

*Title 7. Banking and Securities
Part 5. Office of Consumer Credit Commissioner
Chapter 88. Consumer Debt Management Services
§§88.102, 88.107, & 88.110*

The Finance Commission of Texas (commission) adopts amendments to 7 TAC §88.102, concerning Filing of New Application, and §88.107, concerning Fees. The commission also adopts new 7 TAC §88.110, concerning Denial, Suspension, or Revocation Based on Criminal History, for debt management services providers.

The commission adopts the amendments and new rule without changes to the proposed text as published in the July 3, 2015, issue of the *Texas Register* (40 TexReg 4284).

The commission received no written comments on the proposal.

In general, the purpose of the adoption is to implement Texas Government Code, §411.095, as amended by Senate Bill (SB) 1075 (effective September 1, 2015), relating to criminal history record information obtained by the Office of Consumer Credit Commissioner (OCCC). The adoption also implements Texas Finance Code, §14.152, as amended by SB 1075, which authorizes the OCCC to require applicants for a debt management services provider registration to provide fingerprints. The adoption implements Texas Finance Code, §394.204, which describes the eligibility requirements that an applicant must satisfy before obtaining a debt management services provider registration, and describes the grounds for denying, suspending, or revoking a registration. In addition, the adoption implements Texas Occupations Code, §53.025 by providing guidelines concerning the OCCC's review of criminal convictions for debt management services provider applicants and registrants.

Debt management services providers are registered in Texas under Chapter 394 of the Texas Finance Code. SB 1075 amends Texas Government Code, §411.095 by adding Chapter 394 of the Finance Code to the list of chapters under which the OCCC may obtain criminal history record information from the Department of Public Safety (DPS) relating to an individual applying for or holding a registration.

The amendments to §88.102, concerning Filing of New Application, add paragraph (9) to subsection (b), describing which individuals must submit fingerprints as part of a registration application in order to comply with Texas Finance Code, §14.152, as amended by SB 1075. In particular, paragraph (9)(A) explains that each principal party must provide a set of fingerprints.

The amendments to §88.107, concerning Fees, add a subsection explaining that the applicant must pay a fee to a party designated by DPS for processing fingerprints.

Adopted new §88.110 specifies the criminal history information collected by the OCCC, outlines factors the OCCC will consider when reviewing criminal history information, and describes grounds for denial, suspension, and revocation of a debt management services provider registration.

Subsection (a) describes the OCCC's collection of criminal history record information from law enforcement agencies. Subsection (b) identifies the criminal history information that the applicant must disclose.

Subsection (c) describes the OCCC's denial, suspension, and revocation based on crimes that are directly related to the registered occupation of a debt management services provider. Subsection (c)(1) lists the types of crimes that the OCCC considers to directly relate to the duties and responsibilities of being a debt management services provider, including the reasons the crimes relate to the occupation, as provided by Texas Occupations Code, §53.025(a). Subsection (c)(2) contains the factors the OCCC will consider in determining whether a criminal offense directly relates to the duties and responsibilities of a registrant, as provided by Texas Occupations Code, §53.022. Subsection (c)(3) provides the mitigating factors the OCCC will consider to determine whether a conviction renders an applicant or registrant unfit, as provided by Texas Occupations Code, §53.023.

Subsection (d) identifies offenses involving moral turpitude that may be used as the basis for a denial, suspension, or revocation action by the OCCC. This provision is based on Texas Finance Code, §394.204(i)(1), which authorizes the OCCC to deny an application based on offenses related to moral turpitude.

Subsection (e) explains that the OCCC will revoke a registration on the registrant's imprisonment following a felony conviction, felony community supervision revocation, revocation of parole, or revocation of mandatory supervision, as provided by Texas Occupations Code, §53.021(b).

Subsection (f) identifies other grounds for denial, suspension, or revocation, including convictions for specific offenses described by statutory provisions cited in the rule.

The rule changes are adopted under Texas Government Code, §411.095, as amended by SB 1075. The rule changes are also adopted under Texas Finance Code, §14.152, as amended by SB 1075, which authorizes the OCCC to require applicants for a debt management services provider registration to provide fingerprints. In addition, the rule changes are adopted under Texas Occupations Code, §53.025, which authorizes each licensing authority to issue guidelines relating to the reasons a particular crime is considered to relate to a particular license or registration and any other criteria that affect the decisions of the licensing authority.

Additionally, the rule changes are adopted under Texas Finance Code, §394.204, which describes the eligibility requirements that an applicant must satisfy before obtaining a debt management services provider registration, and describes the grounds for denying, suspending, or revoking a registration. The rule changes are also adopted under Texas Finance Code, §394.214, which authorizes the commission to adopt rules to carry out Texas Finance Code, Chapter 394, Subchapter C.

The statutory provisions affected by the adoption are contained in Texas Occupations Code, Chapter 53, Texas Government Code, §411.095, and Texas Finance Code, §14.152 and Chapter 394, Subchapter C.

§88.102. Filing of New Application.

(a) (No change.)

(b) The application must include the following required forms and filings. All questions must be answered.

(1) - (8) (No change.)

(9) Fingerprints.

(A) The applicant must provide a complete set of legible fingerprints for each person meeting the definition of "principal party" in §88.101 of this title (relating to Definition). All fingerprints must be submitted in a format prescribed by the OCCC and approved by the Texas Department of Public Safety and the Federal Bureau of Investigation.

(B) For limited partnerships, if the Disclosure of Owners and Principal Parties under paragraph (3) of this subsection does not produce a natural person, the applicant must provide a complete set of legible fingerprints for individuals who are associated with the general partner as principal parties.

(C) For entities with complex ownership structures that result in the identification of individuals to be fingerprinted who do not have a substantial relationship to the proposed applicant, the applicant may submit a request to fingerprint three officers or similar employees with significant involvement in the proposed business. The request should describe the relationship and significant involvement of the individuals in the proposed business. The OCCC may approve the request, seek alternative appropriate individuals, or deny the request.

(D) For individuals who have previously been registered by the OCCC and principal parties of entities currently registered, fingerprints are not required to be provided with the initial application if the fingerprints are on record with the OCCC, are less than 10 years old, and have been processed by both the Texas Department of Public Safety and the Federal Bureau of Investigation. Upon request, the OCCC may require individuals and principal parties

previously registered with the OCCC to submit a new set of fingerprints.

(E) For individuals who have previously submitted fingerprints to another state agency, fingerprints are still required to be submitted for use by the OCCC under Texas Finance Code, §14.152. Fingerprints cannot be disclosed to others, except as authorized by Texas Government Code, §560.002.

§88.107. Fees.

(a) (No change.)

(b) Fingerprint processing. An applicant must pay a fee to a party designated by the Texas Department of Public Safety for processing fingerprints. The Texas Department of Public Safety and the designated party determine the amount of the fee and whether it is refundable.

(c) [~~b~~] Registration amendments. A fee of \$25 must be paid each time a registered provider amends a registration by changing the assumed name of the registered provider, inactivating an active registration, or relocating the registered provider location.

(d) [~~e~~] Registration duplicates. The fee for a registration duplicate is \$10.

(e) [~~d~~] Costs of hearings. The commissioner may assess the costs of an administrative appeal pursuant to Texas Finance Code, §14.207 for a hearing afforded under §88.103 of this title (relating to Processing of Application), including the cost of the administrative law judge, the court reporter, attorney's fees, or investigative costs, if applicable.

(f) [(e)] Annual assessments. An annual fixed fee not to exceed \$430 is required for each registered debt management services provider.

§88.110. Denial, Suspension, or Revocation Based on Criminal History.

(a) Criminal history record information. After an applicant submits a complete registration application, including all required fingerprints, and pays the fees required by §88.107 of this title (relating to Fees), the OCCC will investigate the applicant. The OCCC will obtain criminal history record information from the Texas Department of Public Safety and the Federal Bureau of Investigation based on the applicant's fingerprint submission. The OCCC will continue to receive information on new criminal activity reported after the fingerprints have been initially processed.

(b) Disclosure of criminal history. The applicant must disclose all criminal history information required to file a complete application with the OCCC. Failure to provide any information required as part of the application or requested by the OCCC reflects negatively on the belief that the business will be operated lawfully and fairly. The OCCC may request additional criminal history information from the applicant, including the following:

(1) information about arrests, charges, indictments, and convictions;

(2) reliable documents or testimony necessary to make a determination under subsection (c), including letters of recommendation from prosecution, law enforcement, and correctional authorities;

(3) proof that the applicant has maintained a record of steady employment, has supported the applicant's dependents, and has otherwise maintained a record of good conduct; and

(4) proof that all outstanding court costs, supervision fees, fines, and restitution as may have been ordered have been paid.

(c) Crimes directly related to registered occupation. The OCCC may deny a registration application, or suspend or revoke a registration, if the applicant or registrant has been convicted of an offense that directly relates to the duties and responsibilities of a debt management services provider, as provided by Texas Occupations Code, §53.021(a)(1).

(1) Providing debt management services involves making representations to consumers regarding the terms of the services, holding money entrusted to the provider, remitting money to third parties, and collecting charges in a legal manner. Consequently, crimes involving the misrepresentation of costs or benefits of a product or service, the improper handling of money or property entrusted to the person, failure to file a governmental report or filing a false report, or the use or threat of force against another person are directly related to the duties and responsibilities of a registrant and may be grounds for denial, suspension, or revocation.

(2) In determining whether a criminal offense directly relates to the duties and responsibilities of holding a registration, the OCCC will consider the following factors, as specified in Texas Occupations Code, §53.022:

(A) the nature and seriousness of the crime;

(B) the relationship of the crime to the purposes for requiring a registration to engage in the occupation;

(C) the extent to which a registration 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

(D) the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of a registrant.

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

(A) the extent and nature of the person's past criminal activity;

(B) the age of the person when the crime was committed;

(C) the amount of time that has elapsed since the person's last criminal activity;

(D) the conduct and work activity of the person before and after the criminal activity;

(E) 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

(F) evidence of the person's current circumstances relating to fitness to hold a registration, which may include letters of recommendation from one or more of the following:

(i) prosecution, law enforcement, and correctional officers who prosecuted, arrested, or had custodial responsibility for the person;

(ii) the sheriff or chief of police in the community where the person resides; and

(iii) other persons in contact with the convicted person.

(d) Offenses involving moral turpitude. The OCCC may deny a registration application, or suspend or revoke a registration, if the applicant or registrant has been convicted of or found civilly liable for an offense involving moral turpitude, as provided by Texas Finance Code, §394.204(i)(1), (k)(1)-(2). Offenses involving moral turpitude include the following:

(1) forgery;

(2) embezzlement;

(3) obtaining money under false pretenses;

(4) larceny;

(5) extortion;

(6) conspiracy to defraud; and

(7) any other similar offense or violation.

(e) Revocation on imprisonment. A registration will be revoked on the registrant's imprisonment following a felony conviction, felony community supervision revocation, revocation of parole, or revocation of mandatory supervision, as provided by Texas Occupations Code, §53.021(b).

(f) Other grounds for denial, suspension, or revocation. The OCCC may deny a registration application, or suspend or revoke a registration, based on any other ground authorized by statute, including the following:

(1) a conviction for an offense that does not directly relate to the duties and responsibilities of the occupation and that was committed less than five years before the date of application, as provided by Texas Occupations Code, §53.021(a)(2);

(2) a conviction for an offense listed in Texas Code of Criminal Procedure, art. 42.12, §3g, or art. 62.001(6), as provided by Texas Occupations Code, §53.021(a)(3)-(4);

(3) errors or incomplete information in the registration application, as provided by Texas Finance Code, §394.204(h);

(4) a fact or condition that would have been grounds for denying the registration application, and that either did not exist at the time of the application or the OCCC was unaware of at the time of application, as provided by Texas Finance Code, §394.204(k)(1)-(2); and

(5) any other information warranting the belief that the business will not be operated lawfully and fairly, as provided by Texas Finance Code, §394.204(i)(3), (k)(9).

Certification

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas on August 21, 2015.

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