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CHAPTER 27. TOLL PROJECTS

SUBCHAPTER G. OPERATION OF DEPARTMENT TOLL PROJECTS

43 TAC §27.80, §27.82

The Texas Department of Transportation (department) adopts amendments to §27.80 and §27.82, concerning Operation of Department Toll Projects. The amendments to §27.80 and §27.82 are adopted without changes to the proposed text as published in the July 11, 2014, issue of the *Texas Register* (39 TexReg 5350) and will not be republished.

EXPLANATION OF ADOPTED AMENDMENTS

The department is constructing managed lane projects where dynamic pricing will be used to set the amount of the toll charges for the use of the tolled managed lanes. During the dynamic pricing phase, tolls are continually adjusted according to traffic conditions to maintain a free-flowing level of traffic, generally based on a prescribed algorithm.

The amendments to §27.80 and §27.82 define the term executive director and authorize the executive director to establish toll rates for the use of a toll project where dynamic pricing is in effect. In setting the toll rates, the executive director will consider vehicle classifications, type and location of the facility, regional policies, and similar criteria that apply to a specific project. The toll rates may be established through the approval of an algorithm or other methodology designed to maintain a free-flowing level of traffic on one or more lanes of the toll project.

COMMENTS

Comments were not received for the proposed amendments.

STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §228.007, which provides that the commission may by order authorize the department to charge a toll for the use of one or more lanes of a state highway, and Transportation Code, §228.053, which authorizes the department to impose tolls for the use of each toll project or system and the different segments or parts of each project or system.

CROSS REFERENCE TO STATUTE

Transportation Code, Chapter 228.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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PART 10. TEXAS DEPARTMENT OF MOTOR VEHICLES

CHAPTER 215. MOTOR VEHICLE DISTRIBUTION

SUBCHAPTER C. LICENSES, GENERALLY

43 TAC §215.88, §215.89

The Texas Department of Motor Vehicles (department) adopts new §215.88, Criminal Offense and Action on License; and new §215.89, Fitness, without changes to the proposed text as published in the May 30, 2014, issue of the *Texas Register* (39 TexReg 4211). The new sections will not be republished.

EXPLANATION OF ADOPTED NEW SECTIONS

The adopted new sections implement Occupations Code, Chapter 53 and §2301.651. The statutory provisions authorize and, at times, require board or department action on an application for a license or an existing license issued by the department when a person has committed a criminal offense or is unfit to hold a license. The adopted new sections identify criminal offenses that directly relate to the duties and responsibilities of such license holders and provide standards for determination of fitness for licensure.

The adopted new sections address a license issued under Transportation Code, Chapter 503 or under Occupations Code, Chapter 2301, which include manufacturers, distributors, representatives, converters, dealers, auctions, independent mobility motor vehicle dealers, vehicle lease facilitators, and vehicle lessors. The department is issuing guidelines in accordance with Occupations Code, §53.025, stating the reasons a particular criminal offense is considered to relate to a particular license. The guidelines are being published in the *In Addition* section of the *Texas Register*.

These adopted new sections preserve the applicant's or licensee's right to an opportunity for a hearing on the merits before action is taken to deny an application or to revoke or suspend a license.

The distribution and sale of motor vehicles in Texas vitally affects the general economy of the state and the public interest and welfare of its citizens. The department is charged with preventing fraud, unfair practices, discrimination, impositions, or other abuses of the people of Texas to ensure a sound system of distributing and selling motor vehicles.

Adopted new §215.88(a) provides the purpose and scope of the new section.

Adopted new §215.88(b) provides that an action by the board or department to deny an application for a license or to revoke or suspend a license will be made in accordance with applicable law and board rules.

Adopted new §215.88(c) clarifies the terms "applicant" and "person" as used in §215.88, and provides a non-exhaustive list of individuals identified by those terms.

Adopted new §215.88(d) implements Occupations Code, §2301.651(b), which authorizes the board to take action against an applicant or license holder for an act or omission by an officer, director, partner, trustee, or other person acting in a representative capacity for the applicant or license holder that could be cause for denying, suspending, or revoking the license. Because "person" is defined in new §215.88(c), "person" in §215.88(d) specifically includes those individuals identified under §215.88(c), such as an owner, president, vice-president, member of the board of directors, chief executive officer, chief financial officer, chief information officer, chief managing officer, treasurer, controller, director, principal, manager of business affairs, spouse with a community property interest in the licensed entity, a controlling shareholder of the licensed business entity, or a person holding 50% or more ownership interest in the licensed business entity.

Adopted new §215.88(e) implements the mandatory suspension requirements of Family Code, Chapter 232. Family Code, §232.011, requires the board to suspend a license upon receipt of an order or notification issued under Family Code, Chapter 232. The board or department's suspension of the license does not afford the licensee an opportunity for a hearing under Government Code, Chapter 2001. Upon receipt of an order under Family Code, Chapter 232, vacating or staying an order suspending a license, the board must issue or reinstate the license if the applicant or license holder is otherwise qualified for the license.

Adopted new §215.88(f) prohibits a person who is currently imprisoned for felony conviction under any state or federal law from being licensed by the department.

Adopted new §215.88(g) implements Occupations Code, §53.021(b), which requires the board or department to revoke a license issued by the department upon the licensee's imprisonment for a felony conviction, felony community supervision revocation, revocation of parole, or revocation of mandatory supervision. The statutory provision is mandatory and the board and department have no discretion when the licensee is imprisoned under these circumstances.

Adopted new §215.88(h) implements Occupations Code, §53.021 and §2301.651, by giving the board or department discretion to revoke a license issued by the department when certain persons other than the licensee are imprisoned for felony conviction, felony community supervision revocation, revocation of parole, or revocation of mandatory supervision.

Adopted new §215.88(i) implements Occupations Code, §53.021(a), and permits the board or department to suspend a license, revoke a license, or disqualify a person from receiving a license under four scenarios. First, the board or department has discretion to act on an application for a license or a license if a person is convicted of an offense that directly relates to the duties and responsibilities of the licensed occupation. Second, the board or department has discretion to act on an application for a license or a license if a person is convicted of an offense that does not directly relate to the duties of the licensed occupation

but that was committed less than five years before the date the person applies for the license. Third, the board or department has discretion to act on an application for a license or a license if a person is convicted of certain criminal offenses, including murder, capital murder, indecency with a child, aggravated kidnapping, aggravated sexual assault, aggravated robbery, sexual assault, sexual performance by a child, compelling prostitution, trafficking of persons; the manufacture or delivery of a controlled substance or delivery of marijuana in certain locations, such as near a youth center, playground, public swimming pool, or video arcade facility; and injury to a child, elderly individual, or disabled individual, under certain conditions. Fourth, the board or department has discretion to act on an application for a license or a license if a person is convicted of a "sexually violent offense" as that term is defined in the Code of Criminal Procedure, Article 62.001 (any of the following committed by a person 17 years of age or older: continuous sexual abuse of a young child or children, indecency with a child, sexual assault, aggravated sexual assault, or sexual performance by a child). The definition also addresses conviction of aggravated kidnapping and burglary, under certain conditions.

Adopted new §215.88(j) lists offenses that directly relate to the duties and responsibilities of the occupations licensed by the department under Transportation Code, Chapter 503 or Occupations Code, Chapter 2301. The list of criminal offenses reflects the diverse nature of the occupations involved in the vehicle and motor vehicle businesses and industry. The list of crimes includes offenses against the person, property, and public administration; offenses involving motor vehicles, certificates of title and registration, tax, hazardous substances, the environment, organized crime, competition and trade practices; and certain federal offenses involving commerce and trade, motor vehicle safety standards, equipment tampering, and odometer tampering.

Adopted new §215.89 implements Occupations Code, §§53.021, 53.022, 53.023, and 2301.651. Adopted new §215.89(a) affirms that in determining a person's fitness for a license, the board or department will consider applicable law, including specific statutory licensing criteria or requirements, mitigating factors, extenuating circumstances, and other evidence of a person's fitness.

Adopted new §215.89(b) provides that the board or department has discretion to determine a person's fitness for licensure and lists the actions and omissions the board or department considers indicative of a person's fitness to hold a license. These actions or omissions include failure to meet or maintain the qualifications required for licensure; conviction of a criminal offense listed in §215.88(j); omission of or incomplete information provided by an applicant or licensee on an application regarding a conviction; a history of violation of regulatory requirements, including violations in other jurisdictions; or the failure of an applicant or licensee to meet its financial obligations, maintain the authority necessary to conduct business in Texas, pay a civil penalty or administrative fee, or to otherwise comply with the terms of a final order. In order to limit an unfit person's ability to conceal himself or herself as another person or as another entity or to transform into a different entity for the purpose of obtaining a license, the board or department may consider certain relationships of the applicant or licensee in making a fitness determination, including business associations and familial relationships. Finally, the board or department may determine that an applicant or licensee is unfit to hold a license if the person is found, in an order issued through an administrative proceeding,

to be unfit or to be acting in a manner detrimental to a sound system of distribution or sale of motor vehicles in Texas.

COMMENTS

No comments on the proposed new sections were received.

STATUTORY AUTHORITY

The new sections are adopted under Transportation Code, §503.002 and §1002.001, and under Occupations Code, §2301.153 and §2301.155, which provide the Board of the Texas Department of Motor Vehicles the authority to establish rules for the conduct of the work of the department; under Transportation Code, §503.038, which authorizes the department to cancel a dealer's general distinguishing number license if the dealer violates a rule adopted under Transportation Code, Chapter 503; under Occupations Code, §53.025, which requires the department to issue guidelines stating the reasons a particular crime relates to a particular license; under Occupations Code, §§2301.151-2301.153 and 2301.155, which provide the board's jurisdiction, require the board to ensure that the regulation of motor vehicles in Texas is conducted as required by board rules, and empower and authorize the board to adopt rules necessary or convenient to administer Occupations Code, Chapter 2301; under §2301.351, which prohibits a dealer from violating a board rule; and under Occupations Code, §2301.651, which provides for the board's denial of an application for license or revocation or suspension of a license if the applicant or license holder is unfit under standards described in board rules.

CROSS REFERENCE TO STATUTE

Occupations Code, §§53.021, 53.022 - 53.025, and 2301.651.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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CHAPTER 217. VEHICLE TITLES AND REGISTRATION

SUBCHAPTER H. DEPUTIES

43 TAC §217.111

The Texas Department of Motor Vehicles (department) adopts new Subchapter H, Deputies, §217.111, Deputies, which was proposed as §217.111, Purpose and Scope, with changes to the proposed text as published in the May 23, 2014, issue of the *Texas Register* (39 TexReg 3974). Adopted new §217.111 will be republished. The department simultaneously withdraws proposed new §§217.112 - 217.116 as published in the May 23, 2014, issue of the *Texas Register* (39 TexReg 3974).

EXPLANATION OF ADOPTED NEW SUBCHAPTER

The new subchapter implements Transportation Code, §520.0071, as added by House Bill 2741 and House Bill 2202, 83rd Legislature, Regular Session, 2013. Section 520.0071 requires the board by rule to prescribe the classification types of deputies performing titling and registration duties, the duties and obligations of deputies, the type and amount of any bonds that may be required by a county assessor-collector for a deputy to perform titling and registration duties, and the fees that may be charged or retained by deputies.

These bills also repealed Transportation Code, §§520.008, 520.009, 520.0091, and 520.0092, which had governed deputies providing titling and registration services.

Both of these bills also provided that a deputy appointed under Transportation Code, §520.0091 on or before August 31, 2013, may continue to perform the services authorized under Transportation Code, §§520.008, 520.009, 520.0091, and 520.0092, until the effective date of the rules regarding the types of deputies authorized to perform titling and registration duties under Transportation Code, §520.0071.

The proposed new sections of Subchapter H were intended to fill the void created by the repeal of the former Transportation Code sections describing deputies and their duties and obligations, and to implement the legislative directive to prescribe rules governing deputies performing titling and registration duties. The fees proposed under this rulemaking were intended to be temporary, until the completion of a study of the cost to process motor vehicle registration and titling transactions. After the study was completed and the findings presented to the board of the department, the board would then decide whether to reopen the rules for amendment.

The publication of the proposed new rules resulted in a great number of comments from the public, including comments from stakeholders such as county tax assessor-collectors, title companies, automobile dealers, industry groups, and other concerned private and public citizens and organizations. These comments are summarized in more detail in the "comments" section below.

Many of the comments expressed the concern that the proposed additional fees that deputies could charge for providing titling and registration services were too low, so that many deputies would be put out of business or refuse to continue to provide titling and registration services as deputies. Many of the comments expressed the concern that the loss of deputies would impose increased financial and workflow burdens on the county tax assessor-collectors, and would greatly inconvenience those customers who prefer the convenience, additional services, and improved efficiency that a deputy may offer.

Several commenters urged the department to wait until the completion of the comprehensive titling and registration fee study, which is expected to be completed in November 2014, before enacting rules related to deputy fees. Several commenters also urged that the department convene a working group of stakeholders, including industry groups, representative county tax assessor-collectors, and other interested parties, to discuss deputy issues, including fees, before the adoption of the deputy rules.

In response to these comments, the department is withdrawing the proposed deputy rules (except for §217.111, which is being modified, as explained below). The department will repropose new deputy rules following the completion of the fee study and following additional discussions with stakeholders and other interested parties.