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PROPOSAL OF

SUBCHAPTER C. LICENSES, GENERALLY

43 TAC §215.89

REPEAL OF

43 TAC §215.88

INTRODUCTION. The Texas Department of Motor Vehicles (department) proposes the repeal of §215.88 and amendments to 43 TAC §215.89 to update licensing fitness rules under Occupations Code §2301.651 and Transportation Code §503.034, including implementation of Senate Bill 604, 86th Legislature, Regular Session, (2019). In conjunction with this proposal, the department has proposed new §§211. 1 - 211. 5, concerning criminal offense and action on licenses, and amendments to §§221.15, 221.19, 221.111, and 221.112, and repeal of §221.113 and §221.114, concerning salvage vehicle dealer licenses, in this issue of the *Texas Register*.

EXPLANATION. Occupations Code §2301.651 and Transportation Code §503.034 and 503.038 require the department and its board ("board") to review the fitness of applicants for new and renewal licenses, and license holders. The proposed amendments to §215.89 update the requirements related to review of criminal history information, affiliations, and conform with statute. The repeal of §215.88 is necessary because the determination of an offense that directly relates to the duties or responsibilities of the licensed occupation has been moved to proposed new Chapter 211.

The proposed amendment to §215.89(b)(2) changes the reference from §215.88 to proposed new §211.3. The department has proposed new Chapter 211 in this issue of the Texas Register.

The proposed amendment to §215.89(b)(3) eliminates the reference to "criminal history information." The amendment conforms the requirement to Occupations Code §2301.651(a)(2) and

1 Transportation Code §503.038(6), which do not limit consideration of material misstatements just to
2 statements regarding criminal history information.

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

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

9 The proposed amendments to §215.89(b)(9) and (10) clarify that the department is concerned
10 with affiliations that allow for control of the license holder, and describe control as "the power to direct
11 or cause the direction of the management, policies, and activities, of an applicant or license holder,
12 whether directly or indirectly."

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

18 **PUBLIC BENEFIT AND COST NOTE.** Mr. Avitia has also determined that, for each year of the first five years
19 the proposed new section is in effect, the public benefits include updating the licensing fitness reviews
20 requirements to clarify affiliations that are applicable to licensing, conform to statute, and conform to a
21 proposed amended criminal history review process under proposed new Chapter 211.

1 Mr. Avitia anticipates that there will be no additional costs on regulated persons to comply with
2 these rules, because the rules do not establish any additional requirements or costs for the regulated
3 person.

4 **ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS.** As required by Government
5 Code, §2006.002, the department has determined that the proposed new section will not have an adverse
6 economic effect on small businesses, micro-businesses, or rural communities because the proposal
7 imposes no additional requirements, and has no additional financial effect, on any small businesses,
8 micro-businesses, or rural communities. Therefore, the department is not required to prepare a
9 regulatory flexibility analysis under Government Code, §2006.002.

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

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

- 16 will not create or eliminate a government program;
- 17 will not require the creation of new employee positions or the elimination of existing employee
18 positions;
- 19 will not require an increase or decrease in future legislative appropriations to the department;
- 20 will not require an increase or decrease in fees paid to the department;
- 21 will not create new regulations;
- 22 will not expand existing regulations;
- 23 will repeal existing regulation §215.88, that is being replaced by new Chapter 211 in a separate

1 proposal published in this issue of the Texas Register;

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

3 will not positively or adversely affect the Texas economy.

4 **REQUEST FOR PUBLIC COMMENT.**

5 If you want to comment on the proposal, submit your written comments by 5:00 p.m. CDT on July 27,
6 2020. A request for a public hearing must be sent separately from your written comments. Send written
7 comments or hearing requests by email to *rules@txdmv.gov* or by mail to Office of General Counsel, Texas
8 Department of Motor Vehicles, 4000 Jackson Avenue, Austin, Texas 78731. If a hearing is held, the
9 department will consider written comments and public testimony presented at the hearing.

10 **STATUTORY AUTHORITY.** The department proposes new §215.89 under Occupations Code §2301.155.
11 and Transportation Code §503.002 and §1002.001.

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

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

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

19 **CROSS REFERENCE TO STATUTE.** Occupations Code 2301.651, and Transportation Code §503.034 and
20 503.038.

21

22 **TEXT.**

23

1 **SUBCHAPTER C. LICENSES, GENERALLY**

2 **43 TAC §215.89**

3 §215.89. Fitness.

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

7 (1) the requirements of Occupations Code, Chapter 53;

8 (2) the provisions of Occupations Code, §2301.651;

9 (3) any specific statutory licensing criteria or requirements;

10 (4) mitigating factors; and

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

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

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

17 (2) is convicted or deemed convicted by any local, state, federal, or foreign authority of an
18 offense that directly relates to the duties or responsibilities of the licensed occupation as described in
19 §211.3 [listed in ~~§215.88(j)~~] of this title (relating to Criminal Offense Guidelines [and Action on License])
20 or is convicted or deemed convicted of an offense that is independently disqualifying under Occupations
21 Code §53.021 [containing elements that are substantially similar to the elements in the offenses in
22 §215.88(j)];

23 (3) omits information or provides false, misleading, or incomplete information [regarding a

1 ~~criminal conviction]~~ on an initial application, renewal application, or application attachment₂ for a license
2 or other authorization issued by the department or by any local, state, or federal regulatory authority;

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

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

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

11 (7) is assessed a civil penalty, administrative fine, fee, or similar assessment₂ by the board,
12 department, or a local, state, or federal regulatory authority₂ for violation of a requirement governing or
13 impacting the distribution or sale of a vehicle or a motor vehicle, or the acquisition, sale, repair, rebuild,
14 reconstruction, or other dealing of a salvage motor vehicle or nonrepairable motor vehicle, and fails to
15 comply with the terms of a final order or fails to pay the penalty pursuant to the terms of a final order;

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

23 (9) has an ownership, organizational, managerial, or other business arrangement, that would

1 allow a person the power to direct or cause the direction of the management, policies, and activities, of
2 an applicant or license holder, whether directly or indirectly, when the [interest with a] person [whose
3 actions or omissions] could be considered unfit, [who is] ineligible for licensure, or whose current or
4 previous license, permit, or other authorization issued by any local, state, or federal regulatory authority,
5 has been subject to disciplinary action, including suspension, revocation, denial, corrective action, cease
6 and desist order, or assessment of a civil penalty, administrative fine, fee, or similar assessment, by the
7 board, department, or any local, state, or federal regulatory authority;

8 (10) ~~[is a business entity that is operated, managed, or otherwise controlled by a relative or~~
9 ~~family member and that person could be considered unfit, is ineligible for licensure, or whose current or~~
10 ~~previous license, permit, or other authorization issued by any local, state, or federal regulatory authority~~
11 ~~has been subject to disciplinary action, including suspension, revocation, denial, corrective action, cease~~
12 ~~and desist order, or assessment of a civil penalty, administrative fine, fee, or similar assessment; or]~~

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

16 **REPEAL OF**

17 **43 TAC §215.88**

18 [~~§215.88. Criminal Offense and Action on License.~~]

19 [(a) This section describes board or department action on a license application or an existing
20 license issued by the department under Transportation Code, Chapter 503 or Occupations Code, Chapter
21 2301, including denial, revocation, and suspension, and identifies the types of criminal offenses that
22 directly relate to the duties and responsibilities of the occupations licensed under Transportation Code,
23 Chapter 503 or Occupations Code, Chapter 2301.]

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

4 ~~[(1) Occupations Code, Chapter 53;]~~

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

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

7 ~~[(4) board rules.]~~

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

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

10 ~~[(2) the holder of a license or other authorization issued by the department;]~~

11 ~~[(3) a person's spouse with a community property interest in the entity licensed or to be~~
12 ~~licensed by the department;]~~

13 ~~[(4) a controlling shareholder of a business entity licensed by the department;]~~

14 ~~[(5) a person holding 50% or more ownership interest in a business entity licensed by the~~
15 ~~department;]~~

16 ~~[(6) a person acting in a representative capacity for the applicant or license holder,~~
17 ~~including an owner, president, vice president, member of the board of directors, chief executive officer,~~
18 ~~chief financial officer, chief information officer, chief managing officer, treasurer, controller, director,~~
19 ~~principal, manager of business affairs, or similar position of a business entity; or]~~

20 ~~[(7) any person who becomes a person described in this subsection.]~~

21 ~~[(d) An action taken by the board or department under this section may be based on an act or~~
22 ~~omission by an officer, director, partner, trustee, or other person acting in a representative capacity for~~
23 ~~the applicant or license holder.]~~

1 ~~[(e) Upon receipt of an order or notice regarding an applicant or license holder issued under~~
2 ~~Family Code, Chapter 232, the board or department will deny an application for issuance of a license, will~~
3 ~~not renew an existing license, or will suspend a license or other authorization issued by the department.~~
4 ~~The board's or department's action, based upon receipt of an order or notice issued under Family Code,~~
5 ~~Chapter 232, on the application for a license or existing license is not subject to the provisions of~~
6 ~~Government Code, Chapter 2001, including notice, hearing, or opportunity for hearing. Upon receipt of~~
7 ~~an order vacating or staying an order suspending a license issued under Family Code, Chapter 232, the~~
8 ~~board or department will issue the affected license to the applicant or license holder if the applicant or~~
9 ~~license holder is otherwise qualified for the license.]~~

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

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

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

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

21 ~~[(1) a person has been convicted of an offense that directly relates to the duties and~~
22 ~~responsibilities of the licensed occupation. Any such action shall be made after consideration of the~~

1 factors listed in Occupations Code, §53.022 and §53.023, and the guidelines issued by the department
2 pursuant to Occupations Code, §53.025;]

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

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

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

10 [(j) For purposes of Occupations Code, §53.021, the following criminal offenses directly relate to
11 the duties and responsibilities of the occupations licensed by the department:]

12 [(1) Penal Code, Chapter 15, Preparatory Offenses;]

13 [(2) Penal Code, Chapter 16, Criminal Instruments, Interception of Wire or Oral
14 Communication, and Installation of Tracking Device;]

15 [(3) Penal Code, Chapter 19, Criminal Homicide;]

16 [(4) Penal Code, Chapter 20, Kidnapping, Unlawful Restraint, and Smuggling of Persons;]

17 [(5) Penal Code, Chapter 20A, Trafficking of Persons;]

18 [(6) Penal Code, Chapter 21, Sexual Offenses;]

19 [(7) Penal Code, Chapter 22, Assaultive Offenses;]

20 [(8) Penal Code, Chapter 25, Offenses Against the Family;]

21 [(9) Penal Code, Chapter 28, Arson, Criminal Mischief, and Other Property Damage or
22 Destruction;]

23 [(10) Penal Code, Chapter 29, Robbery;]

- 1 ~~[(11) Penal Code, Chapter 30, Burglary and Criminal Trespass;]~~
- 2 ~~[(12) Penal Code, Chapter 31, Theft;]~~
- 3 ~~[(13) Penal Code, Chapter 32, Fraud;]~~
- 4 ~~[(14) Penal Code, Chapter 33, Computer Crimes;]~~
- 5 ~~[(15) Penal Code, Chapter 33A, Telecommunications Crimes;]~~
- 6 ~~[(16) Penal Code, Chapter 34, Money Laundering;]~~
- 7 ~~[(17) Penal Code, Chapter 35, Insurance Fraud;]~~
- 8 ~~[(18) Penal Code, Chapter 36, Bribery and Corrupt Influence;]~~
- 9 ~~[(19) Penal Code, Chapter 37, Perjury and Other Falsification;]~~
- 10 ~~[(20) Penal Code, Chapter 38, Obstructing Governmental Operation;]~~
- 11 ~~[(21) Penal Code, Chapter 71, Organized Crime;]~~
- 12 ~~[(22) Code of Criminal Procedure, Chapter 62, Sex Offender Registration Program,~~
- 13 ~~involving an offense for which the person has been required to register as a sex offender;]~~
- 14 ~~[(23) Transportation Code, Chapter 501, Certificate of Title Act;]~~
- 15 ~~[(24) Transportation Code, Chapter 502, Registration of Vehicles;]~~
- 16 ~~[(25) Transportation Code, Chapter 503, Dealer's and Manufacturer's Vehicle License~~
- 17 ~~Plates;]~~
- 18 ~~[(26) Transportation Code, Chapter 504, License Plates;]~~
- 19 ~~[(27) Transportation Code, Chapter 520, Miscellaneous Provisions;]~~
- 20 ~~[(28) Transportation Code, Chapter 547, Vehicle Equipment;]~~
- 21 ~~[(29) Transportation Code, Chapter 548, Compulsory Inspection of Vehicles;]~~
- 22 ~~[(30) Transportation Code, Chapter 727, Modification of, Tampering with, and Equipment~~
- 23 ~~of Motor Vehicles;~~

1 ~~[(31) Transportation Code, Chapter 728, Subchapter B, Sale of Master Key for Motor~~
2 ~~Vehicle Ignitions;]~~

3 ~~[(32) Occupations Code, Chapter 2301, Subchapter R, Regulation of Certain Commercial~~
4 ~~Uses of Motor Vehicles;]~~

5 ~~[(33) Tax Code, Chapter 23, Appraisal Methods and Procedures;]~~

6 ~~[(34) Tax Code, Chapter 152, Taxes on Sale, Rental, and Use of Motor Vehicles;]~~

7 ~~[(35) Business and Commerce Code, Chapter 17, Deceptive Trade Practices;]~~

8 ~~[(36) Health and Safety Code, Chapter 365, Litter;]~~

9 ~~[(37) Health and Safety Code, Chapter 481, Texas Controlled Substances Act;]~~

10 ~~[(38) Health and Safety Code, Chapter 482, Simulated Controlled Substances;]~~

11 ~~[(39) Health and Safety Code, Chapter 483, Dangerous Drugs;]~~

12 ~~[(40) Water Code, Chapter 7, Enforcement;]~~

13 ~~[(41) United States Code, Title 15, Chapter 28, Disclosure of Automobile Information,~~
14 ~~especially 15 U.S.C. §1233, Violations and Penalties;]~~

15 ~~[(42) United States Code, Title 18, Chapter 63, Mail Fraud and Other Fraud Offenses;]~~

16 ~~[(43) United States Code, Title 49, Chapter 301, Motor Vehicle Safety, especially 49 U.S.C.~~
17 ~~§30170, Criminal Penalties; or]~~

18 ~~[(44) United States Code, Title 49, Chapter 327, Odometers, especially 49 U.S.C. §32709,~~
19 ~~Penalties and Enforcement.]~~

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

22 Issued at Austin, Texas, on June 15, 2020.

23 _____/s/ Tracey Beaver
24 Tracey Beaver, General Counsel