

# PROPOSED RULES

Proposed rules include new rules, amendments to existing rules, and repeals of existing rules. A state agency shall give at least 30 days' notice of its intention to adopt a rule before it adopts the rule. A state agency shall give all interested persons a reasonable opportunity to submit data, views, or arguments, orally or in writing (Government Code, Chapter 2001).

**Symbols in proposed rule text.** Proposed new language is indicated by underlined text. [~~Square brackets and strikethrough~~] indicate existing rule text that is proposed for deletion. "(No change)" indicates that existing rule text at this level will not be amended.

## TITLE 16. ECONOMIC REGULATION

### PART 8. TEXAS RACING COMMISSION

#### CHAPTER 313. OFFICIALS AND RULES OF HORSE RACING

##### SUBCHAPTER D. RUNNING OF THE RACE DIVISION 1. JOCKEYS

###### 16 TAC §313.405

The Texas Racing Commission proposes amendments to 16 TAC §313.405, Whips and Other Equipment. The amendments would change the word "whip" to "crop" throughout the rule and would establish the specifications for an acceptable crop, in accordance with the Association of Racing Commissioners International's model rule.

###### FISCAL NOTE

###### STATE AND LOCAL GOVERNMENT

Chuck Trout, Executive Director, has determined that for the first five-year period the rule is in effect, the amendments would have no anticipated fiscal impact on state or local government.

###### PUBLIC BENEFIT AND COST

Mr. Trout has determined that for each year of the first five years that the amended rule is in effect, the anticipated public benefit will be increased rider and horse safety because jockeys will be able to maintain healthier weights while riding. The probable economic cost to persons required to comply with the rule as amended is minimal, as approximately 75% of jockeys already use crops that comply with the proposed requirements, and the cost to the others of buying a compliant crop (a one-time expense) is estimated to be about \$70.

###### GOVERNMENT GROWTH IMPACT

For each year of the first five years that the amended rule is in effect, the government growth impact is as follows: the amendments do not create or eliminate a government program; the amendments do not create any new employee positions or eliminate any existing employee positions; implementation of the amendments does not require an increase or decrease in future legislative appropriations to the agency; implementation of the amendments does not require a substantial increase or decrease in the total amount of fees paid to the agency; the amendments do not create any new regulations; the amendments do not expand any existing regulations; the amendments do not

create the number of individuals subject to the rule's applicability; and the proposed amendments do not affect this state's economy.

###### SMALL, MICRO-BUSINESS, LOCAL ECONOMY, AND RURAL COMMUNITIES

These amendments would have no anticipated adverse economic effect on small or micro-businesses, local economy, or rural communities, and therefore preparation of an economic impact statement and a regulatory flexibility analysis is not required.

There are no negative impacts upon employment conditions in this state as a result of the proposed amendments.

###### REGULATORY ANALYSIS OF MAJOR ENVIRONMENTAL RULES

Mr. Trout has determined that this proposal is not a "major environmental rule" as defined by Government Code, §2001.0225, and so an environmental impact analysis is not required.

###### TAKINGS IMPACT STATEMENT

Mr. Trout has determined that the proposed rule will not affect private real property, and will not restrict, limit, or impose a burden on an owner's right to his or her private real property and, therefore, will not constitute a taking. As a result, a takings impact assessment is not required, as provided by Government Code §2007.043.

All comments or questions regarding the proposed amendments may be submitted in writing within 30 days following publication of this notice in the *Texas Register* to Jean Cook, Chief of Staff for the Texas Racing Commission, at P.O. Box 12080, Austin, Texas 78711-2080, telephone (512) 833-6699, or fax (512) 833-6907.

The amendments are proposed under Texas Revised Civil Statutes Annotated, Article 179e, §3.02, which requires the Commission to regulate and supervise every race meeting in the state involving wagering on the result of greyhound or horse race and to make rules relating to horse racing.

The amendments implement Texas Revised Civil Statutes Annotated, Article 179e.

###### §313.405. Crops [~~Whips~~] and Other Equipment.

(a) The use of a crop [~~whip~~] is not required and a jockey who uses a crop [~~whip~~] during a race may do so only in a manner consistent with using the jockey's best efforts to win. The correct uses of a crop [~~whip~~] include:

(1) showing the crop [~~whip~~] to the horse before hitting the horse;

(2) using the crop [whip] in rhythm to the horse's stride; and

(3) using the crop [whip] as an aid to keep a horse running straight.

(b) All riding crops are subject to inspection and approval by the stewards and the clerk of scales. Riding crops shall have a shaft and a flap and will be allowed only as follows:

(1) maximum weight of eight ounces;

(2) maximum length, including flap, of 30 inches;

(3) minimum diameter of the shaft of three-eighths inch;

(4) shaft contact area must be smooth, with no protrusions or raised surface, and covered by shock absorbing material that gives a compression factor of at least one millimeter throughout its circumference; and

(5) the flap is the only allowable attachment to the shaft and must meet these specifications:

(A) length beyond the end of the shaft shall not exceed one inch;

(B) width shall be between 0.8 inch and 1.6 inches;

(C) no reinforcements or additions beyond the end of the shaft;

(D) no binding within seven inches of the end of the shaft; and

(E) shock absorbing characteristics similar to those of the contact area of the shaft.

{(b) A whip used in races must be at least 1/4-inch in diameter and have a looped leather "popper" affixed to one end. The whip must have at least three rows of leather feathers above the popper and each feather must be at least one inch long. The popper must be at least 1 1/4 inch wide and three inches long. A whip may not exceed one pound in weight or 31 inches in length, including the popper.}

(c) If a jockey is to ride without a crop[whip], the stewards shall ensure that fact is announced over the public address system.

(d) A jockey may not strike [whip] a horse:

(1) on the head, flanks, or on any part of the horse's body other than the shoulders or hind quarters;

(2) excessively or brutally causing welts or breaks in the skin;

(3) in the post parade except when necessary to control the horse;

(4) when the horse is clearly out of the race or has obtained its maximum placing; or

(5) persistently, if the horse is not responding to the crop [whip].

(e) (No change.)

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

Filed with the Office of the Secretary of State on June 20, 2018.

TRD-201802781

Devon Bijansky

General Counsel

Texas Racing Commission

Earliest possible date of adoption: August 5, 2018

For further information, please call: (512) 833-6699

◆ ◆ ◆  
**PART 9. TEXAS LOTTERY  
COMMISSION**

**CHAPTER 402. CHARITABLE BINGO  
OPERATIONS DIVISION**

**SUBCHAPTER D. LICENSING REQUIRE-  
MENTS**

**16 TAC §402.443**

The Texas Lottery Commission (Commission) proposes new rule 16 TAC §402.443 (Transfer of a Grandfathered Lessor's Commercial Lessor License). The purpose of the proposed rule is to clarify that the broad leasing rights of a "grandfathered" bingo commercial lessor (Grandfathered Lessor) under a commercial lessor license issued on or before June 10, 1989, that has been in effect continuously since that date, cannot be transferred to a new license holder under the license transfer provisions of the Bingo Enabling Act (Texas Occupations Code Chapter 2001) (BEA). The Commission is proposing the new rule in response to Texas Attorney General Opinion No. KP-0202 issued May 16, 2018.

The concept of Grandfathered Lessors originated with H.B. 2260, enacted in 1989 during the regular session of the 71st Texas Legislature. At that time, the Texas Comptroller of Public Accounts administered the charitable bingo regulatory program. H.B. 2260 transferred the bingo program to the Texas Alcoholic Beverage Commission effective January 1, 1990; and, among other things, amended the BEA to provide that newly-licensed commercial lessors may directly lease to only one bingo conductor organization. However, Grandfathered Lessors who kept their license in continuous effect were allowed to continue to lease directly to more than one such organization. Under current law, a Grandfathered Lessor may lease directly (and collect rent from) up to seven bingo conductor organizations. BEA §2001.402(c).

BEA §2001.152(b) provides that "a person who was a licensed commercial lessor on June 10, 1989, whose license has been in effect continuously since that date, and who is otherwise eligible for the license may renew the license." Today, out of a total of over 300 commercial lessor licenses currently in effect, approximately 199 of those are Grandfathered Lessor's licenses. BEA §2001.160(a) further provides that "a licensed commercial lessor may transfer a commercial lessor license if the person to whom the license will be transferred otherwise meets the requirements of this subchapter." The Attorney General in Opinion No. KP-0202 found that such transferee requirements include the leasing restrictions on for-profit non-Grandfathered Lessors (*i.e.*, leasing to only one bingo conductor organization) set forth in the BEA §2001.152(a) eligibility provisions. The Attorney General stated, "A court would likely conclude that the language of the Bingo Enabling Act does not authorize the transfer of a commercial lessor license that includes a grandfathered right to lease to more than one licensed authorized organization." This conclu-

sion requires the Commission to change its historical practice of considering that grandfathered leasing rights (leasing to up to seven bingo conductor organizations) are transferable to a new license holder. Although the Commission's historical practice is not written in a rule, the Attorney General concluded it was likely that a change in such practice requires a formal rulemaking proceeding.

Kathy Pyka, Controller, has determined that for each year of the first five years the rule will be in effect, there will be no fiscal impact for state or local governments as a result of the proposed rule. There will be no adverse effect on small businesses or rural communities, micro businesses, or local or state employment. There will be no additional economic cost to persons required to comply with the rule, as proposed. One industry representative indicated in briefing to the Attorney General that a change in the Commission's historical practice would adversely impact the market value of Grandfathered Lessor's licenses, but the proposed rule itself does not address market value and does not impose a cost. Further, to the extent there may be an economic cost to some persons due to the change in the Commission's practice, the new rule nevertheless is necessary to implement the license transfer requirements of the BEA, as interpreted by the Attorney General. Furthermore, an Economic Impact Statement and Regulatory Flexibility Analysis is not required because the proposed rule will not have an adverse economic effect on small businesses or rural communities as defined in Texas Government Code §2006.001(1-a) and (2).

Ed Rogers, Acting Director of the Charitable Bingo Operations Division, has determined that for each year of the first five years the proposed rule will be in effect, the anticipated public benefit is aligning the Commission's practice of transferring a Grandfathered Lessor's commercial lessor license with the requirements of the BEA and Attorney General Opinion No. KP-0202.

Pursuant to Texas Government Code §2001.0221, the Commission provides the following Government Growth Impact Statement for the proposed rule. For each year of the first five years the proposed rule will be in effect, Kathy Pyka, Controller, has determined the following:

- (1) The proposed rule does not create or eliminate a government program.
- (2) Implementation of the proposed rule does not require the creation of new employee positions or the elimination of existing employee positions.
- (3) Implementation of the proposed rule does not require an increase or decrease in future legislative appropriations to the Commission.
- (4) The proposed rule does not require an increase or decrease in fees paid to the Commission.
- (5) The proposed rule does not create a new regulation.
- (6) The proposed rule does not expand or limit an existing regulation.
- (7) The proposed rule does not increase or decrease the number of individuals subject to the rule's applicability.
- (8) The proposed rule does not positively or adversely affect this state's economy.

The Commission requests comments on the proposed rule from any interested person. Comments may be submitted to Bob Biard, General Counsel, by mail at Texas Lottery Commission,

P.O. Box 16630, Austin, Texas 78761-6630; by facsimile at (512) 344-5189; or by email at [legal.input@lottery.state.tx.us](mailto:legal.input@lottery.state.tx.us). Comments must be received within 30 days after publication of this proposal in the *Texas Register* in order to be considered. The Commission also will hold a public hearing to receive comments on this proposal at 10:00 a.m. on July 18, 2018, at 611 E. 6th Street, Austin, Texas 78701.

The new rule is proposed under Texas Occupations Code §2001.054, which authorizes the Commission to adopt rules to enforce and administer the Bingo Enabling Act; and Texas Government Code §467.102, which authorizes the Commission to adopt rules for the laws under the Commission's jurisdiction.

This proposal is intended to implement Texas Occupations Code, Chapter 2001.

§402.443. Transfer of a Grandfathered Lessor's Commercial Lessor License.

(a) "Grandfathered Lessor's License" means a commercial lessor license that was in effect on June 10, 1989, and that has been in effect continuously since that date.

(b) The Commission's approval to transfer a Grandfathered Lessor's License from a current license holder to a new license holder does not transfer the grandfathered leasing rights. The new license holder's authority under the transferred license shall be subject to the eligibility requirements set forth in Bingo Enabling Act §2001.152(a) (and any successor statute thereto).

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

Filed with the Office of the Secretary of State on June 21, 2018.

TRD-201802790

Bob Biard

General Counsel

Texas Lottery Commission

Earliest possible date of adoption: August 5, 2018

For further information, please call: (512) 344-5012

◆ ◆ ◆  
**TITLE 22. EXAMINING BOARDS**

**PART 3. TEXAS BOARD OF  
CHIROPRACTIC EXAMINERS**

**CHAPTER 78. RULES OF PRACTICE**

**22 TAC §78.14**

The Texas Board of Chiropractic Examiners (Board) proposes the repeal of Chapter 78, §78.14, concerning Acupuncture. This rule will be replaced by a new acupuncture rule at the Board meeting on August 16, 2018. The proposed repeal and replacement is to promote a clear understanding of the use of acupuncture as a modality by chiropractors.

The Board's Executive Director, Patrick Fortner, has determined that for the first five-year period the proposed repeal is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed repeal.

Mr. Fortner has determined that the expected public benefit of the proposed repeal will be clarity and guidance for the public

and stakeholders regarding the use of acupuncture in the practice of chiropractic.

Mr. Fortner has also determined that the proposed repeal will not have an adverse economic effect on small businesses, rural communities or individuals, because it does not impose any duties or obligations upon small businesses, rural communities or individuals.

**GOVERNMENT GROWTH IMPACT:** Mr. Fortner has determined that the proposed repeal does not have a government growth impact pursuant to Texas Government Code, §2001.0221.

Comments on the proposed repeal and/or a request for a public hearing may be submitted to Christopher Burnett, General Counsel, Texas Board of Chiropractic Examiners, 333 Guadalupe St, Tower III, Suite 825, Austin, Texas 78701, via email [rules@tbce.state.tx.us](mailto:rules@tbce.state.tx.us); or fax, (512) 305-6705, no later than 30 days from the date that this proposed repeal is published in the *Texas Register*.

The repeal is proposed under Texas Occupations Code §201.152, which authorizes the Board to adopt rules necessary to regulate the practice of chiropractic to protect the public health and safety. The Board is further authorized to adopt rules based upon the relevant portions of the Administrative Procedure Act, Government Code §2001.

No other statutes, articles or codes are affected by the repeal.

*§78.14. Acupuncture.*

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

Filed with the Office of the Secretary of State on June 21, 2018.

TRD-201802793

Christopher Burnett

General Counsel

Texas Board of Chiropractic Examiners

Earliest possible date of adoption: August 5, 2018

For further information, please call: (512) 305-6700



## **TITLE 34. PUBLIC FINANCE**

### **PART 1. COMPTROLLER OF PUBLIC ACCOUNTS**

#### **CHAPTER 7. PREPAID HIGHER EDUCATION TUITION PROGRAM**

##### **SUBCHAPTER B. BOARD MEETING GUIDELINES AND REQUIREMENTS**

###### **34 TAC §7.18**

The Comptroller of Public Accounts proposes amendments to §7.18, concerning complaints.

The amendments to §7.18 update the language in subsection (a) to require that a statement specifying where to send complaints is placed on plan or program websites and plan or program descriptions instead of on all applications, contracts and informational materials. This change is being made because increased

internet access and usage make websites more effective in conveying this information, and because plan or program descriptions are a more appropriate placement than plan or program contracts. The amendments also correct a typographical error in subsection (b).

Tom Currah, Chief Revenue Estimator, has determined that during the first five years that the proposal is in effect, the rule: will not create or eliminate a government program; will not require the creation or elimination of employee positions; will not require an increase or decrease in future legislative appropriations to the agency; will not require an increase or decrease in fees paid to the agency; will not increase or decrease the number of individuals subject to the rules' applicability; and will not positively or adversely affect this state's economy. This proposal amends an existing rule.

Mr. Currah also has determined that the proposal would have no significant fiscal impact on small businesses or rural communities. The rule would have no fiscal impact on the state government, units of local government, or individuals. The proposed amendment would benefit the public by improving dissemination of this information. There would be no anticipated significant economic cost to the public.

Comments on the proposals may be submitted to Linda Fernandez, Director, Educational Opportunities and Investment Division, Comptroller of Public Accounts, at P.O. Box 13407, Austin, Texas 78711-3407 or at [Linda.Fernandez@cpa.texas.gov](mailto:Linda.Fernandez@cpa.texas.gov). Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

These amendments are proposed under Education Code, §54.618(b)(2), which authorizes the Prepaid Higher Education Tuition Board in the Comptroller of Public Accounts to adopt rules to implement the program.

These amendments implement Education Code, Chapter 54, Subchapter F.

*§7.18. Complaints.*

(a) All plan or program websites and plan or program descriptions [applications, contracts and informational materials distributed] on behalf of the program shall include a statement specifying that complaints may be forwarded to the following address or by calling the toll free number: Prepaid Higher Education Tuition Program, Office of the Comptroller of Public Accounts, P.O. Box 13407, Austin, Texas 78711-3407, 1-800-445-GRAD.

(b) Staff shall document the source and nature of each complaint as provided in [the ] Education Code, §54.617, and shall keep a file for each written complaint filed. Each file shall include a description of the action taken to resolve the complaint. Staff shall provide any person who files a written complaint with a copy of the board's policies [policies] and procedures pertaining to complaint investigation and resolution, shall update such person at least quarterly regarding the status of the complaint, and shall notify such person of the final resolution of the complaint.

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

Filed with the Office of the Secretary of State on June 22, 2018.

TRD-201802800



## SUBCHAPTER K. HIGHER EDUCATION SAVINGS PLAN

### 34 TAC §7.101

The Comptroller of Public Accounts proposes amendments to §7.101, concerning definitions.

The amendments to §7.101 revise paragraph (6)(A) to exclude from the definition of "Promotional material, or savings plan information" internet banner ads that link directly to a web page that contains a link to the savings plan description. This change is being made to allow the comptroller the flexibility to link ads to a webpage that contains the savings plan descriptions instead of the home page of the savings plan.

The amendments to §7.101 also revise paragraph (6)(E) to exclude from the definition of "Promotional material, or savings plan information" objects, advertisements, or social media posts that include no more than the name and logo of the plan and a short slogan that does not constitute a call to invest. This change is being made due to the increased use and content of online advertising, and to be consistent with federal rules and guidance.

Tom Currah, Chief Revenue Estimator, has determined that during the first five years that the proposal is in effect, the rule: will not create or eliminate a government program; will not require the creation or elimination of employee positions; will not require an increase or decrease in future legislative appropriations to the agency; will not require an increase or decrease in fees paid to the agency; will not increase or decrease the number of individuals subject to the rules' applicability; and will not positively or adversely affect this state's economy. This proposal amends an existing rule.

Mr. Currah also has determined that the proposal would have no significant fiscal impact on small businesses or rural communities. The rule would have no fiscal impact on the state government, units of local government, or individuals. The proposed amendment would benefit the public by allowing more flexibility for promotion of the savings plan. There would be no anticipated significant economic cost to the public.

Comments on the proposal may be submitted to Linda Fernandez, Director, Educational Opportunities and Investment Division, Comptroller of Public Accounts, at P.O. Box 13407, Austin, Texas 78711-3407 or at [Linda.Fernandez@cpa.texas.gov](mailto:Linda.Fernandez@cpa.texas.gov). Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

This amendment is proposed under Education Code, §§54.618, 54.702(a), 54.708, and 54.710, which authorize the Prepaid Higher Education Tuition Board in the Comptroller of Public Accounts to adopt rules to implement the program.

This amendment implements Education Code, Chapter 54, Subchapter G.

#### §7.101. Definitions.

The following words, terms, and phrases, when used in this subchapter, shall have the following meanings.

(1) Beneficiary--The designated individual whose qualified higher education expenses are expected to be paid from a savings trust account.

(2) Financial institution--A bank, trust company, savings and loan association, credit union, broker-dealer, mutual fund, insurance company, or other similar financial institution that is authorized to transact business in this state.

(3) Nonqualified withdrawal--A withdrawal from a savings trust account other than:

(A) a qualified withdrawal;

(B) a withdrawal that is made as the result of the death or disability of the beneficiary of the account; or

(C) a withdrawal that is made as a result of the receipt of a scholarship or an allowance or payment that is described in Internal Revenue Code of 1986, §135(d)(1)(B) or (C), as amended, and that the beneficiary has received, to the extent that the amount of the withdrawal does not exceed the amount of the scholarship, allowance, or payment, in accordance with federal law.

(4) Owner--The individual, trust, estate, Uniform Gift to Minors Act (UGMA) custodian or Uniform Transfer to Minors Act (UTMA) custodian, guardian, corporation, non-profit entity, or other legal entity, or any combination thereof that results from transfers by operation of law, that owns a savings trust account under a savings trust agreement between the board and that individual, trust, estate, UGMA or UTMA custodian, guardian, corporation, non-profit entity, or other legal entity, or any combination thereof.

(5) Plan manager--A financial institution that is under contract with the board to serve as a plan administrator.

(6) Promotional material, or savings plan information--Any material published or used in any written, electronic, or other public media. For the purpose of §7.102(e)(2) and (3), of this title (relating to General Provisions) the term does not include:

(A) internet banner ads that link directly to a web page that contains a link to the savings plan description [~~to the home page of a savings plan~~];

(B) time-limited broadcast advertisements;

(C) press releases distributed only to members of the media;

(D) materials and information that is not distributed to account owners, beneficiaries, or the public; or

(E) objects, advertisements or social media posts that include no more than the name and logo of the plan and a short [brief] slogan that does not constitute a call to invest [~~of ten words or less~~].

(7) Qualified higher education expenses--Tuition, fees, books, supplies, and equipment that are required for the enrollment or attendance of a beneficiary at an eligible educational institution as defined by Internal Revenue Code of 1986, §529, as amended, and including in certain instances the following:

(A) In the case of a special needs beneficiary, "qualified higher education expenses" include expenses for special needs services that are incurred in connection with enrollment or attendance of the beneficiary at an eligible educational institution; and

(B) To the extent permitted by Internal Revenue Code of 1986, §529, as amended, beneficiaries who live off-campus and not at home may include in "qualified higher education expenses" a reasonable room and board allowance as determined by the eligible edu-

educational institution, and beneficiaries who live on campus may include in "qualified higher education expenses" the actual invoice amount that is charged for room and board, if that amount is greater than the allowance.

(8) Qualified withdrawal--A withdrawal from a savings trust account to pay the qualified higher education expenses of the beneficiary of the account.

(9) Savings trust account--An account that an owner establishes through the savings plan under this subchapter and Education Code, Chapter 54, Subchapter G, on behalf of a beneficiary for the purpose of applying distributions from the account toward qualified higher education expenses at eligible educational institutions.

(10) Savings trust agreement--The agreement between the owner that establishes a savings trust account and the board, which may be amended over time.

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

Filed with the Office of the Secretary of State on June 22, 2018.  
TRD-201802801  
Victoria North  
Chief Counsel, Fiscal and Agency Affairs Legal Services Division  
Comptroller of Public Accounts  
Earliest possible date of adoption: August 5, 2018  
For further information, please call: (512) 475-0387



## SUBCHAPTER L. PREPAID TUITION UNIT UNDERGRADUATE EDUCATION PROGRAM: TEXAS TOMORROW FUND II

### 34 TAC §7.121

The Comptroller of Public Accounts proposes an amendment to §7.121, concerning application.

The amendment to §7.121 updates the address in subsection (b) where applications are made available by deleting the room number.

Tom Currah, Chief Revenue Estimator, has determined that during the first five years that the proposal is in effect, the rule: will not create or eliminate a government program; will not require the creation or elimination of employee positions; will not require an increase or decrease in future legislative appropriations to the agency; will not require an increase or decrease in fees paid to the agency; will not increase or decrease the number of individuals subject to the rules' applicability; and will not positively or adversely affect this state's economy. This proposal amends an existing rule.

Mr. Currah also has determined that the proposal would have no significant fiscal impact on small businesses or rural communities. The rule would have no fiscal impact on the state government, units of local government, or individuals. The proposed amendment would benefit the public by improving access to applications for this program. There would be no anticipated significant economic cost to the public.

Comments on the proposal may be submitted to Linda Fernandez, Director, Educational Opportunities and Investment Division, Comptroller of Public Accounts, at P.O. Box 13407, Austin,

Texas 78711-3407 or at [Linda.Fernandez@cpa.texas.gov](mailto:Linda.Fernandez@cpa.texas.gov). Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

This amendment is proposed under Education Code, §54.752(b)(1), which authorizes the Prepaid Higher Education Tuition Board in the Comptroller of Public Accounts to adopt rules to implement the program.

This amendment implements Education Code, Chapter 54, Subchapter H.

### §7.121. Application.

(a) This subchapter applies to prepaid tuition contracts under the prepaid tuition unit undergraduate education program (Texas Tomorrow Fund II) to enable individuals to enter into a prepaid tuition contract with the board on behalf of a beneficiary for the purchase of one or more tuition units that the beneficiary is entitled to apply to the payment of the beneficiary's undergraduate tuition and required fees at an eligible educational institution.

(b) Applications shall be made available through the Prepaid Tuition Unit Undergraduate Education Program, Office of the Comptroller of Public Accounts, P.O. Box 13407, Austin, Texas 78711-3407; 111 East 17th Street, [Room 445,] Austin, Texas 78711-1440, or by calling toll-free at 1-800-445-4723 (GRAD), or as otherwise provided by the board on the board's Internet web site.

(c) The rights of purchasers and beneficiaries are subject to the provisions of this subchapter, Education Code, Chapter 54, Subchapter H, Internal Revenue Code, §529, and the terms and conditions of the prepaid tuition contract. To the extent of irreconcilable conflict, the provisions of Internal Revenue Code, §529; Education Code, Chapter 54, Subchapter H; and this subchapter prevail over the prepaid tuition contract. Any amendment to Internal Revenue Code, §529; Education Code, Chapter 54, Subchapter H; or this subchapter that would apply to a prepaid tuition contract will automatically constitute an amendment to the prepaid tuition contract.

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

Filed with the Office of the Secretary of State on June 22, 2018.  
TRD-201802802  
Victoria North  
Chief Counsel, Fiscal and Agency Affairs Legal Services Division  
Comptroller of Public Accounts  
Earliest possible date of adoption: August 5, 2018  
For further information, please call: (512) 475-0387



## TITLE 37. PUBLIC SAFETY AND CORRECTIONS

### PART 7. TEXAS COMMISSION ON LAW ENFORCEMENT

#### CHAPTER 211. ADMINISTRATION

##### 37 TAC §211.1

The Texas Commission on Law Enforcement (Commission) proposes amendments to §211.1, concerning Definitions. Paragraphs (49) - (50) in Subsection (a) are being added to clarify which police chiefs must attend chiefs training through the Bill

Blackwood Law Enforcement Management Institute of Texas. Paragraphs (51) - (68) in Subsection (a) are being renumbered to reflect the addition of the new definitions. Subsection (b) is amended to reflect the effective date of the changes.

The proposed amendments clarify which police chiefs must attend chiefs training through the Bill Blackwood Law Enforcement Management Institute of Texas as required under Texas Occupations Code, Section 1701.358, and Texas Education Code, Section 96.641.

John Beauchamp, General Counsel, has determined that for each year of the first five years the amendments as proposed will be in effect, there will be little or no effect on state or local governments as a result of administering the amendments.

Mr. Beauchamp has determined that for each year of the first five years the section as proposed will be in effect, there will be a positive benefit to the public by correctly listing those required to take the training.

Mr. Beauchamp has determined that for each year of the first five years the section as proposed will be in effect, there will be no anticipated cost to small businesses, micro-businesses, rural communities, or individuals, as a result of the proposed section.

Mr. Beauchamp has determined the following:

(1) the proposed rule does not create or eliminate a government program;

(2) implementation of the proposed rule does not require the creation of new employee positions or the elimination of existing employee positions;

(3) implementation of the proposed rule does not require an increase or decrease in future legislative appropriations to the agency;

(4) the proposed rule does not require an increase or decrease in fees paid to the agency;

(5) the proposed rule does not create a new regulation;

(6) the proposed rule does not expand, limit, or repeal an existing regulation;

(7) the proposed rule does not increase or decrease the number of individuals subject to the rule's applicability;

(8) the proposed rule does not positively or adversely affect this state's economy.

Comments on the proposal may be submitted electronically to [public.comment@tcole.texas.gov](mailto:public.comment@tcole.texas.gov) or in writing to Mr. Kim Vickers, Executive Director, Texas Commission on Law Enforcement, 6330 E. Highway 290, Suite 200, Austin, Texas 78723-1035.

The amendments are proposed under Texas Occupations Code §1701.151, General Powers of the Commission; Rulemaking Authority, Texas Occupations Code, §1701.358, Initial Training and Continuing Education for Police Chiefs, Texas Education Code, §96.641 Initial Training and Continuing Education for Police Chiefs and Command Staff.

No other code, article, or statute is affected by this proposal.

#### §211.1. Definitions.

(a) The following words and terms, when used in this part, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Academic alternative program--A program for college credit offered by a training provider recognized by the Southern Association of Colleges and Schools and the Texas Higher Education Coordinating Board, authorized by the commission to conduct preparatory law enforcement training as part of a degree plan program, and consisting of commission-approved curricula.

(2) Academic provider--A school, accredited by the Southern Association of Colleges and Schools and the Texas Higher Education Coordinating Board, which has been approved by the commission to provide basic licensing courses.

(3) Accredited college or university--An institution of higher education that is accredited or authorized by the Southern Association of Colleges and Schools, the Middle States Association of Colleges and Schools, the New England Association of Schools and Colleges, the North Central Association of Colleges and Schools, the Northwest Commission on Colleges and Universities, the Western Association of Schools and Colleges, or an international college or university evaluated and accepted by a United States accredited college or university.

(4) Active--A license issued by the commission that meets the current requirements of licensure and training as determined by the commission.

(5) Administrative Law Judge (ALJ)--An administrative law judge appointed by the chief administrative law judge of the State Office of Administrative Hearings.

(6) Agency--A law enforcement unit or other entity, whether public or private, authorized by Texas law to appoint a person licensed or certified by the commission.

(7) Appointed--Elected or commissioned by an agency as a peace officer, reserve or otherwise selected or assigned to a position governed by the Texas Occupations Code, Chapter 1701, without regard to pay or employment status.

(8) Background investigation--An investigation into an applicant's personal history that meets or exceeds the commission-developed questionnaire or personal history statement.

(9) Basic licensing course--Any current commission developed course that is required before an individual may be licensed by the commission.

(10) Certified copy--A true and correct copy of a document or record certified by the custodian of records of the submitting entity.

(11) Chief administrator--The head or designee of a law enforcement agency.

(12) Commission--The Texas Commission on Law Enforcement.

(13) Commissioned--Has been given the legal power to act as a peace officer or reserve, whether elected, employed, or appointed.

(14) Commissioners--The nine commission members appointed by the governor.

(15) Contract jail--A correctional facility, operated by a county, municipality or private vendor, operating under a contract with a county or municipality, to house inmates convicted of offenses committed against the laws of another state of the United States, as provided by Texas Government Code, §511.0092.

(16) Contract Jailer--a person licensed as a Jailer in a Contract Jail or employed by an agency outside of a County Jail whose employing agency provides services inside of a County Jail which would require the person to have a Jailer License.

(17) Contractual training provider--A law enforcement agency or academy, a law enforcement association, alternative delivery trainer, distance education, academic alternative, or proprietary training provider that conducts specific education and training under a contract with the commission.

(18) Convicted--Has been adjudged guilty of or has had a judgment of guilt entered in a criminal case that has not been set aside on appeal, regardless of whether:

(A) the sentence is subsequently probated and the person is discharged from probation;

(B) the charging instrument is dismissed and the person is released from all penalties and disabilities resulting from the offense; or

(C) the person is pardoned, unless the pardon is expressly granted for subsequent proof of innocence.

(19) Community supervision--Any court-ordered community supervision or probation resulting from a deferred adjudication or conviction by a court of competent jurisdiction. However, this does not include supervision resulting from a pretrial diversion.

(20) Diploma mill--An entity that offers for a fee with little or no coursework, degrees, diplomas, or certificates that may be used to represent to the general public that the individual has successfully completed a program of secondary education or training.

(21) Distance education--Study, at a distance, with an educational provider that conducts organized, formal learning opportunities for students. The instruction is offered wholly or primarily by distance study, through virtually any media. It may include the use of: videotapes, DVD, audio recordings, telephone and email communications, and Web-based delivery systems.

(22) Duty ammunition--Ammunition required or permitted by the agency to be carried on duty.

(23) Executive director--The executive director of the commission or any individual authorized to act on behalf of the executive director.

(24) Experience--Includes each month, or part thereof, served as a peace officer, reserve, jailer, telecommunicator, or federal officer. Credit may, at the discretion of the executive director, be awarded for relevant experience from an out-of-state agency.

(25) Family Violence--In this chapter, has the meaning assigned by Chapter 71, Texas Family Code.

(26) Field training program--A program intended to facilitate a transition from the academic setting to the performance of the general duties of the appointing agency.

(27) Firearms--Any handgun, shotgun, precision rifle, patrol rifle, or fully automatic weapon that is carried by the individual officer in an official capacity.

(28) Firearms proficiency--Successful completion of the annual firearms proficiency requirements.

(29) Fit for duty review--A formal specialized examination of an individual, appointed to a position governed by the Texas Occupations Code, Chapter 1701, without regard to pay or employment status, to determine if the appointee is able to safely and/or effectively perform essential job functions. The basis for these examinations should be based on objective evidence and a reasonable basis that the cause may be attributable to a medical and/or psychological condition or impairment. Objective evidence may include direct observation, credible third party reports; or other reliable evidence. The review should come

after other options have been deemed inappropriate in light of the facts of the case. The selected Texas licensed medical doctor or psychologist, who is familiar with the duties of the appointee, conducting an examination should be consulted to ensure that a review is indicated. This review may include psychological and/or medical fitness examinations.

(30) High School Diploma--An earned high school diploma from a United States high school, an accredited secondary school equivalent to that of United States high school, or a passing score on the general education development test indicating a high school graduation level. Documentation from diploma mills is not acceptable.

(31) Home School Diploma--An earned diploma from a student who predominately receives instruction in a general elementary or secondary education program that is provided by the parent, or a person in parental authority, in or through the child's home. (Texas Education Code §29.916)

(32) Honorably Retired Peace Officer--an unappointed person with a Texas Peace Officer license who has a cumulative total of 15 years of full-time service as a Peace Officer. An Honorably Retired Peace Officer does not carry any Peace Officer authority.

(33) Individual--A human being who has been born and is or was alive.

(34) Jailer--A person employed or appointed as a jailer under the provisions of the Local Government Code, §85.005, or Texas Government Code §511.0092.

(35) Killed in the line of duty--A death that is the directly attributed result of a personal injury sustained in the line of duty.

(36) Law--Including, but not limited to, the constitution or a statute of this state, or the United States; a written opinion of a court of record; a municipal ordinance; an order of a county commissioners' court; or a rule authorized by and lawfully adopted under a statute.

(37) Law enforcement academy--A school operated by a governmental entity which may provide basic licensing courses and continuing education under contract with the commission.

(38) Law enforcement automobile for training--A vehicle equipped to meet the requirements of an authorized emergency vehicle as identified by Texas Transportation Code §546.003 and §547.702.

(39) Lesson plan--A plan of action consisting of a sequence of logically linked topics that together make positive learning experiences. Elements of a lesson plan include: measurable goals and objectives, content, a description of instructional methods, tests and activities, assessments and evaluations, and technologies utilized.

(40) License--A license required by law or a state agency rule that must be obtained by an individual to engage in a particular business.

(41) Licensee--An individual holding a license issued by the commission.

(42) Line of duty--Any lawful and reasonable action, which an officer identified in Texas Government Code, Chapter 3105 is required or authorized by rule, condition of employment, or law to perform. The term includes an action by the individual at a social, ceremonial, athletic, or other function to which the individual is assigned by the individual's employer.

(43) Moral character--The propensity on the part of a person to serve the public of the state in a fair, honest, and open manner.

(44) Officer--A peace officer or reserve identified under the provisions of the Texas Occupations Code, §1701.001.

(45) Patrol rifle--Any magazine-fed repeating rifle with iron/open sights or with a frame mounted optical enhancing sighting device, 5 power or less, that is carried by the individual officer in an official capacity.

(46) Peace officer--A person elected, employed, or appointed as a peace officer under the provisions of the Texas Occupations Code, §1701.001.

(47) Personal Identification Number (PID)--A unique computer-generated number assigned to individuals for identification in the commission's electronic database.

(48) Placed on probation--Has received an adjudicated or deferred adjudication probation for a criminal offense.

(49) Police Chief--The head of a police department. A police chief is a chief administrator as defined above.

(50) Police Department--A municipal police department, an independent school district police department, or a police department of a public or private institution of higher education. This does not include state agencies that are not institutions of higher education, county agencies, water districts, city marshals' offices, or any other type of law enforcement agency not listed above.

(51) [(49)] POST--State or federal agency with jurisdiction similar to that of the commission, such as a peace officer standards and training agency.

(52) [(50)] Precision rifle--Any rifle with a frame mounted optical sighting device greater than 5 power that is carried by the individual officer in an official capacity.

(53) [(51)] Proprietary training contractor--An approved training contractor who has a proprietary interest in the intellectual property delivered.

(54) [(52)] Public security officer--A person employed or appointed as an armed security officer identified under the provisions of the Texas Occupations Code, §1701.001.

(55) [(53)] Reactivate--To make a license issued by the commission active after a license becomes inactive. A license becomes inactive at the end of the most recent unit or cycle in which the licensee is not appointed and has failed to complete legislatively required training.

(56) [(54)] Reinstate--To make a license issued by the commission active after disciplinary action or failure to obtain required continuing education.

(57) [(55)] Reserve--A person appointed as a reserve law enforcement officer under the provisions of the Texas Occupations Code, §1701.001.

(58) [(56)] School marshal--A person employed and appointed by the board of trustees of a school district, the governing body of an open-enrollment charter school, the governing body of a private school, or the governing board of a public junior college under Texas Code of Criminal Procedure, Article 2.127 and in accordance with and having the rights provided by Texas Education Code, §37.0811.

(59) [(57)] Self-assessment--Completion of the commission created process, which gathers information about a training or education program.

(60) [(58)] Separation--An explanation of the circumstances under which the person resigned, retired, or was terminated,

reported on the form currently prescribed by the commission, in accordance with Texas Occupations Code, §1701.452.

(61) [(59)] SOAH--The State Office of Administrative Hearings.

(62) [(60)] Successful completion--A minimum of:

(A) 70 percent or better; or

(B) C or better; or

(C) pass, if offered as pass/fail.

(63) [(61)] TCLEDDS--Texas Commission on Law Enforcement Data Distribution System.

(64) [(62)] Telecommunicator--A person employed as a telecommunicator under the provisions of the Texas Occupations Code, §1701.001.

(65) [(63)] Training coordinator--An individual, appointed by a commission-recognized training provider, who meets the requirements of §215.9 of this title.

(66) [(64)] Training cycle--A 48-month period as established by the commission. Each training cycle is composed of two contiguous 24-month units.

(67) [(65)] Training hours--Classroom or distance education hours reported in one-hour increments.

(68) [(66)] Training program--An organized collection of various resources recognized by the commission for providing preparatory or continuing training. This program includes, but is not limited to, learning goals and objectives, academic activities and exercises, lesson plans, exams, skills training, skill assessments, instructional and learning tools, and training requirements.

(69) [(67)] Training provider--A governmental body, law enforcement association, alternative delivery trainer, or proprietary entity credentialed by or authorized under a training provider contract with the commission to provide preparatory or continuing training for licensees or potential licensees.

(70) [(68)] Verification (verified)--The confirmation of the correctness, truth, or authenticity of a document, report, or information by sworn affidavit, oath, or deposition.

(b) The effective date of this section is November 1, 2018 [May 1, 2018].

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

Filed with the Office of the Secretary of State on June 22, 2018.

TRD-201802810

Kim Vickers

Executive Director

Texas Commission on Law Enforcement

Earliest possible date of adoption: August 5, 2018

For further information, please call: (512) 936-7771



## CHAPTER 218. CONTINUING EDUCATION

### 37 TAC §218.3

The Texas Commission on Law Enforcement (Commission) proposes the repeal of §218.3, concerning Legislatively Required

Continuing Education for Licensees. The repealed section is replaced with new rule §218.3 proposed elsewhere in this issue of the *Texas Register*.

The repealed section is replaced with new rule §218.3 to consolidate all legislatively required continuing education training requirements into one rule.

John Beauchamp, General Counsel, has determined that for each year of the first five years the repeal as proposed will be in effect, there will be little or no effect on state or local governments as a result of administering the rule.

Mr. Beauchamp has determined that for each year of the first five years the repeal as proposed is in effect, there will be a positive benefit to the public by combining required training into one rule.

Mr. Beauchamp has determined that for each year of the first five years after the repeal as proposed is in effect, there will be no anticipated cost to small business, individuals, or rural communities as a result of the proposed section.

Mr. Beauchamp has determined the following:

- (1) the proposed repeal does not create or eliminate a government program;
- (2) implementation of the proposed repeal does not require the creation of new employee positions or the elimination of existing employee positions;
- (3) implementation of the proposed repeal does not require an increase or decrease in future legislative appropriations to the agency;
- (4) the proposed repeal does not require an increase or decrease in fees paid to the agency;
- (5) the proposed repeal does not create a new regulation;
- (6) the proposed repeal eliminates an existing regulation;
- (7) the proposed repeal does not increase or decrease the number of individuals subject to the rule's applicability; and
- (8) the proposed repeal does not positively or adversely affect this state's economy.

Comments on the proposal may be submitted electronically to [public.comment@tcole.texas.gov](mailto:public.comment@tcole.texas.gov) or in writing to Mr. Kim Vickers, Executive Director, Texas Commission on Law Enforcement, 6330 E. Highway 290, Suite 200, Austin, Texas 78723-1035.

The repeal is proposed under Texas Occupations Code §1701.151, General Powers of the Commission; Rulemaking Authority, Texas Occupations Code §1701.253, School Curriculum, Texas Occupations Code §1701.351, Continuing Education Required for Peace Officers, Texas Occupations Code §1701.352, Continuing Education Programs, Texas Occupations Code §1701.353, Continuing Education Procedures, Texas Occupations Code §1701.354, Continuing Education for Deputy Constables, Texas Occupations Code §1701.3545, Initial Training and Continuing Education for Constables.

No other code, article, or statute is affected by this proposal.

§218.3. *Legislatively Required Continuing Education for Licensees.* The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 22, 2018.

TRD-201802811

Kim Vickers

Executive Director

Texas Commission on Law Enforcement

Earliest possible date of adoption: August 5, 2018

For further information, please call: (512) 936-7771



### 37 TAC §218.3

The Texas Commission on Law Enforcement (Commission) proposes new §218.3, concerning Legislatively Required Continuing Education for Licensees. The new rule as proposed is intended to consolidate multiple training requirements for clarity.

The new rule merges all legislatively-required continuing education training requirements into one rule.

John Beauchamp, General Counsel, has determined that for each year of the first five years the amendment as proposed will be in effect, there will be little or no effect on state or local governments as a result of administering this amendment.

Mr. Beauchamp has determined that for each year of the first five years the section as proposed will be in effect, there will be a positive benefit to the public by clarifying legislatively mandated training requirements.

Mr. Beauchamp has determined that for each year of the first five years the section as proposed will be in effect, there will be no anticipated cost to small business, individuals, or rural communities as a result of the proposed section.

Mr. Beauchamp has determined the following:

- (1) the proposed rule does not create or eliminate a government program;
- (2) implementation of the proposed rule does not require the creation of new employee positions or the elimination of existing employee positions;
- (3) implementation of the proposed rule does not require an increase or decrease in future legislative appropriations to the agency;
- (4) the proposed rule does not require an increase or decrease in fees paid to the agency;
- (5) the proposed rule does not create a new regulation;
- (6) the proposed rule does not expand, limit, or repeal an existing regulation;
- (7) the proposed rule does not increase or decrease the number of individuals subject to the rule's applicability; and
- (8) the proposed rule does not positively or adversely affect this state's economy.

Comments on the proposal may be submitted electronically to [public.comment@tcole.texas.gov](mailto:public.comment@tcole.texas.gov) or in writing to Mr. Kim Vickers, Executive Director, Texas Commission on Law Enforcement, 6330 E. Highway 290, Suite 200, Austin, Texas 78723-1035.

This new rule is proposed under Texas Occupations Code §1701.151, General Powers of the Commission; Rulemaking Authority; Texas Occupations Code §1701.251, Training Programs; Instructors; Texas Occupations Code §1701.253, School Curriculum; Texas Occupations Code §1701.258, Edu-

cation and Training Programs on Trafficking of Persons; Texas Occupations Code §1701.261, Canine Encounter Training Program; Texas Occupations Code §1701.262, Training For School District Peace Officers And School Resource Officers; Texas Occupations Code §1701.263, Education And Training Program For School District Peace Officers And School Resource Officers; Texas Occupations Code §1701.267, Training Program For Court Security Officers; Texas Occupations Code §1701.268, Civilian Interaction Training Program; Texas Occupations Code §1701.310, Appointment of County Jailer; Training Required; Texas Occupations Code §1701.351, Continuing Education Required for Peace Officers; Texas Occupations Code §1701.352, Continuing Education Programs; Texas Occupations Code §1701.353, Continuing Education Procedures; Texas Occupations Code §1701.354, Continuing Education For Deputy Constables; Texas Occupations Code §1701.358, Initial Training And Continuing Education for Police Chiefs; Texas Occupations Code §1701.656, Training; Texas Occupations Code §1701.3545, Initial Training And Continuing Education For Constables; Texas Education Code, §96.641, Initial Training And Continuing Education For Police Chiefs And Command Staff; and Code of Criminal Procedure §2.1386, Eyewitness Identification Protocols.

No other code, article, or statute is affected by this proposal.

§218.3. Legislatively Required Continuing Education for Licensees.

(a) Each agency that appoints licensees shall provide each licensee with a continuing education program to meet or exceed the requirements of this section. This section does not limit the number of hours of continuing education an agency may provide.

(b) Each training unit (2 years)

(1) Peace officers shall complete at least 40 hours of continuing education, to include the corresponding legislative update for that unit.

(2) Telecommunicators shall complete at least 20 hours of continuing education.

(c) Each training cycle (4 years)

(1) Peace officers who have not yet reached intermediate proficiency certification shall complete: Cultural Diversity (3939), Special Investigative Topics (3232), Crisis Intervention (3843) and De-escalation (1849).

(2) Individuals licensed as reserve law enforcement officers, jailers, or public security officers shall complete Cultural Diversity (3939), unless the person has completed or is otherwise exempted from legislative required training under another commission license or certificate.

(d) Assignment specific training

(1) Police chiefs: individuals appointed as "chief" or "police chief" of a police department shall complete:

(A) For an individual appointed to that individual's first position as chief, the initial training program for new chiefs provided by the Bill Blackwood Law Enforcement Management Institute, not later than the second anniversary of that individual's appointment or election as chief; and

(B) At least 40 hours of continuing education for chiefs each 24-month unit, as provided by the Bill Blackwood Law Enforcement Management Institute.

(2) Constables: elected or appointed constables shall complete:

(A) For an individual appointed or elected to that individual's first position as constable, the initial training program for new constables provided by the Bill Blackwood Law Enforcement Management Institute, not later than the second anniversary of that individual's appointment or election as constable.

(B) At least 40 hours of continuing education for constables each 48 month cycle, as provided by the Bill Blackwood Law Enforcement Management Institute.

(3) Deputy constables: each deputy constable shall complete a 20 hour course of training in civil process each training cycle. The commission may waive the requirement for this training if the constable, in the format required by TCOLE, requests exemption due to the deputy constable not engaging in civil process as part of their assigned duties.

(4) New supervisors: each peace officer assigned to their first position as a supervisor must complete new supervisor training within one year prior to or one year after appointment as a supervisor.

(5) School-based Law Enforcement Officers: School district peace officers and school resource officers providing law enforcement services at a school district with an enrollment of 30,000 or more students must obtain a school-based law enforcement proficiency certificate within 120 days of the officer's commission or placement in the district or campus of the district.

(6) Eyewitness Identification Officers: peace officers performing the function of eyewitness identification must first complete the Eyewitness Identification training (3286).

(7) Courtroom Security Officers/Persons: any person appointed to perform courtroom security functions at any level shall complete the Courtroom Security course (10999) within 1 year of appointment (to be added September 1, 2019).

(8) Body Worn Cameras- peace officers and other persons meeting the requirements of Occupations Code 1701.656 must first complete Body-worn Camera training (8158).

(e) Miscellaneous training

(1) Human Trafficking: every peace officer first licensed on or after January 1, 2011, must complete Human Trafficking (3270), within 1 year after licensing.

(2) Canine Encounters: every peace officer first licensed on or after January 1, 2016, must take Canine Encounters (4065), within 2 years of being licensed.

(3) Deaf and Hard of Hearing Drivers: every peace officer licensed on or after March 1, 2016, must complete Deaf and Hard of Hearing Drivers (7887) within 2 years of being licensed.

(4) Civilian Interaction Training: every peace officer licensed before January 1, 2018, must complete Civilian Interaction Training Program (CITP) within 2 years. All other peace officers must complete the course within 2 years of being licensed.

(5) Crisis Intervention Training: every peace officer licensed on or after April 1, 2018, must complete the 40 hour Crisis Intervention Training within 2 years of being licensed.

(6) Mental Health for Jailers: all county jailers must complete Mental Health for Jailers not later than August 31, 2021.

(f) The Commission may choose to accept an equivalent course for any of the courses listed in this chapter, provided the equivalent course is evaluated by commission staff and found to meet or exceed the minimum curriculum requirements of the legislatively mandated course.

(g) The commission shall provide adequate notice to agencies and licensees of impending non-compliance with the legislatively required continuing education.

(h) The chief administrator of an agency that has licensees who are in non-compliance shall, within 30 days of receipt of notice of non-compliance, submit a report to the commission explaining the reasons for such non-compliance.

(i) Licensees shall complete the legislatively mandated continuing education in the first complete training unit, as required, or first complete training cycle, as required, after being licensed.

(j) All peace officers must meet all continuing education requirements except where exempt by law.

(k) The effective date of this section is November 1, 2018.

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

Filed with the Office of the Secretary of State on June 22, 2018.

TRD-201802812

Kim Vickers

Executive Director

Texas Commission on Law Enforcement

Earliest possible date of adoption: August 5, 2018

For further information, please call: (512) 936-7771



## CHAPTER 223. ENFORCEMENT

### 37 TAC §223.17

The Texas Commission on Law Enforcement (Commission) proposes an amendment to §223.17, concerning Reinstatement of a License. Subsection (b) is amended to mirror the current reactivation process. Subsection (c) is amended to reflect the effective date of the changes.

This amendment is necessary to mirror the current reactivation process.

John Beauchamp, General Counsel, has determined that for each year of the first five years the amendment as proposed will be in effect, there will be little or no effect on state or local governments as a result of administering this amendment.

Mr. Beauchamp has determined that for each year of the first five years the section as proposed will be in effect, there will be a positive benefit to the public by having the same guidelines for the reactivation of a license.

Mr. Beauchamp has determined that for each year of the first five years the section as proposed will be in effect, there will be no anticipated cost to small business, individuals, or rural communities as a result of the proposed section.

Mr. Beauchamp has determined the following:

(1) the proposed rule does not create or eliminate a government program;

(2) implementation of the proposed rule does not require the creation of new employee positions or the elimination of existing employee positions;

(3) implementation of the proposed rule does not require an increase or decrease in future legislative appropriations to the agency;

(4) the proposed rule does not require an increase or decrease in fees paid to the agency;

(5) the proposed rule does not create a new regulation;

(6) the proposed rule does not expand, limit, or repeal an existing regulation;

(7) the proposed rule does not increase or decrease the number of individuals subject to the rule's applicability; and

(8) the proposed rule does not positively or adversely affect this state's economy.

Comments on the proposal may be submitted electronically to [public.comment@tcole.texas.gov](mailto:public.comment@tcole.texas.gov) or in writing to Mr. Kim Vickers, Executive Director, Texas Commission on Law Enforcement, 6330 E Highway 290, Suite 200, Austin, Texas 78723-1035.

The amendment is proposed under Texas Occupations Code §1701.151, General Powers of the Commission, Rulemaking Authority, Texas Occupations Code §1701.316, Reactivation of Peace Officer License, Texas Occupations Code §1701.3161, Reactivation of Peace Officer License: Retired Peace Officers, Texas Occupations Code §1701.351, Continuing Education Required for Peace Officers, Texas Occupations Code §1701.501, Disciplinary Action, Texas Occupations Code §1701.502, Felony Conviction or Placement on Community Supervision.

No other code, article, or statute is affected by this proposal.

#### §223.17. *Reinstatement of a License.*

(a) To reinstate a suspended or probated license for a licensee that meets current training requirements and has continually maintained legislatively required continuing education for the duration of the suspension or probation, a licensee must:

(1) make application for reinstatement in the format currently prescribed by the commission; and

(2) submit any required fee(s).

(b) A licensee that does not meet current training requirements, or has failed to continually maintain the legislatively required continuing education for the duration of the suspension or probation, must meet the reactivation of a license requirement in the format currently prescribed by the commission. [following requirements:]

{(1) If less than two years from last appointment held:}

{(A) meet current licensing standards;}

{(B) successfully complete legislatively required continuing education; and}

{(C) make application and submit any required fee(s) in the format currently prescribed by the commission-}

{(2) If two years but less than five years from last appointment held:}

{(A) meet current licensing standards;}

{(B) successfully complete a supplementary peace officer training course approved by the commission;}

{(C) make application and submit any required fee(s) in the format currently prescribed by the commission; and}

{(D) pass the licensing exam.}

{(3) If five years or more from last appointment held;}

{(A) meet current enrollment standards;}

{(B) meet current licensing standards;}

{(C) successfully complete the basic licensing course for the license sought;}

{(D) make application and submit any required fee(s) in the format currently prescribed by the commission; and}

{(E) pass the licensing exam.}

(c) The effective date of this section is November 1, 2018 [February 1, 2016].

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

Filed with the Office of the Secretary of State on June 22, 2018.

TRD-201802813

Kim Vickers

Executive Director

Texas Commission on Law Enforcement

Earliest possible date of adoption: August 5, 2018

For further information, please call: (512) 936-7771



## TITLE 43. TRANSPORTATION

### PART 10. TEXAS DEPARTMENT OF MOTOR VEHICLES

#### CHAPTER 215. MOTOR VEHICLE DISTRIBUTION

#### SUBCHAPTER E. GENERAL DISTINGUISHING NUMBERS

#### 43 TAC §215.155

The Texas Department of Motor Vehicles (department) proposes an amendment to Chapter 215, Motor Vehicle Distribution, Subchapter E, General Distinguishing Numbers, §215.155, Buyer's Temporary Tags.

#### EXPLANATION OF PROPOSED AMENDMENT

An amendment makes §215.155(b) consistent with Transportation Code, Chapter 548, which includes exemptions from the vehicle inspection requirements. The amendment authorizes a buyer's temporary tag to be displayed on a vehicle that does not have a valid inspection if the vehicle is exempt from inspection under Chapter 548.

#### FISCAL NOTE

Linda M. Flores, Chief Financial Officer, has determined that for each of the first five years the amendment as proposed is in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the proposed amendment.

Corrie Thompson, Director of the Enforcement Division, has determined that there will be no impact on local economies or overall employment as a result of enforcing or administering the proposed amendment.

#### PUBLIC BENEFIT AND COST

Ms. Thompson has also determined that for each year of the first five years the amendment is in effect, the public benefit anticipated as a result of enforcing or administering the amendment will be a rule that is consistent with Transportation Code, Chapter 548. There are no anticipated economic costs for persons required to comply with the proposed amendment. There will be no adverse economic effect on small businesses, micro-businesses, or rural communities.

#### TAKINGS IMPACT ASSESSMENT

The department has determined that this proposal affects no private real property interests 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 so 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 amendment is in effect, no government program would be created or eliminated. Implementation of the proposed amendment would not require the creation of new employee positions or elimination of existing employee positions. 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. Additionally, the proposed amendment does not create a new regulation, or expand, limit, or repeal an existing regulation, other than to eliminate the requirement for the vehicle to be inspected prior to obtaining a buyer's temporary tag when the vehicle is exempt from the vehicle inspection requirements under Transportation Code, Chapter 548. The proposed amendment does not affect the number of individuals subject to the rule's applicability and will not affect this state's economy.

#### SUBMITTAL OF COMMENTS

Written comments on the proposed amendment may be submitted to David D. Duncan, General Counsel, Texas Department of Motor Vehicles, 4000 Jackson Avenue, Austin, Texas 78731 or by email to [rules@txdmv.gov](mailto:rules@txdmv.gov). The deadline for receipt of comments is 5:00 p.m. on August 6, 2018.

#### STATUTORY AUTHORITY

The amendment is proposed under Transportation Code, §1002.001, which provides the board of the Texas Department of Motor Vehicles (board) with the authority to adopt rules that are necessary and appropriate to implement the powers and the duties of the department; and more specifically, Transportation Code, §503.002, which authorizes the board to adopt rules for the administration of Transportation Code, Chapter 503.

#### CROSS REFERENCE TO STATUTE

Transportation Code, Chapter 548 and §503.063.

§215.155. *Buyer's Temporary Tags.*

(a) A buyer's temporary tag may be displayed only on a vehicle that can be legally operated on the public streets and highways and for which a sale has been consummated.

(b) A buyer's temporary tag may be displayed only a vehicle that has a valid inspection in accordance with Transportation Code, Chapter 548, unless the vehicle is exempt from inspection under Chapter 548.

(c) For a wholesale transaction, the purchasing dealer places on the motor vehicle its own:

- (1) dealer's temporary tag; or
- (2) metal dealer's license plate.

(d) A buyer's temporary tag is valid until the earlier of:

- (1) the date on which the vehicle is registered; or
- (2) the 60th day after the date of purchase.

(e) The dealer must ensure that the following information is placed on a buyer's temporary tag that the dealer issues:

- (1) the vehicle-specific number obtained from the temporary tag database;
- (2) the year and make of the vehicle;
- (3) the VIN of the vehicle;
- (4) the month, day, and year of the expiration of the buyer's temporary tag; and
- (5) the name of the dealer.

(f) A dealer shall charge a buyer a fee of \$5 for the buyer's temporary tag or Internet-down buyer's temporary tag issued, unless the vehicle is exempt from payment of registration fees under Transportation Code, §502.453 or §502.456 or an all-terrain vehicle or recreational

off-highway vehicle under Transportation Code, §502.140 or Transportation Code, Chapter 663. The fee shall be remitted to the county in conjunction with the title transfer for deposit to the credit of the Texas Department of Motor Vehicles fund, unless the vehicle is sold to an out-of-state resident, in which case:

(1) the dealer shall remit the entire fee to the department for deposit to the credit of the Texas Department of Motor Vehicles fund if payment is made through the department's electronic title system; or

(2) the dealer shall remit the fee to the county for deposit to the credit of the Texas Department of Motor Vehicles fund.

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

Filed with the Office of the Secretary of State on June 25, 2018.

TRD-201802816

David D. Duncan

General Counsel

Texas Department of Motor Vehicles

Earliest possible date of adoption: August 5, 2018

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

