TEXAS OFFICE OF CONSUMER CREDIT COMMISSIONER

Motor Vehicle Advisory Bulletin: Substitute Insurance Requirements

This bulletin describes requirements for placing substitute insurance in a motor vehicle retail installment transaction when a buyer fails to maintain property insurance on the vehicle.

Recently, many providers have offered substitute insurance or similar programs to motor vehicle dealers. The OCCC strongly encourages dealers to review these programs carefully and to exercise due diligence, so that dealers can ensure compliance with the Texas Finance Code, the Texas Insurance Code, and other applicable laws. Dealers may wish to consult legal counsel before adopting a new insurance program.

This bulletin is just a summary. Businesses are responsible for ensuring that they review and comply with all applicable laws, not just the laws described in this bulletin.

1. What is substitute insurance?

In motor vehicle retail installment transactions, the Texas Finance Code allows creditors to require a buyer to insure the purchased vehicle with property insurance. *See* Texas Finance Code Section 348.201.

If the buyer fails to maintain property insurance, then the creditor may place substitute insurance. *See* Texas Finance Code Section 348.207. This bulletin will use the term "substitute insurance" to refer to this type of insurance, although it may have a variety of names in the industry (such as "force-placed insurance" or "CPI").

2. What are the Finance Code's general limitations on required property insurance?

Under Section 348.201 of the Texas Finance Code:

- The required property insurance must bear a reasonable relationship to:
  - the amount, term, and conditions of the retail installment contract, and
  - the existing hazards or risk of loss, damage, or destruction.
- The insurance may not:
  - cover unusual or exceptional risks, or
  - provide coverage not ordinarily included in policies issued to the public.

Under Section 348.209, if insurance is included as an itemized charge, then:

- The insurance must be written at lawful rates, in accordance with the Texas Insurance Code, by a company authorized to do business in Texas.
- The retail installment contract must identify the type of coverage, the term of coverage, and the amount of the premium for coverage.

Under Section 348.215, a financing entity may not require that the buyer purchase insurance coverage from a particular source.

3. What are the Finance Code's general requirements for substitute insurance?

Under Section 348.207 of the Finance Code, substitute insurance must be written at lawful rates in accordance with the Insurance Code by a company authorized to do business in Texas.

In addition, Chapter 307 of the Finance Code contains requirements for collateral protection insurance, including:

- a general 12-month limitation on the term of collateral protection insurance,
- a requirement to provide notice to the debtor before placing the insurance,
- a requirement to send notice to the debtor within 31 days after placing the insurance, and
- a requirement to cancel the collateral protection insurance if the debtor shows evidence of obtaining required property insurance.

4. What information might the OCCC request in examinations?

During periodic examinations of motor vehicle dealers, the OCCC may request records and information relating to substitute insurance, in order to ensure compliance with the Finance Code. This may include the following:

- The OCCC may request the full retail installment transaction file and full retail installment contract, including any clause or addendum related to property insurance or substitute insurance.
- The OCCC may request a copy of any policy issued to or on behalf of a buyer.
- The OCCC may request information from dealers about which provider wrote a particular insurance policy and whether the provider is authorized to do business in Texas.
- The OCCC may request information from dealers about whether particular rates are authorized by the Insurance Code.

The OCCC encourages dealers to carefully review any substitute insurance programs to ensure that they can provide this information on request. Dealers are required to maintain transaction records and to provide this information to the OCCC upon request under Chapter 348 and its implementing rules.

5. What are the legal consequences if a dealer does not comply with the requirements?

If a dealer places insurance that violates the Finance Code's requirements, this could potentially result in the dealer being required to make refunds and cease placing the insurance product.

For example, in 2013, a Texas court of appeals upheld a district court's ruling that a "Collateral Protection Coverage" program was the unauthorized business of insurance. *SideCars, Inc. v. Tex. Dept. of Ins.*, 2013 WL 1395189 (Tex. App.—Austin 2013, pet. denied). This led to an OCCC enforcement case requiring a car dealer to refund premiums collected for the unauthorized product.

Once again, the OCCC strongly encourages dealers to review these insurance programs carefully and to exercise due diligence. Dealers may wish to consult legal counsel before adopting a new insurance program.