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**PROPOSAL OF REVISIONS TO**  
**SUBCHAPTER A. CRIMINAL OFFENSE AND ACTION ON LICENSE**  
**43 TAC §211.1 AND §211.2**  
**REPEAL OF**  
**SUBCHAPTER A. CRIMINAL OFFENSE AND ACTION ON LICENSE**  
**43 TAC §§211.3-211.6**  
**NEW**  
**SUBCHAPTER B. CRIMINAL HISTORY EVALUATION GUIDELINES AND PROCEDURES**  
**43 TAC §§211.10-211.13**

**INTRODUCTION.** The Texas Department of Motor Vehicles (department) proposes amendments to 43 Texas Administrative Code, (TAC) §211.1 and §211.2; repeal of §§211.3, 211.4, 211.5, and 211.6; and new sections §§211.10, 211.11, 211.12, and 211.13. The proposed amendments, repeals, and new sections are necessary to organize the rules into two subchapters for consistency with other chapters in TAC Title 43, to clarify the types of licenses to which the chapter applies, to clarify which crimes relate to the duties and responsibilities of these license holders, to delete duplicative language found in statute, to conform rule language with statutory changes; to clarify existing requirements, and to modernize language and improve readability. Proposed language also conforms with Senate Bill (SB) 224, 88th Legislature, Regular Session (2023), which amended the Penal Code to add felony offenses involving damage to motor vehicles during the removal or attempted removal of a catalytic converter.

**EXPLANATION.** The department is conducting a review of its rules under Chapter 211 in compliance with Government Code, §2001.039. Notice of the department’s plan to conduct this review is also published

1 in this issue of the *Texas Register*. As a part of the review, the department is proposing necessary  
2 amendments, repeals, and new sections as detailed in the following paragraphs.

3           Occupations Code, Chapter 53 and §§2301.651, 2302.104, 2301.105, and 2302.108, and  
4 Transportation Code, §503.034 and §503.038 authorize the department and its board to investigate and  
5 act on a license application, or on a license, when a person has committed a criminal offense. Chapter 211  
6 allows the department to maintain fitness standards for license holders with prior criminal convictions  
7 while implementing the legislature’s stated statutory intent in Occupations Code, §53.003 to enhance  
8 opportunities for a person to obtain gainful employment after the person has been convicted of an offense  
9 and discharged the sentence for the offense.

10           The department must follow the requirements of Occupations Code, Chapter 53 to determine  
11 whether a person’s past criminal history can be considered in evaluating the person’s fitness for licensing.  
12 Occupations Code, §53.021 gives a licensing authority the power to suspend or revoke a license, to  
13 disqualify a person from receiving a license, or to deny a person the opportunity to take a licensing  
14 examination on the grounds that the person has been convicted of: (1) an offense that directly relates to  
15 the duties and responsibilities of the licensed occupation; (2) an offense listed in Article 42A.054, Code of  
16 Criminal Procedure; or (3) a sexually violent offense, as defined by Article 62.001, Code of Criminal  
17 Procedure. The department’s evaluation of past criminal history applies to all license applications. Under  
18 Occupations Code, §53.021(a)(1), the department is responsible for determining which offenses directly  
19 relate to the duties and responsibilities of a particular licensed occupation.

20           Occupations Code, §53.022 sets out criteria for consideration in determining whether an offense  
21 directly relates to the duties and responsibilities of the licensed occupation. Based on those criteria, the  
22 department has determined that certain offenses directly relate to the duties and responsibilities of an  
23 occupation licensed by the department. However, conviction of an offense that directly relates to the

1 duties and responsibilities of the licensed occupation or is listed in Occupations Code, §53.021(a)(2) and  
2 (3) is not an automatic bar to licensing; the department must consider the factors listed under Occupations  
3 Code, §53.023 in making its fitness determination. The factors include, among other things, the person’s  
4 age when the crime was committed, rehabilitative efforts, and overall criminal history. The department is  
5 required to publish guidelines relating to its practice under this chapter in accordance with Occupations  
6 Code, §53.025.

7

#### 8 **Proposed New Subchapter A, General Provisions**

9 Chapter 211 currently contains only one subchapter. The proposed amendments would divide  
10 Chapter 211 into two subchapters. A proposed amendment would retitle Subchapter A “General  
11 Provisions,” consistent with the organization and naming conventions found in Chapters 215 and 221 of  
12 this title. This proposed amendment would provide consistency and improve readability because Chapter  
13 211 applies to the same applicants and license holders as Chapters 215 and 221. Sections 211.1 and 211.2  
14 are proposed for inclusion in retitled Subchapter A for consistency and ease of reference.

15 A proposed amendment to the title of §211.1 would add “Purpose and” to the section title to  
16 indicate that proposed amendments to this section include the purpose for the chapter in addition to  
17 definitions. This proposed change would place the chapter purpose description in the same subchapter  
18 and in the same order as similar language in Chapters 215 and 221 of this title for improved understanding  
19 and readability. Proposed new §211.1(a) would describe the purpose of Chapter 211 by incorporating  
20 existing language in current §211.3(a). The proposed amendments would add at the end of the paragraph  
21 the obligation for the department to review criminal history of license applicants before issuing a new or  
22 renewal license and the option for the department to act on the license of an existing license holder who  
23 commits an offense during the license period, consistent with Occupations Code, Chapter 53 and

1 §§2301.651, 2302.104, 2302.105, and 2302.108, and Transportation Code, §503.034 and §503.038, and  
2 existing department procedures.

3 A proposed amendment to §211.1 would reorganize the current definitions into a subsection (b).  
4 Proposed amendments to §211.1(2) would delete references to “registration, or authorization,” add an  
5 “or” to §211.1(2)(B), delete an “or” and add sentence punctuation in §211.1(2)(C), and delete  
6 §211.1(2)(D). These proposed amendments would clarify that Chapter 211 only applies to licenses issued  
7 by the department under Transportation Code, Chapter 503 and Occupations Code, Chapters 2301 and  
8 2302, and does not apply to registrations the department may issue under the authority of another  
9 Transportation Code chapter. Registrations or permits that the department issues under other  
10 Transportation Code chapters do not currently require a review of an applicant’s criminal history.  
11 Proposed amendments to §211.1(3) would delete the current list of specific retail license types and define  
12 the term “retail” by listing only those license types that are not considered to be retail. This proposed  
13 amendment would shorten the sentence to improve readability without changing the meaning or scope  
14 of the definition. Additionally, this proposed amendment would eliminate the need to update the rule if  
15 a future statutory change created a new type of vehicle or changed the name of an existing vehicle type.

16 A proposed amendment to the title of §211.2 would substitute “Chapter” for “Subchapter” for  
17 consistency with the rule text. A proposed amendment in §211.2(b) would add a comma after Occupations  
18 Code for consistency in punctuation.

19 The remaining sections in Subchapter A are proposed for repeal as each of these sections are  
20 proposed for inclusion in new Subchapter B.

21 **Proposed New Subchapter B, Criminal History Evaluation**

22 A proposed amendment would add a new subchapter, Subchapter B. Criminal History Evaluation  
23 Guidelines and Procedures. Proposed for inclusion in new Subchapter B are new sections §§211.10-

1 211.13. These new proposed sections would contain the guidelines and procedures rule language  
2 currently found in §§211.3-211.6 with the addition of the proposed changes described below.

3 Proposed new §211.10 would include the rule text of current §211.3 with changes as  
4 follows. Current §211.3(a) would be deleted because that language has been incorporated into proposed  
5 new §211.1(a), which describes the purpose of Chapter 211. Proposed new §211.10(a) would incorporate  
6 the language of current §211.3(b), except for the two paragraphs at the end of that subsection which  
7 duplicate a statutory requirement in Occupations Code, §53.022 and do not need to be repeated in rule.  
8 Proposed new §211.10(b) would recodify language that is currently in §211.3(c), except for §§211.3(c)(1)  
9 and (2), which are redundant and unnecessary statutory references.

10 Proposed new §211.10(c) would incorporate §211.3(d) with the following changes. Proposed new  
11 §211.10(c) would add a comma to correct missing punctuation after “Occupations Code” and would  
12 delete three sentences that specify which offenses apply to a license type. Proposed new §211.10(c)  
13 would include clarifying paragraph numbers: paragraph (1) would identify offenses that apply to all license  
14 types, and paragraph (2) would separate and identify additional offenses that apply only to retail license  
15 types. The proposed new language would add clarity and improve readability. Proposed new language  
16 would divide the offense categories currently in §211.3(d)(1) – (16) between the new paragraphs as  
17 relettered subparagraphs of §§211.10(c)(1) and (2).

18 Proposed new §211.10(c)(1)(B), would incorporate language currently in §211.3(d)(2) and add  
19 language to clarify that offenses involving forgery, falsification of records, or perjury include the  
20 unauthorized sale, manufacturing, alteration, issuance, or distribution of a license plate or temporary tag.  
21 This proposed clarifying language provide additional notice to applicants and license holders that the

1 department considers forging or falsification of license plates or temporary tags to be a serious and  
2 potentially disqualifying offense.

3 Proposed new §211.10(c)(1)(E) would incorporate language currently in §211.3(d)(5) and add  
4 possession and dismantling of motor vehicles to the list of felony offenses under a state or federal statute  
5 or regulation that could potentially be disqualifying. Proposed new §211.10(c)(1)(E) would also include  
6 “motor vehicle parts” to clarify that disqualifying felony offenses include crimes related to motor vehicle  
7 parts as well as to motor vehicles. These proposed clarifications are important due to the increasing  
8 frequency of motor vehicle parts theft, including catalytic converters, tailgates, batteries, and wheel rims  
9 and tires.

10 Proposed new §211.10(c)(1)(G) would incorporate language currently in §211.3(d)(7) and would  
11 clarify that an offense committed while engaged in a licensed activity or on a licensed premises includes  
12 falsification of a motor vehicle inspection required by statute. This clarification is important because  
13 emissions inspections in certain counties are required by law and harm the health and safety of Texas  
14 citizens if not performed.

15 Proposed new §211.10(c)(1)(I) would add that offenses of attempting or conspiring to commit any  
16 of the foregoing offenses are potentially disqualifying offenses because the person intended to commit  
17 an offense. This proposed new language incorporates language from current §211.3(d)(16) and is  
18 necessary to add because the offenses that apply to all license holders and the additional offenses that  
19 only apply to retail license types are proposed to be reorganized into separate paragraphs to improve  
20 readability, so the language regarding conspiracies or attempts to commit the offenses must be repeated  
21 in each paragraph to provide notice of these potentially disqualifying offenses.

1 Proposed new §211.10(c)(2)(E) would make felony offenses under Penal Code, §28.03 potentially  
2 disqualifying when a motor vehicle is damaged, destroyed, or tampered with during the removal or  
3 attempted removal of a catalytic converter. This new amendment aligns with Senate Bill (SB) 224, 88th  
4 Legislature, Regular Session (2023), which amended Penal Code, §28.03 to create a state jail felony for  
5 damage to a motor vehicle because of removal or attempted removal of the catalytic converter.

6 Proposed new §211.10(c)(2)(D) would incorporate §211.3(d)(12) and would add two additional  
7 offenses against the family: Penal Code, §25.04 and §25.08. Penal Code, §25.04 includes offenses  
8 involving the enticement of a child away from the parent or other responsible person, and Penal Code,  
9 §25.08 includes offenses related to the sale or purchase of a child. These offenses are relevant to the retail  
10 professions licensed by the department because parents frequently bring children to a dealership when  
11 considering a vehicle purchase, and a retail license holder may have unsupervised access to a child while  
12 a parent test-drives a vehicle or is otherwise engaged in viewing or inspecting a vehicle offered for sale.  
13 License holders also have access to the parent's motor vehicle records, including the family's home  
14 address. A person with a predisposition to commit these types of crimes would have the opportunity to  
15 engage in further similar conduct.

16 Proposed new §211.10(c)(2)(F) would incorporate the language of current §211.3(d)(13), and  
17 clarify that the department would consider any offense against the person to be potentially be  
18 disqualifying, would add a reference to Penal Code, Title 5, and would further clarify that an offense in  
19 which use of a firearm resulted in fear, intimidation, or harm of another person would be included in the  
20 list of potentially disqualifying crimes. Additionally, proposed new §211.10(c)(2)(F) would clarify that a  
21 felony offense of driving while intoxicated which resulted in harm to another person may also be  
22 potentially disqualifying. The department considers these offenses to be related to the occupations of

1 retail license holders because these license holders have direct contact with members of the public during  
2 vehicle test drives or other settings in which no one else is present, and retail license holders have access  
3 to an individual's motor vehicle records, including the individual's home address. A person with a  
4 predisposition for violence would have the opportunity in these situations to engage in further similar  
5 conduct. These proposed amendments would further clarify which offenses against a person the  
6 department considers directly related to the licensed occupation and therefore potentially disqualifying.  
7 The department's consideration of these crimes is subject to certain limitations in Occupations Code,  
8 Chapter 53.

9 Proposed new §211.11 would incorporate language from current §211.4, with the addition of  
10 proposed new §211.11(a), which would clarify that the department will deny a pending application if an  
11 applicant or an applicant's representative as defined in §211.2(a)(2) is imprisoned. Occupations Code,  
12 §53.021(b) requires an agency to revoke a license holder's license on the license holder's imprisonment  
13 following a felony conviction, felony community supervision revocation, revocation of parole, or  
14 revocation of mandatory supervision. Because the department also determines licensure eligibility based  
15 on individuals serving as representatives for the license holder, the department also considers the effect  
16 of imprisonment of those persons on a license holder. Because the revocation for a felony conviction is  
17 mandatory in Occupations Code, §53.021(b), the department must also deny a pending application. An  
18 applicant who is imprisoned may reapply once the applicant is no longer imprisoned and an applicant  
19 whose application is denied based on an imprisoned individual serving in a representative capacity may  
20 choose a different representative and reapply for licensure. Proposed new §211.11(b) would substitute  
21 "of" for "or" to correct a typographical error made at adoption of §211.4. Proposed new §211.11(c)  
22 incorporates language from current §211.4(d). Proposed new §211.11(d) incorporates language from  
23 current §211.4(c).



1 Proposed new §211.12 would incorporate without change the language in current §211.5 that  
2 addresses the procedure for a person to obtain a criminal history evaluation letter from the department.  
3 This process allows a person to request an evaluation prior to applying for a license if the person so  
4 desires.

5 Proposed new §211.13(a) would incorporate the current language of §211.6(a) and would clarify  
6 that fingerprint requirements apply to “an applicant for a new or renewal license” to improve readability  
7 without changing meaning. Proposed new §211.13(b)(1) would incorporate the language of current  
8 §211.6(b)(1) and would clarify that a trust beneficiary is a person who may be required by the department  
9 to submit a set of fingerprints to the Texas Department of Public Safety as part of the application process  
10 for those license types. This is a clarification rather than an extension of the existing requirements for the  
11 fingerprinting of owner applicants, because a trust beneficiary is an equitable owner of the trust’s assets.  
12 It is necessary for the department to fingerprint trust beneficiaries along with other owners because doing  
13 so will prevent a bad actor with a history of criminal offenses that directly relate to the duties and  
14 responsibilities of a license holder from obtaining a license from the department by using a trust to hide  
15 the bad actor’s identity and then using that license to perpetrate, or benefit from, fraudulent and criminal  
16 actions, or otherwise take advantage of the position of trust created by the license.

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

22 **PUBLIC BENEFIT AND COST NOTE.** Ms. Johnston also determined that, for each year of the first five years  
23 the proposal is in effect, public benefits are anticipated, and that applicants and license holders will not

1 incur costs to comply with the proposal. The anticipated public benefits include reduced opportunity for  
2 fraud and related crime, and improved public safety. Requiring fingerprints for a trust beneficiary will  
3 benefit the public by preventing bad actors with a history of criminal offenses that directly relate to the  
4 duties and responsibilities of a license holder from obtaining licenses by using a trust to hide their identity  
5 and then using those licenses to perpetrate, or benefit from, fraud and criminal actions, or otherwise take  
6 advantage of the position of trust created by the license.

7 Ms. Johnston anticipates that there will be no additional costs on regulated persons to comply  
8 with the submission and evaluation of information under this proposal because the rules do not establish  
9 any new requirements or costs for regulated persons unless the person commits a crime. The proposed  
10 requirement in §211.13(b)(1) for the fingerprinting of trust beneficiaries is a clarification of the existing  
11 requirement that applicant owners must be fingerprinted, as trust beneficiaries are equitable owners of  
12 the trust's assets. It therefore does not create a new fingerprinting requirement. Additionally, Ms.  
13 Johnston anticipates that there will be no additional costs on regulated persons to comply with the  
14 fingerprint requirements under this proposal as the new section does not establish fees for fingerprinting  
15 or processing criminal background checks. Fees for fingerprinting and access to criminal history reports  
16 are established by DPS under the authority of Texas Government Code, Chapter 411.

17 **ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS.** As required by Government  
18 Code, §2006.002, the department has determined that this proposal will not have an adverse economic  
19 effect or disproportionate economic impact on small or micro businesses. The department has also  
20 determined that the proposed amendments will not have an adverse economic effect on rural  
21 communities because rural communities are exempt from the requirement to hold a license under  
22 Transportation Code, §503.024. Therefore, under Government Code, §2006.002, the department is not  
23 required to perform a regulatory flexibility analysis.

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

5 **GOVERNMENT GROWTH IMPACT STATEMENT.** The department has determined that each year of the  
6 first five years the proposed repeal and amendments are in effect the amendments will not create or  
7 eliminate a government program; will not require the creation of new employee positions and will not  
8 require the elimination of existing employee positions; will not require an increase or decrease in future  
9 legislative appropriations to the department; will not require an increase in fees paid to the department;  
10 will create new regulations and expand existing regulations, as described in the explanation section of this  
11 proposal; will repeal existing regulations in §§211.3 – 211.6; will increase the number of individuals  
12 subject to the rule's applicability regarding fingerprinting of trust beneficiaries; and will not significantly  
13 benefit 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. Central  
16 Standard Time on December 9, 2024. A request for a public hearing must be sent separately from your  
17 written comments. Send written comments or hearing requests by email to *rules@txdmv.gov* or by mail  
18 to Office of General Counsel, Texas Department of Motor Vehicles, 4000 Jackson Avenue, Austin, Texas  
19 78731. If a hearing is held, the department will consider written comments and public testimony  
20 presented at the hearing.

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1 Transportation Code, §503.002, which authorizes the board to adopt rules for the administration of  
2 Transportation Code, Chapter 503; and Transportation Code, §1002.001, which authorizes the board to  
3 adopt rules that are necessary and appropriate to implement the powers and the duties of the  
4 department.

5 **CROSS REFERENCE TO STATUTE.** Government Code, Chapter 411; Occupations Code, Chapters 53, 2301  
6 and 2302; Transportation Code, Chapters 503 and 1002; Penal Code, Chapters 25, 28, 43, 49 and Title 5;  
7 and Code of Criminal Procedure, Article 42A and 62.

8

9 Text.

10 §211.1. Purpose and Definitions.

11 (a) The licenses issued by the department create positions of trust. License holder services  
12 involve access to confidential information; conveyance, titling, and registration of private property;  
13 possession of monies belonging to or owed to private individuals, creditors, and governmental entities;  
14 and compliance with federal and state environmental and safety regulations. License holders are  
15 provided with opportunities to engage in fraud, theft, money laundering, and related crimes, and to  
16 endanger the public through violations of environmental and safety regulations. Many license holders  
17 provide services directly to the public, so licensure provides persons predisposed to commit assaultive  
18 or sexual crimes with greater opportunities to engage in such conduct. To protect the public from these  
19 harms, the department shall review the criminal history of license applicants before issuing a new or  
20 renewal license and may take action on a license holder who commits an offense during the license  
21 period based on the guidelines in this chapter.

1           **(b)** When used in this chapter, the following words and terms have the following meanings,  
2 unless the context clearly indicates otherwise.

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

4                   (2) "License" means any license [~~, registration, or authorization,~~] issued by the  
5 department under:

6                           (A) Transportation Code, Chapter 503;

7                           (B) Occupations Code, Chapter 2301; or

8                           (C) Occupations Code, Chapter 2302. [~~or~~]

9                           [~~(D) any other license, registration, or authorization, that the department may~~  
10 ~~deny or revoke because of a criminal offense of the applicant or license holder.~~]

11                   (3) "Retail license types" means those license [~~holder~~] types which require holders to  
12 ~~[that]~~ interact directly with the public, [~~including salvage dealers, converters, independent mobility~~  
13 ~~motor vehicle dealers, lease facilitators, and general distinguishing number holders for the following~~  
14 ~~vehicle categories: all terrain vehicle, light truck, motorcycle, motorhome, moped /motor scooter,~~  
15 ~~medium duty truck, neighborhood vehicle, other, passenger auto, recreational off highway vehicle, and~~  
16 ~~towable recreational vehicle,~~] but does not include other license types that do not generally interact  
17 directly with the public, including manufacturers, distributors, and general distinguishing number  
18 holders for the following vehicle categories: ambulance, axle, bus, engine, fire truck/fire fighting vehicle,  
19 heavy duty truck, transmission, wholesale motor vehicle dealer, and wholesale motor vehicle auction.

20

1 §211.2. Application of Chapter [~~Subchapter~~].

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

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

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

7 (b) In this chapter a "conviction" includes a deferred adjudication that is considered to be a  
8 conviction under Occupations Code, §53.021(d).

9

10 **STATUTORY AUTHORITY.** The department proposes repeals to Chapter 211 under Government Code,  
11 §411.122(d), which authorizes department access to criminal history record information maintained by  
12 DPS; Government Code, §411.12511, which authorizes the department to obtain criminal history record  
13 information from DPS and the FBI for license applicants, license holders, and representatives whose act  
14 or omission would be cause for denying, revoking, or suspending a general distinguishing number or  
15 license issued under Transportation Code, Chapter 503, or Occupations Code, Chapters 2301 and 2302;  
16 Occupations Code, §2301.151, which gives the board authority to regulate the distribution, sale, and lease  
17 of motor vehicles and the authority to take any action that is necessary or convenient to exercise that  
18 authority; Occupations Code, §2301.152, which authorizes the board to establish the qualifications of  
19 license holders, ensure that the distribution, sale, and lease of motor vehicles is conducted as required by  
20 statute and board rules, to prevent fraud, unfair practices, discrimination, impositions, and other abuses  
21 in connection with the distribution and sale of motor vehicles, and to enforce and administer Occupations

1 Code, Chapter 2301 and Transportation Code, Chapter 503; Occupations Code, §2301.155, which  
2 authorizes the board to adopt rules as necessary or convenient to administer Occupations Code, Chapter  
3 2301 and to govern practice and procedure before the board; Occupations Code, §2301.651, which gives  
4 the board authority to deny an application for a license, to revoke or suspend a license, to place on  
5 probation, or to reprimand a license holder if the applicant or license holder is unfit, makes a material  
6 misrepresentation, violates any law relating to the sale, distribution, financing, or insuring of motor  
7 vehicles, willfully defrauds a purchaser, or fails to fulfill a written agreement with a retail purchaser of a  
8 motor vehicle; Occupations Code, §2302.051, which authorizes the board to adopt rules as necessary to  
9 administer Occupations Code, Chapter 2302; Transportation Code, §503.002, which authorizes the board  
10 to adopt rules for the administration of Transportation Code, Chapter 503; and Transportation Code,  
11 §1002.001, which authorizes the board to adopt or rules that are necessary and appropriate to implement  
12 the powers and the duties of the department.

13 **CROSS REFERENCE TO STATUTE.** Government Code, Chapter 411; Occupations Code, Chapters 53, 2301  
14 and 2302; Transportation Code, Chapters 503 and 1002; Penal Code, Chapters 25, 28, 43, 49 and Title 5;  
15 and Code of Criminal Procedure, Article 42A and 62.

16

17 Text.

18 [~~§211.3. Criminal Offense Guidelines.~~]

19 [~~(a) The licenses issued by the department create positions of trust. License holders provide~~  
20 ~~services to members of the public. License holder services involve access to confidential information,~~  
21 ~~conveyance, titling, and registration of private property, possession of monies belonging to or owed to~~  
22 ~~private individuals, creditors, and governmental entities, and compliance with federal and state~~



1 ~~environmental and safety regulations. License holders are provided with opportunities to engage in~~  
2 ~~fraud, theft, money laundering, and related crimes and to engage in environmental and safety violations~~  
3 ~~that endanger the public. In addition, licensure provides persons predisposed to commit assaultive or~~  
4 ~~sexual crimes with greater opportunities to engage in such conduct.]~~

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

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

19 ~~[(1) an offense listed in Article 42A.054, Code of Criminal Procedure; or]~~

20 ~~[(2) a sexually violent offense, as defined by Article 62.001, Code of Criminal Procedure.]~~

1           ~~[(d) The list of offenses in this subsection is intended to provide guidance only and is not~~  
2 ~~exhaustive of the offenses that may relate to a particular regulated occupation. After due consideration~~  
3 ~~of the circumstances of the criminal act and its relationship to the position of trust involved in the~~  
4 ~~particular licensed occupation, the department may find that an offense not described below also~~  
5 ~~renders a person unfit to hold a license based on the criteria listed in Occupations Code §53.022.~~  
6 ~~Paragraphs (1) – (8) of this subsection apply to all license types. Paragraphs (9) – (15) of this subsection~~  
7 ~~apply only to retail license types. Paragraph (16) of this subsection applies to offenses applicable to a~~  
8 ~~license type.]~~

9           ~~[(1) offenses involving fraud, theft, deceit, misrepresentation, or that otherwise reflect~~  
10 ~~poorly on the person’s honesty or trustworthiness, including an offense defined as moral turpitude;]~~

11           ~~[(2) offenses involving forgery, falsification of records, or perjury;]~~

12           ~~[(3) offenses involving the offering, paying, or taking of bribes, kickbacks, or other illegal~~  
13 ~~compensation;]~~

14           ~~[(4) felony offenses against public administration;]~~

15           ~~[(5) felony offenses under a state or federal statute or regulation involving the~~  
16 ~~manufacture, sale, finance, distribution, repair, salvage, or demolition, of motor vehicles;]~~

17           ~~[(6) felony offenses under a state or federal statute or regulation related to emissions~~  
18 ~~standards, waste disposal, water contamination, air pollution, or other environmental offenses;]~~

19           ~~[(7) offenses committed while engaged in a licensed activity or on licensed premises;]~~

1                   ~~[(8) felony offenses involving the possession, manufacture, delivery, or intent to deliver~~  
2 ~~controlled substances, simulated controlled substances, dangerous drugs, or engaging in an organized~~  
3 ~~criminal activity;]~~

4                   ~~[(9) felony offenses against real or personal property belonging to another;]~~

5                   ~~[(10) offenses involving the sale or disposition of another person's real or personal~~  
6 ~~property;]~~

7                   ~~[(11) a reportable felony offense conviction under Chapter 62, Texas Code of Criminal~~  
8 ~~Procedure for which the person must register as a sex offender;]~~

9                   ~~[(12) an offense against the family as described by Penal Code §§25.02, 25.07, 25.072,~~  
10 ~~or 25.11;]~~

11                   ~~[(13) felony offenses against the person;]~~

12                   ~~[(14) a felony stalking offense as described by Penal Code §42.072;]~~

13                   ~~[(15) a felony offense against public order and decency as described by Penal Code~~  
14 ~~§§43.24, 43.25, 43.251, 43.26, 43.261, or 43.262; and]~~

15                   ~~[(16) offenses of attempting or conspiring to commit any of the foregoing offenses~~  
16 ~~applicable to the license type].~~

17                   ~~[(e) When determining a person's present fitness for a license, the department shall also~~  
18 ~~consider the following evidence:]~~

19                   ~~[(1) the extent and nature of the person's past criminal activity;]~~

20                   ~~[(2) the age of the person when the crime was committed;]~~

1                   ~~[(3) the amount of time that has elapsed since the person's last criminal activity;]~~

2                   ~~[(4) the conduct and work activity of the person before and after the criminal activity;]~~

3                   ~~[(5) evidence of the person's rehabilitation or rehabilitative effort while incarcerated or~~  
4 ~~after release;]~~

5                   ~~[(6) evidence of the person's compliance with any conditions of community supervision,~~  
6 ~~parole, or mandatory supervision; and]~~

7                   ~~[(7) other evidence of the person's present fitness, including letters of~~  
8 ~~recommendation.]~~

9                   ~~[(f) It is the person's responsibility to obtain and provide to the licensing authority evidence~~  
10 ~~regarding the factors listed in subsection (e) of this section.]~~

11

12                   ~~[\$211.4. Imprisonment.]~~

13                   ~~[(a) Section 211.3 of this Chapter does not apply to persons who are imprisoned at the time the~~  
14 ~~department considers the conviction.]~~

15                   ~~[(b) The department shall revoke a license upon the imprisonment of a license holder following~~  
16 ~~a felony conviction or revocation or felony community supervision, parole, or mandatory supervision.]~~

17                   ~~[(c) The department may revoke a license upon the imprisonment for a felony conviction, felony~~  
18 ~~community supervision revocation, revocation of parole, or revocation of mandatory supervision of a~~  
19 ~~person described by §211.2(a)(2) of this chapter who remains employed with the license holder.]~~

1           ~~[(d) A person currently imprisoned because of a felony conviction may not obtain a license,~~  
2 ~~renew a previously issued license, or act in a representative capacity for an application or license holder~~  
3 ~~as described by §211.2(a)(2).]~~

4

5 ~~[§211.5. Criminal History Evaluation Letters.]~~

6           ~~[(a) Pursuant to Texas Occupations Code, Chapter 53, Subchapter D, a person may request that~~  
7 ~~the department evaluate the person's eligibility for a specific occupational license regulated by the~~  
8 ~~department by:]~~

9                     ~~[(1) submitting a request on a form approved by the department for that purpose; and]~~

10                    ~~[(2) paying the required Criminal History Evaluation Letter fee of \$100.]~~

11           ~~[(b) The department shall respond to the request not later than the 90th day after the date the~~  
12 ~~request is received.]~~

13

14 ~~[§211.6. Fingerprint Requirements for Designated License Types.]~~

15           ~~[(a) The requirements of this section apply to applicants for and holders of license types~~  
16 ~~designated in Chapter 215 or Chapter 221 of this title as requiring fingerprints for licensure.]~~

17           ~~[(b) Unless previously submitted for an active license issued by the department, the following~~  
18 ~~persons may be required to submit a complete and acceptable set of fingerprints to the Texas~~  
19 ~~Department of Public Safety and pay required fees for purposes of obtaining criminal history record~~  
20 ~~information from the Texas Department of Public Safety and the Federal Bureau of Investigation:]~~

1                   ~~[(1) a person applying for a new license, license amendment due to change in~~  
2                   ~~ownership, or license renewal; and]~~

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

6                   ~~[(c) After reviewing a licensure application and licensing records, the department will notify the~~  
7                   ~~applicant or license holder which persons in subsection (b) of this section are required to submit~~  
8                   ~~fingerprints to the Texas Department of Public Safety.]~~

9

10                   **SUBCHAPTER B. CRIMINAL HISTORY EVALUATION GUIDELINES AND PROCEDURES**

11                   **43 TAC §§211.10-211.13**

12                   **STATUTORY AUTHORITY.** The department proposes new sections to Chapter 211 under Government  
13                   Code, §411.122(d), which authorizes department access to criminal history record information  
14                   maintained by DPS; Government Code, §411.12511, which authorizes the department to obtain criminal  
15                   history record information from DPS and the FBI for license applicants, license holders, and  
16                   representatives whose act or omission would be cause for denying, revoking, or suspending a general  
17                   distinguishing number or license issued under Transportation Code, Chapter 503, or Occupations Code,  
18                   Chapters 2301 and 2302; Occupations Code, §2301.151, which gives the board authority to regulate the  
19                   distribution, sale, and lease of motor vehicles and the authority to take any action that is necessary or  
20                   convenient to exercise that authority; Occupations Code, §2301.152, which authorizes the board to  
21                   establish the qualifications of license holders, ensure that the distribution, sale, and lease of motor

1 vehicles is conducted as required by statute and board rules, to prevent fraud, unfair practices,  
2 discrimination, impositions, and other abuses in connection with the distribution and sale of motor  
3 vehicles, and to enforce and administer Occupations Code, Chapter 2301 and Transportation Code,  
4 Chapter 503; Occupations Code, §2301.155, which authorizes the board to adopt rules as necessary or  
5 convenient to administer Occupations Code, Chapter 2301 and to govern practice and procedure before  
6 the board; Occupations Code, §2301.651, which gives the board authority to deny an application for a  
7 license, to revoke or suspend a license, to place on probation, or to reprimand a license holder if the  
8 applicant or license holder is unfit, makes a material misrepresentation, violates any law relating to the  
9 sale, distribution, financing, or insuring of motor vehicles, willfully defrauds a purchaser, or fails to fulfill  
10 a written agreement with a retail purchaser of a motor vehicle; Occupations Code, §2302.051, which  
11 authorizes the board to adopt rules as necessary to administer Occupations Code, Chapter 2302;  
12 Transportation Code, §503.002, which authorizes the board to adopt rules for the administration of  
13 Transportation Code, Chapter 503; and Transportation Code, §1002.001, which authorizes the board to  
14 adopt rules that are necessary and appropriate to implement the powers and the duties of the  
15 department.

16 **CROSS REFERENCE TO STATUTE.** Government Code, Chapter 411; Occupations Code, Chapters 53, 2301  
17 and 2302; Transportation Code, Chapters 503 and 1002; Penal Code, Chapters 25, 28, 43, 49 and Title 5;  
18 and Code of Criminal Procedure, Article 42A and 62.

19

20 Text.

21 §211.10. Criminal Offense Guidelines.

1           (a) Under Occupations Code, Chapter 53, the department may suspend or revoke an existing  
2 license or disqualify an applicant from receiving a license because of a person’s conviction of a felony or  
3 misdemeanor if the crime directly relates to the duties and responsibilities of the licensed occupation.

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

13           (c) The list of offenses in this subsection is intended to provide guidance only and is not  
14 exhaustive of the offenses that may relate to a particular regulated occupation. After due consideration  
15 of the circumstances of the criminal act and its relationship to the position of trust involved in the  
16 particular licensed occupation, the department may find that an offense not described below also  
17 renders a person unfit to hold a license based on the criteria listed in Occupations Code, §53.022.

18           (1) the following offenses apply to all license types:

19                   (A) offenses involving fraud, theft, deceit, misrepresentation, or that otherwise  
20 reflect poorly on the person’s honesty or trustworthiness, including an offense defined as moral  
21 turpitude;



1                           (B) offenses involving forgery, falsification of records, perjury, or the  
2 unauthorized sale, manufacturing, alteration, issuance, or distribution of a license plate or temporary  
3 tag;

4                           (C) offenses involving the offering, paying, or taking of bribes, kickbacks, or  
5 other illegal compensation;

6                           (D) felony offenses against public administration;

7                           (E) felony offenses under a state or federal statute or regulation involving the  
8 manufacture, sale, finance, distribution, repair, salvage, possession, dismantling, or demolition, of motor  
9 vehicles or motor vehicle parts;

10                          (F) felony offenses under a state or federal statute or regulation related to  
11 emissions standards, waste disposal, water contamination, air pollution, or other environmental  
12 offenses;

13                          (G) offenses committed while engaged in a licensed activity or on licensed  
14 premises, including the falsification of a motor vehicle inspection required by statute;

15                          (H) felony offenses involving the possession, manufacture, delivery, or intent to  
16 deliver controlled substances, simulated controlled substances, dangerous drugs, or engaging in an  
17 organized criminal activity; and

18                          (I) offenses of attempting or conspiring to commit any of the foregoing offenses.

19                          (2) the following additional offenses apply to retail license types:

20                          (A) felony offenses against real or personal property belonging to another;

1 (B) offenses involving the sale or disposition of another person’s real or personal  
2 property;

3 (C) a reportable felony offense conviction under Chapter 62, Texas Code of  
4 Criminal Procedure for which the person must register as a sex offender;

5 (D) an offense against the family as described by Penal Code, §§25.02, 25.04,  
6 25.07, 25.072, 25.08, or 25.11;

7 (E) felony offenses under Penal Code, §28.03 involving a motor vehicle that is  
8 damaged, destroyed, or tampered with during the removal or attempted removal of a catalytic  
9 converter;

10 (F) offenses against the person under Penal Code, Title 5, including offenses in  
11 which use of a firearm resulted in fear, intimidation, or harm of another person, and in Penal Code,  
12 Chapter 49, a felony offense of driving while intoxicated that resulted in the harm of another person;

13 (G) a felony stalking offense as described by Penal Code, §42.072;

14 (H) a felony offense against public order and decency as described by Penal  
15 Code §§43.24, 43.25, 43.251, 43.26, 43.261, or 43.262; and

16 (I) offenses of attempting or conspiring to commit any of the foregoing  
17 offenses.

18 (d) When determining a person’s present fitness for a license, the department shall also  
19 consider the following evidence:

20 (1) the extent and nature of the person’s past criminal activity;

- 1                   (2) the age of the person when the crime was committed;
- 2                   (3) the amount of time that has elapsed since the person’s last criminal activity;
- 3                   (4) the conduct and work activity of the person before and after the criminal activity;
- 4                   (5) evidence of the person’s rehabilitation or rehabilitative effort while incarcerated or  
5 after release;
- 6                   (6) evidence of the person’s compliance with any conditions of community supervision,  
7 parole, or mandatory supervision; and
- 8                   (7) other evidence of the person’s present fitness, including letters of recommendation.
- 9                   (e) It is the person’s responsibility to obtain and provide to the licensing authority evidence  
10 regarding the factors listed in subsection (d) of this section.

11

12 §211.11. Imprisonment.

13                   (a) The department shall deny a license application if the applicant or a person described by  
14 §211.2(a)(2) of this chapter (relating to Application of Chapter) is imprisoned while a new or renewal  
15 license application is pending.

16                   (b) The department shall revoke a license upon the imprisonment of a license holder following a  
17 felony conviction or revocation of felony community supervision, parole, or mandatory supervision.

18                   (c) A person currently imprisoned because of a felony conviction may not obtain a license,  
19 renew a previously issued license, or act in a representative capacity for an application or license holder  
20 as described by §211.2(a)(2).

1           (d) The department may revoke a license upon the imprisonment for a felony conviction, felony  
2 community supervision revocation, revocation of parole, or revocation of mandatory supervision of a  
3 person described by §211.2(a)(2) of this chapter who remains employed with the license holder.

4

5 §211.12. Criminal History Evaluation Letters.

6           (a) Pursuant to Texas Occupations Code, Chapter 53, Subchapter D, a person may request that  
7 the department evaluate the person’s eligibility for a specific occupational license regulated by the  
8 department by:

9                   (1) submitting a request on a form approved by the department for that purpose; and

10                   (2) paying the required Criminal History Evaluation Letter fee of \$100.

11           (b) The department shall respond to the request not later than the 90th day after the date the  
12 request is received.

13

14 §211.13. Fingerprint Requirements for Designated License Types.

15           (a) The requirements of this section apply to an applicant for a new or renewal license for the  
16 license types designated in Chapter 215 or Chapter 221 of this title as requiring fingerprints for  
17 licensure.

18           (b) Unless previously submitted for an active license issued by the department, the following  
19 persons may be required to submit a complete and acceptable set of fingerprints to the Texas

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

3 (1) a person, including a trust beneficiary, applying for a new license, license  
4 amendment due to change in ownership, 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.

11

12

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