

1 **PROPOSAL OF**

2 **SUBCHAPTER J. ADMINISTRATIVE SANCTIONS**

3 **43 TAC §215.500 and §215.504**

4 **INTRODUCTION.** The Texas Department of Motor Vehicles (department) proposes to amend 43 TAC  
5 §215.500, concerning administrative sanctions and procedures and add new §215.504 concerning buyer  
6 and lessee refunds. The proposed 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 **EXPLANATION.** The proposed amendment to §215.500 adds §215.500(a)(5) to the existing list of  
11 administrative sanctions available to the department. The department's enforcement division will order  
12 refunds within existing enforcement procedures outlined in Chapter 215. The board could order the  
13 issuance of refunds through settlement negotiations undertaken under Chapter 215; as well as, the  
14 adoption of a proposal for decision issued by an administrative law judge at the State Office of  
15 Administrative Hearings. Proposed new §215.500(a)(5) is necessary to implement SB 604 and to clarify  
16 that refunds will be ordered using the same procedures as existing sanctions under the rules.

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

20 Proposed new §215.504(b) defines "refund" as the return of any percentage of funds paid, or  
21 contracted to be paid, to a person, whether those funds are documented as a separate line item or the  
22 overall amount paid by a customer. Proposed new §215.504(b) explains that a refund may include  
23 overpayments, fees paid for services not rendered, and payments made for products not delivered. A

1 refund does not include any consideration of damages or harm over the amount paid by the customer.  
2 Occupations Code §2301.807 did not extend the department’s sanction authority to order damages or  
3 restitution. Proposed new §215.504(b) is necessary to explain the meaning of refund in the subsection  
4 and clarify that the refund is not a mechanism for restitution or to make the consumer whole; such as,  
5 the dealer licensee reimbursing the buyer or lessee for the cost of third-party services in a situation where  
6 the buyer or lessee must engage a third-party to complete services not rendered. A refund is a tool that  
7 may be used by the department’s enforcement division to order a person who has violated Occupations  
8 Code Chapter 2301 to refund the customer by giving back or returning money paid or contracted to be  
9 paid, if the customer has entered into a financing agreement, because the consumer did not receive a  
10 service or item. The refund is limited to funds paid or contracted to be paid to the dealer licensee.

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12 **FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT.** Linda M. Flores, Chief Financial Officer,  
13 has determined that for each year of the first five years the amended and new sections will be in effect,  
14 there will be no fiscal impact to state or local governments as a result of the enforcement or  
15 administration of the proposal. Corrie Thompson, Director of the Enforcement Division, has determined  
16 that there will be no measurable effect on local employment or the local economy as a result of the  
17 proposal.

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19 **PUBLIC BENEFIT AND COST NOTE.** Ms. Thompson has also determined that, for each year of the first five  
20 years the amended and new sections are in effect, there are public benefits anticipated from the ability  
21 of the board to order refunds.

22 Anticipated Public Benefits. The public benefits anticipated as a result of the proposal include  
23 expanding the administrative tools that the board has to sanction dealer licensees that violate the

1 Occupations Code and department rules and providing buyers and lessees a means of receiving a refund  
2 of money paid to dealer licensees for overpayments, fees paid for services not rendered, and payments  
3 made for products not delivered.

4 Anticipated Costs To Comply With The Proposal. Ms. Thompson anticipates that there will be no  
5 costs to comply with these rules. The proposed rules do not create any compliance requirement of cost  
6 of compliance on a regulated person. The proposed rules implement a potential statutory sanction  
7 provision that the department may order against a person that violates Occupations Code Chapter 2301  
8 or a rule adopted under the chapter.

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10 **ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS.** As required by the  
11 Government Code, §2006.002, the department has determined that the proposed new section will not  
12 have an adverse economic effect on small businesses, micro-businesses, or rural communities as a result  
13 of implementing this rule because it will not create additional requirements or costs on regulated persons.  
14 Therefore, the department is not required to prepare a regulatory flexibility analysis under Government  
15 Code §2006.002.

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17 **TAKINGS IMPACT ASSESSMENT.** The department has determined that no private real property interests  
18 are affected by this proposal and that this proposal does not restrict or limit an owner's right to property  
19 that would otherwise exist in the absence of government action and, therefore, does not constitute a  
20 taking or require a takings impact assessment under the Government Code §2007.043.

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22 **GOVERNMENT GROWTH IMPACT STATEMENT.** The department has determined that during the first five  
23 years the proposed amended and new sections are in effect, no government program would be created

1 or eliminated. Implementation of the proposed amended and new sections would not require the  
2 creation of new employee positions or elimination of existing employee positions. Implementation would  
3 not require an increase or decrease in future legislative appropriations to the department or an increase  
4 or decrease of fees paid to the department. The proposed amended and new sections do not create a  
5 new regulation, or expand, or repeal an existing regulation. Lastly, the proposed amended and new  
6 sections do not affect the number of individuals subject to the rule's applicability and will not affect this  
7 state's economy.

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9 **REQUEST FOR PUBLIC COMMENT.** If you want to comment on the proposal, submit your written  
10 comments by 5:00 p.m. CDT on September 21, 2020. A request for a public hearing must be sent  
11 separately from your written comments. Send written comments or hearing requests by email to  
12 *rules@txdmv.gov* or by mail to Office of General Counsel, Texas Department of Motor Vehicles, 4000  
13 Jackson Avenue, Austin, Texas 78731. If a hearing is held, the department will consider written comments  
14 and public testimony presented at the hearing.

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16 **STATUTORY AUTHORITY.** The amendment is proposed under Occupations Code §2301.155, which  
17 provides the board authority to adopt rules as necessary or convenient to administer Occupations Code  
18 Chapter 2301 and to govern practice and procedure before the board and Transportation Code  
19 §1002.001, which provides the board of the Texas Department of Motor Vehicles with the authority to  
20 adopt rules that are necessary and appropriate to implement the powers and the duties of the  
21 department.

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

1 **TEXT.**

2 **Subchapter J. Administrative Sanctions**

3 **43 TAC §215.500 and §215.504**

4 §215.500. Administrative Sanctions and Procedures.

5 (a) An administrative sanction may include:

6 (1) denial of an application for a license;

7 (2) suspension of a license;

8 (3) revocation of a license; ~~or~~

9 (4) the imposition of civil penalties; or[.]

10 (5) a refund under §215.504 of this title (concerning buyer or lessee refund).

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

15 (1) an application for a license should be denied; or

16 (2) administrative sanctions should be imposed.

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

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

22 (1) a statement describing the department decision and the effective date;

23 (2) a description of each alleged violation;

- 1 (3) a description of each administrative sanction being proposed;
- 2 (4) a statement regarding the legal basis for each administrative sanction;
- 3 (5) a statement regarding the license applicant, license holder, or other person's right to  
4 request a hearing;
- 5 (6) the procedure to request a hearing, including the deadline for filing; and
- 6 (7) notice to the license applicant, license holder, or other person that the proposed  
7 decision and administrative sanctions in the Notice of Department Decision will become final on the date  
8 specified if the license applicant, license holder, or other person fails to timely request a hearing.

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

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

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

18 §215. 504. Buyer or Lessee Refund.

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

21 (b) Under this section, a refund is the return of any percentage ordered by the department of  
22 funds paid, or contracted to be paid, to a person, whether those funds are documented as a separate

1 line item or part of the overall amount paid by a consumer. Refund may include overpayments, fees paid  
2 for services not rendered, and payments made for products not delivered.

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

5 Issued at Austin, Texas, on August 7, 2020.

6 /s/ Tracey Beaver  
7 Tracey Beaver, General Counsel

DRAFT