

**TEXAS DEPARTMENT OF MOTOR VEHICLES  
CASE NO. 21-0004225 CAF**

**NERY SANTIBANEZ,  
Complainant**

v.

**GENERAL MOTORS LLC,  
Respondent**

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**BEFORE THE OFFICE  
  
OF  
  
ADMINISTRATIVE HEARINGS**

**DECISION AND ORDER**

Nery Santibanez (Complainant) seeks relief pursuant to Texas Occupations Code §§ 2301.601-2301.613 (Lemon Law) for alleged defects in her 2020 Cadillac XT6. Complainant asserts that the vehicle is defective because the vehicle’s display screen intermittently will go black and because some of the vehicle’s warning lights (including the check engine light [CEL]) intermittently illuminate. General Motors LLC (Respondent) argued that the vehicle is operating as designed and that no relief is warranted. The hearings examiner concludes that although the vehicle does have a currently existing warrantable defect, Complainant is entitled only to repair relief, as the defect does not substantially impair the use or market value of the vehicle and it does not create a serious safety hazard as defined in the Occupations Code.

**I. PROCEDURAL HISTORY, NOTICE AND JURISDICTION**

Matters of notice and jurisdiction were not contested and are discussed only in the Findings of Fact and Conclusions of Law. The hearing on the merits in this case initially convened in Houston, Texas on April 7, 2021, before Hearings Examiner Edward Sandoval. Nery Santibanez, Complainant, represented herself at the hearing. General Motors LLC, Respondent, was represented by Carlin Davis, Business Resource Manager. The hearing was continued to April 28, 2021, to review and take testimony regarding video evidence presented by Complainant.

The hearing continuance was conducted telephonically by Hearings Examiner Edward Sandoval on April 28, 2021. Nery Santibanez, Complainant, appeared and represented herself at the continuance. General Motors LLC, Respondent, was represented by Carlin Davis, Business Resource Manager. The hearing record closed on April 28, 2021.

## II. DISCUSSION

### A. Applicable Law

The Lemon Law provides, in part, that a manufacturer of a motor vehicle must repurchase or replace a vehicle complained of with a comparable vehicle if the following conditions are met. First, the manufacturer is not able to conform the vehicle to an applicable express warranty by repairing or correcting a defect after a reasonable number of attempts.<sup>1</sup> Second, the defect or condition in the vehicle creates a serious safety hazard or substantially impairs the use or market value of the vehicle.<sup>2</sup> Third, the manufacturer has been given a reasonable number of attempts to repair or correct the defect or condition.<sup>3</sup> Fourth, the owner must have mailed written notice of the alleged defect or nonconformity to the manufacturer.<sup>4</sup> Lastly, the manufacturer must have been given an opportunity to cure the defect or nonconformity.<sup>5</sup>

In addition to these conditions, a rebuttable presumption can be established that a reasonable number of attempts have been undertaken to conform a motor vehicle to an applicable express warranty if the same nonconformity continues to exist after being subject to repair four or more times by the manufacturer, converter, or distributor, or an authorized agent or franchised dealer of a manufacturer, converter, or distributor and the repair attempts were made before the earlier of: (A) the date the express warranty expires; or (B) 24 months or 24,000 miles, whichever occurs first, following the date of original delivery of the motor vehicle to the owner.<sup>6</sup>

If a vehicle is found to have a nonconformity that creates a serious safety hazard which continues to exist, the rebuttable presumption that a reasonable number of repair attempts have been performed can be established if the vehicle has been subject to repair two or more times by the manufacturer, converter, or distributor, or an authorized agent or franchised dealer of a manufacturer, converter, or distributor and the attempts were made before the earlier of: (A) the date the express warranty expires; or (B) 24 months or 24,000 miles, whichever occurs first, following the date of original delivery of the motor vehicle to the owner.<sup>7</sup>

“Serious safety hazard” means a life-threatening malfunction or nonconformity that substantially impedes a person’s ability to control or operate a vehicle for ordinary use or intended purposes, or creates a substantial risk of fire or explosion.<sup>8</sup>

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<sup>1</sup> Tex. Occ. Code § 2301.604(a).

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> Tex. Occ. Code § 2301.606(c)(1).

<sup>5</sup> Tex. Occ. Code § 2301.606(c)(2).

<sup>6</sup> Tex. Occ. Code § 2301.605(a)(1)(A) and (B).

<sup>7</sup> Tex. Occ. Code § 2301.605(a)(2)(A) and (B).

<sup>8</sup> Tex. Occ. Code § 2301.601(4).

Finally, a rebuttable presumption can be established that a reasonable number of attempts have been undertaken to conform a motor vehicle to an applicable express warranty if the same nonconformity continues to exist that substantially impairs the vehicle's use or market value, the vehicle has been out of service for repair for a cumulative total of 30 or more days, and the repairs attempts were made before the earlier of: (A) the date the express warranty expires; or (B) 24 months or 24,000 miles, whichever occurs first, following the date of original delivery of the motor vehicle to the owner.<sup>9</sup>

The 30 day out of service requirement described in Section 2301.605(a)(3) does not include any period during which the manufacturer or distributor lends the vehicle owner a comparable motor vehicle while the owner's vehicle is being repaired by a franchised dealer.<sup>10</sup>

## **B. Complainant's Evidence and Arguments**

Complainant purchased a new 2020 Cadillac XT6 from Ron Craft Chevrolet–Cadillac (Craft) in Baytown, Texas on April 30, 2020, with mileage of 125 at the time of delivery.<sup>11</sup> Respondent provided a new vehicle limited warranty for the vehicle which provides coverage for four (4) years or 50,000 miles. In addition, Respondent provided a powertrain warranty for the vehicle's powertrain providing coverage for six (6) years or 70,000 miles. On the date of the initial hearing the vehicle's mileage was 10,409. At the time of hearing Respondent's warranties were still in effect.

Complainant testified that she has experienced issues with the vehicle's display screen going black and with warning lights illuminating intermittently when she's driving the vehicle.

Complainant stated that sometime in August of 2020, she was driving the vehicle and when she put the vehicle's transmission into reverse, the backup camera screen went black. The screen remained black after Complainant put the transmission back into park. Complainant contacted Craft's service department to see about taking the vehicle in for repair for the issue.

Complainant took the vehicle to Craft for repair on August 18, 2020. Craft's service technician was able to recreate the problem, but did not find any stored trouble codes in the video processing control module.<sup>12</sup> The technician determined that the backup camera had an intermittent fault and replaced the camera to resolve the issue.<sup>13</sup> The vehicle's mileage on this

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<sup>9</sup> Tex. Occ. Code § 2301.605(a)(3)(A) and (B).

<sup>10</sup> Tex. Occ. Code § 2301.605(c).

<sup>11</sup> Complainant Ex. 2, Buyer's Order dated April 30, 2020.

<sup>12</sup> Complainant Ex. 5, Repair Order dated August 18, 2020.

<sup>13</sup> *Id.*

occasion was 3,974.<sup>14</sup> The vehicle was in Craft's possession until August 28, 2020, during this repair visit. Complainant was provided a loaner vehicle while her vehicle was being repaired.

Complainant stated that the same day that she picked up the vehicle from Craft, the display screen went black again. She contacted Craft's service department again to see about having the vehicle repaired. Craft's representative advised Complainant that they would notify her when a loaner could be provided for her when she had the vehicle repaired. Complainant returned the vehicle to Craft for repair on September 4, 2020. Craft's service technician verified that both the front and rear cameras were intermittently not working.<sup>15</sup> In order to resolve the issue, the technician removed and reconnected the camera's coax cable and determined that the camera was operating properly.<sup>16</sup> The technician also determined that the backup camera's bubble lens was cracked and that the camera needed to be replaced.<sup>17</sup> The technician had to order a replacement camera, since none were available at the time.<sup>18</sup> The mileage on the vehicle at the time was 4,174.<sup>19</sup> The vehicle was in Craft's possession until September 18, 2020, during this repair visit. Complainant was provided a loaner vehicle while her vehicle was being repaired.

Complainant testified that the backup camera worked properly for about a week and a half and then the display screen started to intermittently go black again. Complainant contacted Craft's service department about the issue and was informed that the replacement camera had been ordered and she would be informed when it arrived at the dealership.

Complainant testified that another issue with the vehicle arose on November 17, 2020. On that date she was driving the vehicle and had just left her home. While driving several warning lights illuminated on the vehicle's instrument cluster: the check engine light (CEL), stabilitrak warning, service parking brake warning light, and a service parking brake warning message. Complainant stated that the vehicle came to a complete stop in the middle of the road, although the engine was still running. The vehicle would not accelerate. Complainant turned the vehicle on and off and the warning lights cleared from the instrument cluster. After turning the vehicle on and off, the vehicle still would not accelerate normally, but Complainant was able to drive the vehicle back to her home. Complainant contacted the dealer about the issue, and they had the vehicle towed to Craft the following day, November 18, 2020. Craft's service technician was unable to verify the issue, but did find loss of communication codes with the vehicle's power steering control module on the vehicle's computers.<sup>20</sup> The technician determined that the vehicle

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<sup>14</sup> *Id.*

<sup>15</sup> Complainant Ex. 6, Repair Order dated September 4, 2020.

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> Complainant Ex. 7, Repair Order dated November 18, 2020.

was operating as designed at the time.<sup>21</sup> The technician also replaced the backup camera during this repair visit, but after installation discovered intermittent loss of signal from the camera.<sup>22</sup> As a result, the technician taped down the backup camera's coax cable as a temporary fix per Respondent's instructions..<sup>23</sup> The vehicle was in Craft's possession until December 17, 2020, on this occasion.<sup>24</sup> Complainant was provided with a loaner vehicle during this repair visit. The mileage on the vehicle at the time Complainant took it for repair on this occasion was 6,599.<sup>25</sup> Complainant initially refused to pick up the vehicle from Craft, but did so after she was informed that the dealer would no longer pay for the rental vehicle that she was driving. When Complainant picked up the vehicle, Craft's representative informed her that she would be notified when the part needed for the permanent fix for the backup camera arrived at the dealership. She was also instructed to return the vehicle to Craft if the warning lights illuminated again.

Complainant filed a Lemon Law complaint with the Texas Department of Motor Vehicles on December 16, 2020.<sup>26</sup> Complainant did not provide written notice of her dissatisfaction with the vehicle to Respondent.

In early January of 2021, Complainant saw the vehicle's CEL illuminate again. On January 12, 2021, she had the vehicle towed to Craft for repair for the issue. Craft's technician was unable to duplicate the issue regarding the warning lights and did not find any stored diagnostic trouble codes (DTC's) on the vehicle's computers.<sup>27</sup> Also, during this repair visit, the technician installed a new jumper harness to the vehicle's camera to correct insufficient coax cable tension in order to address the issue regarding the backup camera going black intermittently.<sup>28</sup> The vehicle's mileage on this occasion was 7,789.<sup>29</sup> The vehicle was in Craft's possession until January 28, 2021, on this occasion. Complainant was provided a loaner vehicle while her vehicle was being repaired.

During this period of time, Complainant was in contact with Respondent's representatives who had contacted her in an attempt to resolve her complaints with the vehicle. The representative suggested that the vehicle be inspected by another dealer's service personnel. Complainant agreed and allowed the vehicle to be towed on January 28, 2021, to Central Houston Cadillac (Central) located in Houston, Texas. Central's service technician inspected the vehicle to attempt

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<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> Complainant Ex. 1, Lemon Law Complaint. Complainant dated December 16, 2020.

<sup>27</sup> Complainant Ex. 9, Repair Order dated January 12, 2021.

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

to determine why the vehicle's warning lights were illuminating.<sup>30</sup> However, the technician was unable to recreate the issue and did not find any stored DTC's on the vehicle's computers.<sup>31</sup> The vehicle's mileage on this occasion was 7,800.<sup>32</sup> The vehicle was in Central's possession until February 12, 2021. Complainant was provided a loaner vehicle while her vehicle was being repaired.

Complainant testified that the vehicle's CEL has illuminated several times since February 12, 2021. She has seen the CEL and other warning lights illuminate on the following dates:

1. February 13, 2021, the CEL illuminated, two other warning messages appeared,
2. February 15, 2021, the CEL illuminated,
3. February 16, 2021, the CEL and the traction control warning lights illuminated,
4. February 17, 2021, the CEL and the steering assist is reduced warning lights illuminated,
5. February 19, 2021, the CEL illuminated.

Complainant testified that the vehicle's display screen went black on February 23, 2021 and February 24, 2021. Complainant stated that the screen last went black approximately two (2) to three (3) weeks prior to the April 28, 2021, hearing.

Complainant testified that the warning lights have not illuminated since February of 2021.

### **C. Respondent's Evidence and Arguments**

Carlin Davis, Business Resource Manager, testified for Respondent. He has worked in the automotive industry for 14 years. His experience has all been with Respondent and he was worked in seven (7) different positions for Respondent. Mr. Davis is an Automotive Service Excellence (ASE) Certified Master Technician.

Mr. Davis has never seen the vehicle. He did request that Complainant take the vehicle to Central for an inspection in January of 2021. Mr. Davis stated that Respondent's field service engineers have not inspected the vehicle. Mr. Davis feels that the issue of the display screen going black was resolved on January 12, 2021, when Craft's service technician installed a jumper harness to the vehicle's camera to correct insufficient coax cable tension pursuant to Technical Service Bulletin (TSB) 21-NA-048. However, this TSB only was developed to address a known issue of a black screen in reverse with a red triangle and red camera with a circle and slash through it.<sup>33</sup>

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<sup>30</sup> Complainant Ex. 12, Repair Order dated January 28, 2021.

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> Respondent Ex. 1, Technical Service Bulletin (TSB) 21-NA-048 undated.

Mr. Davis testified that he feels the vehicle is operating as designed.

#### **D. Analysis**

Under the Lemon Law, Complainant bears the burden of proof to establish by a preponderance of evidence that a defect or condition creates a serious safety hazard or substantially impairs the use or market value of the vehicle. In addition, Complainant must meet the presumption that the manufacturer was given a reasonable number of attempts to repair or correct the defect or condition to conform the vehicle to an applicable express warranty. Finally, Complainant is required to serve written notice of the defect or nonconformity on Respondent, who must be allowed an opportunity to cure the defect. If each of these requirements is met and Respondent is still unable to conform the vehicle to an express warranty by repairing the defect or condition, Complainant is entitled to have the vehicle repurchased or replaced.

##### **1. Display Screen Issue**

One of Complainant's concerns involved the vehicle's display screen going black periodically. Complainant's testimony was that this last occurred in April of 2021. Respondent felt that the issue was resolved by the January 12, 2021, repair when Craft's service technician installed a jumper harness to the vehicle's camera to correct insufficient coax cable tension pursuant to TSB 21-NA-2021. However, this problem covered by the TSB is not the same problem Complainant is currently encountering with the vehicle.

The evidence establishes that Complainant is still experiencing an issue with the vehicle's display screen going black. However, the issue does not substantially impair the use or market value of the vehicle nor does it create a serious safety hazard as defined in the Occupations Code. As such, the hearings examiner must hold that this issue does not provide sufficient grounds to order repurchase or replacement of the vehicle; however, the hearings examiner will order Respondent to investigate and attempt to repair the concern with the vehicle's display screen intermittently going black.

##### **2. Warning Lights Illuminating**

The evidence taken at hearing indicates that intermittently some of the vehicle's warning lights, including the CEL, illuminate. The problem last occurred in late February of 2021. Even though

the issue is frustrating, it does not substantially impair the use or market value of the vehicle nor does it create a serious safety hazard as defined in the Occupations Code. As such, the hearings examiner must hold that this issue does not provide sufficient grounds to order repurchase or replacement of the vehicle; however, the hearings examiner will order Respondent to investigate and attempt to repair the concern with the vehicle's warning lights illuminating.

On the date of the initial hearing, the vehicle's mileage was 10,409 and it remains under Respondent's warranties. As such, Respondent is still under an obligation to repair the vehicle whenever there is a problem covered by the vehicle's warranty.

Complainant's request for repurchase or replacement relief is denied. However, repair relief will be ordered for the complained of issues as described below.

### III. FINDINGS OF FACT

1. Nery Santibanez (Complainant) purchased a new 2020 Cadillac XT6 on April 30, 2020, from Ron Craft Chevrolet–Cadillac (Craft) in Baytown, Texas with mileage of 125 at the time of delivery.
2. The manufacturer or distributor of the vehicle, General Motors LLC (Respondent), issued a new vehicle limited warranty for the vehicle which provides coverage for four (4) years or 50,000 miles, whichever occurs first. Respondent also provided a powertrain warranty for the vehicle providing coverage for six (6) years or 70,000 miles, whichever comes first.
3. The vehicle's mileage on the date of the initial hearing was 10,409.
4. Respondent's warranties were still in effect at the time of hearing.
5. Complainant has observed that the vehicle's display screen goes black intermittently and has also observed some of the vehicle's warning lights, including the check engine light (CEL), illuminate intermittently.
6. Prior to filing the Lemon Law complaint, Complainant took the vehicle to Respondent's authorized dealer, Craft, on the following dates to address her concerns regarding the display screen going black and/or the warning lights illuminating issues:
  - a. August 8, 2020, at 3,974 miles;
  - b. September 4, 2020, at 4,174 miles; and
  - c. November 18, 2020, at 6,599 miles.

7. On August 8, 2020, Craft's service technician verified the issue regarding the backup camera going black, determined that an intermittent fault was present in the camera, and replaced the camera to resolve the issue.
8. On September 4, 2020, Craft's service technician found that both the front and backup cameras were intermittently inoperative. The technician disconnected the camera wiring and reconnected it to resolve the issue. In addition, the technician determined that the bubble lens on the backup camera was cracked and ordered a new camera for the vehicle.
9. On November 18, 2020, Craft's service technician replaced the backup camera, but after installation discovered intermittent loss of signal from the camera. As a result, the technician taped down the backup camera's coax cable as a temporary fix per Respondent's instructions.
10. Also, on November 18, 2020, Craft's service technician addressed Complainant's concern that the service steering assist message appeared on the vehicle's display screen. The technician found stored trouble codes indicating loss of communication with the vehicle's power steering control module. However, the issue with the warning lights illuminating could not be duplicated, and the technician determined that the vehicle was operating as designed at the time.
11. On December 16, 2020, Complainant filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department).
12. On January 12, 2021, Complainant took the vehicle to Craft for repair for the backup camera and warning lights illuminating issues. The vehicle's mileage at the time was 7,789.
13. During the repair visit described in Findings of Fact #12, Craft's service technician installed a jumper harness to the vehicle's camera to correct insufficient coax cable tension to address the issue regarding the backup camera going black intermittently.
14. Also, on January 12, 2021, Craft's service technician was unable to recreate the issue regarding the warning lights illuminating and did not find any stored diagnostic trouble codes (DTC's) stored on the vehicle's computers for the issue. As such, no repairs were performed for the concern.
15. On January 28, 2021, Complainant had the vehicle towed to Central Houston Cadillac (Central) located in Houston, Texas for repair for the warning lights illuminating issue. The vehicle's mileage at the time was 7,800.

16. During the repair visit described in Findings of Fact #15, Central's service technician was unable to find any stored DTC's and was unable recreate an issue with the vehicle's warning lights illuminating.
17. Complainant experienced the vehicle's CEL illuminating several times between February 13, 2021 through February 19, 2021.
18. Complainant observed the vehicle's display screen go black on February 23, 2021 and February 24, 2021 and sometime in early April of 2021.
19. On March 3, 2021, the Department's Office of Administrative Hearings issued a notice of hearing directed to Complainant and Respondent, giving all parties not less than 10 days' notice of hearing and their rights under the applicable rules and statutes. The notice stated the time, place and nature of the hearing; the legal authority and jurisdiction under which the hearing was to be held; particular sections of the statutes and rules involved; and the matters asserted.
20. The hearing on the merits in this case initially convened in Houston, Texas on April 7, 2021, before Hearings Examiner Edward Sandoval. Nery Santibanez, Complainant, represented herself at the hearing. General Motors LLC, Respondent, was represented by Carlin Davis, Business Resource Manager. The hearing was continued to April 28, 2021, to review and take testimony regarding video evidence presented by Complainant.
21. The hearing continuance was conducted telephonically by Hearings Examiner Edward Sandoval on April 28, 2021. Nery Santibanez, Complainant, appeared and represented herself at the continuance. General Motors LLC, Respondent, was represented by Carlin Davis, Business Resource Manager. The hearing record closed on April 28, 2021.

#### IV. CONCLUSIONS OF LAW

1. The Texas Department of Motor Vehicles (Department) has jurisdiction over this matter. Tex. Occ. Code §§ 2301.601-2301.613 (Lemon Law).
2. A hearings examiner of the Department's Office of Administrative Hearings has jurisdiction over all matters related to conducting a hearing in this proceeding, including the preparation of a decision with findings of fact and conclusions of law, and the issuance of a final order. Tex. Occ. Code § 2301.704.

3. Complainant timely filed a complaint with the Department. Tex. Occ. Code § 2301.204; 43 Tex. Admin. Code § 215.202.
4. The parties received proper notice of the hearing. Tex. Gov't Code §§ 2001.051, 2001.052; 43 Tex. Admin. Code § 215.206(2).
5. Complainant bears the burden of proof in this matter.
6. Complainant proved by a preponderance of the evidence that the vehicle has verifiable defects or nonconformities, *i.e.*, some of the vehicle's warning lights, including the CEL, intermittently will illuminate and the display screen will go black intermittently. However, the defects do not present a serious safety hazard nor substantially impair the use or market value of the vehicle. Tex. Occ. Code § 2301.604.
7. Respondent remains responsible to address and repair or correct any defects that are covered by Respondent's warranties. Tex. Occ. Code §§ 2301.204, 2301.603.
8. Complainant's vehicle does not qualify for replacement or repurchase. Tex. Occ. Code § 2301.604.
9. Complainant is entitled to repair relief under the terms of Respondent's warranty. Tex. Occ. Code § 2301.204.

### ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is **ORDERED** that Complainant's petition for replacement or repurchase relief pursuant to Texas Occupations Code §§ 2301.601-2301.613 is hereby **DISMISSED**. It is **FURTHER ORDERED** that Respondent shall make any repairs needed to conform the vehicle (*i.e.*, inspect the vehicle to address the issue of some of the vehicle's warning lights, including the CEL, intermittently illuminating and the display screen going black intermittently) to the applicable warranty. Complainant shall deliver the subject vehicle to Respondent within 20 days after the date this Order becomes final under Texas Government Code § 2001.144.<sup>34</sup> Within 40 days after receiving the vehicle from Complainant, Respondent shall complete repair of the subject vehicle. However, if the Department determines Complainant's refusal or inability to deliver the vehicle caused the failure to complete the required repair as prescribed, the Department may consider Complainant to have rejected the granted relief

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<sup>34</sup> (1) This Order becomes final if a party does not file a motion for rehearing within 20 days after receiving a copy of this Order, or (2) if a party files a motion for rehearing within 20 days after receiving a copy of this Order, this Order becomes final when: (A) the Department renders an order overruling the motion for rehearing, or (B) the Department has not acted on the motion within 45 days after the party receives a copy of this Order.

and deem this proceeding concluded and the complaint file closed under 43 Texas Administrative Code § 215.210(2).

**SIGNED June 28, 2021.**

A handwritten signature in black ink, appearing to read "Edward Sandoval", is written over a horizontal line.

**EDWARD SANDOVAL  
CHIEF HEARINGS EXAMINER  
OFFICE OF ADMINISTRATIVE HEARINGS  
TEXAS DEPARTMENT OF MOTOR VEHICLES**