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SUBCHAPTER C. LICENSES, GENERALLY

43 TAC §215.88 and §215.89

TEXT

Criminal Offense and Action on License

43 TAC §215.88

§215.88. Criminal Offense and Action on License.

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

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

- (1) Occupations Code, Chapter 53;
- (2) Occupations Code, Chapter 2301, Subchapter N;
- (3) Government Code, Chapter 2001; and
- (4) board rules.

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

- (1) an applicant for a license or other authorization issued by the department;
- (2) the holder of a license or other authorization issued by the department;

1 (3) a person's spouse with a community property interest in the entity licensed or to be licensed
2 by the department;

3 (4) a controlling shareholder of a business entity licensed by the department;

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

6 (6) a person acting in a representative capacity for the applicant or license holder, including an
7 owner, president, vice-president, member of the board of directors, chief executive officer, chief financial
8 officer, chief information officer, chief managing officer, treasurer, controller, director, principal, manager of
9 business affairs, or similar position of a business entity; or

10 (7) any person who becomes a person described in this subsection.

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

14 (e) Upon receipt of an order or notice regarding an applicant or license holder issued under Family
15 Code, Chapter 232, the board or department will deny an application for issuance of a license, will not
16 renew an existing license, or will suspend a license or other authorization issued by the department. The
17 board's or department's action, based upon receipt of an order or notice issued under Family Code, Chapter
18 232, on the application for a license or existing license is not subject to the provisions of Government Code,
19 Chapter 2001, including notice, hearing, or opportunity for hearing. Upon receipt of an order vacating or
20 staying an order suspending a license issued under Family Code, Chapter 232, the board or department will
21 issue the affected license to the applicant or license holder if the applicant or license holder is otherwise
22 qualified for the license.

1 (f) No person currently imprisoned for conviction of a felony under any state or federal law is eligible
2 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, revocation
5 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 factors
14 listed in Occupations Code, §53.022 and §53.023, and the guidelines issued by the department pursuant to
15 Occupations Code, §53.025;

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

19 (3) a person has been convicted of an offense listed in Code of Criminal Procedure, Article
20 42A.054 [~~42.12, Section 3g~~]; or

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

1 (j) For purposes of Occupations Code, §53.021, the following criminal offenses directly relate to the
2 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 Communication,
5 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 Destruction;

13 (10) Penal Code, Chapter 29, Robbery;

14 (11) Penal Code, Chapter 30, Burglary and Criminal Trespass;

15 (12) Penal Code, Chapter 31, Theft;

16 (13) Penal Code, Chapter 32, Fraud;

17 (14) Penal Code, Chapter 33, Computer Crimes;

18 (15) Penal Code, Chapter 33A, Telecommunications Crimes;

19 (16) Penal Code, Chapter 34, Money Laundering;

20 (17) Penal Code, Chapter 35, Insurance Fraud;

21 (18) Penal Code, Chapter 36, Bribery and Corrupt Influence;

22 (19) Penal Code, Chapter 37, Perjury and Other Falsification;

TITLE 43 TRANSPORTATION
Part 10. Texas Department of Motor Vehicles
Chapter 215. Motor Vehicle Distribution

Informal Working Draft Sections

- 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, involving an
4 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 Plates;
- 8 (26) Transportation Code, Chapter 504, License Plates;
- 9 (27) Transportation Code, Chapter 520, Miscellaneous Provisions;
- 10 (28) Transportation Code, Chapter 547, Vehicle Equipment;
- 11 (29) Transportation Code, Chapter 548, Compulsory Inspection of Vehicles;
- 12 (30) Transportation Code, Chapter 727, Modification of, Tampering with, and Equipment of
13 Motor Vehicles;
- 14 (31) Transportation Code, Chapter 728, Subchapter B, Sale of Master Key for Motor Vehicle
15 Ignitions;
- 16 (32) Occupations Code, Chapter 2301, Subchapter R, Regulation of Certain Commercial Uses of
17 Motor Vehicles;
- 18 (33) Tax Code, Chapter 23, Appraisal Methods and Procedures;
- 19 (34) Tax Code, Chapter 152, Taxes on Sale, Rental, and Use of Motor Vehicles;
- 20 (35) Business and Commerce Code, Chapter 17, Deceptive Trade Practices;
- 21 (36) Health and Safety Code, Chapter 365, Litter;
- 22 (37) Health and Safety Code, Chapter 481, Texas Controlled Substances Act;

1 (38) Health and Safety Code, Chapter 482, Simulated Controlled Substances;

2 (39) Health and Safety Code, Chapter 483, Dangerous Drugs;

3 (40) Water Code, Chapter 7, Enforcement;

4 (41) United States Code, Title 15, Chapter 28, Disclosure of Automobile Information, especially 15
5 U.S.C. §1233, Violations and Penalties;

6 (42) United States Code, Title 18, Chapter 63, Mail Fraud and Other Fraud Offenses;

7 (43) United States Code, Title 49, Chapter 301, Motor Vehicle Safety, especially 49 U.S.C. §30170,
8 Criminal Penalties; or

9 (44) United States Code, Title 49, Chapter 327, Odometers, especially 49 U.S.C. §32709, Penalties
10 and Enforcement.

11 **SUBCHAPTER C. LICENSES, GENERALLY**

12 **43 TAC §215.89**

13 **Fitness**

14 **215.89. Fitness.**

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

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

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

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

21 (4) mitigating factors; and

22 (5) other evidence of a person's fitness, as allowed by law, including the standards identified in

1 subsection (b) of this section.

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

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

6 (2) is convicted by any local, state, or federal authority of an offense listed in §215.88(j) of this
7 title [~~(relating to Criminal Offense and Action on License)~~] or is convicted in any jurisdiction of an offense
8 containing elements that are substantially similar to the elements in the offenses in §215.88(j);

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

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

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

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

20 (7) is assessed a civil penalty, administrative fine, fee, or similar assessment by the board,
21 department, or a local, state, or federal regulatory authority for violation of a requirement governing or
22 impacting the distribution or sale of a vehicle or motor vehicle, or the acquisition, sale, repair, rebuild,

1 reconstruction, or other dealing of a salvage motor vehicle or nonrepairable motor vehicle, and fails to
2 comply with the terms of a final order or fails to pay the penalty pursuant to the terms of a final order;

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

9 (9) has an ownership interest with a person whose actions or omissions could be considered
10 unfit, who is ineligible for licensure, or whose current or previous license, permit, or other authorization
11 issued by any local, state, or federal regulatory authority has been subject to disciplinary action, including
12 suspension, revocation, denial, corrective action, cease and desist order, or assessment of a civil penalty,
13 administrative fine, fee, or similar assessment, by the board, department, or any local, state, or federal
14 regulatory authority;

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

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