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PROPOSAL OF REVISIONS TO

SUBCHAPTER A. COLLECTION OF DEBTS

43 TAC §209.1 and §209.2

SUBCHAPTER B. PAYMENT OF FEES FOR DEPARTMENT GOODS AND SERVICES

43 TAC §209.23

SUBCHAPTER C. DONATIONS AND CONTRIBUTIONS

43 TAC §209.33

REPEAL OF

43 TAC §209.34

INTRODUCTION. The Texas Department of Motor Vehicles (department) proposes amendments to 43 Texas Administrative Code (TAC) Chapter 209, Subchapter A, Collection of Debts, §209.1 and §209.2; Subchapter B, Payment of Fees for Department Goods and Services, §209.23; and Subchapter C, Donations and Contributions, §209.33. In conjunction with this proposal, the department is proposing the repeal of 43 TAC §209.34, which is also published in this issue of the *Texas Register*.

The department proposes amendments to make the rules consistent with statute; to comply with statute; to remove unnecessary language; to add context or authority for certain rules; to clarify the rules; and to make the rules consistent with current processes, procedures and terminology. In addition, the department proposes amendments that would renumber subdivisions within the rules due to the addition or deletion of subdivisions.

EXPLANATION.

The department is conducting a review of its rules under Chapter 209 in compliance with Government Code, §2001.039. Notice of the department’s plan to review is also published in this issue of

1 the *Texas Register*. As a part of the review, the department is proposing necessary amendments and a
2 repeal, as detailed in the following paragraphs.

3

4 Subchapter A. Collection of Debts

5 Proposed amendments to §209.1 would add a new subsection (a) to state the purpose of the
6 section, and to incorporate by reference any requirements in 1 TAC §59.2 that are not addressed in §209.1
7 to the extent that Government Code, §2107.002 requires a state agency to include the requirements in
8 rule. Government Code, §2107.002 requires a state agency that collects delinquent obligations owed to
9 the state agency to establish procedures by rule for collecting a delinquent obligation. The rules must
10 conform to the guidelines established by the attorney general in 1 TAC §59.2. Although §209.1 contains
11 most of the procedures for collecting a delinquent obligation contained in 1 TAC §59.2, §209.1 does not
12 contain all such procedures, such as certain requirements that apply to a state agency when the state
13 agency refers a delinquent obligation to the attorney general, a collection firm or private attorney for
14 collection. Due to the addition of proposed new §209.1(a), a proposed amendment to §209.1 would re-
15 letter the subsection for definitions to subsection (b).

16 A proposed amendment would delete the definition for the word “person” in proposed re-
17 lettered §209.1(b) because the word is already defined in Government Code, §311.005, which applies to
18 administrative rules. Proposed amendments would also renumber the remaining definitions in proposed
19 re-lettered §209.1(b) due to the deletion of the definition for the word “person.” Proposed amendments
20 to the definition for the word “security” in proposed re-lettered §209.1(b) would delete references to an
21 “entity” because the definition for the word “person” in Government Code, §311.005 includes “any other
22 legal entity.”

1 A proposed amendment to §209.1 would delete current subsection (b) regarding collection from
2 contractors for the following reasons: 1) this issue is already addressed in §209.1(f)(2), regarding the
3 warrant hold procedures of the Comptroller of Public Accounts authorized by Government Code,
4 §403.055 for any debtor to the state; and 2) the language in current §209.1(b) fails to reference the due
5 process requirements under Government Code, §403.055.

6 Proposed amendments to §209.1(c)(1) through (3) would change the words “will” and “should”
7 to “shall” for consistency and to clarify that the department has a duty to take the actions regarding the
8 notice and demand letters to the debtor. Government Code, §311.016 defines the word “shall” to mean
9 “imposes a duty” unless the context in which the word or phrase appears necessarily requires a different
10 construction. Government Code, §311.002(4) states that Government Code, Chapter 311 applies to each
11 rule adopted under a code. The Chapter 209 rules are adopted under various codes.

12 Proposed amendments to §209.1(c)(4) would change certain instances of the word “will” to
13 “must” to indicate that it is a condition precedent for each letter to comply with certain requirements
14 before the letter becomes a demand letter under 1 TAC §59.2(a)(4), which defines the term “demand
15 letter” within the definition for the term “make demand.” Government Code, §311.016 defines the word
16 “must” to mean “creates or recognizes a condition precedent” unless the context in which the word or
17 phrase appears necessarily requires a different construction. Proposed amendments to §209.1(c)(4)
18 would also clarify that the department shall include the notation “Return Service Requested” on the
19 envelope for each demand letter, and shall resend the demand letter if the United States Postal Service
20 (USPS) provides the department with an address correction. Although 1 TAC §59.2(b)(3) states that all
21 demand letters should be mailed in an envelope bearing the notation “address correction requested” in
22 conformity with a citation to a section in the Code of Federal Regulations, the cited section does not
23 currently contain the notation or mailer endorsement called “address correction requested.” Also, the

1 USPS published a document called “507 Quick Service Guide I Postal Explorer” in which the USPS stated
2 that for first-class mail, the USPS action on the mailer endorsement “Return Service Requested” is to
3 return the “mailpiece” with the new address or the reason for non-delivery attached at no charge.
4 Therefore, “Return Service Requested” is the appropriate phrase to require on the envelope to ensure
5 that USPS provides the department with any new address for the recipient, so that the department can
6 resend the demand letter.

7 Proposed amendments to §209.1(d)(1) would replace a clause with the word “debtor” because
8 the clause repeats a portion of the definition for the word “debtor” in re-lettered §209.1(b). Proposed
9 amendments to §209.1(d)(2) and (3) would add the word “correct” to be consistent with 1 TAC
10 §59.2(b)(2). A proposed amendment to §209.1(d) would also add a new paragraph (4) to be consistent
11 with 1 TAC §59.2(b)(2), which requires that the department’s records maintain an accurate physical
12 address where a fiduciary or trust relationship exists between the agency as principal and the debtor as
13 trustee. Due to the addition of new paragraph (4), the remaining paragraphs in §209.1(d) would be
14 renumbered. Proposed amendments to proposed renumbered §209.1(d)(5), (10) and (12) would add a
15 reference to the debtor for clarity. A proposed amendment to renumbered §209.1(d)(13) would replace
16 the word “account” with the word “obligation” because the word “obligation” is defined in re-lettered
17 §209.1(b).

18 A proposed amendment to §209.1(e)(1)(D) would delete the language that says the department
19 is not required to prepare and file a proof of claim in a bankruptcy case when the department is
20 represented by the attorney general. According to 1 TAC §59.2(b)(6)(C)(i), the attorney general will assist
21 the state agency with the preparation of a proof of claim, but clause (i) does not say the attorney general
22 will file the proof of claim. Also, a proposed amendment to §209.1(e)(1)(D) would clarify that the
23 department shall prepare and file a proof of claim in the bankruptcy case when appropriate based on

1 advice from the attorney general. When the department receives a bankruptcy notice, the department
2 first determines whether the person owes an obligation to the department and whether the bankruptcy
3 notice instructs creditors to not file a claim because no property appears to be available to pay creditors.
4 If the person owes an obligation to the department and the bankruptcy notice does not instruct creditors
5 to not file a proof of claim, the department consults with the attorney general regarding whether to file a
6 proof of claim in the case. The proposed amendment to §209.1(e)(1)(D) would therefore reflect the
7 department's current practice with regard to filing proofs of claim.

8 Proposed amendments to §209.1(e)(1)(E) would modify the language to be consistent with 1 TAC
9 §59.2(b)(6)(C)(v), which says the state agency should file a claim in each probate proceeding administering
10 the decedent's estate, and does not provide any exception for agencies that are represented by the
11 attorney general.

12 Proposed amendments to §209.1(e)(2) would change the word "will" to "shall" for consistency
13 and to indicate the department has a duty regarding the actions listed in paragraph (2). Proposed
14 amendments to §209.1(e)(2) would also clarify that the list of uncollectible obligations is illustrative,
15 rather than exhaustive, and includes obligations that are not legally collectible or are uncollectible as a
16 practical matter. These amendments would help to make §209.1(e)(2) consistent with 1 TAC §59.2(b)(6).

17 A proposed amendment to §209.1(e)(2)(A) would delete the words "dismissed or" because the
18 term "discharged in bankruptcy" is used to refer to an obligation that a creditor is legally prohibited from
19 collecting. Proposed amendments to §209.1(e)(2)(B) would make the language consistent with 1 TAC
20 §59.2(b)(6)(C)(ii) regarding a limitation provision in a lawsuit.

21 A proposed amendment to §209.1(e)(2)(C) would delete subparagraph (C) because §209.1(e)(2)
22 is a list of delinquent obligations the department shall consider to be uncollectible and shall make no
23 further efforts to collect. The department shall not refer these uncollectible obligations to the attorney

1 general's office. Although 1 TAC §59.2(b)(6)(C)(iii) provides an exception for when circumstances indicate
2 that the account is clearly uncollectible, clause (iii) provides the general rule that the obligation should be
3 referred to the attorney general if a corporation has been dissolved, has been in liquidation under Chapter
4 7 of the United States Bankruptcy Code, or has forfeited its corporate privileges or charter; or if a foreign
5 corporation had its certificate of authority revoked. The language in §209.1(e)(2)(C) implies the opposite
6 of what 1 TAC §59.2(b)(6)(C)(iii) provides by stating the general rule is that the delinquent obligation is
7 uncollectible in these situations unless the circumstances indicate that the account is nonetheless
8 collectible or that fraud was involved. If a corporation described in 1 TAC §59.2(b)(6)(iii) owes a delinquent
9 obligation to the department, the department shall refer the obligation to the attorney general unless the
10 circumstances indicate that the obligation is clearly uncollectible or another exception under §209.1 or 1
11 TAC 59.2 applies. For example, the obligation might be legally uncollectible under Business Organizations
12 Code, Chapter 11 regarding the termination of a domestic entity. The list of uncollectible obligations in
13 §209.1(e)(2) is illustrative, rather than exhaustive. Proposed amendments to §209.1(e)(2) would re-letter
14 the subsequent subparagraphs due to the deletion of §209.1(e)(2)(C).

15 A proposed amendment to proposed re-lettered §209.1(e)(2)(D) would make the language
16 consistent with 1 TAC §59.2(b)(6)(v), which says if the debtor is deceased, state agencies should file a
17 claim in each probate proceeding administering the debtor's estate.

18 A proposed amendment to §209.1(e)(3) would add a reasonable tolerance below which the
19 department shall not refer a delinquent obligation to the attorney general as required by 1 TAC
20 §59.2(b)(8). The proposed amendment to §209.1(e)(3) would expressly include the department's current
21 reasonable tolerance practice, which is to not refer a delinquent obligation to the attorney general unless
22 the delinquent obligation exceeds \$2,500 or the attorney general advises otherwise. A proposed
23 amendment to §209.1(e)(3) would also delete the factors that 1 TAC §59.2(b)(8) requires state agencies

1 to consider in establishing the reasonable tolerance, as well as “policy reasons or other good cause,” which
2 is a factor the department previously added to §209.1(e)(3) to consider when making a determination of
3 whether to refer a delinquent obligation to the attorney general. With the proposed specific \$2,500
4 threshold for referral established in rule, these other factors would become unnecessary, as would the
5 complex case-by-case analysis they imply.

6 Proposed amendments to §209.1(e)(4) would change the word “will” to “shall” for consistency
7 and to indicate the department has a duty to refer a delinquent obligation to the attorney general for
8 collection efforts if the department determines that the delinquent obligation shall be referred.

9 Proposed amendments to §209.1(f)(1) would make the language consistent with 1 TAC
10 §59.2(b)(4) regarding the filing of a lien to secure an obligation. A proposed amendment to §209.1(f)(2)
11 would change the word “will” to “shall” for consistency and to clarify that the department has a duty to
12 comply with the “warrant hold” procedures of the Comptroller of Public Accounts authorized by
13 Government Code, §403.055. Although state employees at the Comptroller of Public Accounts and other
14 state agencies refer to the “warrant hold” procedures, the procedures also apply to the issuance of
15 electronic funds transfers. Government Code, §403.055 ensures that no payments are made to a debtor
16 in the form of a warrant or an electronic funds transfer, unless an exception applies. Proposed
17 amendments to §209.1(f)(2) would also make the language consistent with Government Code, §403.055
18 by referencing electronic funds transfers and the fact that there are certain exceptions that authorize the
19 Comptroller of Public Accounts to issue a warrant or initiate an electronic funds transfer to a debtor. In
20 addition, proposed amendments to §209.1(f)(2) would clarify that the “warrant hold” procedures apply
21 to each individual debtor.

22 A proposed amendment to the title of §209.2 and proposed amendments to the text throughout
23 §209.2 would change the words “check” or “checks” to “payment device” to be consistent with the

1 terminology in Business and Commerce Code, §3.506, which authorizes the holder of a dishonored
2 payment device to charge the drawer or indorser a reasonable processing fee not to exceed \$30 when
3 seeking to collect the face value of the payment device. A proposed amendment to the title of §209.2 and
4 proposed amendments to §209.2(a) and (c) would also clarify that §209.2 applies even if there is one
5 instance of a dishonored payment device by amending the rule from the plural to the singular. In addition,
6 proposed amendments to the text throughout §209.2 would replace the word “endorser” with “indorser”
7 to be consistent with the terminology in Business and Commerce Code, §3.506.

8 Proposed amendments to §209.2(b) would clarify that the definitions in Business and Commerce
9 Code, Chapter 3 govern §209.2 and control to the extent of a conflict with the definitions in §209.2(b).
10 Proposed amendments to §209.2(b)(2) would modify the definition for “dishonored check” by replacing
11 the words “check” and “instrument” with the term “payment device” because Business and Commerce
12 Code, §3.506 uses the term “payment device.” Proposed amendments to §209.2(b)(2) would also modify
13 the definition for “dishonored payment device” to delete the portion of the definition that defines a check
14 because proposed new §209.2(b)(3) would add the definition of the term “payment device” from Business
15 and Commerce Code, §3.506. In addition, proposed amendments to §209.2(b)(2) would correct a
16 grammatical error and modify the definition for “dishonored payment device” to clarify that the listed
17 reasons for the dishonor of the payment device are examples.

18 A proposed amendment to the first sentence in §209.2(c) would change the word “will” to “shall”
19 to indicate that the department has a duty to process a dishonored payment device using the procedures
20 outlined in §209.2. A proposed amendment to the first sentence in §209.2(c) would also replace the term
21 “returned check” with the term “dishonored payment device” because of the proposed amendments to
22 the definitions in §209.2(b). In addition, a proposed amendment to the first sentence in §209.2(c) would
23 clarify that the department shall not charge a processing fee to the drawer or indorser if the department

1 is prohibited from doing so under Business and Commerce Code, §3.506, which prohibits a person from
2 charging a processing fee to a drawer or indorser if a reimbursement fee has been collected under Article
3 102.007(e) of the Code of Criminal Procedure.

4 Proposed amendments throughout §209.2(c) would change the word “will” to “shall” for
5 consistency and to impose a duty on the person to whom the language applies. Proposed amendments
6 to §209.2(c)(2) and (3) would replace the term “payment processor charges” with “any service charge
7 under §209.23 of this title (relating to Methods of Payment)” for clarity. A proposed amendment to
8 §209.2(c)(3) would also clarify that the reference to the processing fee is a reference to the \$30 processing
9 fee.

10 A proposed amendment to §209.2(c)(4) would clarify that the fee that is referenced in §209.23 of
11 this title is a service charge. A proposed amendment to §209.2(c)(4) would also replace the word
12 “chapter” with “title” for consistency. In addition, a proposed amendment to §209.2(c)(4) would remove
13 the following language because a proposed amendment to §209.2(c)(2) would add this language, which
14 is only required to be included the first time that §209.23 is referenced in §209.2: (relating to Methods of
15 Payment).

16 A proposed amendment to §209.2(d) would add the missing information to correctly reference
17 §209.1. A proposed amendment to §209.2(d) would also replace the term “payment processor charges”
18 with the clause “service charge under §209.23 of this title (relating to Methods of Payment)” for clarity.
19 In addition, a proposed amendment to §209.2(d) would clarify that the reference to the processing fee is
20 a reference to the \$30 processing fee. Lastly, a proposed amendment to §209.2(d) would break the
21 sentence into two separate sentences for clarity and readability.

22 A proposed amendment to §209.2(e) would change the word “will” to “shall” for consistency and
23 to impose a duty on the department regarding the order in which the drawer’s or indorser’s payment to

1 the department shall be applied. A proposed amendment to §209.2(e) would also clarify that the
2 reference to the processing fee is a reference to the \$30 processing fee. In addition, proposed
3 amendments to §209.2(e) would clarify that after the drawer's or indorser's payment is applied to the
4 \$30 processing fee, the balance would first be applied to any service charge required by §209.23 of this
5 title (relating to Methods of Payment) and then to the face amount of the dishonored payment device.

6

7 Subchapter B. Payment of Fees [~~for Department Goods and Services~~]

8 A proposed amendment to the title to Subchapter B of Chapter 209 would delete the words "for
9 Department Goods and Services" to clarify that Subchapter B is not limited to payment of fees for
10 department goods and services. For example, §209.23 applies to a payment for administrative penalties
11 that are due under an administrative enforcement case, such as the penalties under Transportation Code,
12 §643.251.

13 A proposed amendment to §209.23(a) would state that the purpose of §209.23 is to establish the
14 methods of payment that the department may accept and to make the public aware of a potential service
15 charge for certain methods of payment. Although §209.23 lists many different methods of payment that
16 the department may accept, the transaction itself dictates the methods of payment that the department
17 will accept for that particular transaction. For example, when the department's enforcement attorneys
18 send a Notice of Department Decision (NODD) to an alleged violator of certain Texas laws, the NODD tells
19 the person to pay the administrative penalties with a check, cashier's check or money order. Another
20 example is the department's website, which provides information regarding the methods of payment that
21 are accepted for certain transactions, such as the purchase of an oversize/overweight permit. A proposed
22 amendment to §209.23(a) would also delete a reference to the point of sale because the reference to the
23 "point of sale" may confuse a person who is paying an administrative penalty to the department.

1 A proposed amendment to §209.23(a)(3) would delete the language that says a personal or
2 business check is not an acceptable method of payment of fees under Transportation Code, §502.094 to
3 clarify that this exception is not the only exception for certain methods of payment. For example,
4 §209.2(c)(3) dictates the methods of payment that the department will accept when a person is required
5 to make certain payments to the department after the person's payment device is not honored upon
6 presentment to a bank or other financial institution upon which the payment device is drawn or made.
7 Proposed amendments to §209.23(b) would clarify that a person paying by debit card or electronic funds
8 transfer has a duty to pay any applicable service charge per transaction, which is already required under
9 current law.

10

11 Subchapter C. Donations or ~~and~~ Contributions

12 A proposed amendment to the title to §209.33 would delete the words "Acceptance of" because
13 proposed amendments to §209.33 would expand the scope of the rule to include other topics, such as the
14 standards of conduct governing the relationship between board members, department employees and
15 donors. Proposed new §209.33(a) and (b) would clarify that §209.33 provides uniform criteria and
16 procedures regarding donations or contributions, as well as standards of conduct governing the
17 relationship between the board, the department's employees, and donors, regardless of the type or value
18 of the donation or contribution and regardless of whether the donor is a private donor. A proposed
19 amendment to the title of §209.33 would also change the "and" to "or," so the title would say, "Donations
20 or Contributions" because proposed new §209.33(b) would define the term "donation or contribution."

21 Proposed new §209.33(a) would add language regarding the purpose of §209.33 because
22 proposed amendments to §209.33 would address criteria and procedures regarding donations or
23 contributions under Transportation Code, §1001.008 and Government Code, Chapter 575, as well as

1 standards of conduct that state agencies are required to address in rule under Government Code,
2 §2255.001. As described below, the citations to the applicable statutes in proposed new §209.33(a) would
3 clarify that §209.33 applies, even though some of the cited statutes use different terminology and apply
4 to certain kinds of donations or contributions.

5 Proposed new §209.33(b) would add definitions for clarity, including the definitions of the
6 words “board,” “department,” and “executive director” found in Transportation Code, §1001.001. A
7 proposed definition in proposed new §209.33(b) would also define the term “donation or contribution”
8 as anything of value in any form, including real or personal property, money, materials, or services, given
9 by a donor to the board, as authorized by Transportation Code, §1001.008. Although Transportation Code,
10 §1001.008 refers to both donations or contributions, a contribution is also a donation, and both are also
11 gifts. The proposed definition for the term “donation or contribution” in proposed new §209.33(b) would
12 clarify that §209.33 applies to any donation or contribution, even if the donation or contribution does not
13 fall within the scope of Government Code, Chapter 575 because it does not fall within the definition of
14 the word “gift” in Government Code, §575.001 or has a value of less than \$500 under Government Code,
15 §575.002. Although Government Code, Chapter 575 uses the term “gift” rather than “donation or
16 contribution,” Government Code, §575.001 defines “gift” to mean a donation of money or property.

17 In addition, a proposed definition in proposed new §209.33(b) would define the word “donor” as
18 a person who makes a donation or contribution to the board, as authorized by Transportation Code,
19 §1001.008. Government Code, §311.005 applies to administrative rules such as §209.33 and defines the
20 word “person” to include a corporation, organization, government or governmental subdivision or agency,
21 business trust, estate, trust, partnership, association, and any other legal entity. The proposed definition
22 for “donor” in proposed new §209.33(b) would clarify that §209.33 applies to a donation or contribution
23 from any donor, even if the donation or contribution is from a public donor, such as another governmental

1 agency, and does not fall within the scope of Government Code, §2255.001, which only applies to a
2 donation or contribution of money from a private donor.

3 Due to the addition of proposed new §209.33(a) and (b), proposed amendments to §209.33 would
4 re-letter current subsections (a) and (b) to become subsections (c) and (d). Proposed amendments to
5 proposed re-lettered §209.33(c) and (d) would clarify that subsections (c) and (d) apply to the donation
6 or contribution, even if it is a single donation or contribution. A proposed amendment to proposed re-
7 lettered §209.33(d) would also clarify that the records of the board meeting shall include the name of the
8 donor. Although Government Code, §575.004 does not apply to a gift that has a value of less than \$500,
9 the second sentence in proposed re-lettered §209.33(d) applies to that donation or contribution if the
10 board accepts the donation or contribution because it is a good practice to include the listed information
11 in the records of the board meeting for transparency. Government Code, §575.004 requires a state agency
12 that accepts a gift to record the name of the donor, a description of the gift, and a statement of the
13 purpose of the gift in the minutes of the meeting for the state agency's governing board.

14 Proposed new §209.33(e) would require the department to use the donation or contribution for
15 the purpose specified by the donor to the extent the stated purpose complies with Transportation Code,
16 §1001.008. Transportation Code, §1001.008 only authorizes the board to accept a donation or
17 contribution for the purposes of carrying out the board's functions and duties.

18 Proposed new §209.33(f) would add language from §209.34, which says the department may
19 document terms or conditions relating to a donation or contribution through a donation or contribution
20 agreement with the donor. Proposed new §209.33(f) would also amend the language incorporated from
21 §209.34 by changing the clause "terms or conditions" to "terms and conditions," to correct the
22 terminology and by using the term "donation or contribution" as defined by proposed new §209.33(b). In

1 conjunction with the repeal of §209.34, proposed new §209.33(f) would consolidate the language
2 regarding donations or contributions into one rule.

3 Proposed new §209.33(g) would state that board members and department employees shall
4 comply with the standards of conduct under Government Code, Chapter 572 and any other law regulating
5 the ethical conduct of state officers and employees when interacting with a donor or potential donor.
6 Government Code, §2255.001(b)(2), (3) and (4) require each state agency that is authorized by statute to
7 accept money from a private donor to adopt rules that govern all aspects of conduct of the state agency
8 in the relationship between the donor, the state agency and the state agency's employees, including the
9 donor's "use" of the state agency's employee, service by the state agency's officer or employee as an
10 officer or director of the donor, and the donor's monetary enrichment of the state agency's officer or
11 employee. Although Government Code, §2255.001 only applies to a donation or contribution of money
12 from a private donor, proposed amendments to §209.33 would apply to a donation or contribution from
13 any donor, including another governmental agency, because a conflict of interest could exist for any
14 donation or contribution. Even though Transportation Code, §1005.001 already says the board and
15 department employees are subject to the standards of conduct under Government Code, Chapter 572
16 and any other law regulating the ethical conduct of state officers and employees, proposed new
17 §209.33(g) would repeat the language from Transportation Code, §1005.001 with some modifications
18 because Government Code, §2255.001 requires each state agency that is authorized by statute to accept
19 money from a private donor to adopt rules regarding the relationship between the donor, the state
20 agency, the state agency's officers and the state agency's employees. The provisions in Government Code,
21 §2255.001 regarding a private organization that exists to further the purposes and duties of a state agency
22 do not apply to the department because there is no such private organization for the department;
23 therefore, the department is not proposing a rule regarding a private organization.

1 Proposed new §209.33(h) would state that a board member who serves as an officer or director
2 of a donor shall not vote on that donor's proposal to make a donation or contribution to the board under
3 Transportation Code, §1001.008. Proposed new §209.33(i) would state that if the department's executive
4 director serves as an officer or director of a donor, the executive director shall not vote on that donor's
5 proposal to make a donation or contribution to the board under Transportation Code, §1001.008.
6 Government Code, §2255.001(b)(3) requires each state agency that is authorized by statute to accept
7 money from a private donor to adopt rules that govern all aspects of conduct of the state agency in the
8 relationship between the donor, the state agency, and the state agency's employees, including service by
9 the state agency's officer or employee as an officer or director of the donor. Proposed new §209.33(h)
10 and (i) would help to prevent a conflict of interest regarding a proposed donation or contribution to the
11 board under Transportation Code, §1001.008.

12 Proposed new §209.33(j) would prohibit a board member or a department employee from
13 authorizing a donor to use department property unless the following requirements are met: 1) the board
14 member or the department, as applicable, must have statutory authority to do so; 2) the property shall
15 only be used for a state purpose; and 3) the property shall be used in accordance with a contract between
16 the department and the donor that complies with Texas law. Most of these requirements spell out current
17 law; however, Government Code, §2255.001(b)(2) requires each state agency that is authorized by statute
18 to accept money from a private donor to adopt rules that govern all aspects of conduct of the state agency
19 in the relationship between the donor, the state agency, and the state agency's employees, including the
20 donor's use of the state agency's property.

21 The legislature grants any power to board members and the department regarding the use of the
22 department's property; therefore, a board member or a department employee is prohibited from
23 authorizing a donor to use department property unless there is statutory authority to do so. Also,

1 Government Code, §2203.004 says that state property may only be used for state purposes and that a
2 person may not entrust state property to a person if the property will not be used for state purposes. In
3 addition, if the department will not be sufficiently compensated for the use of the department's property,
4 the transaction must comply with Article III, §51 of the Texas Constitution, which prohibits the legislature
5 from granting, or authorizing a state agency to grant, public money to a private individual or entity.
6 Attorneys general have construed Article III, §51 to also apply to the granting of public property to a
7 private individual or entity. See Tex. Att'y Gen. Op. Nos. GA-0894 (2011) at 1, MW-373 (1981) at 9.
8 Attorneys general have also stated that Article III, §51 does not prevent the state from making an
9 expenditure of public money or providing public property that benefits a private individual or entity if the
10 following requirements are met: 1) the transaction serves a legitimate public purpose; and 2) the
11 appropriate governing body places sufficient controls on the transaction to ensure that the public purpose
12 is carried out. See Tex. Att'y Gen. Op. Nos. GA-0894 (2011) at 2, JC-0244 (2000) at 5, JC-0146 (1999) at 3,
13 MW-373 (1981) at 9. A contract is a general method of placing sufficient controls on the transaction to
14 ensure that the public purpose is carried out.

15 If the department is sufficiently compensated for the use of the department's property, the
16 transaction is not a gratuity under Article III, §51 of the Texas Constitution. See Tex. Att'y Gen. Op. No.
17 GA-0894 (2011). For transparency, proposed new §209.33(j) would require the property to be used in
18 accordance with a contract between the department and the donor that complies with Texas law, even if
19 Article III, §51 of the Texas Constitution does not apply to the transaction.

20 The department's current §209.34 regarding a donation agreement is proposed to be repealed,
21 in conjunction with the proposed amendment to incorporate the language from §209.34 into §209.33,
22 with a minor amendment, to consolidate the language regarding donations or contributions into one rule.

1 **FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT.** Glenna Bowman, Chief Financial Officer,
2 has determined that for each year of the first five years the proposed amendments and repeal will be in
3 effect, there will be no significant fiscal impact to state or local governments as a result of the enforcement
4 or administration of the proposal. Ms. Bowman has also determined that there will be no significant
5 impact on local employment or the local economy as a result of the proposal.

6 **PUBLIC BENEFIT AND COST NOTE.** Ms. Bowman has also determined that, for each year of the first five
7 years the amended and repealed sections are in effect, there are several anticipated public benefits.

8 Anticipated Public Benefits. The public benefits anticipated as a result of the proposal include
9 clarified rules that provide the public with the department's processes and requirements regarding
10 collection of debts, charges for dishonored payment devices, methods of payment, and donations or
11 contributions.

12 Anticipated Costs To Comply With The Proposal. Ms. Bowman anticipates that there will be no
13 new costs to comply with these rules. The cost to persons required to comply with the proposal are costs
14 that currently exist under the law.

15 **ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS.** As required by Government
16 Code, §2006.002, the department has determined that the proposed amendments and repeal will not
17 have an adverse economic effect on small businesses, micro-businesses, and rural communities because
18 the proposal does not increase current costs under Chapter 209. The proposed amendments document
19 the department's current procedures and requirements under Chapter 209. Therefore, the department is
20 not required to prepare a regulatory flexibility analysis under Government Code, §2006.002.

21 **TAKINGS IMPACT ASSESSMENT.** The department has determined that no private real property interests
22 are affected by this proposal and that this proposal does not restrict or limit an owner's right to property

1 that would otherwise exist in the absence of government action and, therefore, does not constitute a
2 taking or require a takings impact assessment under Government Code, §2007.043.

3 **GOVERNMENT GROWTH IMPACT STATEMENT.** The department has determined that each year of the
4 first five years the proposed amendments and repeal are in effect, no government program would be
5 created or eliminated. Implementation of the proposed amendments and repeal would not require the
6 creation of new employee positions or elimination of existing employee positions. Implementation would
7 not require an increase or decrease in future legislative appropriations to the department or an increase
8 or decrease of fees paid to the department. The proposed amendments and repeal do not create a new
9 regulation, or limit or repeal an existing regulation; however, the proposed amendments to §209.33
10 expand existing regulations regarding donations or contributions under Transportation Code, §1001.008
11 to the extent the proposed amendments are not already addressed in current law. Lastly, the proposed
12 amendments and repeal do not affect the number of individuals subject to the rule's applicability and will
13 not affect this state's economy.

14 **REQUEST FOR PUBLIC COMMENT.**

15 If you want to comment on the proposal, submit your written comments by 5:00 p.m. CDT on August 12,
16 2024. A request for a public hearing must be sent separately from your written comments. Send written
17 comments or hearing requests by email to *rules@txdmv.gov* or by mail to Office of General Counsel, Texas
18 Department of Motor Vehicles, 4000 Jackson Avenue, Austin, Texas 78731. If a hearing is held, the
19 department will consider written comments and public testimony presented at the hearing.

20

21

CHAPTER 209. FINANCE

22

SUBCHAPTER A. COLLECTION OF DEBTS

23

43 TAC §209.1 and §209.2

1

2 **STATUTORY AUTHORITY.** The amendments are proposed under Government Code, §2107.002, which
3 requires a state agency that collects delinquent obligations owed to the state agency to establish
4 procedures by rule for collecting a delinquent obligation; Business and Commerce Code, §3.506, which
5 authorizes the holder of a dishonored payment device to charge a maximum processing fee of \$30;
6 Transportation Code, §502.191(e), which authorizes the department to collect a service charge in an
7 amount that is reasonably related to the expense incurred by the department in collecting the original
8 amount of a fee under Transportation Code, Chapter 502 when the payment of the original amount by
9 electronic funds transfer, credit card or debit card is not honored by the funding institution or by the
10 electronic funds transfer, credit card, or debit card company on which the funds were drawn;
11 Transportation Code, §1002.001, which provides the board of the Texas Department of Motor Vehicles
12 (board) with the authority to adopt rules that are necessary and appropriate to implement the powers
13 and the duties of the department; and the statutory authority referenced throughout the preamble and
14 in the rule text, which is incorporated herein by reference.

15 **CROSS REFERENCE TO STATUTE.** The proposed amendments would implement Government Code,
16 Chapter 2107; Business and Commerce Code, §3.506; and Transportation Code, §502.191(e) and
17 §1002.001.

18

19 Text.

20 §209.1. Collection of Debts.

21 (a) Purpose. The purpose of this section is to comply with Government Code, §2107.002, which
22 requires a state agency that collects delinquent obligations owed to the state agency to establish
23 procedures by rule for collecting a delinquent obligation. To the extent this section fails to address any

1 requirements in 1 TAC §59.2 that the department is required to include in rule under Government Code,
2 §2107.002, the department adopts that requirement in 1 TAC §59.2 by reference.

3 (b) [(a)] Definitions. The following words and terms, when used in this section, shall have the
4 following meanings, unless the context clearly indicates otherwise.

5 (1) Attorney general--The Office of the Attorney General of Texas.

6 (2) Debtor--Any person liable or potentially liable for an obligation owed to the
7 department or against whom a claim or demand for payment has been made.

8 (3) Delinquent--Payment is past due by law or by customary business practice,
9 and all conditions precedent to payment have occurred or been performed.

10 (4) Department--The Texas Department of Motor Vehicles.

11 (5) Obligation--A debt, judgment, claim, account, fee, fine, tax, penalty, interest,
12 loan, charge, or grant.

13 ~~[(6) Person--An individual, corporation, organization, business trust, estate,~~
14 ~~trust, partnership, association, and any other legal entity.]~~

15 (6) [(7)] Security--Any right to have property owned by a person ~~[or an entity]~~
16 with an obligation to the department sold or forfeited in satisfaction of the obligation, and any
17 instrument granting a cause of action in favor of the department against a person ~~[, another entity,]~~ or a
18 person's ~~[or entity's]~~ property, such as a bond, letter of credit, or other collateral that has been pledged
19 to the department to secure an obligation.

20 ~~[(b) Collection from contractors. If an obligation of a contractor of the department is delinquent~~
21 ~~and the department owes payment to that contractor, the department will subtract the amount of the~~
22 ~~obligation from the payment if practical.]~~

23 (c) Notification of obligation and demand letters.

1 (1) The department ~~shall~~ ~~[will]~~ send to the debtor written notice of the
2 obligation, such as an administrative enforcement order that imposes a penalty or fine.

3 (2) If no satisfactory response is received within 30 days after the date that the
4 notice is sent under paragraph (1) of this subsection, the obligation becomes delinquent on the 31st day
5 after the date that notice is sent, unless the department's notice, the law, or a department rule imposes
6 a different deadline for payment. The department ~~shall~~ ~~[will]~~ send the first demand letter not later than
7 the 30th day after the date on which the obligation becomes delinquent.

8 (3) If no satisfactory response is received within 30 days after the day on which
9 the first demand letter was sent, the department ~~shall~~ ~~[will]~~ send the final demand letter no later than
10 60 days after the date on which the first demand letter was sent. The final demand letter ~~shall~~ ~~[will]~~
11 include a deadline by which the debtor must respond and, if the department determines in accordance
12 with subsection (e) of this section that the obligation ~~shall~~ ~~[should]~~ be referred to the attorney general,
13 a statement that the obligation, if not paid, ~~shall~~ ~~[will]~~ be referred to the attorney general.

14 (4) Each demand letter ~~must~~ ~~[will]~~ set forth the nature and amount of the
15 obligation owed to the department and ~~must~~ ~~[will]~~ be mailed by first class United States mail, in an
16 envelope ~~that shall bear~~ ~~[bearing]~~ the notation "Return Service Requested." [~~address correction~~
17 ~~requested.~~] If an address correction is provided by the United States Postal Service, the department
18 ~~shall~~ ~~[will]~~ resend the demand letter to that address prior to referral to the attorney general.

19 (d) Records. When practicable, the department shall retain a record of a delinquent obligation. A
20 record shall contain documentation of the following information:

21 (1) the identity of each ~~debtor~~ ~~[person liable on all or any part of the obligation];~~

22 (2) the correct physical address of the debtor's place of business;

23 (3) the correct physical address of the debtor's residence, where applicable;

1 (4) an accurate physical address for the trustee when a fiduciary or trust relationship
2 exists between the department as principal and the debtor as trustee;

3 (5) [(4)] a post office box address when it is impractical to obtain a physical address, or
4 when the post office box address is in addition to a correct physical address for the debtor;

5 (6) [(5)] attempted contacts with the debtor;

6 (7) [(6)] the substance of communications with the debtor;

7 (8) [(7)] efforts to locate the debtor and the assets of the debtor;

8 (9) [(8)] state warrants that may be issued to the debtor;

9 (10) [(9)] current contracts the debtor has with the department;

10 (11) [(10)] security interests that the department has against any assets of the
11 debtor;

12 (12) [(11)] notices of bankruptcy, proofs of claim, dismissals and discharge
13 orders received from the United States bankruptcy courts regarding the debtor; and

14 (13) [(12)] other information relevant to collection of the delinquent obligation
15 [account].

16 (e) Referrals of a delinquent obligation to the attorney general.

17 (1) Prior to referral of a delinquent obligation to the attorney general, the
18 department shall:

19 (A) verify the debtor's address and telephone number;

20 (B) send a first and final demand letter to the debtor in accordance with
21 subsection (c) of this section;

22 (C) verify that the obligation is not considered uncollectible under
23 paragraph (2) of this subsection;

1 (D) prepare and file a proof of claim in the case of a bankruptcy when
2 appropriate based on advice from the attorney general; [~~unless the department is represented by the~~
3 ~~attorney general;~~] and

4 (E) file a claim in each [~~the~~] probate proceeding administering the
5 decedent's estate if the debtor is deceased [~~, unless the department is represented by the attorney~~
6 ~~general~~].

7 (2) The department shall [~~will~~] consider a delinquent obligation uncollectible
8 and shall [~~will~~] make no further effort to collect if the obligation is not legally collectible or is
9 uncollectible as a practical matter. Examples of an obligation that is not legally collectible or is
10 uncollectible as a practical matter include an obligation, which:

11 (A) has been [~~dismissed or~~] discharged in bankruptcy;

12 (B) is subject to an applicable limitations provision that would prevent a
13 lawsuit [~~collection~~] as a matter of law, unless circumstances indicate that the applicable limitations
14 provision has been tolled or is otherwise inapplicable;

15 [~~(C) is owed by a corporation which has been dissolved, is in liquidation~~
16 ~~under Chapter 7 of the United States Bankruptcy Code, has forfeited its corporate privileges or charter,~~
17 ~~or, in the case of a foreign corporation, had its certificate of authority revoked unless circumstances~~
18 ~~indicate that the account is nonetheless collectible or that fraud was involved;~~]

19 (C) [~~(D)~~] is owed by an individual who is located out-of-state, or outside
20 the United States, unless a determination is made that the domestication of a Texas judgment in the
21 foreign forum would more likely than not result in collection of the obligation, or that the expenditure of
22 department funds to retain foreign counsel to domesticate the judgment and proceed with collection
23 attempts is justified;

1 (D) [(E)] is owed by a debtor who is deceased, where each probate
2 proceeding has [have] concluded, and where there are no remaining assets available for distribution; or

3 (E) [(F)] is owed by a debtor whose circumstances demonstrate a
4 permanent inability to pay or make payments toward the obligation.

5 (3) Except as advised otherwise by the attorney general, the department shall
6 not refer a delinquent obligation to the attorney general unless the delinquent obligation exceeds
7 \$2,500. [In making a determination of whether to refer a delinquent obligation to the attorney general,
8 the department will consider:]

9 [(A) the expense of further collection procedures;]

10 [(B) the size of the debt;]

11 [(C) the existence of any security;]

12 [(D) the likelihood of collection through passive means such as the filing
13 of a lien;]

14 [(E) the availability of resources to collect the obligation; and]

15 [(F) policy reasons or other good cause.]

16 (4) The department shall [will] refer a delinquent obligation to the attorney
17 general for further collection efforts if the department determines, in accordance with this subsection,
18 that the delinquent obligation shall [should] be referred.

19 (f) Supplemental and alternative collection procedures.

20 (1) Liens. Where state law allows a state agency to record a lien securing the
21 obligation, the [The] department shall file the [, unless represented by the attorney general, will record
22 a] lien [securing the delinquent obligation] in the appropriate records of the county where the debtor's
23 principal place of business, or, where appropriate, the debtor's residence, is located or in such county as

1 may be required by law as soon as the obligation becomes delinquent or as soon as is practicable.

2 Unless the delinquent obligation has been paid in full, any lien securing the indebtedness may not be
3 released without the approval of the attorney representing the department after the matter has been
4 referred to the attorney general.

5 (2) Warrants. The department ~~shall~~ ~~will~~ utilize the "warrant hold" procedures
6 of the Comptroller of Public Accounts authorized by Government Code, §403.055, to ensure that no
7 treasury warrants are issued to a debtor ~~[debtors]~~ and no electronic funds transfers are made to a
8 debtor until the debt is paid, unless an exception applies.

9
10 §209.2. Charges for Dishonored Payment Device. ~~[Checks.]~~

11 (a) Purpose. Business and Commerce Code, §3.506, authorizes the holder of a dishonored
12 payment device ~~[check]~~, seeking collection of the face value of the payment device ~~[check]~~, to charge
13 the drawer or indorser ~~[endorser]~~ of the payment device ~~[check]~~ a reasonable processing fee, not to
14 exceed \$30. This section prescribes policies and procedures for the processing of a dishonored payment
15 device ~~[checks]~~ made payable to the department and the collection of fees because of the dishonor of a
16 payment device ~~[check]~~ made payable to the department.

17 (b) Definitions. The definitions contained in Business and Commerce Code, Chapter 3 govern this
18 section and control to the extent of a conflict with the following definitions in this subsection. The
19 following words and terms, when used in this section, shall have the following meanings, unless the
20 context clearly indicates otherwise.

21 (1) Department--The Texas Department of Motor Vehicles.

22 (2) Dishonored payment device ~~[check]~~--A ~~[check, draft, order, electronic~~
23 ~~payment, or other]~~ payment device that is drawn or made upon a bank or other financial institution, and

1 that is not honored upon presentment for reasons including, but not limited to, [because] the account
2 upon which the payment device [instrument] has been drawn or made does not exist, ~~[or]~~ is closed, or
3 does not have sufficient funds or credit for payment of the payment device [instrument] in full.

4 (3) Payment device--A check, item, paper or electronic payment, or other device
5 used as a medium for payment.

6 (c) Processing of a dishonored payment device [checks]. Upon receipt of notice from a bank or
7 other financial institution of refusal to honor a payment device [check] made payable to the
8 department, the department shall [will] process the dishonored payment device [returned check] using
9 the following procedures; however, the department shall not charge a \$30 processing fee to the drawer
10 or indorser if the department is prohibited from doing so under Business and Commerce Code, §3.506.

11 (1) The department shall [will] send a written notice by certified mail, return
12 receipt requested, to the drawer or indorser [endorser] at the drawer or indorser's [endorser's] address
13 as shown on:

14 (A) the dishonored payment device [check];

15 (B) the records of the bank or other financial institution; or

16 (C) the records of the department.

17 (2) The written notice shall [will] notify the drawer or indorser [endorser] of the
18 dishonored payment device [check] and shall [will] request payment of the face amount of the payment
19 device, any service charge under §209.23 of this title (relating to Methods of Payment) [check, any
20 payment processor charges], and a \$30 processing fee no later than 10 days after the date of receipt of
21 the notice. The written notice shall [will] also contain the statement required by Penal Code,
22 §32.41(c)(3).

1 (3) The face amount of the payment device, any service charge under §209.23 of
2 this title [~~check, any payment processor charges,~~] and the \$30 processing fee must be paid to the
3 department:

4 (A) with a cashier's check or money order, made payable to the Texas
5 Department of Motor Vehicles; or

6 (B) with a valid credit card, approved by the department, and issued by
7 a financial institution chartered by a state or the United States, or a nationally recognized credit
8 organization.

9 (4) Payments made by credit card must include the service charge [~~fee~~] required
10 by §209.23 of this title [~~chapter~~].

11 (5) If payment is not received within 10 days after the date of receipt of the
12 notice, the obligation shall [~~will~~] be considered delinquent and shall [~~will~~] be processed in accordance
13 with §209.1 of this title (relating to Collection of Debts).

14 (d) Supplemental collection procedures. In addition to the procedures described in §209.1 of
15 this title, the department may notify appropriate credit bureaus or agencies if the drawer or indorser
16 [~~endorser~~] fails to pay the face amount of a dishonored payment device, [~~check,~~] any service charge
17 required under §209.23 of this title [~~payment processor charges~~], and the \$30 processing fee. In
18 addition, the department [~~or~~] may refer the matter for criminal prosecution.

19 (e) Any payment to the department from the drawer or indorser [~~endorser~~] of a dishonored
20 payment device [~~check~~] shall [~~will~~] be applied first to the \$30 processing fee, then to any service charge
21 required by §209.23 of this title, and then to the face amount of the dishonored payment device.

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23 **SUBCHAPTER B. PAYMENT OF FEES [~~FOR DEPARTMENT GOODS AND SERVICES~~]**

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§209.23

STATUTORY AUTHORITY. The amendments are proposed under Transportation Code, §1001.009, which authorizes the board to adopt rules regarding the method of collection of a fee for any goods sold or services provided by the department, or for the administration of any department program; Transportation Code, §501.176, which authorizes the department to collect a fee for processing a title or registration payment by electronic funds transfer, credit card, or debit card in an amount that does not exceed the amount of the charges incurred by the state to process the payment; Transportation Code, §502.094, which authorizes the department to charge a service charge for a payment by credit card or escrow account for a 72-hour or a 144-hour permit; Transportation Code, §502.191, which authorizes the department to collect a fee for processing a payment by electronic funds transfer, credit card, or debit card in an amount not to exceed the amount of the charges incurred by the department to process the payment; Transportation Code, §621.356 and §623.076, which authorize the board to adopt rules that require the payment of a discount or service charge for a credit card payment in addition to the fee; Transportation Code, §643.004, which authorizes the department to adopt rules that require the payment of a discount or service charge for a credit card payment in addition to the fee; Transportation Code, §1001.009, which authorizes the board to adopt rules that require the payment of a discount or service charge for a credit card payment in addition to the fee; Government Code, §2054.2591, which authorizes the Texas Department of Information Resources (DIR) to set fees that a state agency may charge for a transaction that uses the state electronic Internet portal project; Transportation Code, §§501.176, 502.191, and 520.003, which authorize the department to collect the fees that DIR sets under Government Code, §2054.2591; Transportation Code, §1002.001, which provides the board with the authority to adopt rules that are necessary and appropriate to implement the powers and the duties of the department; and

1 the statutory authority referenced throughout the preamble and in the rule text, which is incorporated
2 herein by reference.

3 **CROSS REFERENCE TO STATUTE.** The proposed amendments would implement Transportation Code,
4 §§501.176, 502.094, 502.191, 520.003, 621.356, 623.076, 643.004, 1001.009 and 1002.001; and
5 Government Code, §2054.2591.

6
7 Text.

8 §209.23. Methods of Payment.

9 (a) The purpose of this section is to establish the methods of payment that the Texas
10 Department of Motor Vehicles may accept, depending on the transaction, and to make the public aware
11 of a potential service charge for certain methods of payment. All fees for department goods and services
12 and any fees required in the administration of any department program shall be paid to the department
13 with a method of payment accepted by the department [~~at the point of sale~~], which may be:

14 (1) a valid debit or credit card, approved by the department, and issued by a
15 financial institution chartered by a state or the United States, or a nationally recognized credit
16 organization;

17 (2) electronic funds transfer;

18 (3) a personal check, business check, cashier's check, or money order, payable
19 to the Texas Department of Motor Vehicles [~~except that a personal or business check is not an~~
20 ~~acceptable method of payment of fees under Transportation Code, §502.094~~];

21 (4) cash in United States currency, paid in person; or

22 (5) by an escrow account, established with the department for the specific
23 purpose of paying fees.

1 (b) Persons paying the department by credit card, debit card, or electronic funds transfer [~~or~~
2 ~~Automated Clearing House (ACH)~~] shall pay any applicable service charge per transaction.

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SUBCHAPTER C. DONATIONS OR [~~AND~~] CONTRIBUTIONS

5

§209.33 and §209.34

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7 **STATUTORY AUTHORITY.** The amendments are proposed under Transportation Code, §1001.008, which
8 authorizes the board to accept a donation or contribution in any form and to delegate to the executive
9 director the authority to accept a donation or contribution that is under \$500 or that is not otherwise
10 required to be acknowledged in an open meeting; Transportation Code, §1005.001, which says the board,
11 the executive director, and each employee of the department is subject to the standards of conduct
12 imposed by Government Code, Chapter 572, and any other law regulating the ethical conduct of state
13 officers and employees; Government Code, Chapter 575, which governs a state agency's acceptance of a
14 gift, which is defined as a donation of money or property that has a value of \$500 or more; Government
15 Code, §2255.001, which requires a state agency that is authorized by statute to accept money from a
16 private donor to adopt rules governing the relationship between the donor, the state agency and the state
17 agency's employees; Transportation Code, §1002.001, which provides the board with the authority to
18 adopt rules that are necessary and appropriate to implement the powers and the duties of the
19 department; and the statutory authority referenced throughout the preamble and in the rule text, which
20 is incorporated herein by reference.

21 **CROSS REFERENCE TO STATUTE.** The proposed amendments would implement Transportation Code,
22 §§1001.008, 1002.001, and 1005.001; and Government Code, Chapters 572, 575, and 2255.

23

1 Text.

2 §209.33. ~~Acceptance of~~ Donations or ~~and~~ Contributions.

3 (a) The purpose of this section is to establish the criteria and procedures regarding donations or
4 contributions under Transportation Code, §1001.008 and Government Code, Chapter 575, as well as the
5 standards of conduct governing the relationship between the board, the department's employees, and
6 donors under Government Code, Chapter 2255.

7 (b) The following words and terms, when used in this section, shall have the following meanings,
8 unless the context clearly indicates otherwise.

9 (1) Board--The board of the Texas Department of Motor Vehicles.

10 (2) Department--The Texas Department of Motor Vehicles.

11 (3) Donation or contribution--Anything of value in any form, including real or personal
12 property, money, materials, or services, given by a donor to the board, as authorized by Transportation
13 Code, §1001.008.

14 (4) Donor--A person who makes a donation or contribution to the board, as authorized
15 by Transportation Code, §1001.008.

16 (5) Executive director--The executive director of the Texas Department of Motor
17 Vehicles.

18 (c) ~~(a)~~ The executive director may accept a donation or contribution ~~(donations and~~

19 ~~contributions]~~ valued under \$500.

20 (d) ~~(b)~~ Board acceptance of a donation or contribution ~~(donations and contributions]~~ shall be

21 made in an open meeting. The records of the meeting shall identify the name of the donor and describe

22 the donation or contribution and its purpose.

1 (e) If a donor specifies the purpose of the donation or contribution, the department shall use
2 the donation or contribution for that purpose to the extent the specified purpose complies with
3 Transportation Code, §1001.008.

4 (f) The department may document terms and conditions relating to a donation or contribution
5 through a donation or contribution agreement with the donor.

6 (g) Pursuant to Transportation Code, §1005.001 and Government Code, §2255.001, board
7 members and department employees shall comply with the standard of conduct imposed by
8 Government Code, Chapter 572 and any other law regulating the ethical conduct of state officers and
9 employees when interacting with a donor or potential donor.

10 (h) A board member who serves as an officer or director of a donor shall not vote on that
11 donor's proposal to make a donation or contribution to the board under Transportation Code,
12 §1001.008.

13 (i) If the department's executive director serves as an officer or director of a donor, the
14 executive director shall not vote on that donor's proposal to make a donation or contribution to the
15 board under Transportation Code, §1001.008.

16 (j) A board member or a department employee shall not authorize a donor to use department
17 property unless the following requirements are met:

18 (1) the board member or the department, as applicable, must have statutory authority
19 to do so;

20 (2) the property shall only be used for a state purpose; and

21 (3) the property shall be used in accordance with a contract between the department
22 and the donor that complies with Texas law.

23

1 **STATUTORY AUTHORITY.** The repeal is proposed under Transportation Code, §1001.008, which
2 authorizes the board to accept a donation or contribution in any form and to delegate to the executive
3 director the authority to accept a donation or contribution that is under \$500 or that is not otherwise
4 required to be acknowledged in an open meeting; Government Code, §2255.001, which requires a state
5 agency that is authorized by statute to accept money from a private donor to adopt rules governing the
6 relationship between the donor, the state agency and the state agency's employees; Transportation Code,
7 §1002.001, which provides the board with the authority to adopt rules that are necessary and appropriate
8 to implement the powers and the duties of the department; and the statutory authority referenced
9 throughout the preamble and in the rule text, which is incorporated herein by reference.

10 **CROSS REFERENCE TO STATUTE.** The proposed repeal would implement Transportation Code,
11 §§1001.008 and 1002.001; and Government Code, Chapter 2255.

12

13 Text.

14 [~~§209.34. Donation Agreement.~~]

15 [~~The department may document terms or conditions relating to the donation or contribution~~
16 ~~through a donation agreement with the donor.~~]

17

18