

1 **ADOPTION OF**

2 **SUBCHAPTER J. ADMINISTRATIVE SANCTIONS**

3 **43 TAC §215.500 and §215.504**

4 **INTRODUCTION.** The Texas Department of Motor Vehicles (department) adopts amendments to 43 TAC
5 §215.500, concerning administrative sanctions and procedures and adds new 43 TAC §215.504 concerning
6 buyer and lessee refunds. The adopted amended and new sections implement Senate Bill (SB) 604, 86th
7 Legislature, Regular Session (2019), which amended Occupations Code Chapter 2301 by adding §2301.807
8 which allows the board to order a licensee under Chapter 2301 to pay a refund to a buyer or lessee of a
9 motor vehicle.

10 The department adopts amended §215.500 without changes to the proposed text as published in the
11 August 21, 2020, issue of the *Texas Register* (45 *TexReg* 5874). The department adopts new §215.504 with
12 changes to the proposed text as published in the August 21, 2020, issue of the *Texas Register* (45 *TexReg*
13 5874). This section will be republished.

14 **REASONED JUSTIFICATION.** The amendment to §215.500 adds §215.500(a)(5) to the existing list of
15 administrative sanctions available to the department. The department's enforcement division will order
16 refunds within existing enforcement procedures outlined in Chapter 215. The board could order the
17 issuance of refunds through settlement negotiations undertaken under Chapter 215; as well as, the
18 adoption of a proposal for decision issued by an administrative law judge at the State Office of
19 Administrative Hearings. New §215.500(a)(5) is necessary to implement SB 604 and to clarify that refunds
20 will be ordered using the same procedures as existing sanctions under the rules.

21 New §215.504(a) permits the board to order a person to issue a refund if, after a proceeding
22 under Chapter 215, it determines the person violated or has violated Occupations Code Chapter 2301 or
23 department rules. New §215.504(a) is necessary to implement SB 604.

1 New §215.504(b) defines "refund" as the return of any percentage of funds paid, or contracted to
2 be paid, to a person, whether those funds are documented as a separate line item or the overall amount
3 paid by a buyer or lessee. Based on a comment received, the department considers it necessary to amend
4 the proposed language to substitute the word "buyer or lessee" for "consumer" to better reflect the
5 statutory language in Occupations Code §2301.807. This change does not affect persons not on notice of
6 the proposal or add additional costs.

7 New §215.504(b) explains that a refund may include overpayments, fees paid for services not
8 rendered, and payments made for products not delivered. A refund does not include any consideration of
9 damages or harm over the amount paid by the buyer or lessee. Occupations Code §2301.807 did not
10 extend the department's sanction authority to order damages or restitution. New §215.504(b) is
11 necessary to explain the meaning of refund in the subsection and clarify that the refund is not a
12 mechanism for restitution or to make the consumer whole; such as, the dealer licensee reimbursing the
13 buyer or lessee for the cost of third-party services in a situation where the buyer or lessee must engage a
14 third-party to complete services not rendered. A refund is a tool that may be used by the department's
15 enforcement division to order a person who has violated Occupations Code Chapter 2301 to refund the
16 buyer or lessee by giving back or returning money paid or contracted to be paid, if the buyer or lessee has
17 entered into a financing agreement, because the buyer or lessee did not receive a service or item. The
18 refund is limited to funds paid or contracted to be paid to the dealer licensee.

19 **SUMMARY OF COMMENTS.**

20 The department received written comments requesting a change in the proposed text from the
21 Texas Automobile Dealers Association.

22 **§215.504.**

23 **Comment.**

1 The commenter notes that the proposed language permits the board to order a person to issue a refund
2 whether those funds are documented as a separate line item or part of an overall amount paid by a
3 "consumer" and recommends that the language be amended to align with Occupations Code §2301.807,
4 which permits a refund to the "buyer or lessee of the motor vehicle."

5 **Agency Response.**

6 The department agrees with the commenter and did not intend to expand the universe of
7 individuals who may be entitled to a refund under Occupations Code §2301.807 with the use of
8 "consumer." To clarify department intent and better conform to the statutory language, §215.504(b) has
9 been changed to substitute "buyer or lessee" for "consumer." The change does not affect persons not on
10 notice of the proposal or add additional costs.

11 **STATUTORY AUTHORITY.** The department adopts amended §215.500 and new §215.504 under
12 Occupations Code §2301.155 and Transportation Code §1002.001.

13 Occupations Code §2301.155 authorizes the board of the Texas Department of Motor Vehicles to
14 adopt rules as necessary or convenient to administer this chapter and to govern practice and procedure
15 before the board.

16 Transportation Code §1002.001 authorizes the board to adopt rules that are necessary and
17 appropriate to implement the powers and the duties of the department.

18 **CROSS REFERENCE TO STATUTE.** Occupations Code §2301.807.

19 **TEXT.**

20 **Subchapter J. Administrative Sanctions**

21 **43 TAC §215.500 and §215.504**

22 §215.500. Administrative Sanctions and Procedures.

23 (a) An administrative sanction may include:

- 1 (1) denial of an application for a license;
- 2 (2) suspension of a license;
- 3 (3) revocation of a license; ~~[or]~~
- 4 (4) the imposition of civil penalties; or
- 5 (5) a refund under §215.504 of this title (concerning buyer or lessee refund).

6 (b) The department shall issue and mail a Notice of Department Decision to a license applicant,
7 license holder, or other person by certified mail, return receipt requested, to the last known address upon
8 a determination under Occupations Code, Chapters 2301 and 2302 or Transportation Code, Chapter 503
9 that:

- 10 (1) an application for a license should be denied; or
- 11 (2) administrative sanctions should be imposed.

12 (c) The last known address of a license applicant, license holder, or other person is the last mailing
13 address provided to the department when the license applicant applies for its license, when a license
14 holder renews its license, or when the license holder notifies the department of a change in the license
15 holder's mailing address.

16 (d) The Notice of Department Decision shall include:

- 17 (1) a statement describing the department decision and the effective date;
- 18 (2) a description of each alleged violation;
- 19 (3) a description of each administrative sanction being adopted;
- 20 (4) a statement regarding the legal basis for each administrative sanction;
- 21 (5) a statement regarding the license applicant, license holder, or other person's right to
22 request a hearing;
- 23 (6) the procedure to request a hearing, including the deadline for filing; and

1 (7) notice to the license applicant, license holder, or other person that the adopted
2 decision and administrative sanctions in the Notice of Department Decision will become final on the date
3 specified if the license applicant, license holder, or other person fails to timely request a hearing.

4 (e) The license applicant, license holder, or other person must submit, in writing, a request for a
5 hearing under this section. The department must receive a request for a hearing within 26 days of the
6 date of the Notice of Department Decision.

7 (f) If the department receives a timely request for a hearing, the department will set a hearing
8 date and give notice to the license applicant, license holder, or other person of the date, time, and location
9 of the hearing.

10 (g) If the license applicant, license holder, or other person does not make a timely request for a
11 hearing or enter into a settlement agreement within 27 days of the date of the Notice of Department
12 Decision, the department decision becomes final.

13
14 §215. 504. Buyer or Lessee Refund.

15 (a) The board may order a person to issue a refund if, after a proceeding under this chapter, it
16 determines the person violated or has violated Occupations Code Chapter 2301 or department rules.

17 (b) Under this section, a refund is the return of any percentage ordered by the department of
18 funds paid, or contracted to be paid, to a person, whether those funds are documented as a separate line
19 item or part of the overall amount paid by a buyer or lessee. Refund may include overpayments, fees paid
20 for services not rendered, and payments made for products not delivered.

1

2 **CERTIFICATION.** The agency certifies that legal counsel has reviewed the adoption and found it to be
3 within the state agency's legal authority to adopt.

4 Issued at Austin, Texas, on December 10, 2020.

5

/s/ Tracey Beaver
Tracey Beaver, General Counsel

6

DRAFT