

1 Transportation Code, §520.022, provides that the department has sole authority to determine access to
2 RTS. The department interprets SB 604, Section 4.07, as requiring the department to identify the types of
3 suspected activity that will result in suspension or denial. These are stated in proposed §217.76.
4 Suspension and denial are addressed in proposed §217.77. Reinstatement is addressed in §217.78.

5 Proposed §217.76(a) establishes that §§217.76-217.78 apply to individuals, other than
6 department employees, and entities, with RTS access. The sections do not apply to department employees
7 because their access, and denial of access, is at the will of the department. Stating that the sections do
8 not apply to them clarifies that the sections do not create procedures or requirements related to RTS
9 access, suspension, or denial, for a department employee. The reference to entities includes only entities
10 with RTS access.

11 Proposed §217.76(b) establishes the criteria for the department to suspend or deny access to RTS.
12 After reviewing comments received from county tax assessor-collectors in the SB 604, Section 4.07,
13 coordination process, the department modified the draft text to require a reasonable suspicion and added
14 the sources of information that could validate that suspicion. A reasonable suspicion standard is
15 consistent with the "suspects" language in SB 604, Section 4.07. Requiring a final determination or
16 knowing conduct would not be consistent with the legislative instruction.

17 As with the draft language provided for review, the criteria of suspected fraud, waste, or abuse is
18 further defined to include reasonable suspicion of misappropriation of money, falsification of government
19 records, or a crime involving fraud, theft, deceit, dishonesty, misrepresentation, or that otherwise reflects
20 poorly on the person's honesty or trustworthiness. The listed types of criminal activity were in the
21 coordination process criteria document as defining "a crime of moral turpitude." Based on feedback
22 received from the commenters, the department removed the reference to "a crime of moral turpitude"
23 and kept the listed types of criminal activity.

1 Proposed §217.76(b)(2) also provides that the department may suspend or deny access to RTS
2 based on a demonstration of non-compliance with applicable statutes and rules, including Texas
3 Administrative Code, Chapter 217 and Transportation Code, Chapters 501, 502, 504, or 520. Section
4 217.76(c) lists the types of acceptable forms of information that can be used to support a reasonable
5 suspicion.

6 Proposed §217.77(a) clarifies that the executive director or the executive director's designee has
7 sole authority to determine access to RTS, determine if information exists to support a reasonable
8 suspicion, and may suspend or deny RTS access, based on the criteria in §217.76. This is based on
9 Transportation Code, §520.022. Proposed §217.77(b) provides that a county tax assessor-collector may
10 request the executive director or the executive director's designee immediately suspend a county
11 employee or full service deputy's access to RTS based on the same criteria. Although not a criterion,
12 commenters in the SB 604, Section 4.07, coordination process suggested including a notice, such as the
13 notice set forth in the current §217.163 addendum. Proposed §217.77(c) incorporates the existing notice
14 provision from the addendum into the rule, with modifications to refer to an exception for federal law
15 enforcement, a request for immediate termination by the county tax assess-collector, and for differences
16 in style between the proposal and the addendum.

17 Commenters in the coordination process also suggested the need for a reinstatement process.
18 Proposed §217.78(a) incorporates the addendum reinstatement process which was agreed upon after
19 negotiation between the county tax assessor-collectors and the department. The process has been
20 modified to reflect that it applies to individuals in addition to entities, and to correct differences in style
21 between the proposal and the addendum. Proposed §217.78(b) provides that access to RTS may be
22 reinstated if the person whose access has been suspended is not the subject of a pending criminal
23 investigation by a law enforcement entity. Access may be reinstated if the department determines no

1 fraud, waste, or abuse was committed; the matter has been remedied to the satisfaction of the
2 department; or the person is in compliance with applicable statutes or rules.

3

4 **FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT.** Linda M. Flores, Chief Financial Officer,
5 has determined that for each year of the first five years new sections will be in effect, there will be no
6 fiscal impact to state or local governments as a result of the enforcement or administration of the
7 proposal. Jeremiah Kuntz, Director of the Vehicle Titles and Registration Division, has determined that
8 there will be no measurable effect on local employment or the local economy as a result of the proposal.

9

10 **PUBLIC BENEFIT AND COST NOTE.** Mr. Kuntz has also determined that, for each year of the first five years
11 the new sections are in effect, the public benefits include increased clarity and consistency for reporting
12 by county tax assessor-collectors of suspected fraud, waste, or abuse, leading to an improved ability for
13 the department and law enforcement authorities to coordinate, investigate, and ultimately prevent and
14 deter fraud, waste, and abuse of RTS.

15 Mr. Kuntz anticipates that there will be no additional costs on regulated persons to comply with
16 these rules. Currently, the department is authorized to suspend and deny access to the RTS system,
17 including full service deputies, based on the required addendum in §217.163. Transportation Code,
18 §520.022, clarifies the department's sole authority to control access to the system. Access, suspension,
19 and denial will now be addressed in §§217.76-217.78.

20 Access to the system is allowed unless reasonable suspicion exists that the RTS user has
21 committed fraud, waste, or abuse, or has failed to comply with applicable statutes as required by SB 604,
22 Section 4.07. The criteria for suspension or denial is stated in §217.76. No additional costs arise from the
23 criteria, because not committing fraud, waste, abuse, or noncompliance are functions of the individual's

1 employment or entity's contract. The processes of notice and reinstatement in §217.77 and §217.78 are
2 taken from the current addendum and impose no new requirements.

3

4 **ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS.** As required by Government
5 Code, §2006.002, the department has determined that the proposed new sections will not have an
6 adverse economic effect on small businesses, micro-businesses, or rural communities because the
7 proposal creates no new costs. Therefore, the department is not required to prepare a regulatory
8 flexibility analysis under Government Code, §2006.002.

9

10 **TAKINGS IMPACT ASSESSMENT.** The department has determined that no private real property interests
11 are affected by this proposal and that this proposal does not restrict or limit an owner's right to property
12 that would otherwise exist in the absence of government action and, therefore, does not constitute a
13 taking or require a takings impact assessment under Government Code, §2007.043.

14

15 **GOVERNMENT GROWTH IMPACT STATEMENT.** The department has determined that each year of the first
16 five years the proposed new sections are in effect, the proposed rule:

17 will not create or eliminate a government program;

18 will not require the creation of new employee positions or the elimination of existing employee
19 positions;

20 will not require an increase or decrease in future legislative appropriations to the department;

21 will not require an increase or decrease in fees paid to the department;

22 will create new regulations in §§217.76-217.78 to implement Transportation Code, §520.021 and
23 §520.022, enacted in SB 604;

- 1 will not expand existing regulations;
- 2 will not repeal existing regulations;
- 3 will not increase or decrease the number of individuals subject to the rule's applicability; and
- 4 will not positively or adversely affect the Texas economy.

5

6 **REQUEST FOR PUBLIC COMMENT.**

7 If you want to comment on the proposal, submit your written comments by 5:00 p.m. CST on November
8 18, 2019. A request for a public hearing must be sent separately from your written comments. Send
9 written comments or hearing requests by email to *rules@txdmv.gov* or by mail to Office of General
10 Counsel, Texas Department of Motor Vehicles, 4000 Jackson Avenue, Austin, Texas 78731. If a hearing is
11 held, the department will consider written comments and public testimony presented at the hearing.

12

13 **STATUTORY AUTHORITY.** The department proposes new §§271.76-217.78 under SB 604, Section 4.06,
14 and Transportation Code, §520.021 and §1002.001.

15 Senate Bill 604, Section 4.06, 86th Legislature, Regular Session (2019), provides that not later than
16 March 1, 2020, the department shall, in coordination with county tax assessors-collectors and in
17 accordance with Subchapter C, Chapter 520, Transportation Code, as added by this Act, develop, adopt,
18 and implement rules that create clear criteria for the suspension or denial of access to the department's
19 automated registration and titling system if a county tax assessor-collector suspects fraud, waste, or abuse
20 relating to the system by an employee of the tax assessor-collector's or a person deputized under
21 Transportation Code, §520.0071.

22 Transportation Code, §520.021, authorizes the department to adopt rules and policies for the
23 maintenance and use of the department's automated registration and titling system.

1 Transportation Code, §1002.001, authorizes the board to adopt rules that are necessary and
2 appropriate to implement the powers and the duties of the department.

3

4 **CROSS REFERENCE TO STATUTE.** Transportation Code, §520.021.

5 **TEXT.**

6 **SUBCHAPTER C. REGISTRATION AND TITLE SYSTEM**

7 **43 TAC §§217.76-§217.78**

8 §217.76. Criteria for Suspension or Denial of Access to RTS

9 (a) Sections 217.77, 217.78, and this section apply to individuals, other than department
10 employees, and entities, with RTS access.

11 (b) The department may suspend or deny any individual user's or entity's access to RTS if:

12 (1) information exists to support a reasonable suspicion that the individual or entity is
13 committing fraud, waste, or abuse related to RTS, including:

14 (A) misappropriation of money;

15 (B) falsification of government records; or

16 (C) a crime involving fraud, theft, deceit, dishonesty, misrepresentation, or that
17 otherwise reflects poorly on the individual's honesty or trustworthiness; or

18 (2) the individual or entity demonstrates non-compliance with applicable statutes and
19 rules, including Texas Administrative Code, Chapter 217 and Transportation Code, Chapters 501, 502, 504,
20 or 520.

21 (c) Acceptable forms of information that can support a reasonable suspicion include:

22 (1) information gathered in an audit under Transportation Code, §520.010 or §520.011;

23 (2) a request to suspend or deny the individual or entity access from a county tax assessor-

1 collector;

2 (3) review of transactions processed by the individual or entity; and

3 (4) oral or written information or complaints from:

4 (A) a law enforcement agency;

5 (B) another government agency;

6 (C) an association or trade group;

7 (D) an entity; or

8 (E) an identifiable individual.

9

10 §217.77. Process for Suspension or Denial of Access to RTS.

11 (a) The executive director or the executive director's designee has sole authority to:

12 (1) determine access to RTS;

13 (2) determine that information exists to support a reasonable suspicion that the individual

14 or entity is committing fraud, waste, or abuse related to RTS; and

15 (3) suspend or deny the individual's or entity's access to RTS, based on the criteria in

16 §217.76 of this title (relating to Criteria for Suspension or Denial of Access to RTS).

17 (b) A county tax assessor-collector may request the executive director or the executive director's

18 designee immediately suspend a county employee or full service deputy's access to RTS based on the

19 criteria in §217.76 of this title.

20 (c) The department shall inform the county tax assessor-collector before taking action to suspend

21 or deny the individual's or entity's access to RTS subsection (a) of this section, unless:

22 (1) the action is as a result of a court order;

23 (2) time is of the essence;

1 (3) revealing this action would detrimentally interfere with or compromise an active
2 investigation by the department or an enforcement agency of this state or the federal government; or
3 (4) the action is based on the county tax collector-assessor's request in subsection (b) of
4 this section.

5
6 §217.78. Reinstatement of Access to RTS.

7 (a) A county tax assessor-collector may request a review of a decision to suspend or terminate
8 RTS access by submitting a request for reinstatement in writing to the department.

9 (1) The request for reinstatement should include all supporting information that is relevant to
10 support reinstatement.

11 (2) A county tax assessor-collector may submit information in support of or relevant to a
12 request for reinstatement to the department.

13 (3) The executive director shall make a final determination on reinstatement within 21
14 calendar days from the date the department receives the request for reinstatement. If the department
15 requests additional information from the individual, entity, or county tax assessor-collector, the deadline
16 for determination of the request for reinstatement is tolled until the additional information is received.

17 (b) Unless an individual or entity is the subject of a pending criminal investigation by a law
18 enforcement entity, the individual or entity's access to RTS will be reinstated if the department
19 determines that:

20 (1) no fraud, waste, or abuse was committed;

21 (2) the matter has been remedied to the satisfaction of the department; or

22 (3) the individual or entity is in compliance with applicable statutes and rules.

23

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

3 Issued at Austin, Texas, on October 7, 2019.

4 /s/ Tracey Beaver
5 **Tracey Beaver, General Counsel**