

Title 7, Texas Administrative Code
Part 5. Office of Consumer Credit Commissioner
Chapter 86. Retail Creditors
Subchapter B. Retail Installment Contract

The Finance Commission of Texas (commission) adopts amendments to §86.201 (relating to Documentary Fee) in 7 TAC Chapter 86, concerning Retail Creditors.

The commission adopts the amendments to §86.201 without changes to the proposed text as published in the May 3, 2024, issue of the Texas Register (49 TexReg 2871).

The commission received no official comments on the proposed amendments.

The rule at §86.201 relates to documentary fees for retail installment transactions under Texas Finance Code, Chapter 345. In general, the purpose of the rule changes to 7 TAC §86.201 is to adjust the maximum documentary fee amount under the rule.

The Office of Consumer Credit Commissioner (OCCC) distributed an early precomment draft of proposed changes to interested stakeholders for review, and then held a stakeholder webinar regarding the rule changes. The OCCC received three written precomments on the rule text draft. The OCCC and the commission appreciate the thoughtful input provided by stakeholders.

Texas Finance Code, Chapter 345 governs retail installment transactions to purchase goods other than motor vehicles. Under Texas Finance Code, §345.251(a), a retail seller may charge a documentary fee in a retail installment transaction to purchase a motorcycle, moped, all-terrain vehicle, boat, boat motor, boat trailer, or towable recreational vehicle. Under Texas Finance

Code, §345.251(b)(2), the documentary fee "may not exceed a reasonable amount agreed to by the retail seller and retail buyer for the documentary services, subject to a reasonable maximum amount set by rule by the finance commission."

Currently, §86.201 describes the maximum documentary fee in a Chapter 345 retail installment transaction. The rule distinguishes between retail installment transactions for covered land vehicles (i.e., motorcycles, mopeds, all-terrain vehicles, boat trailers, and towable recreational vehicles) and covered watercraft (i.e., boats and boat motors). Current §86.201(c) contains a \$125 maximum documentary fee for the purchase of one or more covered land vehicles. Current §86.201(d) contains a \$125 maximum documentary fee for the purchase of one or more covered watercraft. Current §86.201(e) contains a \$175 maximum documentary fee for the purchase of one or more covered land vehicles and one or more covered watercraft.

In 2013, the commission adopted the \$125 and \$175 amounts in §86.201. The amounts have not been adjusted since then. As the commission explained in its preamble to the 2013 adoption, the rule's fee amounts and terminology are intended to correspond to different sets of titling and registration requirements. Land vehicles are subject to titling and registration requirements administered by the Texas Department of Motor Vehicles (TxDMV) under Texas Transportation Code, Chapters 501 and 502. Watercraft are subject to titling and registration requirements administered by the

Texas Parks and Wildlife Department (TPWD) under Texas Parks and Wildlife Code, Chapter 31. As the commission explained, the higher \$175 amount for the purchase of both types of vehicles "is intended to compensate the retail creditor for the documents and procedures that are necessary to title items with both TxDMV and TPWD." 38 TexReg 5707 (Aug. 30, 2013).

Adopted amendments throughout §86.201 adjust the maximum documentary fee for a Chapter 345 retail installment transaction. An amendment to §86.201(c) adjusts the documentary fee for a covered land vehicle from \$125 to \$200. An amendment to §86.201(d) adjusts the documentary fee for covered watercraft from \$125 to \$200. An amendment to §86.201(e) adjusts the documentary fee for both a covered land vehicle and covered watercraft from \$175 to \$250.

The commission and the OCCC believe that now is an appropriate time to revisit the maximum documentary fee amounts in §86.201 and to adjust them. The \$75 adjustment corresponds to a similar adjustment recently adopted by the commission in amendments to 7 TAC §84.205 (relating to Documentary Fee), concerning documentary fees for motor vehicles. See 49 TexReg 4903 (July 5, 2024). The amendments to §84.205 adjusted the motor vehicle documentary fee amount considered reasonable from \$150 to \$225. That adoption was based on the OCCC's ongoing review of documentary fee cost analyses, as well as documentary fee amounts found to be reasonable in a recent contested case.

The commission and the OCCC believe that a corresponding \$75 adjustment is

appropriate for covered land vehicles and watercraft under §86.201. The \$200 amount is appropriate because these vehicles are subject to similar document-related requirements that apply to motor vehicles; many, but not all, of the motor vehicle document requirements apply to vehicles under §86.201. For example, vehicles under §86.201 are subject to titling and registration requirements (as described earlier in this preamble) but generally are not subject to the requirements to provide a new car window sticker or a used car buyers guide. See 15 U.S.C. §1232 (requirement to provide new car window sticker applies to automobiles), Federal Trade Commission Used Car Rule, 16 C.F.R. §455.1(d)(2) (requirement to provide used car buyers guide applies to certain motorized vehicles other than motorcycles).

In informal precomments, stakeholders expressed general support for the proposed amendments. Two boating trade associations filed precomments supporting the proposed amendments. A third informal precomment was filed on behalf of a motorcycle trade association, a recreational vehicle association, and two boating trade associations. This precomment stated that the associations support the proposed amendments and stated: "We can confirm that our dealers conduct the same required administrative work to complete transactions as do automobile dealers: vehicle titling (which sometimes requires in-person visits to county offices), vehicle registration, submitting taxes, obtaining and mailing license plates, ensuring liens are correctly recorded and released, verifying a trade-in's value and whether it has open recalls, etc." The precomment also stated: "Costs have increased since 2013 due to general inflation, specific cost increases and heightened state and federal regulatory requirements. We

have seen increased costs across multiple categories, including wages (up over 50% in some labor markets), real property leasing rates, technology (with specific new hardware, software and printers now mandated) and postage."

The rule amendments are adopted under Texas Finance Code, §345.251(b)(2), which authorizes the Finance Commission to adopt a rule establishing a reasonable maximum documentary fee amount, and Texas Finance Code, §345.251(e), which authorizes the commission to adopt rules to enforce Texas Finance Code, §345.251. In addition, Texas Finance Code, §11.304 authorizes the commission to adopt rules necessary to supervise the OCCC and ensure compliance with Texas Finance Code, Title 4.

The statutory provisions affected by the adoption are contained in Texas Finance Code, Chapter 345.

§86.201. Documentary Fee

(a) Purpose. The purpose of this section is to specify the maximum documentary fee in a retail installment transaction for the sale of a motorcycle, moped, all-terrain vehicle, boat, boat motor, boat trailer, or towable recreational vehicle, as provided by Texas Finance Code, §345.251.

(b) Definitions.

(1) All-terrain vehicle--Has the meaning provided by Texas Transportation Code, §551A.001(1).

(2) Boat--A vessel, as described by Texas Parks and Wildlife Code, §31.003(2).

(3) Boat motor--An outboard motor, as described by Texas Parks and Wildlife Code, §31.003(13).

(4) Covered land vehicle--A motorcycle, moped, all-terrain vehicle, boat trailer, or towable recreational vehicle.

(5) Covered watercraft--A boat or boat motor.

(6) Moped--Has the meaning provided by Texas Transportation Code, §541.201(8).

(7) Motorcycle--Has the meaning provided by Texas Transportation Code, §541.201(9).

(8) Retail installment contract--Has the meaning provided by Texas Finance Code, §345.001(6) and refers to one or more instruments entered into that evidence a secured or unsecured retail installment transaction for the sale of goods under Texas Finance Code, Chapter 345.

(9) Towable recreational vehicle--Has the meaning provided by Texas Finance Code, §348.001(10-a).

(c) Contract for covered land vehicles only. For a retail installment contract for the purchase of one or more covered land vehicles, the reasonable maximum amount of the documentary fee is \$200 [~~\$125~~].

(d) Contract for covered watercraft only. For a retail installment contract for the purchase of one or more covered watercraft, the reasonable maximum amount of the documentary fee is \$200 [~~\$125~~].

(e) Contract for both covered land vehicles and covered watercraft. For a retail

installment contract for the purchase of one or more covered land vehicles and one or more covered watercraft, the reasonable maximum amount of the documentary fee is \$250 [~~\$175~~].

Certification

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas on August 16, 2024.

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Office of Consumer Credit Commissioner