



# Texas Burglar & Fire Alarm Association

Representing Texas electronic security, fire and integrated systems professionals

Concerns with the Texas Department of Public Safety

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# I. Overview:

The Texas Private Security Board was moved over to the Texas Department of Public Safety during the 2003 Legislative session in an effort to consolidate agencies and save money. While it took DPS some time to “warm up” to the new responsibility of working with industry groups (as opposed to working with criminals) a good working relationship formed and both agencies worked well together until recently.

As stated in Chapter 1702 of the Occupations Code, the Private Security Board has the authority to promulgate rules for administering Chapter 1702. Nowhere does Chapter 1702 state that the Public Safety Commission or DPS has authority to make or change rules without the Private Security Board, yet recently DPS and the Public Safety Commission have rescinded rules or enacted rules without the consent of the Private Security Board. DPS claims that their governing statute gives them the ability to “do whatever is necessary” in the name of public safety, which appears to include violating Chapter 1702. TBFAA feels that these overt actions violate not only the actual language of Chapter 1702, but also violates the spirit of Chapter 1702 and the previous levels of cooperation between the two governing bodies.

The following pages will detail our concerns.

## II. Concerns about the elimination of the authority of the Private Security Board (Appointed by the Governor) by the DPS legal staff.

The following pages delineate the position of the Texas Burglar and Fire Alarm Association regarding the statutory rulemaking authority of the Board.

White Paper on Rule Making Authority of the Private Security Board  
From: The Security Industry

The industry has concerns over the actions of the Public Safety Commission in sending a proposed rule change affecting the private security industry to the Texas Register. The basis of the industry's concerns are the highlighted areas below in Occupations code 1702.0611.

Sec. 1702.0611. RULEMAKING PROCEDURES. (a) The board [defined to be the Private Security Board][added] may only adopt rules under this chapter on the approval of the Public Safety Commission as provided by this section.

(b) Before adopting a rule under this chapter, the board [emphasis added] must:

- (1) determine the need for the proposed rule;
- (2) work with persons who will be affected by the rule to ensure consideration of all relevant issues regarding the proposed rule;
- (3) consult with an attorney in the department's regulatory licensing service to draft the rule and ensure that the proposed rule complies with statutory requirements regarding administrative rules; and
- (4) submit the proposed rule to the department's general counsel, director, and chief accountant for consideration of the proposed rule's impact on the department and to ensure that the proposed rule is within the board's authority.

(c) On the completion of the required publication and comment periods under Chapter 2001, Government Code, the Public Safety Commission [emphasis added] shall:

- (1) return the proposed rule to the board if:
  - (A) the commission identifies a problem with the rule that must be resolved before the rule is approved; or
  - (B) a comment requiring resolution is received during the comment period; or
- (2) place the rule on the commission's agenda for final approval during the commission's next regularly scheduled meeting.

(d) On approval of the proposed rule by the Public Safety Commission, the department shall comply with the requirements of Chapter 2001, Government Code, for final adoption of the rule.

Based on the above language in the Occupations Code, there appears to be little ambiguity regarding the rule making process. Tex. Occ. Code §1702.005 states

that the act “shall be” administered through the Private Security Board. It is the Private Security Board’s position that this requirement when combined with the rule making procedures found in Tex. Occ. Code §1702.0611 grants the Private Security Board exclusive authority to draft proposed rules.

The statute lacks ambiguity as to which entity can submit proposed rules to the Public Safety Commission because Tex. Occ. Code §1702.0611(b) states that “the board” is the submitting body. Subpart (b) of the statute does not include the Department.

The Department and the Private Security Board cannot be conflated in §1702.0611(b) because the Department’s involvement in the rule making process is referenced in both Tex. Occ. Code §1702.0611(b)(3) & (4), ensuring that the legislature intended the board to be a distinct entity from the department under subpart (b) of this statute.

The Department of Public Safety is given an opportunity to review proposed rules twice, under Tex. Occ. Code §1702.0611(b)(3) & (4), to insure that the rules are drafted properly, within the authority of the board, and impact the department in an acceptable manner. What the statute lacks is a mechanism for the department to submit its own rules.

The Public Safety Commission, under Tex. Occ. Code §1702.0611(c) has final approval authority under Tex. Occ. Code §1702.0611(c)(1)(A); and the sole remedy for a proposed rule that will not be adopted is the return of the rule to the board Tex. Occ. Code §1702.0611(c)(1).

As we understand the Department’s position, it feels that it should have rule making authority under Tex. Occ. Code §1702 concurrently with the board because, as a matter of policy, a civilian committee should not effectively be able to dictate the usage of the Department’s man-power and budget. We feel that this contravenes Tex. Occ. Code §1702.0611, and is ultimately not a tenable position for the Department.

The Department’s position is not reflected in the law, though the law does account for disagreements between the Board and Department, and that these disagreements are to be resolved under Tex. Occ. Code §1702.0612. Negotiated Rulemaking and Alternative Dispute Resolution. It is the Board’s position that this was the mechanism intended by the Legislature in the event that the Board and the Department reach an impasse.

## OCCUPATIONS CODE

## TITLE 10. OCCUPATIONS RELATED TO LAW ENFORCEMENT AND SECURITY

## CHAPTER 1702. PRIVATE SECURITY

## SUBCHAPTER A. GENERAL PROVISIONS

Sec. 1702.001. SHORT TITLE. This chapter may be cited as the Private Security Act.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.551(b), eff. Sept. 1, 2001.

Sec. 1702.002. DEFINITIONS. In this chapter:

(1) "Alarm system" means:

(A) electronic equipment and devices designed to detect or signal:

(i) an unauthorized entry or attempted entry of a person or object into a residence, business, or area monitored by the system; or

(ii) the occurrence of a robbery or other emergency;

(B) electronic equipment and devices using a computer or data processor designed to control the access of a person, vehicle, or object through a door, gate, or entrance into the controlled area of a residence or business; or

(C) a television camera or still camera system that:

(i) records or archives images of property or individuals in a public or private area of a residence or business; or

(ii) is monitored by security personnel or services.

(1-a) For purposes of Subdivision (1), the term "alarm system" does not include a telephone entry system, an operator for opening or closing a residential or commercial gate or door, or an accessory used only to activate a gate or door, if the system, operator, or accessory is not connected to a computer or data processor that records or archives the voice, visual image, or identifying information of the user.

(1-b) "Board" means the Texas Private Security Board.

(2) "Branch office" means an office that is:

(A) identified to the public as a place from which business is conducted, solicited, or advertised; and

(B) at a place other than the principal place of business as shown in board records.

(3) "Branch office license" means a permit issued by the board that entitles a person to operate at a branch office as a security services contractor or investigations company.

(4) Repealed by Acts 2009, 81st Leg., R.S., Ch. 1146, Sec. 4.102(1), eff. September 1, 2009.

(5) "Commissioned security officer" means a security officer to whom a security officer commission has been issued by the board.

(5-a) "Department" means the Department of Public Safety of the State of Texas.

(6) "Detection device" means an electronic device used as a part of an alarm system, including a control, communications device, motion detector, door or window switch, sound detector, vibration detector, light beam, pressure mat, wiring, or similar device.

(6-a) "Electronic access control device" means an electronic, electrical, or computer-based device, including a telephone entry system, that allows access to a controlled area of a business, but that is not monitored by security personnel or services and does not send a signal to which law enforcement or emergency services respond. The term does not include:

(A) a mechanical device, such as a deadbolt or lock;  
or

(B) an operator for opening or closing a commercial gate or door or an accessory, such as a fixed or portable transmitter, card-reader, or keypad, if the operator or accessory is used only to activate the gate or door and is not connected to an alarm system.

(6-b) "Endorsement" means a permit entitling an individual holding a registration to perform a service regulated by this chapter for an appropriately licensed company.

(7) "Extra job coordinator" means a peace officer who:

(A) is employed full-time by the state or a political subdivision of the state; and



(B) schedules other peace officers to provide guard, patrolman, or watchman services in a private capacity who are:

(i) employed full-time by the state or a political subdivision of the state; and

(ii) not employed by the extra job coordinator.

(8) "Firearm" has the meaning assigned by Section 46.01, Penal Code.

(9) "Insurance agent" means:

(A) a person licensed under Subchapter B, C, D, or E, Chapter 4051, or Chapter 981, Insurance Code;

(B) a salaried, state, or special agent; or

(C) a person authorized to represent an insurance fund or pool created by a local government under Chapter 791, Government Code.

(10) "Investigations company" means a person who performs the activities described by Section 1702.104.

(11) "Letter of authority" means a permit issued by the board that entitles the security department of a private business or a political subdivision to employ a commissioned security officer.

(12) "License" means a permit issued by the board that entitles a person to operate as a security services contractor or investigations company.

(13) "License holder" means a person to whom the board issues a license.

(14) "Manager" means an officer or supervisor of a corporation or a general partner of a partnership who has the experience required by Section 1702.119 to manage a security services contractor or an investigations company.

(15) "Peace officer" means a person who is a peace officer under Article 2.12, Code of Criminal Procedure.

(16) "Person" includes an individual, firm, association, company, partnership, corporation, nonprofit organization, institution, or similar entity. Section 311.005(2), Government Code, does not apply to this subdivision.

(16-a) "Personal protection officer" means a person who performs the activities described by Section 1702.202.

(17) "Personal protection officer endorsement" means a permit issued by the board that entitles an individual to act as a

personal protection officer.

(18) "Private investigator" means an individual who performs one or more services described by Section 1702.104.

(19) "Registrant" means an individual who has registered with the board under Section 1702.221.

(20) "Registration" means a permit issued by the board to an individual described by Section 1702.221.

(20-a) "Security officer" means a person who performs the activities described by Section 1702.222.

(21) "Security officer commission" means an authorization issued by the board that entitles a security officer to carry a firearm.

(22) "Security services contractor" means a person who performs the activities described by Section 1702.102.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.552, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 898, Sec. 1, eff. June 20, 2003; Acts 2003, 78th Leg., ch. 936, Sec. 1, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1276, Sec. 10A.545, eff. Sept. 1, 2003; Acts 2003, 78th Leg., 3rd C.S., ch. 10, Sec. 2.01, eff. Oct. 20, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. [728](#), Sec. 11.151, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. [1155](#), Sec. 1, eff. June 18, 2005.

Acts 2007, 80th Leg., R.S., Ch. [921](#), Sec. 17.001(58-a), eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. [1146](#), Sec. 4.01, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. [1146](#), Sec. 4.102(1), eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. [1146](#), Sec. 4B.01, eff. September 1, 2009.

**Sec. 1702.004. GENERAL SCOPE OF REGULATION. (a) The board, in addition to performing duties required by other law or exercising powers granted by other law:**

**(1) licenses investigations companies and security**

services contractors;

(2) issues commissions to certain security officers;

(3) issues endorsements to certain security officers engaged in the personal protection of individuals;

(4) registers and endorses:

(A) certain individuals connected with a license holder; and

(B) certain individuals employed in a field connected to private investigation or private security; and

(5) regulates license holders, security officers, registrants, and endorsement holders under this chapter.

(b) The board shall adopt rules necessary to comply with Chapter 53. In its rules under this section, the board shall list the specific offenses for each category of regulated persons for which a conviction would constitute grounds for the board to take action under Section 53.021.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.554, eff. Sept. 1, 2001.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. [906](#), Sec. 1, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. [1146](#), Sec. 4.02, eff. September 1, 2009.

Sec. 1702.005. DEPARTMENT OF PUBLIC SAFETY. (a) The board created under Section 1702.021 is a part of the department. The department shall administer this chapter through the board.

(b) A reference in this chapter or another law to the Texas Commission on Private Security means the board.

Added by Acts 2003, 78th Leg., 3rd C.S., ch. 10, Sec. 2.02, eff. Oct. 20, 2003.

Sec. 1702.006. FOREIGN ENTITY REGISTRATION. Licensure under this chapter does not exempt a foreign entity from the registration requirements of Chapter 9, Business Organizations Code.

Added by Acts 2009, 81st Leg., R.S., Ch. [1146](#), Sec. 4B.04, eff.

September 1, 2009.

SUBCHAPTER B. TEXAS PRIVATE SECURITY BOARD

Sec. 1702.021. BOARD MEMBERSHIP. (a) The Texas Private Security Board consists of seven members appointed by the governor with the advice and consent of the senate as follows:

(1) four public members, each of whom is a citizen of the United States;

(2) one member who is licensed under this chapter as a private investigator;

(3) one member who is licensed under this chapter as an alarm systems company; and

(4) one member who is licensed under this chapter as the owner or operator of a guard company.

(b) Appointments to the board shall be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointee.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.556, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 1170, Sec. 34.01, eff. Sept. 1, 2003; Acts 2003, 78th Leg., 3rd C.S., ch. 10, Sec. 2.03, eff. Oct. 20, 2003.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. [1146](#), Sec. 4.04, eff. September 1, 2009.

Sec. 1702.023. ELIGIBILITY OF PUBLIC MEMBERS. The board's public members must be representatives of the general public. A person may not be a public member of the board if the person or the person's spouse:

(1) is registered, commissioned, certified, or licensed by a regulatory agency in the field of private investigations or private security;

(2) is employed by or participates in the management of a business entity or other organization regulated by or receiving money from the board;

(3) owns or controls, directly or indirectly, more than a

10 percent interest in a business entity or other organization regulated by or receiving money from the board; or

(4) uses or receives a substantial amount of tangible goods, services, or money from the board other than compensation or reimbursement authorized by law for board membership, attendance, or expenses.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.558, eff. Sept. 1, 2001.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. [1146](#), Sec. 4.05, eff. September 1, 2009.

Sec. 1702.024. MEMBERSHIP AND EMPLOYEE RESTRICTIONS. (a) In this section, "Texas trade association" means a cooperative and voluntarily joined association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interests.

(b) A person may not be a board member, and may not be a department employee whose primary duties include private security regulation and who is employed in a "bona fide executive, administrative, or professional capacity," as that phrase is used for purposes of establishing an exemption to the overtime provisions of the federal Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et seq.), and its subsequent amendments, if:

(1) the person is an officer, employee, or paid consultant of a Texas trade association in the field of private investigation or private security; or

(2) the person's spouse is an officer, manager, or paid consultant of a Texas trade association in the field of private investigation or private security.

(c) A person may not be a board member or act as general counsel to the board or agency if the person is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a profession related to the operation of the agency.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by

Acts 2001, 77th Leg., ch. 1420, Sec. 14.559, eff. Sept. 1, 2001.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. [1146](#), Sec. 4.06, eff. September 1, 2009.

Sec. 1702.025. TERMS; VACANCIES. (a) The board members serve staggered six-year terms, with the terms of two or three members expiring on January 31 of each odd-numbered year.

(b) If a vacancy occurs during the term of a board member, the governor shall appoint a new member to fill the unexpired term.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.560(a), eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 1170, Sec. 34.02, eff. Sept. 1, 2003; Acts 2003, 78th Leg., 3rd C.S., ch. 10, Sec. 2.04, eff. Oct. 20, 2003.

Sec. 1702.026. OFFICERS. (a) The governor shall designate one board member as presiding officer to serve in that capacity at the will of the governor. The governor shall designate the presiding officer without regard to race, creed, color, disability, sex, religion, age, or national origin.

(b) The board shall elect from among its members an assistant presiding officer and a secretary to serve two-year terms beginning on September 1 of each odd-numbered year.

(c) The presiding officer of the board or, in the absence of the presiding officer, the assistant presiding officer shall preside at each board meeting and perform the other duties prescribed by this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.561(a), eff. Sept. 1, 2001; Acts 2003, 78th Leg., 3rd C.S., ch. 10, Sec. 2.04, eff. Oct. 20, 2003.

Sec. 1702.027. GROUNDS FOR REMOVAL. (a) It is a ground for removal from the board that a member:

(1) does not have the qualifications required by Section 1702.021 at the time of taking office;

(2) does not maintain the qualifications required by

Section 1702.021 during service on the board;

(3) is ineligible for membership under Section 1702.023 or 1702.024;

(4) cannot, because of illness or disability, discharge the member's duties for a substantial part of the member's term; or

(5) is absent from more than half of the regularly scheduled board meetings that the member is eligible to attend during a calendar year without an excuse approved by a majority vote of the board.

(b) The validity of an action of the board is not affected by the fact that it is taken when a ground for removal of a board member exists.

(c) If the chief administrator has knowledge that a potential ground for removal exists, the chief administrator shall notify the presiding officer of the board of the potential ground. The presiding officer shall then notify the governor and the attorney general that a potential ground for removal exists. If the potential ground for removal involves the presiding officer, the chief administrator shall notify the next highest ranking officer of the board, who shall then notify the governor and the attorney general that a potential ground for removal exists.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.562, eff. Sept. 1, 2001.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. [1146](#), Sec. 4.07, eff. September 1, 2009.

Sec. 1702.028. PER DIEM; REIMBURSEMENT. (a) A board member is entitled to a per diem as set by legislative appropriation for each day the member engages in the business of the board.

(b) A member is entitled to reimbursement for travel expenses incurred while conducting board business, including expenses for transportation, meals, and lodging, as prescribed by the General Appropriations Act.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.563, eff. Sept. 1, 2001.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. [1146](#), Sec. 4.08, eff. September 1, 2009.

Sec. 1702.029. MEETINGS. The board shall meet at regular intervals to be decided by the board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.564, eff. Sept. 1, 2001.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. [1146](#), Sec. 4.09, eff. September 1, 2009.

Sec. 1702.030. TRAINING. (a) A person who is appointed to and qualifies for office as a board member may not vote, deliberate, or be counted as a member in attendance at a board meeting until the person completes a training program that complies with this section.

(b) The training program must provide the person with information regarding:

- (1) this chapter;
- (2) the programs operated by the board;
- (3) the role and functions of the board;
- (4) the rules of the board, with an emphasis on the rules that relate to disciplinary and investigatory authority;
- (5) the current budget for the board;
- (6) the results of the most recent formal audit of the board;
- (7) the requirements of:
  - (A) the open meetings law, Chapter 551, Government Code;
  - (B) the public information law, Chapter 552, Government Code;
  - (C) the administrative procedure law, Chapter 2001, Government Code; and
  - (D) other laws relating to public officials, including conflict of interest laws; and
- (8) any applicable ethics policies adopted by the board or the Texas Ethics Commission.

(c) A person appointed to the board is entitled to



reimbursement, as provided by the General Appropriations Act, for the travel expenses incurred in attending the training program regardless of whether the attendance at the program occurs before or after the person qualifies for office.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.565(a), eff. Sept. 1, 2001.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. [1146](#), Sec. 4.10, eff. September 1, 2009.

#### SUBCHAPTER C. CHIEF ADMINISTRATOR AND PERSONNEL

**Sec. 1702.041. CHIEF ADMINISTRATOR. (a) The chief administrator is responsible for the administration of this chapter under the direction of the board. The chief administrator shall perform duties as prescribed by the board and the department.**

(b) The chief administrator is a full-time employee of the department. A board member may not serve as chief administrator.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.566, eff. Sept. 1, 2001.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. [1146](#), Sec. 4.12, eff. September 1, 2009.

**Sec. 1702.042. PERSONNEL; CONFLICT OF INTEREST.** An employee of the department whose primary duties include private security regulation may not:

(1) have a financial or business interest, contingent or otherwise, in a security services contractor or investigations company; or

(2) be licensed under this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.567, eff. Sept. 1, 2001.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. [1146](#), Sec. 4.13, eff. September 1, 2009.

Sec. 1702.043. DIVISION OF RESPONSIBILITIES. The board shall develop and implement policies that clearly separate the policy-making responsibilities of the board and the management responsibilities of the chief administrator and staff of the department.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.568, eff. Sept. 1, 2001.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. [1146](#), Sec. 4.14, eff. September 1, 2009.

Sec. 1702.044. QUALIFICATIONS AND STANDARDS OF CONDUCT INFORMATION. The chief administrator or the chief administrator's designee shall provide to board members and to agency employees, as often as necessary, information regarding the requirements for office or employment under this chapter, including information regarding a person's responsibilities under applicable laws relating to standards of conduct for state officers or employees.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.569, eff. Sept. 1, 2001.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. [1146](#), Sec. 4.15, eff. September 1, 2009.

Sec. 1702.047. ADMINISTRATIVE STAFF. The department shall designate a department employee who shall report directly to the board. The employee designated under this section shall provide administrative assistance to the board in the performance of the board's duties.

Added by Acts 2005, 79th Leg., Ch. [1278](#), Sec. 1, eff. September 1, 2005.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. [1146](#), Sec. 4B.02, eff. September 1, 2009.

#### SUBCHAPTER D. POWERS AND DUTIES OF BOARD

Sec. 1702.061. GENERAL POWERS AND DUTIES OF BOARD. (a) The board shall perform the functions and duties provided by this chapter.

(b) The board shall adopt rules and general policies to guide the agency in the administration of this chapter.

(c) The rules and policies adopted by the board under Subsection (b) must be consistent with this chapter and other board rules adopted under this chapter and with any other applicable law, state rule, or federal regulation.

(d) The board has the powers and duties to:

(1) determine the qualifications of license holders, registrants, endorsement holders, and commissioned security officers;

(2) investigate alleged violations of this chapter and of board rules;

(3) adopt rules necessary to implement this chapter; and

(4) establish and enforce standards governing the safety and conduct of each person licensed, registered, or commissioned under this chapter.

(e) The board shall have a seal in the form prescribed by the board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.573(a), eff. Sept. 1, 2001.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. [1146](#), Sec. 4.17, eff. September 1, 2009.

Sec. 1702.0611. RULEMAKING PROCEDURES. (a) The board may only adopt rules under this chapter on the approval of the Public Safety Commission as provided by this section.

(b) Before adopting a rule under this chapter, the board must:

(1) determine the need for the proposed rule;

(2) work with persons who will be affected by the rule to ensure consideration of all relevant issues regarding the proposed rule;

(3) consult with an attorney in the department's regulatory licensing service to draft the rule and ensure that the proposed rule complies with statutory requirements regarding administrative rules; and

(4) submit the proposed rule to the department's general counsel, director, and chief accountant for consideration of the proposed rule's impact on the department and to ensure that the proposed rule is within the board's authority.

(c) On the completion of the required publication and comment periods under Chapter 2001, Government Code, the Public Safety Commission shall:

(1) return the proposed rule to the board if:

(A) the commission identifies a problem with the rule that must be resolved before the rule is approved; or

(B) a comment requiring resolution is received during the comment period; or

(2) place the rule on the commission's agenda for final approval during the commission's next regularly scheduled meeting.

(d) On approval of the proposed rule by the Public Safety Commission, the department shall comply with the requirements of Chapter 2001, Government Code, for final adoption of the rule.

Added by Acts 2005, 79th Leg., Ch. [1278](#), Sec. 2, eff. September 1, 2005.

Sec. 1702.0612. NEGOTIATED RULEMAKING AND ALTERNATIVE DISPUTE RESOLUTION. (a) The board shall develop and implement a policy to encourage the use of:

(1) negotiated rulemaking procedures under Chapter 2008, Government Code, for the adoption of board rules; and

(2) appropriate alternative dispute resolution procedures under Chapter 2009, Government Code, to assist in the resolution of internal and external disputes under the board's jurisdiction.

(b) The board's procedures relating to alternative dispute resolution must conform, to the extent possible, to any model guidelines issued by the State Office of Administrative Hearings for the use of alternative dispute resolution by state agencies.

(c) The board shall designate a trained person to:

(1) coordinate the implementation of the policy adopted under Subsection (a);

(2) serve as a resource for any training needed to implement the procedures for negotiated rulemaking or alternative

dispute resolution; and

(3) collect data concerning the effectiveness of those procedures, as implemented by the board.

Added by Acts 2009, 81st Leg., R.S., Ch. [1146](#), Sec. 4.18, eff. September 1, 2009.

Sec. 1702.062. FEES. (a) The board by rule shall establish reasonable and necessary fees that produce sufficient revenue to administer this chapter. The fees may not produce unnecessary fund balances.

(b) The board may charge a fee each time the board requires a person regulated under this chapter to resubmit a set of fingerprints for processing by the board during the application process for a license, registration, endorsement, or commission. The board shall set the fee in an amount that is reasonable and necessary to cover the administrative expenses related to processing the fingerprints.

(c) A person whose pocket card has not expired is not eligible to receive from the board another pocket card in the same classification in which the pocket card is held.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.574, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 593, Sec. 1, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. [1278](#), Sec. 3, eff. September 1, 2005.

Acts 2009, 81st Leg., R.S., Ch. [1146](#), Sec. 4.19, eff. September 1, 2009.

Sec. 1702.063. BOARD USE OF FINES. The fines collected under this chapter may not be used to administer this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.575, eff. Sept. 1, 2001.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. [1146](#), Sec. 4.20, eff. September 1, 2009.

Sec. 1702.0635. RESTRICTIONS ON CERTAIN RULES. The board may

### III. Issues with licensing and the DPS – The evolution of licensing issues.

The following pages delineate the position of the Texas Burglar and Fire Alarm Association regarding the issues that have arisen regarding licensing under DPS.

## DPS and Regulatory Licensing Services Issues

1. DPS is a fine law enforcement agency
2. Licensing – not so much
3. PSB was moved under DPS in 2003.
4. DPS promised immediately a re-write of the software for licensing
5. Some 11 years later nothing has been done and we continue to limp along
6. The PSB had to force the agency to meet statutory obligations and send out license/renewal registration notices. They had refused at first.
7. The PSB database has issues with registrants with multiple pocket cards – from day one and still has the same issues 11 years later.
8. DPS is hit or miss on informing a company that a registrant's application is not complete.
9. In 2013 DPS mandated (without industry acceptance) mandatory fingerprints on renewals – this had never happened before. This legislation was snuck in at the very last minute by DPS legal staff without consulting the industry or PSB.
10. In 2013 DPS mandated that all fingerprints must be submitted electronically through the single source vendor of L-1/Morpho Trust, again without consulting the industry or PSB. This was mandated by DPS management.
11. DPS paid no attention to the fact that L-1 was, at times, one week out on schedule for fingerprints, thus forcing potential new hires to wait a full week before they could go to work.
12. DPS unilaterally eliminated a rule that allowed companies to do a background check via private companies while registering an employee, thus allowing the employee to go to work immediately. This rule had allowed a 5 day period to complete the application process as long as the background check was performed. This rule was revoked without the consent of the PSB. This rule had been in affect for many years and the previous attorney (when PSB was a stand alone agency) affiliated with the AG's office had no problem with the 5 day rule (originally it was a 7 day rule).
13. Statutorily the PSB has rulemaking authority, but DPS and the PSC have, on several occasions made or changed rules based on their belief that they can do whatever they want in the interest of "public safety" regardless of what the statute (1702) says.
14. DPS has forced upon the PSB an attorney who is consistently working against the PSB wishes and is not working in the interest of the PSB. The PSB should have the right to select a DPS attorney, and consult with the AG's office should the DPS attorney not be acting in good faith for the PSB. The PSB should also have the right to remove the attorney and select (through an interview process) a different attorney from the DPS staff.
15. When issues involving PSB are up in front of the PSC, DPS and PSC make it difficult for industry representatives to communicate our concerns.

Industry personnel are allowed to speak only during public comment. When staff or the director makes their comments we are NOT allowed to rebut any of their statements. This is similar to having a trial and not letting the defense cross examine a witness. This is unfair.

16. When DPS makes rule changes there is no effort on the part of the agency to inform the industry or licensed population of these rule changes, other than a simple posting of "new rules" on the website. The agency takes no pro-active approach to informing the licensed population (such as email or regular mail).



## VI. Issues with licensing procedure delays – preventing Texans from working

The following pages delineate the position of the Texas Burglar and Fire Alarm Association regarding the delay in allowing Texans to go to work in a timely fashion based on unilateral decisions by the DPS upper management regarding due diligence and background checks. Several screen shots are included to show the delay time in fingerprint scheduling by L-1 MorphoTrust, thus preventing Texans from going to work.

## Morpho Fingerprint Issue 20140123

On Thursday, January 23, 2014 at approximately 10:30 AM I spoke with Assistant Director Skylor Hearn at DPS regarding the week long schedule backlog at IdentoGo by MorphoTrust (see screen shot below). Mr. Hearn informed me that Morpho by contract has a seven day window to meet contract terms. The 72 hour time frame for fingerprint appointments that we had been told about was only a "gentlemen's agreement" between the two parties. This had never been explained to us before – we were always told that the time limit was 72 hours. This misinformation is extremely disconcerting.

I was also told that DPS and Morpho look at the schedule every 30 days to evaluate performance. The problem here is that it can take 30 days PLUS the time to resolve the issue to bring the schedule back into compliance.

Additionally, the last new hire I sent for fingerprints at the IdentoGo location had to wait 45 minutes for a scheduled appointment. Why even have a schedule with this amount of waiting time.

The conversation ended with the fact that nothing will change until possibly a new contract is signed.

This leaves the industry in a frustrating position making new hires wait for up to a week before they can begin working. If the new hire cannot wait, this leaves the employer out \$69 or more in fees for an employee who seeks employment sooner in another industry.

Additionally...

IdentoGo still has the agency listed as "Texas Board of Private Investigators and Security Agency". This name is over 14 years old. This could be confusing for someone trying to schedule appointments. According to Mr. Hearn this is an issue at the FBI and changing the name might result in "down time" at the federal level if the name is changed.

When you call DPS regarding fingerprint schedule issues the tell you to call MorphoTrust. MorphoTrust tells you that they can do nothing. This is the experience that I have personally had with Morpho.

https://buibtfingerprint.com/index.php

please follow this link to our alternative appointment scheduler.

is a supercenter location offering passport, id theft protection and more.

Locations sorted by distance from 78232

January 22 - January 28 Next Week >>

[Select Another Region or Zip Code]

	Wednesday 1/22/2014	Thursday 1/23/2014	Friday 1/24/2014	Saturday 1/25/2014	Sunday 1/26/2014	Monday 1/27/2014	Tuesday 1/28/2014
San Antonio - Tesoro Dr NE ISD 8760 Tesoro Dr, Rm 119 San Antonio, TX 78217 Directions	Schedule Full	Schedule Full	Schedule Full	Closed	Closed	Schedule Full	Schedule Full
San Antonio - Northwest One Park Ten 6800 Park Ten Blvd, Ste 108, N Bldg San Antonio, TX 78213 Directions	Schedule Full	Schedule Full	Schedule Full	Closed	Closed	Schedule Full	Schedule Full
San Antonio - East Education Support Center - Bldg 1 1314 Hines Ave San Antonio, TX 78208 Directions	Schedule Full	Schedule Full	Schedule Full	Closed	Closed	Schedule Full	Schedule Full
Converse Lonestar Handgun Shooting Range, LLC 2001 N Graytown Rd Converse, TX 78109 Directions	Schedule Full	Schedule Full	Schedule Full	Schedule Full	Closed	Schedule Full	Click to Schedule
New Braunfels Fourth Perimeter Tactical 1335 Wald Rd, Ste 102 New Braunfels, TX 78132 Directions	Schedule Full	Schedule Full	Closed	Closed	Closed	Schedule Full	Schedule Full

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## Jackson, Matthew Scheduling issue

MorphoTrust USA Enrollment Services - Windows Internet Explorer


https://tbi.fingerprint.com/index.php

Marine and Coastal Water... Startpage Search Engine TxDPS - Private Security B...

MorphoTrust USA Enrollment Services

### Texas Registration




If you are using assistive technology (such as a screen reader) or have problems using the scheduler below, please follow this link to our alternative appointment scheduler.

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Locations sorted by distance from 78232

February 10 - February 16 Next Week >>

[Select Another Region or Zip Code]

	Monday 2/10/2014	Tuesday 2/11/2014	Wednesday 2/12/2014	Thursday 2/13/2014	Friday 2/14/2014	Saturday 2/15/2014	Sunday 2/16/2014
<b>San Antonio - Tesoro Dr</b> NE ISO 8750 Tesoro Dr, Rm 119 San Antonio, TX 78217 <a href="#">Directions</a>	Schedule Full	Schedule Full	Schedule Full	Schedule Full	Schedule Full	Closed	Closed
<b>San Antonio - Northwest</b> One Park Ten 8800 Park Ten Blvd, Ste 108, N Bldg San Antonio, TX 78213  <a href="#">Directions</a>	Schedule Full	Schedule Full	Schedule Full	Schedule Full	Schedule Full	Closed	Closed
<b>San Antonio - East</b> Education Support Center - Bldg 1 1314 Hines Ave San Antonio, TX 78208  <a href="#">Directions</a>	Schedule Full	Schedule Full	Schedule Full	Schedule Full	Schedule Full	Closed	Closed
<b>Converse</b> Lonestar Handgun Shooting Range, LLC 2901 N Graytown Rd Converse, TX 78109 <a href="#">Directions</a>	Schedule Full	Schedule Full	Schedule Full	Schedule Full	Schedule Full	Schedule Full	Closed
<b>New Braunfels</b> Fourth Perimeter Tactical 1335 Wald Rd, Ste 102 New Braunfels, TX 78132  <a href="#">Directions</a>	Schedule Full	Schedule Full	Schedule Full	Closed	Closed	Closed	Closed

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2/10/2014

MorphoTrust USA Enrollment Services - Windows Internet Explorer


https://tx.btfingerprint.com/index.php

Marine and Coastal Water... Startpage Search Engine TxDPS - Private Security B...

MorphoTrust USA Enrollment Services






## Texas Registration

If you are using assistive technology (such as a screen reader) or have problems using the scheduler below, please follow this link to our alternative appointment scheduler.

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Locations sorted by distance from 78232 << Previous Week **February 17 - February 23** Next Week >>

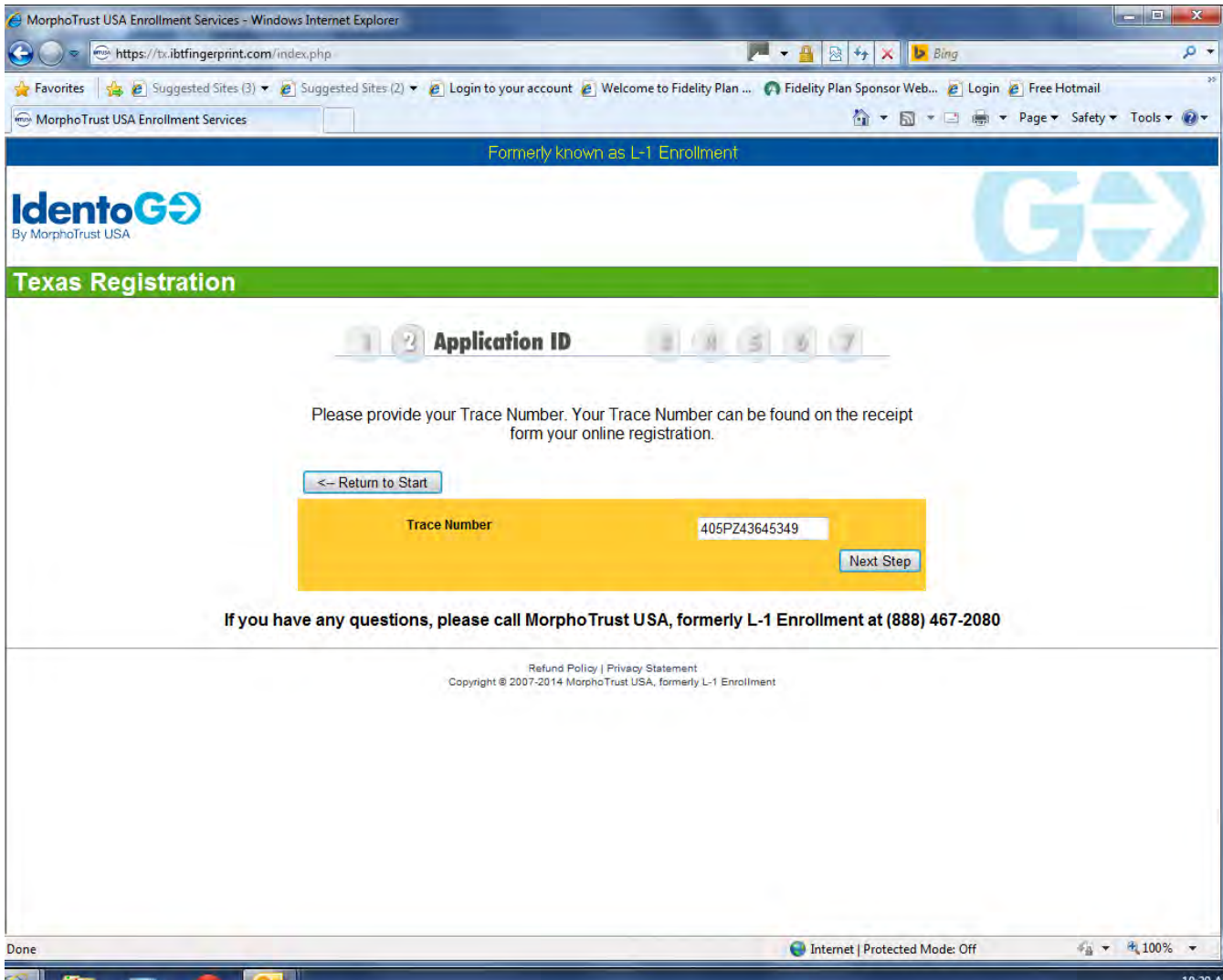
[Select Another Region or Zip Code]

	Monday 2/17/2014	Tuesday 2/18/2014	Wednesday 2/19/2014	Thursday 2/20/2014	Friday 2/21/2014	Saturday 2/22/2014	Sunday 2/23/2014
<p>San Antonio - Tesoro Dr NE ISO 8750 Tesoro Dr, Rm 119 San Antonio, TX 78217</p> <p>Directions</p>	Schedule Full	Schedule Full	Click to Schedule	Click to Schedule	Click to Schedule	Closed	Closed
<p>San Antonio - Northwest One Park Ten 2800 Park Ten Blvd, Ste 108, N Bldg San Antonio, TX 78213</p> <p>Directions</p>	 Schedule Full	 Schedule Full	Click to Schedule	Click to Schedule	Click to Schedule	Closed	Closed
<p>San Antonio - East Education Support Center - Bldg 1 1314 Hines Ave San Antonio, TX 78208</p> <p>Directions</p>	 Schedule Full	 Schedule Full	Click to Schedule	Click to Schedule	Click to Schedule	Closed	Closed
<p>Converse Lonestar Handgun Shooting Range, LLC 2681 N Graytown Rd Converse, TX 78109</p> <p>Directions</p>	Schedule Full	Click to Schedule	Click to Schedule	Click to Schedule	Click to Schedule	Click to Schedule	Closed
<p>New Braunfels Fourth Perimeter Tactical 1335 Wald Rd, Ste 102 New Braunfels, TX 78132</p> <p>Directions</p>	 Schedule Full	Click to Schedule	Click to Schedule	Click to Schedule	Closed	Closed	Closed

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**SC** is a supercenter location offering passport, id theft protection and more.

Locations sorted by distance from 78232

[Select Another Region or Zip Code]

January 22 - January 28 Next Week >>

	Wednesday 1/22/2014	Thursday 1/23/2014	Friday 1/24/2014	Saturday 1/25/2014	Sunday 1/26/2014	Monday 1/27/2014	Tuesday 1/28/2014
<b>San Antonio - Tesoro Dr NE ISD</b> 8750 Tesoro Dr, Rm 119 San Antonio, TX 78217 <a href="#">Directions</a>	<a href="#">Schedule Full</a>	<a href="#">Schedule Full</a>	<a href="#">Schedule Full</a>	Closed	Closed	<a href="#">Schedule Full</a>	<a href="#">Schedule Full</a>
<b>San Antonio - Northwest One Park Ten</b> <b>SC</b> 6800 Park Ten Blvd, Ste 108, N Bldg San Antonio, TX 78213 <a href="#">Directions</a>	<a href="#">Schedule Full</a>	<a href="#">Schedule Full</a>	<a href="#">Schedule Full</a>	Closed	Closed	<a href="#">Schedule Full</a>	<a href="#">Schedule Full</a>
<b>San Antonio - East Education Support Center - Bldg 1</b> <b>SC</b> 1314 Hines Ave San Antonio, TX 78208 <a href="#">Directions</a>	<a href="#">Schedule Full</a>	<a href="#">Schedule Full</a>	<a href="#">Schedule Full</a>	Closed	Closed	<a href="#">Schedule Full</a>	<a href="#">Schedule Full</a>
<b>Converse Lonestar Handgun Shooting Range, LLC</b> 2661 N Graytown Rd Converse, TX 78109 <a href="#">Directions</a>	<a href="#">Schedule Full</a>	<a href="#">Schedule Full</a>	<a href="#">Schedule Full</a>	<a href="#">Schedule Full</a>	Closed	<a href="#">Schedule Full</a>	<a href="#">Click to Schedule</a>
<b>New Braunfels Fourth Perimeter Tactical</b> <b>SC</b> 1335 Wald Rd, Ste 102 New Braunfels, TX 78132 <a href="#">Directions</a>	<a href="#">Schedule Full</a>	<a href="#">Schedule Full</a>	Closed	Closed	Closed	<a href="#">Schedule Full</a>	<a href="#">Schedule Full</a>

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Locations sorted by distance from 78232 << Previous Week **January 29 - February 4** Next Week >>

[Select Another Region or Zip Code]

	Wednesday 1/29/2014	Thursday 1/30/2014	Friday 1/31/2014	Saturday 2/1/2014	Sunday 2/2/2014	Monday 2/3/2014	Tuesday 2/4/2014
<p>San Antonio - Tesoro Dr NE ISD 8750 Tesoro Dr, Rm 119 San Antonio, TX 78217</p> <p>Directions</p>	Schedule Full	Click to Schedule	Click to Schedule	Closed	Closed	Click to Schedule	Click to Schedule
<p>San Antonio - Northwest One Park Ten 6800 Park Ten Blvd, Ste 108, N Bldg San Antonio, TX 78213</p> <p>Directions</p>	Click to Schedule	Click to Schedule	Click to Schedule	Closed	Closed	Click to Schedule	Click to Schedule
<p>San Antonio - East Education Support Center - Bldg 1 1314 Hines Ave San Antonio, TX 78208</p> <p>Directions</p>	Click to Schedule	Click to Schedule	Click to Schedule	Closed	Closed	Click to Schedule	Click to Schedule
<p>Converse Lonestar Handgun Shooting Range, LLC 2661 N Graytown Rd Converse, TX 78109</p> <p>Directions</p>	Click to Schedule	Click to Schedule	Click to Schedule	Click to Schedule	Closed	Click to Schedule	Click to Schedule
<p>New Braunfels Fourth Perimeter Tactical 1335 Wald Rd, Ste 102 New Braunfels, TX 78132</p> <p>Directions</p>	Click to Schedule	Click to Schedule	Closed	Closed	Closed	Click to Schedule	Click to Schedule

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## VII. TBFAA wish list

1. The authority of the Private Security Board be restored and respected by the DPS legal department and allow the Private Security Board to exclusively perform the task of promulgating rules for the Private Security Industry.
2. DPS should revert back to a position of allowing hiring companies to perform “due diligence” on potential new hires and allow them to work in supervised positions until such time that fingerprints and electronic registration can be achieved (no more than 7 business days since that is the timeframe allowed by DPS in their contract with L-1/Morpho Trust to provide fingerprint services).
3. Allow for independent legal counsel for the Private Security Board (possibly by the Attorney General's office as was the situation when the Private Security Board was an independent agency) to prevent the inherent conflicts that can arise between what DPS management desires to have happen and what the Private Security Board envisions and what law actually allows.