



TEXAS DEPARTMENT OF BANKING

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SUPERVISORY MEMORANDUM – 1042

October 17, 2017

TO: All Institutions Regulated by the Texas Department of Banking
FROM: Charles G. Cooper, Banking Commissioner
SUBJECT: Effect of Criminal Convictions on Licensing

OVERVIEW

Texas Occupations Code § 53.021(a) grants the Texas Department of Banking the authority to suspend or revoke a license, disqualify a person from receiving a license, or deny to a person the opportunity to take a licensing examination on the grounds that the person has been convicted of: (1) an offense that directly relates to the duties and responsibilities of the licensed occupation; (2) an offense that does not directly relate to the duties and responsibilities of the licensed occupation and that was committed less than five years before the date the person applies for the license; (3) an offense listed in 42A.054, Code of Criminal Procedure¹; or (4) a sexually violent offense, as defined in Article 62.001, Code of Criminal Procedure.

Pursuant to Texas Occupations Code § 53.025, the Department is issuing the following guidelines regarding section 53.021(a)(1), stating the reasons a particular crime is considered to directly relate to the duties and responsibilities of a particular license and any other criterion that affects the licensing decisions of the Department. The Department currently charters or issues licenses or permits to the following entities: state-chartered banks and foreign bank agencies, trust companies, money services businesses, sellers of prepaid funeral benefits, and perpetual care cemeteries. As to money services business licensing, disqualifying convictions are set out in Texas Finance Code § 151.202(e); the below guidelines are intended to supplement what is set out in statute. As to permits to sell or accept money for prepaid funeral benefits, crimes directly related to the fitness for those permits are set out in 7 Texas Administrative Code § 25.31(c).

POLICY

Pursuant to Texas Occupations Code § 53.021(a)(1), the Department may suspend or revoke a license, disqualify a person from receiving a license, or deny a person the opportunity to take a licensing examination on the grounds that the person has been convicted of an offense that directly relates to the duties and responsibilities of the licensed occupation. These guidelines are intended

¹ This section of the Code of Criminal Procedure lists violent crimes. Examples include murder, aggravated kidnapping, indecency with a child and trafficking of persons.

to reflect the Department's overarching duty to regulate the fiduciary and financial responsibilities of its licensees and apply to felony convictions of officers, directors, owners, and the entity itself.

State-Chartered Bank and Foreign Bank Agency

- Operating a state-chartered bank or foreign bank agency involves or may involve activities such as receiving money from consumers, remitting money to third parties, maintaining accounts, making representations to consumers regarding the terms of loans, repossessing property without a breach of the peace, maintaining goods that have been repossessed, collecting amounts due in a legal manner, and foreclosing on real property in compliance with state and federal law. Consequently, the following crimes are directly related to the duties and responsibilities of a licensee and may be grounds for denial, suspension, or revocation:
 - A. any offense involving dishonesty or theft;
 - B. any offense that involves misrepresentation, deceptive practices, or making a false or misleading statement (including fraud or forgery);
 - C. any offense that involves breach of trust or other fiduciary duty;
 - D. any offense that involves drug trafficking, terrorist funding, money laundering or a related financial crime;
 - E. any violation of the Bank Secrecy Act or USA PATRIOT Act;
 - F. any criminal violation of a statute governing debt collection;
 - G. failure to file a government report, filing a false government report, or tampering with a government record;
 - H. any greater offense that includes an offense described in subparagraphs (A) - (G) of this paragraph as a lesser included offense;
 - I. any offense that involves intent, attempt, aiding, solicitation, or conspiracy to commit an offense described in subparagraphs (A) - (H) of this paragraph.

Trust Company

- Operating a trust company involves or may involve activities such as acting as trustee and performing fiduciary duties per written agreement or by court order, receiving money and other property for investment in real or personal property, acting as executor, administrator, or trustee of the estate of a deceased person, acting as a custodian, guardian, conservator, or trustee for a minor or incapacitated person, receiving for safekeeping personal property, acting as custodian, assignee, transfer agent, escrow agent, registrar, or receiver, acting as investment advisor, agent, or attorney in fact, or engaging in a financial activity or an activity incidental or complementary to a financial activity. Consequently, the following crimes are directly related to the duties and responsibilities of a licensee and may be grounds for denial, suspension, or revocation:

- A. any offense involving dishonesty or theft;
- B. any offense that involves misrepresentation, deceptive practices, or making a false or misleading statement (including fraud or forgery);
- C. any offense that involves breach of trust or other fiduciary duty;
- D. any offense that involves drug trafficking, terrorist funding, money laundering or a related financial crime;
- E. any violation of the Bank Secrecy Act or USA PATRIOT Act;
- F. failure to file a government report, filing a false government report, or tampering with a government record;
- G. any greater offense that includes an offense described in subparagraphs (A) - (F) of this paragraph as a lesser included offense;
- H. any offense that involves intent, attempt, aiding, solicitation, or conspiracy to commit an offense described in subparagraphs (A) - (G) of this paragraph.

Money Services Business

- Operating a money services business involves or may involve activities such as receiving money, bullion, or specie from consumers, remitting money, bullion, or specie to third parties, maintaining accounts, exchanging currency, transporting currency, and making representations to consumers regarding the intent to make available deposited money, bullion, or specie. Consequently, in addition to the disqualifying convictions set out in Texas Finance Code § 151.202(e), the following crimes are directly related to the duties and responsibilities of a licensee and may be grounds for denial, suspension, or revocation:
 - A. any offense involving dishonesty or theft;
 - B. any offense that involves misrepresentation, deceptive practices, or making a false or misleading statement (including fraud or forgery);
 - C. any offense that involves breach of trust or other fiduciary duty;
 - D. failure to file a government report, filing a false government report, or tampering with a government record;
 - E. any greater offense that includes an offense described in subparagraphs (A) - (D) of this paragraph as a lesser included offense;
 - F. any offense that involves intent, attempt, aiding, solicitation, or conspiracy to commit an offense described in subparagraphs (A) - (E) of this paragraph.

Seller of Prepaid Funeral Benefits

- See 7 Texas Administrative Code § 25.31(c).

Perpetual Care Cemetery

- Operating a perpetual care cemetery involves or may involve activities such as making representations to prospective purchasers of burial rights, collection and investment of perpetual care trust funds, continuing the general maintenance and care of the cemetery property, and maintaining adequate records as required by 7 Texas Administrative Code § 26.2. Consequently, the following crimes are directly related to the duties and responsibilities of a licensee and may be grounds for denial, suspension, or revocation:
 - A. any offense involving dishonesty or theft;
 - B. any offense that involves the desecration of a cemetery, abuse of a corpse, or related crime;
 - C. any offense that involves misrepresentation, deceptive practices, or making a false or misleading statement (including fraud or forgery);
 - D. any offense that involves breach of trust or other fiduciary duty;
 - E. failure to file a government report, filing a false government report, or tampering with a government record;
 - F. any greater offense that includes an offense described in subparagraphs (A) - (E) of this paragraph as a lesser included offense;
 - G. any offense that involves intent, attempt, aiding, solicitation, or conspiracy to commit an offense described in subparagraphs (A) - (F) of this paragraph.

Additional Factors

In determining whether a criminal offense directly relates to the duties and responsibilities of holding any of the above charters, licenses, or permits, the Department will consider the following factors, as specified in Texas Occupations Code § 53.022:

- the nature and seriousness of the crime;
- the relationship of the crime to the purposes for requiring a license to engage in the occupation;
- the extent to which a license might offer an opportunity to engage in further criminal activity of the same type as that in which the person previously had been involved; and
- the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of a licensee.

In determining whether a conviction for a crime renders an applicant or a licensee unfit to be a licensee, the Department will consider the following factors, as specified in Texas Occupations Code § 53.023:

- the extent and nature of the person's past criminal activity;

- the age of the person when the crime was committed;
- the amount of time that has elapsed since the person's last criminal activity;
- the conduct and work activity of the person before and after the criminal activity;
- evidence of the person's rehabilitation or rehabilitative effort while incarcerated or after release, or following the criminal activity if no time was served; and
- evidence of the person's current circumstances relating to fitness to hold a license, which may include letters of recommendation from one or more of the following:
 - prosecution, law enforcement, and correctional officers who prosecuted, arrested, or had custodial responsibility for the person;
 - the sheriff or chief of police in the community where the person resides; and
 - other persons in contact with the convicted person.

The purpose of these guidelines is to give notice to the types of crimes that *may* result in adverse action. Moreover, these guidelines are not intended to be an exhaustive list nor do they prohibit the Department from considering crimes not listed herein. After due consideration of the factors listed above, the Department may find that a conviction not described herein renders a person unfit to hold a license.