

[REDACTED]

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**From:** [REDACTED]  
**Sent:** Friday, November 12, 2021 4:03 PM  
**To:** Zz - Resource - GCO\_Rules  
**Subject:** Paper plates

**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 read an article about dealers being able to issue thousands upon thousands of temporary tags and I am truly appalled that it has gone on so long. This puts so many of us in danger on the roads we pay for. It puts our law enforcement at even greater risk. If we don't support our officers and do something to back them up we may not have many left. Allowing dealers to issue 900 per dealer is not going to stop these criminals. They will just keep making up fraudulent accounts. There needs to be fingerprints and background checks for these dealers instead of just blindly issuing them to any Tom, Dick or Harry. Please consider putting in stronger measures to combat this.

Sincerely

[REDACTED]

[Sent from Yahoo Mail for iPhone](#)

[REDACTED]

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**From:** [REDACTED]  
**Sent:** Saturday, November 20, 2021 8:10 AM  
**To:** Zz - Resource - GCO\_Rules  
**Subject:** Paper plates

**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 am appalled by the idea of issuing 900 paper tags per dealer, if a dealer only has one car on his lot he should only have the capabilities of printing only one paper tag. If a legit dealer has the 900 cars for sale then he can only print 900 paper tags. Dealers should not be or have the capability of printing more tags than the cars being sold on their lot. Enough is enough. I am frustrated of seeing cars on the highway with paper plates.

Regards,  
[REDACTED]

**From:** [REDACTED]  
**Sent:** Tuesday, December 7, 2021 10:13 PM  
**To:** Zz - Resource - GCO\_Rules  
**Subject:** Public Comment for Upcoming Rules Change on Paper tags

**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.**

Hello,

I am writing as a concerned citizen. I grew up in the car business 30 years ago and understood the paper tag system to be a temporary tag that you typically had 30-60 days to use until your new license plates were available. It seemed like a reasonable system and people abided by it. I am sure there was some fraud, but it seemed so much harder back then.

Now this has become something that criminals have taken over and frankly, the State of Texas looks like more of a joke every day for not doing something.

I have lived in Houston for 6 years after living out of the State from 1997 until 2015. I have lived on the East Coast, Louisiana, the Central Plains, and overseas in Europe. I never saw such clear fraud in any of those places. In Europe, the used cars that my wife and I bought came with the license plates already affixed to the cars. They were attached to the title of the car, and before we could leave the lot, we had to have insurance secured for the cars with the dealer, the bank, and the government and had to use that license plate. So, why can we not do that in this State? How about this?

- 1) Stop using hard to read/destroy/copy paper. Use either plastic or metal plates that a new car dealer (see #2) has to take back when permanent tags come in and put a very clearly traceable number on them. Make them some really recognizable color, like red with white letters. Something that alerts everyone, "this is a paper tagged car, and you can read the tag number well."
- 2) Plastic or metal temporary tags for new vehicles only. Thus, limit the number of dealers that could potentially own temporary tags, and these new car dealers are much more easily traceable.
- 3) Attach the permanent license plate number to the VIN and title of the vehicle.
- 4) Used cars have to keep their license plate until they are crushed or the State issues a new tag because the old one is no longer reflective or destroyed in an accident (with a police report number).
- 5) Let's go one further and make insurance tie to the license plate so that no insurance on file with the State flags the tag for non-renewal when it comes back up.
- 6) Tie the insurance database and the VIN/license plate database together (merge them) so that we can ensure everybody is legal to drive around.

Well, what about personalized plates? Two options:

- 1) Stop using them (If you eliminate them altogether, everyone's "free speech" can be eliminated all at once and you are not being biased, except against criminals), or
- 2) Have people apply for personalized plates online. When they come in, head on up to their courthouse with the old tags in hand and turn them in for the personalized ones and attach the new personalized plates to the VIN/title.

There's going to be people that state "well, this hurts X, Y, Z" (pick your favorite partisan group: lower income people, the Texas Automobile Dealer Association and its members, undocumented people, criminals, smaller car lots, etc.). As a

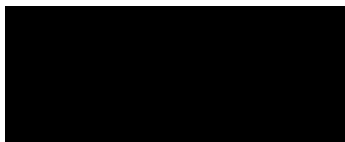
taxpayer, voter, and Native Texan, I want the State to put some teeth into its laws, move into the 21st Century, and get it's stuff together. The crime in Houston is horrible; start by doing something about it where we can so that all of the law abiding people that work, pay their bills, register their cars, pay their insurance premiums can see some relief from high insurance and criminals that can just commit crimes, hit and runs, etc. without any consequences. Just level the playing field for everyone with consistent rules. Right now, the criminals have the upper hand on paper tags.

Yes, it will take work. It is what you are paid to do. Don't want to progress things to protect the law-abiding citizens? Please quit and tell the public why you are quitting: "I do not want to improve things for the people that pay my salary; I feel too much pressure from special interest group X, Y, or Z."

Do not "limit" tags to 900 a year. The criminals already just register fake businesses to get tags or print them up. There's nothing to stop them from just creating more. This is a non-starter in the logic area.

Seems harsh I understand, but as a Native Texan from the same city as Governor Abbott, I am embarrassed by what this State has become. It's embarrassing and we look sloppy and lazy. It's so bad that I'm not sure I will retire here.

Sincerely,





The Transportation Policy Body for the North Central Texas Council of Governments  
(Metropolitan Planning Organization for the Dallas-Fort Worth Region)

December 12, 2021

Office of General Counsel  
Texas Department of Motor Vehicles  
4000 Jackson Avenue  
Austin, Texas 78731

Texas Department of Motor Vehicles Office of General Counsel:

The Regional Transportation Council (RTC) is the Metropolitan Planning Organization for the Dallas-Fort Worth (DFW) area; a membership roster is provided in Attachment 1. As staff to the RTC, the North Central Texas Council of Governments (NCTCOG) appreciates the opportunity to comment on the Texas Department of Motor Vehicles (DMV) proposed revisions to §§215.150-215.155 and new §215.505 of the Texas Administrative Code (TAC) Chapter 43, as published in the November 12, 2021, issue of the Texas Register.

NCTCOG is responsible for implementing many emission reduction control strategies that support the DFW 8-Hour Ozone Attainment Demonstration State Implementation Plan (SIP), which includes activities aimed at supporting the State's Inspection and Maintenance (I/M) Program for affected registered motor vehicles. Each temporary tag that is improperly issued leads to not having a required vehicle emission and/or safety inspection test, avoidance of vehicle insurance, and not being properly registered, ultimately leading to higher tailpipe emissions, unsafe driving conditions, and significant lost revenue to the State. NCTCOG would like to provide the following comments on the proposed revisions to help optimize the temporary tag database and temporary tag requirements.

§215.150. Authorization to Issue Temporary Tags.

NCTCOG supports the issuance of temporary tags for authorized purposes only for each type of temporary tag to curb or reduce temporary tag fraud. NCTCOG supports the department to develop necessary queries to the dealer and converter database or enhance the information system to ensure dealers and converters are in compliance with subsection (d).

NCTCOG proposes changes to language in the following subsections of §215.150.

- In subsection (d)(2), consider setting a specific number of authorized users that would have access to the database.
- In subsection (d), consider adding:
  - (6) dealer or converter may be asked to submit their password policy and/or provide employment documentation to support all bona fide employees upon the department request.

§215.505. Denial of Dealer or Converter Access to Temporary Tag System.

NCTCOG supports the denial of dealers or converters to the temporary tags system as a means to curb or reduce temporary tag fraud.

NCTCOG proposes changes to language in the following subsections of §215.505.

- In subsection (b), the second and third reference to a 10-day period is not specified as a calendar day. It should be corrected to ensure consistency.
- In subsection (c), a sentence should be added to place the responsibility of keeping the contact information current and correct on the dealer or converter, not the department.
- In subsection (d), consider decreasing from 26 calendar days to 14 calendar days. This should be enough time for a dealer or converter to respond to an urgent matter.
- In subsection (f), consider decreasing from 26 calendar days to 14 calendar days. Fourteen calendar days should be enough time for a dealer or converter to respond to an urgent matter.

§215.152. Obtaining Numbers for Issuance of Temporary Tags.

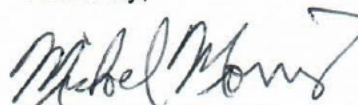
NCTCOG supports limiting the number of issued buyer's temporary tags, agent temporary tags, and converter temporary tags as a means to curb or reduce temporary tag fraud. The language in the new §215.152 subsections (g) and (h) is favored as it addresses dealers moving to different locations or opening additional locations and determines how they will be treated during the issuance of temporary tags. NCTCOG supports the new §215.152 subsections (j), (k), and (l) so the allotment number of temporary tags is not inflated for subsequent years and reinforces enforcement actions will be taken for any dealer or converter misusing or acting fraudulently.

NCTCOG proposes changes to language in the following subsections of §215.152.

- In subsection (c)(1)(A), strike this language from the rule. This may give unscrupulous dealers or converters an inflated baseline and does not ensure that these tags are tied to actual vehicle sales like using the number of title transactions processed.
- In subsections (f)(1) and (f)(2), consider decreasing the amount for agent temporary tags and vehicle specific temporary tags due to the limited and defined uses of these types of tags as these are not connected to a vehicle sale.
- In subsection (i), assuming appropriate resources are available to process allotments in a timely manner, consider increasing from 50 percent to 75 percent of maximum number before a dealer or converter can request an increase in allotment. Increasing the percent may ensure the dealer or converter is likely to reach their original allotment prior to requesting an increase to the department.

Thank you for the opportunity to provide comments on the proposed DMV revisions to §§215.150, 215.152 and new §215.505 of the Texas Administrative Code Chapter 43. If you have any questions, please feel free to contact [REDACTED] or [REDACTED]

Sincerely,



Michael Morris, P.E.  
Director of Transportation

JB:kw

Attachment

## REGIONAL TRANSPORTATION COUNCIL

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Chair  
Dallas Area Rapid Transit

# TEXAS HOUSE of REPRESENTATIVES



**Cole Hefner**

District 5

December 13, 2021

***SENT VIA ELECTRONIC MAIL ONLY***

Ms. Tracey Beaver  
General Counsel  
Texas Department of Motor Vehicles  
4000 Jackson Avenue  
Austin, Texas 78731

Dear Ms. Beaver:

As the author of HB 3927, thank you for allowing me to submit these comments during Texas DMV's rule making period. Also thank you for all your efforts stopping access to DMV's temporary tag system by fraudulent businesses. As you know this is a real concern of mine and we must do everything we can to aid law enforcement while not being onerous to legitimate auto dealers. Working together I know we can find a way to strike this balance.

I am concerned that as proposed, Texas DMV's rules may create an unintended hardship for dealers who sell mostly to customers in other states. The intent behind this legislation has always been to identify and remove illegitimate criminals from this process without harming legitimate businesses, and I would like to see this legislative intent carried into rulemaking as well.

As proposed, DMV's rules may create a hardship on Texas dealers that sell mostly to out-of-state customers. In its preamble the Department states, "The department also recognizes all dealers and converters are not the same. As such, the proposal considers actual temporary tag issuance specific to each established dealer and converter as a minimum allotment and then provides an increase based on each dealer's and converter's licensing tenure, as well as an increase for growth, resulting in a maximum number of temporary tags unique to each dealer and converter." By creating a formula where the base number of temporary tags issued is predominantly tied to Registration and Title System transactions, this causes significant hardship to dealers who sell mostly to out-of-state customers. These rules should not pick winners and losers based on what business model a dealer decides to use.





# TEXAS HOUSE *of* REPRESENTATIVES



## Cole Hefner

District 5

Another issue I see in the proposed rule is that of expected growth. As proposed, the Department's rule creates a multiplier based on the market's rate of growth. HB 3927 is clear when it states that a "dealer's" expected growth would be considered in determining the number of temporary tags the Department will issue. Understandably, having different expectations of growth for each dealer in the State would be a nightmare to administer but I do think we can produce a system for those dealers that want to demonstrate that their expected growth rate has historically and will continue to outperform market norms.

Thank you again for considering my legislative intent when addressing these rules. I do believe we can find solutions to these two issues that will not create a loophole for fraudulent businesses.

Sincerely,

  
Cole Hefner





## SENATOR PAUL BETTENCOURT

DISTRICT 7

December 13, 2021

VIA Email to: Rules@TXDMV.gov

Office of General Counsel  
Texas Department of Motor Vehicles  
1701 N. Congress Avenue  
Austin, Texas, 78701

Re: HB 3927 Proposed Rules

Dear Office of General Counsel,

Soon, the Texas Department of Motor Vehicles (DMV) will be reviewing proposed rules implementing HB 3927, which was passed by the Texas legislature to address a very serious and growing criminal activity—the selling of fraudulent Texas temporary tags for motor vehicles. This crime has been going on for many years, so it is imperative that the DMV move quickly with the adoption and implementation of the proposed rules for HB 3927.

These rule changes require greater accountability from dealers who either through purposeful fraud or neglect, allow thousands of fake temporary tags out onto Texas roads and highways. It is essential that there is a current and accurate record of authorized users of the Temporary Tag database and a current and accurate record of all unauthorized accesses to the Temporary Tag database in order to eliminate the fraud use of the database.

Our outdated system of using paper tags is not sustainable with the technological ease with which these tags can be produced or fraudulently created by bad-faith actors. I am committed to collaborating with the Department to develop legislation to create a more secure method of giving car buyers a license plate, as well as increasing administrative and criminal penalties for fraudulent activity on the part of both bad faith dealers and buyers. In developing a better process, Texas would be well-served by looking to other states for best practices.

In regards to the proposed Rule changes, I am providing the following comments:

**Comment #1:**

§215.150. Authorization to Issue Temporary Tags, page 10  
§215.150 (d) (1)

CAPITOL OFFICE:  
P.O. BOX 12068  
AUSTIN, TEXAS 78711-0107  
(512) 463-0107  
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COMMITTEES:  
LOCAL GOVERNMENT – CHAIR  
CRIMINAL JUSTICE  
EDUCATION  
FINANCE  
SELECT COMMITTEE ON REDISTRICTING  
SENATE CHAMBER REVIEW COMMITTEE

DISTRICT OFFICE:  
11451 KATY FREEWAY, STE. 209  
HOUSTON, TEXAS 77079  
(713) 464-0282  
FAX (713) 461-0108

**Discussion:** It is imperative that every user of the temporary tag database be required to have a unique identification and password to access the temporary tag database and also that each dealer or converter be able to provide a current list of user's names to the department.

**Proposed Language:**

(1) requiring everyone who has access to the temporary tag database to have and use a unique identification code and password;

(2) maintain a current list of all users who are authorized to access the temporary tag database, including their identification information and make that information available to the department;

(4) ~~(3)~~ establishing and following reasonable password policies, including preventing the sharing of passwords;

**Comment #2:**

§215.150. Authorization to Issue Temporary Tags, page 10

§215.150 (d) (4)

**Discussion:** The terms "secure printed tags" and "destroy expired tags" can be considered ambiguous and should be clearly defined in the rules.

**Proposed Language:**

(6) securing printed tags by keeping them in a locked container or in a locked room that is limited in access to only authorized personnel;

(7) destroying expired tags by shredding or other permanent disfigurement prior to disposal;

**Comment #3:**

§215.150. Authorization to Issue Temporary Tags, page 10

§215.150 (d) (9)

**Discussion:** HB 3927 requires the department to develop, manage and maintain a secure database of information on the vehicles and buyers of the vehicles for which dealers and converters have issued temporary tags. The following added language is suggested.

**Proposed Language:**

(8) Maintaining a secure real-time database of information on vehicles which the dealer or converter has issued a temporary tag; and

(9) Maintaining a secure real-time database of information on persons whom temporary buyer's tags are issued.

**Comment #4:**

§215.150. Authorization to Issue Temporary Tags, page 10

§215.150 (d)

**Discussion:** The drafters of Subsection (d) of §215.150 have stated that the dealer or converter is responsible for the use and access to the temporary data under the dealer's or converter's account, including access by any user or unauthorized person. It is reasonable then to expect that the dealer or converter will record any unauthorized access to the database and report such activity to the department. Consequently, following changes are recommended.

**Proposed Language:**

(10) Maintaining a record of any unauthorized access to the temporary tag database, the details of the issuance of the unauthorized temporary tags and reporting such access to the department on a weekly or on occurrence basis.

(11) Once it is determined that unauthorized access to the temporary tag database has occurred, providing immediate corrective actions, and providing information of such activities to the department.

**Comment #5:**

§215.505. Denial of Dealer or Converter Access to Temporary Tag System, page 17  
§215.505(b)

**Discussion:** If the department is certain that the dealer or converter is inappropriately using the temporary tag database, the access to the database should be cut off immediately.

**Proposed Language:**

(b) The department shall deny a dealer or converter access to the temporary tag database ~~10 calendar days from~~ immediately on the date the department sends notice electronically and by certified mail to the dealer or converter that the department has determined, directly or through an account user, the dealer or converter has fraudulently obtained temporary tags from the temporary tag database. A dealer or converter may seek a negotiated resolution with the department ~~within the 10-day period~~ by demonstrating corrective actions taken or that the department's determination was incorrect. ~~If a resolution is not agreed to prior to the end of the 10-day period, the department will deny access to the temporary tag database.~~

(d) A dealer or converter may request a hearing on the denial as provided by Subchapter O, Chapter 2301, Occupations Code. The request must be submitted in writing and request a hearing under this section. The department must receive a written request for a hearing within 26 days of the date of the notice denying access to the database. The request for a hearing does not stay the ~~10-day period of~~ denial of access under subsection (b) of this section. A dealer may continue to seek a negotiated resolution with the department after a request for hearing has been submitted under this subsection by demonstrating corrective actions taken or that the department's determination was incorrect.

**Comment # 6:**

§215.505. Denial of Dealer or Converter Access to Temporary Tag System, page 17  
§215.505(g)

**Discussion:** Under HB 3927 Section 4, Sec. 503.632. Department Regulation of Temporary Tags and Access to Temporary Tag Databases, the Texas legislature has given the department the authority to promulgate rules to establish the maximum number of temporary tags that a dealer or converter may obtain in a calendar year. With such rampant fraudulent activity, it is necessary to re-evaluate all dealers and converters by determining their status via an on-site visit to the dealer's location and review of their records to determine the appropriate number of tags that will be authorized per dealer or converter.

**Proposed Language:**

(g) Due to the magnitude of the abuse of the temporary tag program, in order to determine the number of temporary tags that will be available to the dealer or converter on an annual basis, any and all dealers and converters shall be assessed on the following criteria through an on-location visit by DMV personnel:

(1) the dealer 's or converter 's:

(A) time in operation;

(B) sales data; and

(C) expected growth;

(2) expected changes in the dealer 's or converter 's market;

(3) temporary conditions that may affect sales by the dealer or converter;

(4) the size and actual inspection of the physical location of the dealer or converter;

and

(4) any other information the department considers relevant.

Thank you for your work and attention to this issue, and for your consideration of these comments on these proposed rules. As the DMV moves forward, it should be looking at best practices in other states as it determines a long-term replacement for temporary paper tags. I look forward to continued collaboration with your department in our joint efforts toward stamping out this widespread fraud moving away from paper tags to a more secure system. Through both regulatory and legislative action going forward we will continue to make Texas a safer and more prosperous state for our citizens.

Sincerely,



Paul Bettencourt, Chairman  
Senate Committee on Local Government



1108 Lavaca, Suite 800  
Austin, Texas 78701  
Phone: 512-476-2686  
www.tada.org

December 13, 2021

Office of General Counsel  
Attn: Ms. Tracey Beaver  
General Counsel, TxDMV  
4000 Jackson Avenue  
Austin, TX 78731

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

Re: Proposed Rules—Chapter 215 and Chapter 217

Dear Ms. Beaver:

On behalf of the Texas Automobile Dealers Association (TADA), please accept the following comments with respect to the proposed rules regarding temporary tags and title and registration services as published in the *Texas Register* on November 12, 2021, 46 *TexReg* 7752 - 7768.

The published proposals are in response to House Bill 3927 (87<sup>th</sup> Legislature, R.S., 2021) (Exhibit A), and Senate Bill 876 (87<sup>th</sup> Legislature, R.S., 2021) (Exhibit B), and attached for reference.

**Subchapter E. GENERAL DISTINGUISHING NUMBERS**  
**Proposed 43 TAC §215.150. Authorization to Issue Temporary Tags.**

Proposed rule 43 TAC §215.150(d) provides that a dealer is responsible for *all* use and access to the temporary tag database under the dealer's or converter's account, including access by any user or unauthorized person.

Any business or individual with an internet connection or a shared connection with another entity may be subject to a cyberattack as well as a virus and other types of computer intrusions. Although fire walls and proper safeguards and comprehensive plans are put in place by a business, there is no system or software or system-wide computer protection that is available to safeguard a

system against all types of viruses, hacking, or attacks.

As franchised dealers secure their computer networks and continually upgrade their various computer systems, TADA requests that “all” be stricken from the proposal so that subsection (d) reads:

“A dealer or converter is responsible for [att] use of and access to the applicable temporary tag database under the dealer’s or converter’s account, including access by any user or unauthorized person. Dealer and converter duties include monitoring temporary tag usage, managing account access, and taking timely and appropriate actions to maintain system security, including: . .”

Although the dealer remains responsible for the use and access to the TxDMV’s temporary tag database through the proposal with respect to reasonable password policies, limiting users, and securing equipment and tags,<sup>1</sup> there may be a circumstance over which the dealer has no control and removing “all” takes into account a period of time or event that is outside of the dealer’s command.

#### **Proposed 43 TAC §215.152. Obtaining Numbers for Issuance of Temporary Tags.**

The number of temporary tags that any licensed dealer may print is discussed in proposed 43 TAC §215.152 with respect to a currently licensed dealer, a new dealer point, and, a dealer who is relocating as well as opening an additional location.

As the misuse of the agency’s temporary tag database is occurring by a few entities who abuse their state-issued license, a focus of the agency’s resources on the abusers is available through the statute, as provided for in the suggested optional considerations.

#### **Optional Considerations**

The statute provides that the department by rule *may* establish the maximum number of temporary tags that a dealer *may* obtain annually and sets out the various factors to be considered when determining a dealer’s maximum number.<sup>2</sup> Consequently, the statute does not impose a duty on the department by stating that it “shall” establish the maximum number of temporary tags that a dealer “shall” obtain in a calendar year.

The department has discretionary authority as to whether it will establish the maximum

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<sup>1</sup>Proposed 43 TAC §215.150(d) (1) - (5).

<sup>2</sup>(a) The department by rule *may* establish the maximum number of temporary tags that a dealer or converter *may* obtain in a calendar year under Section 503.062, 503.0625, or 503.063. TEX. TRANSP. CODE ANN. §503.0632 (Vernon Supp. 2021). (Emphasis added.)

number of temporary tags that may be obtained by a dealer. The statute uses “may” and not “shall” regarding establishing the maximum number of temporary tags that a dealer “may” obtain annually. In accordance with the Code Construction Act, Section 311.016, Government Code, unless the context in which the word or phrase appears necessarily requires a different construction or unless a different construction is expressly provided by statute, “may” creates discretionary authority or grants permission or a power.

The statute does not require the agency to establish a maximum number of temporary tags that a dealer may obtain annually. As the department has discretionary authority as to whether to establish a maximum number of temporary tags for a dealer to obtain, the department can determine that establishing a specific number for a dealer who has been licensed for a specific time period, such as five years, and who has not fraudulently obtained temporary tags, need not have a maximum number of temporary tags assigned by the department, leaving the department to focus on those types of licensees which have been shown to fraudulently print temporary tags as well as closely monitor and investigate license applicants and new licensees.

Another category for the department’s consideration not to establish a maximum number of temporary tags, is a licensee who is a franchised dealer. As stated by witnesses in hearings and reported by the media, the franchised dealers are not at issue for fraudulently printing temporary tags. With the information as provided by law enforcement that the franchised dealers are not the dealers at issue for fraudulently printing and selling temporary tags and as the statute gives the department the discretionary authority to establish the maximum number of temporary tags that a dealer may obtain, a dealer who is licensed by the department as a franchised dealer may be excluded from an established maximum number of temporary tags that may be obtained.

Another alternative for the department’s consideration is to combine the conditions of an established length of time that a dealer has been licensed without fraudulently obtaining temporary tags and who is also licensed as a franchised dealer as not subject to a maximum number of temporary tags that may be obtained.

TADA requests that the department consider that a dealer who has been licensed for a specific length of time, such as 5 years, and who has not fraudulently printed temporary tags, not be subject to proposed 43 TAC §215.152(c), (d), (f) -(j), and (l).

In the alternative, TADA requests that a licensed franchised dealer who has not fraudulently printed temporary tags, not be subject to proposed 43 TAC §215.152(c), (d), (f) - (j), and (l).

As a third option, TADA requests that a licensed franchised dealer who has been licensed for 5 years or more and who has not fraudulently printed temporary tags, not be subject to proposed 43 TAC §215.152(c), (d), (f) -(j), and (l).

If the dealers who have been licensed for a period of time and who have not fraudulently printed temporary tags are not subject to the proposed annually imposed temporary tag number



formula, then the department's licensing and enforcement investigators will be able to use their time and energy to inquire in-depth into new applicants, such as by in-person visits to a new licensee's location as well as closely monitor the daily number of temporary tags that are printed.

By placing the department in a position to focus its licensing and investigative resources on those who are fraudulently obtaining temporary tags, its resources can be utilized more strategically and benefit the public, the dealer community, and law enforcement.

### **Proposed Temporary Tag Formula**

Annually, proposed 43 TAC §215.152(c) states that the TxDMV will inform each licensed dealer as to the maximum number of authorized buyer's temporary tags for issuance during the calendar year, as provided for in §503.0632, Transportation Code.

The proposal does not specify *when or how* the notification will be made to the licensed dealer. In order for a dealer to be informed of the agency's annual temporary tag number allotment prior to the beginning of the calendar year, TADA suggests that a notification by the department be given to the dealer and any dealer-designated person by email and through the U.S. Postal Service with the following underlined language:

(c) The department will inform each dealer and any dealer-designated person annually, by email and to the dealer's mailing address as shown in the department's records, within a reasonable time and no less than 30 days prior to the start of the new annual allotment, of the maximum number of buyer's temporary tags the dealer is authorized to issue during the calendar year under Transportation Code §503.0632. . . .

The proposed dealer's annual buyer's temporary tag formula is calculated from the dealer's sales data from the previous *three* fiscal years as determined from the department's systems. TADA recommends that for clarity and so there is no confusion, that the *three* fiscal years be included in subparagraphs A., B., and C., as shown below:

- (1) Sales data determined from the department's systems from previous three fiscal years. A dealer's base number will contain the greater of:
  - A. The maximum number of in-state buyer's temporary tags issued during the previous three fiscal years, or
  - B. The maximum number of title transaction processed through the Registration Title System during the previous three fiscal years; and
  - C. The maximum number of out-of-state buyer's temporary tags issued during the previous three fiscal years added to A. or B.; except,
  - D. The dealer's base number is limited to an amount not more than two times the number of title transactions identified in subparagraph (B) of this paragraph.

The proposed buyer's temporary tag formula next provides for a multiplier based on the

dealer's time in operation by stating:

- (c)(2): a multiplier based on the dealer's time in operation; and
- (c)(3): the total value of paragraphs (1) and (2) of this subsection, multiplied by the expected annual growth rate percentage, not less than zero, to determine the buyer's temporary tag allotment; and in addition: . . .

The proposal does not state *what* the "multiplier" is in (c)(2) nor does it state in (c)(3) *what* the expected annual growth rate percentage multiplier is other than it is not less than zero. In order to discern a multiplier amount under departmental consideration in the allotment formula, the Preamble to the proposed rule as published in the *Texas Register* must be consulted; however, since the multipliers are not a part of the proposed rule, the multipliers can be revised by the department without notice.

The Preamble provides that for §215.152(c)(2): "the anticipated factor is based on the percentage of years the dealer has been in business over the last 10 years. For example, a dealer that has been in business for five years would receive a 50% addition to the base."<sup>3</sup>

The Preamble also provides that for §215.152(c)(3), "the market growth rate factor is based on the percentage growth in the market over the prior three fiscal years. The agency's current analysis beginning in 2018 is a 9.7% growth rate."<sup>4</sup>

TADA requests that the multipliers be included within the written rule so that a licensee can be apprised of how the agency determines the number of buyer's temporary tags that will be allotted. As proposed, the multiplier in (c)(2) for a dealer's time in operation is unknown and the calculation to determine the expected annual growth rate percentage multiplier is also unknown, leaving a dealer to conjecture as to the formula and causing a concern that a different formula may be used for other licensees resulting in a different allotment of temporary tags.

These same unknown multipliers are proposed in §215.152(d) for the agent temporary tags and vehicle specific temporary tags. Again, TADA requests that the multipliers be provided within the rule.

Section 503.0632(b), Transportation Code, provides that the maximum number of temporary tags that is determined for "a dealer" must be based on that dealer's anticipated need by taking into consideration the dealer's time in operation, sales data, and expected growth.

The suggested multiplier example stated in the Preamble for time in operation is for a maximum of 10 years, even though a dealer is in business for a time beyond the 10 years. This

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<sup>3</sup>46 *TexReg* 7758 (November 12, 2021).

<sup>4</sup>*Id.*

multiplier may be reasonable; however, as previously requested, the calculation should be included within the rule so that there is a known expectation by all licensees.

A statewide growth factor versus a regional growth factor may not take into account a recent change in circumstances, such as a new plant in a dealer's market. In addition, for a franchised dealer, the line-make may play a role in a dealer's expected market growth.

If 10 years for time in operation and a statewide growth factor standard are to be a part of the formula, TADA requests the rule so state; otherwise, the formula is unclear and is subject to multiple interpretations as well as to modifications without notice to the licensees.

### **New Points, Transfers, and Relocations**

Proposed Section 215.152(f) discusses a new dealership point and provides that a new franchised dealer is allotted 600 temporary buyer's tags, agent tags, and vehicle specific tags.

TADA is concerned that 600 is not an adequate number for all new franchised dealer points. The number may be adequate for a dealer in a rural area or for a line such as Ferrari; however, a Chevrolet, Ford, Toyota, or Jeep dealer in a metropolitan location may print 600 temporary buyer's tags in less than 3 months.

TADA suggests that the agency inquire of a new franchised dealer licensee what he or she expects to sell in their location over the calendar year and multiply that number by no less than 2 to derive an initial temporary tag number.

The proposal also discusses that an existing dealer relocating its operation will continue with its allotment, and an existing dealer opening an additional location will receive a maximum allotment provided to existing locations.<sup>5</sup>

Another scenario for temporary tag allotment determination is a buy-sell of an existing franchised dealer. The buy-sell agreement may or may not include a relocation of the licensed facility. The purchasing dealer should be allotted at least as many temporary tags as the selling dealer was allotted. TADA requests a buy-sell purchaser of a franchised dealer be allotted, at minimum, the same number of temporary tags as the seller was allotted by the department.

### **Notice of 50% Use**

Section 215.152(i) states that after using 50% of the allotted maximum number of temporary tags, a dealer may request an increase in the number by submitting a request in the department's eLICENSING system.

Because a dealer may not track the number of temporary tags used, TADA requests that the agency send a notification to the licensee prior to the licensee's 50% allotted use. The notice may

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<sup>5</sup>43 TAC §215.152(g) and (h).

be added to the section as follows:

(i) After using 50 percent of the allotted maximum number of temporary tags, the department will send an email notification to the dealer or converter and the dealer's and converter's designated representative that the [a] dealer or converter may request an increase in the number of temporary tags by submitting a request in the department's eLICENSING system.

#### **43 TAC §215.154. Dealer's Temporary Tags**

Transportation Code §503.062 provides that a dealer may issue a temporary tag for use on an unregistered vehicle for demonstration use and to a prospective buyer for demonstration use and to a customer to temporarily operate the vehicle while their vehicle is being repaired, also known as a "loaner" vehicle or a "courtesy" vehicle.

The proposed rule provides that a dealer's temporary tag may not be displayed on a dealer's service or work vehicle which includes "a courtesy car with no signs on the vehicle."<sup>6</sup>

As the statute provides for a temporary tag to be used on a courtesy vehicle or "loaner," TADA requests that the rule track the statute and not disallow the use of a temporary tag on a courtesy or loaner vehicle that is provided to a customer to temporarily operate while their vehicle is being repaired, with or without a sign on the vehicle.

By tracking the statute, TADA requests that 43 TAC §215.154(e)(3) be repealed.

#### **Subchapter J. Administrative Sanctions**

#### **Proposed 43 TAC §215.505. Denial of Dealer or Converter Access to Temporary Tag System**

Section 503.062, Transportation Code, provides:

(f) If the department determines that a dealer or converter is fraudulently obtaining temporary tags from the temporary tag database, the department may, after giving notice electronically and by certified mail to the dealer or converter, deny access to a temporary tag database to the dealer or converter. A dealer or converter denied access to a temporary tag database under this subsection may request a hearing on the denial as provided by Subchapter O, Chapter 2301, Occupations Code.<sup>7</sup>

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<sup>6</sup>Proposed 43 TAC §215.154(e)(3).

<sup>7</sup>*Id.* at 503.0632(f).

The proposed rule defines “fraudulently obtaining temporary tags from the temporary tag database” as obtaining:

1. An excessive number of temporary tags relative to dealer sales;
2. Temporary tags for a vehicle not in the dealer’s or converter’s inventory with the presumption that if a vehicle is not listed in the relevant monthly Vehicle Inventory Tax Statement, it is not in inventory; and,
3. Access to the temporary tag database for a fictitious user or person using a false identity.<sup>8</sup>

TADA is supportive of a robust enforcement of the agency’s licensing process and temporary tag database so that the fraudulent misuse of the database ends. There is a concern that there is no guidepost provided for within the rule with respect to what is an excessive number of temporary tags relative to a dealer’s sales. Is the benchmark twice the number of sales or ten percent? What is the “excessive” number of buyer’s temporary tags versus excessive agent’s temporary tags versus excessive vehicle specific temporary tags?

TADA suggests the need to include specific criteria for the department’s enforcement division regarding the denial of access to the database. In addition to other elements, fraud carries with it a material misrepresentation that is known to be false or recklessly performed.<sup>9</sup> If the agency infers fraud by an excessive number of temporary tags relative to a dealer’s sales, the investigators need markers as well as a specific time period for inferring fraud by what is excessive and for what time period as well as which type of temporary tag.

In addition, the proposal provides a presumption for fraudulently obtaining a temporary tag from the database if a temporary tag is issued for a vehicle not in the dealer’s inventory because it is not listed on the dealer’s monthly Vehicle Inventory Tax Statement. A vehicle may be in the dealer’s inventory at the time the temporary tag is printed; however, the sale may be rescinded or the vehicle may be dealer-traded so that in neither scenario is the vehicle listed on the “Dealer’s Motor Vehicle Inventory Tax Statement” (Comptroller of Public Accounts Form 50-246).

With respect to a fictitious use or person using a false identity, if a system is compromised by cyberattack or a virus, this scenario may be outside of the control of the licensee and the licensee will not have made a material misrepresentation that is known to be false or recklessly performed.

Providing specific numerical criteria as well as taking into account fraud elements, may give investigators additional guidance for enforcement which TADA supports.

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<sup>8</sup>Proposed 43 TAC §215.505(a).

<sup>9</sup>See Ernst & Young, L.L.P. v. Pacific Mutual Life Insurance Company, 51 S.W.3d 573 (Tex. 2001).

**Chapter 217. Vehicle Titles and Registration**

**Subchapter A. Motor Vehicle Titles**

43 TAC §§217.2, 217.4

**Subchapter B. Motor Vehicle Registration**

43 TAC §§217.23, 217.28, 217.36, 217.45, 217.46

The statute and proposed rules use the terminology “willing to accept the application” for a county tax assessor-collector (TAC) in Subchapter A. and Subchapter B. concerning the titling and registering of motor vehicles.

The following concerns by stakeholders with respect to the proposed rules include:

1. As there is no definition of “willing to accept the application,” is a TAC allowed to pick and choose which dealer’s transactions it is “willing” to accept?
2. Is a TAC required to disclose the necessary requirements for its willingness to accept an application?
3. May a TAC decide to be “willing” one week and not “willing” the next week to accept applications?
4. Is a TAC required to give or post a notice regarding its willingness to accept applications so that dealers and others know of their willingness?

TADA appreciates the department clarifying the above issues as these issues and others will arise as the implementation date approaches.

The proposed amendment to §217.28(f) allows that:

For purposes of Transportation Code §502.407(c), the county tax assessor-collector’s office of the county in which the owner resides is closed for a protracted period of time if the county tax assessor-collector’s office has notified the department that it is closed or will be closed for more than one week.

As an offense is committed after the fifth working day after a vehicle’s registration expires, TADA suggests the department propose a definition of “closed” to allow for a knowable defense under §502.407, Transportation Code.

If an office is open less than eight hours per day for a week, is the office open? If the office is open a 5 hours in a five-day week, is it considered “open” or “closed”?

Additional guidance for a definition of “closed” will assist the public and dealers going forward.

**Conclusion**

TADA appreciates the opportunity to comment on the proposals as published in the November 12, 2021, *Texas Register*.

The issues and suggestions to the proposals as discussed above aim to clarify and assist the good work that is exhibited in today's proposal.

The franchised dealers continue to have concerns regarding the misuse of the temporary tag database and welcome the opportunity to discuss the proposal and attached comments with the department.

If the department has any question regarding these comments, please do not hesitate to contact me at your convenience.

Sincerely,



Karen Phillips  
General Counsel/EVP

# **EXHIBIT A**



AN ACT

1  
2 relating to certain temporary motor vehicle tags.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

4 SECTION 1. Sections 503.0626(a) and (c), Transportation  
5 Code, are amended to read as follows:

6 (a) The department shall develop, manage, and maintain a  
7 secure, real-time database of information on vehicles to which  
8 dealers and converters have affixed temporary tags. [~~The database  
9 shall be managed by the vehicle titles and registration division of  
10 the department.~~]

11 (c) Before a dealer's or converter's temporary tag may be  
12 displayed on a vehicle, the dealer or converter must enter into the  
13 database through the Internet information on the vehicle and  
14 information about the dealer or converter as prescribed by the  
15 department. Except as provided by Section 506.0632(f), the [~~The~~]  
16 department may not deny access to the database to any dealer who  
17 holds a general distinguishing number issued under this chapter or  
18 who is licensed under Chapter 2301, Occupations Code, or to any  
19 converter licensed under Chapter 2301, Occupations Code.

20 SECTION 2. Section 503.063, Transportation Code, is amended  
21 by adding Subsections (i) and (j) to read as follows:

22 (i) A vehicle may be issued and display a buyer's tag  
23 without satisfying the inspection requirements of Chapter 548 if:

24 (1) the buyer of the vehicle is not a resident of this

1 state; and

2 (2) the vehicle:

3 (A) at the time of purchase, is not located or  
4 required to be titled or registered in this state;

5 (B) will be titled and registered in accordance  
6 with the laws of the buyer's state of residence; and

7 (C) will be inspected in accordance with the laws  
8 of the buyer's state of residence, if the laws of that state require  
9 inspection.

10 (j) A vehicle may be issued and display a buyer's tag  
11 without satisfying the inspection requirements of Chapter 548 if  
12 the vehicle is purchased at public auction in this state and is:

13 (1) an antique vehicle as defined by Section  
14 683.077(b); or

15 (2) a special interest vehicle as defined by Section  
16 683.077(b) that:

17 (A) is at least 12 years of age; and

18 (B) has been the subject of a retail sale.

19 SECTION 3. Sections 503.0631(a) and (c), Transportation  
20 Code, are amended to read as follows:

21 (a) The department shall develop, manage, and maintain a  
22 secure, real-time database of information on persons to whom  
23 temporary buyer's tags are issued that may be used by a law  
24 enforcement agency in the same manner that the agency uses vehicle  
25 registration information. ~~[The database shall be managed by the~~  
26 ~~vehicle titles and registration division of the department.]~~

27 (c) Except as provided by Subsection (d), before a buyer's

1 temporary tag may be displayed on a vehicle, a dealer must enter  
2 into the database through the Internet information about the buyer  
3 of the vehicle for which the tag was issued as prescribed by the  
4 department and generate a vehicle-specific number for the tag as  
5 required by Section 503.063(e). Except as provided by Section  
6 506.0632(f), the [The] department may not deny access to the  
7 database to any dealer who holds a general distinguishing number  
8 issued under this chapter or who is licensed under Chapter 2301,  
9 Occupations Code.

10 SECTION 4. Subchapter C, Chapter 503, Transportation Code,  
11 is amended by adding Section 503.0632 to read as follows:

12 Sec. 503.0632. DEPARTMENT REGULATION OF TEMPORARY TAGS AND  
13 ACCESS TO TEMPORARY TAG DATABASES. (a) The department by rule may  
14 establish the maximum number of temporary tags that a dealer or  
15 converter may obtain in a calendar year under Section 503.062,  
16 503.0625, or 503.063.

17 (b) The maximum number of temporary tags that the department  
18 determines a dealer or converter may obtain under this section must  
19 be based on the dealer's or converter's anticipated need for  
20 temporary tags, taking into consideration:

21 (1) the dealer's or converter's:

22 (A) time in operation;

23 (B) sales data; and

24 (C) expected growth; ✓

25 (2) expected changes in the dealer's or converter's  
26 market;

27 (3) temporary conditions that may affect sales by the

1 dealer or converter; and

2 (4) any other information the department considers  
3 relevant.

4 (c) At the request of a dealer or converter, the department  
5 may authorize additional temporary tags of any type for the dealer  
6 or converter if the dealer or converter demonstrates a need for  
7 additional temporary tags resulting from business operations,  
8 including anticipated need.

9 (d) The department's denial of a request under Subsection  
10 (c) may be overturned if a dealer or converter shows by a  
11 preponderance of the evidence the need for additional temporary  
12 tags.

13 (e) The department shall monitor the number of temporary  
14 tags obtained by a dealer or converter.

15 (f) If the department determines that a dealer or converter  
16 is fraudulently obtaining temporary tags from the temporary tag  
17 database, the department may, after giving notice electronically  
18 and by certified mail to the dealer or converter, deny access to a  
19 temporary tag database to the dealer or converter. A dealer or  
20 converter denied access to a temporary tag database under this  
21 subsection may request a hearing on the denial as provided by  
22 Subchapter O, Chapter 2301, Occupations Code.

23 SECTION 5. Sections 503.067(b) and (d), Transportation  
24 Code, are amended to read as follows:

25 (b) A person may not operate a vehicle that displays:

26 (1) a temporary tag in violation of this chapter or  
27 Chapter 502; or

1           (2) any other ~~[an]~~ unauthorized temporary tag.

2           (d) A person may not sell or distribute a temporary tag or an  
3 item represented to be a temporary tag unless the person is(+

4           ~~[(1)]~~ a dealer issuing the tag in connection with the  
5 sale of a vehicle~~[+ or~~

6           ~~[(2)] a printer or distributor engaged in the business~~  
7 ~~of selling temporary tags solely for uses authorized under this~~  
8 ~~chapter].~~

9           SECTION 6. The changes in law made by this Act apply only to  
10 an offense committed on or after the effective date of this Act. An  
11 offense committed before the effective date of this Act is governed  
12 by the law in effect on the date the offense was committed, and the  
13 former law is continued in effect for that purpose. For purposes of  
14 this section, an offense was committed before the effective date of  
15 this Act if any element of the offense occurred before that date.

16           SECTION 7. This Act takes effect September 1, 2021.

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President of the Senate

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Speaker of the House

I certify that H.B. No. 3927 was passed by the House on May 7, 2021, by the following vote: Yeas 128, Nays 12, 1 present, not voting; and that the House concurred in Senate amendments to H.B. No. 3927 on May 28, 2021, by the following vote: Yeas 125, Nays 16, 4 present, not voting.

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Chief Clerk of the House

I certify that H.B. No. 3927 was passed by the Senate, with amendments, on May 22, 2021, by the following vote: Yeas 30, Nays 0.

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Secretary of the Senate

APPROVED: \_\_\_\_\_

Date

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Governor

# **EXHIBIT B**

1 AN ACT  
2 relating to the county in which a person may apply for the  
3 registration of and title for a motor vehicle.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

5 SECTION 1. Section 501.023(a), Transportation Code, is  
6 amended to read as follows:

7 (a) The owner of a motor vehicle must present identification  
8 and apply for a title as prescribed by the department, unless  
9 otherwise exempted by law. To obtain a title, the owner must  
10 apply:

11 (1) to the county assessor-collector in the county in  
12 which:

13 (A) the owner is domiciled; or

14 (B) the motor vehicle is purchased or encumbered;

15 or

16 (2) to any ~~[the]~~ county assessor-collector ~~[of a~~  
17 ~~county]~~ who is willing to accept the application ~~[if the county~~  
18 ~~assessor-collector's office of the county in which the owner~~  
19 ~~resides is closed or may be closed for a protracted period of time~~  
20 ~~as defined by the department].~~

21 SECTION 2. Section 501.0234(d), Transportation Code, is  
22 amended to read as follows:

23 (d) A seller who applies for the registration or a title for  
24 a motor vehicle under Subsection (a)(1) may ~~[shall]~~ apply:



1           (1) to the county assessor-collector of the county in  
2 which:

3                           (A) the owner is domiciled; or

4                           (B) the motor vehicle is purchased or encumbered;

5 or

6           (2) to any [in the] county assessor-collector who is  
7 willing to accept the application [as directed by the purchaser  
8 from the counties set forth in Section 501.023].

9           SECTION 3. Section 501.030(e), Transportation Code, is  
10 amended to read as follows:

11           (e) Before a motor vehicle that is required to be registered  
12 in this state and that is brought into this state by a person other  
13 than a manufacturer or importer may be bargained, sold,  
14 transferred, or delivered with an intent to pass an interest in the  
15 vehicle or encumbered by a lien, the owner must apply for a title in  
16 a manner prescribed by the department to the county  
17 assessor-collector for the county in which the transaction is to  
18 take place or to any assessor-collector who is willing to accept the  
19 application. The assessor-collector may not issue a title receipt  
20 unless the applicant delivers to the assessor-collector  
21 satisfactory evidence showing that the applicant is the owner of  
22 the vehicle and that the vehicle is free of any undisclosed liens.

23           SECTION 4. Section 502.0023(b), Transportation Code, is  
24 amended to read as follows:

25           (b) A system of extended registration under this section  
26 must allow the owner of a commercial fleet to register[+

27                           [~~+~~] an entire commercial fleet in the county of the

1 owner's residence or principal place of business or in any county in  
2 which the county assessor-collector is willing to accept the  
3 registration~~[, or~~

4  ~~[(2) the motor vehicles in a commercial fleet that are~~  
5  ~~operated most regularly in the same county].~~

6 SECTION 5. Section 502.040(b), Transportation Code, is  
7 amended to read as follows:

8 (b) The application must be accompanied by personal  
9 identification as determined by department rule and made in a  
10 manner prescribed by the department through:

11 (1) ~~[through]~~ the county assessor-collector of the  
12 county in which the owner resides; or

13 (2) any ~~[if the office of that assessor-collector is~~  
14  ~~closed, or may be closed for a protracted period of time, as defined~~  
15  ~~by department rule, through a]~~ county assessor-collector who is  
16 willing to accept the application.

17 SECTION 6. Section 502.041(a), Transportation Code, is  
18 amended to read as follows:

19 (a) Notwithstanding Section 502.040, the owner of a vehicle  
20 may concurrently apply for a title and for registration through the  
21 county assessor-collector of the county in which:

22 (1) the owner resides; ~~[or]~~

23 (2) the vehicle is purchased or encumbered; or

24 (3) the county assessor-collector is willing to accept  
25 the application.

26 SECTION 7. Section 502.407(c), Transportation Code, is  
27 amended to read as follows:

1 (c) It is a defense to prosecution under this section that  
2 at the time of the offense:

3 (1) the office of the county assessor-collector for  
4 the county in which the owner of the vehicle resided was closed for  
5 a protracted period of time in accordance with department rules  
6 [~~Section 502.040(b)(2)~~]; and

7 (2) the vehicle's registration was expired for 30  
8 working days or less.

9 SECTION 8. The heading to Section 520.006, Transportation  
10 Code, is amended to read as follows:

11 Sec. 520.006. COLLECTION OF FEES ON BEHALF OF ANOTHER  
12 ASSESSOR-COLLECTOR; COMPENSATION OF ASSESSOR-COLLECTOR.

13 SECTION 9. Sections 520.006(a-1) and (b), Transportation  
14 Code, are amended to read as follows:

15 (a-1) A county assessor-collector collecting fees on behalf  
16 of another [a] county assessor-collector [~~whose office is closed or~~  
17 ~~may be closed for a protracted period of time as defined by the~~  
18 ~~department~~] for purposes of Section 501.023, 501.0234, 501.030,  
19 502.0023, [ex] 502.040, or 502.041 shall collect all taxes, fees,  
20 and other revenue based on the vehicle owner's county of residence.  
21 The vehicle owner's county of residence shall be the recipient of  
22 all taxes, fees, and other revenue collected as a result of the  
23 transaction, except that the county processing the application may  
24 retain the portion of the title application fee under Section  
25 501.138 and the processing and handling fee under Section 502.1911  
26 that the tax assessor-collector is authorized to [may] retain [the  
27 ~~commission for fees collected, but shall allocate the fees to the~~

1 ~~county that is closed or may be closed for a protracted period of~~  
2 ~~time].~~

3 (b) A county assessor-collector who is compensated under  
4 this section for processing a transaction shall pay the entire  
5 expense of issuing registration receipts and license plates under  
6 Chapter 501 or 502 from the compensation allowed under this  
7 section.

8 SECTION 10. Section 521.144(c), Transportation Code, is  
9 amended to read as follows:

10 (c) A registration receipt issued by a ~~the~~ county  
11 assessor-collector in this state ~~(of the county in which the new~~  
12 ~~resident resides]~~ is satisfactory evidence that a motor vehicle is  
13 registered under Chapter 502.

14 SECTION 11. The following provisions of the Transportation  
15 Code are repealed:

16 (1) Section 501.023(e); and

17 (2) Section 501.0234(e).

18 SECTION 12. Section 502.407(c), Transportation Code, as  
19 amended by this Act, applies only to an offense committed on or  
20 after the effective date of this Act. An offense committed before  
21 the effective date of this Act is governed by the law in effect when  
22 the offense was committed, and the former law is continued in effect  
23 for that purpose. For purposes of this section, an offense was  
24 committed before the effective date of this Act if any element of  
25 the offense occurred before that date.

26 SECTION 13. This Act takes effect March 1, 2022.

\_\_\_\_\_  
President of the Senate

\_\_\_\_\_  
Speaker of the House

I hereby certify that S.B. No. 876 passed the Senate on April 13, 2021, by the following vote: Yeas 29, Nays 2; and that the Senate concurred in House amendments on May 27, 2021, by the following vote: Yeas 28, Nays 3.

\_\_\_\_\_  
Secretary of the Senate

I hereby certify that S.B. No. 876 passed the House, with amendments, on May 14, 2021, by the following vote: Yeas 93, Nays 35, one present not voting.

\_\_\_\_\_  
Chief Clerk of the House

Approved:

\_\_\_\_\_  
Date

\_\_\_\_\_  
Governor



December 13, 2021

Ms. Tracey Beaver  
General Counsel  
Texas Department of Motor Vehicles  
4000 Jackson Avenue  
Austin, Texas 78731

Dear Ms. Beaver,

Thank you for giving Vroom the opportunity to submit the following comments to the Texas Department of Motor Vehicles (the “Department” or “DMV”) regarding the proposed rules implementing HB 3927, which are designed to prevent bad actors from issuing temporary tags for vehicles they have not sold – a goal that Vroom wholeheartedly supports. However, as proposed, the draft rules place undue hardship on legitimate, licensed, growing dealers in the State of Texas in a manner that puts Texas and its licensed dealers at a competitive disadvantage to dealers in other states. As you can appreciate, a sufficient supply of buyer’s temporary tags is critical to the operation of any dealership —without them the dealer cannot deliver vehicles to customers.

### **Overview**

#### **About Vroom**

Vroom is an innovative, end-to-end ecommerce platform that is transforming the used vehicle industry by offering an ecommerce solution to buy and sell used vehicles. Vroom, Inc., a publicly traded company, is the parent company of Vroom Automotive, LLC, a licensed independent auto dealer based in Texas that also operates the Texas Direct Auto brand (collectively referred to herein as “Vroom”). Vroom uses data-driven technology to bring all phases of the vehicle buying and selling process to consumers on any device, wherever they are located. Vroom offers an extensive selection of used vehicles, transparent no-haggle pricing, competitive financing, and at-home pick-up and delivery across the continental United States. Vroom is also licensed as an independent auto dealer in Florida and Arizona, but the substantial majority of Vroom’s vehicle sales are completed under its Texas license.

Vroom launched its current ecommerce business model in 2016, and over the ensuing years, Vroom has invested heavily in the growth and development of its business, including its ecommerce platform, vehicle operations and technology. We have experienced unprecedented growth in the past three years during which ecommerce sales have increased by over 280%. For example, in 2019, Vroom sold approximately 19,000 ecommerce units, in 2020 it sold approximately 34,500 units, and in 2021, Vroom is projected to sell over 73,000 ecommerce units. (These numbers do not include the vehicles sold by our Texas Direct Auto dealership.) The company projects substantial growth to continue in 2022.

#### **Vroom’s Contributions to Texas**

Vroom is a large and growing employer in the State of Texas, having increased its Texas employee population by nearly 70% in the past year. Vroom employs over 1,000 people in Texas and is currently recruiting for approximately 70 more Texas-based roles. Additionally, Vroom has expanded its investment in the state by acquiring Vast, Inc, d/b/a CarStory, an automotive data analytics company based in Austin, in January 2021. Vroom also recently announced the acquisition of United Auto Credit Corp (“UACC”), a leading automotive lender with nearly 300 employees based in Fort Worth and which is expected to continue expanding after the transaction closes. Vroom’s growing footprint in Texas is directly related to the need to support its growth in sales of used vehicles on a national level. In 2020 and 2021 (estimated),

Vroom paid \$1.8 million and \$3.65 million, respectively, in Texas Motor Vehicle Inventory Taxes (“VIT Taxes”) on vehicles it sold all over the country.

### **Current Use of Texas Temporary Tags**

For each of the vehicles Vroom sells through its Texas license, whether to a resident of Texas or of another state, Vroom issues a Texas buyer’s temporary tag to allow the customer to drive until permanent plates are received. Vroom sells to customers all over the continental United States as a Texas dealer, so it issues a Texas buyer’s temporary tag through the DMV’s online system, and far more of the vehicles are sold outside of Texas than in-state. In 2020, Vroom sold over 41,000 vehicles to customers (comprised of approximately 34,500 ecommerce vehicles and over 7,000 vehicles through our Texas Direct Auto dealership in Stafford), with over 70% of those vehicles sold outside of Texas. In 2021, Vroom is projected to sell approximately double that number. Although the volume may vary, other ecommerce dealers and local dealers that sell across state lines similarly issue Texas temporary tags to purchasers in other states.

### **Summary of Recommended Changes to the Proposed Rules**

Vroom’s recommended changes to the proposed rules are submitted with this letter and summarized below. These recommended changes are designed to maintain the goal of preventing bad actors from issuing fraudulent temporary tags, while still enabling Vroom and other legitimate dealers to operate and grow without undue burden or anti-competitive restrictions. These changes are also meant to address potential inconsistencies between HB 3927 and the DMV’s proposed rules.

Attached are drafts indicating possible ways to address the issues discussed. These are not intended as the only way to address the issues but indicate ways that they can be addressed. The draft edits are italicized to distinguish them from the underlined changes proposed in the published proposal. As indicated, Vroom does not have issues with much of the published proposal and its italicized draft edits are to address the specific issues identified in this comment.

First, Vroom proposes that a modification be made to the rule to allow dealers that have been in business for at least five years, and that are not under suspicion of issuing fraudulent tags for non-existent sales, to be exempt from the formula in the new rules and allowed to obtain buyer’s temporary tags as they do under current practice. Those are not the dealers that HB 3927 was intended to affect. HB 3927 provides that “The department by rule may establish the maximum number of temporary tags that a dealer or converter may obtain in a calendar year . . .” It does not require that the rule limit the number of temporary tags of dealers who are not the source of the problem that the statute and rule are intended to address. There is no reason to subject the Department to the burden of setting, adjusting and administering limits for those dealers, or for those dealers to have the compliance burden, additional paperwork and operational uncertainty that the proposed rule otherwise would create.

Alternatively, the rule could allow dealers who have been in business for at least five years, and that are not under suspicion of using the temporary tags for non-existent sales, to estimate and receive the number of temporary tags they will need in a given year.

Either of the foregoing changes would save the Department a substantial amount of time and taxpayer resources otherwise required to determine annually and administer the allocations of tags for every dealer in the state. As the rule proposal notes, the dealers who have misused the temporary tags are a “small subset”. Those “fly by night” dealers are the problem. Established dealers who have legally operated for years and do not misuse temporary tags are not the problem. The proposed change would allow the Department to focus on the small subset of dealers that are the problem.

Second, we address the portion of the proposal that uses a general or average growth factor to determine the number of buyer's temporary tags to be authorized to a dealer. A general growth factor is appropriate for dealers with average expected growth. HB 3927 provides that the number of tags authorized for a dealer "must be based on the dealer's . . . anticipated need for temporary tags, taking into consideration: (1) the dealer's . . . expected growth." The rule should therefore allow a dealer who provides information that shows that it reasonably expects greater than average growth to obtain buyer's temporary tags sufficient for its expected growth.

Third, we address the proposed DMV rules that would limit a dealer's allotment of tags to two times the number of vehicles it registers in-state. This limit would create undue hardship for Vroom, given that the vast majority of its tags are issued to out-of-state customers across the United States, and would adversely affect other Texas dealers who conduct substantial sales to out-of-state buyers. Allotment of temporary tags should be based upon the total verifiable volume of vehicles sold by the dealer. This volume is easily quantified by the number of vehicles for which a dealer paid VIT Taxes. Dealers using this approach would submit to the DMV monthly statements that were filed with and stamped by the applicable county tax collector. Bad actors would not be able to satisfy this requirement. Because the industry is witnessing a growing number of dealers enabling remote and ecommerce sales, and many dealers located near the state border have been selling across state lines for some time, we believe this proposal would benefit other Texas dealers as well.

Fourth, as currently proposed, the rules permit a dealer who has used 50% of its allotted tags to request more tags, but without setting criteria for how such requests will be evaluated by the Department. Moreover, the rules give the Department unrestricted discretion to award less than the amount requested without such lesser award being treated as a denial of the request – and without being treated as a denial, the dealer would be unable to seek additional review of the decision as contemplated by the Transportation Code. Our proposed revisions would provide that a dealer's request would be reviewed in accordance with the same criteria we proposed for the initial allotment, namely including reference to a dealer's VTR registrations or filed VIT Tax statements. These changes would allow additional temporary tags to be obtained by showing that the actual current year sales are on a pace that will require additional tags. The Department would grant the request on that basis, unless there is evidence of tags being fraudulently obtained for vehicles not sold to bona fide buyers. We also propose that if the Department awards less than 90% of the amount a dealer requests, the dealer will have an opportunity to appeal for further review.

### **Explanation Of Concerns and Recommended Changes to the Proposed Rules**

#### **Alternative To Calculations For Licensed Dealers In Operation For Five Calendar Years Or More**

As noted in the Public Benefit and Cost Note for the proposed rule, the purpose of the rule is to prevent "the criminal activity of a small subset of dealers who fraudulently obtain and sell tens of thousands of temporary tags." The Economic Impact and Regulatory Flexibility statement makes clear that "[i]t has been small and micro-business license holders that have misused the temporary tag database and issued the tens of thousands of illegal tags." An addition is proposed to allow the Department to continue its aim of preventing a small group of "fly by night, here today gone tomorrow" dealers from abusing the system, while keeping the needed allotment of tags for legitimate, well-established dealers that have never engaged in such conduct.

Proposed subsection (m) would address this problem by allowing well established dealers that do not use buyer's temporary tags for the illicit purposes that the rule seeks to prevent, to obtain the tags that they need as they need them.



As an alternative to subsection (m), a proposed subsection (d) would allow legitimate dealers who have been licensed and operating for at least five years to obtain temporary tags based on the established dealer's knowledge of its market and needs, rather than through a "one size fits all" formula. A dealer that has been licensed and in operation for at least the five preceding years, and for which the Department has seen no evidence that the dealer is issuing fraudulent temporary tags or intends to do so, would be allowed to provide a written estimate of the number of tags it will need and to receive the number of tags for its estimated sales. The proposed written estimate would be compiled in good faith and signed by an owner, officer, or partner of the dealership, taking into account the factors set forth in the Transportation Code §503.0632(b). The Department would grant the dealer this amount unless suspected by the Department to have issued tags for vehicles that were not the subject of bona fide sales to customers, which adds a layer of protection against misuse of this provision.

Either of the above proposals would eliminate the uncertainty caused by the base number calculation, while also saving the time and taxpayer resources required for the Department to calculate and administer annual estimates for every dealer in the state. The addition of either proposal would be helpful to the vast majority of honest Texas dealers as well as to the Department, and the Department would be relieved of setting allocations for dealers that have been in business for years and who do not present a risk of fraud.

#### **Need For Dealers With Greater Than Average Expected Growth To Obtain Sufficient Tags For Actual Sales**

We would also like to note that although the proposed rules contain two additional multipliers to the base number, those provisions might be insufficient to overcome the issues with the base number calculation. The multiplier proposed in §215.152(c)(2) is worded as "a multiplier based on the dealer's time in operation" which leaves significant ambiguity to what amount of credit dealers would get for their time in operation and how that multiplier would be set by the Department. In addition, in §215.152(c)(3), the number resulting from the above multiplier would be "multiplied by the expected annual growth rate percentage." The rule does not define this growth rate, but we urge the Department to allow flexibility to consider the dealer's growth rate and not just an industry growth rate, the latter of which would be far less than the triple digit growth rate experienced by Vroom in recent years. For the above reasons, it is critical that the rule not rely solely upon these multipliers. The rule must provide flexibility for legitimate dealers with significant growth or other factors that necessitate more tags, where there is no basis to believe that the dealer is fraudulently issuing tags.

Transportation Code §503.0632 requires that the number of tags allotted to a dealer or converter:

"must be based on the dealer's or converter's anticipated need for temporary tags, taking into consideration:

(1) the dealer's or converter's:

(A) time in operation;

(B) sales data; and

(C) expected growth; [and]

expected changes in the dealer's or converter's market . . ."

[Emphasis added.]

The proposed rule provides that the dealer's annual allocation takes into account general growth in the market, but the rule does not take into account the particular dealer's growth or changes in the particular dealer's market. While the general growth multiplier may work for some dealers, it is inconsistent with the provisions of HB 3927 and will not work for a dealer experiencing greater than average growth or changes in the dealer's particular market. An addition to the rule should therefore be made to allow a dealer that

demonstrates an additional need to be allocated sufficient tags to accommodate its expected growth and market. The other additions proposed below likewise are based in the factors stated in the statute.

**Limit on Dealer's Base Number in §215.152(c)(1)(D)  
Use of Vehicle Inventory Tax Method**

In determining the number of temporary tags that a dealer can obtain, the current proposed rule would limit a dealer's base number to two times the amount of their *in-state registrations* in the relevant period. Although part of the rule proposes looking at sales data both in and out of Texas from the prior three fiscal years, subsection (D) then limits the dealer's base number "to an amount that is not more than two times the number of title transactions identified in subparagraph (B) of this paragraph", i.e., "the number of title transactions processed through the Registration and Title System during previous fiscal years", which applies only to sales to Texas customers. Accordingly, in-state registrations are the main limiting factor.

For dealers with more out of state than in state sales transactions, or even a substantial number of out-of-state sales, this limitation would result in the dealer receiving fewer tags than the vehicles it will sell. To illustrate, had this rule been in place at the start of 2021, Vroom's base number would have been at least 10,000 less than its actual sales, leaving Vroom unable to issue temporary tags to over 10,000 customers.

Receiving fewer tags than projected sales is an insupportable position for any dealer, but even more so for a public company with nationwide ecommerce sales, such as Vroom. Vroom would be at a severe competitive disadvantage compared to its ecommerce competitors across the United States. In such case, Vroom would have no choice but to move its operations to another state. We know from the public meetings held to date that this is not the intent of the DMV. Even the rule's preamble acknowledges that "all dealers and converters are not the same. As such, the proposal considers actual temporary tag issuance specific to each established dealer and converter as a minimum allotment and then provides an increase based on each dealer's and converter's licensing tenure, as well as an increase for growth, resulting in a maximum number of temporary tags unique to each dealer and converter." A formula that would give Vroom less than its actual temporary tag issuance runs contrary to the aim of the rules. It is important to note that it is not an adequate solution to provide that Vroom could request more tags from the DMV. As a public company operating at a substantial growth rate, it is not tenable to inject that level of uncertainty into Vroom's business.

Vroom's proposed change would provide an alternative limit to the base number in subsection (D) that is two times the number of vehicles for which that dealer paid VIT Taxes in the prior year, if greater than the two times the number of vehicles such dealer processed through the Texas Registration and Title System ("RTS") in the proposal. The dealer would support this with evidence of its monthly VIT statements for the preceding 12 months that have been marked stamped by the relevant county tax collector. Dealers pay this tax on each vehicle sold to customers, as shown in the VIT statements, pursuant to Tax Code 23.122.

The proposed use of a dealer's VIT statements would not open a loophole for fraudulent dealers. First, and perhaps most significantly, the amount of VIT Taxes to be paid would exceed any potential revenue that a fraudster would hope to obtain from selling fraudulent temporary tags, and therefore a fraudulent dealer would not have paid VIT Taxes. Second, the VIT statements, which are filed under penalty of law, must list descriptions of the vehicles and their value, which also would not exist for fraudsters on vehicles they never sold.

For Vroom, the use of the VIT vehicle numbers would change the calculation above significantly. Vroom paid VIT Taxes for 42,988 retail vehicles in 2020, even though the majority of those vehicles never even entered the state. By those numbers, Vroom's calculation of its base number would have been 85,976 buyer's temporary tags for 2021, which would just barely align with our approximately 80,000 retail sales

projected. As you can see, even this calculation just barely allows for Vroom’s projected substantial sales growth year over year.

We would also like to note that although the proposed rules contain two additional multipliers to the base number, those provisions might be insufficient to overcome the issues with the base number calculation. The multiplier proposed in §215.152(c)(2) is worded as “a multiplier based on the dealer’s time in operation” which leaves significant ambiguity to what amount of credit dealers would get for their time in operation and how that multiplier would be set by the Department. In addition, in §215.152(c)(3), the number resulting from the above multiplier would be “multiplied by the expected annual growth rate percentage.” The rule does not define this growth rate, but we urge the Department to allow flexibility to consider the dealer’s growth rate and not just an industry growth rate, the latter of which would be far less than the triple digit growth rate experienced by Vroom in recent years. For the above reasons, it is critical that the rule not rely solely upon these multipliers. The rule must provide flexibility for legitimate dealers with significant growth or other factors that necessitate more tags, where there is no basis to believe that the dealer is fraudulently issuing tags.

Transportation Code §503.0632 requires that the number of tags allotted to a dealer or converter:

“must be based on the dealer's or converter's anticipated need for temporary tags, taking into consideration:

(1) the dealer's or converter's:

(A) time in operation;

(B) sales data; and

(C) expected growth; [and]

expected changes in the dealer's or converter's market . . .”

[Emphasis added.]

The proposed rule provides that the dealer’s annual allocation takes into account general growth in the market, but the rule does not take into account the particular dealer’s growth or changes in the particular dealer’s market. While the general growth multiplier may work for some dealers, it is inconsistent with the provisions of HB 3927 and will not work for a dealer experiencing greater than average growth or changes in the dealer’s particular market. An addition to the rule should therefore be made to allow a dealer that demonstrates an additional need to be allocated sufficient tags to accommodate its expected growth and market. The other additions proposed below likewise are based in the factors stated in the statute.

As noted in the Public Benefit and Cost Note for the proposed rule, the purpose of the rule is to prevent “the criminal activity of a small subset of dealers who fraudulently obtain and sell tens of thousands of temporary tags.” The Economic Impact and Regulatory Flexibility statement makes clear that “[i]t has been small and micro-business license holders that have misused the temporary tag database and issued the tens of thousands of illegal tags.” An addition is proposed to allow the Department to continue its aim of preventing a small group of “fly by night, here today gone tomorrow” dealers from abusing the system, while keeping the needed allotment of tags for legitimate, well-established dealers that have never engaged in such conduct.

Proposed subsection (m) would address this problem by allowing well established dealers that do not use buyer’s temporary tags for the illicit purposes that the rule seeks to prevent, to obtain the tags that they need as they need them.

As an alternative to subsection (m), a proposed subsection (d) would allow legitimate dealers who have been licensed and operating for at least five years to obtain temporary tags based on the established dealer’s knowledge of its market and needs, rather than through a “one size fits all” formula. A dealer that has been

licensed and in operation for at least the five preceding years, and for which the Department has seen no evidence that the dealer is issuing fraudulent temporary tags or intends to do so, would be allowed to provide a written estimate of the number of tags it will need and to receive the number of tags for its estimated sales. The proposed written estimate would be compiled in good faith and signed by an owner, officer, or partner of the dealership, taking into account the factors set forth in the Transportation Code §503.0632(b). The Department would grant the dealer this amount unless suspected by the Department to have issued tags for vehicles that were not the subject of bona fide sales to customers, which adds a layer of protection against misuse of this provision.

Either of the above proposals would eliminate the uncertainty caused by the base number calculation, while also saving the time and taxpayer resources required for the Department to calculate and administer annual estimates for every dealer in the state. The addition of either proposal would be helpful to the vast majority of honest Texas dealers as well as to the Department, and the Department would be relieved of setting allocations for dealers that have been in business for years and who do not present a risk of fraud.

### **Recourse for Dealers Who Need Additional Tags During the Year - §215.152(i)**

Section 215.152(i) of the current rule proposal would permit a dealer to request additional buyer's temporary tags once it uses 50% of the allotted tags. However, the rule does not provide criteria for the Department to evaluate such a request. Vroom proposes that the Department look at similar data as what Vroom proposed would be used in initially calculating the dealer's base number, namely the number of RTS transactions or number of vehicles reported sold in monthly VIT statements, in order to set a baseline for the request. This would allow a dealer to obtain additional temporary tags if its actual verifiable sales during the year exceed the sales upon which its allotment for the year was initially set, provided that the Department did not have evidence that the dealer was issuing fraudulent temporary tags. If justified through those means, the dealer will be granted the requested number of tags. If the less than 90% of the requested amount is granted, the dealer would have the same recourse as for other denials that has already been provided – an appeal to the Director of the Motor Vehicle Division whose decision would subsequently be subject to review by a district court. This change would not open a loophole for bad actors, given that the dealer would have to supply verifiable proof that its actual sales are on pace to exceed its initial allotment of temporary tags. This change would be helpful to Texas dealers who can prove that their sales growth is real and that they have a legitimate need for more temporary tags.

Under the current subsection (3) of that provision, if the Department allocates a lesser number of additional temporary tags than the amount requested, such decision is not treated as a denial of the dealer's request. That would leave a dealer without any method to ask for reconsideration or to appeal the decision as final. As a result, if the Department gives only 10% of what the dealer requested (e.g., grants 100 tags instead of a request for 1,000), the dealer will have no recourse. HB 3927 provides for review of the Department's decision if the dealer can show by a preponderance of the evidence that it needs additional tags. The rule should recognize the right that HB 3927 gave the dealer to obtain a review and prove by a preponderance of the evidence that the dealer needs more tags. An opportunity to seek reconsideration would not benefit fraudulent actors, who would not be able to carry their burden of showing the district court by a preponderance of the evidence that they need additional temporary tags. While we expect that this review would be rarely needed or used, given the critical importance of temporary tags for a dealer to sell vehicles, the importance of having sufficient temporary tags and fundamental due process require that the dealer have an opportunity for review, as HB 3927 provides.

In summary, we believe that the above proposed changes provide reasonable, supportable methods for granting dealers the appropriate leeway in operating their business without the threat of insufficient temporary tags to issue to bona fide purchasers. The proposed changes continue to meet the goal of the rules to prevent bad actors from abusing the system, but the changes do so in a way that does not interfere

with dealers' legitimate sales or create a substantial competitive disadvantage to Texas dealers compared to dealers in other states.

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We thank the Texas DMV for being collaborative during the last legislative session and during this rule making process. Vroom appreciates the focus on minimizing the risk that fraudulent operators will be issuing temp tags and respects the importance of not creating loopholes that might allow fraudulent dealers to operate in Texas. It is with this spirit that we propose the solutions outlined above. Please do not hesitate to contact me and my team if Vroom can be of assistance.

Sincerely,



Anna-Lisa Corrales  
VP, Compliance

*Draft edits to published proposal.*

*The draft edits shown below in italics indicate possible ways to address the issues and potential solutions discussed in the body of this comment. These edits are not intended to be the only way to address the issues but indicate ways that they can be addressed in a manner consistent with the purpose of the rule proposal and the statute. The draft edits are italicized to distinguish them from the underlined changes proposed in the published proposal.*

CROSS REFERENCE TO STATUTE. Transportation Code §§503.062, 503.0625, 503.063, and 503.0632(a)-(e).

§215.152. Obtaining Numbers for Issuance of Temporary Tags.

(a) A dealer, a federal, state, or local governmental agency, or a converter is required to have internet access to connect to the temporary tag databases maintained by the department.

(b) Except as provided by §215.157 of this title (relating to Advance Numbers, Preprinted Internet-down Temporary Tags), before a temporary tag may be issued and displayed on a vehicle, a dealer, a federal, state, or local governmental agency, or converter must:

(1) enter in the temporary tag database true and accurate information about the vehicle, dealer, converter, or buyer, as appropriate; and

(2) obtain a specific number for the temporary tag.

(c) The department will inform each dealer annually of the maximum number of buyer's temporary tags the dealer is authorized to issue during the calendar year under Transportation Code §503.0632. The number of buyer's temporary tags allocated to each dealer by the department will be determined based on the following formula:

(1) Sales data determined from the department's systems from previous three fiscal years. A dealer's base number will contain the greater of:

(A) the maximum number of in-state buyer's temporary tags issued during previous fiscal years, or

(B) the maximum number of title transactions processed through the Registration and Title System during previous fiscal years; and

(C) the addition of the maximum number of out-of-state buyer's temporary tags issued during previous fiscal years; except

(D) the dealer's base number will be limited to an amount that is not more than *the greater of:*

\_\_\_\_\_ (i) two times the number of title transactions identified in subparagraph (B) of this paragraph, or

*(ii) at the dealer's option, two times the number of vehicles listed in the Dealer's Motor Vehicle Inventory Tax Statements filed by the dealer with the county tax assessor-collector pursuant to Tax Code §23.122 during the twelve months preceding the due date under this subsection. A dealer electing this option must submit to the Department file stamped copies of the Dealer's Motor Vehicle Inventory Tax Statements filed with the appropriate county tax collector for the preceding twelve month period, by {date of deadline DMV needs the VIT information} of the year preceding the year for which the temporary tags will be issued;*

(2) a multiplier based on the dealer's time in operation; and

(3) the total value of paragraphs (1) and (2) of this subsection, multiplied by the expected annual growth rate percentage, not less than zero, to determine the buyer's temporary tag allotment; and in addition:

(4) the department may increase the determined allotment of buyer's temporary tags for dealers in the state, in a geographic or population area, or in a county, based on:

(A) changes in the market;

(B) temporary conditions that may affect sales; and

*(C) the dealer's anticipated need for temporary tags taking into consideration the factors set forth in Transportation Code §503.0632(b), if the dealer presents information in support of one or more of those factors, and*

(D) any other information the department considers relevant.

*(d) {Note: this subsection (d) is needed only if (m) below is not added.} As an alternative to section (c), if a dealer has been licensed and in operation for at least the five calendar years preceding the year for which buyer's temporary tags are to be allotted, the dealer may provide the Department the dealer's written estimate of the number of buyer's temporary tags that the dealer estimates it will need for the year.*

*The written estimate will be signed by an officer, owner, or partner of the dealer and certified by the dealer to be the dealer's good faith estimate of the number of buyer's temporary tags it anticipates that it should have available for use in the next year, considering the factors in Transportation Code §503.0632(b). Unless the Department has reason to believe that the dealer has abused the use of buyer's temporary tags by engaging in a practice of issuing buyer's temporary tags for vehicles that were not the subject of actual sales to bona fide buyers or intends to use buyer's temporary tags for that purpose, the number of buyer's temporary tags allocated to the dealer by the department will be the number set forth in the dealer's written certified estimate. The dealer will make its estimate in good faith, considering its sales, expected growth, anticipated changes in its market, any other applicable factors under Transportation Code §503.0632(b) and a reasonable contingency factor stated in the estimate.*

(e) The department will inform each dealer annually of the maximum number of agent temporary tags and vehicle specific temporary tags the dealer is authorized to issue during the calendar year under Transportation Code §503.0632. The number of agent temporary tags and vehicle specific temporary tags allocated to each dealer by the department, for each tag type, will be determined based on the following formula:

(1) dealer temporary tag data for agent temporary tags and vehicle specific temporary tags determined from the department's systems from previous three fiscal years. A dealer's base number will contain the maximum number of dealer temporary tags issued during previous fiscal years;

(2) a multiplier based on the dealer's time in operation; and

(3) the total value of paragraphs (1) and (2) of this subsection, multiplied by the expected annual growth rate percentage, not less than zero, to determine the dealer's temporary tag allotment; and in addition:

(4) the department may increase a dealer's allotment of agent temporary tags and vehicle specific temporary tags for dealers in the state, in a geographic or population area, or in a county, based on:

(A) changes in the market;

(B) temporary conditions that may affect sales; and

(C) any other information the department considers relevant.

(f) The department will inform each converter annually of the maximum number of temporary tags the converter is authorized to issue during the calendar year under



Transportation Code §503.0632. The number of temporary tags allocated to each converter by the department will be determined based on the following formula:

(1) converter temporary tag data determined from the department's systems from previous three fiscal years. A converter's base number will contain the maximum number of converter temporary tags issued during previous fiscal years;

(2) A multiplier based on the converter's time in operation; and

(3) the total value of paragraphs (1) and (2) of this subsection, multiplied by the expected annual growth rate percentage, not less than zero, to determine the converter's temporary tag allotment.

(4) The department may increase a converter's allotment of converter temporary tags for converters in the state, in a geographic or population area, or in a county, based on:

(A) changes in the market;

(B) temporary conditions that may affect sales; and

(C) any other information the department considers relevant.

(g) A dealer or converter that is licensed after the commencement of a calendar year shall be authorized to issue the number of temporary tags allotted in this subsection prorated on all or part of the remaining months until the commencement of the calendar year after the dealer's or converter's initial license expires. The allocations shall be as determined by the department in granting the license, but not more than:

(1) 600 temporary tags for a franchised dealer per each tag type, buyer's temporary tags, agent temporary tags, and vehicle specific tags;

(2) 300 temporary tags for a nonfranchised dealer per each tag type, buyer's temporary tags, agent temporary tags, and vehicle specific tags; and

(3) A converter will be allocated 600 temporary tags.

(h) An existing dealer or converter that is moving its operations from one location to a different location will continue with its allotment of temporary tags and not be allocated temporary tags under subsection (f) of this section.

(i) An existing dealer or converter opening an additional location will receive a maximum allotment based on the allotment provided to existing locations.

(j) After using 50 percent of the allotted maximum number of temporary tags, a dealer or converter may request an increase in the number of temporary tags by submitting a request in the department's eLICENSING system.

(1) The dealer or converter must provide information demonstrating the need for additional temporary tags results from business operations, including anticipated needs, as required by §503.0632(c). Information may include documentation of sales and tax reports filed as required by law, information of anticipated need, or other information of the factors listed in §503.0632(b).

(2) The department shall consider the information presented and may consider information not presented that may weigh for or against granting the request that the department in its sole discretion determines to be relevant in making its determination. Other relevant information may include information of the factors listed in §503.0632(b), the timing of the request, and the applicant's temporary tag activity.

(3) Subject to subsection (4), the department may allocate a lesser or greater number of additional temporary tags than the amount requested by the dealer or converter. Allocation of a greater number of additional temporary tags is not a denial of the request. Allocation of less than the number of additional temporary tags requested is considered a denial to the extent that the allocation is less than ninety percent of the number requested.

*(4) Unless there is evidence from which the Department believes that a dealer is using temporary tags for vehicles that are not the subject of actual sales to bona fide buyers, evidence that the dealer has either (i) had title transactions processed through the Registration and Title System during the current year that, when annualized, exceed the dealer's transactions reflected in the greater of subsections (c)(1)(A), (c)(1)(B) or (d), or (ii) that the number of sales shown on the dealer's current year Dealer's Motor Vehicle Inventory Tax Statements, when annualized, exceeds the total annual sales shown on the dealer's Dealer's Motor Vehicle Inventory Statements for the preceding year, the dealer will be allocated additional temporary tags. Additional temporary tags will be authorized in an amount at least equal to the dealer's average monthly sales for the current year, determined using current year sales reflected in the dealer's transactions processed through the Registration and Titling System or, at the dealer's option, the dealer's transactions shown by its current year Dealer's Motor Vehicle Inventory Tax Statements, times the number of months remaining in the current year, times two. A dealer relying on data shown on Dealer's Motor Vehicle Inventory Tax Statements must provide the Department filed stamped copies of the statements filed with the appropriate county tax collector.*

(5) If a request is denied, a dealer or converter may appeal the denial to the Director of the Motor Vehicle Division whose decision is the final decision of the Department and subject to review in accordance with Transportation Code §503.0632(d) by a state district court in the county of the dealer or converter's location. Review of the Department's final decision shall be de novo.

(6) Subject to such order as may be made by a court of competent jurisdiction, once a denial is final, a dealer or converter may only submit a subsequent request for additional temporary tags during that calendar year if the dealer or converter is able to provide additional information not considered in the prior request, which may include sales records, forecasts, or other relevant information.

(k) A change in the allotment under subsection (i) of this section does not create a dealer or converter base for subsequent year calculations.

(l) The department may at any time initiate an enforcement action against a dealer or converter if temporary tag usage suggests that misuse or fraud has occurred as described in Transportation Code §§503.038, 503.0632(f), or 503.067.

(l) Unused dealer or converter tag allotments from a calendar year do not roll over to subsequent years.

*(m) Subsections (c)-(e) and (h)-(k) do not apply to a dealer that has been licensed and in operation for at least the five calendar years preceding the year for which buyer's temporary tags are to be allotted unless the Department has reason to believe that the dealer has abused the use of buyer's temporary tags by engaging in a practice of issuing buyer's temporary tags for vehicles that were not the subject of actual sales to bona fide buyers or intends to use buyer's temporary tags for that purpose,*



December 10, 2021

Tracey Beaver  
General Counsel  
Texas Department of Motor Vehicles  
4000 Jackson Avenue  
Austin, TX 78731

Re: 43 TAC Chapter 215 Proposals, Texas Register, November 12, 2021

Dear Ms. Beaver:

The Texas Independent Automobile Dealers Association (TIADA) respectfully submits the following comments in response to the Texas Department of Motor Vehicles (TxDMV) proposed changes to 43 Texas Administrative Code Chapter 215.

TIADA represents over 1,000 independent automobile dealers throughout the state of Texas which range in size from large publicly traded companies to small and micro-businesses. Our members use the temporary tag system to allow test drives of vehicles, transport vehicles for business purposes, and most importantly to deliver vehicles to their purchasers. TIADA strongly supports TxDMV's efforts to limit fraudulently used temporary tags, however TIADA would like to note the problem is not a "small subset of dealers" who are fraudulently selling temporary tags as portrayed in testimony during board meetings, but instead are criminals who are abusing the temporary tag database. Criminals should never be given legitimacy by recognizing them as something they are not.

TIADA after reviewing the purposed rules has the following concerns and suggestions for amendments of 43 TAC §§215.150, 215.152, 215.154, and 215.505:

**The purposed rule over broadly makes dealers responsible for controlling access to the temporary tag database.** §215.150(d) states "A dealer or converter is responsible for all use of and access to the applicable temporary tag database under the dealer's or converter's account, including access by any user or unauthorized person." As purposed dealers would be responsible for breaches of the database that are outside of their control, such as attacks by hackers to the TxDMV system. This is especially concerning with the numerous recent high profile cyber and ransomware attacks, which recently led to the Federal Trade Commission changing its Safeguards Rule. Therefore, TIADA recommends replacing §215.150(d) with the following:

"A dealer or converter is responsible for taking reasonable measures to safeguard the use and access to the applicable temporary tag database under the dealer's or converter's account, including access by any user or unauthorized person. Dealer and converter reasonable measures include, but are not limited to monitoring temporary tag usage, managing account access, and taking timely and appropriate actions to maintain system security, including:"

**Small and micro-businesses should receive a minimum number of tags.** §215.152 is complex and requires multiple calculations. Small and micro-businesses, which make up approximately half of all licensees should be able to easily verify their allotment of temporary tags is correct. To avoid requiring small and micro-businesses to make complex calculations, there should be a minimum number of tags that every dealer qualifies for. Additionally, small and micro-businesses can fluctuate greatly in sales due to numerous non-market related conditions, such as an owner battling health issues for years and finally being well enough to focus on their business or a significant change in access to capital. Therefore, TIADA recommends a minimum number of tags for small and micro-businesses and since 300 is used for new businesses, TIADA feels that number is also appropriate as a minimum level for an established business.

**Provisions should be made to handle changes in business practices.** Most dealers use agent specific tags, but during the COVID pandemic some dealers switched to vehicle specific tags so they could send customers on test drives without a salesperson. Also, many dealers facing staff shortages are considering not having their salespeople go on test drives and may switch to vehicle specific tags. The number of tags issued per year is greatly increased when a dealer uses vehicle specific tags, and this limit would hinder the ability for dealers currently using agent specific tags to switch to vehicle specific tags. Therefore, TIADA recommends a process to increase the allotment of temporary tags when a dealer switches from agent specific tags to vehicle specific tags.

**The multipliers provided by §215.152 based on years in operation are unclear.** The preamble to §215.152 provides an example of a years in business multiplier that could be expressed in words thereby resolving the ambiguity of §215.152. TIADA suggests adopting the following formula in lieu of the purposed language of §215.152(c)(2) and §215.152(d)(2):

“a multiplier giving a 10 percent increase in tags for each year the dealer has been in business up to 10 years”

**Experienced license holders must receive the same multipliers.** §215.152 provides that a dealer will receive “a multiplier based on the dealer’s time in operation,” but the term dealer fails to provide if it is also extended to experienced license holders or license holders who changed their legal entity. A process is already in place to recognize experienced licensed holders as it relates to pre-licensing education. That process requires an experienced license holder to upload a statement listing the dates, license holder names, and license numbers they have been associated with over the years. Likewise, TIADA recommends a similar process be adopted to ensure experienced license holders are allocated enough temporary tags. Furthermore, dealers often must obtain a new GDN due to a change in location or ownership. For example, a dealer who grew up in his family’s dealership recently had to obtain a license and new GDN because his parents passed, and he was unable to transfer the prior GDN because the ownership structure changed. Another dealer recently had to obtain a new GDN because the dealership relocated outside of the city limits. In both of these instances, it would appear that the dealer was only licensed for a short time. Therefore, TIADA suggests the following language in lieu of “a multiplier based on the dealer’s time in operation”:

“a multiplier based on the greater of  
(A) a dealer’s time in operation at any licensed location, or  
(B) the number of years any GDN holder has operated at that location.”

**§215.152 appears to set an absolute limit on independent dealers receiving a license after the commencement of a calendar year to 300 temporary tags.** §215.152(f) states “. . . The allocations shall be as determined by the department in granting the license, **but not more than** [emphasis added].” TIADA believes situations may arise that require more than 300 temporary tags. Therefore, TIADA suggests the inserting the word “initial” before the word “allocations” and after the word “The” thereby making it clear that a dealer can obtain more temporary tags.

**It is unclear if §215.152(f) applies to §215.152(h).** §215.152(h) should follow the format of §215.152(g) by clearly stating subsection (f) does not apply. This avoids any confusion created by subsection (f) which provides a nonfranchised dealer shall not be allowed more than 300 temporary tags.

**§215.152 should provide a process for obtaining an additional allotment for dealers who are licensed in other states.** The two largest used car dealers in Texas both started in other states. Future large volume dealers may not have a footprint in Texas prior to opening a large volume location. Therefore, TIADA recommends changing a new subsection to §215.152 stating the following:

“A dealer or convert operating in another state will receive a maximum allotment based on the sales of their existing locations”

**An allocated amount of tags less than requested is effectively a denial.** §215.152(i)(3) provides an “allocation of a lesser or greater number of additional temporary tags is not a denial of the request.” However, the refusal of a certain number of additional temporary tags requested or desired is a constructive denial that a dealer should be able to appeal. Therefore, TIADA suggests updating the language to state “Allocation of a lesser number of additional tags is considered a denial of the request.”

**The proposed rule creates confusion by qualifying courtesy cars in §215.154(e).** §215.154(e)(3) states “a courtesy car with no signs on the vehicle” is not allowed to use a temporary tag. The negative-implication canon of construction provides the expression of one thing implies the exclusion of others. Since “courtesy cars with no signs” are expressed, the negative-implication canon would lead one to believe courtesy cars with signs are allowed. Therefore, TIADA believes §215.154(e)(3) should remain unchanged and not be amended to add “with no signs on the vehicle”.

**The proposed rules should follow the objective of HB 3927 by focusing on grossly excessive issuance of temporary tags.** HB 3927 was passed to deal with criminals issuing grossly excessive numbers of temporary tags without any sales. §215.505(a)(1) provides a dealer is misusing the

temporary tag database if it obtains “an excessive number of temporary tags relative to dealer sales”. What is “an excessive number of temporary tags relative to dealer sales”? Is just one tag issued by a rouge employee enough to take away a dealer’s access to the temporary tag system? This is especially concerning since access can be denied before a hearing. Therefore, TIADA recommends the following instead of “an excessive number of temporary tags relative to dealer sales”:

“a grossly excessive number of temporary tags relative to dealer sales”

Thank you in advance for your consideration of our comments and your efforts. TIADA stands ready to help in any way we can to ensure criminals are prevented from accessing the temporary tag system and appreciates all the efforts by TxDMV to ensure our members legitimate uses are maintained. If we can be of any additional assistance, please do not hesitate to contact us.

Respectfully,



Earl Cooke

Director of Compliance and Business Development



**From:** [REDACTED]  
**To:** [Zz - Resource - GCO Rules](#)  
**Subject:** Honest Texas Citizen  
**Date:** Wednesday, December 8, 2021 9:17:23 PM

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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.

This Paper License Plate issue is outrageous. For four years you people have argued over who has the authority to impose a simple law of "Proving the I.D. of the agent for any public company the sells automobiles ? This is straight up corruption at its finest ! Any person who represents the good state of Texas should be finger printed and forced to prove their identity for each and every business license given by the state. And this person should have to renew this license once a year at the least. Along with tracking how many paper plates are given out by each licensed business. If any dealer is giving out more then 900 paper license plates a year, a red flag should automatically be thrown up and their license automatically be suspended immediately, causing a denial of even one more paper plate being issues to that person or business license. This is just plain common sense. It is crazy that anyone could register any unsafe POS in our state and legally put it on the road, endangering Texas citizens and the public as many times as they want. And no one is checking up on this. It's the day of electronics and computers. Blaming this problem on anything other then corruption is absurd ! This is a very dangerous game y'all are playing with peoples lives. A perfect example of why we must prove identities in todays world has just been proven with this past Presidential election ! I bet y'all understand that !

Sent from my iPhone