investigations into unlawful or improper activities.

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

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

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

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

21 The department considers the following offenses relate retail license types only:(9) Felony
22 offenses against real or personal property belonging to another, because licensees have the ability to

1 affect property rights presenting a person predisposed to such violations an opportunity for to commit an
2 offense.

3 (10) Offenses involving the sale or disposition of another person's real or personal
4 property, because licensees have the ability to affect property rights presenting a person predisposed to
5 such violations an opportunity for to commit an offense.

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

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

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

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

1 (15) Felony offenses involving a felony offense against public order and decency as
2 described by Penal Code §§43.24, 43.25, 43.251, 43.26, 43.261, or 43.262, because licensees have direct
3 contact with members of the general public including and access to an individual's motor vehicle records,
4 including the individual's address. A person with a predisposition for crimes involving prohibited sexual
5 conduct or acts with children would have the opportunity to engage in further similar conduct.

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

8 Proposed new §211.3(a) - (c) list the reasons the department has determined that certain offenses
9 directly relate to the duties and responsibilities of the licensed occupation.

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

14 Proposed new §211.3(e) lists the factors that the department must consider in making its
15 evaluation of the applicant's fitness for licensing.

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

18 Proposed new §211.4 addresses imprisonment of an applicant, license holder, or person listed
19 otherwise listed in §211.2(a)(2). Occupations Code §53.021(b) requires an agency to revoke a license
20 holder's license on the license holder's imprisonment following a felony conviction, felony community
21 supervision revocation, revocation of parole, or revocation of mandatory supervision. Because the
22 department also licenses persons based on individuals serving in representative capacities, the
23 department will also consider the effect of imprisonment of those persons on license holder. Because the

1 revocation is mandatory, the factors and determinations listed in §211.3 do not apply to a person under
2 this section.

3 Proposed new §211.5 implements Occupations Code §53.102 that allows a person to request that
4 a licensing authority issue a criminal history evaluation letter regarding the person's eligibility for a license
5 issued by that authority. As authorized in Occupations Code §53.105, §211.5 also proposes a fee in the
6 amount of \$100 to cover the cost of the review.

7 **FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT.** Linda M. Flores, Chief Financial Officer,
8 has determined that for each year of the first five years the new sections will be in effect, there will be no
9 significant fiscal impact to state or local governments as a result of the enforcement or administration of
10 the proposal. Daniel Avitia, Director of the Motor Vehicle Division, has determined that there will be no
11 measurable effect on local employment or the local economy as a result of the proposal.

12 **PUBLIC BENEFIT AND COST NOTE.** Mr. Avitia has also determined that, for each year of the first five years
13 the new sections are in effect, there are several public benefits anticipated because the proposed new
14 chapter creates a unified process in line with Occupations Code Chapter 53 that will to promote
15 consistency, efficiency, and predictability in board and department decisions concerning the effect of
16 criminal offenses on licensure. In addition, certain independent motor vehicle dealer applicants will have
17 the opportunity to request an evaluation of their prior criminal history before enrolling in an independent
18 motor vehicle dealer training under Transportation Code §503.0296. Further, the department has
19 determined those offenses that directly relate to the duties and responsibilities of the licensed
20 occupations, establishing a standard that will protect the public.

21 Mr. Avitia anticipates that there will be no additional costs on regulated persons to comply with
22 the submission and evaluation of information under this proposal, because the rules do not establish any
23 additional requirements or costs for regulated persons. Some applicants for certain independent motor

1 vehicle licenses may request a preliminary evaluation of their criminal history under §211.5. If they do,
2 the fee will be \$100 per person. The preliminary review however, is not required, and must be weighed
3 as a business decision against the cost of enrolling in an independent dealer training course (currently
4 \$149) and making the other necessary business investments (including a two-year lease and securing a
5 surety bond) to apply for a license that may ultimately be denied. The department also considers that
6 §211.3 sets forth those offenses that relate to the licensed occupations, and other offenses under
7 Occupations Code §53.021.

8 The department determined the proposed fee based on its analysis of costs associated with
9 performing the evaluation. Occupations Code §53.105 requires a fee adopted by a licensing authority to
10 be in an amount sufficient to cover the cost of administering this subchapter. The department determined
11 that its costs would be staff time per evaluation, the cost of background checks, and the initial cost to add
12 this feature to the current eLICENSING system. The department estimates staff time of 4-7 hours for each
13 evaluation resulting in a cost of \$90 to \$160 per evaluation. The department estimates that each
14 background check through the Department of Public Safety would cost \$1, or be incorporated in an
15 existing fixed monthly third-party service provider fee. System implementation costs were not available.
16 Total costs are estimated to be \$91 to \$161. The department believes the \$100 fee is sufficient to cover
17 the cost of administration.

18 **ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS.** As required by Government
19 Code, §2006.002, the department has determined that there may be an adverse economic effect or
20 disproportionate economic impact on small or micro businesses as a result of the enforcement or
21 administration of §211.5, based on the cost of the review request.

1 The department has determined that the proposed new sections will not have an adverse
2 economic effect or a disproportionate economic impact on rural communities because new sections do
3 not uniquely or disproportionately apply to residents of rural communities.

4 The department considered the following alternatives to minimize any adverse impact on small
5 or micro businesses while still accomplishing the proposal's objectives:

6 (1) The department considered not proposing the new rules, but ultimately rejected this option
7 because that would deny applicants the opportunity to make the business decision to request the review.

8 (2) The department also considered exempting small or micro businesses from the requirements
9 of the rule, but ultimately rejected this option because a significant number of persons, if not almost all
10 initial applicants, would be classified as a small or micro business because they would have less than six
11 million dollars in receipts and less than 100 employees. The department has set the fee to cover the costs
12 of the review as required under §53.105. As reviews may differ, the fee is based on an estimated average
13 cost. Excluding a significant number of persons would increase the costs for other persons. Further,
14 Occupations Code §53.105 does authorize an agency to charge different fees to different persons.

15 (3) Finally, the department also considered imposing a lesser fee on small or micro businesses,
16 but ultimately rejected this option for the same reasons outlined in the second consideration above.

17 The department, after considering the purpose of the authorizing statutes, does not believe it is feasible
18 to waive or modify the fee requirement of proposed §211.5.

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

1 **GOVERNMENT GROWTH IMPACT STATEMENT.** The department has determined that each year of the
2 first five years the proposed new section is in effect, the proposed rule:

3 will not create or eliminate a government program;

4 will not require the creation of new employee positions or the elimination of existing employee
5 positions;

6 will not require an increase or decrease in future legislative appropriations to the department;

7 will not require an increase or decrease in fees paid to the department;

8 will create new regulations in new Chapter 211;

9 will not expand existing regulations;

10 will replace existing regulation in §215.88 that is being repealed in a separate proposal published
11 in this issue of the *Texas Register*;

12 will not increase or decrease the number of individuals subject to the rule's applicability; and

13 will not positively or adversely affect the Texas economy.

14 **REQUEST FOR PUBLIC COMMENT.**

15 If you want to comment on the proposal, submit your written comments by 5:00 p.m. CDT on July 27,
16 2020. A request for a public hearing must be sent separately from your written comments. Send written
17 comments or hearing requests by email to rules@txdmv.gov or by mail to Office of General Counsel, Texas
18 Department of Motor Vehicles, 4000 Jackson Avenue, Austin, Texas 78731. If a hearing is held, the
19 department will consider written comments and public testimony presented at the hearing.

20 **STATUTORY AUTHORITY.** The department proposes amendments to §§211.1 - 211.5 under Occupations
21 Code §2301.155 and §2302.051, and Transportation Code §503.002 and §1002.001.

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

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

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

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

7 **CROSS REFERENCE TO STATUTE.** Occupations Code §§53.021, 53.022-53.025, 53.102, 53.104, 2301.651;
8 2301.651, §2302.104 and §2302.108, and Transportation Code §503.034 and §503.038.

9
10 §211.1. Definitions.

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

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

14 (2) "License" means any license, registration, or authorization, issued by the department

15 under:

16 (A) Transportation Code, Chapter 503;

17 (B) Occupations Code, Chapter 2301;

18 (C) Occupations Code, Chapter 2302; or

19 (D) any other license, registration, or authorization, that the department may

20 deny or revoke because of a criminal offense of the applicant or license holder.

21 (3) "Retail license types" means those licensee types that interact directly with the public,

22 including salvage dealers, converters, independent mobility motor vehicle dealers, lease facilitators, and

23 general distinguishing number holders in the following vehicle categories: all-terrain vehicle, light truck,

1 motorcycle, motorhome, moped/motor scooter, medium duty truck, neighborhood vehicle, other,
2 passenger auto recreational off-highway vehicle, and towable recreational vehicle, but does not include
3 other license types that do not generally interact directly with the public, including manufacturers,
4 distributors, and general distinguishing number holders for the following vehicle categories: ambulance,
5 axle, bus, engine, fire truck/fire fighting vehicle, heavy duty truck, and transmission.

6
7 §211.2. Application of Subchapter.

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

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

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

13 (b) In this chapter a "conviction" includes a deferred adjudication that is deemed to be a
14 conviction under Occupations Code §53.021.

15
16 §211.3. Criminal Offense Guidelines.

17 (a) The licenses issued by the department create positions of trust. License holders provide
18 services to members of the public. License holder services involve access to confidential information,
19 conveyance, titling, and registration of private property, possession of monies belonging to or owed to
20 private individuals, creditors, and governmental entities, and compliance with federal and state
21 environmental and safety regulations. License holders are provided with opportunities to engage in fraud,
22 theft, money laundering, and related crimes and to engage in environmental and safety violations that

1 endanger the public. In addition, licensure provides persons predisposed to commit assaultive or sexual
2 crimes with greater opportunities to engage in such conduct.

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

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

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

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

19 (d) The list of offenses in this subsection is intended to provide guidance only and is not exhaustive
20 of the offenses that may relate to a particular regulated occupation. After due consideration of the
21 circumstances of the criminal act and its relationship to the position of trust involved in the particular
22 licensed occupation, the department may find that an offense not described below also renders a person
23 unfit to hold a license based on the criteria listed in Occupations Code §53.022. Paragraphs (1) - (8) apply

- 1 to all license types. Paragraphs (9) - (15) apply only to retail license types. Paragraph (16) applies to
2 offenses applicable to a license type:
- 3 (1) offenses involving fraud, theft, deceit, misrepresentation, or that otherwise reflect
4 poorly on the person's honesty or trustworthiness, including an offense defined as moral turpitude;
- 5 (2) offenses involving forgery, falsification of records, or perjury;
6 (3) offenses involving the offering, paying, or taking of bribes, kickbacks, or other illegal
7 compensation;
- 8 (4) felony offenses against public administration;
9 (5) felony offenses under a state or federal statute or regulation involving the
10 manufacture, sale, finance, distribution, repair, salvage, or demolition, of motor vehicles;
- 11 (6) felony offenses under a state or federal statute or regulation related to emissions
12 standards, waste disposal, water contamination, air pollution, or other environmental offenses;
- 13 (7) offenses committed while engaged in a licensed activity or on licensed premises;
14 (8) felony offenses involving the possession, manufacture, delivery, or intent to deliver
15 controlled substances, simulated controlled substances, dangerous drugs, or engaging in an organized
16 criminal activity;
- 17 (9) felony offenses against real or personal property belonging to another;
18 (10) offenses involving the sale or disposition of another person's real or personal
19 property;
- 20 (11) a reportable felony offense conviction under Chapter 62, Texas Code of Criminal
21 Procedure for which the person must register as a sex offender;
- 22 (12) an offense against the family as described by Penal Code §§25.02, 25.07, 25.072, or
23 25.11;

1 (13) felony offenses against the person;
2 (14) a felony stalking offense as described by Penal Code §42.072;
3 (15) a felony offense against public order and decency as described by Penal Code
4 §§43.24, 43.25, 43.251, 43.26, 43.261, or 43.262; and

5 (16) offenses of attempting or conspiring to commit any of the foregoing offenses
6 applicable to the license type.

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

9 (1) the extent and nature of the person's past criminal activity;
10 (2) the age of the person when the crime was committed;
11 (3) the amount of time that has elapsed since the person's last criminal activity;
12 (4) the conduct and work activity of the person before and after the criminal activity;
13 (5) evidence of the person's rehabilitation or rehabilitative effort while incarcerated or
14 after release; and

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

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

19
20 §211.4. Imprisonment.

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

