

TEXAS TRANSPORTATION COMMISSION

ALL Counties

MINUTE ORDER

Page 1 of 1

ALL Districts

The Texas Transportation Commission (commission) finds it necessary to adopt 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 adopted 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 adopted and is authorized for filing with the Office of the Secretary of State.

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:

Recommended by:

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Director, Motor Vehicle Division

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Executive Director

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Minute Number	Date Passed
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Adoption Preamble

1  
2 The Texas Department of Transportation (department) adopts 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. New §8.87 is adopted  
9 with changes to the proposed text as published in the September  
10 8, 2006 issue of the *Texas Register* (31 TexReg 7298).

11

12 EXPLANATION OF ADOPTED NEW SECTION

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

1 provide guidelines for licensing decisions based on Occupations  
2 Code, §2301.651.

3

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

24

25 Adopted language in §8.87, subsection (a) states that the terms

1 "applicant" and "licensee" include individuals associated with  
2 various types of business entities. The department has added  
3 "license holder" as that term is defined in Occupations Code,  
4 Chapter 2301. The position of trustee has been added to comport  
5 with Occupations Code, §2301.651(b).

6  
7 Section 8.87, subsection (b) is adopted with changes. The new  
8 language clarifies that a license shall be revoked upon the  
9 imprisonment of a sole proprietor. Automatic revocation under  
10 subsection (b) will not apply to licenses held by other types of  
11 business entities if an individual associated with the entity's  
12 business structure is imprisoned.

13  
14 Adopted new language in subsection 8.87(c) states that the  
15 department has determined that any felony is an offense of such  
16 a serious nature that a conviction of a felony offense is of  
17 prime importance in determining fitness for licensure under  
18 Occupations Code, §2301.651(a)(1). The department has concluded  
19 that a licensee or applicant should not be licensed until three  
20 years have passed from the completion of the sentence, parole,  
21 or community supervision stemming from the conviction of any  
22 felony offense. The department believes this three-year  
23 standard is reasonable and within the authority of Occupations  
24 Code, §2301.651 to determine fitness for obtaining a license.  
25 Section 8.87, subsection (c) is adopted with changes to clarify

1 that an applicant or licensee is presumed to be unfit for  
2 licensure unless the applicant or licensee proves fitness in a  
3 hearing. The changes establish that the applicant or licensee  
4 has the burden to prove fitness.

5  
6 Under Occupations Code, Chapter 53 the department has determined  
7 that the conviction of a licensee or applicant of any offense  
8 involving the distribution, sale, financing, or leasing of motor  
9 vehicles, odometer fraud, tax evasion, title fraud, or Vehicle  
10 Identification Number (VIN) plate tampering directly relates to  
11 the occupation of distributing motor vehicles. Issuing a  
12 license to such a licensee or applicant would continue to  
13 provide the opportunity to engage in further criminal activity  
14 of the same nature. The department will consider licensees or  
15 applicants convicted of these types of offenses on a case-by-  
16 case basis to determine the issuance or renewal of the license,  
17 according to the requirements of Occupations Code, Chapter 53.

18  
19 Adopted language in §8.87, subsection (g) provides the hearing  
20 process for a licensee or applicant adversely affected by the  
21 new procedures. The applicant or licensee will be notified of  
22 the action and will have an opportunity to request an  
23 administrative hearing. The hearing will be conducted under the  
24 provisions of Occupations Code, §§2301.701-2301.713, §2301.806  
25 and 43 TAC Chapter 8, Subchapter B. The section is adopted with

1 changes that state that the applicant or licensee has the burden  
2 to prove present fitness at the hearing.

3

4 Adopted language in §8.87, subsection (h) establishes a  
5 revocation for the failure of an applicant or licensee to notify  
6 the department of a conviction pursuant to Occupations Code,  
7 §2301.651(a)(2). Changes clarify that failure to disclose any  
8 conviction on a new, renewal, or amendment application is  
9 considered a material misrepresentation. Another change to  
10 subsection (h) substitutes "minor traffic violation" for "Class  
11 C traffic violation" as that language is more common. However,  
12 this change in terms does not change the disclosure  
13 requirements. The licensee must report all convictions that are  
14 not minor class C traffic violations. For example, a licensee  
15 does not report traffic violations such as speeding or  
16 disregarding a traffic control device.

17

18 Additional provisions set out that an applicant whose license or  
19 application has been revoked or denied may not reapply before  
20 the first anniversary of the revocation or denial. The adopted  
21 language also provides that the department will not refund fees  
22 paid by an applicant or licensee if the license is revoked or  
23 the application denied. Section 8.87, subsection (j) is adopted  
24 with a minor change to address a technical grammatical error.

25

1 Adopted §8.87, subsection (k) provides that existing licensees  
2 who disclosed conviction prior to January 1, 2008 will not be  
3 reviewed under subsections (c) and (d) of the rule. The date by  
4 which disclosure is required is changed to January 1, 2008 to  
5 allow time for existing licensees to disclose previous  
6 convictions in the course of the annual renewal cycle. The  
7 department believes these changes are reasonable because they  
8 allow licensees to rely on determinations made under then-  
9 current procedures.

10

11 COMMENTS

12 The department conducted a public hearing on October 3, 2006 to  
13 receive comments concerning the proposed new section. Written  
14 comments were received from the Texas Automobile Dealers  
15 Association and the Alliance of Automobile Manufacturers.

16

17 Comment

18 One commenter stated that the language in the proposed rule is  
19 broader than the statutory provision set out in Occupations  
20 Code, §2301.651 because the rule applies to every officer,  
21 director, partner, member, or general manager of various  
22 business entities. The commenter further stated that it does  
23 not follow that natural persons serving in these positions act  
24 in a representative capacity for the license holder.

25

1 The commenter stated that a licensee or license holder is a  
2 "person" as defined in Occupations Code, §2301.002(27), which is  
3 a legal entity that can be a natural person, partnership,  
4 corporation, association, trust, estate, or any other legal  
5 entity. The commenter asserted that the definition precludes  
6 the automatic application of the rule to officers, directors,  
7 partners, limited liability members and managers, general  
8 managers, or dealer principals of a dealership.

9

10 Response

11 The department agrees that it would be inequitable to  
12 automatically revoke a license because a natural person who  
13 holds one of the positions set out in §8.87, subsection (a) has  
14 been imprisoned. The definitions of "applicant" and "licensee"  
15 are amended to include "license holder" as that term is defined  
16 in Occupations Code, Chapter 2301. Subsection (b) is amended so  
17 that automatic license revocation upon imprisonment only applies  
18 to imprisonment of sole proprietors.

19

20 The department does not agree that license holder entities are  
21 exempt from scrutiny if a natural person who holds one of the  
22 positions set out in §8.87, subsection (a) has been convicted.  
23 The department further disagrees that natural persons serving in  
24 these positions do not act in a representative capacity for the  
25 license holder. Occupations Code, §2301.651(b) states that the

1 department may take action against an applicant or license  
2 holder for an act or omission by an officer, director, partner,  
3 trustee, or other person acting in a representative capacity for  
4 the applicant or license holder that would be cause for denying,  
5 revoking, or suspending a license under Chapter 2301. The  
6 phrase "acting in a representative capacity" modifies "other  
7 person." It does not relate to officers, directors, partners,  
8 or trustees.

9  
10 In fact, the department believes it must examine the history of  
11 individuals who hold positions listed in §8.87, subsection (a)  
12 to enforce the provisions to prevent fraud, unfair practices,  
13 discrimination, impositions, or other abuse of the people of  
14 this state, as set out in Occupations Code, §2301.001.

15  
16 Nevertheless, the language in §8.87, subsections (c) and (g) has  
17 been amended to clarify that the license holder, applicant, or  
18 licensee is only presumed, rather than deemed, to be unfit in  
19 those situations. The license holder, applicant, or licensee  
20 has an opportunity to request a hearing and rebut the  
21 presumption by proving they are presently fit to obtain or  
22 maintain a license.

23  
24 Comment

25 One commenter stated that §8.87(c) holds that a licensee or

1 applicant is unfit if convicted of a felony under five specific  
2 offenses enumerated in §8.87(d).

3  
4 Response

5 The department disagrees. Section 8.87(c) states that a  
6 licensee or applicant is presumed to be unfit if convicted of  
7 any felony, including a felony conviction of the offenses listed  
8 in §8.87(d).

9  
10 Comment

11 One commenter stated that the department should provide more  
12 guidance as to what offenses are included under "the  
13 distribution, sale, financing, or leasing of motor vehicles" in  
14 §8.87(d)(1).

15  
16 Response

17 The department disagrees. The wording is similar to the  
18 statutory language contained in Occupations Code,  
19 §2301.651(a)(4), which has been in effect since the statute was  
20 originally enacted in 1971. Persons in the motor vehicle  
21 distribution industry are generally aware of what offenses  
22 relate to the distribution, sale, financing, or leasing of motor  
23 vehicles. In addition, any licensee or applicant will have an  
24 opportunity to request a formal hearing and present argument as  
25 to whether a particular offense falls within this category.

1

2 Comment

3 Two commenters stated that the rule is unclear as to what  
4 convictions should be reported to the agency. One questioned  
5 whether Class A and B traffic violations should be reported only  
6 if they relate to the items listed in §8.87(d)(1). Another  
7 suggested that only relevant convictions and convictions that  
8 occurred within the past three years should be reported.

9

10 Response

11 The department has changed §8.87, subsection (h) to make it  
12 clear that all convictions should be reported to the department  
13 with the exception of minor traffic violations. This term was  
14 amended to utilize the more common language which should be  
15 easily understood. Class A and B traffic violations must be  
16 reported under the provisions of the adopted rule.

17

18 The department does not agree that only convictions that  
19 occurred in the past three years should be reported. The  
20 department will review the entire criminal history prior to  
21 issuing or renewing the license.

22

23 Comment

24 A commenter suggested that references to convictions in "any  
25 jurisdiction" be changed to "of the laws of the United States or

1 another state."

2

3 Response

4 The department disagrees. The statute does not require

5 licensees to be United States citizens or entities. There are

6 licensed dealers who live in other countries, but own

7 dealerships in Texas. These people have work permits or visas

8 that allow them to legally enter and work in the United States.

9 Current residents or citizens may have relevant prior history in  
10 another jurisdiction.

11

12 Comment:

13 One commenter stated that the December 1, 2006 deadline in

14 §8.87, subsection (k) does not provide an adequate amount of

15 time for the department to give notice of the disclosure

16 requirement to all licensees and receive responses.

17

18 Response

19 Occupations Code, §2301.263 states that a license is subject to

20 each provision of the statute and rules in effect at the time of

21 issuance, and any provisions that take effect during the term of

22 the license. The original purpose of §8.87, subsection (k) was

23 to "grandfather" licensees who disclosed felony convictions and

24 were approved under procedures in place prior to adoption of the

25 rule.

1  
2 Section 8.87, subsection (k) is changed to clarify that  
3 convictions must have been disclosed by January 1, 2008. This  
4 is to allow all existing licensees an opportunity to disclose  
5 felony and misdemeanor convictions without risking revocation of  
6 license under subsection (c), if it has been less than three  
7 years since completion of the sentence. Section 8.87,  
8 subsection (h) is amended to clarify that disclosure is required  
9 on new, renewal, and amended applications. Extending the date  
10 to January 1, 2008 allows existing licensees to make disclosure  
11 through the regular license renewal process and balance  
12 department workload.

13

14 STATUTORY AUTHORITY

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

22

23 CROSS REFERENCE TO STATUTE

24 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" shall have the following meanings.

6 (1) a license holder, as defined by Occupations Code,  
7 §2301.002(18);

8 (2) a sole proprietor;

9 (3) any officers or directors of corporations;

10 (4) partners and managing partners of partnerships;

11 (5) managers or members of limited liability companies;

12 (6) limited partners and general partners of limited  
13 partnerships;

14 (7) trustees;

15 (8) general managers; and

16 (9) dealer principals.

17 (b) In accordance with Occupations Code, §53.021(b), any  
18 license issued to a sole proprietor shall be revoked upon the  
19 sole proprietor's imprisonment following a felony conviction,  
20 felony community supervision revocation, revocation of parole,  
21 or revocation of mandatory supervision, in any jurisdiction.

22 (c) A licensee or applicant is presumed unfit under  
23 Occupations Code, §2301.651(a)(1) if the applicant or licensee

1 has been convicted of a felony, or one of the offenses  
2 enumerated in subsection (d) of this section, in any  
3 jurisdiction, for which less than three years have elapsed since  
4 the completion of the sentence, parole, or community  
5 supervision. A new, renewal, or amendment application filed by  
6 such a licensee or applicant shall be denied unless the  
7 applicant or licensee proves present fitness to obtain or  
8 maintain the license in a hearing conducted under this section.

9 (d) A new, renewal, or amendment application for a license  
10 may be denied or license revoked if the applicant or licensee  
11 has been convicted of any felony or misdemeanor in any  
12 jurisdiction relating to:

13 (1) the distribution, sale, financing, or leasing of  
14 motor vehicles;

15 (2) odometer fraud;

16 (3) tax evasion;

17 (4) title fraud; or

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

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

22 (f) Upon determination that a new, renewal, or amendment  
23 application should be denied or a license revoked, the

1 department will mail a notice of the denial or revocation to the  
2 last known address of the applicant or licensee by certified  
3 mail, clearly stating:

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

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

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

8 and

9 (4) that if the applicant or licensee wants to protest  
10 the denial or revocation, a request for a hearing must be made  
11 in writing to the department within 20 days of receipt of notice  
12 of the denial or revocation.

13 (g) Hearings requested under subsection (f) of this section  
14 shall be conducted under the provisions of Occupations Code,  
15 §§2301.701-2301.713, 2301.806, and Subchapter B of this chapter.  
16 The applicant or licensee must prove present fitness to obtain  
17 or maintain the license using the factors in Occupations Code,  
18 §53.022 and §53.023.

19 (h) The failure of an applicant or licensee to report to  
20 the department on a new, renewal, or amendment application a  
21 conviction of any offense, other than a minor traffic violation,  
22 shall be cause for revoking or suspending the license or denying  
23 the application under Occupations Code, §2301.651(a)(2).

1           (i) A licensee or applicant whose license or application is  
2           revoked or denied under this section may not apply for a new  
3           license before the first anniversary of the date of the  
4           revocation or denial.

5           (j) The department will not refund fees paid by an  
6           applicant if the license is revoked or denied under this  
7           section.

8           (k) Subsections (c) and (d) of this section do not apply to  
9           renewal or amendment applications if the licensee's conviction  
10          was disclosed to the Motor Vehicle Division prior to January 1,  
11          2008.

12