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) adopts new §86.301 (relating to Purpose and Scope), §86.302 (relating to Definitions), §86.303 (relating of 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 and Commercial Sales-Based Financing.

The commission adopts the amendments to §86.301, §86.302, §86.303, §86.304, §86.305, §86.307, §86.320, §86.321, and §86.322, without changes to the proposed text as published in the March 6, 2026, issue of the *Texas Register* (51 TexReg 1355).

The commission adopts the amendments to §86.310, §86.311, §86.312, and §86.313 with changes to the proposed text as published in the November 7, 2025, issue of the *Texas Register* (50 TexReg 7172).

Summary of Adopted Rules

In general, the purpose of the adopted 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.

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

Adopted 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."

Adopted new §86.303 describes the requirements for filing a new registration application. Registrants will 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 other financial services 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. These rules will enable the OCCC to provide a functional registration system that will minimize regulatory burden, particularly for companies operating in more than one state.

Adopted 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.

Adopted 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).

Adopted 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.

Adopted new §86.307 describes fees for registration. There will be a $1,000 fee for the initial registration and annual renewal. The rule authorizes the OCCC to annually adjust these dollar amounts based on the Consumer Price Index (CPI), but the rule also provides that the OCCC may discount or reduce a fee. This rule will help ensure that the OCCC is able to recover the costs of regulation.

Adopted 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. Since the proposal, in response to official comments, language has been added in §86.310(b) to clarify that the disclosure must accurately reflect the terms of the provider's specific offer, and the word "promptly" has been added in §86.310(c) to specify that the provider must promptly notify the recipient and provide revised disclosures in the event of an inaccuracy. New §86.310(c) requires a contract to include a notice explaining how the recipient may contact the OCCC regarding a complaint.

Adopted new §86.311 includes 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. Since the proposal, in response to an official comment, a change has been made in §86.311(c) to add the phrase "by the broker," to specify that a broker must maintain disclosures provided by the broker to the recipient.

Adopted new §86.312 implements the prohibition on unfair, deceptive, and abusive acts and practices under Texas Finance Code, §398.005. The 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; debiting amounts without authorization; 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. In general, adopted §86.312 will help ensure that providers and brokers do not engage in practices that cause substantial injury to recipients, mislead recipients, interfere with a recipient's ability to understand the terms of the transaction, or take unreasonable advantage of the recipient. Since the proposal, in response to official comments, changes have been made to §86.312(b)(10) to use the term "debiting" rather than "withdrawing," and to refer to both an account and a deposit account. Changes have also been made to §86.312(b)(12) to include instructions to "a recipient's customer" in a prohibition of certain instructions to redirect payment amounts, and to add exceptions where another person has consented to payment being redirected to the provider or where payment is for debt that has been validly assigned to the debtor. *See* Tex. Bus. & Comm. Code §9.406(a) (describing a notification to the debtor that an amount due has been assigned). Changes have also been made to §86.312(b)(13) to add the words "material" and "written" in the prohibition of violations of intercreditor agreements.

Adopted new §86.313 implements 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. Since the proposal, in response to official comments, a change has been made in §86.313(b) to state that a "mechanism for automatically debiting a deposit account" includes a situation where the recipient provides more than one prewritten check. This change replaces language in the proposal stating that an "automatic debit" includes this situation. The change is intended to avoid the implication that the checks are themselves debits.

Adopted 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.

Adopted 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.

Adopted 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 implements 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.

Summary of Stakeholder Comments

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.

After publishing the proposed rules in the *Texas Register*, the commission received seven official comments on the proposal. One official comment is from Kram Law LLC (a law firm representing commercial sales-based financing providers), which opposes the adoption of proposed §86.313(b). One comment is from the Revenue Based Financing Coalition (an association of commercial sales-based financing providers), which recommends changes to proposed §86.312 and §86.313. One comment is from Texas Appleseed, the Responsible Business Lending Coalition, the Small Business Majority, the Texas Association of Community Development Corporations, and Business and Community Lenders, which support the proposed rules overall but recommend changes to proposed §86.310 and §86.312. One comment is from the Financial Technology Association (a network of fintech lenders), which recommends changes to proposed §86.307, §86.310, §86.311, §86.312, and §86.313. One comment is from Hudson Cook LLP (a law firm representing commercial sales-based financing providers and commercial lenders), which recommends changes to proposed §86.312 and §86.313. One comment is from the Electronic Transactions Association (a trade association representing the payments industry), which recommends changes to proposed §86.310, §86.311, and §86.312. One comment is from DARE Capital, Palatine Hill Capital, and Momentum Capital Funding (factoring companies that provide working capital to small businesses in Texas), which recommend changes to proposed §86.312 and §86.313. In addition, at the commission's February 20, 2026, meeting, the commission heard spoken testimony of a witness from Texas Appleseed and a witness from Hudson Cook (who was representing the Revenue Based Financing Coalition). The commission and the OCCC appreciate the thoughtful input of stakeholders.

Regarding the scope of the rules, a trade association's official comment recommends

that the rules reaffirm Chapter 398's exclusion for banks, credit unions, and certain other financial institutions. The commission declines to make this change, which is unnecessary because this exclusion is already located in the statute at Texas Finance Code, §398.003, and because the adopted rule at §86.301(b) acknowledges exemptions under Chapter 398. Repeating each of the statute's exemptions in the rule would make the rule unnecessarily lengthy.

Regarding the fee provisions in §86.307, an association's official comment makes three recommendations. First, the comment recommends adding language to the rule specifying that the OCCC will provide advance notice of renewal at least 60 days before the renewal window opens. The commission declines to include this language, which is unnecessary because the OCCC typically includes renewal instructions on its website, and because the NMLS system provides an extensive renewal period before expiration (typically two months). Second, the comment recommends a grace period for inadvertent lapses before late fees are applied. The commission declines to include this language, because the renewal information on the OCCC website and the extensive renewal period in NMLS will make a grace period unnecessary. Third, the comment recommends a percentage cap on CPI-based fee increases. The commission declines to include this change, because CPI itself provides a limitation on the amount of fee increases, and because this change would not achieve the objective of ensuring that the OCCC can recover the costs of regulating the industry.

Regarding the requirement in §86.310(a) to provide a disclosure at or before the time the specific offer is made, an association's official comment recommends that the rule exclude nonbinding estimated offers from the meaning of "specific offer." The commission believes this change is unnecessary and inappropriate because the statute at Texas Finance Code, §398.001(9) includes the following definition, which is sufficiently clear: "'Specific offer' means the specific terms of commercial sales-based financing. The term includes a price or amount quoted to a recipient by a person providing the financing based on information obtained from or about the recipient that, if accepted by the recipient, would be binding on the provider, subject to specific requirements in the financing terms."

One official comment of consumer and business advocates recommends adding a requirement in §86.310(a) to provide the disclosure at or before the time of the specific offer or when the recipient finalizes an application for the transaction, whichever is earlier. The commission declines to add this language, because the statute at Texas Finance Code, §398.051(a) specifically states that the disclosure is required if the provider extends a specific offer, and does not mention disclosure for an application that the recipient finalizes before a specific offer is made.

An official comment of factoring companies recommends requiring a cool-down period after disclosures are provided, so that the recipient has time to fully evaluate the proposed financing. The commission declines to add this language. The statute at Texas Finance Code, §398.052 specifically states that the provider must obtain the recipient's signature on the disclosure before finalizing the application, but does not specify any cool-down period before an application or contract is finalized.

Regarding the requirement in §86.310(c) to provide corrected disclosures in the event of

an inaccuracy, an official comment of consumer and business advocates expresses concern that a corrected disclosure under §86.310(c) could enable a provider to modify a previously signed contract. The comment recommends replacing proposed §86.310(c) with a different provision stating that the provider must ensure that the disclosure form is true and accurately reflects the terms of the contract, and that the terms on the disclosure shall be considered part of the contract. Similarly, in spoken testimony at the commission's February 20, 2026, meeting, a witness expressed concern that the corrected disclosure in §86.310(c) could be a "do over" for providers that violate disclosure requirements. In response to the official comment, since the proposal, language has been added in §86.310(b) to clarify that the disclosure must accurately reflect the terms of the provider's specific offer. However, the commission declines to remove the text of §86.310(c) requiring corrected disclosures. To clarify, this provision is intended to ensure that recipients receive accurate information. If a provider violates disclosure requirements by providing a disclosure that does not accurately reflect the specific offer, and later provides a corrected disclosure, this ensures the recipient receives accurate information but does not eliminate the fact that the previous violation occurred. In addition, a corrected disclosure under §86.310(c) does not authorize a provider to change a previously executed contract. Rather, the provider must ensure that the disclosure is consistent with the specific offer reflected in the contract's terms. The commission also declines to add language stating that the disclosure is part of the contract, because Chapter 398 distinguishes between the disclosure and the contract for commercial sales-based financing, and seems to contemplate that the recipient can consider the disclosure before deciding to accept the specific offer and enter a contract.

Also regarding §86.310(c), an association's official comment recommends specifying a clear timeframe for providing corrected disclosures (e.g., two business days) and a "materiality threshold that limits the obligation to inaccuracies that meaningfully affect the transaction's economic terms, rather than minor clerical errors." In response to this comment, the word "promptly" has been added in §86.310(c) to specify that the provider must promptly notify the recipient and provide revised disclosures in the event of an inaccuracy. The commission declines to specify an exact timeframe in the rule, because what constitutes a prompt notification could depend on the facts of the transaction and the parties' course of dealing. The commission declines to adopt a materiality threshold, because the statute requires providers to disclose the specific terms as defined in Texas Finance Code, §398.001 and §398.051, and does not contain any materiality threshold. The commission and the OCCC strongly encourage providers to employ procedures that minimize the likelihood of any inaccuracies, which would help avoid the need for corrected disclosures.

Regarding the requirement in §86.310(d) for the provider's contract to include a notice with the OCCC's contact information, an association's official comment recommends removing this provision because the requirement "is not present in other state disclosure regimes and would create an unnecessary divergence from emerging standards." Another association's official comment also recommends removing this requirement so that providers can use consistent disclosures in different states. The commission declines to remove this requirement, because this requirement is

necessary to ensure that recipients are aware that they can file complaints with the OCCC. If providers wish to use the same contract for multiple states, they might consider including the OCCC notice in a state-specific provision for Texas transactions. Also, §86.310(d) requires the OCCC notice in the "contract for services," which could be separate from the disclosure under Texas Finance Code, §398.051. Therefore, §86.310 does not in itself create a divergence with respect to a disclosure under Section 398.051.

One official comment of consumer and business advocates recommends that the rules include a model disclosure form for required disclosures. Similarly, an association's official comment recommends that the OCCC adopt a disclosure modeled after requirements in other states, in order to reduce administrative burdens and costs for companies operating in multiple states. The commission declines to include a model disclosure form in the adopted rules. 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, and does not specify that the commission or the OCCC will adopt a model disclosure. In the future, the OCCC may consider a model disclosure form, which could be posted as an optional form on the OCCC website.

An association's official comment asks: "Does a financing disclosure that follows the [Connecticut] financing disclosure template satisfy the disclosure requirements for Texas?" The Connecticut Commercial Sales-Based Financing Disclosure Form is available in guidance issued by the Connecticut Department of Banking on August 1, 2024. While the Connecticut form includes many of the elements required under Section 398.051, the form also contains specific references to Connecticut law that could misleadingly suggest to a Texas recipient that Connecticut law applies. Providers should carefully review their disclosure forms to ensure that they contain the information required by Section 398.051 and are not misleading.

Regarding recordkeeping requirements for brokers in §86.311(c), an association's official comment recommends adding the phrase "by the broker," to specify that a broker must maintain disclosures provided by the broker to the recipient. In response to this comment, §86.311(c) has been revised to include the phrase "by the broker." This change minimizes the burden on the broker by limiting disclosure recordkeeping to items that the broker has provided. A provider will remain responsible for maintaining disclosures that it provides to the recipient under §86.311(b)(2).

Regarding the requirements to maintain applications, adverse action notices, advertisements, and solicitations in §86.311(e) and (f), an association's official comment recommends removing these subsections. The association states that these requirements are "unduly burdensome" and that "[m]ost providers of online sales-based financing lack the procedures or functionality necessary to comply with these requirements." The commission declines to remove subsections (e) and (f) from §86.311. These provisions are necessary to ensure compliance with Texas Finance Code, Chapter 398. If a registrant fails to maintain these records, then it may be impossible to determine whether the registrant has engaged in unfair, deceptive, or abusive acts in underwriting, advertising, or solicitation. These are standard records for regulated

financial institutions, including commercial financing providers, to maintain. *See, e.g.*, Regulation B, 12 C.F.R. §1002.12(b) (requiring business creditors to maintain credit applications and adverse action notices).

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. 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 §86.812(b)(4), which provides that failure to make accurate disclosures under the statute and rule is an unfair, deceptive, or abusive act or practice, an association's official comment recommends limiting this provision to failure "by providers," in order to clarify that a broker is not responsible for disclosures of a provider. The commission declines to make this change. There could be a fact question of whether a broker failed to make a required disclosure, such as the OCCC notice in a contract for brokering services, as required by §86.310(d).

As proposed, §86.312(b)(10) would have prohibited withdrawing amounts from a person's account without the person's authorization. Regarding this prohibition, the official comments of an association and a law firm recommend replacing "withdrawing" with "debiting," and replacing "account" with "deposit account," to be consistent with

terminology used in Chapter 398. In response to this comment, changes have been made in §86.310(b)(10) to use the terms "debiting" and "deposit account." As adopted, §86.310(b)(10) prohibits debiting amounts from a person's account or deposit account without the person's authorization. Texas's Uniform Commercial Code includes a distinction between an account and a deposit account. *See* Tex. Bus. & Comm. Code §9.102(a)(2) (defining the term "account" and stating that it does not include a deposit account). Given this distinction, the commission and the OCCC believe that it is appropriate to prohibit unauthorized debits from both accounts and deposit accounts.

As proposed, §86.312(b)(12) would have prohibited instructing a recipient to redirect payment amounts to the provider, where the amounts were previously scheduled to be paid to another person. An official comment of factoring companies recommends adding the phrase "or a recipient's customers" to this provision, so that the prohibition would apply to instructions to a recipient's customers. In a previous informal comment provided to the OCCC in November 2025, the factoring companies described an abusive practice in which a commercial sales-based financing provider contacts account debtors on accounts receivable that a factoring company has purchased, and notifies them that payments should be redirected from the factoring company to the provider. In response to the official comment, adopted §86.312(b)(12) includes the phrase "or a recipient's customer."

Regarding §86.312(b)(12), the official comments of two associations recommend adding language to specify that the prohibition does not apply if the other party has consented to the redirection of payments. In response to these official comments, adopted §86.312(b)(12) includes the word "unless" and a new subparagraph (A) to explain that the prohibition does not apply if the other person has consented to the payment being redirected to the provider.

The official comments of an association and a law firm recommend removing §86.312(b)(12) altogether, because they state that the provision is unclear and could inadvertently prohibit routine conversations in collections. The commission disagrees with these comments. Adopted §86.312(b)(12) is necessary to prevent an abusive practice identified by stakeholders. Also, §86.312(b)(12) is reasonably clear as adopted. Providers can comply with adopted §86.312(b)(12) by managing their collections communications through standardized policies and procedures, as is customary for regulated financial institutions.

As proposed, §86.312(b)(13) would have prohibited a provider's violation of an intercreditor agreement to which the provider is a party. The official comments of an association and a law firm recommend removing §86.312(b)(13) altogether, because they state that this will discourage providers from entering intercreditor agreements, and because parties already have remedies under contract law. The commission disagrees with this suggestion and believes that this subsection is necessary to prevent abusive practices by providers. However, in order to clarify the scope of this subsection, the words "material" and "written" have been added to adopted §86.312(b)(13), so that the rule applies to a provider's material violation of a written intercreditor agreement.

Regarding the prohibition in proposed §86.312(b)(14) on characterizing a consumer transaction as "business" or "commercial," one official comment states that "it is

imperative to maintain this language to ensure that consumers do not face adverse financial outcomes." The official comments of two associations recommend limiting this prohibition to apply only when the provider "has knowledge that the advanced funds will be used for individual, family, or household purposes." The commission declines to make this change. The language in §86.312(b)(14) is similar to language in the Texas Finance Code's consumer lending provisions. In describing the applicability of requirements for regulated consumer loans, Texas Finance Code, §342.005 uses the phrase "extended primarily for personal, family, or household use." Section 342.005 focuses on the primary use of the loan and does not mention the lender's knowledge or intent. In addition, Texas Finance Code, §342.008 prohibits a device, subterfuge, or pretense to evade Chapter 342's requirements. Based on these provisions in Chapter 342, the commission and the OCCC believe that adopted §86.312(b)(14) appropriately refers to transactions extended primarily for personal, family, or household use. The adopted rule will help prevent abuses and consumer harm resulting from a consumer loan regulated under Chapter 342 being presented as a commercial transaction. The rule will also be consistent with Chapter 342's provision prohibiting a device, subterfuge, or pretense to evade consumer lending requirements.

One official comment recommends adding a new provision in §86.312(b) that would prohibit "quoting pricing in misleading ways," including describing percentage rates other than an annual interest rate or APR, and describing nonannual rates as "simple interest." The commission declines to add this language to §86.312(b). These recommendations would require the rules to prescribe a standard methodology for calculating annual rates, which would go beyond the already detailed disclosure requirements of Chapter 398. The recommendations also appear to go beyond the examples of unfair, deceptive, and abusive practices listed in Texas Finance Code, §398.005.

An official comment of consumer and business advocates recommends adding a new provision in §86.312(b) that would prohibit "misleadingly marketing short-term products for long-term use." The comment states: "It is common for high-cost, short-term financing to be marketed and justified as being for an emergency purpose, when in fact the business model is to recruit the borrower into an ongoing cycle of renewing this financing over and over." The commission declines to add this language to §86.312(b), because the proposed language would be too vague. The commission and the OCCC do not have sufficient information to provide clear guidance distinguishing between "short-term" and "long-term" products, or explaining what would constitute marketing a product "for long-term use."

An official comment of factoring companies recommends adding language that would identify the following as unfair or abusive acts or practices: credit card fee splits, lockbox arrangements, and failure to conduct an ability-to-repay underwriting analysis. The commission declines to add these provisions to §86.312. These 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. 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.

The official comment of factoring companies also recommends adding a provision making the following practice an unfair and abusive act or practice: "Another unfair and deceptive practice that we have seen certain MCA companies engage in occurs when a creditor perfects a first lien security interest on collateral and provides notice in the UCC filing that the debtor has agreed not to grant future liens on the collateral (i.e. a negative pledge agreement). MCA companies frequently ignore this negative pledge notice in the senior creditor's UCC filing and take a subordinate security interest anyway. This has a negative impact on the small business as it triggers a default with the senior creditor." The commission declines to add the provision suggested by this comment. In this situation, it appears that the debtor has breached its previous agreement with the first creditor. It is not clear that the commercial sales-based financing provider is taking unfair or abusive advantage of the debtor in the manner described by Texas Finance Code, §398.005. This situation might be better addressed by creditors educating debtors, to make sure that debtors understand their obligations under existing credit agreements.

Adopted §86.313 implements the prohibition on certain automatic debits in Texas Finance Code, §398.056. In their joint precomment, the author and sponsor of HB 700 recommend that certain additional actions be considered automatic debits for purposes of Section 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 companies 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, §86.313 includes provisions clarifying that debits are automatic if they are authorized to occur more than one time or on a recurring basis, that a mechanism for automatically debiting a deposit account 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.

Adopted §86.313(b) explains that debits are automatic if they are authorized in advance to occur more than one time or on a recurring basis. The first sentence of §86.313(b) is consistent with an interpretation recommended by a law firm in an informal comment. The informal comment supports providing clear guidance by interpreting the term "automatic" to mean "preauthorized recurring debits from a customer's deposit account that occur without further customer action," explaining that this interpretation is consistent with Texas statutes and case law, as well as federal law. *See* Regulation E, 12 C.F.R. §1005.2(k) (defining "preauthorized electronic fund transfer" as "an electronic fund transfer authorized in advance to recur at substantially regular intervals").

The official comments of an association and a law firm recommend striking the second

sentence of proposed §86.313(b), which would have stated that an automatic debit includes a situation in which a recipient provides more than one prewritten check in advance. The association and law firm explain that the term "check" is defined in Texas Business & Commerce Code, §3.104, and state that including the presentment of checks in the definition of "automatic debit" could unnecessarily complicate the rule. At the commission's February 20, 2026, meeting, a witness acknowledged that there was "no argument with the policy" but stated that including checks in this definition could cause confusion. In response to these comments, a change has been made since the proposal to specify in §86.313(b) that a mechanism for automatically debiting an account includes the situation where the recipient provides prewritten checks. This addresses the comments by removing the implication that the checks are themselves debits. However, the commission declines to strike this sentence altogether as suggested by the comments. The commission and OCCC believe that it is appropriate to maintain the adopted version of the sentence, because the checks ultimately result in debits to a deposit account. *See* "Bank debit," Merriam-Webster.com Dictionary (accessed June 8, 2026) (defining "bank debit" as "the charge against a bank-deposit account resulting from the drawing of checks or from cash withdrawals"). Also, this sentence minimizes the likelihood that a provider will circumvent the prohibition in §86.313 and Texas Finance Code, §398.056 by obtaining a series of prewritten checks from the recipient.

A law firm's official comment recommends striking the entire text of §86.313(b) and replacing it with the following: "For purposes of this section, a debit to a deposit account is automatic if it is initiated through a preprogrammed, self-executing, or recurring mechanism that transmits debit instructions without individualized human initiation at the time each debit is transmitted. A debit is not automatic solely because the recipient provided advance authorization for multiple future debits, provided that each debit is separately initiated by an individual human action at the time of transmission." According to the firm, the commission's proposed version of §86.313(b) is inconsistent with the plain meaning of the terms "automatic" and "mechanism," because the proposal mentions advance authorization rather than focusing on the process for completing the debit. The firm cites Texas case law, stating: "In *Woods MFI, LLC v. PlainsCapital Bank*, the court treated 'automatic debit' and manual payment processing as categorically different, consistent with the plain-meaning understanding that 'automatic' refers to the method of execution rather than the existence of a prior authorization. *See Woods MFI, LLC v. PlainsCapital Bank*, No. 14-15-00655-CV, 2016 WL 6465872, at *4 (Tex. App.—Houston [14th Dist.] Nov. 1, 2016)." The firm argues that the second sentence of §86.313(b), dealing with prewritten checks, does not involve an automatic debit, because the process of presenting and honoring checks involves intervention by humans, including the person presenting the check to the bank and the bank honoring the check. The firm also notes that "check" and "automatic bank draft" are listed as two items in Texas Penal Code, §1.07(46-a), which includes defines a "sight order" as "a written or electronic instruction to pay money that is authorized by the person giving the instruction and that is payable on demand or at a definite time by the person being instructed to pay," and explains that "[t]he term includes a check, an electronic debit, or an automatic bank draft." For these reasons,

the firm argues that the meaning of "automatic debit" should be limited to situations without individual human initiation at the time of debit, and that the sentence on prewritten checks should be removed.

The OCCC and commission disagree with this law firm's comment, and believe that the adopted version of §86.313(b) is consistent with the plain meaning of Texas Finance Code, §398.056, and the objectives of the statute and rule.

First, adopted §86.313(b) is consistent with the plain meanings of the terms "automatic" and "mechanism." According to Merriam-Webster, the definition of "automatic" includes "largely or wholly involuntary," "acting or done spontaneously or unconsciously," "done or produced as if by machine," and "having a self-acting or self-regulating mechanism." "Automatic," Merriam-Webster.com Dictionary (accessed June 8, 2026). Preauthorized recurring debits are consistent with this definition. From the recipient's point of view, the preauthorized debits will likely occur with a self-regulating character as if by machine, and without further voluntary action by the recipient. A "mechanism" includes "a process, technique, or system for achieving a result." "Mechanism," Merriam-Webster.com Dictionary (accessed June 8, 2026). Adopted §86.313(b) is consistent with this definition, because a preauthorization for recurring debits is a process, technique, or system for achieving the result of debiting an account.

Second, adopted §86.313(b) is consistent with how the term "automatic" is used in Texas law. For example, the Texas Supreme Court used the phrase "automatic billing" to refer to an insurance product for which a customer would be billed at the end of a free period if the customer did not cancel. *See Stonebridge Life Ins. Co. v. Pitts*, 236 S.W.3d 201, 203-206 (Tex. 2007). The Supreme Court did not explicitly limit its use of the term "automatic" to situations without any human action at the time of billing. The law firm cites *Woods MFI, LLC v. PlainsCapital Bank* for the proposition that "'automatic' refers to the method of execution rather than the existence of a prior authorization," but this proposition is not part of the *Woods MFI* court's analysis. In *Woods MFI*, a borrower alleged that a lender's assignee breached an automatic-debit agreement by failing to debit a particular account. *Woods MFI, LLC v. PlainsCapital Bank*, No. 14-15-00655-CV, p. 7 (Tex. App.—Houston [14th Dist.] Nov. 1, 2016, pet. denied) (mem op.). The court of appeals found that the text of the loan agreement did not obligate the assignee to perform automatic debits. *Id.* at pp. 11–12. However, the court found that there was a fact question on whether a separate automatic-debit agreement was created, based on witness testimony of a separate agreement and the fact that the assignee debited the first two monthly payments from the relevant account after taking over the loan. *Id.* at pp. 18–19. Contrary to the firm's interpretation, the court did not analyze any distinction between a "prior authorization" and a "method of execution," and did not suggest that the term "automatic" is limited to non-human-initiated debits. In general, the court in *Woods MFI* seems to use the term "automatic" to refer to debits that recur regularly under an agreement, consistent with adopted §86.313(b). The use of "automatic" in §86.313(b) is also consistent with the definition of "sight order" in Texas Penal Code, §1.07(46-a), under which a sight order is "a written or electronic instruction to pay money" and "includes a check, an electronic debit, or an automatic bank draft." This section of the Penal Code suggests that the

term "automatic" can apply to preauthorized instructions to pay money, consistent with §86.313(b). Contrary to the firm's interpretation, this definition does not state that the term "automatic" is limited to non-human-initiated debits. To the extent that the Penal Code might be read to distinguish between a "check" and a "debit," the commission has addressed this issue in the second sentence of adopted §86.313(b), as discussed earlier in this preamble.

Third, the firm's proposal would enable providers to circumvent §86.313 and Texas Finance Code, §398.056. Under the firm's proposal, if an individual human (such as an employee of the commercial sales-based financing provider) takes some action at the time of each debit, then the debit is not automatic. If adopted, this proposal would enable providers to circumvent the prohibition on certain automatic debits by having an individual employee take an action at the time of the debit. This proposal would fail to meet the objectives of §86.313 and Texas Finance Code, §398.056 and would fail to prevent abusive uses of automatic debits.

In its official comment, the firm requests a concise statement under Texas Government Code, §2001.030, of the principal reasons for and against adoption of §86.313(b). To summarize, the principal reasons for adoption of §86.313(b) are: (1) the rule provides clear guidance that is necessary to implement the prohibition of certain automatic debits in Texas Finance Code, §398.056; (2) the rule's reference to authorized recurring debits is consistent with the plain meaning of Texas Finance Code, §398.056, including the terms "automatic" and "mechanism"; (3) the rule is consistent with the use of the term "automatic" in Texas law; and (4) the rule would prevent methods of circumventing the prohibition in Texas Finance Code, §398.056, including abusive uses of automatic debits. The principal reason against adoption of §86.313(b), according to the firm, is that the rule is supposedly inconsistent with the plain meaning and legal usage of the term "automatic," and that the rule should be limited to debits that are not initiated by any human action at the time of the debit. As discussed earlier in this preamble, the commission disagrees with the firm's proposal because the rule is consistent with the plain meaning and legal usage of the relevant terms, and because the firm's proposal would enable providers to circumvent the prohibition in Texas Finance Code, §398.056.

The firm's official comment also asks the following question: "whether § 398.056 prohibits a single, non-recurring debit that is manually initiated by a human at the time of payment, when that debit is made under a broader standing authorization covering future payments." The comment states: "To avoid uncertainty for providers and recipients, the final rule or its accompanying preamble should expressly confirm that a single, manually initiated debit falls outside § 398.056's prohibition even when made under a broader standing authorization." The commission and the OCCC disagree with this suggestion and decline to add language on this issue in the rule. In order to comply with §86.313 and Texas Finance Code, §398.056, a provider should ensure that it has the appropriate security interest before obtaining an authorization for recurring debits. If a provider obtains an authorization to automatically debit a deposit account and does not have the required security interest, then this is a violation of §86.313 and Texas Finance Code, §398.056. It is not necessary for the rule to specify whether a violation would also occur at the time of a later,

manually initiated debit, because the provider would already be in violation.

Seven 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.

Regarding §86.313(c), an association's official comment recommends limiting the scope of the rule to the specific stream of receivables for the covered transaction. The commission declines to limit §86.313(c) in this way, because this would enable a provider to circumvent the intended scope of the prohibition on automatic debits (e.g., by designating a new stream of receivables at the time of the transaction and obtaining a first-lien security interest in that stream).

Adopted §86.313(d) explains that Texas Business & Commerce Code, Chapter 9 governs perfection and priority of a security interest in accounts receivable, and that generally, a UCC-1 financing statement must be filed to perfect a security interest, as provided by Texas Business & Commerce Code, §9.310(a). The official comment of factoring companies recommends adding the phrase "in the State of Texas" to the second sentence of §86.313(d), so that the sentence would state that generally, a UCC-1 financing statement must be filed in the State of Texas to perfect a security interest. The commenters state that this is necessary to address an abuse where a provider files a UCC-1 in New York on a Texas-based small business and takes the position that this allows it to establish an automatic debit provision with respect to the recipient's deposit account. The commission declines to make the change suggested by the comment. Texas Business & Commerce Code, Chapter 9 includes several provisions on which jurisdiction's law governs perfection. A determination of which law governs perfection could be affected by several factors, including the location of the debtor, the organizational structure of the debtor, the location of the collateral, and the type of collateral. *See* Tex. Bus. & Comm. Code, §9.301, §9.305, §9.307. Under Chapter 9, whether a provider has filed in the correct jurisdiction would depend on the facts of the transaction. Adding the phrase "in the State of Texas" to the second sentence of §86.313(d) would not definitively resolve this complex issue.

Adopted §86.313(e) explains that a provider or broker may not accept payment of a debit in violation of §86.313 and may not direct a third party to complete a debit that violates §86.313. An official comment of consumer and business advocates supports this subsection, stating: "If the language in 7 TAC §86.313 (e) is removed, a third party could bypass the bill's regulatory intent and fulfill disqualifying automatic debits on behalf of the commercial sales-based financing provider." The official comments of an association and a law firm recommend striking §86.313(e), because the subsection lacks an element of scienter (i.e., a mental state) and because §86.312(b)(15) already prohibits subterfuge to evade regulatory requirements. The commission disagrees with these comments and has maintained §86.313(e) in this adoption. It is not necessary for the rule to specify a mental state for the provider. To comply with §86.313 and Texas Finance Code, §398.056, whether or not a third party is involved, the provider

should be aware of the relevant facts: whether the provider has established a mechanism for automatically debiting the recipient's deposit account, and whether the provider has the required security interest. This language is appropriate to maintain in §86.313 to ensure that providers do not circumvent the prohibition in Texas Finance Code, §398.056.

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, adopted §86.321(c) explains that there is a maximum administrative penalty of $10,000 per violation.

An official comment of consumer and business advocates recommends that Texas adopt the Responsible Business Lending Coalition's Small Business Borrowers' Bill of Rights. In general, this bill of rights appears to be a set of legislative proposals that goes beyond the current requirements of Texas Finance Code, Chapter 398. The commission and OCCC interpret this comment as a proposal for future legislative changes, rather than a specific set of recommendations for revising the proposed rules.

Statutory Authority and Affected Provisions

The new rules are adopted 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 adopted 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 adopted 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 adoption 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 accurately reflect the terms of the provider's specific offer to the recipient.

(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 promptly notify the recipient of the inaccuracy and must promptly 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 by the broker 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) debiting amounts from a person's account or deposit account without the person's authorization;

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

(12) instructing a recipient or a recipient's customer 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), unless:

(A) the other person has consented to payment being redirected to the provider; or

(B) the payment is for debt that has been validly assigned to the provider.

(13) a provider's material violation of a written 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. A mechanism for automatically debiting a deposit account 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 adoption and found it to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas on June 19, 2026.

Matthew J. Nance
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Office of Consumer Credit Commissioner