



MOTOR VEHICLE ADVISORY BULLETIN

Documentary Fee Filing Review Process

House Bill 3621

The Texas Legislature amended the Texas Finance Code last session with House Bill 3621 to allow motor vehicle dealers the ability to increase the documentary fee charged to a retail buyer for handling documents relating to the sale and financing of a motor vehicle. The law before September 1, 2009, set the ceiling for a documentary fee at \$50. Before increasing a maximum documentary fee above \$50, House Bill 3621 provides that:

[A] retail seller shall provide written notice to the commissioner of the maximum amount of the documentary fee the retail seller intends to charge. The commissioner may review the amount of a documentary fee for reasonableness. . . . If the commissioner determines that a documentary fee charged is not reasonable, the commissioner may require that the documentary fee charged be reduced or suspended.

Review Process

The review for reasonableness will evaluate the resources required to process the documents relating to the sale and financing of a motor vehicle by the retail seller. The OCCC may request a retail seller to provide the OCCC with information in addition to the written notice of the fee increase to assist the OCCC in its evaluation of the reasonableness of the filing. A dealer must be able to demonstrate to the OCCC that its charge for a documentary fee is supported by costs that are allocated to functions or processes allowed by the statute. The information provided by the dealer must be accurate and truthful. Providing materially inaccurate or false information to the OCCC may invalidate the filing and possibly result in an enforcement action against the licensee.

If the cost analysis changes so that the facts no longer support the same documentary fee, the retail seller must, at minimum, charge a lower amount. The retail seller may provide the OCCC with an additional filing of the lower amount, but this is not required. If the cost analysis changes so that the facts support a higher documentary fee, the retail seller may continue to charge the original amount; however, in order to charge a higher documentary fee, the retail seller must file another written notice with the OCCC for a higher documentary fee.

The OCCC, after reviewing the information provided by the retail seller in relation to the written notice of the documentary fee, may issue a finding that the fee filed by the retail seller is not reasonable. The retail seller may comply with the order of the OCCC or the retail seller may request an administrative hearing. If the OCCC finds a fee to not be reasonable, the retail seller will be ordered to lower the amount of the documentary fee to an amount determined by the OCCC. The retail seller may also be ordered to provide restitution to all customers who were charged a documentary fee in excess of the amount determined by the OCCC to be reasonable.

Administrative Hearing Process

The Texas Finance Commission employs an administrative law judge (ALJ) to hear the contested cases for the Department of Banking, the Department of Savings and Mortgage Lending, and the Office of Consumer Credit Commissioner. Contested cases are heard by the ALJ under the Administrative Procedure Act, the Texas Rules of Civil Procedure, the Texas Rules of Evidence and the Rules of Procedure for Contested Case Hearings, Appeals, and Rulemakings for the Finance Commission Agencies. Discovery is conducted under a modified version of the Texas Rules of Civil Procedure for the Texas Finance Commission agencies.

After the close of evidence, the transcript and any briefing of the parties will be reviewed by the ALJ. Next, the ALJ will prepare a draft proposal for decision (PFD). The parties may file exceptions to the draft PFD before the record is filed with the Commissioner. The Commissioner reviews the entire record in order to prepare a final order which may be appealed to state district court.