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To: Texas Department of Motor Vehicles Board  
From: Monique Johnston, Motor Vehicle Division Director  
Agenda Item: 5  
Subject: Chapter 211. Criminal History Offense and Action on License  
New, §211.6  
(Relating to Fingerprint Requirements for Licensing Applicants for and Holders of a General Distinguishing Number (GDN) under Transportation Code Chapter 503 for all dealer types under Transportation Code §503.029(a)(6))

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#### RECOMMENDATION

Adopt the proposed new rule effective September 1, 2022, and approve for publication in the *Texas Register*.

#### PURPOSE AND EXECUTIVE SUMMARY

The purpose of new §211.6 is to:

- 1) prevent fraud in the application process by implementing a fingerprint requirement for dealers prior to the issuance of a new, renewal, or amended (due to a change in ownership) General Distinguishing Number (GDN) under Transportation Code §503.029(a)(6);
- 2) obtain a complete Texas Department of Public Safety (DPS) and Federal Bureau of Investigation (FBI) criminal history of the applicant for a GDN, as well as their representatives, to determine whether to deny the application for a GDN under the department's criminal offense guidelines under 43 TAC §211.3; and
- 3) obtain the DPS and FBI Rap Back subscriptions to obtain any updates to the DPS and FBI criminal history record information on an existing GDN holder, as well as their representatives, to determine whether to revoke the GDN under the department's criminal offense guidelines under §211.3.

#### FINANCIAL IMPACT

No significant impact.

#### BACKGROUND AND DISCUSSION

The department currently has access, via a name-based search, to criminal history record information that DPS maintains. However, bad actors can circumvent this name-based background check by using false or stolen identities.

A fingerprint-based background check significantly increases the likelihood that the department can verify the identity of the applicant and the applicant's representatives that are included in the license application. The fingerprints would be collected through a service that requires individuals to show up in person and present identification which must be validated prior to having their fingerprints collected electronically. The fingerprint-based background check is also more comprehensive as the data includes crimes committed in other states and federal crimes.

Providing fingerprints also enables the department to obtain both the DPS and FBI “Rap Back” subscription service, which notifies the department when a person’s criminal history record has changed. The department can then take more immediate action to determine if an associated license should be revoked or not renewed.

The fingerprint requirement is a one-time requirement if an active license is maintained and will affect new applicants, renewal applicants, and existing licenses that are modified due to a change in ownership.

In a recent sample of 50 active GDN applications in the categories listed in §503.029(a)(6), the average number of people required to provide fingerprints would be between 1 and 2 per application, with the range of people impacted varying between 1 and 4. The current cost per person is \$38.25. Out-of-state persons may have to pay an additional processing fee of up to \$39.95.

The department is recommending a September 1, 2022, effective date. This effective date gives the department the necessary time to implement and test the minimum necessary system enhancements required.

#### COMMENTS

The proposed §211.6 was published for comment in the April 22, 2022, issue of the *Texas Register*. The comment period closed on May 22, 2022. The department received four comments in support of the proposed new rule, and four comments requesting a change in the rule text. The eight comments are attached. The department does not recommend making any changes to the rule text.



1 background check significantly increases the likelihood that the department can verify the identity of the  
2 applicant, as well as the applicant’s representatives who are included in the license application. The  
3 fingerprints would be collected through a service that requires the individual to show up in person and  
4 present identification which must be validated prior to having their fingerprints collected electronically.

5 Licenses issued by the department create positions of trust. Abuse of this trust provides license  
6 holders opportunities to engage in fraud, theft, money laundering and related crimes. Recently, bad actor  
7 license holders have taken advantage of their licenses by printing fraudulent temporary tags, which enable  
8 criminals to operate stolen vehicles, facilitating crimes such as human and drug trafficking. Criminals use  
9 fraudulently obtained temporary tags that are registered under fake names and addresses to make it  
10 harder for law enforcement to trace the vehicles. Fraudulent temporary tags are also used to operate  
11 motor vehicles that violate environmental and safety regulations, thus endangering the public.

12 Section 211.6 is also designed to protect the public even when a fraudulent temporary tag is not  
13 at issue. Holders of a GDN license for all dealer types under Transportation Code §503.029(a)(6), as well  
14 as their representatives, provide services that involve access to confidential information, conveyance,  
15 titling, and registration of private property. Further, license holders and their representatives obtain  
16 possession of monies belonging to or owed to private individuals, creditors, and governmental entities. In  
17 addition, licensure provides persons who are predisposed to commit assaultive or sexual crimes with  
18 greater opportunities to engage in such conduct. Lastly, license holders and their representatives must  
19 comply with federal and state environmental and safety regulations.

20 The fingerprint-based background check will be used to evaluate the criminal history of the  
21 applicant, as well as the applicant’s representatives who are required to be listed on the department’s  
22 licensing application, under the department’s criminal offense guidelines in §211.3 under Occupations  
23 Code §53.021. The DPS criminal history record information is limited to crimes committed in Texas. The

1 FBI criminal history record information includes crimes committed in other states, as well as federal  
2 crimes. Human and drug trafficking crimes are commonly prosecuted on a federal level. Also, the FBI  
3 fingerprint-based criminal history background check enables the department to obtain the FBI “Rap  
4 Back” subscription service, which notifies the department when a person’s criminal history record has  
5 changed. DPS also provides a “Rap Back” service, which requires fingerprints. The department intends to  
6 use information from the FBI and DPS Rap Back services to determine if an associated license should be  
7 revoked or not renewed as authorized under applicable statutes and department rules.

8         New §211.6(a) is added to state that the fingerprint requirements apply to applicants for and  
9 holders of a franchised or independent dealer GDN. These license holders and their representatives  
10 provide services that involve access to confidential information, conveyance, titling, and registration of  
11 private property. Further, license holders and their representatives obtain possession of monies belonging  
12 to or owed to private individuals, creditors, and governmental entities. In addition, licensure provides  
13 persons who are predisposed to commit assaultive or sexual crimes with greater opportunities to engage  
14 in such conduct. Lastly, license holders and their representatives must comply with federal and state  
15 environmental and safety regulations.

16         When the department adopted current Chapter 211, it determined which offenses directly relate  
17 to the duties and responsibilities of license holders and their representatives, either because the offense  
18 entails a violation of the public trust; issuance of a license would provide an opportunity to engage in  
19 further criminal activity of the same type; or the offense demonstrates the person’s inability to act with  
20 honesty, trustworthiness, and integrity. Such offenses include crimes under the laws of another state and  
21 the United States. In proposing new §211.6, the department determined that requiring a biometric  
22 identifier to verify identity and obtain a comprehensive DPS and FBI criminal history record for applicants  
23 for and holders of licenses, along with their representatives, will prevent individuals with disqualifying

1 criminal histories from being licensed or renewing their licenses, thus substantially decreasing fraud and  
2 providing enhanced protection for citizens of Texas.

3 New §211.6(b) requires all persons applying for a new license, license amendment due to  
4 change in ownership, or license renewal, to submit a complete and acceptable set of fingerprints to DPS  
5 and pay required fees for the purpose of obtaining criminal history record information from DPS and the  
6 FBI.

7 New §211.6(c) requires that persons who are acting at the time of application, or will later act, in  
8 a representative capacity for an applicant or holder of a license, including the applicant's or holder's  
9 officers, directors, members, managers, trustees, partners, principals, or managers of business affairs,  
10 must also submit a complete and acceptable set of fingerprints and pay fees to DPS as described by  
11 §211.6(b). New §211.6(c) is consistent with §211.2(a)(2) of this chapter because it lists the same  
12 representatives for an applicant or holder of a license.

13 Occupations Code §2301.651(b) gives the board authority to deny an application for a license or  
14 take other action against an applicant or “license holder” for an act or omission by an officer, director,  
15 partner, trustee, or other person acting in a representative capacity for an applicant or “license holder”  
16 that would be cause for denying a license under Chapter 2301. Occupations Code §2301.002(18) defines  
17 “license holder” as a person who holds a license or GDN issued under Chapter 2301 or Transportation  
18 Code Chapter 503. Occupations Code §2301.651(a) includes bases for which the department may deny an  
19 application for a license or revoke or suspend a license, including when the applicant or license holder is  
20 unfit under standards described in Chapter 2301 or the board’s rules. The fingerprint-based background  
21 check will be used to evaluate the criminal history of the applicant, as well as the applicant’s  
22 representatives who are required to be listed on the department’s licensing application, under the  
23 department’s criminal offense guidelines in §211.3.

1           Taken together, Occupations Code §2301.651(b), related definitions in §2301.002, and  
2           §§2301.251, 2301.255, and 2301.257 provide authority for the department to require applicants to list in  
3           the GDN application any individual authorized to act as a representative. Without this information the  
4           department could not carry out its statutory responsibility under Chapter 2301 to investigate whether a  
5           representative committed a disqualifying act or omission that would prevent the applicant from being  
6           licensed as a GDN dealer.

7           **SUMMARY OF COMMENTS.**

8           The department received four written comments in support of the proposed new rule from the  
9           Smith County District Attorney’s Office, the Dublin Police Department and two individual commenters.  
10          The department received four written comments requesting one or more changes in the rule text from  
11          the Vidor Police Department, the Fort Bend County Precinct 3 Constable’s Office, the Texas Automobile  
12          Dealers Association, and an individual commenter.

13          **Comment:**

14          A commenter expressed support for the proposed rule stating that the rule is another positive  
15          step in the right direction to restore integrity of the system.

16          **Agency Response:**

17          The department appreciates the support and agrees with the commenter that implementing  
18          fingerprinting for GDN dealers will substantially reduce identity fraud in the dealer application process  
19          and enable the department to more effectively screen dealer applicants based on criminal history. Also,  
20          the department must obtain fingerprints to subscribe to the DPS and FBI Rap Back services to obtain any  
21          new criminal history record information on current GDN holders and their representatives to determine  
22          whether to revoke, renew, or amend an existing GDN under the department’s criminal offense guidelines  
23          under §211.3 and Occupations Code §53.021.

1 **Comment:**

2 A commenter expressed support for the rule and is looking forward to further measures the  
3 department will take to fight fraud and other crimes. The commenter noted that this rule addresses public  
4 safety concerns and that the department has a duty to screen individuals who are collecting and using  
5 citizen's personal identifying information.

6 **Agency Response:**

7 The department appreciates the support and has several other initiatives underway to reduce  
8 fraud and support law enforcement. The department agrees with the commenter that this rule addresses  
9 important public safety concerns and that the department has an important responsibility to effectively  
10 screen dealer applicants and not license known bad actors who could continue to commit fraud and other  
11 crimes. Also, the department must obtain fingerprints to subscribe to the DPS and FBI Rap Back services  
12 to obtain any new criminal history record information on current GDN holders and their representatives  
13 to determine whether to revoke, renew, or amend an existing GDN under the department's criminal  
14 offense guidelines under §211.3 and Occupations Code §53.021.

15 **Comment:**

16 A commenter supports the new rule noting that an incredible amount of crime has been  
17 perpetrated using fraudulent Texas paper tags and endorses all other efforts the department undertakes  
18 to prevent the mass issuance of fraudulent paper tags.

19 **Agency Response:**

20 The department appreciates the support. As of June 27, 2022, 75 dealers have been denied access  
21 to the temporary tag system used to print paper tags since the department's rule authorizing denial of  
22 access (43 TAC §215.505) became effective on January 27, 2022. One of the dealers who has been denied  
23 access under §215.505 used a stolen identity to obtain a license from the department. Department staff

1 continue to closely monitor dealer temporary tag usage. Feedback from the law enforcement community  
2 is that these efforts have already made a significant difference and that fingerprinting is a crucial next step  
3 to prevent bad actors from being licensed.

4 **Comment:**

5 A commenter supports fingerprinting of individuals involved in operating a car dealership and  
6 encouraged adoption of the rule.

7 **Agency Response:**

8 The department appreciates the support and agrees that this rule will provide increased  
9 protection to Texas citizens.

10 **Comment:**

11 Two commenters recommended that all persons who access the temporary tag system be  
12 fingerprinted.

13 **Agency Response:**

14 The department appreciates the comment. Texas Government Code §411.122 allows the  
15 department to access criminal history record information only for persons who are applicants or current  
16 license holders. So, while owners and certain authorized representatives who have temporary tag system  
17 access will be fingerprinted under this rule, the department may not require fingerprints for all persons  
18 to whom a dealer may grant temporary tag system access under the dealer's account. Dealers are  
19 responsible for managing account access and use and are required to limit authorized users to owners  
20 and bona fide employees with a business need to access the database under 43 TAC §215.150. Also,  
21 comments on modifying the department's rules regarding the temporary tag database are welcome, but  
22 are outside the scope of §211.6.

23 **Comment:**

1 A commenter suggested that all affected persons be fingerprinted immediately, rather than  
2 waiting until the existing GDN holders apply to renew their license.

3 **Agency Response:**

4 The department appreciates the comment and shares the commenter's sense of urgency to  
5 implement the fingerprint rule. The rule requires all new applicants to be fingerprinted before a license  
6 can be issued. Section 211.6 also requires current license holders to be fingerprinted at their next license  
7 renewal date which will occur during one of the next 24 months. Over 20,150 current license holders are  
8 affected by this rule. Requiring immediate fingerprinting for all current license holders would place a  
9 severe burden on license holders, the department, and DPS's vendor that provides identity verification  
10 and fingerprinting services. Further, this change would delay implementation of this rule, including the  
11 requirement for all new applicants to be fingerprinted. For these reasons, the department will not make  
12 this suggested change.

13 **Comment:**

14 A commenter suggested that two-factor authentication should be required to log in to the  
15 temporary tag database to prevent unauthorized users from accessing the system.

16 **Agency Response:**

17 The department appreciates the comment and agrees that system security enhancements such  
18 as two-factor authentication or multi-factor authentication are helpful in preventing unauthorized system  
19 access. The department's Information Technology Services Division is currently evaluating these tools and  
20 plans to implement solutions such as these across multiple department systems. Comments on improving  
21 temporary tag-related system security are welcome but are outside the scope of §211.6.

22 **Comment:**

1           A commenter suggested adding a new subsection to the rule exempting a person who has been  
2 fingerprinted by another Texas agency as the identity of the licensee has previously been vetted. The  
3 commenter gave the following examples of a license holder with a set of fingerprints on file with DPS: a  
4 license to carry a handgun, a license with the Texas Department of Insurance, and a license regarding  
5 motor vehicle sales financing. The commenter also stated that if it was necessary, such license holder  
6 must give the department written authorization so the person's fingerprints are subject to the DPS Rap  
7 Back subscription service, so the department can obtain criminal history record updates. The commenter  
8 further suggested that the department use electronically readable information from a driver's license,  
9 commercial driver's license, or personal identification certificate as an alternative means of establishing a  
10 licensee's or applicant's identity. Lastly, the commenter stated that the newly adopted rules regarding  
11 temporary tags should be given time to gauge whether there is a need to impose new and additional  
12 regulatory demands on licensees.

13 **Agency Response:**

14           The department appreciates the comment. The commenter focused on the department's  
15 statement that the purpose of §211.6 is to verify the identity of the applicant. However, the department  
16 also stated that the purpose of §211.6 is to provide the department with the applicant's fingerprints so  
17 the department can obtain a complete and comprehensive DPS and FBI criminal background check to  
18 evaluate the applicant's criminal history under the department's criminal offense guidelines under  
19 §211.3.

20           Section 211.3 authorizes the department to deny an application for a license, as well as to revoke  
21 the license of an existing licensee. The department must obtain the complete DPS and FBI criminal history  
22 record of the applicant, as well as its representatives who are listed in the application, and check for  
23 possible affiliation with any other individual or business entity previously deemed unfit to hold a license,

1 to properly administer Transportation Code §503.034, Occupations Code §53.021 and §2301.651, and  
2 §211.3. The department must also obtain fingerprints to subscribe to the DPS and FBI Rap Back services  
3 to obtain any new criminal history record information on current GDN holders and their representatives  
4 to determine whether to revoke an existing GDN under the department's criminal offense guidelines  
5 under §211.3 and Occupations Code §53.021.

6 DPS interprets Government Code §411.087(d)(1) to require the department to provide  
7 fingerprints for applicants and license holders as a prerequisite to receiving criminal history record  
8 information from the system containing DPS and FBI fingerprint-based criminal history records. A state  
9 agency that receives criminal history record information from DPS is not authorized to share that criminal  
10 history record information with another state agency. The department must obtain the criminal history  
11 record information on the applicant and the people who are listed in the applicant's application to  
12 determine whether the application must be denied under the department's criminal offense guidelines  
13 under §211.3. Even though another Texas state agency issued a license to an applicant after obtaining the  
14 applicant's fingerprint-based criminal history record information, the department might reject an  
15 application from the same applicant under the department's criminal offense guidelines under §211.3.  
16 Different Texas state agencies have different criminal offense guidelines, which are customized for each  
17 state agency using the criteria under Occupations Code §53.021. Section 53.021(a) includes an offense  
18 that directly relates to the duties and responsibilities of the licensed occupation.

19 Even if DPS authorized the department to obtain criminal history record information under  
20 §411.087(d)(1) based on fingerprints on file for another Texas state agency, the department would choose  
21 to have applicants and license holders provide fingerprints as part of an application for a GDN under  
22 §211.6. Otherwise, an applicant for a GDN could impersonate someone else if they knew the person has

1 fingerprints on file with DPS. For example, if the applicant knows someone who has a license to carry a  
2 handgun, the applicant could impersonate this person when applying for a GDN from the department.

3           The department agrees that the use of electronically readable information from a driver's license,  
4 commercial driver's license, or personal identification certificate is a valuable tool to establish a license  
5 holder's or applicant's identity, and this method is used by DPS's vendor to confirm identity. However, it  
6 is not an alternative to fingerprinting as the department must also obtain the complete DPS and FBI  
7 criminal history record information on any applicant and license holder, as well as its representatives who  
8 are listed in the application. While not all dealer categories have been associated with temporary tag  
9 fraud, the department's existing background check process has found applicants in all dealer categories  
10 that have been convicted of other forms of fraud and serious crimes including forgery, making a false  
11 statement, tampering with a government record, theft, aggravated assault, and delivery of a controlled  
12 substance. A fingerprint requirement is warranted for all dealers and will provide increased protection for  
13 the citizens of Texas. For these reasons, the department will not make these suggested changes.

14           The commenter focused on the fraudulent issuance of temporary tags and stated that the  
15 department's newly implemented rules regarding temporary tags should be given time to gauge whether  
16 there is a need to impose new and additional regulatory demands on licensees. As previously stated in  
17 this adoption order, the purpose of §211.6 is not limited to combatting temporary tag fraud. The  
18 department must implement §211.6 as soon as possible to protect the public. Section 211.6(b) was  
19 designed to lessen the burden on GDN applicants by only requiring the submission of fingerprints once  
20 for an active license.

21 **STATUTORY AUTHORITY.** The department adopts new §211.6 under Occupations Code §2301.155; and  
22 Transportation Code §503.002 and §1002.001.

1 Occupations Code §2301.155 authorizes the board to adopt rules as necessary or convenient to  
2 administer Occupations Code Chapter 2301 and to govern practice and procedure before the board.

3 Transportation Code §503.002 authorizes the board to adopt rules for the administration of  
4 Transportation Code Chapter 503.

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

7 **CROSS REFERENCE TO STATUTE.** Occupations Code §2301.651; Transportation Code §503.034 and  
8 §503.038; and Government Code §§411.084, 411.087 and 411.122.

9 **TEXT.**

10 **SUBCHAPTER A. CRIMINAL OFFENSE AND ACTION ON LICENSE**

11 **43 TAC §211.6**

12 **§211.6 Fingerprint Requirements for General Distinguishing Numbers**

13 (a) The requirements of this section apply to applicants for and holders of a general  
14 distinguishing number under Transportation Code Chapter 503 for all dealer types under Transportation  
15 Code §503.029(a)(6).

16 (b) Unless previously submitted to the department by an applicant for an active license issued  
17 by the department under Transportation Code Chapter 503, a person applying for a new license, license  
18 amendment due to change in ownership, or license renewal, must submit a complete and acceptable set  
19 of fingerprints to the Texas Department of Public Safety and pay required fees for purposes of obtaining  
20 criminal history record information from the Texas Department of Public Safety and the Federal Bureau  
21 of Investigation.

22 (c) Persons acting in a representative capacity for an applicant or holder of a license who are  
23 required to be listed on a licensing application under §215.133(c) of this title (relating to General

1 Distinguishing Number), including the applicant's or holder's officers, directors, members, managers,  
2 trustees, partners, principals, or managers of business affairs, must submit a complete and acceptable  
3 set of fingerprints and pay fees to the Texas Department of Public Safety under subsection (b) of this  
4 section, unless the person has previously submitted fingerprints related to an active license issued by  
5 the department under Transportation Code Chapter 503.

6  
7 **CERTIFICATION.** The agency certifies that legal counsel has reviewed the proposal and found it to be  
8 within the state agency's legal authority to adopt.

9 Issued at Austin, Texas, on M DD, YYYY.

10

11  
12  
13

/s/ Elizabeth Brown Fore  
Elizabeth Brown Fore, General Counsel

## Harris, Tameka

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**From:** Adam Colby <AColby@smith-county.com>  
**Sent:** Thursday, May 5, 2022 4:34 PM  
**To:** Zz - Resource - GCO\_Rules  
**Subject:** Chapter 211.6

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To whom it may concern,

The Texas Financial Crimes Intelligence Center would like to take this opportunity to support the proposed rules requiring the fingerprinting of licensed dealers. This intelligence center is tasked as the primary repository for criminal intelligence related to organized financial crime within the state of Texas. As such, we have seen an incredible amount of crime perpetrated with the assistance of fraudulent Texas paper tags. We have tracked numerous criminal organizations and have often seen the same vehicles involved in a repetitive pattern of criminal activity, utilizing fraudulent paper tags as cover. The ability to easily purchase fraudulent tags has repeatedly thwarted the efforts of law enforcement investigating every type of crime imaginable. It has not been uncommon to see the same vehicles with over a dozen different paper tags. The problem has become so pervasive that law enforcement in surrounding states have come to view a Texas paper tag as reasonable suspicion to initiate surveillance. I wholeheartedly endorse this proposed rule and any other efforts made by TX DMV to prevent the mass issuing of fraudulent paper tags. The implementation of this rule will undoubtedly have a detrimental effect on criminal organizations operating within our state.

Thank you,

Director Adam Colby  
Chief Intelligence Coordinator  
Texas Financial Crimes Intelligence Center  
Chief Investigator-Smith County District Attorney's Office  
Desk: 903-590-4978  
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<https://www.tdlr.texas.gov/fcic/>



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*Note: Except for criminal histories generated through the law enforcement databases, none of the information furnished by Texas FCIC should be used as probable cause for warrants. Data should be independently corroborated. This data is presented without discrimination.*

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**From:** [David Kohler](#)  
**To:** [Zz - Resource - GCO Rules](#)  
**Subject:** Fingerprinting GDN applicants and GDN license holders  
**Date:** Monday, May 2, 2022 10:52:12 AM

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Thank you to TxDMV for submitting this rule proposal to begin fingerprinting all new GDN applicants and also requiring existing GDN holders to submit fingerprints for application renewal.

Another positive step in the right direction to help restore the integrity of the system.

Respectfully,

David Kohler

**From:** [David Kohler](#)  
**To:** [Zz - Resource - GCO Rules](#)  
**Subject:** TxDMV Fingerprinting rule proposal  
**Date:** Tuesday, May 10, 2022 11:24:56 AM

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Good afternoon,

If the current rule proposal requiring ALL GDN holders/applicants to be fingerprinted, does NOT include anyone associated with the GDN that has direct access to Web-Dealer to be able to print E-Tags, the current rule proposal should be amended to include that, ANYONE having direct access into Web-Dealer.

Thank you

Respectfully,

David Kohler

## Harris, Tameka

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**From:** Edward Martin <emartin@cityofvidor.com>  
**Sent:** Thursday, May 5, 2022 9:37 AM  
**To:** Zz - Resource - GCO\_Rules  
**Subject:** Proposed rules - 211.6

**ATTENTION: This email originated from outside of TxDMV. Malicious software, such as viruses, worms, and ransomware can be transmitted via email attachments and links. Do not click any links or open any attachments unless you recognize the sender and have confirmed the content is safe.**

While I think you are on the correct path I believe you are lacking one very important group in this requirement. In order to clean the "bad" GDN holders from the system you MUST include all current GDN holders and anyone that wants access to the system. The big box dealers, the owners, do not generally access the system for printing tags; their employees do. This system is a direct connection to the TXDPS TLETS "secured" site. ALL persons with access, future and current, need to be vetted now, not when it renews in two (2) years.

I applaud the directions the TXDMV are taking but if we are to truly address this then vetting ALL users in the correct way to go.

If I were to use the Identigo system currently used to verify LTC holders in Texas the cost is roughly \$25. Big box dealers can certainly afford this and the small dealers generally have one or two sales people. I seriously doubt 25 to 50 dollars will break a dealership. I own two businesses and understand overhead and operational cost. I have to pay for food handlers licenses for my employees. It is the cost of doing business.

I understand the TADA is opposed to this but at the end of the day the building says, "Texas Dept of Motor Vehicles" not TADA Dept of Motor Vehicles. Texas has been the laughing stock for tags for years and we have the opportunity to fix it. Make the rules for all and present them to the dealers. Its time the people of Texas got faith back in the system.

Respectfully,

*Ed Martin*

Captain, Law Enforcement  
Vidor Police Department  
(409) 769-4561 Work  
(409) 781-4595 Cell  
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[emartin@cityofvidor.com](mailto:emartin@cityofvidor.com)



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**From:** [Garret, Martin](#)  
**To:** [Zz - Resource - GCO Rules](#)  
**Subject:** Chapter 211. Criminal History Offense and Action on License  
**Date:** Thursday, May 5, 2022 10:25:35 AM  
**Attachments:** [image001.png](#)

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All,

I think the adoption of this new legislature sounds outstanding. If it is not already in place, I would like to see a two factor authentication in order to log on to WebDealer using cell phones with Duo Mobile. This way, you can actually prevent unauthorized users from accessing the system.

**Martin Garret**  
Lieutenant

**Office of Nabil Shike**  
**Ft Bend County Pct 3 Constable**  
**12919 Dairy Ashford, Ste 300**  
**Sugar Land, TX 77478**  
**Office (281) 243-4841**  
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**From:** [Nanci Wilson](#)  
**To:** [Zz - Resource - GCO Rules](#)  
**Subject:** Comment on proposed rule  
**Date:** Thursday, May 5, 2022 2:20:25 PM

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I highly support the fingerprinting of individuals involved in operating a car dealerships. Please adopt the rule.

Nanci Wilson, CFE  
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**From:** [Nicholas McGregor](#)  
**To:** [Zz - Resource - GCO Rules](#)  
**Subject:** Public Comment on Proposed Rule 211.6  
**Date:** Thursday, May 5, 2022 10:03:05 AM

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**ATTENTION: This email originated from outside of TxDMV. Malicious software, such as viruses, worms, and ransomware can be transmitted via email attachments and links. Do not click any links or open any attachments unless you recognize the sender and have confirmed the content is safe.**

I believe this rule allows TxDMV as an agency to address public safety concerns that have continued to grow due to bad actors exploiting the Temporary Tag system through unchecked licensure. It is not uncommon for safety screening of applicants for other professional licenses in our state, and this process has been long overdue for TxDMV applicants. Those individuals entrusted to sell a vehicle to the general public handle personal identifying information (PII) every time they conduct a transaction. Not only with the exponential wave of Identity Theft incidents occurring in our nation and around the world, but also with peace of mind that our PII will be cared for, I believe it is the duty of TxDMV as a regulatory agency to screen those individuals who are collecting and using our citizens' information.

I support this rule and look forward to further measures that TxDMV takes to help fight fraud and other crimes through the exploitation of our state vehicle titling and registration systems, in the interest of public safety.

Sincerely,

Nick McGregor



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May 21, 2022

Office of General Counsel  
Attn: Aline Aucoin  
Texas Department of Motor Vehicles  
4000 Jackson Avenue  
Austin, TX 78731

Sent via email: [rules@txdmv.gov](mailto:rules@txdmv.gov)

Re: Proposed 43 TAC §211.6  
*Fingerprint Requirements for General Distinguishing Numbers*

Dear Ms. Aucoin:

On behalf of the Texas Automobile Dealers Association (TADA), the following comments are submitted regarding the Texas Department of Motor Vehicle's (TxDMV) proposed rule, "Fingerprint Requirements for General Distinguishing Numbers," as published in the *Texas Register*, 47 Tex.Reg. 2122 - 2124 (April 22, 2022).

The explanation for the proposed rule, as published in the *Texas Register*, is "to prevent and detect fraud in the application process."<sup>1</sup> TADA supports the agency's intended purpose to prevent and detect fraud; however, TADA respectfully requests that the Board amend the proposal to except those licensees from the proposal who have previously submitted fingerprints with other Texas state agencies as the identity of these licensees has previously been vetted.

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<sup>1</sup> "EXPLANATION. The fingerprint requirements for licensing proposed in new §211.6 are intended to prevent and detect fraud in the application process by requiring certain license applicants to be fingerprinted as part of the application process. The fingerprints will be used to generate an FBI criminal history report which will verify the applicant's identity and be used in evaluating the applicant's criminal history under the department's criminal offense guidelines in §211.3 of this chapter. . ."  
(47 Tex.Reg. 2122 (April 22, 2022).

## **BACKGROUND**

The TxDMV's January 27, 2022, Agenda Item 3.A. Briefing Item provides:  
Stopping the fraudulent production and use of temporary tags is the top priority of the Texas Department of Motor Vehicles (TxDMV). Addressing this serious issue requires the ongoing collaboration of law enforcement, TxDMV staff, and state and local leadership.

The 87<sup>th</sup> Legislature, Regular Session, addressed the "fraudulent production and use of temporary tags" by passing HB 3927.

House Bill 3927 authorized the Texas Department of Motor Vehicles to establish the maximum number of temporary tags that a dealer or converter may issue in a calendar year. In addition, HB 3927 gave the department the authority to deny access to the temporary tag database if a dealer or converter is fraudulently obtaining temporary tags from the database.

The agency adopted rules implementing HB 3927 and Executive Director Avitia reported at the April 14, 2022, board meeting, that 30 licensees have been removed from access to the eTAG system since the end of January (Bd Tr at 14 (April 14, 2022)). During the last 30 days, another 20 licensees have been removed from access to the eTAG system by the department.<sup>2</sup>

At the April 14, 2022, board meeting, Officer David Kohler responded to Board Member Graham as follows:

**MR. GRAHAM:** . . . I know that you to some degree represent law enforcement and have been very active, and I just kind of wanted to hear that side of it and make sure that y'all were satisfied with the direction of the agency and the pace which we move forward.

**MR. KOHLER:** Leaps and bounds over the last two months compared to the previous three years. It's very noticeable—if I can have just a few more minutes—because you don't see what your product is on the street. I can tell you what I see on the street now is the proliferation of the mass producing of fraudulent tags has come to almost a screeching halt.

Now what we see are the altered tags. . .

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<sup>2</sup> Executive Director Avitia reported at the May 18, 2022, board meeting, that the number of licensees who no longer have access to the eTAG system is now 50.

But the product is working and I wanted to thank you for your efforts and the members of DMV. . .  
(Bd Tr at 22-23 (April 14, 2022))

The legislation passed by the 87<sup>th</sup> Legislature and the adopted rules by the department as voted on by the board at their meeting on January 27, 2022, are performing as anticipated, i.e., the legislation and rules “are working,” to paraphrase Mr. Kohler.

The rules have been in place only for approximately three and one-half (3½) months. Limiting the number of temporary tags that may be printed by a dealer or converter and the agency’s access denial to the temporary tag database if it determines that fraudulent temporary tags are obtained, is performing because in that limited amount of time, the agency has removed at least 50 people from the database.

The newly implemented rules should be given the requisite time to gauge whether there is a need to impose new and additional regulatory demands on licensees. Proposing additional requirements on licensees is not shown to be necessary at this time as the newly passed legislation and rules are preventing the fraudulent printing of temporary tags even after only three and one-half months of their enactment.

### **PROPOSED RULE**

The department identified in its January 27, 2022, briefing on the temporary tag initiative, that **“criminals are circumventing requirements to obtain vehicle dealer licenses to fraudulently issue temporary tags. . . Some use the fraudulent tags themselves, while others sell tags through social media or in-person deals.”** (Agenda Item 3.A., 1/27/2022) (Emphasis added.)

Fingerprinting an applicant or a licensee for a general distinguishing number (GDN) will not prevent a person from “circumventing the department’s licensing requirements to sell fraudulent temporary tags through social media or in-person.”

As proposed, an applicant and a holder of a GDN, unless previously submitted, must submit a complete and acceptable set of fingerprints to the Texas Department of Public Safety (DPS) and pay the necessary fee for a criminal history record information from the DPS and the Federal Bureau of Investigation (FBI) when applying for a new license, a license amendment due to a change in ownership, or a license renewal.

In addition, any person who acts in a representative capacity for an applicant or holder

of a GDN who is required to be listed on the agency's licensing application, must submit a complete and acceptable set of fingerprints and pay the requisite fees to DPS, unless that person has previously submitted fingerprints related to an active license issued by the agency.

Many applicants and holders of a GDN have previously submitted their fingerprints to the DPS when obtaining a license. Examples of a license-holder with a set of fingerprints on file with the DPS include a license to carry a handgun; a license with the Texas Department of Insurance; and, a license to obtain a motor vehicle sales finance license.

TADA respectfully requests the board to allow a GDN holder, applicant, or person acting in a representative capacity, who has previously submitted fingerprints to the DPS, to be excluded from the proposal requiring that person to submit another set of fingerprints to the DPS. If it is necessary for a person to give the TxDMV written authorization so that their fingerprints are subject to the "Rap Back" subscription service for the department, then TADA proposes the necessary permission to be given to the department and included in the proposal as provided below:

43 TAC § 211.6 (d)

(1) This section does not apply to a person who has previously submitted a complete and acceptable set of fingerprints to the Texas Department of Public Safety for the purpose of obtaining criminal history record information from the Texas Department of Public Safety and the Federal Bureau of Investigation.

(2) The Texas Department of Motor Vehicles is authorized by a person who has previously submitted a complete and acceptable set of fingerprints to the Texas Department of Public Safety, to obtain a "Rap Back" subscription for that person who will provide written authorization to the Texas Department of Motor Vehicles to be a participant in the "Rap Back" program, if necessary.

Allowing a person who has previously submitted a complete and acceptable set of fingerprints to DPS and providing a written authorization to the TxDMV for that person to be a participant in the department's "Rap Back" program, does not require another licensing agency to share their information with the TxDMV.

If legislation is necessary to allow the TxDMV to have access to a licensee's or applicant's DPS information with a written authorization regarding the "Rap Back" program, as the legislature convenes in January, 2023, such an amendment could be passed prior to the

many GDN renewals or new applications being subject to another identical DPS fingerprint requirement with the associated cost.

Currently, Government Code §411.087 allows that a person, agency, department, political subdivision, or other entity entitled to access the criminal record history of a person under 42 U.S.C. Section 5119a, is not required to collect or submit the person's fingerprints if a complete set of the person's fingerprints was previously submitted under Subsection (d)(1).<sup>3</sup>

Providing that the department may obtain a written authorization from a person who has previously submitted fingerprints to the DPS does not hinge on that person's other agency's license continuing, as the person will now be included in the "Rap Back" program for the TxDMV.

Another identification alternative to the fingerprinting requirement is for the department to access or use the electronically readable information from a driver's license, commercial driver's license, or personal identification certificate as provided by Transportation Code §521.126. The electronically readable data may be accessed by a person who uses the information for a law enforcement or governmental purpose.

Currently, the driver's license is used to establish the identity of a voter under Chapter 63, Election Code.

An amendment to the rule proposal to allow the use of a driver's license as an alternative means of identification is: The department may access or use the electronically readable information from a licensee's or applicant's driver's license, commercial driver's license, or personal identification certificate to establish identification.

While the fraudulent printing of temporary tags is receding, according to law enforcement and because of the steps taken by the department, the proposed rule requiring fingerprinting is for identification of a licensee or applicant. However, much of the explanation provided in the *Texas Register* for the fingerprint rule discusses fraudulent temporary tags used to operate motor vehicles that violate environmental and safety regulations and "bad actor license holders [who] have taken advantage of their licenses by

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<sup>3</sup>Gov'T CODE §411.087(d)(1) provides that "a person, agency, department, political subdivision, or other entity that is not a criminal justice agency is entitled to obtain criminal history record information from the Federal Bureau of Investigation only if: (1) the requestor submits a complete set of the individual's fingerprints and other identifying information and pays any fee required or approved by the bureau;"

printing fraudulent temporary tags which enable criminals to operate stolen vehicles, facilitating crimes such as human and drug trafficking.”<sup>4</sup> (Emphasis added.)

Allowing the recently adopted rules to perform and monitoring their performance is a reasonable response. To require additional conditions and expenses on a licensee or an applicant when the new rules are accomplishing their goals and in their infancy, is a concern.

## **SUMMARY**

TADA and its members support the department and the legislature in adopting necessary legislation and rules that effect the lawful use of the state’s eTAG system.

Amending the proposal to allow a licensee or applicant who has previously submitted their fingerprints to the DPS and providing that the licensee or applicant will give written authorization to the department to obtain a “Rap Back” subscription for that person, is respectfully requested and if legislation is determined to be necessary, TADA is supportive.

In addition, TADA requests that the use of the electronically readable information from a driver’s license, commercial driver’s license, or personal identification certificate be used as an alternative means of establishing a licensee’s or applicant’s identity.

If you have any question or would like to discuss, please do not hesitate to contact me.

Sincerely,



Karen Phillips  
General Counsel/EVP

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<sup>4</sup>*Id.* 47 Tex.Reg. 2122.