

*Title 7. Banking and Securities*  
*Part 5. Office of Consumer Credit Commissioner*  
*Chapter 84. Motor Vehicle Installment Sales*

The Finance Commission of Texas (commission) adopts amendments, new rules, and repeals in 7 TAC, Chapter 84, concerning Motor Vehicle Installment Sales. The commission adopts amendments to §§84.102, 84.201, 84.203, 84.601, 84.605, 84.607, 84.610, 84.611, 84.708, 84.709, 84.804, 84.808, and 84.809; the repeal of §§84.205, 84.604, 84.613, and 84.614; and new §§84.205, 84.309, 84.604, and 84.613.

The adopted changes affect rules contained in Subchapter A, concerning General Provisions; Subchapter B, concerning Retail Installment Contract; Subchapter C, concerning Insurance and Debt Cancellation Agreements; Subchapter F, concerning Licensing; Subchapter G, concerning Examinations; and Subchapter H, concerning Retail Installment Sales Contract Provisions.

The commission adopts the amendments to §§84.102, 84.201, 84.601, 84.605, 84.607, 84.610, 84.708, 84.709, 84.804, 84.808, and 84.809; the repeal of §§84.205, 84.604, 84.613, and 84.614; and new §84.309 and §84.604, without changes to the proposed text as published in the March 4, 2016, issue of the *Texas Register* (41 TexReg 1613).

The commission adopts the amendments to §84.203 and §84.611; and adopts new §84.205 and §84.613 with changes to the proposed text as published in the March 4, 2016, issue of the *Texas Register* (41 TexReg 1613). These changes are being made in order to provide additional clarification and address the

official comments received, as discussed in the following paragraph.

The commission received two written comments on the proposal from the American Financial Services Association (AFSA) and the Texas Automobile Dealers Association (TADA).

The AFSA comment requests clarification regarding the proposed amendments in §84.203 and §84.611(e). First, regarding deferment charges in §84.203, the AFSA comment requests additional guidance relating to the definition of and calculation of a deferment charge. Second, the AFSA comment also requests clarification on the proposed amendments to §84.611(e), specifically concerning the definition of retail installment contracts "serviced" and the calculation of dollar volume of contracts. Third, the AFSA comment included suggestions for the model contract in §84.809(b). The AFSA comment does not address the other rule changes included in the proposal.

The TADA comment solely relates to new §84.205, Documentary Fee (repeal and replace), and supports the proposed increase in the amount that does not require a cost analysis from \$125 to \$150. The comment provides recommendations regarding four issues contained in the documentary fee rule as proposed (outlined in the next paragraph), but is silent with respect to the other changes included in the proposal.

The TADA comment offers suggestions related to the following four documentary fee issues: 1) form for notification

(§84.205(c)(3)); 2) facilities costs (§84.205(d)(3)(B)(v)); 3) depreciation (§84.205(d)(3)(B)(v)); and 4) commission employee compensation (§84.205(d)(3)(B)(i)(I)).

The commission's responses to the official comments received are included after the purpose discussions following each respective rule provision receiving comments.

In general, the purpose of this rule adoption regarding 7 TAC, Chapter 84 is to implement changes resulting from the commission's review of this chapter under Texas Government Code, §2001.039. The notice of intention to review 7 TAC Chapter 84 was published in the January 15, 2016, issue of the *Texas Register* (41 TexReg 637). The commission received no comments in response to that notice.

The adopted rule changes relate to the following issues: deferment charges and time price differential, documentary fees, debt cancellation agreements, licensing processes and annual renewal statement, and technical corrections. Additionally, §§84.205, 84.604, and 84.613 have been repealed in order to replace them with new, reorganized rules.

The agency circulated an early draft of proposed changes to interested stakeholders. The agency then held a stakeholders meeting where attendees provided oral precomments. In addition, the agency received two informal written precomments. Certain concepts recommended by the precommenters were incorporated into the proposal, and the agency appreciates the thoughtful input provided by stakeholders.

The individual purposes of the amendments, new rules, and repeals are provided in the following paragraphs.

*I. Deferment charges and time price differential*

An amendment to §84.102 clarifies the definition of "deferment charge" to remove the phrase "The payment of an additional."

Adopted amendments throughout §84.201 provide updated internal references and citations. Additionally, in Figure §84.201(d)(2)(B)(iii), an amendment will correct a typographical error. For 61 months and \$15.00 add-on rates per \$100, the figure's current rate of 26.6341% will be replaced by the correct rate of 24.6341%.

The adoption includes several amendments to §84.203, which relates to deferment charges. In general, the purpose of these amendments is to clarify the requirements for calculating and charging deferment charges, which are authorized under Texas Finance Code, §348.114. In particular, the amendments clarify the requirements for transactions using the true daily earnings method.

An amendment to subsection (a) of §84.203 clarifies the definition of "deferment charge" to remove the phrase "the payment of an additional." The adoption removes a sentence from subsection (a) to conform to amendments to subsection (d)(3).

Regarding §84.203(a), the official AFSA comment states that "the proposed amendments to the definition do not adequately identify what constitutes a deferment." The current rule text, which this adoption does not change, states that a

deferment charge is a "charge to defer the payment date of a scheduled payment or partial payment on a contract. . . . This section applies only to an amendment relating to the deferment of all or part of one or more installments, and does not apply to amendments relating to renewing, restating, or rescheduling the unpaid balance under a retail installment sales contract." The commission believes that this text is sufficient to specify what constitutes a deferment. For this reason, the commission declines to provide further modifications to the rule in response to the commenter's suggestion.

In the amendments to subsection (b), the rule's former requirement to provide a deferment notice to the buyer has been replaced with a requirement to provide the buyer with a copy of the written deferment agreement. Paragraph (1) describes the elements that must be included in the deferment agreement. These requirements are based on Texas Finance Code, §348.116, which provides that an amendment to a retail installment contract must be confirmed in a writing signed by the buyer, and that the holder must deliver a copy of the confirmation to the buyer. Regarding the requirement to have a signed deferment agreement, one precommenter asked whether the agency would continue to follow a policy that the commission articulated in the 2008 preamble to the original adoption of §84.203. In that preamble, the commission stated: "There are certain fact situations where a signature would not be required. For example, if the holder does not change the payment amount and does not impose a charge for the deferment." 33 TexReg 8915 (2008). The agency will continue to follow this policy after the adoption of these amendments.

The adoption deletes current subsection (c), which deals with the content of the deferment notice, because the adoption replaces this provision with a requirement to provide a deferment agreement containing similar information in subsection (b). Subsection (d) of the adoption amends the guidelines for computing the deferment charge in order to provide additional clarity. For example, amendments to paragraphs (1)(A)(i)(II) and (2)(A)(i)(II) specify that the holder may charge a deferment charge that is lower than the maximum. Also, amendments to paragraphs (1)(D) and (2)(D) describe requirements for the application of payments. New paragraph (3) describes how the deferment charge should be calculated for a transaction using the true daily earnings method. This provision explains that all time price differential that will accrue on the deferred installments during the deferment period must be included in the base deferment charge.

The official AFSA comment states that "the proposed amendments to the definition do not adequately identify . . . whether a finance charge will now be considered a deferment charge for the purposes of the new rules. Accordingly, AFSA requests clarification on the treatment of the finance charge on a deferred payment as a deferment charge." Licensees may use three different methods for calculating time price differential (i.e., finance charge): the add-on method, the scheduled installment earnings method, and the true daily earnings method. In response to this comment, new paragraphs (1)(E) and (2)(E) have been added to subsection (d), explaining that for contracts using the add-on method or scheduled installment earnings method, the deferment charge does not include time price differential. As proposed, paragraph (3)(D) already described the portion of the

time price differential that is included in the deferment charge for contracts using the true daily earnings method.

The adoption deletes current subsections (f) and (g), dealing with accrual of time price differential and accounting of payments, because the adoption replaces these provisions with amended provisions in subsection (d). The adoption adds a new subsection (f) explaining that a holder may not make a false, misleading, or deceptive representation relating to a deferment charge. For example, a holder may not make an offer to the retail buyer such as "Payment Holiday--Pay Only \$25" if the total deferment charge exceeds \$25.

The official AFSA comment states: "AFSA also requests additional guidance from the OCCC regarding calculation of the deferment charge in order to provide financial institutions with greater clarity." The commission believes that the rule provides sufficient guidance on how holders can charge a deferment charge in compliance with Texas Finance Code, §348.114. For this reason, the commission declines to add further guidance in the text of the rule. If further guidance is necessary, the OCCC may issue an advisory bulletin on this issue.

The official AFSA comment states: "Additionally, AFSA respectfully requests that the OCCC consider the potential negative impact of the proposed deferment charge restrictions on creditors and consumers. Deferments are available to consumers at the discretion of creditors; accordingly, creditors may opt to discontinue the practice if the proposed rules create an excessive administrative burden. Without available deferments, the end result for consumers may be accelerated remedial

action." The commission is unaware of how the amendments would create a negative impact on creditors or consumers. The amendments will result only in minor changes (if any) to how holders presently impose deferment charges, compared to the previous version of the rule. Any changes are necessary to ensure that holders comply with Texas Finance Code, §348.114.

## *II. Documentary fees*

Section 84.205, which relates to documentary fees, has been repealed and replaced with a new rule. The previous version of §84.205 described the requirements for filing a written notification of an increased documentary fee under Texas Finance Code, §348.006, and described the criteria that the Office of Consumer Credit Commissioner (OCCC) uses to determine whether a documentary fee is reasonable. The new rule largely maintains the former rule's requirements, but it includes new provisions relating mainly to three issues. First, it raises the documentary fee amount that does not require a cost analysis from \$125 to \$150. Second, it codifies several concepts that the OCCC has used in accepting notifications of documentary fees and in reviewing cost analyses. Third, it specifies the format of the cost analysis, in order to help streamline the OCCC's process of reviewing documentary fees.

Subsection (a) describes the purpose of the new section, including a reference to the documentary fee provisions of Texas Finance Code, §348.006. Subsection (b) describes the rule's general requirements, explaining that: (1) for a documentary fee of \$50 or less, no notification or cost analysis is required; (2) for a documentary fee over \$50, up to \$150, a notification is required,

but a cost analysis is not required; and (3) for a documentary fee over \$150, both a notification and a cost analysis are required. The current documentary fee rule at §84.205(e)(3) allows a seller to file a documentary fee up to \$125 without providing a cost analysis. The commission adopted the original rule with the \$125 amount in 2010. The agency believes that this is an appropriate time to revisit the \$125 amount and increase it to \$150, primarily for two reasons. First, the agency's ongoing review of documentary fee cost analyses has indicated that a large portion of sellers can support a fee of \$150 as being reasonable. Second, since 2010, several document-related costs for Texas motor vehicle dealerships have increased. Based on these factors, as well as a comparison of maximum documentary fee amounts in other states, the OCCC believes that \$150 is an appropriate amount that sellers can file without providing a supporting cost analysis.

Subsection (c) describes the requirements for the written notification that sellers must provide to the OCCC before charging a documentary fee greater than \$50. Paragraph (2) explains that a seller must provide a notification for each licensed location or registered office at which motor vehicles are sold. Paragraph (3) explains that the notification must be provided on a form prescribed by the OCCC.

One precommenter expressed concern that a separate submission would be required for each licensed location or registered office. The current procedure for submitting documentary fee notifications already allows sellers to submit a single spreadsheet listing multiple locations. As the OCCC develops an updated form for providing the notification, the agency will be mindful of this concern.

The official TADA comment states: "At the February 3, 2016 meeting, TADA discussed its concern regarding mandating that a specific form be required when notifying the agency of a documentary fee amount." The commenter concludes with the following: "Although a prescribed form for notification is useful, the mandating of a prescribed form is not included in the statute and TADA requests that the proposal be modified so that notification 'may' be on a prescribed form."

The OCCC believes that a standardized form is appropriate and necessary to ensure that filings are correctly processed, and to enable the agency to comply with its statutory responsibility under Texas Finance Code, §348.006 to accept documentary fee notifications. As the Texas Supreme Court stated, "[w]hen a statute expressly authorizes an agency to regulate an industry, it implies the authority to promulgate rules and regulations necessary to accomplish that purpose." *Pruett v. Harris Cty. Bail Bond Bd.*, 249 S.W.3d 447, 453 (Tex. 2008).

The OCCC already directs sellers to submit standardized documentary fee filings online. The OCCC's upcoming system for online documentary fee submissions will be more streamlined. It will allow a licensee to make a documentary fee filing by logging in and providing the following information: (1) the amount of the documentary fee, (2) a contact name, (2) a contact e-mail address, (3) a contact phone number, and (4) the implementation date. The new system will offer direct and immediate feedback to sellers. It will be a superior method for sellers to submit documentary fee notifications. Without a standardized process for submitting notifications, dealers and the agency run a great risk of not being

able to demonstrate compliance with the statute.

If a seller sends a written notification to the OCCC on an improper form and makes a bona fide effort to communicate its documentary fee amount to the OCCC, the OCCC can exercise its discretion and determine whether the attempted communication constitutes the equivalent of a filing. Thus, the commission declines to adopt the commenter's suggestion and maintains §84.205(c)(3) as proposed.

Paragraph (4) describes the requirements for filing a documentary fee notice upon a transfer of ownership between businesses. The new rule requires the transferee to file a documentary fee notification no later than the 30th calendar day following the transfer of ownership if it intends to charge a documentary fee greater than \$50. Regarding this requirement, one precommenter stated: "[W]e have seen a number of sophisticated dealership operators simply forget about the documentary fee notice when applying for a transfer or new MVSF because they believed that the ALECS application system was comprehensive. . . . We would recommend including in 84.205(c)(4) a requirement that the OCCC include in the application for a MVSF license a section to provide notice of a documentary fee increase." As the OCCC amends its internal processes and the content of its online license applications, the agency will ensure that the Chapter 348 license application includes a reminder to file a documentary fee notification if the applicant intends to charge a documentary fee over \$50. The agency believes that this reminder in the license application will address the precommenter's concern, and that additional language on this issue in paragraph (4) is unnecessary.

Paragraphs (6) and (7) describe the OCCC's authority to order restitution or order the seller to lower its documentary fee if the seller fails to provide a written notification. In particular, paragraph (6)(B) explains that the OCCC may order the seller to lower its documentary fee prospectively. One precommenter asked for the phrase "for a specified period of time" to be added to the end of this provision. While a specified period might be appropriate in some situations, it might not be appropriate in others. For example, if a seller filed a \$100 documentary fee and charged \$150, then the OCCC might order the seller to cease charging a documentary fee greater than \$100. Depending on the circumstances of the violation, it might not be feasible for the order to state a specified period of time (e.g., six months). For this reason, the adoption does not include this suggested phrase.

One precommenter asked whether the OCCC would continue entering agreed orders for administrative penalties as an alternative to restitution for failure to provide a documentary fee notification. Along the same lines, one precommenter stated: "We would also recommend that the OCCC be limited to an administrative penalty upon the finding that a dealer increased the documentary fee to the safe harbor amount without providing notice to the agency and limiting the restitution amount to the difference between the fee charged in excess of safe harbor amount of \$150. Requiring dealerships to make restitution of up to \$100 per customer for simply failing to send a single email to the OCCC is an unnecessarily harsh and punitive measure for a mere administrative violation. For many dealerships, such a restitution order could result in layoffs or the closure of the dealership for nothing more than inadvertence."

In addition, the official TADA comment observes the following regarding restitution: "the potential penalty is substantial for a failure to provide notice, i.e., restitution and an order to lower the documentary fee." (footnote omitted).

The commission believes that the rule's restitution provisions are appropriate. In certain cases where sellers failed to provide a documentary fee notification, the OCCC has entered agreed orders in which the OCCC and the seller agreed that the seller would pay an administrative penalty as an alternative to restitution. Typically, these have been cases where the seller charged a documentary fee of \$125 or less, and providing restitution down to \$50 would have imposed a substantial financial hardship on the seller. Under Texas Finance Code, §14.252(c), in determining the amount of an administrative penalty, the OCCC can consider the seriousness and nature of the violation, the extent of harm to third parties, and the amount necessary to deter future violations, among other factors. The adopted rule text does not affect the agency's ability to enter agreed orders for administrative penalties within the agency's discretion. Because agreed orders are voluntarily agreed to by both sides, the agency believes that it is not necessary for the rule to describe the agreed order process.

The rule's restitution provisions are consistent with the authority to order restitution under Texas Finance Code, §14.251(b). The agency believes that the rule should specify this authority for cases where restitution is appropriate.

Subsection (d) describes the requirements for the cost analysis that sellers must provide to the OCCC before charging a documentary fee greater than \$150.

Paragraph (1) explains that the seller has the burden of showing that the documentary fee is reasonable, and that all included costs are reasonable, specified, and supported by documentation. This is similar to §84.205(e)(3) of the current rule, which states: "A retail seller has the burden of showing that all included costs are specified and supported by adequate documentation." One precommenter stated: "The new regulation should place the burden on the OCCC to demonstrate by specific cost elements how the agency determined that the requested documentary fee was too high." The agency disagrees with this statement. It is appropriate for the rule to place the burden on the seller, because the seller is in the best position to support the reasonableness of its documentary fee through specific documentation of its costs and processes. Placing the burden on the seller is also appropriate because Texas Finance Code, §348.006 prohibits sellers from charging an unreasonable documentary fee, and requires sellers to initiate the review process by providing a notification to the OCCC.

Paragraph (2) summarizes the five main reasonableness requirements for costs to be included in the documentary fee: (1) costs must be directly related to the preparation and processing of documents; (2) costs must relate to activities required to comply with local, state, or federal law concerning motor vehicle sales; (3) costs must comply with the prudent-business-person standard; (4) costs must comply with timing requirements, and must be incurred concurrently with or after the seller's preparation of a sales contract, and before title is transferred; and (5) the documentary fee may not include any finance charge, and any costs included in the documentary fee must be incurred uniformly in cash and credit transactions.

One precommenter disagreed with both parts of the timing requirement. Regarding the requirement that costs be incurred with or after the preparation of a sales contract, the precommenter stated: "[M]ost dealerships will collect a customer's personal information and identification before a test drive and begin working on verifying personal information for Red Flags/OFACs compliance." It is true that sellers incur a small amount of document-related costs before the negotiation or preparation of any sales contract. However, the agency believes that this concern is adequately addressed by paragraphs (2)(D)(i) and (3)(B)(ii)(V), which would allow the seller to include the cost of printing a copy of the buyer's driver's license to verify the buyer's identity, notwithstanding the timing requirement. The precommenter also stated: "Limiting costs to be incurred at the *earlier* of the time when title is actually transferred or legally required to be transferred is inconsistent with the Texas Department of [Motor] Vehicle's regulations allowing a dealership to transfer title after the deadline when there is good cause for a delay (i.e. out of state title issues, lien holder delays, etc.)." The agency disagrees with the contention that the timing requirement is inconsistent with TxDMV's rules. The general deadlines for transferring motor vehicle titles are provided in Texas Transportation Code, §501.0234, and TxDMV's rule at 10 TAC §215.144. As provided by Section 501.0234(f), a seller does not violate a titling deadline "during the time the seller is making a good faith effort to comply." For purposes of the documentary fee rule at paragraph (2)(D)(ii), the seller could include costs incurred while the seller is making a good-faith effort to comply with the deadline, as provided by Section 501.0234(f). In other words, the documentary fee rule is entirely consistent

with the good-faith provision in Section 501.0234(f). In any case, the agency anticipates that this good-faith provision would have little effect on a final documentary fee cost analysis, because sellers generally transfer titles before the deadlines described in TxDMV's rule. For this reason, the agency believes that the adopted timing requirement is appropriate.

Paragraph (2)(D)(i) includes a change from the proposal to specify that the first part of the timing requirement does not apply to the costs of purchasing or printing forms specifically listed in subsection (d)(3)(B)(ii).

Paragraph (6)(F) describes several prohibited categories of costs that may not be included in the documentary fee, including advertising costs, floor planning costs, a salesperson's commission, and costs for the disbursement of money. Regarding the provision on disbursement of money, one precommenter noted that sellers might incur costs to send a required payment to a governmental entity. In response to this precomment, paragraph (6)(F)(v) specifies that it refers to the disbursement of money to a financial institution. This would, for example, prohibit sellers from including the cost of sending a certified check to pay off a trade-in vehicle in the documentary fee.

Paragraph (3) describes the form of the cost analysis for a documentary fee over \$150. The cost analysis includes a summary of documentary fee costs and supporting exhibits. The summary consists of an itemization of costs in the following six categories: (1) personnel; (2) forms and printing; (3) postage; (4) software; (5) facilities costs; and (6) other costs.



Paragraph (3)(B)(i) describes the supporting exhibit for personnel, which must include job descriptions on a task level, salaries, and a complete description of how compensation is calculated for each included position. The rule explains that commission paid to a salesperson for the sale of a motor vehicle must be excluded. This is substantially similar to the requirement that appears in the current rule at §84.205(d)(4). Several precommenters expressed concern about this requirement, arguing that it could be read to totally prohibit a salesperson's compensation from being included in the documentary fee.

The TADA official comment expresses similar concerns regarding allowable compensation, stating that "commission employees should not be reduced to their base salary, i.e., minimum wage, in the cost analysis. Again, this reduction is not an accurate or true reflection of a dealership's costs. The percentage of an employee's time that is required to perform the handling of documents times compensation should be the formula incorporated in the dealership's cost analysis, not a minimum wage formula."

In order to clarify the requirement to exclude a salesperson's commission, the following sentence has been added to paragraph (3)(B)(i)(II): "If the seller offers a guaranteed minimum draw against future commission, then the draw may be included in the base salary rather than the commission." The commission disagrees with the commenter's suggestion that the rule will require all commission employees to be reduced to their base salary. Paragraph (3)(B)(i)(II) distinguishes between salespersons and other employees. For salespersons, the documentary fee may not include commission, because the work for

which a salesperson receives commission-based compensation is not directly related to the processing of documents. For other employees, commission may be included if it complies with the rule's other requirements.

Paragraph (3)(B)(ii) describes the supporting exhibit for forms and printing. The paragraph includes a list of specific documents for which the seller may include costs, including the written contract for the sale of the motor vehicle, the application for certificate of title, the privacy notice, the Texas Lemon Law disclosure, the buyer's temporary tag, the window sticker (for new vehicles), and the used car buyers guide (for used vehicles). Paragraph (3)(B)(iii) describes the supporting exhibit for postage. Paragraph (3)(B)(iv) describes the supporting exhibit for software.

Paragraph (3)(B)(v) describes the supporting exhibit for facilities costs. The supporting exhibit for facilities must identify all included facilities costs (e.g., rent, property taxes, insurance), and any facilities costs must be adjusted to include only direct fixed costs that comply with the reasonableness requirements. The exhibit must describe an appropriate methodology for ensuring that the documentary fee includes only the portion of facilities costs corresponding to the percentage of time and space used for activities that may be included in the documentary fee. As an example, if a dealership is open 10 hours per day, 6 days a week, then one appropriate method to calculate includable facilities costs would be: (1) determining hourly fixed costs, which are the total fixed costs for one year divided by the total number of hours in a year ( $365 \text{ days/year} \times 24 \text{ hours/day} = 8,760 \text{ total hours/year}$ ); (2) multiplying the result of (1) by 3,120 hours, which is the

dealership's number of business hours in a year (52 weeks/year  $\times$  6 days/week  $\times$  10 business hours/day); (3) multiplying the result of (2) by the percentage of space used for includable activities (calculated on a square-footage basis); and (4) multiplying the result of (3) by the percentage of business time spent on includable activities in each space. This amount might vary among spaces, requiring the seller to calculate separate includable costs for each space. For example, if the title clerks spend 75% of their time on includable activities, and if the title clerks' office space is occupied during 90% of business hours, then the percentage of business time spent on includable activities in the title clerks' office space would be 67.5% (75%  $\times$  90%).

One precommenter expressed concern about this methodology, arguing that it would not enable sellers to recoup costs that arise during hours while the dealership is closed. The precommenter argued that, for example, if a section of the facilities is used entirely for document processing and is used throughout standard business hours, then 100% of the costs of that section of the facilities should be includable in the documentary fee. Similarly, one precommenter stated: "If a clerk's office is empty for an hour at the beginning of the day and an hour during lunch, the dealership does not reduce its cost by that much."

The TADA official comment echoes these concerns: "The cost analysis for a facility should not be reduced if the facility is not open 24 hours a day and 7 days a week. This proposed reduction is not an accurate analysis of the true cost incurred and thus the cost analysis will not be accurate under this proposed formula."

The commission agrees that dealerships incur costs while closed, but these costs do not directly relate to processing documents. The documentary fee should only include costs that are directly related to processing documents. Overhead costs that are not directly related to processing documents should be included elsewhere, either in the cash price (for general costs) or the time price differential (for costs specific to credit transactions). The agency has allowed a portion of facilities costs to be included in the documentary fee, to recognize the fact that some facilities are necessary to process documents. The alternative would be to prohibit facilities costs altogether. The portion of facilities costs directly related to document processing is, by its nature, very narrow. It is true that a dealership incurs costs, for example, to keep electricity running during non-business hours, or to pay rent on space while employees are on break. However, these are indirect overhead expenses that are not directly related to processing documents. This type of cost should be included in the dealer's cost of goods sold, and covered by the cash price or the time price differential, rather than the separate and additional consideration of the documentary fee. Thus, for these reasons the commission maintains §84.205(d)(3)(B)(v) with respect to allowable facilities costs.

Paragraph (3)(B)(v) also explains that the documentary fee may not include any depreciation of facilities costs. The official TADA comment states that "depreciation should be allowed in the cost analysis as the dealership should be allowed to recoup its allocable cost attributable to the facility--the same as rent is an allowable cost." Depreciation is an indirect expense, rather than a cost actually paid by a seller to process documents. Depreciation is a non-cash expense with an income tax benefit,

and it is used as a tool for orderly accounting. Because it is a non-cash expense, depreciation is more indirectly related to processing documents than rent. The relationship between depreciation and the seller's actual costs could vary considerably depending on the method of depreciation. If depreciation were allowed, this could cause facilities costs to reflect a disproportionate amount of the documentary fee. For this reason, the commission believes that it is appropriate for the rule to exclude depreciation of facilities costs and hence, §84.205(d)(3)(B)(v) is maintained for this adoption.

Regarding facilities costs, one precommenter stated: "Dealerships should also be allowed to include a percentage of the common areas, bathrooms and break rooms. Dealerships are required by law to have bathrooms and break rooms for employees and customers." The agency disagrees with the argument regarding bathrooms and break rooms. The cost of maintaining bathrooms and break rooms is another indirect overhead expense that does not directly relate to the processing of documents. It should be included in the cash price of the motor vehicle.

Paragraph (3)(B)(vi) describes the supporting exhibit for other costs. Paragraph (4) describes the requirements for a cost analysis covering multiple locations, and allows sellers to submit a single cost analysis covering more than one licensed location or registered office if the cost structures of all locations are substantially similar. Paragraph (5) explains that the OCCC will review each cost analysis to determine whether it is reasonable.

Paragraph (6) describes the OCCC's authority to order restitution if the seller

charges a documentary fee over \$150 or if the documentary fee includes costs that are not reasonable. One precommenter stated: "[W]e believe that the new regulations should *not* allow a dealer to raise the documentary fee above the safe harbor or the current fee if the fee is above the safe harbor until the OCCC has approved the increase. The restitution order can be crippling for a dealership and may not even result in a refund to customers if the dealership goes out of business. Setting aside a reserve to cover a restitution order is too disruptive to dealership business." The agency disagrees with this precomment for three reasons. First, this prohibition would be inconsistent with Texas Finance Code, §348.006(g)(2), which provides: "This section does not . . . require that the commissioner approve a specific documentary fee amount before a retail seller charges the fee." Second, the OCCC believes that setting up a reserve account for the portion of all documentary fees above \$150 is a prudent practice, and several sellers have set up this type of account for documentary fees over \$125. Third, if a reserve account is impractical for a seller, the seller could simply refrain from charging a documentary fee over \$150 until it receives a statement from the OCCC that its documentary fee has been determined reasonable.

Paragraph (6) includes a change from the proposal to specify that the method of calculating restitution applies for each buyer.

### *III. Debt cancellation agreements*

The adoption includes new §84.309, relating to debt cancellation agreements that require the buyer to maintain insurance. These agreements must be submitted for

approval to the OCCC, and the OCCC has 45 days to approve or deny an agreement as provided by Texas Finance Code, §348.604. The denial of a debt cancellation agreement may be appealed to the commission, as provided by Texas Finance Code, §348.604(e). In general, the purpose of the amendments is to describe the process for submitting the agreements and the procedure for appealing a denial of an agreement.

Subsection (a) describes the purpose and scope of the rule. Subsection (b) explains that an agreement must be submitted in accordance with the OCCC's instructions.

Subsection (c) provides a general \$250 fee for submitting a debt cancellation agreement. Since the Finance Code's debt cancellation agreement submission requirements went into effect in 2011, each submitted agreement has been reviewed by an OCCC attorney and an OCCC review examiner. The employees review each agreement to make sure that it includes all elements required by Texas Finance Code, §348.602 and §348.603, and that the agreement does not contain inconsistent or misleading provisions. If the agreement cannot be approved as submitted, the employees will draft a letter that explains how the agreement must be amended and provides the submitter an opportunity to amend the form before it is denied. While it would be within the OCCC's authority to deny an agreement without sending a follow-up letter, the agency believes that these letters are an important tool to help companies submit an approvable version of the agreement before the 45-day deadline, conserving resources that would be spent on a denial and subsequent resubmission. The \$250 amount is based on the average time spent by OCCC employees to process the

submission, review the agreement, and draft follow-up correspondence. The adopted fee is authorized under Texas Finance Code, §14.107(a), which authorizes the commission to "establish reasonable and necessary fees for carrying out the commissioner's powers and duties" under Chapter 348.

One precommenter expressed concern about the \$250 fee combined with the manner in which the OCCC has sent follow-up letters on debt cancellation agreements. The precommenter stated: "In theory, we do not oppose a fair fee. We certainly understand that a fee might be appropriate for new submissions due to the intensive work involved. . . . Our specific concerns involve the way the proposed rules, coupled with the internal policies and practices of OCCC, will impact the efficiency and fairness of the process." The OCCC will review its internal policies for processing debt cancellation agreements to ensure that companies have a reasonable amount of time to respond to initial follow-up correspondence.

Subsection (d) explains that the OCCC will send a notice of approval or denial within 45 days of receiving a debt cancellation agreement submission. Subsection (e) explains that the person who submitted the form can appeal a denial by serving a notice of appeal on the OCCC no later than the 30th calendar day after the date of denial. Subsection (f) explains that the appeal is a contested case under the Administrative Procedure Act (Texas Government Code, Chapter 2001). Subsection (g) explains that the administrative law judge in the contested case will issue a proposal for decision to the commission. Subsection (h) explains that the commission will issue a final order.

Subsection (i) explains that the order may be appealed to a Travis County district court. These provisions are intended to provide due process and fair procedures for appealing the denial of a debt cancellation agreement.

#### *IV. Licensing and annual renewal statement*

An adopted amendment to §84.601(7)(A) amends the definition of "principal party" for sole proprietorships. The amendment removes the statement that proprietors include spouses with a community property interest. In addition, an amendment to §84.602(1)(A)(v)(I) removes the requirement to disclose community property interests and documentation regarding separate property status, and replaces it with a requirement to disclose the names of the spouses of principal parties if requested. The agency currently spends considerable time requesting information from license applicants to determine the status of spouses' property interests, and explaining these concepts to applicants. These amendments will help streamline the licensing process and reduce regulatory burden. The amendments will also make the application process simpler and more straightforward for applicants. In specific cases where the spouse is a principal party (e.g., where the business is actually a partnership between the spouses rather than a sole proprietorship), the OCCC would be able to request additional information about the spouse under current §84.602(1)(C).

Section 84.604 has been repealed and replaced with a new rule, with the intent to clarify the requirements when a licensee transfers ownership. The prior version of §84.604 described what constitutes a transfer of ownership requiring the filing of a transfer application. The adopted new rule largely maintains the requirements under the

former rule, but it provides two different paths the transferee can take for a transfer of ownership: either an application to transfer the license, or a new license application on transfer of ownership. The amendments outline what the application has to include, the timing requirements, and which parties are responsible at different points in the transfer process. Subsection (a) describes the purpose of the new section. Subsection (b) defines terms used throughout the subsection. In particular, subsection (b)(5) defines the phrase "transfer of ownership," listing different types of changes in acquisition or control of the licensed entity.

Subsection (c) specifies that a license may not be sold, transferred, or assigned without the written approval of the OCCC, as provided by Texas Finance Code, §348.512 and §353.512. Subsection (d) provides a timing requirement, stating that a complete license transfer application or new license application on transfer of ownership must be filed no later than 30 days after the transfer of ownership. Subsection (e) outlines the requirements for the license transfer application or new license application on transfer of ownership. These requirements include complete documentation of the transfer of ownership, as well as a complete license application for transferees that do not hold an existing motor vehicle sales finance license. Subsection (e)(5) explains that the application may include a request for permission to operate.

Subsection (f) provides that the OCCC may issue a permission to operate to the transferee. A permission to operate is a temporary authorization from the OCCC allowing a transferee to operate while final approval is pending for an application.

Subsection (g) specifies the transferee's authority to engage in business if the transferee has filed a complete application including a request for permission to operate. It also requires the transferee to immediately cease doing business if the OCCC denies the request for permission to operate or denies the application.

Subsection (h) describes the situations where the transferor is responsible for business activity at the licensed location, situations where the transferee is responsible, and situations where the transferor and transferee share joint and several responsibility.

In §84.605, concerning Change in Form or Proportionate Ownership, conforming changes have been made corresponding to adopted new §84.604. Throughout subsections (b) and (c), references have been added to the second path a transferee may take, i.e., a new license application on transfer of ownership.

Adopted amendments to §84.607 clarify the circumstances in which a licensee must notify the OCCC of changes to information in the original license application. The amendments specify that the requirement to provide updated information within 14 days applies before a license application is approved. New §84.607(b) provides that a licensee must notify the OCCC within 30 days if the information relates to the names of principal parties, criminal history, regulatory actions, or court judgments. New §84.607(c) specifies that each applicant or licensee is responsible for ensuring that all contact information on file with the OCCC is current and correct, and that it is a best practice for licensees to regularly review contact information.

Adopted amendments to §84.610 clarify the agency's procedure for providing delinquency notices to licensees that have failed to pay an annual assessment fee. The amendments specify that notice of delinquency is considered to be given when the OCCC sends the notice by mail to the address on file with the OCCC as a master file address, or by e-mail to the address on file with the OCCC (if the licensee has provided an e-mail address).

An adopted amendment to §84.611(c) provides that a license applicant must pay a fee to a party designated by the Texas Department of Public Safety (DPS) for processing fingerprints, replacing a statement that the fee will be paid to the OCCC. This amendment conforms the rule to the method by which applicants currently provide fingerprint information through DPS's Fingerprint Applicant Services of Texas (FAST) program.

Also in §84.611, the adoption amends subsection (e) by adding new paragraph (3), which requires licensees to file an annual renewal statement in connection with each renewal. These statements would include the dollar volume and number of retail installment contracts originated, acquired, or serviced during the preceding calendar year. The adoption specifies that this information is confidential because it is collected under the OCCC's examination authority. The adoption also includes conforming changes to paragraph (1)(C) of subsection (e).

These amendments have two main purposes. First, they would help the OCCC schedule examinations by providing information about the size of licensees, as well as scope and risk factors. Second, they would help the OCCC evaluate whether larger-volume licensees should pay a greater

portion of the fees assessed to the Chapter 348 licensee population, in light of the increased examination resources that these licensees require. The current rule at §84.611(e)(1)(C) allows the OCCC to collect a volume-based fee as part of a licensee's annual assessment. This rule was originally adopted under Texas Finance Code, §14.107(b), which authorizes the commission to adopt rules "provid[ing] that the amount of a fee charged to a license holder is based on the volume of the license holder's regulated business and other key factors." However, because the OCCC cannot conduct examinations of all licensees every year, the OCCC cannot currently determine the dollar volume of retail installment contracts that a licensee originated, acquired, or serviced during a previous year. The amendments would enable the agency to collect this information.

Subsection (e)(3) contains a change from the proposal to remove a sentence that stated: "The licensee must provide the statement at the time of filing the renewal." The agency is considering allowing licensees to submit the statement shortly after renewal, particularly for the renewal cycle that will occur in summer 2016.

At the stakeholder meeting, one precommenter stated that sellers do not currently maintain information about the dollar amount of contracts that they originate. The precommenter suggested that the rule allow sellers to submit only the number of contracts, rather than the dollar volume. However, it is the OCCC's understanding that dealer software programs generally allow sellers to generate reports showing annual dollar volumes. It is also the agency's understanding that sellers need this information to correctly calculate their

revenues for income-tax purposes. Currently, the agency anticipates that the dollar volume would be based on the amount financed of each contract originated, acquired, or serviced during the previous calendar year.

Regarding the proposed new subsection (e) of §84.611, the official AFSA comment requests clarification in two areas: 1) the definition of retail installment contracts "serviced" in relation to the variable assessment fee that may be charged under §84.611(e)(1)(C); and 2) the calculation of the dollar volume of contracts.

First, the AFSA comment states that "additional information on how the OCCC defines serviced is needed. . . . [I]t is unclear if a company that retains servicing rights for the lifetime of a contract would owe variable fees one time at the origination of the contract or each year over the lifetime of the contract." The OCCC intends to address this issue as it develops instructions for submitting the annual renewal statement. Further, the AFSA comment states that "there could easily be a situation where the initial acquirer, the subsequent acquirer, and the servicer (i.e., the initial acquirer that retains servicing rights) all pay the fee, potentially all in the same year." The OCCC has not yet determined what the amount of the volume-based fee will be. Because the OCCC would examine all three entities (the seller, the holder, and the servicer), it might be appropriate for each entity to pay part of the volume-based fee, in order to ensure that the OCCC recoups its costs and each entity pays its appropriate fair share of the regulatory expenses.

Second, regarding the calculation of the dollar volume of contracts for the annual renewal statement required by

§84.611(e)(3), the AFSA comment seeks guidance on the following questions: "Is this volume based on the account balance on a specific date? Is this the date the contract was acquired? Does this include contracts that are paid off in the same year they were purchased or serviced?" As stated in the preamble of the proposal, the agency anticipates that the dollar volume will be based on the amount financed of each contract originated, acquired, or serviced during the previous calendar year. 41 TexReg 1619 (March 4, 2016). The agency intends to provide more information about specific calculation requirements as it develops the instructions for the annual renewal statement.

Adopted new §84.613 specifies the criminal history information collected by the OCCC, outlines factors the OCCC will consider when reviewing criminal history information, and describes grounds for denial, suspension, and revocation of a motor vehicle sales finance license. This section replaces former §84.613 and §84.614, which have been repealed. Subsection (a) describes the OCCC's collection of criminal history record information from law enforcement agencies. Subsection (b) identifies the criminal history information that the applicant must disclose. Subsection (c) describes the OCCC's denial, suspension, and revocation based on crimes that are directly related to the licensed occupation of a motor vehicle sales finance licensee.

Subsection (c)(1) lists the types of crimes that the OCCC considers to directly relate to the duties and responsibilities of being a motor vehicle sales finance licensee, including the reasons the crimes relate to the occupation, as provided by Texas Occupations Code, §53.025(a). Subsection

(c)(1) includes changes from the proposal to more clearly specify the offenses that are directly related to the licensed occupation. The listed offenses now include theft, assault, and any offense that involves misrepresentation or a false or misleading statement. The listed offenses are similar to the offenses involving moral character under previous §84.613(d)(1). The agency believes that these offenses directly relate to the licensed occupation, and that they reflect negatively on an applicant's character and fitness to hold a license.

Subsection (c)(2) contains the factors the OCCC will consider in determining whether a criminal offense directly relates to the duties and responsibilities of a licensee, as provided by Texas Occupations Code, §53.022. Subsection (c)(3) provides the mitigating factors the OCCC will consider to determine whether a conviction renders an applicant or licensee unfit, as provided by Texas Occupations Code, §53.023. Subsection (d) describes the OCCC's authority to deny a license application if it does not find that the financial responsibility, experience, character, and general fitness of the applicant are sufficient to command the confidence of the public and warrant the belief that the business will be operated lawfully and fairly, as provided by Texas Finance Code, §348.504(a) and §353.504(a). Subsection (e) explains that the OCCC will revoke a license on the licensee's imprisonment following a felony conviction, felony community supervision revocation, revocation of parole, or revocation of mandatory supervision, as provided by Texas Occupations Code, §53.021(b). Subsection (f) identifies other grounds for denial, suspension, or revocation, including convictions for specific offenses described by statutory provisions cited in the rule.



*V. Other technical corrections*

Adopted amendments to §84.708 and §84.709 regarding recordkeeping provide updated citations to a TxDMV regulation concerning the discharge or release of a lien. The parallel amendments are contained in §84.708(e)(2)(P) and §84.709(e)(2)(H).

The adoption includes clarifying changes to §84.804, which relates to provisions required in a retail installment sales contract. A clarifying change in the first sentence of the section explains that a retail installment sales contract must include all provisions required by Texas Finance Code, Chapter 348, and other law. An amendment to paragraph (4) explains that the itemized charges may include other charges authorized under Chapter 348. The rule adds a new provision at paragraph (4)(Q) explaining that the itemized charges may include a charge for an automobile club membership. This is based on a 2013 amendment to Texas Finance Code, §348.005(4), authorizing a seller to include a charge for an automobile club in the itemized charges of a retail installment sales contract.

The adoption includes clarifying changes to §84.804 relating to model plain-language contract clauses for Chapter 348 transactions. In paragraph (16)(C)(i)(II), text has been added to clarify that a model clause should be used for scheduled installment earnings transactions where the seller discloses the annual percentage rate using a method other than a 365/365 basis. In paragraph (20), an amendment specifies that a model clause refers to contracts using either the sum of the periodic balances method or the scheduled installment earnings method. In paragraph (20)(B)(ii), the model refunding clause for contracts

using the scheduled installment earnings method is amended for clarity, and the rule text is amended to specify that this clause should be used if sales tax is advanced. In addition, new paragraph (20)(B)(iii) provides a new model clause for scheduled installment earnings contracts with deferred sales tax. Conforming changes are contained in the model retail installment sales contract for Chapter 348 transactions at figure 7 TAC §84.809(b).

The AFSA comment states: "AFSA requests consideration of an amendment to the model retail installment sales contract form to include lines for both 'Cash to buyer' and 'Payoff by seller' on the itemized list under 'Gross Trade-in' in the 'Downpayment' section of the standard form." The model contract at figure 7 TAC §84.809(b) already contains a line labeled "payoff by Seller," which is under "Gross trade-in" in the downpayment section of the itemization of amount financed. The commission believes that it would be inappropriate to add a "Cash to buyer" line, because sellers are generally prohibited from paying cash to buyers under Texas Finance Code, §348.403. Accordingly, the commission declines to adopt this suggestion.

*IV. Documentary fee rule delayed effective date*

New §84.205 and the repeal of previous §84.205, regarding documentary fees, will have a delayed effective date of June 1, 2016. The purpose of the delay is to allow time to incorporate electronic documentary fee submission into the agency's online system. The agency anticipates that the updated system for submitting documentary fees will be available to licensees by June 1.

*V. Statutory authority*

All of the amendments, new rules, and repeals are adopted under Texas Finance Code, §11.304, which authorizes the commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally, Texas Finance Code, §348.513 grants the commission the authority to adopt rules to enforce the motor vehicle installment sales chapter.

The rule changes in §84.205 concerning documentary fees are adopted under Texas Finance Code, §348.006(h), which authorizes the commission to adopt rules, including rules relating to the standards for a reasonableness determination or disclosures, necessary to enforce §348.006. Within §84.205, the restitution provisions are adopted under Texas Finance Code, §14.251(b), which authorizes the commissioner to order restitution to an identifiable person injured by a violation of Title 4.

The adopted fee in §84.309(c) and the adopted amendments to §84.611(e) are authorized under Texas Finance Code, §14.107, which authorizes the commission to establish reasonable and necessary fees for carrying out the commissioner's powers and duties under Chapter 348.

The statutory provisions affected by the adopted rule changes are contained in Texas Finance Code, Chapter 348.

*Chapter 84. Motor Vehicle Installment Sales*

*§84.102. Definitions.*

The following words and terms, when used in this chapter, will have the following

meanings, unless the context clearly indicates otherwise:

(1) - (7) (No change.)

(8) Deferment charge--A [~~The payment of an additional~~] charge to defer the payment date of a scheduled payment on a contract.

(9) - (23) (No change.)

*§84.201. Time Price Differential.*

(a) - (c) (No change.)

(d) Method of calculation.

(1) Regular payment contract using sum of the periodic balances method. The time price differential charge is computed using the add-on rates authorized by Texas Finance Code, §348.104 or the alternative time price differential rate authorized by Texas Finance Code, §348.105 converted to an equivalent add-on rate per \$100 per annum.

(A) Base time price differential charge. The base time price differential charge is determined by multiplying the principal balance subject to a finance charge, as defined by §84.102(14) [~~§84.102(13)~~] of this title (regarding Definitions), by the applicable add-on rate per \$100 per year for the corresponding term of the contract. If the retail installment contract is payable for a period that is shorter or longer than a year or is for an amount that is less or greater than \$100, the amount of the time price differential charge is decreased or increased proportionately.

(B) - (D) (No change.)

(2) Scheduled installment earnings method. The scheduled installment earnings method can be used for both regular and irregular payment contracts.

(A) Maximum time price differential. The maximum time price differential charge is computed by applying the applicable maximum daily rate to the unpaid principal balance subject to a finance charge, as defined by §84.102(14) [~~§84.102(13)~~] of this title, as if each payment will be made on its scheduled installment date. A payment received before or after the due date does not affect the amount of the scheduled reduction in the unpaid principal subject to a finance charge. The computation of the time price differential must comply with the U.S. Rule as defined by §84.102(22) [~~§84.102(21)~~] of this title.

(B) Maximum annualized daily rate.

(i) -(ii) (No change.)

(iii) Effective rate. The maximum annualized daily rate cannot exceed the effective rate contained in Figure: 7 TAC §84.201(d)(2)(B)(iii) for the equivalent monthly period and appropriate add-on rate per \$100 determined by the model year designated by the manufacturer of the vehicle. The effective rates contained in Figure: 7 TAC §84.201(d)(2)(B)(iii) are the current maximum annualized daily rate authorized by Texas Finance Code, §348.104 or the alternative simple time price differential rate authorized by Texas Finance Code, §348.105. The alternative simple time price differential rate authorized by Texas Finance Code, §348.105 displayed as an example in Figure: 7 TAC §84.201(d)(2)(B)(iii) is 18% per annum. If

the alternative simple time price differential rate is adjusted according to Texas Finance Code, Chapter 303 and is greater than effective rate contained in Figure: 7 TAC §84.201(d)(2)(B)(iii), the published rate will be highest effective rate.

Figure: 7 TAC §84.201(d)(2)(B)(iii) *{{See attached amendments.}}*

(iv) (No change.)

(C) - (D) (No change.)

(3) True daily earnings method. The true daily earnings method can be used for both regular and irregular payment contracts.

(A) Maximum time price differential. The maximum time price differential charge is computed by applying the applicable daily rate to the unpaid principal balance subject to a finance charge, as defined by §84.102(14) [~~§84.102(13)~~] of this title. The computation of the time price differential must comply with the U.S. Rule as defined by §84.102(22) [~~§84.102(21)~~] of this title. The earned time price differential charge is computed as follows:

(i) - (ii) (No change.)

(B) - (E) (No change.)

*§84.203. Deferment Charge.*

(a) Definition. A "deferment charge" means a [~~the payment of an additional~~] charge to defer the payment date of a scheduled payment or partial payment on a contract. A deferment charge prescribed by this section may occur in a retail installment transaction that employs the precomputed

add-on method for regular payment contracts using the sum of the periodic balances, the scheduled installment earnings method, or the true daily earnings method. This section applies only to an amendment relating to the deferment of all or a part of one or more installments, and does not apply to amendments relating to renewing, restating, or rescheduling the unpaid balance under a retail installment sales contract. ~~[The term "deferment charge" does not include the continuing accrual of finance charge at the contract rate already agreed upon in a retail installment sales contract employing the true daily earnings method.]~~ The parties to a retail installment sales contract may agree to modify the terms of the transaction as long as the amendment conforms to the requirements of Texas Finance Code, Chapter 348, Subchapter B.

(b) Written deferment agreement.  
~~[Bilateral or mutual deferment.]~~

(1) General requirements. A retail buyer and a holder may mutually agree to defer all or a part of one or more scheduled installments. A deferment agreement must be in writing and must be noted in the account record at the time the deferment is made. The written deferment agreement must include all of the following:

- (A) the name of the holder;
- (B) the name of the retail buyer;
- (C) the account number of the retail buyer;
- (D) the date of the deferment;
- (E) the installment or installments being deferred;

(F) the deferment period;

(G) the total amount of any deferment charge and any authorized additional deferment cost;

(H) the date and amount of the next installment due; and

(I) any other conditions of deferment.

(2) Signature and delivery. A deferment agreement is an amendment to the retail installment sales contract that must be confirmed in a writing signed by the retail buyer and delivered to the retail buyer, as provided by Texas Finance Code, §348.116. ~~[Bilateral or mutual deferments must be agreed upon in writing as required by Texas Finance Code, §348.116.]~~ The retail buyer's written agreement to the bilateral or mutual deferment may be confirmed by an email signature, an electronic signature, a facsimile signature, a written notation made by the retail buyer on a signed check, or some other writing signed by the retail buyer.

(3) [(2)] Disaster exception. A holder must deliver the deferment agreement to the retail buyer, but is not required to obtain the retail buyer's signature, if the following conditions are met:

(A) The retail buyer resides in an area designated as a state of disaster under Texas Government Code, §418.014; and

(B) The deferment occurs before the state of disaster has been terminated:

- (i) by executive order; or

**ADOPT AMENDMENTS, NEW RULES, & REPEALS**  
**7 TAC, CHAPTER 84**  
**Page 21 of 45**

(ii) by expiration as described in Texas Government Code, §418.014(c).

~~[(c) Deferment notice. Each deferment must be noted on the account record at the time the deferment is made. A written notice containing the conditions of the deferment must be furnished to the retail buyer as required by Texas Finance Code, §348.116. A deferment notice must include the name of the holder, the name of the retail buyer, the account number of the retail buyer, the date of the deferment, the installment or installments being deferred, the deferment period, the total amount of any deferment charge and any authorized additional deferment cost, and the date and amount of the next installment due.]~~

(c) ~~[(d)]~~ Limitation of number of installments being deferred per amendment. A holder may only defer the equivalent of three monthly installments per amendment. This limitation applies to the number of whole or partial installments that can be deferred, not the length of time an installment can be deferred.

(d) ~~[(e)]~~ Computation of deferment charge. A holder of a retail installment sales contract under Texas Finance Code, Chapter 348 may calculate the deferment charge by any method of calculation as long as the deferment charge does not exceed the maximum amount permitted by Texas Finance Code, §348.114 and this section.

(1) Regular payment contract using sum of the periodic balances method.

(A) Base deferment charge. For a regular payment contract employing the add-on method and the refunding method of the sum of the periodic balances,

a holder may assess, charge, and collect a base deferment charge computed by:

(i) Multiplying the amount of the installment or installments being deferred by either:

(I) the maximum effective rate authorized for a regular payment contract for the monthly term [the contract]; or

(II) a lower rate agreed to by the parties;

(ii) dividing the results of clause (i) of this subparagraph by 12; and

(iii) multiplying the results of clause (ii) of this subparagraph by the number of months the installment or installments are being deferred.

(B) Additional deferment costs. In addition to the base deferment charge authorized by this section, the holder of a retail installment sales contract may collect from the retail buyer the amount of the additional cost to the holder for:

(i) premiums for continuing in force any insurance coverages provided by the retail installment contract; and

(ii) any additional necessary official fees.

(C) Minimum deferment charge. The minimum deferment charge authorized under this paragraph [section] is \$1.00.

(D) Application of payments. For a regular payment contract employing

the add-on method and the refunding method of the sum of the periodic balances, if a payment is submitted from which a deferment charge is taken, any excess of the amount paid over the amount necessary to bring the account current must be applied to the remaining balance of the retail installment sales contract.

(E) Time price differential not included. For a regular payment contract employing the add-on method and the refunding method of the sum of the periodic balances, the deferment charge does not include time price differential agreed upon in the retail installment sales contract.

(2) Scheduled installment earnings method [~~or true daily earnings method~~].

(A) Base deferment charge. For a regular or an irregular payment contract employing the scheduled installment earnings method [~~or true daily earnings method~~], a holder may assess, charge, and collect a base deferment charge computed by:

(i) Multiplying the amount of the installment or installments being deferred by either of the following rates computed on a daily basis using a 365-day calendar year:

(I) the maximum annualized daily rate authorized for the contract, as described by Figure: 7 TAC §84.201(d)(2)(B)(iii); or

(II) a lower rate agreed to by the parties, which may be the contract rate; and

(ii) multiplying the results of clause (i) of this subparagraph by the

actual number of days the installment or installments are being deferred.

(B) Additional deferment costs. In addition to the base deferment charge authorized by this section, the holder of a retail installment sales contract may collect from the retail buyer the amount of the additional cost to the holder for:

(i) premiums for continuing in force any insurance coverages provided by the retail installment contract; and

(ii) any additional necessary official fees.

(C) Minimum deferment charge. The minimum deferment charge authorized under this paragraph [~~section~~] is \$1.00.

(D) Application of payments. For a contract using the scheduled installment earnings method, if a payment is submitted from which a deferment charge is taken, any excess of the amount paid over the amount necessary to bring the account current must be applied to the remaining balance of the retail installment sales contract. However, any difference that exceeds \$3.00 must be returned to the retail buyer if the retail buyer requests the refund within 30 days of the payment.

(E) Time price differential not included. For a contract using the scheduled installment earnings method, the deferment charge does not include time price differential agreed upon in the retail installment sales contract.

(3) True daily earnings method.

(A) Base deferment charge.  
For a regular or an irregular payment contract employing the true daily earnings method, a holder may assess, charge, and collect a base deferment charge computed by:

(i) Multiplying the amount of the installment or installments being deferred by either of the following rates computed on a daily basis using a 365-day calendar year:

(I) the maximum annualized daily rate authorized for the contract, as described by Figure: 7 TAC §84.201(d)(2)(B)(iii); or

(II) a lower rate agreed to by the parties, which may be the contract rate; and

(ii) multiplying the results of clause (i) of this subparagraph by the actual number of days the installment or installments are being deferred.

(B) Additional deferment costs. In addition to the base deferment charge authorized by this section, the holder of a retail installment sales contract may collect from the retail buyer the amount of the additional cost to the holder for:

(i) premiums for continuing in force any insurance coverages provided by the retail installment contract; and

(ii) any additional necessary official fees.

(C) Minimum deferment charge. The minimum deferment charge authorized under this paragraph is \$1.00.

(D) Accrual of time price differential. For a contract using the true daily earnings method, all time price differential that will accrue on the deferred installments during the deferment period must be included in the base deferment charge. If the holder agrees to a base deferment charge that is less than the amount of time price differential that would otherwise have accrued on the deferred installments during the deferment period, then it must waive the accrued time price differential on the deferred installments for the deferment period in excess of the base deferment charge the holder agreed to. The deferment charge does not include time price differential that accrues on amounts other than the deferred installments, nor does it include time price differential that accrues outside of the deferment period.

~~[(f) Negative accrual of time price differential. In a retail installment sales contract employing the true daily earnings method, the payments scheduled for the period following the deferral (including the deferred payments) must be sufficient to:]~~

~~[(1) pay the time price differential remaining on the deferred payment or payments and the amount currently accruing after the period of deferral; or]~~

~~[(2) be applied in another manner that is more favorable to the retail buyer than the method provided in paragraph (1) of this subsection.]~~

~~[(g) Accounting of payment. If a payment is submitted from which a deferment charge is taken, any excess of the amount paid over the amount necessary to bring the account current must be applied to the remaining balance of the retail installment sales contract. However, in a~~

~~precomputed retail installment sales contract employing the scheduled installment earnings method, any difference that exceeds \$3.00 must be returned to the retail buyer if the retail buyer requests the refund within 30 days of the payment.]~~

(e) ~~[(h)]~~ Noncompliance. Deferment fees not assessed or collected in accordance with the requirements of this section are subject to refund to the retail buyer. In the event deferment fees are refunded to the retail buyer, no rescheduling of the retail installment sales contract is permitted.

(f) False, misleading, or deceptive representation. A holder may not make a false, misleading, or deceptive representation relating to a deferment charge. For example, in a contract using the true daily earnings method, a holder may not make an offer to the retail buyer such as "Payment Holiday--Pay Only \$25" if the total deferment charge, including all time price differential that the holder will charge on the deferred installment for the deferment period, exceeds \$25. If a holder makes a false, misleading, or deceptive representation regarding a deferment charge, then the deferment charge is subject to refunding under subsection (e).

*§84.205. Documentary Fee. {{This section replaces former section 84.205, which has been repealed.}}*

(a) Purpose. Under Texas Finance Code, §348.006(e), before a retail seller charges a documentary fee greater than \$50, the seller must provide the OCCC with a written notification of the maximum amount of the documentary fee the seller intends to charge. The OCCC may review the amount of the documentary fee for reasonableness.

This section describes the requirements for the notification and cost analysis.

(b) General requirements.

(1) \$50 or less. A seller is not required to provide a notification or cost analysis to the OCCC before charging a documentary fee of \$50 or less.

(2) Over \$50, up to \$150. Before charging a documentary fee greater than \$50, but less than or equal to \$150, a seller must provide a notification to the OCCC. A seller is not required to provide a cost analysis before charging a documentary fee in this range. The OCCC will presume a documentary fee of \$150 or less to be reasonable.

(3) Over \$150. Before charging a documentary fee greater than \$150, a seller must provide a notification and a cost analysis to the OCCC.

(c) Notification.

(1) Generally. Before charging a documentary fee greater than \$50, a seller must provide a written notification to the OCCC, stating the amount of the maximum documentary fee that the seller intends to charge.

(2) Notification for each location. A seller must provide a notification for each licensed location or registered office at which motor vehicles are sold. If a seller has more than one license or registered office in the same physical space, then it must provide a notification for each license or registered office under which it sells vehicles. For example, if a seller has two registered offices at the same location and does business under the names of both



registered offices, then it must provide a notification for each of the two registered offices.

(3) Form. The notification must be provided on a form prescribed by the OCCC for receiving notifications of documentary fee amounts. A notification is not effective until the OCCC receives a complete form.

(4) Transfer of ownership. In the event of a transfer of ownership described by §84.604 of this title (relating to Transfer of License; New License Application on Transfer of Ownership), if the transferee intends to charge a documentary fee greater than \$50, then the transferee must provide a documentary fee notification for each licensed location or registered office that the transferee will operate. The transferee must provide the notification no later than the 30th calendar day following the transfer of ownership. If the transferee has not filed a notification on or before the 30th calendar day following the transfer of ownership, then it must cease charging a documentary fee greater than \$50. The transferee may not charge a greater amount than the amount described in the transferor's previous notification until the transferee has provided a complete notification listing the amount that the transferee intends to charge. If the transferor did not previously provide a documentary fee notification, then the transferee may not charge a documentary fee greater than \$50 until it has provided a complete notification listing the amount it intends to charge.

(5) Failure to provide notification. A seller violates this subsection if the seller:

(A) charges a documentary fee greater than \$50 without first providing a complete notification to the OCCC; or

(B) provides a notification to the OCCC and charges a documentary fee greater than the amount described in the notification.

(6) Restitution and order to lower documentary fee. If a seller violates this subsection, then the OCCC may take an action, including ordering the seller to do one or more of the following:

(A) provide restitution to affected buyers;

(B) lower its documentary fee prospectively;

(C) provide a complete, accurate notification to the OCCC;

(D) cease charging a documentary fee greater than \$50 for a specified period of time.

(7) Restitution amount. If a seller does not provide a complete notification to the OCCC, then the amount of restitution for violating this subsection will not exceed the amount of the documentary fee the seller charged or received minus \$50 (for each buyer). If the seller provides a notification but charges a documentary fee greater than the amount described in the notification, then the restitution for violating this subsection will not exceed the amount of the documentary fee the seller charged or received minus the amount of its filing (for each buyer).

(d) Cost analysis.

(1) Generally. Before charging a documentary fee greater than \$150, a seller must submit a cost analysis showing that the documentary fee is reasonable. The seller

has the burden of showing that the documentary fee is reasonable, and that all included costs are reasonable, specified, and supported by adequate documentation. This subsection does not require the OCCC's approval of a documentary fee before a seller charges it. However, the OCCC may order restitution under subsection (d)(6) if a seller charges a documentary fee over \$150 that is not supported by a complete cost analysis, or if the documentary fee includes costs that are not reasonable.

(2) Reasonableness requirements. In order to be reasonable, a documentary fee must reflect costs actually incurred by the seller in preparing and processing documents for a motor vehicle sale. All included costs must comply with the following reasonableness requirements.

(A) Directly related and allocable. Costs must directly relate to the seller's preparation and processing of documents for a motor vehicle sale. Costs must be allocable (i.e., chargeable or assignable) to the objective of preparing and processing documents. Costs must be incurred by the seller. A seller may not increase any authorized charge imposed by a third party.

(B) Allowable. Costs must relate to activities required to comply with local, state, or federal law concerning motor vehicle sales. Costs related to ancillary or optional products may not be included. Costs must be determined in accordance with generally accepted accounting principles.

(C) Prudent business person. Costs must comply with the prudent-business-person standard. This means that costs are limited to what a prudent business

person would pay in a competitive marketplace. For example, hiring a limousine to deliver documents does not comply with the prudent-business-person standard. In determining whether a given cost is prudent, consideration will be given to the following:

(i) whether the cost is of a type generally recognized as ordinary, customary, and necessary for preparing and processing documents for a motor vehicle sale;

(ii) the restraints or requirements imposed by sound business practices, arm's-length bargaining, and applicable laws and regulations;

(iii) market prices for comparable goods or services; and

(iv) the necessity of the cost.

(D) Timing.

(i) Costs must be incurred either concurrently with or after the seller's preparation of at least one of the following: a buyer's order, bill of sale, purchase agreement, or retail installment sales contract. Any costs incurred before the preparation of the earliest of these documents may not be included. This clause does not apply to the costs of purchasing or printing forms specifically listed in subsection (d)(3)(B)(ii).

(ii) Costs must be incurred before the title of the purchased motor vehicle is actually transferred, or when title is legally required to have been transferred, whichever is earlier.

(iii) Costs relating to a trade-in motor vehicle must be incurred before the title of the trade-in motor vehicle is actually transferred, or when the title is legally required to have been transferred, whichever is earlier.

(E) No finance charge. The documentary fee may not include any amount that would be considered a finance charge under the Truth in Lending Act, 15 U.S.C. §§1601-1667f. All included costs must be incurred uniformly in cash and credit transactions.

(i) The documentary fee may not include any cost associated with the negotiation or assignment of the retail installment sales contract to another financial institution or a related finance company.

(ii) The documentary fee may not include any cost associated with the evaluation of the buyer's creditworthiness. A seller may include the cost of obtaining a credit report, if the seller incurs this cost in a substantial number of transactions where credit is not extended, and the cost complies with the other requirements described in this subsection (e.g., the cost of obtaining a credit report to ensure compliance with the USA PATRIOT Act, 31 U.S.C. §5318(l)(2)(C)).

(iii) The documentary fee may not include the cost of preparing any disclosure or contractual provision that is used only in credit transactions. In particular, the documentary fee may not include the cost of preparing a Truth in Lending disclosure statement.

(F) Other prohibitions. The documentary fee may not include costs associated with any of the following:

(i) advertising;

(ii) floor planning (i.e., the seller's credit arrangements for the purchase of its inventory);

(iii) manufacturer or distributor's rebates;

(iv) the price of any report on the condition or history of the motor vehicle to be purchased or traded in;

(v) the disbursement of money to a financial institution (e.g., the cost of issuing a certified check);

(vi) a salesperson's commission for the sale of the motor vehicle (but commissions for an employee other than a salesperson may be included if they comply with subsection (d)(3)(B)(i)).

(3) Form of cost analysis. The cost analysis must include a summary of documentary fee costs and supporting exhibits.

(A) Summary of documentary fee costs. The summary of documentary fee costs must be provided on a form prescribed by the OCCC.

(i) The summary must include an itemization of the amount of costs for each of the following categories:

(I) personnel;

(II) forms and printing;

(III) postage;

(IV) software;

(V) facilities costs;

(VI) other costs.

(ii) The summary must include the number of sales completed during the period used to determine the costs described in clause (i).

(B) Supporting exhibits. A seller must provide a supporting exhibit for each category of costs included in the documentary fee. A seller must prorate costs to ensure that costs that are impermissible under this subsection are excluded. If a category is associated with both permissible and impermissible costs, then a seller must include only the permissible portion and explain the percentage of the category that is being included. The OCCC may prescribe a form for the supporting exhibits. A seller is not required to provide an exhibit for any category that does not include any costs.

(i) Personnel. The supporting exhibit for personnel must describe how all employee salaries included in the documentary fee comply with the reasonableness requirements described in this subsection.

(I) The supporting exhibit for personnel must include a job description for each position. Job descriptions must be specific enough to illustrate which functions are unique to each listed position, on a task level. The job description must identify which specific tasks are included as a cost component of the documentary fee, and which are excluded.

(II) The supporting exhibit for personnel must include each salary and a complete description of how compensation is calculated for each position (e.g., a pay plan).

(-a-) Commission paid to a salesperson for the sale of a motor vehicle must be excluded. If the seller includes a portion of the base salary paid to a salesperson, then the seller must explain how the salary has been prorated to exclude impermissible costs. If the seller offers a guaranteed minimum draw against future commission, then the draw may be included in the base salary rather than the commission.

(-b-) If the seller includes any commission paid to a person other than a salesperson, then the seller must explain how the commission has been prorated to exclude any impermissible costs (e.g., commission for ancillary products, or commission that arises only in credit transactions). If the seller offers a guaranteed minimum draw against future commission, then the draw may be included in the base salary rather than the commission.

(III) If costs of training employees are included, then the supporting exhibit must include an agenda for the training and an explanation of the subject matter of the training. The seller must explain how training costs have been prorated to exclude impermissible costs (e.g., costs of training employees on responsibilities that arise only in credit transactions, or that arise before preparation of a purchase agreement).

(ii) Forms and printing. The supporting exhibit for forms and

**ADOPT AMENDMENTS, NEW RULES, & REPEALS**  
**7 TAC, CHAPTER 84**  
**Page 29 of 45**

printing must describe all included costs and explain which forms are purchased or printed. All included forms must be used uniformly in cash and credit motor vehicle sales. If a seller uses a form only in certain transactions, then the seller must prorate costs by the fraction of the seller's sales in which the form is used. For example, if a form is used only for used motor vehicle sales, then a seller must prorate the cost of the form by the fraction of the seller's sales that are used motor vehicles. If a seller includes forms not listed in this clause, then the supporting exhibit must include an explanation of how the forms comply with the reasonableness requirements described in this subsection, with a citation to the law that requires the form. A seller may include the costs of the following forms:

(I) a written contract for the sale of the motor vehicle, as required by Texas Business and Commerce Code §2.201, which may be in the form of a purchase agreement, buyer's order, bill of sale, or retail installment sales contract (if a seller includes the cost of a retail installment sales contract, then the cost must be prorated to exclude the Truth in Lending disclosure statement and any provisions that are used only in credit transactions);

(II) an application for certificate of title, form 130-U, as required by Texas Transportation Code, §501.023;

(III) a statement of the county of title issuance, form VTR-136, as required by Texas Transportation Code, §501.023;

(IV) a privacy notice, as required by the Gramm-Leach-Bliley Act, 15 U.S.C. §6803;

(V) a copy of the buyer's driver's license, in order to verify the buyer's identity and ensure compliance with the USA PATRIOT Act, 31 U.S.C. §5318(l)(2)(C);

(VI) a report of a cash payment over \$10,000, form 8300, as required by the USA PATRIOT Act, 31 U.S.C. §5331;

(VII) a Texas Lemon Law disclosure, as required by Texas Occupations Code, §2301.610;

(VIII) the buyer's temporary tag, as required by Texas Transportation Code, §503.063, and 43 Texas Administrative Code §245.155;

(IX) the buyer's temporary tag receipt, as required by 43 Texas Administrative Code §245.156;

(X) a window sticker for new vehicles, as required by 15 U.S.C. §1232; and

(XI) a used car buyers guide, as required by the Federal Trade Commission's Used Motor Vehicle Rule, 16 C.F.R. §455.2.

(iii) Postage. The supporting exhibit for postage must identify the postage carrier, the types of documents that are sent by postage, and each specific postage cost. All postage costs must comply with the reasonableness requirements described in this subsection, including the prudent-business-person standard. The OCCC will presume that a prudent business person would use certified mail from the United States Postal Service or a similarly priced service. The exhibit must explain

how costs that do not comply with this subsection (e.g., costs of sending documents to other financial institutions) have been excluded.

(iv) Software. The supporting exhibit for software must identify the cost of each included piece of software. The exhibit must state the type of software used and the specific functions of the software. The exhibit must identify which specific software functions are included as a cost component of the documentary fee, and which are excluded. If the software is associated with both permissible and impermissible costs, then a seller must include only the permissible portion and explain the percentage of the category that is being included.

(v) Facilities costs. The supporting exhibit for facilities must identify all included facilities costs (e.g., rent, property taxes, insurance). Any facilities costs must be adjusted to include only direct fixed costs that comply with the reasonableness requirements described in this subsection. The documentary fee may not include any depreciation of facilities costs. The exhibit must describe an appropriate methodology ensuring that the documentary fee includes only the portion of the facilities costs that corresponds to the percentage of time and space used for activities that may be included in the documentary fee.

(vi) Other costs. The supporting exhibit for other costs must identify all other costs included in the documentary fee. The exhibit must state the amount of each cost and the nature of the associated activities. If the activities are associated with both permissible and impermissible costs, then a seller must

include only the permissible portion and explain the percentage of the category that is being included.

(4) Cost analysis covering multiple locations. A seller may submit a cost analysis that covers more than one licensed location or registered office if:

(A) the cost structures of all covered locations are substantially similar (e.g., due to centralized processing among a group of locations); and

(B) in the supporting exhibits, the seller explains which costs are similar among the locations and explains the differences in costs among the locations.

(5) OCCC review. The OCCC will review each cost analysis in order to determine whether the documentary fee is reasonable for the seller that provided the analysis. If the cost analysis does not support the seller's documentary fee, or if the OCCC determines that any included costs are not reasonable, then the OCCC may require the seller to provide additional information, or the OCCC may determine that the amount is unreasonable. The review may result in a determination of the maximum amount of the documentary fee that a specific seller may charge.

(6) Restitution and order to lower documentary fee. If a seller violates this subsection by charging a documentary fee over \$150 that is not supported by a complete cost analysis or that includes costs that are not reasonable, then the OCCC may order the seller to provide restitution to affected buyers and lower its documentary fee prospectively. For each buyer, the restitution for violating this subsection will not exceed the amount of the documentary

fee the seller charged or received, minus \$150, minus other restitution paid under subsection (c)(6)-(7) of this section. In addition, the OCCC may order a seller to cease charging a documentary fee greater than \$50 for a specified period of time if the seller violates this subsection.

§84.309. Debt Cancellation Agreements Requiring Insurance.

(a) Purpose and scope. This section applies to a debt cancellation agreement that includes insurance coverage as part of the retail buyer's responsibility to the holder, as provided by Texas Finance Code, §348.601(a). Debt cancellation agreements must be submitted to the OCCC for approval, as provided by Texas Finance Code, §348.604(a). The denial of a debt cancellation agreement may be appealed to the Finance Commission of Texas, as provided by Texas Finance Code, §348.604(e). This section describes the requirements for submitting a debt cancellation agreement to the OCCC and the requirements for appealing the denial of a debt cancellation agreement to the commission.

(b) Submission. A debt cancellation agreement must be submitted in accordance with the OCCC's instructions. A submission is not effective until the agreement is submitted in accordance with the OCCC's instructions, including the fee required under subsection (c).

(c) Fee. The person submitting a debt cancellation agreement must pay a \$250 nonrefundable fee to the OCCC for each submitted agreement.

(d) OCCC's notice of approval or denial. No later than the 45th day after the

OCCC receives a debt cancellation agreement submission, the OCCC will send a notice of approval or a notice of denial to the person who submitted the agreement, as provided by Texas Finance Code, §348.604(b). The date of approval or denial is the date on which the OCCC sends the notice of approval or denial. The OCCC may deny approval of a debt cancellation agreement if the agreement excludes language required by Texas Finance Code, §348.602 and §348.603, or if it contains any inconsistent or misleading provisions.

(e) Appellant's notice of appeal. A person who submits a debt cancellation agreement and receives a notice of denial from the OCCC may appeal the denial by serving a notice of appeal on the OCCC. The appellant must serve the notice of appeal no later than the 30th calendar day after the date of denial. If a notice of appeal is not served in accordance with this subsection, then the denial becomes final and cannot be appealed.

(f) Contested case. If a person appeals the denial of a debt cancellation agreement under subsection (e), then the appeal will be a contested case under the Administrative Procedure Act, Texas Government Code, Chapter 2001, and the rules of procedure applicable under §9.1(a) of this title (relating to Application, Construction, and Definitions). The burden of proof is on the appellant to show that the agreement should have been approved under Texas Finance Code, §348.604.

(g) Proposal for decision. In connection with a contested case under this section, the administrative law judge will issue a proposal for decision to the commission. The proposal for decision will include a recommendation regarding whether the

OCCC's denial of the agreement should be affirmed or reversed. The proposal for decision may include a recommendation that costs be assigned to a party, to the extent authorized by law.

(h) Commission's final order. The commission will issue a final order after review of the administrative law judge's proposal for decision. The final order will include a statement of whether the OCCC's denial of the agreement is affirmed or reversed. The final order may include an assignment of costs to a party, to the extent authorized by law.

(i) Judicial review of commission's final order. A final order of the commission under subsection (h) may be appealed to a Travis County district court, as provided by Texas Government Code, §2001.176.

*§84.601. Definitions.*

Words and terms used in this chapter that are defined in Texas Finance Code, Chapter 348, have the same meanings as defined in Chapter 348. The following words and terms, when used in this chapter, will have the following meanings, unless the context clearly indicates otherwise.

(1) - (6) (No change.)

(7) Principal party--An individual with a substantial relationship to the proposed business of the applicant. The following individuals are principal parties:

(A) a proprietor holding a 100% ownership interest [~~proprietors, to include spouses with community property interest~~];

(B) - (J) (No change.)

(8) - (10) (No change.)

*§84.602. Filing of New Application.*

An application for issuance of a new motor vehicle sales finance license issued under Texas Finance Code, Chapter 348 or 353 must be submitted in a format prescribed by the commissioner at the date of filing and in accordance with the commissioner's instructions. The commissioner may accept the use of prescribed alternative formats in order to accept approved electronic submissions. Appropriate fees must be filed with the application, and the application must include the following:

(1) Required application information. All questions must be answered.

(A) Application for license.

(i) - (iv) (No change.)

(v) Owners and principal parties.

(I) Proprietorships. The applicant must disclose the name of the individual holding a 100% ownership interest in the business and the name of any individual [~~who owns and who is~~] responsible for operating the business. If requested, the applicant must also disclose the names of the spouses of these individuals. [~~All community property interests must also be disclosed. If the business interest is owned by a married individual as separate property, documentation establishing or confirming separate property status must be provided.~~]



(II) - (IX) (No change.)

(B) - (D) (No change.)

(E) Consent form. Each applicant must submit a consent form signed by an authorized individual. Electronic signatures will be accepted in a manner approved by the commissioner. The following are authorized individuals:

(i) If the applicant is a proprietor, the [each] owner must sign.

(ii) If the applicant is a partnership, one [each] general partner must sign.

(iii) - (v) (No change.)

(F) (No change.)

(2) - (3) (No change.)

*§84.604. Transfer of License; New License Application on Transfer of Ownership. **{{This section replaces former section 84.604, which has been repealed.}}***

(a) Purpose. This section describes the license application requirements when a licensed entity transfers its license or ownership of the entity. If a transfer of ownership occurs, the transferee must submit either a license transfer application or a new license application on transfer of ownership under this section.

(b) Definitions. The following words and terms, when used in this section, will have the following meanings:

(1) Grandparent entity--A direct owner of a parent entity.

(2) License transfer--A sale, assignment, or transfer of a license under Texas Finance Code, Chapter 348 or 353.

(3) Parent entity--A direct owner of a licensee or applicant.

(4) Permission to operate--A temporary authorization from the OCCC, allowing a transferee to operate under a transferor's license while final approval is pending for a license transfer application or a new license application on transfer of ownership.

(5) Transfer of ownership--Any purchase or acquisition of control of a licensed entity (including acquisition by gift, devise, or descent), or a substantial portion of a licensed entity's assets, where a substantial change in management or control of the business occurs. The term does not include a change in proportionate ownership as defined in §84.605 of this title (relating to Change in Form or Proportionate Ownership). The term does not include a change in ownership above the level of the grandparent entity. Transfer of ownership includes the following:

(A) an existing owner of a sole proprietorship relinquishes that owner's entire interest in a license or an entirely new entity has obtained an ownership interest in a sole proprietorship license;

(B) any purchase or acquisition of control of a licensed general partnership, in which a partner relinquishes that owner's entire interest or a new general partner obtains an ownership interest;

(C) any change in ownership of a licensed limited partnership interest in which:

(i) a limited partner owning 10% or more relinquishes that owner's entire interest;

(ii) a new limited partner obtains an ownership interest of 10% or more;

(iii) a general partner relinquishes that owner's entire interest; or

(iv) a new general partner obtains an ownership interest (transfer of ownership occurs regardless of the percentage of ownership exchanged of the general partner);

(D) any change in ownership of a licensed corporation in which:

(i) a new stockholder obtains 10% or more of the outstanding voting stock in a privately held corporation;

(ii) an existing stockholder owning 10% or more relinquishes that owner's entire interest in a privately held corporation;

(iii) any purchase or acquisition of control of 51% or more of a company that is the parent entity or controlling stockholder of a licensed privately held corporation occurs; or

(iv) any stock ownership changes that result in a change of control (i.e., 51% or more) for a licensed publicly held corporation occur;

(E) any change in the membership interest of a licensed limited liability company;

(i) in which a new member obtains an ownership interest of 10% or more;

(ii) in which an existing member owning 10% or more relinquishes that member's entire interest; or

(iii) in which a purchase or acquisition of control of 51% or more of any company that is the parent entity or controlling member of a licensed limited liability company occurs;

(F) any transfer of a substantial portion of the assets of a licensed entity under which a new entity controls business at a licensed location; and

(G) any other purchase or acquisition of control of a licensed entity, or a substantial portion of a licensed entity's assets, where a substantial change in management or control of the business occurs.

(6) Transferee--The entity that controls business at a licensed location after a transfer of ownership.

(7) Transferor--The licensed entity that controls business at a licensed location before a transfer of ownership.

(c) License transfer approval. No license may be sold, transferred, or assigned without the written approval of the OCCC, as provided by Texas Finance Code, §348.512 and §353.512. A license transfer is approved when the OCCC issues its final written approval of a license transfer application.

(d) Timing. No later than 30 days after the event of a transfer of ownership, the

transferee must file a complete license transfer application or new license application on transfer of ownership in accordance with subsection (e). A transferee may file an application before this date.

(e) Application requirements.

(1) Generally. This subsection describes the application requirements for a license transfer application or a new license application on transfer of ownership. A transferee must submit the application in a format prescribed by the OCCC. The OCCC may accept prescribed alternative formats to facilitate multistate uniformity of applications or in order to accept approved electronic submissions. The transferee must pay appropriate fees in connection with the application.

(2) Documentation of transfer of ownership. The application must include documentation evidencing the transfer of ownership. The documentation should include one or more of the following:

(A) a copy of the asset purchase agreement when only the assets have been purchased;

(B) a copy of the purchase agreement or other evidence relating to the acquisition of the equity interest of a licensee that has been purchased or otherwise acquired;

(C) any document that transferred ownership by gift, devise, or descent, such as a probated will or a court order; or

(D) any other documentation evidencing the transfer event.

(3) Application information for new licensee. If the transferee does not hold a license at the time of the application, then the application must include the information required for new license applications under §84.602 of this title (relating to Filing of New Application). The instructions in §84.602 of this title apply to these filings.

(4) Application information for transferee that holds a license. If the transferee holds a license at the time of the application, then the application must include amendments to the transferee's original license application describing the information that is unique to the transfer event, including disclosure questions, owners and principal parties, and a new financial statement, as provided in §84.602 of this title. The instructions in §84.602 of this title apply to these filings. The responsible person at the new location must file a personal affidavit, personal questionnaire, and employment history, if not previously filed. Other information required by §84.602 of this title need not be filed if the information on file with the OCCC is current and valid.

(5) Request for permission to operate. The application may include a request for permission to operate. The request must be in writing and signed by the transferor and transferee. The request must include all of the following:

(A) a statement by the transferor granting authority to the transferee to operate under the transferor's license while final approval of the application is pending;

(B) an acknowledgement that the transferor and transferee each accept joint and several responsibility to any

consumer and to the OCCC for any acts performed under the license while the permission to operate is in effect; and

(C) if the application is a new license application on transfer of ownership, an acknowledgement that the transferor will immediately surrender or inactivate its license if the OCCC approves the application.

(f) Permission to operate. If the application described by subsection (e) includes a request for permission to operate and all required information, and the transferee has paid all fees required for the application, then the OCCC may issue a permission to operate to the transferee. A request for permission to operate may be denied even if the application contains all of the required information. The denial of a request for permission to operate does not create a right to a hearing. If the OCCC grants a permission to operate, the transferor must cease operating under the authority of the license. Two companies may not simultaneously operate under a single license. A permission to operate terminates if the OCCC denies an application described by subsection (e).

(g) Transferee's authority to engage in business. If a transferee has filed a complete application including a request for permission to operate as described by subsection (e), by the deadline described by subsection (d), then the transferee may engage in business under Texas Finance Code, Chapter 348 or 353, as applicable. However, the transferee must immediately cease doing business if the OCCC denies the request for permission to operate or denies the application. If the OCCC denies the application, then the transferee has a right to a hearing on the denial, as provided by

§84.608(d) of this title (relating to Processing of Application).

(h) Responsibility.

(1) Responsibility of transferor. Before the OCCC's final approval of an application described by subsection (e), the transferor is responsible to any consumer and to the OCCC for all motor vehicle sales finance activity performed under the license.

(2) Responsibility of transferee. After a transferee begins performing motor vehicle sales finance activity under a license, the transferee is responsible to any consumer and to the OCCC for all motor vehicle sales finance activity performed under the license. In addition, a transferee is responsible for any transactions that it purchases from the transferor.

(3) Joint and several responsibility. If a transferee begins performing motor vehicle sales finance activity under a license before the OCCC's final approval of an application described by subsection (e) (including activity performed under a permission to operate), then the transferor and transferee are jointly and severally responsible to any consumer and to the OCCC. This responsibility applies to any acts performed under the license after the transferee begins performing motor vehicle sales finance activity and before the OCCC's final approval of the license transfer.

*§84.605. Change in Form or Proportionate Ownership.*

(a) (No change.)

(b) Merger. A merger of a licensee is a change of ownership that results in a new or different surviving entity and requires the

filing of a license transfer application or a new license application on transfer of ownership pursuant to §84.604 of this title (relating to Transfer of License; New License Application on Transfer of Ownership). If the merger of the parent entity of a licensee that leads to the creation of a new entity or results in a different surviving parent entity, the licensee must advise the commissioner of the change in writing within 14 calendar days after the change, by filing a license amendment and paying the required fees as provided in §84.611. Mergers or transfers of other entities with a beneficial interest beyond the parent entity level only require notification within 14 calendar days. Failure to meet the application filing deadline does not invalidate transactions unless the agency has obtained a contrary finding through the administrative process.

(c) Proportionate ownership.

(1) A change in proportionate ownership that results in the exact same owners still owning the business, and does not meet the requirements described in paragraph (2) of this subsection, does not require a transfer. Such a proportionate change in ownership does not require the filing of a license transfer application or a new license application on transfer of ownership, but does require notification when the cumulative ownership change to a single entity or individual amounts to 10% or greater. No later than 14 calendar days following the actual change, the licensee is required to notify the commissioner in writing of the change in proportionate ownership by filing a license amendment and paying the required fees as provided in §84.611 of this title. This subsection does not apply to a legal entity that has filed with the OCCC the most recent Form 10-K or 10-

Q filing of the licensee or of the parent entity, although a license transfer application or a new license application on transfer of ownership may be required under §84.604 of this title.

(2) A proportionate change in which an owner that previously held under 10% obtains an ownership interest of 10% or more, requires a license transfer application or a new license application on transfer of ownership under §84.604 of this title.

(3) (No change.)

*§84.607. Updating Application and Contact Information [~~Reportable Actions After Application~~].*

(a) Applicant's updates to license application information. Before a license application is approved, an applicant must report to the OCCC any [~~Any action, fact, or~~] information that would require a materially different answer than that given in the original license application and that relates to the qualifications for license [~~;~~ ~~must be reported~~] within 14 calendar days after the person has knowledge of the [~~action, fact or~~] information.

(b) Licensee's updates to license application information. A licensee must report to the OCCC any information that would require a different answer than that given in the original license application within 30 calendar days after the licensee has knowledge of the information, if the information relates to any of the following:

(1) the names of principal parties;

(2) criminal history;

(3) actions by regulatory agencies;  
or

(4) court judgments.

(c) Contact information. Each applicant or licensee is responsible for ensuring that all contact information on file with the OCCC is current and correct, including all mailing addresses, all phone numbers, and all e-mail addresses. It is a best practice for licensees to regularly review contact information on file with the OCCC to ensure that it is current and correct.

*§84.610. License Status.*

(a) - (c) (No change.)

(d) Expiration. A license will expire the later of July 31 of each year or the 16th day after the written notice of delinquency is given unless the annual assessment fees have been paid by the due date for license renewal. A licensee that pays the annual assessment fees will automatically be renewed even though a new license may not be issued. For purposes of this subsection, notice of delinquency in the payment of an annual assessment fee is given when the OCCC sends the delinquency notice:

(1) by mail to the address on file with the OCCC as a master file address; or

(2) by e-mail to the address on file with the OCCC as a master file e-mail address, if the licensee has provided a master file e-mail address.

(e) (No change.)

*§84.611. Fees.*

(a) - (b) (No change.)

(c) Fingerprint processing. An applicant must pay a fee to a party designated by the Texas Department of Public Safety for processing fingerprints. The Texas Department of Public Safety and the designated party determine the amount of the fee and whether it is refundable. [A nonrefundable fee as prescribed by the commissioner will be charged to recover the costs of investigating each principal party's fingerprint record. This fee must be paid for each fingerprint record filed with an application for a new license or a license transfer.]

(d) (No change.)

(e) Annual renewal and assessment fees.

(1) An annual assessment fee is required for each licensee consisting of:

(A) a licensed location fee not to exceed \$460;

(B) a registered office fee not to exceed \$430 per location; and

(C) if necessary, a variable fee based upon the annual dollar volume of retail installment sales contracts originated, [or] acquired, or serviced during the preceding calendar year, as stated in the annual renewal statement described by paragraph (3).

(2) The maximum annual assessment for each active license will be no more than \$1,200 excluding the registered office fees.

(3) A licensee must file an annual renewal statement in connection with the license renewal. The licensee must provide

the statement in a format prescribed by the OCCC and in accordance with the OCCC's instructions. The statement must include the annual dollar volume and number of retail installment sales contracts originated, acquired, or serviced during the preceding calendar year, calculated in accordance with the OCCC's instructions, and any other information required under the OCCC's instructions. The annual renewal statement is collected under the OCCC's examination authority, as provided by Texas Finance Code, §348.415. A licensee's annual renewal statement relates to the examination process and is confidential under Texas Finance Code, §14.2015(a) and §348.514(d). However, the OCCC may publish aggregated reports based on the annual renewal statements that it collects.

(f) Licensed location or registered office duplicate certificates sent by mail. The fee for a duplicate certificate sent by mail is \$10.

(g) (No change.)

*§84.613. Denial, Suspension, or Revocation Based on Criminal History. {{This section replaces sections 84.613 and 84.614, both of which have been repealed.}}*

(a) Criminal history record information. After an applicant submits a complete license application, including all required fingerprints, and pays the fees required by §84.611 of this title (relating to Fees), the OCCC will investigate the applicant and its principal parties. The OCCC will obtain criminal history record information from the Texas Department of Public Safety and the Federal Bureau of Investigation based on the applicant's fingerprint submission. The OCCC will continue to receive information

on new criminal activity reported after the fingerprints have been initially processed.

(b) Disclosure of criminal history. The applicant must disclose all criminal history information required to file a complete application with the OCCC. Failure to provide any information required as part of the application or requested by the OCCC reflects negatively on the belief that the business will be operated lawfully and fairly. The OCCC may request additional criminal history information from the applicant, including the following:

(1) information about arrests, charges, indictments, and convictions of the applicant and its principal parties;

(2) reliable documents or testimony necessary to make a determination under subsection (c), including letters of recommendation from prosecution, law enforcement, and correctional authorities;

(3) proof that the applicant has maintained a record of steady employment, has supported the applicant's dependents, and has otherwise maintained a record of good conduct; and

(4) proof that all outstanding court costs, supervision fees, fines, and restitution as may have been ordered have been paid or are current.

(c) Crimes directly related to licensed occupation. The OCCC may deny a license application, or suspend or revoke a license, if the applicant or licensee has been convicted of an offense that directly relates to the duties and responsibilities of a licensee under Texas Finance Code, Chapter 348 or 353, as provided by Texas Occupations Code, §53.021(a)(1).

(1) Originating, acquiring, or servicing retail installment sales contracts under Texas Finance Code, Chapter 348 or 353, involves or may involve making representations to consumers regarding the terms of the contract, receiving money from consumers, remitting money to third parties, maintaining accounts, repossessing property without a breach of the peace, maintaining goods that have been repossessed, and collecting due amounts in a legal manner. Consequently, the following crimes are directly related to the duties and responsibilities of a licensee and may be grounds for denial, suspension, or revocation:

(A) theft;

(B) assault;

(C) any offense that involves misrepresentation, deceptive practices, or making a false or misleading statement (including fraud or forgery);

(D) any offense that involves breach of trust or other fiduciary duty;

(E) any criminal violation of a statute governing credit transactions or debt collection;

(F) failure to file a government report, filing a false government report, or tampering with a government record;

(G) any greater offense that includes an offense described in subparagraphs (A) - (F) of this paragraph as a lesser included offense;

(H) any offense that involves intent, attempt, aiding, solicitation, or

conspiracy to commit an offense described in subparagraphs (A) - (G) of this paragraph.

(2) In determining whether a criminal offense directly relates to the duties and responsibilities of holding a license, the OCCC will consider the following factors, as specified in Texas Occupations Code, §53.022:

(A) the nature and seriousness of the crime;

(B) the relationship of the crime to the purposes for requiring a license to engage in the occupation;

(C) the extent to which a license might offer an opportunity to engage in further criminal activity of the same type as that in which the person previously had been involved; and

(D) the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of a licensee.

(3) In determining whether a conviction for a crime renders an applicant or a licensee unfit to be a licensee, the OCCC will consider the following factors, as specified in Texas Occupations Code, §53.023:

(A) the extent and nature of the person's past criminal activity;

(B) the age of the person when the crime was committed;

(C) the amount of time that has elapsed since the person's last criminal activity;



(D) the conduct and work activity of the person before and after the criminal activity;

(E) evidence of the person's rehabilitation or rehabilitative effort while incarcerated or after release, or following the criminal activity if no time was served; and

(F) evidence of the person's current circumstances relating to fitness to hold a license, which may include letters of recommendation from one or more of the following:

(i) prosecution, law enforcement, and correctional officers who prosecuted, arrested, or had custodial responsibility for the person;

(ii) the sheriff or chief of police in the community where the person resides; and

(iii) other persons in contact with the convicted person.

(d) Crimes related to character and fitness. The OCCC may deny a license application if the OCCC does not find that the financial responsibility, experience, character, and general fitness of the applicant are sufficient to command the confidence of the public and warrant the belief that the business will be operated lawfully and fairly, as provided by Texas Finance Code, §348.504(a) and §353.504(a). In conducting its review of character and fitness, the OCCC will consider the criminal history of the applicant and its principal parties. If the applicant or a principal party has been convicted of an offense described by subsections (c)(1) or (f)(2) of this section, this reflects negatively on an applicant's

character and fitness. The OCCC may deny a license application based on other criminal history of the applicant or its principal parties if, when the application is considered as a whole, the agency does not find that the financial responsibility, experience, character, and general fitness of the applicant are sufficient to command the confidence of the public and warrant the belief that the business will be operated lawfully and fairly. The OCCC will, however, consider the factors identified in subsection (c)(2)-(3) of this section in its review of character and fitness.

(e) Revocation on imprisonment. A license will be revoked on the licensee's imprisonment following a felony conviction, felony community supervision revocation, revocation of parole, or revocation of mandatory supervision, as provided by Texas Occupations Code, §53.021(b).

(f) Other grounds for denial, suspension, or revocation. The OCCC may deny a license application, or suspend or revoke a license, based on any other ground authorized by statute, including the following:

(1) a conviction for an offense that does not directly relate to the duties and responsibilities of the occupation and that was committed less than five years before the date of application, as provided by Texas Occupations Code, §53.021(a)(2);

(2) a conviction for an offense listed in Texas Code of Criminal Procedure, art. 42.12, §3g, or art. 62.001(6), as provided by Texas Occupations Code, §53.021(a)(3)-(4);

(3) errors or incomplete information in the license application;

**ADOPT AMENDMENTS, NEW RULES, & REPEALS**  
**7 TAC, CHAPTER 84**  
**Page 42 of 45**

(4) a fact or condition that would have been grounds for denying the license application, and that either did not exist at the time of the application or the OCCC was unaware of at the time of application, as provided by Texas Finance Code, §348.508(3) and §353.508(3); and

(5) any other information warranting the belief that the business will not be operated lawfully and fairly, as provided by Texas Finance Code, §§348.504(a), 348.508, 353.504(a), and 353.508.

*§84.708. Files and Records Required (Retail Sellers Collecting Installments on Retail Installment Sales Contracts).*

(a) - (d) (No change.)

(e) Records required.

(1) (No change.)

(2) Retail installment sales transaction file. A licensee must maintain a paper or imaged copy of a retail installment sales transaction file for each individual retail installment sales contract or be able to produce the same information within a reasonable amount of time. The retail installment sales transaction file must contain documents which show the licensee's compliance with applicable law. The required documents must show the licensee's compliance with Texas Finance Code, Chapter 348 and would accordingly include applicable state and federal laws and regulations, including the Truth in Lending Act. If a substantially equivalent electronic record for any of the following records exists, a paper copy of the record does not have to be included in the retail installment sales transaction file if the electronic record

can be accessed upon request. The retail installment sales transaction file must include copies of the following records or documents, unless otherwise specified:

(A) - (O) (No change.)

(P) for a retail installment sales transaction that has been repaid in full, evidence of the discharge or release of lien as prescribed by 43 TAC §217.106 (relating to Discharge of Lien) [~~§217.3 (relating to Motor Vehicle Certificates of Title)~~].

(Q) (No change.)

(3) - (9) (No change.)

(f) (No change.)

*§84.709. Files and Records Required (Holders Taking Assignment of Retail Installment Sales Contracts).*

(a) - (d) (No change.)

(e) Records required.

(1) (No change.)

(2) Retail installment sales transaction file. A licensee must maintain a paper or imaged copy of a retail installment sales transaction file for each individual retail installment sales contract or be able to produce the same information within a reasonable amount of time. The retail installment sales transaction file must contain documents which show the licensee's compliance with applicable law. The required documents must show the licensee's compliance with Texas Finance Code, Chapter 348 and would accordingly include applicable state and federal laws and regulations, including the Truth in Lending

Act. If a substantially equivalent electronic record for any of the following records exists, a paper copy of the record does not have to be included in the retail installment sales transaction file if the electronic record can be accessed upon request. The retail installment sales transaction file must include copies of the following records or documents, unless otherwise specified:

(A) - (G) (No change.)

(H) for a retail installment sales transaction that has been repaid in full, evidence of the discharge or release of lien as prescribed by 43 TAC §217.106 (relating to Discharge of Lien) [~~§217.3 (relating to Motor Vehicle Certificates of Title)~~].

(I) (No change.)

(3) - (9) (No change.)

(f) (No change.)

*§84.804. Disclosures and Contract Provisions Required by Texas Finance Code.*

A retail installment sales contract must include all provisions required by Texas Finance Code, Chapter 348, and other law. The contract must include [shall have] the following disclosures and provisions, as applicable:

(1) - (3) (No change.)

(4) The amounts of any itemized [Itemized] charges not included in the cash price, as required by Texas Finance Code, §348.102(a)(7). Itemized charges may include [,- but are not limited to,] the following charges as applicable and any other charges that are authorized to be

included in the itemized charges under Texas Finance Code, Chapter 348:

(A) - (N) (No change.)

(O) Warranty contract; [øø]

(P) Identity recovery service contract;

(Q) Automobile club membership.

(5) - (8) (No change.)

*§84.808. Model Clauses.*

The following model clauses provide the plain language equivalent of provisions found in contracts subject to Texas Finance Code, Chapter 348.

(1) - (15) (No change.)

(16) Finance charge earnings methods:

(A) - (B) (No change.)

(C) Scheduled installment earnings method.

(i) Sales tax advance. At the creditor's option a creditor may choose one of the following model clauses regarding sales tax advance:

(I) (No change.)

(II) If sales tax is advanced, and the [æ] retail seller either discloses the annual percentage rate using a method other than a 365/365 basis or requires a retail buyer to purchase credit life or credit accident and health insurance, then

~~[and the sales tax is not deferred,]~~ the contract rate disclosure should read: "The contract rate is \_\_\_\_%. This contract rate may not be the same as the Annual Percentage Rate. You will figure the Finance Charge by applying the scheduled installment earnings method as defined by the Texas Finance Code to the unpaid portion of the principal balance. You based the Finance Charge, Total of Payments, and Total Sale Price as if all payments were made as scheduled. The unpaid principal balance does not include the late charges or returned check charges."

(17) - (19) (No change.)

(20) Finance charge refund method. If a contract uses either ~~[the finance charge refunding method of]~~ the sum of the periodic balances method or the scheduled installment earnings method to calculate a refund of the unearned finance charge, the finance charge refund provision reads: "If I prepay in full, I may be entitled to a refund of part of the Finance Charge." On contracts using the true daily earnings method, this finance charge refund provision should not be disclosed because it is not applicable.

(A) (No change.)

(B) Contracts using the scheduled installment earnings method.

(i) Name of method. The model clause to identify the method of refunding finance charge reads: "You will figure the Finance Charge refund by the scheduled installment earnings method as defined by the Texas Finance Commission rule."

(ii) Optional description of method for sales tax advance. If sales tax is

advanced, then the ~~[The]~~ creditor may include the following additional description of the method: "You will figure my refund by deducting earned finance charges from the total Finance Charge. You will figure earned finance charges by applying a daily rate to the unpaid principal balance as if I paid all my payments on the date due. If I prepay between payment due dates, you will figure earned finance charges for the partial payment period. You do this by counting the number of days from the due date of the prior payment through the date I prepay. You then multiply that number of days times the daily rate. The daily rate is 1/365th of the Annual Percentage Rate. You will also add the acquisition cost of \$25 (or \$150 for a heavy commercial vehicle) to the earned finance charge, so long as the total of the earned finance charge and the acquisition cost does not exceed the total Finance Charge disclosed in the contract. I will not get a refund if it is less than \$1.00."

(iii) Optional description of method for deferred sales tax. If sales tax is deferred, then the creditor may include the following additional description of the method: "You will figure my refund by deducting earned finance charges from the total Finance Charge. You will figure earned finance charges by applying a daily rate to the unpaid principal balance subject to a finance charge as if I paid all my payments on the date due. If I prepay between payment due dates, you will figure earned finance charges for the partial payment period. You do this by counting the number of days from the due date of the prior payment through the date I prepay. You then multiply that number of days times the daily rate. The daily rate is 1/365th of the contract rate shown on the contract. You will also add the acquisition cost of \$25 (or \$150 for a heavy commercial vehicle) to the earned

finance charge, so long as the total of the earned finance charge and the acquisition cost does not exceed the total Finance Charge disclosed in the contract. I will not get a refund if it is less than \$1.00."

(C) (No change.)

(21) - (45) (No change.)

§84.809. *Permissible Changes.*

(a) (No change.)

(b) A sample model motor vehicle retail installment sales contract is presented in the following example.

Figure: 7 TAC §84.809(b) *{See attached amendments.}*

(c) - (d) (No change.)

### **Certification**

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas on April 15, 2016.

Laurie B. Hobbs  
Assistant General Counsel  
Office of Consumer Credit Commissioner

Figure: 7 TAC §84.201(d)(2)(B)(iii)

TERM - # OF MONTHS	ADD-ON RATES PER \$100.00 PER ANNUM			
	\$7.50	\$10.00	\$12.50	\$15.00
1	18.0000%	18.0000%	18.0000%	18.0000%
2	18.0000%	18.0000%	18.0000%	19.9452%
3	18.0000%	18.0000%	18.6541%	22.3624%
4	18.0000%	18.0000%	19.8374%	23.7670%
5	18.0000%	18.0000%	20.5996%	24.6655%
6	18.0000%	18.0000%	21.1215%	25.2754%
7	18.0000%	18.0000%	21.4935%	25.7054%
8	18.0000%	18.0000%	21.7659%	26.0160%
9	18.0000%	18.0000%	21.9688%	26.2435%
10	18.0000%	18.0000%	22.1215%	26.4109%
11	18.0000%	18.0000%	22.2367%	26.5338%
12	18.0000%	18.0000%	22.3232%	26.6226%
13	18.0000%	18.0338%	22.3875%	26.6849%
14	18.0000%	18.0812%	22.4340%	26.7265%
15	18.0000%	18.1171%	22.4664%	26.7513%
16	18.0000%	18.1435%	22.4872%	26.7626%
17	18.0000%	18.1621%	22.4985%	26.7628%
18	18.0000%	18.1743%	22.5020%	26.7540%
19	18.0000%	18.1809%	22.4988%	26.7375%
20	18.0000%	18.1830%	22.4901%	26.7148%
21	18.0000%	18.1811%	22.4768%	26.6867%
22	18.0000%	18.1758%	22.4594%	26.6542%
23	18.0000%	18.1677%	22.4387%	26.6178%
24	18.0000%	18.1570%	22.4150%	26.5783%
25	18.0000%	18.1442%	22.3889%	26.5360%
26	18.0000%	18.1294%	22.3605%	26.4915%
27	18.0000%	18.1130%	22.3304%	26.4449%
28	18.0000%	18.0952%	22.2986%	26.3968%
29	18.0000%	18.0761%	22.2654%	26.3472%
30	18.0000%	18.0559%	22.2311%	26.2964%
31	18.0000%	18.0347%	22.1957%	26.2446%
32	18.0000%	18.0126%	22.1594%	26.1920%
33	18.0000%	18.0000%	22.1224%	26.1387%
34	18.0000%	18.0000%	22.0847%	26.0848%
35	18.0000%	18.0000%	22.0464%	26.0305%
36	18.0000%	18.0000%	22.0077%	25.9759%
37	18.0000%	18.0000%	21.9686%	25.9210%
38	18.0000%	18.0000%	21.9292%	25.8659%
39	18.0000%	18.0000%	21.8895%	25.8106%
40	18.0000%	18.0000%	21.8496%	25.7553%
41	18.0000%	18.0000%	21.8095%	25.7000%
42	18.0000%	18.0000%	21.7693%	25.6447%
43	18.0000%	18.0000%	21.7290%	25.5894%
44	18.0000%	18.0000%	21.6886%	25.5343%
45	18.0000%	18.0000%	21.6483%	25.4793%
46	18.0000%	18.0000%	21.6079%	25.4245%
47	18.0000%	18.0000%	21.5679%	25.3699%
48	18.0000%	18.0000%	21.5273%	25.3155%
49	18.0000%	18.0000%	21.4871%	25.2613%
50	18.0000%	18.0000%	21.4469%	25.2074%

Figure: 7 TAC §84.201(d)(2)(B)(iii)

TERM - # OF MONTHS	ADD-ON RATES PER \$100.00 PER ANNUM			
	\$7.50	\$10.00	\$12.50	\$15.00
51	18.0000%	18.0000%	21.4069%	25.1537%
52	18.0000%	18.0000%	21.3670%	25.1003%
53	18.0000%	18.0000%	21.3272%	25.0473%
54	18.0000%	18.0000%	21.2876%	24.9945%
55	18.0000%	18.0000%	21.2481%	24.9420%
56	18.0000%	18.0000%	21.2088%	24.8898%
57	18.0000%	18.0000%	21.1696%	24.8380%
58	18.0000%	18.0000%	21.1307%	24.7865%
59	18.0000%	18.0000%	21.0919%	24.7354%
60	18.0000%	18.0000%	21.0533%	24.6845%
61	18.0000%	18.0000%	21.0149%	<del>24.6341%</del>
62	18.0000%	18.0000%	20.9767%	24.5839%
63	18.0000%	18.0000%	20.9387%	24.5342%
64	18.0000%	18.0000%	20.9009%	24.4847%
65	18.0000%	18.0000%	20.8633%	24.4357%
66	18.0000%	18.0000%	20.8259%	24.3870%
67	18.0000%	18.0000%	20.7888%	24.3386%
68	18.0000%	18.0000%	20.7518%	24.2906%
69	18.0000%	18.0000%	20.7151%	24.2430%
70	18.0000%	18.0000%	20.6786%	24.1957%
71	18.0000%	18.0000%	20.6423%	24.1488%
72	18.0000%	18.0000%	20.6063%	24.1022%
73	18.0000%	18.0000%	20.5705%	24.0559%
74	18.0000%	18.0000%	20.5349%	24.0101%
75	18.0000%	18.0000%	20.4995%	23.9645%
76	18.0000%	18.0000%	20.4643%	23.9194%
77	18.0000%	18.0000%	20.4294%	23.8745%
78	18.0000%	18.0000%	20.3947%	23.8300%
79	18.0000%	18.0000%	20.3602%	23.7859%
80	18.0000%	18.0000%	20.3259%	23.7421%
81	18.0000%	18.0000%	20.2919%	23.6986%
82	18.0000%	18.0000%	20.2581%	23.6555%
83	18.0000%	18.0000%	20.2245%	23.6127%
84	18.0000%	18.0000%	20.1911%	23.5702%

24.6341%

**Figure: 7 TAC §84.809(b)**

**MOTOR VEHICLE RETAIL INSTALLMENT SALES CONTRACT**

(Optional: DATE \_\_\_\_\_)  
 BUYER \_\_\_\_\_  
 ADDRESS \_\_\_\_\_  
 CITY \_\_\_\_\_ STATE \_\_\_\_\_ ZIP \_\_\_\_\_  
 PHONE \_\_\_\_\_

SELLER/CREDITOR \_\_\_\_\_  
 ADDRESS \_\_\_\_\_  
 CITY \_\_\_\_\_ STATE \_\_\_\_\_ ZIP \_\_\_\_\_  
 PHONE \_\_\_\_\_

The Buyer is referred to as "I" or "me." The Seller is referred to as "you" or "your." This contract may be transferred by the Seller.

**PROMISE TO PAY**

The credit price is shown below as the "Total Sales Price." The "Cash Price" is also shown below. By signing this contract, I choose to purchase the motor vehicle on credit according to the terms of this contract. I agree to pay you the Amount Financed, Finance Charge, and any other charges in this contract. I agree to make payments according to the Payment Schedule in this contract. If more than one person signs as a buyer, I agree to keep all the promises in this agreement even if the others do not.

I have thoroughly inspected, accepted, and approved the motor vehicle in all respects.

**MOTOR VEHICLE IDENTIFICATION**

Stock No.	Year	Make	Model	Vehicle Identification Number	License Number (if applicable)	<input type="checkbox"/> New <input type="checkbox"/> Demonstrator <input type="checkbox"/> Factory Official/Executive <input type="checkbox"/> Used	<b>USE FOR WHICH PURCHASED</b> <input type="checkbox"/> PERSONAL, FAMILY OR HOUSEHOLD <input type="checkbox"/> BUSINESS OR COMMERCIAL <input type="checkbox"/> AGRICULTURAL
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Trade-in: Year \_\_\_\_\_ Make \_\_\_\_\_ Model \_\_\_\_\_ VIN \_\_\_\_\_ License No. \_\_\_\_\_

<b>ANNUAL PERCENTAGE RATE</b> The cost of my credit as a yearly rate.  %	<b>FINANCE CHARGE</b> The dollar amount the credit will cost me.  \$	<b>Amount Financed</b> The amount of credit provided to me or on my behalf.  \$	<b>Total of Payments</b> The amount I will have paid after I have made all payments as scheduled.  \$	<b>Total Sale Price</b> The total cost of my purchase on credit, including down payment of \$ _____  \$
<b>My Payment Schedule will be:</b>				
<b>Number of Payments</b>	<b>Amount of Payments</b>	<b>When Payments Are Due</b>		

**Security:** You will have a security interest in the motor vehicle being purchased.

**Late Charge:** **[Sum of the periodic balances method:]** (Option A:) If you do not receive my entire payment within 15 days after it is due (10 days if I am buying a heavy commercial vehicle), I will pay a late charge at the rate of \_\_\_\_\_% per year on the past due amount. The late charge on the past due amount will be earned from the due date to the date that it is paid. (Option B:) If you do not receive my entire payment within 15 days after it is due (10 days if I am buying a heavy commercial vehicle), I will pay a late charge of \_\_\_\_\_% of the scheduled payment. **[Scheduled installment earnings or true daily earnings method:]** (Option A:) If I do not pay my entire payment within 15 days after it is due (10 days if I am buying a heavy commercial vehicle), I will pay a late charge on the past due amount at the contract rate. (Option B:) If you do not receive my entire payment within 15 days after it is due (10 days if I am buying a heavy commercial vehicle), I will pay a late charge at the rate of \_\_\_\_\_% per year on the late amount. The late charge on the past due amount will be earned from the due date to the date that it is paid. (Option C:) If you do not receive my entire payment within 15 days after it is due (10 days if I am buying a heavy commercial vehicle), I will pay a late charge of \_\_\_\_\_% of the scheduled payment.

**Prepayment:** **[True daily earnings method:]** If I pay all that I owe early, I will not have to pay a penalty. **[Sum of the periodic balances or scheduled installment earnings method:]** I can pay all that I owe early. If I do so, I can get a refund of part of the Finance Charge.

**Additional information:** I will refer to this document for information about nonpayment, default, security interests, any required repayment in full before the scheduled date, and prepayment refunds.



## ITEMIZATION OF AMOUNT FINANCED

1. Cash price [Optional additional description: "(including any accessories, services, and taxes)"] \$ \_\_\_\_\_(1)
  
2. Downpayment = \$ \_\_\_\_\_  
 [If netting add: (if negative, enter "0" and see Line 4.A. below)]  
 Gross trade-in \$ \_\_\_\_\_  
 - payoff by Seller \$ \_\_\_\_\_  
 = net trade-in \$ \_\_\_\_\_  
 [If not netting add: (if negative enter "0" and see Line 4.A. below)]  
 + cash \$ \_\_\_\_\_  
 + Mfrs. Rebate \$ \_\_\_\_\_  
 + other (describe) \_\_\_\_\_ \$ \_\_\_\_\_  
 Total downpayment \$ \_\_\_\_\_(2)
  
3. Unpaid balance of cash price (1 minus 2) \$ \_\_\_\_\_(3)
  
4. Other charges including amounts paid to others on my behalf (Seller may keep part of these amounts.):
  - A. Net trade-in payoff [Alternative caption: "prior credit or lease balance"] to \_\_\_\_\_ \$ \_\_\_\_\_
  - B. Cost of physical damage insurance paid to insurance company \$ \_\_\_\_\_
  - C. Cost of optional coverages with physical damage insurance paid to insurance company \$ \_\_\_\_\_
  - D. Cost of optional credit insurance paid to insurance company or companies \$ \_\_\_\_\_  
 Life \_\_\_\_\_  
 Disability \_\_\_\_\_
  - E. Debt cancellation agreement fee paid to the Seller \$ \_\_\_\_\_
  - F. Official fees paid to government agencies \$ \_\_\_\_\_
  - G. Dealer's inventory tax [Optional addition: (if not included in cash price)] \$ \_\_\_\_\_
  - H. Sales tax [Optional addition: (if not included in cash price)] \$ \_\_\_\_\_
  - I. Other taxes [Optional addition: (if not included in cash price)] \$ \_\_\_\_\_
  - J. Government license and registration fees \$ \_\_\_\_\_
  - K. Government certificate of title fee \$ \_\_\_\_\_
  - L. Government vehicle inspection fees \$ \_\_\_\_\_  
 to state \$ \_\_\_\_\_ to inspection station \$ \_\_\_\_\_
  - M. Deputy service fee paid to dealer \$ \_\_\_\_\_
  - N. **Documentary fee. A documentary fee is not an official fee. A documentary fee is not required by law, but may be charged to buyers for handling documents relating to the sale. A documentary fee may not exceed a reasonable amount agreed to by the parties. This notice is required by law. [Option to insert Spanish translation of disclosure here.]** \$ \_\_\_\_\_
  - O. Other charges (Seller must identify who is paid and describe purpose) \$ \_\_\_\_\_  
 to \_\_\_\_\_ for \_\_\_\_\_ \$ \_\_\_\_\_  
 to \_\_\_\_\_ for \_\_\_\_\_ \$ \_\_\_\_\_  
 to \_\_\_\_\_ for \_\_\_\_\_ \$ \_\_\_\_\_

Total other charges and amounts paid to others on my behalf \$ \_\_\_\_\_(4)
  
5. **Amount Financed** (3 + 4) \$ \_\_\_\_\_(5)

[Optional caption: Seller will pay taxes, title fee, license and registration fees, and part of the inspection fee to government agencies. Seller will retain the documentary fee and the deputy service fee. Seller may also retain part or all of the inspection fee, insurance, service contracts, and other charges.]

[Note: A creditor may delete portions of the figure applicable to any insurance premiums or debt cancellation fees that are not financed in the contract and may also delete other inapplicable portions. Under item 4, a creditor may add a line for "other insurance paid to insurance company."]

<b>DEFERRED DOWNPAYMENT(S)</b>	
AMOUNT	DATE DUE

**MODEL CLAUSE FOR PHYSICAL DAMAGE INSURANCE**

**PROPERTY INSURANCE:** I must keep the collateral insured against damage or loss in the amount I owe. I must keep this insurance until I have paid all that I owe under this contract. I may obtain property insurance from anyone I want or provide proof of insurance I already have. The insurer must be authorized to do business in Texas. The maximum deductible is \$ \_\_\_\_\_. I agree to give you proof of property insurance. I must name you as the person to be paid under the policy in the event of damage or loss.

*[Note: The following optional provisions are included for creditors who finance physical damage insurance. Creditors who do not routinely finance physical damage coverage, or who are not financing it in a particular transaction, may delete the remaining disclosures in this figure. A creditor may also delete those portions below that pertain to coverages it does not routinely finance, or that pertain to coverages that it is not financing in a particular transaction.]*

If any insurance is included below, policies or certificates from the insurance company will describe the terms, conditions and deductibles.

A. *Physical damage insurance.* If you obtain physical damage insurance, the coverages, terms and premiums for these terms are set forth below.

Coverage	Term in Months	Premium
Collision	_____	<input type="checkbox"/> \$ _____
Comprehensive	_____	<input type="checkbox"/> \$ _____
Fire, Theft, and Combined Additional Coverage	_____	<input type="checkbox"/> \$ _____
Other	_____	<input type="checkbox"/> \$ _____

B. *Optional coverages with physical damage insurance.* If I have chosen this insurance, the premiums for the initial \_\_\_\_\_ month term are itemized below. *[Note: Alternatively, these optional coverages may be disclosed as part of Figure: 7 TAC §84.808(12).]*

\$ \_\_\_\_\_ Towing and Labor Costs Reimbursement       \$ \_\_\_\_\_ Rental Reimbursement

\$ \_\_\_\_\_ Other: \_\_\_\_\_

If the box next to a premium for an insurance coverage included above is marked, that premium is not fixed or approved by the Texas Insurance Commissioner. If the premium is for a required coverage, I have the option, for a period of 10 days from the date I receive a copy of this contract, of furnishing that coverage through existing policies of insurance or by obtaining like coverage from any insurance company authorized to do business in Texas.

*I agree to purchase the above checked coverages.*

Buyer's Signature: \_\_\_\_\_ Date: \_\_\_\_\_

**MODEL CLAUSE FOR OPTIONAL INSURANCE COVERAGES AND DEBT CANCELLATION AGREEMENT**

*Optional insurance coverages and debt cancellation agreement.* The granting of credit will not be dependent on the purchase of either the insurance coverages or the debt cancellation agreement described below. It will not be provided unless I sign and agree to pay the extra cost. **[At creditor's option, the following may be added:]** The credit approval process will not be affected by whether or not I buy these insurance coverages or the debt cancellation agreement. *[Note: If this form is used for commercial transactions, a creditor has the option to bold the language in the preceding paragraph.]*

Coverage	Term in Months	Premium or Fee
GAP*	_____	<input type="checkbox"/> \$ _____
Invol. Unemployment	_____	<input type="checkbox"/> \$ _____
Debt cancellation agreement**	_____	\$ _____
Liability Insurance	_____	<input type="checkbox"/> \$ _____
	\$ _____ per person	\$ _____ property damage
	\$ _____ per accident	

\*If the motor vehicle is determined to be a total loss, GAP Insurance will pay you the difference between the proceeds of my basic collision policy and the amount I owe on the motor vehicle, minus my deductible. I can cancel that insurance without charge for 10 days from the date of this contract.

\*\*YOU WILL CANCEL CERTAIN AMOUNTS I OWE UNDER THIS CONTRACT IN THE CASE OF A TOTAL LOSS OR THEFT OF THE VEHICLE AS STATED IN THE DEBT CANCELLATION AGREEMENT. I can cancel the debt cancellation agreement without charge for a period of 30 days from the date of this contract, or for the period stated in the debt cancellation agreement, whichever period ends later.

If the box next to a premium for an insurance coverage included above is marked, that premium is not fixed or approved by the Texas Insurance Commissioner. A debt cancellation agreement is not insurance and is regulated by the Office of Consumer Credit Commissioner.

*For the premiums or fees included above, I want the related optional coverages and debt cancellation agreement.*

Buyer's Signature: \_\_\_\_\_ Date: \_\_\_\_\_

*[Note: A creditor who does not routinely finance optional coverages, or does not finance them in a particular transaction, may omit this figure. A creditor may also delete those portions of the figure that pertain to coverages it does not routinely finance, or that pertain to coverages that it is not financing in a particular transaction.]*

**MODEL CLAUSE FOR OPTIONAL CREDIT LIFE AND ACCIDENT AND HEALTH (DISABILITY) INSURANCE**

*Optional credit life and credit disability insurance.* Credit life insurance and credit disability insurance are not required to obtain credit. They will not be provided unless I sign and agree to pay the extra cost. **[At creditor's option, the following may be added:]** My decision to buy or not buy these insurance coverages will not be a factor in the credit approval process.

Credit Life, one buyer \$ \_\_\_\_\_  Credit Life, both buyers \$ \_\_\_\_\_ Term \_\_\_\_\_  
 Credit Disability, one buyer \$ \_\_\_\_\_  Credit Disability, both buyers \$ \_\_\_\_\_ Term \_\_\_\_\_

**[Optional additional sentence for balloon payment contracts:]** Credit Life Insurance is for the scheduled term of this contract. Credit Disability Insurance covers the first \_\_\_\_ payments and does not cover the last scheduled payment. **[Optional additional language for true daily earnings method contracts:]** Credit life insurance pays only the amount I would owe if I paid all my payments on time. Credit disability insurance does not cover any increase in my payment or in the number of payments.

If the term of the insurance is 121 months or longer, the premium is not fixed or approved by the Texas Insurance Commissioner.

I want the insurance indicated above.

Buyer's Signature: \_\_\_\_\_ Date: \_\_\_\_\_  
Co-Buyer's Signature: \_\_\_\_\_ Date: \_\_\_\_\_

**[Note: A creditor who does not routinely finance these coverages, or does not finance them in a particular transaction, may omit this figure. A creditor may also delete those portions of the figure that pertain to coverages it does not routinely finance, or that pertain to coverages that it is not financing in a particular transaction.]**

**LIABILITY INSURANCE**

(OPTION A) THIS CONTRACT DOES NOT INCLUDE INSURANCE COVERAGE FOR PERSONAL LIABILITY AND PROPERTY DAMAGE CAUSED TO OTHERS.

(OPTION B) UNLESS A CHARGE FOR LIABILITY INSURANCE IS INCLUDED IN THE ITEMIZATION OF AMOUNT FINANCED, LIABILITY INSURANCE COVERAGE FOR BODILY INJURY AND PROPERTY DAMAGE CAUSED TO OTHERS IS NOT INCLUDED IN THIS CONTRACT.

(OPTION C) UNLESS A CHARGE FOR LIABILITY INSURANCE IS INCLUDED IN THE ITEMIZATION OF AMOUNT FINANCED, ANY INSURANCE REFERRED TO IN THIS CONTRACT DOES NOT INCLUDE COVERAGE FOR PERSONAL LIABILITY AND PROPERTY DAMAGE CAUSED TO OTHERS.

Any change to this contract must be in writing. Both you and I must sign it. No oral changes to this contract are enforceable.

\_\_\_\_\_ Buyer \_\_\_\_\_ Co-Buyer

**HOW YOU FIGURE THE FINANCE CHARGE**

**[Regular transaction using sum of the periodic balances method:]** (Option A<sub>1</sub>: Sales Tax Advance) You figure the Finance Charge using the add-on method as defined by the Texas Finance Commission Rule. Add-on Finance Charge is calculated on the full amount of the unpaid principal balance and added as a lump sum to the unpaid principal balance for the full term of the contract. (Option A<sub>2</sub>: Sales Tax Advance) The Finance Charge will be calculated by using the add-on method. Add-on Finance Charge is calculated on the full amount of the unpaid principal balance and added as a lump sum to the unpaid principal balance for the full term of the contract. The add-on Finance Charge is calculated at a rate of \$\_\_\_\_ per \$100.00 per year. This rate is not the same as the Annual Percentage Rate. (Option B: Deferred Sales Tax) The Finance Charge will be calculated by using the add-on method. Add-on Finance Charge is calculated on the full amount of the unpaid principal balance subject to a finance charge and added as a lump sum to the unpaid principal balance subject to a Finance Charge for the full term of the contract. The add-on finance charge is calculated at a rate of \$\_\_\_\_ per \$100.00 per year. This rate is not the same as the Annual Percentage Rate.

**[True daily earnings method:]** (Option A<sub>1</sub>: Sales Tax Advance) You figure the Finance Charge using the true daily earnings method as defined by the Texas Finance Code. Under the true daily earnings method, the Finance Charge will be figured by applying the daily rate to the unpaid portion of the Amount Financed for the number of days the unpaid portion of the Amount Financed is outstanding. The daily rate is 1/365th of the Annual Percentage Rate. The unpaid portion of the Amount Financed does not include late charges or returned check charges. (Option A<sub>2</sub>: Sales Tax Advance) The contract rate is \_\_\_\_%. This contract rate may not be the same as the Annual Percentage Rate. You will figure the Finance Charge by applying the true daily earnings method as defined by the Texas Finance Code to the unpaid portion of the principal balance. The daily rate is 1/365th of the contract rate. The unpaid principal balance does not include the late charges or returned check charges. (Option B: Deferred Sales Tax) The contract rate is \_\_\_\_%. This contract rate may not be the same as the Annual Percentage Rate. You will figure the Finance Charge by applying the true daily earnings method as defined by the Texas Finance Code to the unpaid portion of the principal balance subject to a Finance Charge. The daily rate is 1/365th of the contract rate. The unpaid principal balance subject to a finance charge does not include the late charges, sales tax, or returned check charges.

**[Scheduled installment earnings method:]** (Option A<sub>1</sub>: Sales Tax Advance) You figure the Finance Charge using the scheduled installment earnings method as defined by the Texas Finance Code. Under the scheduled installment earnings method, the Finance Charge is figured by applying the daily rate to the unpaid portion of the Amount Financed as if each payment will be made on its scheduled payment date. The daily rate is 1/365th of the Annual Percentage Rate. The unpaid portion of the Amount Financed does not include late charges or returned check charges. (Option A<sub>2</sub>: Sales Tax Advance) The contract rate is \_\_\_\_%. This contract rate may not be the same as the Annual Percentage Rate. You will figure the Finance Charge by applying the scheduled installment earnings method as defined by the Texas Finance Code to the unpaid portion of the principal balance. You based the Finance Charge, Total of Payments, and Total Sale Price as if all payments were made as scheduled. The unpaid principal balance does not include the late charges or returned check charges. (Option B: Deferred Sales Tax) The contract rate is \_\_\_\_%. This contract rate may not be the same as the Annual Percentage Rate. You figured the Finance Charge by applying the scheduled installment earnings method as defined by the Texas Finance Code to the unpaid portion of the principal balance subject to a Finance Charge. You based the Finance Charge, Total of Payments, and Total Sale Price as if all payments were made as scheduled. The unpaid principal balance subject to a Finance Charge does not include the late charges, sales tax, or returned check charges.

**CONSUMER WARNING**

**[Scheduled Installment Earnings Method:] Notice to the buyer - I will not sign this contract before I read it or if it contains any blank spaces. I am entitled to a copy of the contract I sign. Under the law, I have the right to pay off in advance all that I owe and under certain conditions may obtain a partial refund of the finance charge. I will keep this contract to protect my legal rights.**

**[True Daily Earnings Method:] Notice to the buyer - I will not sign this contract before I read it or if it contains any blank spaces. I am entitled to a copy of the contract I sign. Under the law, I have the right to pay off in advance all that I owe and under certain conditions may save a portion of the finance charge. I will keep this contract to protect my legal rights.**

**BUYER'S ACKNOWLEDGEMENT OF CONTRACT RECEIPT**

(OPTION A: **If the buyer's signature is dated**) I AGREE TO THE TERMS OF THIS CONTRACT. WHEN I SIGN THE CONTRACT, I WILL RECEIVE THE COMPLETED CONTRACT. IF NOT, I UNDERSTAND THAT A COPY WILL BE MAILED TO ME WITHIN A REASONABLE TIME.

(OPTION B: **If the buyer's signature is not dated**) I AGREE TO THE TERMS OF THIS CONTRACT. I CONFIRM THAT BEFORE I SIGNED THIS CONTRACT, YOU GAVE IT TO ME, AND I WAS FREE TO TAKE IT AND REVIEW IT. I RECEIVED THE COMPLETED CONTRACT ON \_\_\_\_\_ (MO.) (DAY) (YR.)

(OPTION C: **If the buyer's signature is not dated**) I SIGNED THIS CONTRACT ON \_\_\_\_\_ AND A COPY WILL BE MAILED TO ME WITHIN A REASONABLE TIME.

(OPTION D: **If the buyer's signature is dated or not dated**) I AGREE TO THE TERMS OF THIS CONTRACT AND ACKNOWLEDGE RECEIPT OF A COMPLETED COPY OF IT. I CONFIRM THAT BEFORE I SIGNED THIS CONTRACT, YOU GAVE IT TO ME, AND I WAS FREE TO TAKE IT AND REVIEW IT.

\_\_\_\_\_  
Buyer  
\_\_\_\_\_  
Co-Buyer  
\_\_\_\_\_  
Date  
\_\_\_\_\_  
Date  
\_\_\_\_\_  
Seller  
\_\_\_\_\_  
Date

THIS CONTRACT IS NOT VALID UNTIL YOU AND I SIGN IT.

**OCCC NOTICE. For questions or complaints about this contract, contact (insert name of creditor) at (insert creditor's phone number and, at creditor's option, one or more of the following: mailing address, fax number, website, e-mail address). The Office of Consumer Credit Commissioner (OCCC) is a state agency, and it enforces certain laws that apply to this contract. If a complaint or question cannot be resolved by contacting the creditor, consumers can contact the OCCC to file a complaint or ask a general credit-related question. OCCC address: 2601 N. Lamar Blvd., Austin, Texas 78705. Phone: (800) 538-1579. Fax: (512) 936-7610. Website: [occc.texas.gov](http://occc.texas.gov). E-mail: [consumer.complaints@occc.texas.gov](mailto:consumer.complaints@occc.texas.gov).**

**OTHER TERMS AND CONDITIONS**

**[Sum of the periodic balances method and scheduled installment earnings method:] HOW YOU CALCULATE MY FINANCE CHARGE REFUND IF I PREPAY** If I prepay in full, I may be entitled to a refund of part of the Finance Charge. **[Sum of the periodic balances method:]** You will figure the Finance Charge refund by using the sum of the periodic balances method as defined by the Texas Finance Commission rule. (Optional: You will figure the Finance Charge refund using the sum of the periodic balances method as defined by the Texas Finance Commission rule. The Finance Charge Refund will be computed upon the entire Finance Charge minus the Acquisition Cost. I will not get a refund if it is less than \$1.00.) (Additional Option for heavy commercial vehicle: You will figure the Finance Charge refund using the sum of the periodic balances method as defined by the Texas Finance Commission rule. The Finance Charge refund will be computed based upon the entire Finance Charge calculated using the sum of the periodic balances method. Then you will subtract the Acquisition Cost from that amount. I will not get a refund if it is less than \$1.00.) **[Scheduled installment earnings method:]** You will figure the Finance Charge refund by the scheduled installment earnings method as defined by the Texas Finance Commission rule. (Optional clause for sales tax advance: You will figure my refund by deducting earned finance charges from the total Finance Charge. You will figure earned finance charges by applying a daily rate to the unpaid principal balance as if I paid all my payments on the date due. If I prepay between payment due dates, you will figure earned finance charges for the partial payment period. You do this by counting the number of days from the due date of the prior payment through the date I prepay. You then multiply that number of days times the daily rate. The daily rate is 1/365th of the Annual Percentage Rate. You will also add the acquisition cost of \$25 (or \$150 for a heavy commercial vehicle) to the earned finance charge, so long as the total of the earned finance charge and the acquisition cost does not exceed the total Finance Charge disclosed in the contract. I will not get a refund if it is less than \$1.00.) (Optional clause for deferred sales tax: You will figure my refund by deducting earned finance charges from the total Finance Charge. You will figure earned finance charges by applying a daily rate to the unpaid principal balance subject to a finance charge as if I paid all my payments on the date due. If I prepay between payment due dates, you will figure earned finance charges for the partial payment period. You do this by counting the number of days from the due date of the prior payment through the date I prepay. You then multiply that number of days times the daily rate. The daily rate is 1/365th of the contract rate shown on the contract. You will also add the acquisition cost of \$25 (or \$150 for a heavy commercial vehicle) to the earned finance charge, so long as the total of the earned finance charge and the acquisition cost does not exceed the total Finance Charge disclosed in the contract. I will not get a refund if it is less than \$1.00.) **[Flexible contract forms designed to accommodate alternative methods:]** You will figure the Finance Charge refund using the sum of the periodic balances method as defined by the Texas Finance Commission rule if: this contract is a Regular Payment Contract as defined by the Texas Finance Commission rule, and this contract does not have a term greater than 61 months. If this contract is not a Regular Payment Contract or if it has a term greater

than 61 months, you will figure the Finance Charge refund using the scheduled installment earnings method as defined by the Texas Finance Commission rule. I will not get a refund if it is less than \$1.00.

**HOW YOU WILL APPLY MY PAYMENTS** [True daily earnings method:] You will apply my payments in the following order:

1. earned but unpaid finance charge; and
2. anything else I owe under this agreement.

**HOW LATE OR EARLY PAYMENTS CHANGE WHAT I MUST PAY** [True daily earnings method:] You based the Finance Charge, Total of Payments, and Total Sale Price as if all payments were made as scheduled. If I do not timely make all my payments in at least the correct amount, I will have to pay more Finance Charge and my last payment will be more than my final scheduled payment. If I make scheduled payments early, my Finance Charge will be reduced (less). If I make my scheduled payments late, my Finance Charge will increase.

**INTEREST AFTER MATURITY** [Scheduled installment earnings or sum of the periodic balances method:] If I don't pay all I owe when the final payment becomes due, or I do not pay all I owe if you demand payment in full under this contract, I will pay an interest charge on the amount that is still unpaid. That interest charge will be the higher rate of 18% per year or the maximum rate allowed by law, if that rate is higher. The interest charge for this amount will begin the day after the final payment becomes due.

**SPECIAL PROVISIONS FOR BALLOON PAYMENT CONTRACTS** A balloon payment is a scheduled payment more than twice the amount of the average of my scheduled payments, other than the downpayment, that are due before the balloon payment.

**(Paying the balloon payment under Texas Finance Code §348.123(a))** I can pay all I owe when the balloon payment is due and keep my motor vehicle.

**(Option A: Refinancing the balloon payment)** If I buy the motor vehicle primarily for personal, family, or household use, I can enter into a new written agreement to refinance the balloon payment when due without a refinancing fee. If I refinance the balloon payment, my periodic payments will not be larger or more often than the payments in this contract. The annual percentage rate in the new agreement will not be more than the Annual Percentage Rate in this contract. This provision does not apply if my Payment Schedule has been adjusted to my seasonal or irregular income.

**(Option B: Special right to refinance balloon payment under Texas Finance Code §348.123(b)(5)(b)(iii))** I can enter into a new agreement to refinance my last installment if I am not in default. I can refinance at an annual percentage rate up to 5 points greater than the Annual Percentage Rate shown in this contract. The rate will not be more than applicable law allows. The new agreement will allow me to refinance the last installment for at least 24 months with equal monthly payments. You and I can also agree to refinance the last installment over another time period or on a different payment schedule.

**AGREEMENT TO KEEP MOTOR VEHICLE INSURED** I agree to have physical damage insurance covering loss or damage to the vehicle for the term of this contract. The insurance must cover your interest in the vehicle. The insurer must be authorized to do business in Texas. (Optional Provisions: The insurance must include collision coverage and either comprehensive or fire, theft, and combined additional coverage. The maximum deductible is \$\_\_\_\_\_.)

**YOUR RIGHT TO PURCHASE REQUIRED INSURANCE IF I FAIL TO KEEP THE MOTOR VEHICLE INSURED** If I fail to give you proof that I have insurance, you may buy physical damage insurance. You may buy insurance that covers my interest and your interest in the motor vehicle, or you may buy insurance that covers your interest only. I will pay the premium for the insurance and a finance charge at the contract rate. If you obtain collateral protection insurance, you will mail notice to my last known address shown in your file.

**PHYSICAL DAMAGE INSURANCE PROCEEDS** I must use physical damage insurance proceeds to repair the motor vehicle, unless you agree otherwise in writing. However, if the motor vehicle is a total loss, I must use the insurance proceeds to pay what I owe you. I agree that you can use any proceeds from insurance to repair the motor vehicle, or you may reduce what I owe under this contract. If you apply insurance proceeds to the amount I owe, they will be applied to my payments in the reverse order of when they are due. If my insurance on the motor vehicle or credit insurance doesn't pay all I owe, I must pay what is still owed. Once all amounts owed under this contract are paid, any remaining proceeds will be paid to me.

**RETURNED INSURANCE PREMIUMS AND SERVICE CONTRACT CHARGES** [True daily earnings method:] If you get a refund on insurance or service contracts, or other contracts included in the cash price, you will subtract it from what I owe. Once all amounts owed under this contract are paid, any remaining refunds will be paid to me. [Scheduled installment earnings method or sum of the periodic balances:] If you get a refund of insurance or service contract charges, you will apply it and the unearned finance charges on it in the reverse order of the payments to as many of my payments as it will cover. Once all amounts owed under this contract are paid, any remaining refunds will be paid to me.

**APPLICATION OF CREDITS** Any credit that reduces my debt will apply to my payments in the reverse order of when they are due, unless you decide to apply it to another part of my debt. The amount of the credit and all finance charge or interest on the credit will be applied to my payments in the reverse order of my payments.

**TRANSFER OF RIGHTS** You may transfer this contract to another person. That person will then have all your rights, privileges, and remedies.

**SECURITY INTEREST** To secure all I owe on this contract and all my promises in it, I give you a security interest in:

- the motor vehicle including all accessories and parts now or later attached (Optional: and any other goods financed in this contract);
- all insurance proceeds and other proceeds received for the motor vehicle;
- any insurance policy, service contract or other contract financed by you and any proceeds of those contracts; and
- any refunds of charges included in this contract for insurance, or service contracts.

This security interest also secures any extension or modification of this contract. The certificate of title must show your security interest in the motor vehicle.

**USE AND TRANSFER OF THE MOTOR VEHICLE** I will not sell or transfer the motor vehicle without your written permission. If I do sell or transfer the motor vehicle, this will not release me from my obligations under this contract, and you may charge me a transfer of equity fee of \$25 (\$50 for a heavy

commercial vehicle). I will promptly tell you in writing if I change my address or the address where I keep the motor vehicle. I will not remove the motor vehicle (Optional: motor vehicle or other collateral) from Texas for more than 30 days unless I first get your written permission.

**CARE OF THE MOTOR VEHICLE** I agree to keep the motor vehicle free from all liens and claims except those that secure this contract. I will timely pay all taxes, fines, or charges pertaining to the motor vehicle. I will keep the motor vehicle in good repair. I will not allow the motor vehicle to be seized or placed in jeopardy or use it illegally. I must pay all I owe even if the motor vehicle is lost, damaged or destroyed. If a third party takes a lien or claim against or possession of the motor vehicle, you may pay the third party any cost required to free the motor vehicle from all liens or claims. You may immediately demand that I pay you the amount paid to the third party for the motor vehicle. If I do not pay this amount, you may repossess the motor vehicle and add that amount to the amount I owe. If you do not repossess the motor vehicle, you may still demand that I pay you, but you cannot compute a finance charge on this amount.

**DEFAULT** I will be in default if:

- I do not pay any amount when it is due;
- I break any of my promises in this agreement;
- I allow a judgment to be entered against me or the collateral; or
- I file bankruptcy, bankruptcy is filed against me, or the motor vehicle becomes involved in a bankruptcy.

If I default, you can exercise your rights under this contract and your other rights under the law.

**LATE CHARGE** I will pay you a late charge as agreed to in this contract when it accrues.

**REPOSSESSION** If I default, you may repossess the motor vehicle from me if you do so peacefully. If any personal items are in the motor vehicle, you can store them for me and give me written notice at my last address shown on your records within 15 days of discovering that you have my personal items. If I do not ask for these items back within 31 days from the day you mail or deliver the notice to me, you may dispose of them as applicable law allows. Any accessory, equipment, or replacement part stays with the motor vehicle.

**MY RIGHT TO REDEEM** If you take my motor vehicle, you will tell me how much I have to pay to get it back. If I do not pay you to get the motor vehicle back, you can sell it or take other action allowed by law. My right to redeem ends when the motor vehicle is sold or you have entered into a contract for sale or accepted the collateral as full or partial satisfaction of a contract.

**DISPOSITION OF THE MOTOR VEHICLE** If I don't pay you to get the motor vehicle back, you can sell it or take other action allowed by law. If you sell the motor vehicle in a public or private sale, you will send me notice at least 10 days before you sell it. You can use the money you get from selling it to pay allowed expenses and to reduce the amount I owe. Allowed expenses are expenses you pay as a direct result of taking the motor vehicle, holding it, preparing it for sale, and selling it. If any money is left, you will pay it to me unless you must pay it to someone else. If the money from the sale is not enough to pay all I owe, I must pay the rest of what I owe you plus interest. If you take or sell the motor vehicle, I will give you the certificate of title and any other document required by state law to record transfer of title.

**COLLECTION COSTS** If you hire an attorney who is not your employee to enforce this contract, I will pay reasonable attorney's fees and court costs as the applicable law allows.

**CANCELLATION OF OPTIONAL INSURANCE AND SERVICE CONTRACTS** This contract may contain charges for insurance or service contracts or for services included in the cash price. If I default, I agree that you can claim benefits under these contracts to the extent allowable, and terminate them to obtain refunds of unearned charges to reduce what I owe or repair the motor vehicle.

**YOUR RIGHT TO DEMAND PAYMENT IN FULL** If I default, or you believe in good faith that I am not going to keep any of my promises, you can demand that I immediately pay all that I owe. You don't have to give me notice that you are demanding or intend to demand immediate payment of all that I owe.

**IF YOU DEMAND I PAY ALL I OWE** [Sum of the periodic balances method or scheduled installment earnings method:] If you demand that I pay you all that I owe, you will give me a credit of part of the Finance Charge as if I had prepaid in full.

**SERVICING AND COLLECTION CONTACT** You may try to contact me at any mailing address, e-mail address, or phone number I give you, as the law allows. You may try to contact me in writing (including mail, e-mail, and text messages) and by phone (including prerecorded or artificial voice messages and automatic telephone dialing systems).

**RETURNED CHECK FEE** I agree to pay you a fee of up to \$30 for a returned check. You can add the fee to the amount I owe or collect it separately.

**INTEGRATION AND SEVERABILITY CLAUSE** This contract contains the entire agreement between you and me relating to the sale and financing of the motor vehicle. If any part of this contract is not valid, all other parts stay valid.

**LEGAL LIMITATIONS ON YOUR RIGHTS** If you don't enforce your rights every time, you can still enforce them later. You will exercise all of your rights in a lawful way. I don't have to pay finance charge or other amounts that are more than the law allows. This provision prevails over all other parts of this contract and over all your other acts.

**APPLICABLE LAW** Federal law and Texas law apply to this contract.

**SELLER'S DISCLAIMER OF WARRANTIES** Unless the seller makes a written warranty, or enters into a service contract within 90 days from the date of this contract, the seller makes no warranties, express or implied, on the motor vehicle, and there will be no implied warranties of merchantability or of fitness for a particular purpose. This provision does not affect any warranties covering the motor vehicle that the motor vehicle manufacturer may provide.

**NOTICE: ANY HOLDER OF THIS CONSUMER CREDIT CONTRACT IS SUBJECT TO ALL CLAIMS AND DEFENSES WHICH THE DEBTOR COULD ASSERT AGAINST THE SELLER OF GOODS OR SERVICES OBTAINED PURSUANT HERETO OR WITH THE PROCEEDS HEREOF. RECOVERY HEREUNDER BY THE DEBTOR SHALL NOT EXCEED AMOUNTS PAID BY THE DEBTOR HEREUNDER. (This provision applies to this contract only if the motor vehicle financed in the contract was purchased for personal, family, or household use.)**

The rates of this contract are negotiable. The seller may assign or otherwise sell this contract and receive a discount or other payment for the difference between the rate, charges, or balance.

*In this box only, the word "you" refers to the Buyer.*

Used Car Buyers Guide. The information you see on the window form for this vehicle is part of this contract. Information on the window form overrides any contrary provisions in the contract of sale.

Spanish Translation:

Guía para compradores de vehículos usados. La información que ve en el formulario de la ventanilla para este vehículo forma parte del presente contrato. La información del formulario de la ventanilla deja sin efecto toda disposición en contrario contenida en el contrato de venta.