

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 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.

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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 June 30, 2022.

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