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**PROPOSAL OF**  
**SUBCHAPTER A. CRIMINAL HISTORY OFFENSE AND ACTION ON LICENSE**  
**43 TAC §211.6**

**INTRODUCTION.** The Texas Department of Motor Vehicles (department) proposes to amend 43 Texas Administrative Code (TAC) §211.6 concerning fingerprint requirements for license applicants and holders. These amendments are consistent with House Bill (HB) 4123, 88th Legislature, Regular Session (2023), which clarified the department’s existing authority under Texas Government Code, §411.122 to require fingerprints as part of the license application process for licenses issued under Occupations Code Chapters 2301 and 2302 and Transportation Code, Chapter 503. Fingerprint requirements prevent application fraud in two important ways – by verifying identify and by allowing the department to obtain a complete and comprehensive criminal background check from both the Texas Department of Public Safety (DPS) and the Federal Bureau of Investigation (FBI) prior to issuing a license. The current rule references only General Distinguishing Numbers issued under Transportation Code 503, so this rule proposal amends §211.6 to make it possible for the department to require fingerprinting for all license types in the future, if the department chooses to subsequently propose amendments to Chapter 215 or 221 of this title to add fingerprint requirements for a specific license type.

The department proposes changes to the title of §211.6 and amendments to subsections to clarify that additional license types may be designated by rule to require fingerprinting. The proposed amendments would consolidate the language that currently appears in subsection (c) into subsection (b), would revise language for clarity and ease of understanding, and would add new language to subsection (c) to inform the public that the department will first review an application and then notify the applicant or license holder which specific persons will be required to provide fingerprints.

1 **EXPLANATION.**

2           The title of §211.6 is proposed to be amended to reflect that the fingerprint requirements of this  
3 section will apply to all license types designated in Chapters 215 and 221 of this title as requiring  
4 fingerprinting for licensure. This may include licenses other than general distinguishing numbers if the  
5 department amends Chapters 215 and 221 of this title in the future. This amendment is necessary to  
6 describe more accurately the department's authority under Texas Government Code, §411.122 and  
7 §411.12511 to implement fingerprint requirements.

8           Proposed amendments to subsections (a) and (b) would delete references to a General  
9 Distinguishing Number under Transportation Code, Chapter 503. These amendments are necessary to  
10 reflect more accurately the department's authority to implement fingerprint requirements for additional  
11 license types through rulemaking.

12           Other proposed amendments in subsection (a) would specify that the rule will apply to license  
13 types designated in Chapter 215 or Chapter 221 of this title as requiring fingerprints for licensure. These  
14 amendments are necessary to reflect more accurately the department's authority to implement  
15 fingerprint requirements for additional license types through rulemaking, and to clarify for ease of  
16 reference which chapters may contain fingerprint requirements for specific license types.

17           Proposed amendments to subsection (b) would combine language currently in subsections (b)  
18 and (c) into amended (b), would make clarifying changes to remove unnecessary language, and would  
19 identify the persons that may be subject to a fingerprint requirement. These amendments are proposed  
20 to add clarity and for ease of understanding.

21           Proposed amendments to subsection (c) would replace the existing language that is proposed to  
22 be consolidated into subsection (b) with new language clarifying that the department will review each  
23 license application, determine which persons need to be fingerprinted, and notify the applicant or license

1 holder. This amendment is necessary to inform the public, including applicants and license holders, that  
2 the department must first review the application and department licensing records to determine which  
3 persons are required to be fingerprinted, before then notifying the applicant of which individuals must  
4 submit fingerprints.

5 **FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT.** Glenna Bowman, Chief Financial Officer,  
6 has determined that for each year of the first five years the amendments will be in effect, there will be no  
7 significant fiscal impact to state or local governments as a result of the enforcement or administration of  
8 the proposal. Monique Johnston, Director of the Motor Vehicle Division, has determined that there will  
9 be no measurable effect on local employment or the local economy as a result of the proposal.

10 **PUBLIC BENEFIT AND COST NOTE.** Ms. Johnston has also determined that, for each year of the first five  
11 years the amended section is in effect, there are several public benefits and no costs anticipated.

12 Anticipated Public Benefits. The public benefits anticipated as a result of the proposal include  
13 clarifying the fingerprinting requirements for licensure by the department. Contingent on additional  
14 future rulemaking, the proposed amendments would allow the department the possibility of exercising  
15 its full legal authority to fingerprint licensure applicants, verifying the identity of applicants and license  
16 holders for more types of licenses and thereby preventing fraudulent applications under false or stolen  
17 identities, while giving the department access to more accurate and comprehensive criminal history  
18 record information to use in evaluating fitness for licensure under its criminal offense guidelines in §211.3.  
19 These amendments, combined with additional future rulemaking, will benefit the public by preventing  
20 bad actors with a history of criminal offenses that directly relate to the duties and responsibilities of a  
21 license holder from obtaining licenses from the department and using those licenses to perpetrate  
22 fraudulent and criminal actions, or otherwise taking advantage of the position of trust created by the  
23 license.

1           Anticipated Costs To Comply With The Proposal. Ms. Johnston anticipates that there will be no  
2 additional costs on regulated persons to comply with the fingerprint requirements under this proposal as  
3 these amendments alone do not expand fingerprinting requirements or establish fees for fingerprinting  
4 or processing criminal background checks. Fees for fingerprinting and access to criminal history reports  
5 are established by DPS under the authority of Texas Government Code Chapter 411.

6 **ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS.** In the cost analysis in the  
7 Public Benefit and Cost Note section of this proposal, the department has determined that proposed  
8 amendments to §211.6 will not result in additional costs for license holders or applicants, including any  
9 small businesses, micro-businesses, or rural communities. Therefore, the department is not required to  
10 prepare a regulatory flexibility analysis under Government Code, §2006.002.

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

15 **GOVERNMENT GROWTH IMPACT STATEMENT.** The department has determined that each year of the  
16 first five years the proposed amendments are in effect, no government program would be created or  
17 eliminated. Implementation of the proposed amendments would not require the creation of new  
18 employee positions or elimination of existing employee positions. Implementation would not require an  
19 increase or decrease in future legislative appropriations to the department or an increase or decrease of  
20 fees paid to the department. Without additional rulemaking, the proposed amendments do not create a  
21 new regulation, or expand, limit, or repeal an existing regulation. Lastly, without additional rulemaking  
22 the proposed amendments do not affect the number of individuals subject to the rule's applicability and  
23 will not affect this state's economy.

1 **REQUEST FOR PUBLIC COMMENT.**

2 If you want to comment on the proposal, submit your written comments by 5:00 p.m. CDT on October 1,  
3 2023. A request for a public hearing must be sent separately from your written comments. Send written  
4 comments or hearing requests by email to *rules@txdmv.gov* or by mail to Office of General Counsel, Texas  
5 Department of Motor Vehicles, 4000 Jackson Avenue, Austin, Texas 78731. If a hearing is held, the  
6 department will consider written comments and public testimony presented at the hearing.

7 **STATUTORY AUTHORITY.** The department proposes amendments to §211.6 under Government Code,  
8 §411.122(d), which authorizes department access to criminal history record information maintained by  
9 DPS; Government Code, §411.12511, which authorizes the department to obtain criminal history record  
10 information from DPS and the FBI for license applicants, license holders, and representatives whose act  
11 or omission would be cause for denying, revoking, or suspending a general distinguishing number or  
12 license issued under Transportation Code, Chapter 503, or Occupations Code, Chapters 2301 and 2302;  
13 Occupations Code, §2301.151, which gives the board authority to regulate the distribution, sale and lease  
14 of motor vehicles and the authority to take any action that is necessary or convenient to exercise that  
15 authority; Occupations Code, §2301.152, which authorizes the board to establish the qualifications of  
16 license holders, ensure that the distribution, sale and lease of motor vehicles is conducted as required by  
17 statute and board rules, to prevent fraud, unfair practices, discrimination, impositions, and other abuses  
18 in connection with the distribution and sale of motor vehicles, and to enforce and administer Occupations  
19 Code, Chapter 2301 and Transportation Code, Chapter 503; Occupations Code, §2301.155, which  
20 authorizes the board to adopt rules as necessary or convenient to administer Occupations Code, Chapter  
21 2301 and to govern practice and procedure before the board; Occupations Code, §2301.651, which gives  
22 the board authority to deny an application for a license, revoke or suspend a license, place on probation,  
23 or reprimand a licensee if the applicant or license holder is unfit, makes a material misrepresentation,

1 violates any law relating to the sale, distribution, financing, or insuring of motor vehicles, willfully defrauds  
2 a purchaser, or fails to fulfill a written agreement with a retail purchaser of a motor vehicle; Occupations  
3 Code, §2302.051, which authorizes the board to adopt rules as necessary to administer Occupations Code,  
4 Chapter 2302; Transportation Code, §503.002, which authorizes the board to adopt rules for the  
5 administration of Transportation Code, Chapter 503; and Transportation Code, §1002.001, which  
6 authorizes the board to adopt rules that are necessary and appropriate to implement the powers and the  
7 duties of the department.

8 **CROSS REFERENCE TO STATUTE.** Government Code, Chapter 411; Occupations Code, Chapters 2301 and  
9 2302; and Transportation Code, Chapters 503 and 1002.

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11 **TEXT.**

12

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

13 **43 TAC § 211.6 Fingerprint Requirements for Designated License Types~~[General Distinguishing~~  
14 ~~Numbers]~~**

15 (a) The requirements of this section apply to applicants for and holders of license types designated  
16 in Chapter 215 or Chapter 221 of this title as requiring fingerprints for licensure~~[a general distinguishing~~  
17 ~~number under Transportation Code Chapter 503 for all dealer types under Transportation Code~~  
18 ~~§503.029(a)(6)].~~

19 (b) Unless previously submitted ~~[to the department by an applicant]~~ for an active license issued  
20 by the department~~[under Transportation Code Chapter 503]~~, the following persons may be required to~~[a~~  
21 ~~person applying for a new license, license amendment due to change in ownership, or license renewal,~~  
22 ~~must]~~ submit a complete and acceptable set of fingerprints to the Texas Department of Public Safety and

1 pay required fees for purposes of obtaining criminal history record information from the Texas  
2 Department of Public Safety and the Federal Bureau of Investigation: [.]

3 (1) a person applying for a new license, license amendment due to change in ownership,  
4 or license renewal; and

5 (2) a person acting in a representative capacity for an applicant or license holder who is  
6 required to be listed on a licensing application, including an officer, director, member, manager, trustee,  
7 partner, principal, or manager of business affairs.

8 (c) After reviewing a licensure application and licensing records, the department will notify the  
9 applicant or license holder which persons in subsection (b) of this section are required to submit  
10 fingerprints to the Texas Department of Public Safety~~[Persons acting in a representative capacity for an~~  
11 ~~applicant or holder of a license who are required to be listed on a licensing application under §215.133(c)~~  
12 ~~of this title (relating to General Distinguishing Number), including the applicant's or holder's officers,~~  
13 ~~directors, members, managers, trustees, partners, principals, or managers of business affairs, must submit~~  
14 ~~a complete and acceptable set of fingerprints and pay fees to the Texas Department of Public Safety under~~  
15 ~~subsection (b) of this section, unless the person has previously submitted fingerprints related to an active~~  
16 ~~license issued by the department under Transportation Code Chapter 503].~~

17  
18 **CERTIFICATION.** The agency certifies that legal counsel has reviewed the proposal and found it to be  
19 within the state agency's legal authority to adopt.

20 Filed with the Office of the Secretary of State on August 17, 2023.

21 /s/ Laura Moriaty  
22 Laura Moriaty, General Counsel  
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