

Title 7, Texas Administrative Code
Part 5. Office of Consumer Credit Commissioner
Chapter 86. Retail Creditors and Commercial Sales-Based Financing
Subchapter C. Commercial Sales-Based Financing

The Finance Commission of Texas (commission) proposes new §86.301 (relating to Purpose and Scope), §86.302 (relating to Definitions), §86.303 (relating to Filing of New Application), §86.304 (relating to Processing of Registration Application), §86.305 (relating to Required Notifications), §86.306 (relating to Registration Term, Renewal, and Expiration), §86.307 (relating to Fees), §86.310 (relating to Disclosures), §86.311 (relating to Recordkeeping), §86.312 (relating to Prohibition of Unfair, Deceptive, and Abusive Acts), §86.313 (relating to Prohibition of Certain Automatic Debits), §86.320 (relating to Complaints and Investigations), §86.321 (relating to Enforcement), and §86.322 (relating to Suspension or Revocation Based on Criminal History) in 7 TAC Chapter 86, concerning Retail Creditors.

In general, the purpose of the proposed rules is to implement requirements for commercial sales-based financing providers and brokers under Texas Finance Code, Chapter 398, as added by HB 700 (2025).

Chapter 398 describes requirements for commercial sales-based financing providers and brokers. The Texas Legislature created Chapter 398 by enacting HB 700 (2025). HB 700 went into effect on September 1, 2025, and includes requirements for registration and disclosures, as well as prohibitions of certain practices. HB 700 requires the commission to adopt implementing rules by September 1, 2026, and requires providers and brokers to register with the OCCC by December 31, 2026.

Proposed new §86.301 explains the purpose and scope of the new rules, which apply to providers and brokers under Chapter 398.

Proposed new §86.302 contains definitions of terms that are used throughout the rules but are not otherwise defined in Chapter 398: "key individual," "NMLS," "OCCC" and "registrant."

Proposed new §86.303 describes the requirements for filing a new registration application. Registrants would be required to submit information through the Nationwide Multistate Licensing System (NMLS). NMLS is an online platform used by state financial regulatory agencies to manage licenses, including license applications and renewals. NMLS was created in 2008. The federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 explains that the purposes of NMLS include increasing uniformity and reducing regulatory burden. SAFE Act, 12 USC §5101. Each state currently uses NMLS for licensing certain individuals, and states are increasingly using the system to license consumer finance companies. NMLS is managed by the Conference of State Bank Supervisors and is subject to ongoing modernization efforts and enhancements. New §86.303 describes the requirement to submit a registration application through NMLS, the information for a company application, and amendments for information that changes in a pending application.

Proposed new §86.304 describes the processing of a registration application, explaining that an application is complete when it conforms to rules and published instructions and all fees have been paid, and that a registration is effective on receipt of a completed application and required fees.

Proposed new §86.305 describes notifications that registrants are required to provide to the OCCC. The rule distinguishes between advance change notices (a term used in NMLS for changes that a registrant must provide in advance), and other required notifications to be reported within 30 days after the registrant has knowledge of the change (e.g., civil or regulatory actions, criminal history, bankruptcy, data breaches).

Proposed new §86.306 describes the term of registration. Registrations must be renewed annually during a specified renewal period. After renewal, a registration will have a one-year term.

Proposed new §86.307 describes fees for registration. There would be a \$1,000 fee for the initial registration and annual renewal. The rule would authorize the OCCC to annually adjust these dollar amounts based on the Consumer Price Index (CPI), but the rule would also provide that the OCCC may discount or reduce a fee.

Proposed new §86.310 describes disclosure requirements, explaining that the disclosures required by Texas Finance Code, §398.051 must be provided before the recipient signs an agreement for commercial sales-based financing, and that all terms in the disclosure must be accurate. In addition, proposed new §86.310(c) would require a contract to include a notice explaining how the recipient may contact the OCCC regarding a complaint.

Proposed new §86.311 would include recordkeeping requirements for providers and brokers. This includes a transaction file with any written agreement, each disclosure, and an account history, to be maintained for the later of four years from the date of the transaction or two years from the date of the final entry. The rule would also require maintaining third-party agreements and information related to data security and data breaches.

Proposed new §86.312 would implement the prohibition on unfair, deceptive, and abusive acts and practices under Texas Finance Code, §398.005. The proposed rule describes prohibited acts and practices including false, misleading, or inaccurate statements in advertisements, disclosures, or contracts; failure to perform contracted-for services; charging fees that were not specifically disclosed or contracted for; certain waivers of statutory rights; certain violations of Chapter 398; failure to maintain records; improperly characterizing a consumer transaction as a "business" or "commercial" transaction; a device or subterfuge to evade regulatory requirements; and other listed acts and practices.

Proposed new §86.313 would implement the prohibition of certain automatic debits under Texas Finance Code, §398.056. The rule explains that in order to automatically debit a deposit account, a provider or broker must hold a validly perfected, first-priority security interest in all accounts receivable of the recipient, and describes the requirements that govern perfection and priority under Texas Business & Commerce Code, Chapter 9. The rule's language aligns with a distinction in the definitions of the terms "account" and "deposit account" under Texas Business & Commerce Code, §9.102.

Proposed new §86.320 describes the OCCC's authority to take complaints, the authority to request information and conduct investigations, and the requirement for a business to allow the OCCC to investigate transactions and records.

Proposed new §86.321 describes the OCCC's enforcement authority to issue injunctions (which may include restitution), to impose administrative penalties, and to suspend or revoke a registration. The OCCC generally tries to resolve compliance issues informally without enforcement (e.g., through instructions resulting from complaints or investigations). When enforcement is necessary, the OCCC typically follows an approach of escalating sanctions, starting with an injunction to correct violations, and then progressing to administrative penalties (and ultimately revocation) if violations are not corrected.

Proposed new §86.322 describes authority for the OCCC to suspend or revoke a registration based on the criminal history of a registrant or its key individuals. An applicant is required to disclose this information to the OCCC under Texas Finance Code, §398.053(d). The rule would implement Texas Occupations Code, Chapter 53 by describing criminal offenses that relate to the occupation and explaining the factors that the OCCC considers in determining whether to suspend or revoke a registration.

Mirand Diamond, Director of Licensing, Finance and Human Resources, has determined that for the first five-year period the proposed rule changes are in effect, there will be fiscal implications for state government as a result of administering the rules. The OCCC anticipates a change in revenue due to the fees collected for

registering commercial sales-based providers and administering the new regulatory program. While the OCCC has not yet received specific information about the number of companies that will register, the OCCC estimates a total number of approximately 65 registrants. The OCCC projects a change of revenue of approximately \$65,000 per year, based on an estimate of 65 registrants paying a \$1,000 fee each year. The OCCC anticipates that the agency's costs to administer the new regulatory program will result from the new statutory requirements in Texas Finance Code, Chapter 398, rather than resulting from the proposed rules. There are no anticipated fiscal implications for local government as a result of the proposed rules.

Christine Graham, Director of Consumer Protection, has determined that for each year of the first five years the proposed amendments are in effect, the public benefit anticipated as a result of the new rules will be that the commission's rules will specify requirements for commercial sales-based financing providers and brokers, will enable registered businesses to comply with Texas Finance Code, Chapter 398, and will enable the OCCC to effectively administer and enforce Chapter 398, resulting in improved compliance and a healthier credit environment for commercial sales-based finance.

The OCCC anticipates some costs for businesses required to comply with the new rules due to the fees for registration. The new rule at §86.307 describes a \$1,000 initial and annual registration fee. Other than the annual fee, any other compliance costs are anticipated to be minimal, and are anticipated to result primarily from requirements in Chapter 398 rather than requirements in the proposed rules.

The OCCC estimates that, for each year of the first five years during which the amended sections will be in effect, there will be some economic costs applicable to small businesses and micro-businesses required to comply with the new rules due to the fees for registration. While the OCCC has not yet received specific information about the number of companies that will register, the OCCC estimates that approximately 50 companies have fewer than 100 employees and would therefore be considered small businesses.

The OCCC has attempted to minimize the impact on small businesses and micro-businesses by allowing for discounts to fee amounts. The OCCC considered alternatives that included different amounts or different tiered structures, but found that these alternatives would be unnecessarily complex to administer or would fail to ensure that assessment amounts cover the cost of regulation, as required by Texas Finance Code, §16.003.

The OCCC is not aware of any adverse effect on rural communities resulting from this proposal. The OCCC is not aware of significant operational differences for regulated businesses in rural communities as opposed to urban locations. But in order to obtain more complete information concerning the economic effect of these rule changes, the OCCC invites comments from interested stakeholders and the public on any economic impacts on rural communities, as well as any alternative methods of achieving the purpose of the proposal while minimizing adverse impacts on small businesses, micro-businesses, and rural communities.

During the first five years the proposed rule changes will be in effect, the rules will not

create or eliminate a government program. Implementation of the rule changes will not require the creation of new employee positions or the elimination of existing employee positions. Implementation of the rule changes will not require an increase or decrease in future legislative appropriations to the OCCC, because the OCCC is a self-directed, semi-independent agency that does not receive legislative appropriations. The proposal requires an increase in fees paid to the OCCC in order to implement a new regulatory program. The proposal creates new regulations. The proposal would not expand, limit, or repeal a current regulation. The proposed rules would increase the number of individuals subject to the rules' applicability because there are not currently administrative rules applying to this industry, although the scope of affected businesses is limited to providers and brokers as defined by Texas Finance Code, §398.001. The agency does not anticipate that the proposed rule changes will have an effect on the state's economy.

The OCCC distributed an early precomment draft of proposed changes to interested stakeholders for review. The OCCC received nine informal written precomments from stakeholders. These included a joint precomment from the representative and senator who authored and sponsored HB 700, as well as precomments from an association representing the payments industry, an attorney with a practice dedicated primarily to commercial lending, an association of fintech lenders, an association of finance companies providing capital to small and medium-sized businesses, a group of three factoring businesses that provide working capital to Texas small businesses, a consumer advocacy group, an association of small-business lenders and investors, and a law firm

that represents commercial lenders and sales-based financing providers.

Regarding the disclosure provisions in proposed §86.310, two precomments recommend specifying that required disclosures must be made when the provider makes a specific offer to the recipient. In response to these precomments, proposed §86.310 specifies that required disclosures must be made at or before the time the provider extends a specific offer to the recipient. This is consistent with the disclosure requirement of Texas Finance Code, §398.051(a). The term "specific offer" is defined in Texas Finance Code, §398.001(9). Two precomments also recommend adopting a model disclosure form for required disclosures. The OCCC may consider a model disclosure form in the future, but a model disclosure form does not appear to be immediately necessary in the current rulemaking, considering that Chapter 398 contains detailed disclosure provisions and detailed definitions of the information that must be disclosed.

Regarding the prohibition on unfair, deceptive, or abusive acts or practices in proposed §86.312, in their joint precomment, the author and sponsor of HB 700 recommend including prohibitions on certain practices, including failure to conduct an ability-to-repay analysis taking into account existing or concurrent advances, failure to provide a cool-down period after an application is approved, abusive "stacking" practices (which occur when a business takes out multiple advances at the same time, often from different providers, without paying off the original advance), violations of intercreditor agreements, and taking money from a deposit account without a first-priority perfected security interest in the deposit account through a deposit account control

agreement or a legally enforceable court order. The precomment from a group of factoring businesses also recommends requiring an ability-to-repay analysis (to address abuses in stacking), prohibiting violations of intercreditor agreements, and a prohibition on notifying a recipient to redirect payments from a factoring company to a provider.

In response to these precomments, proposed §86.312 includes prohibitions on claiming legal rights to take actions that a person does not have the authority to take, filing a lien on a debtor's property without a security agreement authenticated by the debtor, withdrawing amounts from a person's account without the person's authorization, a provider's violation of an intercreditor agreement to which the provider is a party, and instructing a recipient to redirect payment amounts to the provider, where the amounts were previously scheduled to be paid to another person (e.g., a creditor or factor). The issue of stacking is also partially addressed by the requirement in proposed §86.313 to have a perfected security interest in accounts receivable in order to take an automatic debit of a deposit account. However, several of the other recommendations appear to go beyond the prohibited acts and practices listed in Texas Finance Code, §398.005, which focus primarily on harm to the recipient of funds, and would likely require additional clarifying language in Chapter 398 to be implemented. Some of the issues involving harm to third parties (such as a business's other creditors) may involve remedies that are outside the current scope of Chapter 398, such as creditor remedies under Texas Business & Commerce Code, Chapter 9, or a cause of action for tortious interference with contract.

Regarding the prohibition in proposed §86.812(b)(14) on characterizing a consumer transaction as "business" or "commercial," two precomments recommend limiting this prohibition, with one precomment recommending that the prohibition apply where funds "are intended primarily for personal, family, or household purposes," and another precomment recommending that the prohibition apply when the provider "has knowledge that the advanced funds will be used for individual, family, or household purposes." The commission and the OCCC believe that proposed §86.812(b)(14) appropriately refers to transactions extended primarily for personal, family, or household use. This is similar to the language in Texas Finance Code, §342.005, regarding the applicability of requirements for regulated consumer loans.

Regarding the prohibition of certain automatic debits in §86.313, seven of the precomments express general support for the proposed text of §86.313(c), under which a provider or broker must hold a validly perfected, first-priority security interest in all accounts receivable of the recipient in order to automatically debit a deposit account. Several precomments note that this interpretation aligns with a distinction in the definitions of the terms "account" and "deposit account" under Texas Business & Commerce Code, §9.102. The precomment from an association representing the payments industry recommends further limiting the scope of the rule to accounts receivable for the covered transaction. However, this would appear to enable a provider to circumvent the intended scope of the prohibition on automatic debits. In their joint precomment, the author and sponsor of HB 700 recommend that certain additional actions be considered automatic debits for purposes of Texas Finance Code, §398.056,

including manual debits, debits that are entered daily, prewritten checks that are deposited on a periodic basis, credit card split arrangements, mechanisms to remit payment to providers before money is deposited in a bank account, and use of a third-party vendor to debit an account. The precomment from a group of factoring businesses also recommends that daily manual debits, prewritten checks, a portal for daily ACH entries, instructions to redirect funds, and use of third-party service providers to handle automatic debits should be considered automatic debits under §86.313. In response to these precomments, proposed §86.313 includes provisions clarifying that an automatic debit includes prewritten checks and that a provider may not direct a third party to complete a debit that violates §86.313. However, several of the other recommendations appear to go beyond the scope of automatic debits described by Texas Finance Code, §398.056, either because they are manually initiated (rather than automatic) or because they do not involve a deposit account being debited.

Regarding the administrative penalty provisions in §86.321, two precomments recommend aligning the rule with Texas Finance Code, §398.101, which describes a penalty of \$10,000 for each violation. In response to these precomments, proposed §86.321(c) explains that there is a maximum administrative penalty of \$10,000 per violation.

Comments on the proposal may be submitted in writing to Matthew Nance, General Counsel, Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705 or by email to rule.comments@occc.texas.gov. The commission invites any comments with information related to the cost, benefit, or

effect of the proposed rule changes, including any applicable data, research, or analysis, from any person required to comply with the proposed rule changes or any other interested person. To be considered, a written comment must be received on or before the 30th day after the date the proposal is published in the *Texas Register*. After the 30th day after the proposal is published in the *Texas Register*, no further written comments will be considered or accepted by the commission.

The new rules are proposed under Texas Finance Code, §398.005, which authorizes the commission to adopt rules applicable to commercial sales-based financing providers and brokers, and under Section 2(b) of HB 700 (2025), which authorizes rules regarding registration fees and the form of registration. The rule provisions related to fees in §86.307 are also proposed under Texas Finance Code, §16.003, which authorizes the OCCC to set the amounts of fees as necessary for carrying out its functions. The provisions relating to suspension or revocation based on criminal history in §86.322 are also proposed under Texas Occupations Code, §53.025, which authorizes state licensing agencies to issue guidelines describing criminal offenses related to a particular occupation.

The statutory provisions affected by the proposal are contained in Texas Finance Code, Chapter 398.

§86.301. Purpose and Scope

(a) Purpose. The purposes of this subchapter are to implement Texas Finance Code, Chapter 398, and to assist in the administration and enforcement of Chapter 398.

(b) Scope. This subchapter applies to any person who engages in business as a provider

or broker of commercial sales-based financing, unless specifically exempted by Texas Finance Code, Chapter 398.

§86.302. Definitions

Words and terms used in this subchapter that are defined in Texas Finance Code, Chapter 398, have the same meanings as defined in Chapter 398. The following words and terms, when used in this subchapter, will have the following meanings, unless the context clearly indicates otherwise.

(1) Key individual--An individual owner, officer, director, or employee with a substantial relationship to the business of an applicant or registrant. The following are key individuals:

(A) any individual who is a direct owner of 10% or more of an applicant or registrant; and

(B) any individual who is a control person or executive officer of an applicant or registrant, including individual who has the power to direct management or policies of a company (e.g., president, chief executive officer, general partner, managing member, vice president, treasurer, secretary, chief operating officer, chief financial officer); and

(C) an individual designated as a key individual where necessary to show that the business will be operated lawfully and fairly.

(2) NMLS--The Nationwide Multistate Licensing System.

(3) OCCC--The Office of Consumer Credit Commissioner of the State of Texas.

(4) Registrant--A person who has been issued a commercial sales-based financing registration under Texas Finance Code, Chapter 398.

§86.303. Filing of New Application

(a) NMLS. To submit a commercial sales-based financing registration application, an applicant must submit a complete, accurate, and truthful registration application through NMLS (or a successor system designated by the OCCC). An application is complete when it conforms to the written instructions and necessary fees have been paid.

(b) Company registration application. A company registration application will include the following information and any other information listed in the written instructions:

(1) A company form including the name of the applicant entity, contact information, registered agent, location of books and records, legal status, and responses to disclosure questions.

(2) An individual form for each key individual, including name, contact information, and responses to disclosure questions.

(3) A business operating plan describing the source of customers, purpose of transactions, anticipated size of transactions, and source of working capital.

(4) A certificate of formation or other formation document.

(5) Any assumed names or other trade names that the applicant will use, and an assumed name certificate for each assumed name or other trade name.

(6) Franchise tax account information showing that the applicant entity is authorized to do business in Texas.

(7) An explanation and supporting documents for any judgment, memorandum of understanding, enforcement order, or conviction against the applicant or a key individual, related to a violation of law, act of fraud, breach of trust, or money laundering.

(c) Amendments to pending application. An applicant must immediately amend a pending application if any information changes requiring a materially different response from information provided in the original application.

§86.304. Processing of Registration Application

(a) Complete application. A registration application is complete when:

(1) the application conforms to the rules and published instructions; and

(2) all fees have been paid.

(b) Effectiveness. A registration is effective on receipt of a completed registration application and required fees.

§86.305. Required Notifications

(a) Advance change notice. No later than the date of the change (or an earlier date specified in the written instructions), a registrant must notify the OCCC of a change to any of the following information provided in the original registration application:

(1) legal name of entity;

(2) any assumed names of entity;

(3) legal status of entity;

(4) names of direct owners or indirect owners;

(5) names of affiliates or subsidiaries;

(6) names of any key individuals; or

(7) main address.

(b) Other required notifications. No later than 30 days after the registrant has knowledge of the information, a registrant must report the following information to the OCCC:

(1) any civil or regulatory actions against the registrant or key individuals that were not disclosed in the original application and would require a different answer than that given in the original registration application;

(2) criminal history of the registrant or key individuals that was not disclosed in the original application;

(3) any bankruptcy of the registrant or a direct owner; or

(4) any breach of system security under Texas Business & Commerce Code, §521.053, affecting at least 250 residents of this state.

(c) Contact information. Each applicant or registrant 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 email addresses. The OCCC may send notices to the mailing address or email address on file.

It is a best practice for registrants to regularly review contact information on file to ensure that it is current and correct.

§86.306. Registration Term, Renewal, and Expiration

(a) Registration term and renewal. A registration must be renewed annually during a specified renewal period to remain effective. After renewal, a registration is effective for a term of one year.

(b) NMLS. To maintain and renew a registration, a registrant must maintain an active account in NMLS (or a successor system designated by the OCCC). The OCCC may make renewal unavailable to a registrant that fails to maintain an active account.

(c) Expiration. If a registrant does not pay the annual fee during the renewal period, the registration will expire.

§86.307. Fees

(a) Initial registration. For an initial registration, an applicant must pay a \$1,000 initial registration fee.

(b) Annual renewal. To renew a registration, a registrant must pay a \$1,000 annual fee.

(c) Registration amendment. The OCCC may require a registrant to pay a fee up to \$75 to amend registration information.

(d) Late renewal. The OCCC may allow late renewal of a registration for a specified period. To renew a registration late, a person must pay a late renewal fee up to \$1,000 in addition to the annual fee.

(e) Periodic adjustment. Starting July 1, 2027, and each July 1 thereafter, the OCCC may revise the dollar amounts in subsections (a) and (b) of this section based on the Consumer Price Index for Urban Wage Earners and Clerical Workers (or an equivalent measure of inflation if this measure is unavailable). The OCCC will use December 2025 as a base year and adjust fee amounts based on the percentage change from December 31, 2025, to the December 31 preceding the year of adjustment, rounding to the nearest \$5 increment. No later than May 1, the OCCC will publish the amount of any periodic adjustment.

(f) Discount. The OCCC may discount or reduce the amount of a fee described by this section. The commissioner is authorized to determine the amount of a discount.

(g) Fees nonrefundable and nontransferable. Fees described by this section are nonrefundable and nontransferable.

§86.310. Disclosures

(a) Timing. A provider must provide a recipient with any disclosures required by Texas Finance Code, §398.051, in writing at or before the time the provider extends a specific offer to the recipient.

(b) Accuracy. All terms and dollar amounts disclosed under Texas Finance Code, §398.051, must be accurate.

(c) Revised disclosures in case of inaccuracy. At any time after providing required disclosures under Texas Finance Code, §398.051, if the provider learns that any information on the disclosures was inaccurate or did not correctly reflect the terms of the transaction at closing, then the

provider must notify the recipient of the inaccuracy and must provide revised, accurate disclosures to the recipient.

(d) OCCC notice. A contract for services under Texas Finance Code, Chapter 398 must contain the following statement as a separate section or otherwise conspicuously set out from surrounding written material: "The Office of Consumer Credit Commissioner (OCCC) is a state agency that enforces certain laws that apply to this contract. If a complaint cannot be resolved by contacting the provider, a commercial sales-based financing recipient can contact the OCCC to file a complaint. OCCC address: 2601 N. Lamar Blvd., Austin, Texas 78705. Phone: (800) 538-1579. Website: occc.texas.gov."

§86.311. Recordkeeping

(a) Generally. A provider or broker must maintain records for each transaction entered or brokered under Texas Finance Code, Chapter 398, and must make those records available for investigation. Records may be maintained using an electronic system, a paper or manual system, or a combination of these types of systems, unless otherwise specified by statute or rule.

(b) Provider's transaction file. A provider must maintain a transaction file for each recipient of a transaction under Texas Finance Code, Chapter 398. The transaction file must include the following:

(1) a complete copy of the written agreement between the provider and the recipient;

(2) each disclosure made to the recipient, including disclosures under Texas Finance Code, §398.051;

(3) each additional document, addendum, or authorization signed by the recipient;

(4) any documentation showing attachment, perfection, or release of a lien;

(5) an account history showing the application of each payment made by the recipient; and

(6) any written documentation of collection, repossession, foreclosure, or litigation against the recipient.

(c) Broker's transaction file. A broker must maintain a transaction file for each recipient of brokering services under Texas Finance Code, Chapter 398. The transaction file must include any disclosures provided to the recipient and any agreement that the broker entered with the recipient.

(d) Time to maintain transaction file. A registrant must maintain the transaction file under subsection (b) or (c) of this section until the later of:

(1) four years from the date of the transaction; or

(2) two years from the date of the final entry on the account.

(e) Application and adverse action records. If a prospective recipient applies for commercial sales-based financing and does not enter a commercial sales-based financing transaction, then a registrant must maintain the application and any written adverse action notice for one year from the date of the application, or one year from the date of the adverse action notice, whichever is later.

(f) Advertising and solicitation. A registrant must maintain each advertisement or solicitation for one year from the date of the advertisement or solicitation.

(g) Third-party agreements. A registrant must maintain any written agreements with third parties that relate to services under Texas Finance Code, Chapter 398, including any agreement between a provider and a broker, until one year after the date the agreement terminates.

(h) Data security policies and procedures. A registrant must maintain policies and procedures to maintain the security of customer information and protect information from unauthorized access.

(i) Data breach notifications. A registrant must maintain the following for data breach notifications:

(1) the text of any data breach notification provided to recipients, including any notification under Texas Business & Commerce Code, §521.053, for a period of four years from the date of the notification; and

(B) any data breach notification provided to a government agency, including any notification provided to the Office of the Attorney General under Texas Business & Commerce Code, §521.053, for a period of four years from the date of the notification.

§86.312. Prohibition of Unfair, Deceptive, and Abusive Acts

(a) Generally. A provider or broker may not engage in an unlawful, unfair, deceptive, or abusive act or practice related to a transaction under Texas Finance Code, Chapter 398.

(b) Acts and practices identified. The following are unlawful, unfair, deceptive, or abusive acts or practices:

(1) false, misleading, or inaccurate statements in advertisements, solicitations, disclosures, contracts, or communications with the recipient or other parties, including:

(A) inaccurate descriptions of contracted-for services;

(B) claiming a legal right to take an action that the person does not have the authority to take; and

(C) a statement that there is no personal guarantee, if this is inaccurate;

(2) failure to perform contracted-for services;

(3) charging fees or other amounts that were not specifically disclosed and contracted for;

(4) failure to make accurate disclosures under Texas Finance Code, Chapter 398 and this subchapter;

(5) a confession of judgment in violation of Texas Finance Code, §398.055;

(6) an automatic debit in violation of Texas Finance Code, §398.056 and this subchapter;

(7) a waiver of a recipient's statutory rights under Texas Finance Code, Chapter 398;

(8) filing a lien on a debtor's property without first obtaining a security agreement

authenticated by the debtor under Texas Business & Commerce Code, §9.203;

(9) foreclosure of collateral without complying with applicable requirements (e.g., Texas Business & Commerce Code, Chapter 9);

(10) withdrawing amounts from a person's account without the person's authorization;

(11) failure to maintain records required by this subchapter;

(12) instructing a recipient to redirect payment amounts to the provider, where the amounts were previously scheduled to be paid to another person (e.g., a creditor or factor);

(13) a provider's violation of an intercreditor agreement, if the provider is a party to the agreement;

(14) improperly characterizing a transaction as a "business" or "commercial" transaction when the advanced funds are extended primarily for individual, family, or household use; and

(15) a device or subterfuge to evade statutory or regulatory requirements.

§86.313. Prohibition of Certain Automatic Debits

(a) Generally. As provided by Texas Finance Code, §398.056, a provider or broker may not establish a mechanism for automatically debiting a recipient's deposit account unless the provider or broker holds a validly perfected security interest in the recipient's account under Chapter 9, Business

& Commerce Code, with a first priority against the claims of all other persons.

(b) Automatic debit. For purposes of this section, debits are automatic if they are authorized in advance to occur more than one time or on a recurring basis. An automatic debit includes a situation in which a recipient provides more than one prewritten check to a provider in advance for payments under a commercial sales-based financing transaction.

(c) Security interest in accounts receivable. For purposes of this section, in order to automatically debit a deposit account, a provider or broker must hold a validly perfected, first-priority security interest in all accounts receivable of the recipient.

(d) Perfection and priority of security interest. Texas Business & Commerce Code, Chapter 9 governs perfection and priority of a security interest in accounts receivable. Generally, a UCC-1 financing statement must be filed in order to perfect a security interest, as provided by Texas Business & Commerce Code, §9.310(a). Priority is generally determined by the time of filing or perfection, as provided by Texas Business & Commerce Code, §9.322(a)(1).

(e) Violation by third party. A provider or broker may not accept payment of a debit in violation of this section and may not direct a third party to complete a debit that violates this section.

§86.320. Complaints and Investigations

(a) Complaints. The OCCC may accept complaints regarding transactions under Texas Finance Code, Chapter 398 and this subchapter.

(b) Request for information and investigation. On receipt of a written complaint or other reasonable cause to believe that a person is violating Texas Finance Code, Chapter 398 or this subchapter, the OCCC may:

(1) require the person to furnish information regarding a specific transaction to which the violation relates; and

(2) conduct an investigation to determine whether a violation exists.

(c) Access to records. In an investigation under subsection (b) of this section, a person subject to investigation must allow the OCCC to:

(1) access the person's place of business;

(2) investigate the person's transactions and records relating to business under Texas Finance Code, Chapter 398; and

(3) make a copy of transactions and records relating to business under Texas Finance Code, Chapter 398.

§86.321. Enforcement

(a) Informal resolution. The OCCC may agree to an informal resolution of a complaint, investigation, enforcement case, or other matter with a provider or broker.

(b) Injunction. If the OCCC has reasonable cause to believe that a person is violating Texas Finance Code, Chapter 398 or this subchapter, then the OCCC may issue an injunction to enforce compliance.

(1) An injunction may include an order to cease and desist from a violation, an order to take affirmative action, or both.

(2) An injunction may include an order to provide restitution to an identifiable person.

(3) If a person against whom an injunction is issued under this section requests a hearing not later than the 30th day after the injunction is served, the OCCC will set a hearing under Texas Government Code, Chapter 2001. If a hearing is not timely requested, the injunction is considered final and enforceable.

(c) Administrative penalty. After notice and an opportunity for hearing, the OCCC may impose an administrative penalty up to \$1,000 for each day of violation, with a maximum of \$10,000 per violation, against a person who:

(1) violates an injunction under subsection (a) of this section; or

(2) knowingly and willfully violates Texas Finance Code, Chapter 398 or this subchapter.

(d) Suspension or revocation. After notice and an opportunity for hearing, the OCCC may suspend or revoke a registration if the OCCC finds that:

(1) the registrant, knowingly or without exercise of due care, violated Texas Finance Code, Chapter 398, this subchapter, or an order issued under this section; or

(2) a fact or condition warrants the belief that the business will not be operated lawfully and fairly.

(e) Administrative Procedure Act. An enforcement order under this section is subject to Texas Government Code, Chapter 2001 (the Texas Administrative Procedure Act).

§86.322. Suspension or Revocation Based on Criminal History

(a) Disclosure of criminal history. An applicant must disclose all criminal history information required to file a complete application. Failure to provide information described in the disclosure questions or written instructions is a violation of this subchapter and is grounds for suspending or revoking a registration.

(b) Crimes directly related to registered occupation. The OCCC may suspend or revoke a registration if the registrant or a key individual has been convicted of an offense that directly relates to the duties and responsibilities of a registrant under Texas Finance Code, Chapter 398, as provided by Texas Occupations Code, §53.021(a)(1).

(1) Originating or servicing transactions under Texas Finance Code, Chapter 398 involves or may involve making representations to a recipient regarding transaction terms, receiving money from recipients, remitting money to third parties, maintaining accounts, repossessing property without a breach of the peace, maintaining repossessed property, collecting due amounts in a legal manner, and foreclosing on property in compliance with state and federal law. Consequently, the following crimes are directly related to the duties and responsibilities of a registrant and may be grounds for 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) money laundering;

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

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

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

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

(I) any offense that involves intent, attempt, aiding, solicitation, or conspiracy to commit an offense described in subparagraphs (A) - (H) of this paragraph.

(2) In determining whether a criminal offense directly relates to the duties and responsibilities of holding a registration, 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 registration to engage in the occupation;

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

(D) the relationship of the crime to the ability or capacity required to perform the duties and discharge the responsibilities of a registrant; and

(E) any correlation between the elements of the crime and the duties and responsibilities of the registered occupation.

(3) In determining whether a conviction for a crime renders a registrant unfit to hold a registration, 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;

(F) evidence of the person's compliance with any conditions of community supervision, parole, or mandatory supervision; and

(G) evidence of the person's current circumstances relating to fitness to hold a registration, which may include letters of recommendation.

(e) Revocation on imprisonment. A registration will be revoked on the registrant'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 suspension or revocation. The OCCC may suspend or revoke a registration based on any other ground authorized by law, including a registrant's or key individual's conviction for an offense listed in Texas Code of Criminal Procedure, art. 42A.054, or art. 62.001(6), as provided by Texas Occupations Code, §53.021(a)(2) - (3).

Certification

The agency certifies that legal counsel has reviewed the proposal and found it to be within the agency's legal authority to adopt.

Issued in Austin, Texas on February 20, 2026.

Matthew J. Nance
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Office of Consumer Credit Commissioner