



GOVERNOR GREG ABBOTT

To: Philip Holt, Chair
Charles Cooper, Executive Director
Leslie Pettijohn, Commissioner
Matthew Nance, General Counsel
Finance Commission of Texas

From: Caleb Gunnels, Counsel
Regulatory Compliance Division, Office of the Governor

Date: June 13, 2024

Subject: Proposed Title 7 Texas Administrative Code Section 86.201 (RCD Rule Review #2024-004)

I. Syllabus

The Finance Commission of Texas (“commission”) proposed amended 7 TAC §86.201 to increase the maximum documentary fee amounts charged by retail sellers for retail installment transactions to purchase motorcycles, boats, all-terrain vehicles, and certain other vehicles and trailers.¹ The board submitted the proposed amended rule to the Regulatory Compliance Division (“division”) for review on May 6, 2024.² The division invited public comments on the proposed rule for a 30-day period ending on June 12, 2024, and received no comments.

Based on the following analysis, the division has determined that the proposed amended rule is consistent with state policy, and, thus, the proposed amended rule is approved by the division and may be finally adopted and implemented.

II. Analysis

Pursuant to Section 345.251, Texas Finance Code, proposed amended §86.201 adjusts the maximum documentary fees allowed to be charged by retail sellers for retail installment transactions to purchase certain types of vehicles. Retail installment transactions are an agreement to purchase a good or service and pay the price over time.

¹ 49 Tex. Reg. 2871 (2024) (to be codified at 7 TAC §86.201) (proposed May 3, 2024) (Fin. Comm’n Tex.).

² Rule Submission Memorandum from the Finance Commission of Texas (May 6, 2024), at 1 (on file with the Regulatory Compliance Division of the Office of the Governor).

Section 345.251, Texas Finance Code, in part, authorizes retail sellers to charge a reasonable documentary fee, subject to a maximum amount set by the commission, which must be agreed to by the seller and the buyer for services rendered for or on behalf of a retail buyer in handling and processing documents relating to the sale of a motorcycle, moped, all-terrain vehicle, boat, boat motor, boat trailer, or towable recreational vehicle. In 2013, pursuant to its authority under Sections 345.251(b)(2) and 345.251(e), Texas Finance Code, the commission established the maximum documentary fee in current 7 TAC §86.201 at \$125 for the purchase of a covered land vehicle or covered watercraft, and \$175 for the purchase of one or more covered land vehicles and one or more covered watercraft.³ The commission notes that the fee amounts are intended to correspond to different sets of titling and registration requirements.⁴ For example, covered land vehicles are subject to titling and registration requirements administered by the Texas Department of Motor Vehicles (“TxDMV”) under Chapters 501 and 502, Texas Transportation Code. Likewise, covered watercraft are subject to titling and registration requirements administered by the Texas Parks and Wildlife Department (“TPWD”) under Chapter 31, Texas Parks and Wildlife Code.

Given that the aforementioned maximum documentary fee amounts have not been adjusted since 2013, the commission proposed an adjustment in tandem with a similar increase to documentary fees for motor vehicles under proposed amended 7 TAC §84.205.⁵ According to the commission, the Office of Consumer Credit Commissioner (“OCCC”) has found, in its ongoing review of documentary fee costs analyses for motor vehicles, that of the 211 documentary fee filings submitted to the OCCC since 2020, the average filing amount was \$246.30.⁶ Following such findings, the commission proposed amended §84.205 to adjust the motor vehicle documentary fee amount that it considers reasonable from \$150 to \$225.⁷ The commission believes that a \$75 increase to the maximum documentary fee for covered land vehicles and covered watercraft under proposed amended §86.201, which is \$25 less than the proposed maximum documentary fee for motor vehicles, is appropriate because the documentation requirements for covered vehicles and watercraft are subject to similar, but not all, of the documentation requirements that apply to motor vehicles.⁸ In preparation for the proposal, the OCCC distributed a precomment draft of the proposed adjustment on March 15, 2024, and held a stakeholder webinar on March 26, 2024, where it received informal comments.⁹

The OCCC has the authority to enforce Chapter 345, Texas Finance Code, with respect to regulated persons pursuant to Section 14.201, Texas Finance Code. Likewise, Section 11.304,

³ Rule Submission Memorandum from the Finance Commission of Texas (May 6, 2024), at 2. The commission notes that “covered land vehicles” include motorcycles, mopeds, all-terrain vehicles, boat trailers, and towable recreational vehicles. Likewise, “covered watercraft” includes boats and boat motors.

⁴ *Id.*

⁵ *Id.* at 3; 49 Tex. Reg. 1172 (2024) (to be codified at 7 TAC §84.205) (proposed Mar. 1, 2024) (Fin. Comm’n Tex.).

⁶ Rule Submission Memorandum from the Finance Commission of Texas (Mar. 18, 2024), at 9 (on file with the Regulatory Compliance Division of the Office of the Governor).

⁷ Rule Submission Memorandum from the Finance Commission of Texas (May 6, 2024), at 3.

⁸ *Id.*

⁹ *Id.* at 4.

Texas Finance Code, generally tasks the commission with adopting rules necessary to supervise the OCCC and ensure compliance with applicable laws under the Texas Finance Code pertaining to the regulation of interest, loans, and financed transactions, including Chapter 345. Pursuant to its rulemaking authority, the commission proposed amended 7 TAC §86.201 to increase the maximum documentary fee for retail installment transactions to purchase covered land vehicles and watercraft under Texas Finance Code, Chapter 345. Because the proposed amended rule may result in higher prices for a service provided by license holders in this state, the commission submitted it to the division for review.¹⁰

A. The adjustment to the maximum documentary fee for covered land vehicles and covered watercraft retail installment transactions in proposed amended §86.201 is consistent with state policy.

Current §86.201 generally governs the maximum documentary fee in a retail transaction for the sale of covered land vehicles and covered watercraft, as provided by Section 345.251, Texas Finance Code. Retail sellers are authorized to charge a documentary fee for services rendered for or on behalf of the retail buyer in handling and processing documents relating to the sale of a motorcycle, moped, all-terrain vehicle, boat, boat motor, boat trailer, or towable recreational vehicle pursuant to Section 345.251(a), Texas Finance Code. Section 345.251(b)(2), Texas Finance Code, requires that a documentary fee not exceed a reasonable amount agreed to by the retail seller and retail buyer for the documentary services, subject to a reasonable maximum amount set by rule by the commission. Adopted in 2013, current §86.201(c) sets a reasonable maximum amount of a documentary fee for a retail installment contract for the purchase of one or more covered land vehicles at \$125. For the purchase of one or more covered watercraft, the maximum fee is \$125 pursuant to current §86.201(d). And, the maximum fee for the purchase of one or more covered land vehicles and one or more covered watercraft is \$175 pursuant to current §86.201(e).

As noted above, the OCCC has conducted a cost analysis of documentary fees for motor vehicles, which the commission relies on here.¹¹ In its proposal to increase the motor vehicle documentary fee amount considered reasonable under proposed amended §84.205, the commission argued that most sellers could demonstrate costs related to documentary services of at least \$225.¹² The commission also reviewed a recent contested case before the State Office of Administrative Hearings, where an administrative law judge found that a motor vehicle dealership group met its burden of proving that a range of documentary fee amounts was reasonable, after an analysis of the dealership group's costs relating to payroll, facilities,

¹⁰ *Id.* at 5.

¹¹ Rule Submission Memorandum from the Finance Commission of Texas (Mar. 18, 2024), at 9; Rule Submission Memorandum from the Finance Commission of Texas (May 6, 2024), at 3.

¹² Rule Submission Memorandum from the Finance Commission of Texas (Mar. 18, 2024), at 9.

software, forms, printing, and postage, which resulted in a final order that approved a range of fees from \$202.58 to \$267.83.¹³

Based on its analysis of the aforementioned contested case, and the OCCC's continued review of documentary fee cost analyses, the OCCC and the commission have proposed to adjust the reasonable maximum documentary fees for the purchase of covered land vehicles and covered watercraft under proposed amended §86.201.¹⁴ Specifically, proposed amended §86.201(c) increases the reasonable maximum amount of a documentary fee for a retail installment contract for the purchase of one or more covered land vehicles to \$200. Proposed amended §86.201(d) does the same for covered watercraft, increasing the fee to \$200. And, proposed amended §86.201(e) increases the maximum documentary fee for the purchase of one or more covered land vehicles and one or more covered watercraft to \$250. The commission urges that the proposed fee increases are intended to adequately represent the reasonable costs for documentary services in the current market.¹⁵

Section 345.251(b)(2), Texas Finance Code, in part, grants the commission authority to establish the reasonable maximum amount of documentary fees charged for the sale of covered vehicles and covered watercraft. Likewise, Section 345.251(e), grants the commission broad authority to adopt rules necessary to enforce Section 345.215, Texas Finance Code. The commission notes that while maximum documentary fees are proposed to increase, retail sellers will maintain their ability to charge lower documentary fees in a competitive marketplace.¹⁶ Ultimately, given the data presented by the commission and the broad statutory authority to set such fees, proposed amended §86.201 is a reasonable exercise of the commission's authority and is consistent with state policy.

III. Determination

Based on the above analysis, the proposed amended rule is approved by the division and may proceed to final adoption and implementation.

¹³ Proposal for Decision, *Office of Consumer Credit Commissioner v. Clay Cooley Entities*, SOAH Docket No. 466-22-0322 (Oct. 11, 2022); Final Order to Reduce Documentary Fees and Pay Restitution, *Office of Consumer Credit Commissioner v. Clay Cooley Entities*, SOAH Docket No. 466-22-0322 (Jan. 18, 2023).

¹⁴ Rule Submission Memorandum from the Finance Commission of Texas (May 6, 2024), at 3.

¹⁵ *Id.* at 4.

¹⁶ *Id.*