

TEXAS TRANSPORTATION COMMISSION

ALL Counties

MINUTE ORDER

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ALL Districts

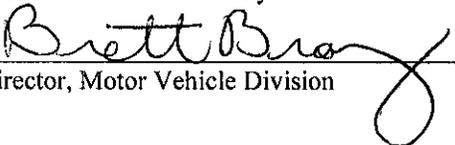
The Texas Transportation Commission (commission) finds it necessary to propose new §8.87, relating to effect of criminal conduct of applicants and licensees on licensure, to be codified under Title 43, Texas Administrative Code, Part 1.

The preamble and the proposed new section, attached to this minute order as Exhibits A and B, are incorporated by reference as though set forth at length verbatim in this minute order.

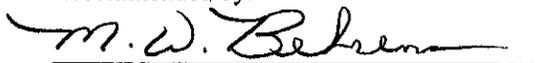
IT IS THEREFORE ORDERED by the commission that new §8.87 is proposed for adoption and is authorized for publication in the *Texas Register* for the purpose of receiving public comments.

The executive director is directed to take the necessary steps to implement the actions as ordered in this minute order, pursuant to the requirements of the Administrative Procedure Act, Government Code, Chapter 2001.

Submitted and reviewed by:


Director, Motor Vehicle Division

Recommended by:


Executive Director

110647 AUG 24 06

Minute
Number

Date
Passed

1 Proposed Preamble

2 The Texas Department of Transportation (department) proposes new
3 §8.87, Effect of Criminal Conduct of Applicants and Licensees on
4 Licensure, relating to motor vehicle dealer, manufacturer,
5 distributor, converter, lessor, lease facilitator,
6 representative, and in-transit licenses issued under Occupations
7 Code, Chapter 2301, Transportation Code, Chapter 503, and 43 TAC
8 Chapter 8, Motor Vehicle Distribution.

9

10 EXPLANATION OF PROPOSED NEW SECTION

11 Occupations Code, Chapter 53, Consequences of Criminal
12 Conviction, authorizes licensing authorities to use criminal
13 conviction information in making licensing decisions. The
14 statute requires the licensing authority to publish the
15 guidelines used in implementing the statute. In addition,
16 Occupations Code, §2301.651 authorizes the department to
17 determine an individual's fitness to perform the duties required
18 under the license. The department can deny an applicant or
19 suspend or revoke a current licensee that the department
20 determines is unfit to perform the duties or carry out the
21 responsibilities of a licensee. The Texas Transportation
22 Commission (commission) proposes this new rule to conform with
23 the requirements outlined in Occupations Code, Chapter 53 and to
24 provide guidelines for licensing decisions based on Occupations
25 Code, §2301.651.

1
2 The business of buying, selling, and exchanging motor vehicles
3 is of vital importance to the economy of the state of Texas and
4 it is essential that the public have confidence in the oversight
5 and regulation of the industry. The department considers it
6 important that licensees and license applicants, including
7 managers, owners, corporate officers, partners, and other
8 persons acting in a representative capacity for an applicant or
9 licensee, be honest, trustworthy, and reliable in their dealings
10 with the public. In the course of business, licensees interact
11 with the public in a very personal manner. Through motor
12 vehicle sales and leases, the licensee obtains and handles
13 sensitive personal and financial information. Due to the
14 complexity of motor vehicle sales and financing, the public
15 relies upon representations made by and information obtained
16 from licensees. This reliance creates opportunities for
17 profiting from fraudulent or deceptive practices in motor
18 vehicle transactions. These acts can cause serious financial
19 harm to individuals who may be victims of deceptive, fraudulent,
20 and illegal acts by persons in the business of selling motor
21 vehicles.

22
23 Proposed new language states that the department has determined
24 that any felony is an offense of such a serious nature that a
25 conviction of a felony offense is of prime importance in

1 determining fitness for licensure under Occupations Code,
2 §2301.651(a)(1). The department has concluded that an
3 individual should not be licensed until three years have passed
4 from the completion of the sentence, parole, or community
5 supervision stemming from the conviction of any felony offense.
6 The department believes this three-year standard is reasonable
7 and within the authority of Occupations Code, §2301.651 to
8 determine fitness for obtaining a license.

9
10 Under Occupations Code, Chapter 53 the department has determined
11 that an individual convicted of any offense involving the
12 distribution, sale, financing, or leasing of motor vehicles,
13 odometer fraud, tax evasion, title fraud, or Vehicle
14 Identification Number (VIN) plate tampering directly relates to
15 the occupation of distributing motor vehicles. Issuing a
16 license to such an individual would continue to provide the
17 individual the opportunity to engage in further criminal
18 activity of the same nature. The department will consider
19 individuals convicted of these types of offenses on a case-by-
20 case basis to determine the issuance or renewal of the license,
21 according to the requirements of Occupations Code, Chapter 53.

22
23 Proposed new language provides the hearing process for an
24 individual adversely affected by the new procedures. The
25 applicant or licensee will be notified of the action and will

1 have an opportunity to request an administrative hearing. The
2 hearing will be conducted under the provisions of Occupations
3 Code, §§2301.701-2301.713, §2301.806 and 43 TAC Chapter 8,
4 Subchapter B.

5
6 Proposed language establishes a revocation for the failure of an
7 applicant or licensee to notify the department of a conviction.
8 Additional provisions set out that an applicant whose license or
9 application has been revoked or denied may not reapply before
10 the first anniversary of the revocation or denial. The proposed
11 language also provides that the department will not refund fees
12 paid by an applicant if the license is revoked or the
13 application denied.

14
15 Proposed subsection (k) provides that applicants or licensees
16 who disclosed the conviction prior to December 1, 2006 will not
17 be affected by the proposed rule. Those individuals who have
18 had their criminal conviction information reviewed under the
19 procedures in place prior to the adoption of this rule will not
20 be subject to denial of renewal or revocation of their license
21 based on the provisions of the proposed subsections (c) and (d).

22
23 FISCAL NOTE
24 James Bass, Chief Financial Officer, has determined that for
25 each of the first five years the new section as proposed is in

1 effect, there will be no fiscal implications for state or local
2 governments as a result of enforcing or administering the new
3 section. There are no anticipated economic costs for persons
4 required to comply with the section as proposed.

5
6 Brett Bray, Director, Motor Vehicle Division, has certified that
7 there will be no significant impact on local economies or
8 overall employment as a result of enforcing or administering the
9 new section.

10

11 PUBLIC BENEFIT

12 Mr. Bray has also determined that for each year of the first
13 five years the section is in effect, the public benefit
14 anticipated as a result of enforcing or administering the new
15 section will be a reduction in the number of convicted felons
16 and certain other criminals in the vehicle distribution
17 industry. The reputation and sales practices of the industry
18 may improve and the public's confidence in dealers and other
19 licensees may rise. In addition, the section will simplify the
20 application review process as it relates to criminal
21 convictions. There will be no adverse economic effect on small
22 businesses.

23

24 PUBLIC HEARING

25 Pursuant to the Administrative Procedure Act, Government Code,

1 Chapter 2001, the Texas Department of Transportation will
2 conduct a public hearing to receive comments concerning the
3 proposed rules. The public hearing will be held at 9:00 a.m. on
4 October 3, 2006, in the first floor hearing room of the Dewitt
5 C. Greer State Highway Building, 125 East 11th Street, Austin,
6 Texas and will be conducted in accordance with the procedures
7 specified in 43 TAC §1.5. Those desiring to make comments or
8 presentations may register starting at 8:30 a.m. Any interested
9 persons may appear and offer comments, either orally or in
10 writing; however, questioning of those making presentations will
11 be reserved exclusively to the presiding officer as may be
12 necessary to ensure a complete record. While any person with
13 pertinent comments will be granted an opportunity to present
14 them during the course of the hearing, the presiding officer
15 reserves the right to restrict testimony in terms of time and
16 repetitive content. Organizations, associations, or groups are
17 encouraged to present their commonly held views and identical or
18 similar comments through a representative member when possible.
19 Comments on the proposed text should include appropriate
20 citations to sections, subsections, paragraphs, etc. for proper
21 reference. Any suggestions or requests for alternative language
22 or other revisions to the proposed text should be submitted in
23 written form. Presentations must remain pertinent to the issues
24 being discussed. A person may not assign a portion of his or
25 her time to another speaker. Persons with disabilities who plan

1 to attend this meeting and who may need auxiliary aids or
2 services such as interpreters for persons who are deaf or
3 hearing impaired, readers, large print or Braille, are requested
4 to contact Randall Dillard, Director, Public Information Office,
5 125 East 11th Street, Austin, Texas 78701-2483, 512/463-8588 at
6 least two working days prior to the hearing so that appropriate
7 services can be provided.

8

9 SUBMITTAL OF COMMENTS

10 Written comments on the proposed new section may be submitted to
11 Brett Bray, Director, Motor Vehicle Division, P.O. Box 2293,
12 Austin, Texas 78768-2293. The deadline for receipt of comments
13 is 5:00 p.m. on October 9, 2006.

14

15 STATUTORY AUTHORITY

16 The new section is proposed under Transportation Code, §201.101,
17 which provides the commission with the authority to establish
18 rules for the conduct of the work of the department, and more
19 specifically, Occupations Code, §2301.005 and §2301.155, and
20 Transportation Code, §503.002, which authorize the commission to
21 adopt rules as necessary or convenient to administer Occupations
22 Code, Chapter 2301 and Transportation Code, Chapter 503.

23

24 CROSS REFERENCE TO STATUTE

25 Occupations Code, §2301.651 and Transportation Code, §503.038.

1 SUBCHAPTER C. LICENSES, GENERALLY

2 §8.87 Effect of Criminal Conduct of Applicants and Licensees on
3 Licensure.

4 (a) For purposes of this section the terms "applicant" and
5 "licensee" include a sole proprietor, any officers or directors
6 of corporations, partners and managing partners of partnerships,
7 managers or members of limited liability companies, limited
8 partners and general partners of limited partnerships, general
9 managers, and dealer principals.

10 (b) In accordance with Occupations Code, §53.021(b), any
11 license issued to a licensee shall be revoked upon the
12 licensee's imprisonment following a felony conviction, felony
13 community supervision revocation, revocation of parole, or
14 revocation of mandatory supervision, in any jurisdiction.

15 (c) A licensee or applicant is deemed unfit under
16 Occupations Code, §2301.651(a)(1) if the applicant or licensee
17 has been convicted of a felony, or one of the offenses
18 enumerated in subsection (d) of this section, in any
19 jurisdiction, for which less than three years have elapsed since
20 the completion of the sentence, parole, or community
21 supervision. A new, renewal, or amendment application filed by
22 such a licensee or applicant shall be denied.

23 (d) A new, renewal, or amendment application for a license

1 may be denied or license revoked if the applicant or licensee
2 has been convicted of any felony or misdemeanor in any
3 jurisdiction relating to:

4 (1) the distribution, sale, financing, or leasing of
5 motor vehicles;

6 (2) odometer fraud;

7 (3) tax evasion;

8 (4) title fraud; or

9 (5) Vehicle Identification Number (VIN) plate tampering.

10 (e) In determining whether to deny an application under
11 subsection (d) of this section, the department shall consider
12 the factors set out in Occupations Code, §53.022 and §53.023.

13 (f) Upon determination that a new, renewal, or amendment
14 application should be denied or a license revoked, the
15 department will mail a notice of the denial or revocation to the
16 last known address of the applicant or licensee by certified
17 mail, clearly stating:

18 (1) the reason for the denial or revocation;

19 (2) the effective date of the denial or revocation;

20 (3) the right of the applicant or licensee to request an
21 administrative hearing on the question of denial or revocation;

22 and

23 (4) if the applicant or licensee wants to protest the

1 denial or revocation, a request for a hearing must be made in
2 writing to the department within 20 days of receipt of notice of
3 the denial or revocation.

4 (g) Hearings requested under subsection (f) of this section
5 shall be conducted under the provisions of Occupations Code,
6 §§2301.701-2301.713, §2301.806, and Subchapter B of this
7 chapter.

8 (h) The failure of an applicant or licensee to report to
9 the department a conviction of an offense, other than a Class C
10 traffic violation, shall be cause for denying, revoking, or
11 suspending the license under Occupations Code, §2301.651(a)(2).

12 (i) A licensee or applicant whose license or application is
13 revoked or denied under this section may not apply for a new
14 license before the first anniversary of the date of the
15 revocation or denial.

16 (j) The department will not refund fees paid by an
17 applicant if the license is revoked or denied under this
18 subsection.

19 (k) Subsections (c) and (d) of this section do not apply to
20 renewal or amendment applications if the licensee's conviction
21 was disclosed to the Motor Vehicle Division prior to December 1,
22 2006.