

subsection, the application will be deemed withdrawn and will be administratively closed.

(h) The department will evaluate a sufficient application for a new license, license amendment, or license renewal in accordance with applicable rules and statutes to determine whether to approve or deny the application. If the department determines that there are grounds for denial of the application, the department may pursue denial of the application in accordance with Subchapter J of this chapter (relating to Administrative Sanctions).

(i) The department will process an application for a new license, license amendment, or license renewal filed by a military service member, military spouse, or military veteran in accordance with Occupations Code, Chapter 55. A license holder who fails to timely file a sufficient application for a license renewal because that license holder was on active duty is exempt from any increased fee or penalty imposed by the department for failing to renew the license in a timely manner.

(j) A military spouse may engage in a business or occupation for which a department issued license is required if the military spouse meets the requirements of Occupations Code, §55.0041 and this section.

(1) To meet the requirements of Occupations Code, §55.0041, a military spouse must submit to the department:

(A) notice of the military spouse's intent to engage in a business or occupation in Texas for which a department issued license is required;

(B) proof of the military spouse's residency in Texas and a copy of the military spouse's military identification card, as required by Occupations Code, §55.0041(b)(2); and

(C) documentation demonstrating that the military spouse is licensed and in good standing in another jurisdiction for the relevant business or occupation.

(2) Upon receipt of the notice and documentation required by paragraphs (1)(B) and (C) of this subsection, the department shall:

(A) confirm with the other licensing jurisdiction that the military spouse is currently licensed and in good standing for the relevant business or occupation; and

(B) conduct a comparison of the other jurisdiction's license requirements, statutes, and rules with the department's licensing requirements to determine if the requirements are substantially equivalent.

(3) If the department confirms that a military spouse is currently licensed in good standing in another jurisdiction with substantially equivalent licensing requirements, the department may issue a license to the military spouse for the relevant business or occupation. The license is subject to requirements in Chapter 215 of this title and Occupations Code, Chapter 2301 in the same manner as a license issued under the standard application process, unless exempted under Occupations Code, Chapter 55.

(k) [(j)] A license holder who timely files a sufficient license renewal application in accordance with subsection (d) of this section may continue to operate under the expired license until the license renewal application is determined.

(l) [(k)] A license holder who fails to timely file a sufficient license renewal application in accordance with subsection (d) of this section is not authorized to continue licensed activities after the date the license expires. A license holder may dispute a decision that a license renewal application was not timely or sufficient by submitting

evidence to the department demonstrating that the license renewal application was timely and sufficient. Such evidence must be received by the department within 10 calendar days of the date the department issues notice that a timely or sufficient license renewal application was not received by the department.

(m) [(h)] The department shall accept a late license renewal application up to 90 days after the date the license expires. In accordance with subsection (1) [(k)] of this section, the license holder is not authorized to continue licensed activities after the date the license expires until the department approves the late license renewal application. If the department grants a license renewal under this section, the licensing period begins on the date the department issues the renewed license. The license holder may resume licensed activities upon receipt of the department's written verification or upon receipt of the renewed license.

(n) [(m)] If the department has not received a late license renewal application within 90 days after the date the license expires, the department will close the license. A person must apply for and receive a new license before that person is authorized to resume activities requiring a license.

(o) [(n)] A metal dealer's license plate issued in accordance with Transportation Code, Chapter 503, Subchapter C expires on the date the associated license expires or when a license renewal application is determined, whichever is later.

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

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Tracey Beaver

General Counsel

Texas Department of Motor Vehicles

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For further information, please call: (512) 465-5665



SUBCHAPTER D. FRANCHISED DEALERS, MANUFACTURERS, DISTRIBUTORS, AND CONVERTERS

43 TAC §215.102

INTRODUCTION.

The Texas Department of Motor Vehicles (department) proposes the repeal of §215.102, Representatives; amendments to 43 TAC §215.133, General Distinguishing Number; and new §215.161, Licensing Education Course Requirements. The proposed amendments, new section, and repeal are necessary to implement statutory changes made by the 86th Legislature, Regular Session (2019) in House Bill (HB) 3842, HB 1667; and Senate Bill (SB) 604, 86th Legislature, Regular Session.

EXPLANATION OF PROPOSED AMENDMENTS, NEW SECTION, AND REPEAL.

Proposed repeal of §215.102, Representatives, implements SB 604, which eliminates the "representative" license.

Proposed amended §215.133(a) implements Transportation Code, §503.027(a), as amended by HB 3842. House Bill 3842 removed the exception under Transportation Code, §503.027(a), that provided a dealer is not required to hold a

general distinguishing number (GDN) for a location from which the dealer consigns five or fewer vehicles in a calendar year. The phrase "unless the consignment location is a wholesale motor vehicle auction" was added to conform to Transportation Code, §503.027(a).

Proposed new §215.133(j) implements HB 1667. House Bill 1667 added Occupations Code, §2302.009, and amended §2302.101, to provide that a person holding an independent motor vehicle GDN is exempt from the requirement that the person also hold a salvage dealer license to act as a salvage vehicle dealer or rebuilder, store or display a motor vehicle as an agent or escrow agent of an insurance company.

Proposed new §215.133(k) implements SB 604 that added new Transportation Code §503.0296 to require an applicant for an original or renewal general distinguishing number complete web-based education and training developed or approved by the department. Proposed new §215.133(k) requires that a person must complete licensing training developed or approved by the department to be eligible for an independent motor vehicle GDN. Persons who have completed the required training will not have to retake the training for subsequent renewals. Persons who have held an independent motor vehicle distinguishing number for at least ten years as of September 1, 2019, are exempt from the licensing training requirement.

Proposed new §215.161, Licensing Education Course Requirements, implements SB 604 by adding licensing education course requirements applicable to course providers.

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT.

Linda M. Flores, Chief Financial Officer, has determined that for each year of the first five years the amendments, new section, and repeal will be in effect, there will be no significant fiscal impact to state or local governments as a result of the enforcement or administration of the proposal. Daniel Avitia, Director of the Motor Vehicle Division, has determined that there will be no measurable effect on local employment or the local economy as a result of the proposal.

PUBLIC BENEFIT AND COST NOTE.

Mr. Avitia has also determined that, for each year of the first five years the amendments, new section, and repeal are in effect, the public will benefit because of enforcing or administering the proposals.

Anticipated Public Benefits. The public, including license applicants and license holders, will benefit by the simplification of licensing provided in these proposals and the addition of licensing education provided to independent motor vehicle license applicants and license holders.

Anticipated Costs To Comply With The Proposal. While some independent motor vehicle license holders and applicants may be required to pay a maximum of \$150 to complete a licensing education class, Mr. Avitia has determined that this cost will be offset by the reduced risk of these license holders incurring financial penalties due to noncompliance with laws and regulations, benefitting both the license holders and the public. The department reviewed other states requiring licensing courses for motor vehicle dealers and determined the \$150 is consistent with the fees charged by other states.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS.

As required by Government Code, §2006.002, the department has determined that there may be an adverse economic effect or disproportionate economic impact on small or micro businesses because of the enforcement or administration of these proposals. The cost analysis in the Public Benefit and Cost Note section also applies to these small and micro businesses.

The department has determined that the proposed amendments, new section, and repeal will not have an adverse economic effect or a disproportionate economic impact on rural communities.

The department considered the following alternatives to minimize any adverse impact on small and micro businesses while accomplishing the proposal's objectives: not proposing amendments; and proposing a different requirement for small and micro businesses.

The purpose of new §215.133(k) and §215.161, Licensing Education Course Requirements, is to implement SB 604, 86th Legislature, Regular Session, which requires the department to develop or approve web-based training for an independent motor vehicle dealer applicant. The department believes that proposing different standards than those included in this proposal would not provide a better option for small or micro businesses and would not conform to the requirements under SB 604. Offering education services prior to licensing helps ensure these licensees are knowledgeable in the laws and regulations meant to protect the public from deceptive business practices and other issues related to the motor vehicle industry. If the department did not propose this rule, independent motor vehicle dealers would not have the training necessary to ensure that they are knowledgeable in the rules and regulations affecting their profession. For these reasons, the department has rejected these options. However, the department is proposing a reasonable maximum fee, and requiring trade association course providers to charge the same fee to non-members as members to minimize any potential adverse impact.

TAKINGS IMPACT ASSESSMENT.

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

GOVERNMENT GROWTH IMPACT STATEMENT.

The department has determined that during the first five years the proposed amendments, new section, and repeal are in effect, no government program would be created or eliminated.

Implementation of the proposed amendments, new section, and repeal would not require the creation of new employee positions or elimination of existing employee positions. The licensing education training will be provided by a trade association or an institution of higher learning and the costs to develop and manage the web-based training will be the responsibility of the course provider. Implementation would not require an increase or decrease in future legislative appropriations to the department or an increase or decrease of fees paid to the department as fees for licensing training will be paid to the course providers. The proposed amendments, new section, and repeal will create new regulations; however, these proposals are necessary to implement HB 3842, HB 1667, and SB 604.

Additionally, the proposed amendments, new section, and repeal do not affect the number of individuals subject to the rules applicability and will not affect this state's economy.

REQUEST FOR PUBLIC COMMENT.

If you want to comment on the proposal, submit your written comments by 5:00 p.m. CST on September 23, 2019. A request for a public hearing must be sent separately from your written comments. Send written comments or hearing requests by email to rules@txdmv.gov or by mail to Office of General Counsel, Texas Department of Motor Vehicles, 4000 Jackson Avenue, Austin, Texas 78731. If a hearing is held, the department will consider written comments and public testimony presented at the hearing.

STATUTORY AUTHORITY.

The repeal is proposed under Transportation Code, §503.002, which authorizes the board of the Texas Department of Motor Vehicles to adopt rules for the administration of Transportation Code, Chapter 503; under Transportation Code, §1002.001, which requires and authorizes the department to administer and enforce the provisions of the Occupations Code, Chapter 2301; under Transportation Code, §1002.001, which authorizes the board to adopt rules necessary and appropriate to implement the powers and duties of the department under the Transportation Code and other Texas laws; 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, empower, authorize, and require the board to adopt rules under Occupations Code, Chapter 2301, necessary or convenient to administer Chapter 2301, and govern practice and procedure before the board; and under Occupations Code §2301.351, which prohibits a dealer from violating a board rule.

CROSS REFERENCE TO STATUTE. Transportation Code, Chapter 1002.

§215.102. *Representatives.*

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

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Tracey Beaver

General Counsel

Texas Department of Motor Vehicles

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SUBCHAPTER E. GENERAL DISTINGUISHING NUMBERS

43 TAC §215.133, §215.161

STATUTORY AUTHORITY.

The amendments and new section are proposed under Transportation Code, §503.002, which authorizes the board of the Texas Department of Motor Vehicles to adopt rules for the administration of Transportation Code, Chapter 503; under Transportation Code, §1002.001, which requires and authorizes the department to administer and enforce the provisions of Occupations Code, Chapter 2301; under Transportation Code, §1002.001,

which authorizes the board to adopt rules necessary and appropriate to implement the powers and duties of the department under the Transportation Code and other Texas laws; 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, empower, authorize, and require the board to adopt rules under Occupations Code, Chapter 2301, necessary or convenient to administer Chapter 2301, and govern practice and procedure before the board; and under Occupations Code §2301.351, which prohibits a dealer from violating a board rule.

10. CROSS REFERENCE TO STATUTE. Transportation Code, Chapter 1002.

§215.133. *General Distinguishing Number.*

(a) No person may engage in business as a dealer unless that person has a currently valid general distinguishing number assigned by the department for each location from which the person engages in business. A [If a dealer consigns more than five vehicles in a calendar year for sale from a location other than the location for which the dealer holds a general distinguishing number, the] dealer must also hold a general distinguishing number for a [the] consignment location, unless the consignment location is a wholesale motor vehicle auction.

(b) The provisions of subsection (a) of this section do not apply to:

(1) a person who sells or offers for sale fewer than five vehicles of the same type as herein described in a calendar year and such vehicles are owned by him and registered and titled in his name;

(2) a person who sells or offers to sell a vehicle acquired for personal or business use if the person does not sell or offer to sell to a retail buyer and the transaction is not held for the purpose of avoiding the provisions of Transportation Code, §503.001 et seq., and this subchapter;

(3) an agency of the United States, this state, or local government;

(4) a financial institution or other secured party selling a vehicle in which it holds a security interest, in the manner provided by law for the forced sale of that vehicle;

(5) a receiver, trustee, administrator, executor, guardian, or other person appointed by or acting pursuant to the order of a court;

(6) an insurance company selling a vehicle acquired from the owner as the result of paying an insurance claim;

(7) a person selling an antique passenger car or truck that is at least 25 years old or a collector selling a special interest motor vehicle as defined in Transportation Code, §683.077, if the special interest vehicle is at least 12 years old;

(8) a licensed auctioneer who, as a bid caller, sells or offers to sell property to the highest bidder at a bona fide auction if neither legal nor equitable title passes to the auctioneer and if the auction is not held for the purpose of avoiding another provision of Transportation Code, §503.001 et seq., and this subchapter; and provided that if an auction is conducted of vehicles owned, legally or equitably, by a person who holds a general distinguishing number, the auction may be conducted only at a location for which a general distinguishing number has been issued to that person or at a location approved by the department as provided in §215.135 of this subchapter (relating to More than One Location); and

(9) a person who is a domiciliary of another state and who holds a valid dealer license and bond, if applicable, issued by an agency

of that state, when the person buys a vehicle from, sells a vehicle to, or exchanges vehicles with a person who:

(A) holds a current valid general distinguishing number issued by the department, if the transaction is not intended to avoid the terms of Transportation Code, §503.001 et seq.; or

(B) is a domiciliary of another state if the person holds a valid dealer license and bond, if applicable, issued by that state, and if the transaction is not intended to avoid the terms of Transportation Code, §503.001 et seq.

(c) Application for a general distinguishing number shall be on a form prescribed by the department properly completed by the applicant showing all information requested thereon and shall be submitted to the department accompanied by the following:

(1) proof of a \$25,000 surety bond as provided in §215.137 of this title (relating to Surety Bond);

(2) the fee for the general distinguishing number as prescribed by law for each type of license requested;

(3) the fee as prescribed by law for each metal dealer plate requested as prescribed by law;

(4) a copy of each assumed name certificate on file with the Office of the Secretary of State or county clerk; and

(5) a photocopy of at least one of the following documents for the owner, president, or managing partner of the dealership:

(A) current driver's license;

(B) current Department of Public Safety identification;

(C) current concealed handgun license or license to carry a handgun issued by the Texas Department of Public Safety under Government Code, Chapter 411, Subchapter H;

(D) current passport; or

(E) current United States armed forces identification.

(d) A person who applies for a general distinguishing number and will operate as a dealer under a name other than the name of that person shall use the name under which that person is authorized to do business, as filed with the Office of the Secretary of State or county clerk, and the assumed name of such legal entity shall be recorded on the application using the letters "DBA."

(e) If the general distinguishing number is issued to a corporation, the dealer's name and assumed name used by the dealer, as on file with the Office of the Secretary of State, shall be recorded on the application.

(f) A wholesale dealer license holder may buy, sell, or exchange vehicles with licensed dealers. A wholesale dealer license holder may not sell or exchange vehicles at retail.

(g) An independent mobility motor vehicle dealer shall retain and produce for inspection all records relating to the license requirements under Occupations Code, §2301.002(17-a) and all information and records required under Transportation Code, §503.0295.

(h) An application for a general distinguishing number may be denied if an applicant for such license has committed any act that could result in license cancellation or revocation under Transportation Code, §503.001 et seq.; Occupations Code, §2301.001 et seq.; or any rule or regulation of the department.

(i) Upon request by the department, the applicant shall submit documents demonstrating that the applicant owns the real property on

which the business is situated or has a written lease for the property that has a term of not less than the term of the license.

(j) A person holding an independent motor vehicle general distinguishing number license does not have to hold a salvage dealer license to:

(1) act as a salvage vehicle dealer or rebuilder, or

(2) store or display a motor vehicle as an agent or escrow agent of an insurance company.

(k) To be eligible for an independent motor vehicle general distinguishing number license, a person must complete licensing training specified by the department, except as provided herein:

(1) once a person has completed the required training, the person will not have to retake the training for subsequent license renewals, but may be required to provide proof of training completion as part of the license renewal process; and

(2) a person holding an independent motor vehicle general distinguishing number license for at least 10 years as of September 1, 2019, is exempt from the licensing training requirement.

§215.161. Licensing Education Course Requirements.

(a) A motor vehicle dealer licensing education course provider must be a Texas institution of higher education, as defined by Education Code, §61.003, or a motor vehicle trade association domiciled in this state.

(b) The licensing education course must be approved by the department and must include information on the laws and rules applicable to motor vehicle dealers and the consequences of violating those laws and rules.

(c) The licensing education course must consist of at least six hours of online instruction.

(d) The cost for the licensing education course must not exceed \$150 per person. A trade association course provider may not charge a different rate to a nonmember.

(e) The course provider must issue a certificate of completion to each person who successfully completes the licensing education course.

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

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Tracey Beaver

General Counsel

Texas Department of Motor Vehicles

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CHAPTER 217. VEHICLE TITLES AND REGISTRATION

SUBCHAPTER C. REGISTRATION AND TITLE SYSTEMS

43 TAC §217.75