

TEXAS DEPARTMENT OF MOTOR VEHICLES

CONSUMER PROTECTION ADVISORY COMMITTEE

MEETING

OPEN MEETING VIA TELEPHONE CONFERENCE CALL  
PURSUANT TO GOVERNOR'S MARCH 16, 2020  
TEMPORARY SUSPENSION OF CERTAIN OPEN MEETING PROVISIONS

Thursday,  
June 18, 2020  
9:04 a.m.

COMMITTEE MEMBERS:

Laird Doran, Presiding Officer  
Dorothy Brooks  
Richard Cavender  
Melissa Colvin (absent)  
Tiffen Eshpeter  
James French  
Ruben Gonzalez  
Cheryl Johnson  
Traci McCullah  
Ray Olah  
Jeanette Rash (absent)  
Michael Rigby  
Carroll Smith  
Juan Solis (absent)

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P R O C E E D I N G S

1  
2 MR. DORAN: Good morning. My name is Laird  
3 Doran, and I'm pleased to open the meeting of the Consumer  
4 Protection Advisory Committee. For ease of reference, I  
5 will refer to this Advisory Committee as CPAC, which is  
6 the acronym for this Committee.

7 It is now 9:04, and I am now calling the CPAC  
8 meeting for June 18, 2020 to order. I want to note for  
9 the record that the public notice of this meeting  
10 containing all items on the agenda was filed with the  
11 Office of Secretary of State on June 10, 2020.

12 This meeting is being held by telephone  
13 conference call in accordance with Texas Government Code  
14 Chapter 551 and as temporarily modified under Governor  
15 Gregg Abbott's authority to suspend certain statutes due  
16 to COVID-19.

17 Governor Abbott suspended various provisions of  
18 the Texas Open Meetings Act that require government  
19 officials and members of the public to be physically  
20 present at specified meeting locations. Under that  
21 suspension, the public will not be able to physically  
22 attend this meeting in person.

23 Instead, the public may attend this meeting by  
24 calling a toll-free telephone number which is posted in  
25 the agenda which was filed with the Office of the

1 Secretary of State on June 10, 2020. All Advisory  
2 Committee members, including myself, will be participating  
3 remotely via WebEx.

4 At this time, please mute your phone for the  
5 entire duration of this meeting. I am asking our WebEx  
6 meeting host to make sure all participants' phones are  
7 muted except for Advisory Committee members and those who  
8 are presenting.

9 Callers will be removed for any disruption  
10 including background noise. I would like to remind all  
11 participants that this is a telephone conference call  
12 meeting. Because this meeting is being held by telephone  
13 conference call, there are a few things that will assist  
14 in making the meeting run smoother and assist the court  
15 reporter in getting an accurate record.

16 Department staff, Committee members and any  
17 commenters should identify themselves before speaking.  
18 Please speak clearly. Remember that there may be a slight  
19 delay due to the telephone conference call meeting, so  
20 please wait a little longer than usual before responding  
21 to participants.

22 Do not speak over others, and speakers should  
23 ask the Presiding Officer to proceed and be sure to get  
24 recognized before speaking. Because the number of dial-in  
25 participants is limited, if you wish to address the

1 Advisory Committee or speak on an agenda item during  
2 today's meeting, please send an email to  
3 gco\_general@txdmv.gov.

4 Please identify in your email the specific item  
5 you are interested in commenting on, your name and  
6 address, and whether you are representing anyone or are  
7 speaking on behalf of yourself. If your comment does not  
8 pertain to a specific agenda item, we will take your  
9 comment during the general public comment portion of the  
10 meeting.

11 In accordance with Department administrative  
12 rule, comments to the Advisory Committee will be limited  
13 to three minutes. Then the call will be muted. Comments  
14 should be pertinent to the issue stated in your email.  
15 When addressing the Advisory Committee, please state your  
16 name and affiliation for the record.

17 Before we begin today, I'd like to remind all  
18 presenters and those in attendance of the rules of conduct  
19 at Texas Department of Motor Vehicles public meetings. In  
20 the Department's rules, under 43 TAC, or Texas  
21 Administrative Code, Section 206.22, the Presiding Officer  
22 is given authority to supervise the conduct of meetings.

23 This includes the authority to determine when a  
24 speaker is being disruptive of the meeting or is otherwise  
25 violating the timing or presentation rules I just

1 discussed. Disruptive speakers will be muted, given a  
2 warning about disruptive behavior, and then removed from  
3 the meeting for any continued disruption.

4 Advisory Committee members, please let us know  
5 immediately if you are no longer able to participate for  
6 any reason. If your phone call drops and you are  
7 disconnected, Texas DMV staff will interrupt the meeting  
8 to let us know to get you back on the line before we  
9 proceed with the agenda.

10 I'd like to move to Agenda Item 1(a), roll call  
11 and establishment of quorum. And now I'd like to have a  
12 roll call of the Advisory Committee members. Please let  
13 me know if I pronounce your name incorrectly, and when I  
14 call your name, please indicate if you are present by  
15 stating "here" or "present."

16 MR. DORAN: Member Brooks?

17 MS. BROOKS: Here, present.

18 MR. DORAN: Member Brooks, I want to welcome  
19 you and all the other new members to the Committee, and  
20 we'd like to just take a minute for you to introduce  
21 yourself to the Committee members and tell us a little bit  
22 about your background.

23 MS. BROOKS: Thank you. I am director of  
24 Operations for Southwest Movers Association. I've been  
25 there 20 years, working with the movers. Prior to that, I

1 was with Texas Trucking Association, and for about  
2 40 years.

3 So this is an opportunity and a pleasure and an  
4 honor for me to participate on this Committee.

5 MR. DORAN: Thank you, Ms. Brooks. We  
6 appreciate having you.

7 Member Cavender?

8 MR. CAVENDER: Present. Good morning.

9 MR. DORAN: Good morning. Member Cavender,  
10 would you please introduce yourself as well, and if you  
11 wouldn't mind sharing a little bit of your background?

12 MR. CAVENDER: Yes. Good morning, fellow  
13 members. I am Rick Cavender from the Cavender Auto Family  
14 in San Antonio, Cedar Park, Columbus, and Weimar. We have  
15 dealerships in Texas, and we have been in business  
16 80 years, celebrating that.

17 I am a long-time automobile dealer, currently  
18 dealer principal at Audi Dominion in San Antonio. I'm the  
19 past chairman of Texas Automobile Dealers Association and  
20 the past chairman of the San Antonio Automobile Dealers  
21 Association, and it is indeed a great pleasure to move  
22 into participation on this Committee.

23 Looking forward to our future together.

24 MR. DORAN: Thank you, Member Cavender. We are  
25 very pleased to have you.

1           Member Eshpeter? Did I pronounce that  
2 correctly? Member Eshpeter?

3           MS. ESHPETER: Oh, sorry. Yes. Here. It kept  
4 re-muting on me.

5           MR. DORAN: Okay. Wonderful. Would you mind  
6 sharing a little bit about your background as well with  
7 the Committee?

8           MS. ESHPETER: Yes. I've been with Better  
9 Business Bureau for 20 years. I'm the chief operating  
10 officer, and oversee all of our reporting and the  
11 information that we provide on companies.

12           MR. DORAN: Wonderful. Well, so pleased to  
13 have you joining us.

14           Member French?

15           MR. FRENCH: Yes. Present.

16           MR. DORAN: Member French, welcome. If you  
17 wouldn't mind sharing just a little bit about your  
18 background as well?

19           MR. FRENCH: Okay. I have been involved in the  
20 movement and storage industry for some 53 years, and  
21 represented -- or represent Scobey Moving & Storage here  
22 in San Antonio. The company is also represented in El  
23 Paso, Austin, Killeen, two operations here in San Antonio,  
24 so we're a pretty good-sized industry.

25           I have been involved with Southwest Movers as

1 chairman several years ago, and will continue to work with  
2 them in the future. I've also just been involved with  
3 Meals on Wheels San Antonio for the last six years as a  
4 member of their board of trustees.

5 I think that's it. I'm glad to be involved and  
6 see what we can do to contribute.

7 MR. DORAN: Well, welcome, Member French. We  
8 are delighted to have you.

9 Continuing with the roll call, Member Gonzalez?

10 MR. GONZALEZ: Present.

11 MR. DORAN: Member Cheryl Johnson?

12 MS. JOHNSON: Present.

13 MR. DORAN: Okay. Member McCullah? Member  
14 McCullah?

15 (No response.)

16 MR. DORAN: Okay. Member Olah?

17 MR. OLAH: Present.

18 MR. DORAN: Okay. Member Rigby?

19 MR. RIGBY: Present.

20 MR. DORAN: Okay. Member Smith?

21 MR. SMITH: Present.

22 MR. DORAN: Welcome, Member Smith. I wanted to  
23 give you an opportunity to introduce yourself to the group  
24 as well.

25 MR. SMITH: Thank you, Mr. Chairman. I am a

1 45-year Chevrolet dealer in Pasadena, Texas. I have  
2 served on the board of the Houston Auto Dealers  
3 Association, and as chairman, Texas Auto Dealers  
4 Association, and as chairman, and served 16 years  
5 representing the dealers of Texas on the National Auto  
6 Dealers Association board.

7 I'm certainly excited and looking forward to  
8 serving with this group and will look forward to  
9 contributing, and thank you very much. Good to be with  
10 you.

11 MR. DORAN: Glad to have you, Member Smith.  
12 Member Solis? Member Solis?

13 (No response.)

14 MR. DORAN: Okay. For the record, I am Laird  
15 Doran. I am present as well, and I do believe that we  
16 have a quorum.

17 MR. RICHARDS: Mr. Doran?

18 MR. DORAN: Yes?

19 MR. RICHARDS: David Richards for the record.  
20 I believe Ms. McCullah is on the call. Maybe she was  
21 muted before.

22 Traci, are you on the call now?

23 MS. McCULLAH: Yes, I am.

24 MR. RICHARDS: Could you give us some  
25 background information, please?

1 MS. McCULLAH: Absolutely. I am 40 years in  
2 the moving industry. I am past chairman of Southwest  
3 Movers, past president of Houston Movers. I'm a second-  
4 generation mover. I am a past Household Good Advisory  
5 Committee member under Johnny Walker, and I've spent  
6 20 years with the Houston Livestock Show and Rodeo as a  
7 volunteer.

8 MR. DORAN: Well, Member McCullah, we are  
9 delighted to have you. Thank you for joining us.

10 MS. McCULLAH: Thank you.

11 MR. DORAN: Okay. Members, we are going to now  
12 take up Agenda Item No. 2, Discussion, Briefing and Action  
13 Items, as we move to Item No. 2a, which is Title and  
14 Consumer Issues When a Dealer Goes Out of Business.

15 Members, you will recall that we began a  
16 discussion on this agenda item back on May 28, 2020 at our  
17 CPAC meeting.

18 We need to continue that discussion and decide  
19 upon recommendations that will be made to the Texas  
20 Department of Motor Vehicles Executive Director, as well  
21 as the Board. You will also notice that since our last  
22 meeting, this agenda item has been expanded to include a  
23 discussion involving consequences to consumer financing  
24 and credit scoring when a dealer goes out of business.

25 Members, the discussion will be led today by

1 Director of Vehicle Titles and Registration Division, Mr.  
2 Jeremiah Kuntz. I will now turn the meeting over to Mr.  
3 Kuntz. Jeremiah?

4 MR. KUNTZ: Thank you, Chairman Doran. So the  
5 last time -- and we'll kind of go over this a little bit  
6 for the benefit of our new members, so I'll try and cover  
7 this quickly so as to not completely repeat the  
8 presentation that we did the last time.

9 But during the last legislative session,  
10 statutes were amended to put in place some provisions  
11 related to the waiving of certain fees when a dealer goes  
12 out of business and specifically relating to the waiving  
13 of the title and registration fees for dealers that have  
14 gone out of business.

15 And that is -- and obviously, in order to  
16 provide consumers with the benefit of not having to pay  
17 for those fees again, because the way it's set out is they  
18 would have potentially already paid the dealership for the  
19 title, the registration for a vehicle, and that dealership  
20 has gone out of business and has basically not applied for  
21 title in accordance with state law.

22 So the Department recently adopted rules  
23 related to when those fees can be waived, and so we have  
24 certain conditions that would be met when those fees can  
25 be waived, and specifically, if a dealer has ceased

1 operations as determined by the Department, and for  
2 example, if our Enforcement Division went out to do a site  
3 inspection and saw that the dealership was boarded up or  
4 they had a closed sign or something on their business  
5 property, but they hadn't necessarily notified the  
6 department.

7 They had just basically closed up and we  
8 weren't aware until we actually saw that they were -- they  
9 appear to be closed, or if they have surrendered their  
10 license, so they've, you know, told the Department -- not  
11 going to be operating as a dealership anymore.

12 They've, you know, stopped operating, and so  
13 their license has not been renewed, and they've told the  
14 Department, we're going out of business. In those  
15 instances, a consumer that has potentially been harmed has  
16 the ability to come to our Regional Service Center and  
17 notify our staff that they believe that the dealership has  
18 gone out of business.

19 We would do exactly like I said. We would do  
20 some kind of investigation, determine that, yes, indeed,  
21 that dealership has gone out of business, and then we  
22 would issue that consumer a letter that they could take  
23 with them to the county tax assessor-collector's office to  
24 apply for title and registration, and we would itemize all  
25 of the fees that would be waived by the county tax

1     assessor-collector.

2                   And so what we would be looking at is they  
3     would show us either a sales contract or some kind of  
4     receipt that they have for the vehicle and something that  
5     would show to us that, yes, they had paid the dealership  
6     the title fees; they had paid the registration fees.

7                   And if that is the case, then we would itemize  
8     those on that letter to the tax assessor-collector and  
9     instruct them to go ahead and waive those fees and allow  
10    the person to obtain title and registration for their  
11    vehicle.

12                   The other provision in state law allows for a  
13    consumer to obtain a 30-day permit free of charge so that  
14    in case they are going through a process and trying to  
15    work through all of this, that they have an opportunity to  
16    get a 30-day permit so they can operate the vehicle while  
17    all of this is going on and not be charged for that.

18                   So that's kind of a broad overview of what this  
19    is. So I'll stop for just a second in case any of our new  
20    members have any questions about the dealer going out of  
21    business provisions.

22                   (No response.)

23                   MR. KUNTZ: Okay. So if there aren't any  
24    questions, some of the things that we talked about last  
25    time -- I know we talked about bankruptcy as one of those

1 issues that is not currently a provision that's allowed  
2 for in our rules, and I think that there was some good  
3 discussion last time that during a bankruptcy, that may  
4 prove to be difficult to consider that dealer out of  
5 business and just because of all of the federal issues and  
6 federal laws around bankruptcy and kind of who is in  
7 charge at that point, because usually during a bankruptcy  
8 there is a court that is involved that is making  
9 determinations about the financial status of an entity.

10 And so we had raised that issue as to whether  
11 or not that was something that we should be adding to the  
12 rules, and I believe that what we heard last time was that  
13 that may prove to be problematic to add that provision to  
14 the rules, to say bankruptcy was considered a dealer out  
15 of business for this purpose.

16 Did I capture that correctly for the members  
17 that were here? I just want to make sure I'm --

18 MR. DORAN: Mr. Kuntz? Yeah. This is  
19 Presiding Officer Doran. I believe you did capture the  
20 concerns about bankruptcy accurately.

21 MR. KUNTZ: Okay. The other item that was  
22 discussed centered around the surety bond that is posted  
23 by a dealer when they are licensed, and currently under  
24 state law, the surety bond that a dealer provides, I  
25 believe, is \$25,000.

1           During the legislative session, when the bill  
2 was being considered, there was consideration for  
3 increasing that bond amount. That did not pass. However,  
4 what did pass was the ability of the Department to  
5 actually be a party that could seek damages against that  
6 bond.

7           And so the way that that is -- a lot of the  
8 discussion that came out centered around what that would  
9 look like if the Department was seeking to call that bond  
10 and whether or not the bond had been sufficiently amended  
11 to make sure that that was addressed.

12           And I believe that there were some members of  
13 the Committee that brought up some very good points about  
14 what is required to be in those bonds, and I believe that  
15 discussion, I believe, warranted some further evaluation  
16 and research by the Department.

17           I think our legal counsel and potentially our  
18 Licensing Division were going to need to look at how those  
19 bonds work, because there are specific provisions in the  
20 Transportation Code. I believe it was pointed out in  
21 Transportation Code, Chapter 503, related to that bond,  
22 and I believe that that bond has to be looked at by the  
23 Attorney General, if I'm remembering correctly.

24           So I don't know if General Counsel has had time  
25 to evaluate those provisions of the Transportation Code or

1 look at whether or not we needed to -- I believe there was  
2 discussion that we would need to amend our administrative  
3 rules in order to further define that bond to make sure  
4 that we are a party that could seek, I guess, damages or  
5 whatever you would call it, in order to get funds to repay  
6 the State for any fees that were waived.

7 MR. RICHARDS: Officer Doran?

8 MR. DORAN: Yes, David?

9 MR. RICHARDS: David Richards. Permission to  
10 speak?

11 MR. DORAN: Yes. Proceed.

12 MR. RICHARDS: Thank you. Members, we have the  
13 benefit of a Motor Vehicle Division attorney on the call  
14 today, LaDonna Castanuela. She has done some research on  
15 the bond, and I think in pretty much, in very simplistic  
16 form, lay out for you what is required under the bond that  
17 we're talking about.

18 It's a -- as Jeremiah said, it's a \$25,000  
19 bond, security bond.

20 LaDonna, are you on the call? And can you  
21 answer some of the questions Jeremiah posed?

22 MS. CASTANUELA: Yes, I'm here. Is it working?  
23 I'm here, David. Can you hear me?

24 MR. RICHARDS: Yes, we can hear you.

25 MS. CASTANUELA: All right, then. So you know,

1 on page 7 of the materials, you'll actually see an example  
2 of an actual dealer bond, and then page 8 is the back of  
3 that bond, the next page, and then page 9 is the sample  
4 form that is approved by the Attorney General. It says at  
5 the bottom of it -- you'll see that it was approved in  
6 July of 1985.

7 That form is provided to a GDN dealer applicant  
8 through our eLicensing system when he or she is applying  
9 for the license. So the question about do we need to  
10 update the language on the bond -- if you'll look at  
11 the -- page 7, it has a statement already in there that  
12 says, "Recovery against the bond may be made by a person  
13 who obtains a judgment against a dealer, assessing  
14 damages."

15 Under the Government Code, person -- the  
16 definition of "person" includes government agencies. So I  
17 don't think that we need to update the language on the  
18 bond -- or the bond language or the approved bond language  
19 to implement our new Transportation Code 501.036.

20 I think there was a question also about how the  
21 bonds work, but I can tell you about Motor Vehicles  
22 Division's part in this. Of course, we require the  
23 \$25,000 bond when an applicant applies for a GDN. If  
24 someone wants to recover against that bond, the first  
25 thing that -- the only way that we know is that we'll get

1 a request for a copy of the dealer's bond.

2 We'll require that person to make an open  
3 records request, and then we will provide the bond.  
4 You'll notice the back page of the bond has that  
5 information about how to make claims. It will include  
6 [inaudible] for the bond company, and also for the  
7 Department of Insurance.

8 That page is a requirement under insurance  
9 rules. So that's what -- the person who wishes to recover  
10 will start out by contacting the surety company and/or TDI,  
11 who will probably contact the insurance company. The next  
12 time that we know anything about what happens on those  
13 efforts to recover against the bond right now is that we'll  
14 get a letter.

15 It's required under the bond, in the various  
16 sentence of the bond or the sample bond, but we get  
17 notice -- Motor Vehicle Division gets notice of any  
18 recovery against a -- any judgment. So we'll incorporate  
19 it into the bond. And sometimes those letters tell us  
20 that -- you know, it's sent to us by the surety company,  
21 and it will tell us that a judgment has been made against  
22 this bond and it will tell us that amount.

23 Oftentimes -- well, all the time, the amount  
24 exceeds the \$25,000. It will also tell us that the bond  
25 was closed. We of course have to follow up with the

1 dealer. [inaudible] the dealer wants to remain in  
2 business and have a \$25,000 bond.

3 But we also get notice of judgments that are  
4 less than \$25,000. So say, for instance, the letter says  
5 the judgment is \$10,000 that is made against this bond,  
6 then we've also got to follow up with the dealer and tell  
7 them, okay, now, you only have \$15,000 left on your bond,  
8 and so you need to do something about that so you have  
9 \$25,000 at all times while you are licensed.

10 So did I miss anything? Any questions that I'm  
11 supposed to answer? Or do I have any more questions?

12 MR. DORAN: This is Presiding Officer Doran. I  
13 actually had a question for you. The bond recovery  
14 process, is that something that a customer would need to  
15 retain a lawyer to help them, or is it the type of thing  
16 that the consumer could essentially accomplish on their  
17 own, in your opinion?

18 MS. CASTANUELA: Oh, gosh. Officer Doran, I  
19 really don't know what that process is like. Like I said,  
20 all we do, as far as the actual bonds is the open records  
21 request and then the letter. We -- of course, we haven't  
22 had to recover or -- as far as I know, there hasn't been  
23 an effort by the Department to recover under the new  
24 statute.

25 MR. DORAN: Okay.

1 MR. RICHARDS: Officer Doran?

2 MR. DORAN: Yes, David?

3 MR. RICHARDS: David Richards for the record.

4 May I have permission to speak?

5 MR. DORAN: Yes, please.

6 MR. RICHARDS: To answer your question, I don't  
7 know necessarily that an attorney would have to be  
8 retained by a consumer. If we're talking an amount that  
9 the consumer's trying to recoup that's, say, for example,  
10 within a justice court's jurisdiction -- I know years ago,  
11 and it's probably been up since then -- it was 5,000.

12 \$5,000 was the maximum jurisdictional amount  
13 that one could sue, and as I think most of the members and  
14 attendees know, a justice court is likened to a people's  
15 court, where you can go in and represent yourself.

16 So I think it's possible for a consumer to go  
17 in, depending upon the amount in question to a justice  
18 court and represent himself or herself to obtain a  
19 judgment after they've, you know, followed the procedures,  
20 as LaDonna's laid out, on the back of the bond for  
21 notifying the surety bond company, and going through that  
22 procedure.

23 So I don't think necessarily that has to take  
24 place. I will say this, for the benefit of the new  
25 members who haven't been a part of the discussion, and

1 just as a reminder to everybody: we're hoping that CPAC  
2 will offer some recommendations to the Executive Director  
3 and Board, as Presiding Officer Doran laid out.

4 One of the items that was discussed for the  
5 benefit of the new members is the amount of the bond, and  
6 as I think Mr. Kuntz pointed out, there was a move to  
7 raise that amount to \$50,000. It did not make it -- make  
8 the final cut in the legislation.

9 So that was something that, during the  
10 discussion we've had previously -- that some of the  
11 members that were originally on Board -- or the Committee  
12 talked about maybe raising it. So I mean, that might be  
13 something, for the purposes of our discussion today, a  
14 discussion of whether or not that's an item that the  
15 Advisory Committee wants to recommend to Ms. Brewster and  
16 the Board, raising the amount, and that would be obviously  
17 a legislative change. So that's one thing.

18 But I did want to explain my understanding of  
19 the mechanics of a consumer going to JP court or justice  
20 court to obtain a judgment, that I think they can do that  
21 without retaining an attorney. So I will give the floor  
22 back to Officer Doran.

23 MS. CASTANUELA: Officer Doran?

24 MR. DORAN: Yes?

25 MS. CASTANUELA: LaDonna Castanuela. Just one

1 note: I reminded myself here that the attorneys' fees are  
2 in fact a cost that can be recovered under the bond,  
3 specifically mentioned and itemized in 503.123

4 MR. DORAN: Well, thank you. This is Member  
5 Doran for the record. I think at this point we wanted to  
6 open it up for some discussion by the Committee members,  
7 for questions.

8 MR. SMITH: Officer Doran, Carroll Smith.

9 MR. DORAN: Mr. Smith, please proceed.

10 MR. SMITH: Thank you. I am asking a question  
11 which obviously is from a newbie. But can you kind of --  
12 as quickly -- what is the scope of this problem? I mean,  
13 how often is the public experiencing a dealership out of  
14 business or broke?

15 I mean, what is the size of the problem?

16 MR. DORAN: Member Smith, I'm going to defer  
17 that to staff, but I will say that on our prior call,  
18 May 28, we did have some pretty extensive discussion about  
19 the Reagor Dykes situation, the dealer group out of  
20 Lubbock, and some of the challenges that consumers were  
21 having in being able to obtain title for their vehicles  
22 there and not having trades paid off, things of that  
23 nature.

24 So that did come up as a real-world example.  
25 But I'm --

1 MS. THOMPSON: Mr. Doran?

2 MR. DORAN: -- going to turn it over to --

3 MS. THOMPSON: Ms. Thompson.

4 MR. DORAN: -- Ms. Thompson, please.

5 MS. THOMPSON: Thank you. Mr. Carroll, Corrie  
6 Thompson, Director of the Enforcement Division. We are  
7 familiar with each other. Thank you for being part of the  
8 Committee. We appreciate your participation. I did want  
9 to say that it's cyclical, the way the Department sees  
10 these things happen.

11 Sometimes it could be one consumer affected by  
12 a dealer who's gone out of business. This past year,  
13 however, we've had a number of large dealerships go out of  
14 business, and the Department has received hundreds and  
15 hundreds of complaints on the same dealership within a  
16 matter of weeks.

17 And so this past legislative session, that is  
18 actually what prompted the state to come forward to help  
19 kind of get relief for these consumers that are affected  
20 by the dealers going out of business.

21 So it goes either way. It could be one person  
22 affected, it could be hundreds affected. And we do  
23 routinely see this throughout the fiscal year as we  
24 process cases.

25 MS. THOMPSON: Thank you.

1 MR. OLAH: Officer Doran? Ray Olah. I ask to  
2 be recognized to speak.

3 MR. DORAN: Yes, Mr. Olah -- or Member Olah.  
4 You're recognized.

5 MR. OLAH: You know, as -- I have the bond  
6 sample up on my computer screen, and as I read it, it just  
7 occurs to me that it's exceedingly difficult for a  
8 consumer or an affected purchaser of a vehicle to make a  
9 claim on this bond.

10 There's a point at which an affected person  
11 will probably just give up on it and decide, I'm just  
12 going to have to take the loss. And I wonder if we can't  
13 come up with a way for a consumer, instead of having to go  
14 to JP court or otherwise hiring a lawyer to establish  
15 damages, if a consumer could not make a claim directly  
16 with the surety bond company.

17 In other words, is it possible to define under  
18 the Administrative Code what a consumer needs in order to  
19 perfect a claim and set forth the procedures of things  
20 that they have to do in order to make a claim, and then  
21 allow the consumer to make a claim directly with the  
22 surety bond company?

23 And this is in line with, you know, traditional  
24 notions of insurance coverage. You know, for instance,  
25 when you make a claim for auto body damages that you've

1 had on your car with an auto insurance company, it just  
2 seems to me that there are so many steps here, that we're  
3 actually dissuading or making it difficult for a consumer  
4 to make a claim against the bond.

5 So just an idea for discussion.

6 MR. RIGBY: Officer Doran, Michael Rigby.  
7 Permission to speak?

8 MR. DORAN: Member Rigby, you're recognized.

9 MR. RIGBY: Thank you. Yeah. I would agree  
10 with those comments. I think the statute now provides  
11 that the consumer has to get this judgment. Even if they  
12 were able to do that on their own in JP court, I think  
13 that's a significant hurdle for most consumers to obtain a  
14 recovery.

15 And so I'd agree with those comments. I'm also  
16 curious for -- I have a question for Ms. Castanuela, if  
17 she has any sense of like what is the average amount of a  
18 claim under these bonds, and how often do the aggregate  
19 claims exceed the \$25,000 amount?

20 Thank you.

21 MS. CASTANUELA: LaDonna Castanuela. So I said  
22 to our staff that see these notices of judgment come in,  
23 and she told me that we get about 50 of them a month. So  
24 I did not ask her to break down, you know, what the  
25 amounts are.

1           That -- I don't -- I wouldn't expect that that  
2 is something that she necessarily is checking, but she  
3 said probably half of those she has to follow up with the  
4 dealership, to look up a dealer's license each time she  
5 gets one of those letters, and oftentimes the date that  
6 the bond company tells her we're closing the bond is  
7 actually the date that the dealer has told us that he's  
8 closing his license.

9           But if that's not true and there's still a  
10 judgment, she's got to follow up with the dealer and make  
11 it right so that there is a \$25,000 bond in place again.  
12 I also note that we receive probably 15 or 20 open-records  
13 requests a month from -- for dealer bonds, and many times  
14 they tell us that that's exactly why they're requesting  
15 the dealer bond, is to pursue recovery against it.

16           MR. RIGBY: Michael Rigby. I have a follow-up  
17 question.

18           MR. DORAN: Member Rigby, you're recognized.

19           MR. RIGBY: Thank you. I guess it's a little  
20 hard to say whether, you know, we need to recommend an  
21 increase in the \$25,000 bond without some analysis of  
22 those kinds of numbers, whether the claims against the  
23 bond frequently exceed the \$25,000 amount, and if so, by  
24 how much?

25           I mean, it may be that we need to recommend,

1 you know, no change or a change to 50,000 or a change to  
2 100,000, but without that kind of research and analysis, I  
3 think it's difficult to reach some kind of conclusion  
4 about what the appropriate amount might be.

5 Thank you.

6 MS. JOHNSON: Member Johnson requesting to be  
7 recognized and be allowed to speak.

8 MR. DORAN: Member Johnson, you're recognized.

9 MS. JOHNSON: An additional question -- and I  
10 don't know if Mr. Kuntz can answer this or not -- is what  
11 was the objection by the legislature in the committee to  
12 increasing the amount? Because that could factor into the  
13 equation.

14 MR. KUNTZ: So for the record, Jeremiah Kuntz,  
15 Director of Vehicle Titles and Registration Division. I  
16 do not have the specific information on what the  
17 objections were in committee. We could go back and try  
18 and look at the tapes and see if there's anything in the  
19 committee, but I do not remember a specific objection that  
20 was voiced on the record or anything.

21 MS. JOHNSON: So cost associated with that  
22 would likely have been the reason. We just really have no  
23 clue? And I do believe that there would be benefit to  
24 determine what is the additional cost for the dealers in  
25 obtaining the higher-cost bonds?

1           If it's a minimal amount, then it would be  
2 logical to increase the amount.

3           MR. KUNTZ: Yeah.

4           MR. FRENCH: This is James French, requesting  
5 permission to speak.

6           MR. DORAN: Member French, you're recognized.

7           MR. FRENCH: Thank you. I'll tell you -- tell  
8 a real quick story from personal experience. Back in the  
9 late '80s, I bought a vehicle on a consignment lot, wrote  
10 the guy a check, drove off with the car. A few weeks  
11 later, I was approached by the guy who had put it up for  
12 consignment, that he had never been paid and it turned out  
13 that title transfer had never been filed.

14           Yes, I got an attorney, because I had no idea  
15 of that bond that was out there. What ended up happening  
16 is, I got -- you know, recovered the monies, paid the guy  
17 that had it up for consignment sale, and you know, we came  
18 to a good agreement. They actually paid my legal fees.

19           But the bottom line, what I found out then is  
20 this was about an \$18,000 purchase, and it's first-come,  
21 first-serve on these bonds. Fortunately I had an  
22 attorney. He got to it first.

23           I don't know how many other people were left  
24 hanging, but it seems to me that 25,000 is very, very low  
25 in today's world when we're dealing with \$100,000

1 vehicles. Thank you.

2 MR. GONZALEZ: Chairman, do I have permission  
3 to speak?

4 MR. DORAN: Is that Member Gonzalez?

5 MR. GONZALEZ: Yes, sir.

6 MR. DORAN: Okay. Yes, you are recognized.

7 MR. GONZALEZ: Thank you. I've been aware of  
8 this program for quite some time, and along the lines  
9 for -- to help the consumer, would it be possible for the  
10 DMV to provide a checklist of any customer that comes in,  
11 where they have this problem with the dealer that failed  
12 to provide them ownership documents or transfer title, a  
13 checklist of what the consumer is required to obtain?

14 For example, in many cases, the price of a  
15 vehicle is going to be over \$10,000, so a referral to a  
16 justice of the peace is probably not going to be adequate  
17 for them to get some type of a judgment from the justice  
18 of the peace, so they almost automatically have to go to  
19 county court or district court.

20 And I think that would kind of help them follow  
21 the guidance, because in the past, whenever a person  
22 complains to the DMV, the automatic answer was, you've got  
23 to talk to an attorney. And there again, an attorney who  
24 has a fee that's going to be, in many cases, excessive.  
25 Then again, it might be moderate. But the consumer is

1 referred to an attorney, so they're kind of at a loss.

2 If we could help them with some type of  
3 checklist of what they would need to do, with basic stuff  
4 like you need to get a copy of the bond under the open-  
5 records requirement, petition a judge to seek award -- be  
6 awarded ownership for this reason, I think it would make  
7 it flow better and help the consumer.

8 Nowadays a vehicle, when it's sold by a  
9 dealership, a used car dealership, they sell some late  
10 model stuff that's more than \$25,000. So consideration of  
11 raising the bond would be very apropos in this type of  
12 situation.

13 That's my comments that I would like to give  
14 the membership. Thank you.

15 MR. DORAN: Thank you, Member Gonzalez.

16 Are there further questions by the members?  
17 This is Presiding Officer Doran. I wanted to just follow  
18 up with staff on a comment and a question. I would -- as  
19 it relates to the discussion about raising the amount of  
20 the bond and the failed legislative initiative on that  
21 last session, just for the record, the average price of a  
22 new vehicle in the United States in 2019 was \$36,000.

23 And as it relates to -- here comes the  
24 question -- as it relates to the discussion we've been  
25 having about whether a lawyer is required, about, you

1 know, a consumer understanding the steps necessary to  
2 follow this process of making a claim against the bond, I  
3 believe Member Gonzalez was talking about a checklist.

4 My question to the DMV would be, you know,  
5 without providing legal advice to the public, per se,  
6 would -- is it possible that this checklist or an  
7 explanation of the steps necessary for a consumer to  
8 follow could that be something that was published on your  
9 website or accessible on your website as an agency?

10 MR. RICHARDS: Officer Doran?

11 MR. DORAN: And I mean that, as opposed to just  
12 citing the statute. I guess that's the distinction.

13 MR. RICHARDS: Officer Doran?

14 MR. DORAN: Yes, David. Go ahead.

15 MR. RICHARDS: David Richards for the record.  
16 I don't see why we could not do that. I would like to  
17 back up a minute. In the materials that Ms. Castanuela  
18 sent to everyone, and they're in your Advisory Committee  
19 meeting materials, on the back side of the bond, it refers  
20 a customer or a consumer to the Texas Department of  
21 Insurance, if -- and particularly in the event that they  
22 are getting nowhere with the surety bond company.

23 I don't see why it would not be a good public  
24 service or consumer service, I guess, the choice on our  
25 part to post something on the website, and we could refer

1 them to the Department of Insurance and we could post a  
2 checklist if we needed to.

3 So I think that's something that's doable.

4 MS. JOHNSON: Member Johnson requesting to be  
5 recognized and to speak?

6 MR. DORAN: Member Johnson, you're recognized.

7 MS. JOHNSON: Probably the most direct --  
8 because the website tends to be difficult, even for me,  
9 and [audio skip] when that website was created -- so it  
10 would be very beneficial to have that checklist available  
11 in every county tax office, because ultimately that's  
12 where [audio skip] are going to come in.

13 They're going to receive -- try to obtain the  
14 title, and then waiving these fees, that could be  
15 something that is automatically provided to them by the  
16 county tax assessor-collectors' offices; it would be very  
17 beneficial to have that.

18 MS. THOMPSON: This is Corrie Thompson, Officer  
19 Doran. I just wanted to make a comment, if I could?

20 MR. DORAN: Yes, Ms. Thompson. You're  
21 recognized.

22 MS. THOMPSON: With that, I do just want to  
23 acknowledge something that you pointed out as well. The  
24 Department does have to be very careful with information  
25 that's provided, because we are not permitted to provide

1 the public with legal advice.

2 MR. AVITIA: Officer Doran, this is Daniel  
3 Avitia. Permission to speak?

4 MR. DORAN: Yes, Daniel. You're recognized.

5 MR. AVITIA: Thank you, sir. I concur with  
6 Corrie's comments. Before we go too far down the road on  
7 this issue, the Department is not allowed to provide legal  
8 advice outside of the Department, so I would prefer that  
9 we table this opportunity so that we have an opportunity  
10 to speak with the TxDMV's General Counsel and gain a  
11 perspective on the matter.

12 MR. DORAN: Thank you, Daniel. We're referring  
13 to the specific issue -- this is a question for you. But  
14 are we referring to the specific question about the  
15 posting of a checklist that staff would come up with  
16 and/or any other guidance beyond a mere citation to the  
17 legal authority necessary to pursue this process?

18 Is that what we're tabling?

19 MR. AVITIA: I'm -- thank you, sir -- I'm  
20 referring specifically to the checklist. Yes, sir.

21 MR. DORAN: Okay. Thank you.

22 MR. SMITH: Officer Doran? Member Smith. May  
23 I speak?

24 MR. DORAN: Member Smith, you're recognized.

25 MR. SMITH: Kind of follow-up to my earlier

1 question. But is there any data that the Department has  
2 with regard to how many times perhaps that the bond has  
3 not been adequate to meet the demand?

4 MS. CASTANUELA: Excuse me. LaDonna  
5 Castanuela.

6 MR. DORAN: You are recognized.

7 MS. CASTANUELA: So I don't believe there's any  
8 data. I think it probably [audio skip] asking my many  
9 questions about this process, but I know who receives  
10 those letters about the judgment and those letters include  
11 the judgment amounts.

12 We can -- I'm sure that I can work with staff  
13 and come up with some kind of data from, you know, the  
14 last couple of months, for instance, and we can get sort  
15 of a little snapshot of what those amounts look like.

16 MR. GONZALEZ: Member Doran, may I speak? This  
17 is Member Gonzalez.

18 MR. DORAN: Member Gonzales, you are  
19 recognized.

20 MR. GONZALEZ: Yes, sir. Thank you. Concern  
21 about the bond amount. A lot of times in this process,  
22 it's the person that comes -- first-come, first-served  
23 basically on the bond issue. There's -- there have been  
24 occasions where a dealership fails to provide title and  
25 somebody files a claim and they've already exceeded the

1 \$25,000 amount to be able to claim that.

2 And then there's a second customer that comes  
3 into play that has the same problem. And does the DMV  
4 plan on addressing those secondary -- second or third  
5 complainants that come in? If they come in and file a --  
6 show a contract that they've bought a vehicle  
7 legitimately, what is the alternative for that second or  
8 third buyer if the bond has already been exhausted?

9 What is the recommendation for them to do as  
10 consumers if they get hit by this dealer that's failed to  
11 provide title? That would be my question, one question.

12 MS. THOMPSON: Member Doran, this is Corrie  
13 Thompson. If I may make a comment?

14 MR. DORAN: Yes, Ms. Thompson, please. You're  
15 recognized.

16 MS. THOMPSON: Officer Doran. My apologies. I  
17 did just want to say that I want everybody to be very  
18 clear that there's different areas of law that provide  
19 remedies for people. So there's criminal, there's civil,  
20 there's administrative.

21 The agency is charged with administrative law.  
22 Those are the cases that we take against the dealers and  
23 that we sanction them for, and we've talked about the  
24 Department's traditional sanction authority, which  
25 includes imposition of administrative penalties, as well

1 as revocation of licenses.

2 In these earlier meetings with CPAC, we've  
3 discussed new sanction authority that the Department has  
4 that we're trying to develop rules for, and that's the  
5 refund authority. So that would be separate and apart  
6 from the civil remedy that the consumer has to go against  
7 the dealer's bond.

8 So if, per se, the bond were to be exhausted  
9 because two or three consumers decided to pursue civil  
10 remedies and go against the dealer's bond, the consumer  
11 who files the complaint with the Department of Motor  
12 Vehicles and has a case ongoing can still be subject to  
13 that refund authority that we're talking about, as another  
14 agenda item separate and apart from the bond issue.

15 So I do want to make sure that we're kind of  
16 keeping those separate, because that's separate authority  
17 that the Department can order on the dealer, that they can  
18 agree to pay, and that's not part of the bond being paid  
19 out.

20 So I would say that would be remedy,  
21 potentially, Member Gonzalez. If we do not have any  
22 future legislation that increases the bond amount, that  
23 would still be an option.

24 MR. GONZALEZ: Thank you. Thank you very much,  
25 Corrie.

1           MR. KUNTZ: Chairman Doran, this is Jeremiah  
2 Kunz.

3           MR. DORAN: Jeremiah, you're recognized.

4           MR. KUNTZ: So what I want to -- and I'm going  
5 to piggyback a little bit on what Corrie has said here.  
6 There's really a couple of questions that are coming up.  
7 Under the legislation that passed this last session that  
8 we are talking about today or that we've talked about  
9 today, House Bill 3842, regardless of whether there's a  
10 sufficient bond or not, the Department and the county are  
11 instructed to issue title and waive fees.

12                   And so the remedy at least for obtaining title  
13 is already there for the consumer to protect their  
14 interest. The State is essentially out the money at that  
15 point. The State would basically have damages against it  
16 if the consumer has come in and gotten title and we've  
17 waived those fees.

18                   So just wanted to make sure that we kind of  
19 clarified that, that there is a remedy for them to still  
20 be able to get a title and registration. The State just  
21 would not -- kind of like you said, if the bond has  
22 already been exhausted, if we get -- as Ms. Thompson said,  
23 if we get hundreds of title applications that come in and  
24 we are waiving all of those fees, there is a potential  
25 that the State would exceed that \$25,000 and not be able

1 to be made whole.

2 And I believe there is one other recommendation  
3 that came up that I believe Member Gonzalez raised, which  
4 was the county being able to be made whole through this  
5 for any local fees that are waived as well. I think that  
6 that's a recommendation that this Committee can consider,  
7 is changing it to statute that would allow the county to  
8 potentially be a party to the bond as well.

9 MS. JOHNSON: Member Johnson requesting the  
10 Chair recognize me and I be allowed to speak?

11 MR. DORAN: Yes, Member Johnson. You are  
12 recognized.

13 MS. JOHNSON: I don't think it's premature.  
14 And I just researched on the internet the cost of these  
15 \$25,000 bonds. So I would like to move that the DMV Board  
16 pursue legislatively an increase in the amount of surety  
17 bond required of motor vehicle dealers.

18 MR. DORAN: Ms. Johnson, before we move forward  
19 with entertaining your motion, I do need to make sure that  
20 we have really exhausted our discussion as a group. So  
21 let me ask our Committee members here if there are further  
22 questions before we take up and entertain the motion?

23 So actually, I have one question for LaDonna  
24 and Corrie. Ms. Thompson talked about some of the tools  
25 in the toolbox that the DMV has in terms of recourse

1 against the dealer. I was just wondering if you could  
2 speak to whether the consumer, who has had to go out and  
3 retain counsel in some instances, if he or she has a cause  
4 of action or a potential claim under the Texas Deceptive  
5 Trade Practices Act?

6 And I'm speaking specifically of instances  
7 where a customer has paid for the vehicle but has not been  
8 able to obtain title and therefore doesn't legally own  
9 that vehicle.

10 MS. THOMPSON: Member -- or Officer Doran?  
11 Corrie Thompson with a comment.

12 MR. DORAN: Yes, Ms. Thompson. You're  
13 recognized.

14 MS. THOMPSON: Yes. Thank you for bringing up  
15 yet another potential remedy. Herein lies the maze that  
16 is the Department's function. So yes. So consumers can  
17 file private civil actions for civil Deceptive Trade  
18 Practices actions, which allow for treble damages, or they  
19 can seek representation through the Attorney General  
20 Consumer Protection Division, which sometimes decides to  
21 pick up consumer cases like these as well on the civil  
22 side.

23 MR. DORAN: Thank you. Let me go back to the  
24 Committee members and ask one more time if there were any  
25 further questions or discussion before taking up Ms.

1 Johnson's motion?

2 MR. GONZALEZ: Chairman Doran? Permission to  
3 speak?

4 MR. DORAN: Yes, Member Gonzalez.

5 MR. GONZALEZ: Yes. We're out here on the  
6 border next to New Mexico, and I just wanted to ask Mr.  
7 Kunz, is there a provision where if a New Mexico resident  
8 comes to El Paso and buys a vehicle and he has also failed  
9 to provide a title document so he can apply for title in  
10 New Mexico, and he wishes to complain, is there an  
11 opportunity for this non-resident to go through this  
12 process, even though he's not a resident of this state?

13 However, he did purchase a vehicle from a Texas  
14 dealer. Is there any provision or any avenue for this  
15 non-resident to seek remedy through this process? Has  
16 that been thought out or is that an exception that will be  
17 made at the Regional Service Center when it's presented to  
18 them?

19 We do get occasions for that situation here.  
20 So I just, out of curiosity, would like to ask Mr. Kuntz  
21 if that has been put out? Thank you.

22 MR. KUNTZ: So for the record, Jeremiah Kunz,  
23 Director of Vehicle Titles and Registration Division. I'm  
24 going to answer that in a couple of different ways, and  
25 one, the dealership is licensed in the state of Texas and

1 any claims that a consumer has against that dealer can be  
2 made regardless of where they are located.

3 I think Corrie would tell you that if an  
4 individual from New York came down and bought a vehicle in  
5 Texas and they were harmed by that dealer, you know, in a  
6 way, for not doing something in accordance with state law,  
7 that she has the authority through administrative code to  
8 take action against their license.

9 As for the waiving of the title and  
10 registration fees, we have no jurisdiction. Our laws have  
11 no jurisdiction in the state of New Mexico. So if a  
12 consumer purchased a vehicle at a dealership in El Paso  
13 and was bringing this vehicle back to New Mexico to obtain  
14 title, we do not have the authority to require that the  
15 State of New Mexico waive those fees.

16 So if they'd paid the dealership for the New  
17 Mexico taxes, title and registration, we have no way to  
18 compel the State of New Mexico to waive the fees for that  
19 consumer. So that's just -- unfortunately, that's the way  
20 that that would have to work.

21 I think that the scenarios are going to be  
22 somewhat different depending on whether it's a cash sale  
23 or if there's a lien involved. So if a consumer from New  
24 Mexico came across the border and purchased a vehicle from  
25 a dealership in Texas and paid cash, hypothetically I

1 would believe that that dealership is going to hand them  
2 the title and send them to go apply for title and  
3 registration in New Mexico on their own.

4           However, if there's a lien involved, a  
5 lienholder would require that the dealership perfects  
6 their lien and most likely that dealership would be  
7 contacting the State of New Mexico to apply for title in  
8 New Mexico.

9           So just kind of depends on the scenario as --

10           MR. GONZALEZ: Thank you, Mr. Kuntz.

11           MR. SMITH: Officer Doran? Member Smith.  
12 Permission to speak?

13           MR. DORAN: Member Smith, you are recognized.

14           MR. SMITH: I apologize to the Committee  
15 because certainly, as I've joined the discussion on this  
16 in the middle, I'm sure that I've missed a lot of  
17 information and a lot of facts. I'm concerned that, just  
18 by raising a bond amount, as somebody said earlier -- what  
19 is the correct amount?

20           But I believe that, at least from my joining in  
21 the middle of this, I have not seen enough data to  
22 understand whether this is a solution to the problem or  
23 it's just a raising of a fee? I think we need to know  
24 more about how this is happening and whether or not this  
25 will really solve the problems that the public is having.

1           Where are the problems coming from? What are  
2 they created by? Is there not maybe some other way  
3 besides affecting the thousands of dealers when maybe this  
4 is a specific problem that can be addressed in another  
5 manner?

6           So certainly me coming in the middle -- I would  
7 be against the motion, because I don't have enough  
8 information to think that this may be a solution to a  
9 problem I don't understand. Thank you.

10           MR. DORAN: So --

11           MR. KUNTZ: This is Jeremiah Kuntz, Chairman  
12 Doran?

13           MR. DORAN: You are recognized, Jeremiah.

14           MR. KUNTZ: I guess I will answer this the best  
15 way that I can, and I know I've heard Corrie talk about  
16 this, you know, a little bit today. The bond is like  
17 insurance and you never need insurance until you need it,  
18 and so what I would say is that generally when we see a  
19 dealership that goes out of business, it's very bad for  
20 lots of consumers.

21           I would say, and I'll, you know, let LaDonna  
22 and Corrie kind of jump here: We have thousands of  
23 dealers in the state of Texas. I would contend to you  
24 that most of those dealers, on an annual basis, don't go  
25 out of business.

1           They continue to operate their business and are  
2 in good standing, as far as a business owner. But when we  
3 do have dealerships that go out of business, it is  
4 generally not a good situation for all parties involved,  
5 and I know that we've talked a little bit about Reagor  
6 Dykes, because I think that's probably somewhat relevant  
7 to this conversation.

8           It's a little bit different in that it was a  
9 bankruptcy that took place, but that was a major franchise  
10 dealer in the state of Texas, and there were hundreds of  
11 consumers that were harmed by them not going to the county  
12 tax assessor-collector and applying for title and paying  
13 title and registration fees.

14           That caused a lot of disruption for many, many  
15 people who had bought brand-new vehicles, had potentially  
16 traded in vehicles, that their trade-ins had not been paid  
17 off, and it is an ongoing and very large problem for many  
18 consumers in the state of Texas.

19           So kind of back to what I started with: It's  
20 like insurance. You don't really need it until you really  
21 need it, and I think that that's kind of the discussion  
22 we're having here is -- when these things have been  
23 exercised, when a dealer has actually gone out of  
24 business, that the bond in these situations very well may  
25 not be sufficient.

1           And I'll say, in the Reagor Dykes scenario, it  
2 definitely was not sufficient to be able to cover all of  
3 the damages that occurred.

4           MR. RIGBY: Michael Rigby. Permission to  
5 speak?

6           MR. DORAN: Member Rigby, you are recognized.

7           MR. RIGBY: Thank you. So I hear from staff  
8 that the amount, the \$25,000 amount is not sufficient, but  
9 I don't hear a recommendation about what might be or would  
10 be sufficient. And I concur with some of the other  
11 members that it's difficult to make a decision without  
12 that information, and I'd prefer for that to be [audio  
13 skip], but you're got to look at the historical experience  
14 of DMV and analyze what came in and how much the claims  
15 exceeded the bond amount. So that's a concern I share.

16           In addition, I'm also concerned about  
17 whether -- how the bankruptcy piece plays into this. You  
18 know, perhaps it is like insurance, but if in order to  
19 access the surety bond you have to get a judgment and the  
20 dealer files a bankruptcy action and all of those lawsuits  
21 are stayed automatically in bankruptcy court, and any  
22 claim may be discharged by the bankruptcy court, then is  
23 this bond really a solution, or is it kind of an illusion?

24           So if you can help me understand the bankruptcy  
25 piece and any recommendations you have for the bond

1 amount, that would be helpful.

2 MR. RICHARDS: Officer Doran?

3 MR. DORAN: Yes, David. Please proceed.

4 MR. RICHARDS: David Richards, for the record.

5 For the purposes of discussion and also the new members,  
6 the bankruptcy scenario, as Member Rigby has pointed out,  
7 pretty much shuts everything down. What we talked  
8 about -- and for the benefit of the new members, the last  
9 time what I talked about -- Member Olah had mentioned  
10 about working with the AG's Office, which is exactly what  
11 we did.

12 I was assigned the Reagor Dykes oversight, and  
13 I worked with the Attorney General's Office regarding all  
14 of those consumers who were unable to get their titles  
15 transferred or to get their trade-in amounts paid off.

16 And most recently -- it was in the last several  
17 months -- the Attorney General's Office represented those  
18 consumers, or at least the Department, by advocating for  
19 the appointment of an ombudsman to represent the interests  
20 of consumers that were left high and dry.

21 The bankruptcy court judge was very sympathetic  
22 and entered an order appointing an individual to serve as  
23 ombudsman. The -- several of the secured creditors ponied  
24 up money. There's a fund, initial fund, I believe, of  
25 \$100,000 -- it may be a little bit more -- to allow the

1 ombudsman to go forward and sue the bankruptcy court, mind  
2 you, to get these consumers -- or at least hopefully make  
3 them whole.

4 So by and large, there's not lot that can be  
5 done if we go to the scenario that Member Rigby laid out.

6 Once the case is filed with bankruptcy -- and he  
7 accurately said everything is stayed -- we would have to,  
8 through the Attorney General's Office -- and Member Olah  
9 mentioned the last time -- seek what they call "leave of  
10 court" to deal with this, and that's what was done by the  
11 Attorney General in Reagor Dykes about a couple of months  
12 ago.

13 But we'll continue to do that, where we  
14 hopefully -- not -- well, in the -- hopefully not in the  
15 event that we have it, but in the event we have this  
16 happen again, we will work with the Attorney General's  
17 Office to see if we can't get an ombudsman or someone  
18 that's appointed to help consumers out.

19 But once the petition is filed in bankruptcy,  
20 it pretty much shuts everything down, including any  
21 actions or claims or judgments on the bond. That's pretty  
22 much the size of it and what we can do and what we intend  
23 to do as a Department, should we face another Reagor Dykes  
24 type bankruptcy situation with a franchise dealer.

25 MR. RIGBY: Michael Rigby. Permission to

1 speak?

2 MR. DORAN: Member Rigby, you are recognized.

3 MR. RIGBY: Yes. So I guess just kind of a  
4 follow-up question. I can see where that might work,  
5 where you've got a large dealership that shuts down, but  
6 with any kind of dealer, a small, buy-here, pay-here  
7 dealer, could do the same thing and file bankruptcy, and  
8 I'm not sure, you know, if you're going to devote all  
9 those resources to, you know, asking leave of court, from  
10 the bankruptcy court.

11 And so I guess my general question is whether  
12 the current statute that requires a judgment to access the  
13 bond is an effective way to address the consumer's loss?  
14 Is there another way that the consumer could directly  
15 access those bond funds without obtaining a judgment?

16 And I don't know the answers and I don't know  
17 if that's even possible, but I'd be interested in hearing  
18 your thoughts about whether there's a way to revise the  
19 statute to allow a quicker and more efficient to access  
20 the bond funds and make the consumers whole.

21 Thank you.

22 MR. RICHARDS: Officer Doran?

23 MR. DORAN: Yes, David?

24 MR. RICHARDS: It's David Richards for the  
25 record. I'll just step and say, clearly -- I know that

1 Member Olah mentioned earlier rulemaking, but I think our  
2 vehicle is statutory change. Clearly the securing of a  
3 judgment is required for a consumer to go forward, and  
4 there would have to be some sort of statutory change.

5 And again, we haven't outlined that, but I  
6 mean, that's why we have the CPAC, to make  
7 recommendations.

8 If it's the CPAC's will to recommend to the  
9 Board and to Ms. Brewster that the statutory change be  
10 made to allow consumers to access the bond without having  
11 to obtain a judgment, then it should be a recommendation,  
12 and that part of that looks -- we could -- staff could  
13 work with CPAC to see -- I mean, see how that would unfold  
14 and how that would play out, but right now, that is the --  
15 if you will, the impediment to a consumer going directly,  
16 you know, filing with the surety company a claim, and you  
17 know, they have to go forward with obtaining a judgment.

18 The bonds require it. It's stated in the bond.  
19 Statute requires it. So I mean, that could be a  
20 recommendation from the CPAC that a statutory change be  
21 made to allow consumers to go straight to the bond without  
22 obtaining a judgment.

23 And I'll defer to Ms. Thompson and anybody else  
24 who wants to speak on it, but that's my position on it.

25 MS. JOHNSON: Member Johnson requesting to be

1 recognized and to speak?

2 MR. DORAN: Member Johnson, you're recognized.

3 MS. JOHNSON: Maybe I lost track of the  
4 conversation, but it appeared to me that the purpose of  
5 this agenda item was the Board was trying to determine  
6 whether this Committee believed that it is -- that the DMV  
7 Board should pursue legislatively an increase in the bond  
8 amount, and further -- and if that's the question, that  
9 did not reference an amount, because I think it's up for  
10 them to determine what amount needs to be.

11 But also what -- I think what everybody is  
12 losing sight of is the consumer has a car. What we're  
13 looking at predominantly right now in recovery is the fees  
14 that they're incurring in order to obtain ownership of the  
15 vehicle.

16 Am I totally off? Have I lost track somewhere  
17 of what we're trying to accomplish?

18 MR. KUNTZ: So this is Jeremiah Kuntz.

19 Member --

20 MR. DORAN: You're recognized, Jeremiah.

21 MR. KUNTZ: Thank you. Thank you, Member  
22 Doran. Yes and no. So I don't believe that this  
23 discussion is limited just to the fees for the title and  
24 registration. I think that question has essentially been  
25 answered by the legislation.

1           What we are talking about, at least what I  
2 thought we were charged with talking about, was any other  
3 consumer protections that could be implemented when a  
4 dealer goes out of business, and the example was given  
5 before of -- and I can't remember which member gave this  
6 story, about purchasing a vehicle from a dealer on  
7 consignment and that title not transferring.

8           So you don't just necessarily have the fees at  
9 risk. You could potentially have other items that are  
10 problematic from a financial standpoint to a consumer.  
11 One of those could be that, you know, there's a  
12 disagreement.

13           The -- you know, the person who put the vehicle  
14 up on consignment never gets paid by the dealership.  
15 Therefore they're out, you know, potentially the entire  
16 value of the vehicle because they no longer have the  
17 vehicle and they're seeking that against the person that  
18 has the vehicle.

19           Well, the person that has the vehicle doesn't  
20 have a title to it, so the original owner is really the  
21 original owner until that title transfers. So you've got  
22 a dispute then between two private parties, and the  
23 dealership has taken the money and left.

24           Another scenario that potentially comes up is a  
25 trade-in vehicle. I know from, again, personal

1 experience -- I had a -- my stepbrother traded in a  
2 vehicle. The dealership never paid off his trade-in, and  
3 so he kept getting notices from his lienholder saying,  
4 hey, you're delinquent on the payment of your vehicle  
5 payment, because the dealership had never paid it off.

6 So there are other issues for the Committee to  
7 consider that potentially have harm to consumers.

8 MS. JOHNSON: But Jeremiah, would not -- in  
9 that trade-in -- that seller -- that trade-in vehicle had  
10 transferred title, effectively, to the dealership and  
11 therefore could have filed a form removing their name from  
12 ownership of that vehicle?

13 MR. KUNTZ: No, because they -- the title they  
14 may have assigned to the dealership, but remember: the  
15 dealer never applied for title in their name because they  
16 just do an assignment.

17 If that dealership disappears, there's no  
18 evidence that that transaction took place, because our  
19 system is not -- is -- our system still going to show the  
20 lienholder with a lien on that vehicle, and you as the  
21 titled owner of it.

22 MR. DORAN: This is Member -- Officer Doran. I  
23 wanted to -- I know we've been talking about the bond for  
24 a while, and I wanted to come back to that issue real  
25 quickly before we move on to other angles and efforts to

1 protect the consumer here.

2 But as it relates to the bond -- and I'm  
3 inviting discussion on this -- but you know, the purpose  
4 of the bond, I guess you could argue, is twofold. Perhaps  
5 it's to try and make the consumer whole, but at only  
6 \$25,000, it's possible that the very first consumer that  
7 makes a claim against the bond is going to exhaust that  
8 bond, and that consumer may not even be made fully whole.

9 So that purpose in terms of the bond meeting  
10 that purpose is a bit in question in my mind. And then  
11 the second purpose potentially that a bond might have --  
12 and I would actually defer to our dealer members on the  
13 Committee as to their opinion on this -- but perhaps it's  
14 to discourage that conduct.

15 And so if having a bond that is, you know,  
16 \$50,000 versus \$25,000 really likely to make a dealer more  
17 careful in the way in which they are handling a customer's  
18 transaction? I think that could very much be up for  
19 debate, and I don't know -- it was mentioned earlier --  
20 what would be the increased burden on -- let's call it --  
21 the good dealers that have never had an issue resulting  
22 from that.

23 So I'm kind of challenged here to see the bond  
24 as that helpful in accomplishing the goal here of  
25 protecting the consumer. Therefore I'm wondering -- and

1 this is a question for staff -- is there a different type  
2 of bond that could be required of dealers specifically to  
3 address these certain types of claims?

4 And maybe the requirement to carry this type of  
5 bond doesn't come into effect for a licensee or a dealer  
6 until there has been a complaint made against that dealer,  
7 because they have had a problem in the past?

8 Is that something -- I'm not a bond surety  
9 expert, but I'm just wondering if there might not be some  
10 type of specialty bond that could be required by the  
11 agency of dealers that have had some type of problem in  
12 the past with correctly paying off trades and handling the  
13 title and registration transactions?

14 MS. THOMPSON: This is Corrie Thompson.  
15 Officer Doran, just a comment.

16 MR. DORAN: Yes, Ms. Thompson, you're  
17 recognized.

18 MS. THOMPSON: To me, what -- the comment that  
19 you've just made, and that suggestion to me -- if someone  
20 else would like to speak up on it, I'd like to hear  
21 everyone else's thoughts -- but to me, that sounds like  
22 mixing the civil remedy available to the consumers through  
23 recovery of the bond with the administrative remedy  
24 available through the Department, and so I'm not sure how  
25 feasible that suggestion would be.

1 MR. DORAN: Okay. Thank you.

2 MR. CAVENDER: Member Cavender, requesting  
3 permission to speak?

4 MR. DORAN: Member Cavender, you've recognized.

5 MR. CAVENDER: Yes. You all -- you know, with  
6 eyes on our community and especially on the dealer body  
7 that we have in Texas, I've witnessed the good dealers  
8 that are operating in good ways for consumers, and I do  
9 think that this would be a burden for the good dealers to  
10 have just an arbitrary \$50,000 bond called into their  
11 expense structure.

12 I would think the dealers might agree to look  
13 at transaction pricing, and Officer Doran mentioned this a  
14 little earlier today, that \$37,000 being the transaction  
15 price in 2019. Perhaps a compromise where we could look  
16 at that and just measure the annual transaction pricing as  
17 that surety bond amount.

18 And with that, I'm just going to let that be  
19 part of the discussion, if it's something you all might  
20 consider.

21 MR. DORAN: Thank you, Member Cavender.

22 MS. CASTANUELA: Officer Doran, LaDonna  
23 Castanuela?

24 MR. DORAN: LaDonna, you are recognized.

25 MS. CASTANUELA: I just want to say that the

1 requirement -- the security requirement for the bond for a  
2 GDN license holder specifically does not apply to  
3 franchise dealers, and I just haven't heard it mentioned.

4 I don't -- I want to make sure everyone is aware of that.

5 MR. DORAN: Thank you, LaDonna. That does seem  
6 like a very material piece of information.

7 MR. SMITH: Officer Doran? Member Smith. May  
8 I speak?

9 MR. DORAN: Member Smith, you are recognized.

10 MR. SMITH: I think maybe it was Jeremiah, but  
11 someone just recently mentioned the case of a consignment  
12 dealership, and that seems to me to be probably the most  
13 egregious thing that could happen to consumers -- one, the  
14 guy selling the car and the other the guy buying the car.

15 Just a question: would it be appropriate that,  
16 depending on the operation of a dealership, that maybe the  
17 bond amount should be different? Should the bond amount  
18 for the exposure of a consignment operation be different  
19 from that of a dealership that just sells cars that they  
20 own?

21 MR. DORAN: Member Smith, I'm going to kick  
22 that one over to staff to ask if that is something from a  
23 legal and an agency standpoint is possible to bifurcate,  
24 so to speak, certain different types of dealer license  
25 holders, in terms of the requirements?

1 I guess it sounds like we're already doing  
2 that, with the distinction between a franchise dealer and  
3 a non-franchise dealer.

4 MR. KUNTZ: So Chairman Doran, this is Jeremiah  
5 Kuntz.

6 MR. DORAN: Jeremiah, you are recognized.

7 MR. KUNTZ: I'm going to go out on a limb and  
8 again, and I'll have to let my counterparts in the other  
9 divisions speak up. You know, I used to do a lot of  
10 legislative work. I would answer it this way: anything  
11 can be done through legislation.

12 I don't know that there is sufficient statutory  
13 authority for the Department to bifurcate that, because I  
14 believe that the statute is just a requirement, as was  
15 laid out for all dealers that are not franchised, but I'll  
16 kind of defer to General Counsel and others.

17 But I believe that that could potentially be a  
18 legislative recommendation.

19 MR. DORAN: Thank you.

20 MR. RICHARDS: Officer Doran?

21 MR. DORAN: Yes, David. You're recognized.

22 MR. RICHARDS: David Richards, for the record.

23 I would concur with Division Director Kuntz. It would be  
24 a legislative recommendation that would need to be made.

25 MR. DORAN: And David, this is Presiding

1 Officer Doran. Is that the type of thing that you would  
2 need a motion for?

3 MR. RICHARDS: David Richards, again, for the  
4 record. Yes. We hope, through this Committee, members,  
5 that we not only get recommendations of a legislative  
6 nature, but also if the Committee believes that we should  
7 promulgate rules, that would be something we'd want  
8 recommended.

9 And yes, to answer your question: a  
10 legislative change, we would ask for a motion from the  
11 membership and a vote, if that is what they would like to  
12 do.

13 MR. AVITIA: Officer Doran, this is Daniel  
14 Avitia. Permission to speak?

15 MR. DORAN: Daniel, you are recognized.

16 MR. AVITIA: Thank you, sir. I believe there's  
17 already a motion currently in play that requested the bond  
18 amount be increased. I just want to make sure we don't  
19 lose sight of that and that we address the motion or that  
20 it be redacted or taken away if it's not a motion.

21 And I also want to concur with David and  
22 Corrie's -- or maybe Jeremiah's recommendation about any  
23 changes would require legislative action.

24 MR. DORAN: Okay. Thank you. All right. We  
25 can -- this is Presiding Officer Doran. We can go back to

1 the motion that Member Johnson brought up, although I will  
2 say that it's my impression that there was still a desire  
3 by some Committee members to want to see the data behind  
4 whether the bonds are being exhausted and -- prior to  
5 really making an informed decision on whether to recommend  
6 raising the bond.

7 Is that still the case, members?

8 MR. RICHARDS: Officer Doran? Oh, go ahead.  
9 I'm sorry.

10 MS. JOHNSON: Member Johnson, requesting to be  
11 speak and be recognized?

12 MR. DORAN: Yes, Member Johnson. You are  
13 recognized.

14 MS. JOHNSON: I would withdraw that motion,  
15 although I do believe the Board is still trying to pursue  
16 that legislatively and I still -- I do believe that we do  
17 need additional information to determine what that amount  
18 should be, if the Department would agree to bring that  
19 information back.

20 MR. DORAN: Thank you, Member Johnson.  
21 David -- again, Presiding Officer Doran -- do you need a  
22 motion from us as a Committee to request that the agency  
23 gather that information to present it to CPAC?

24 MR. RICHARDS: Yes, if you would, please.

25 MR. DORAN: Okay. Members, is there a motion

1 to -- members, would someone like to make a motion to  
2 request that DMV provide -- gather and provide information  
3 regarding the exhaustion of bonds, the types of dealers  
4 that consumers are bringing or making claims against  
5 bonds, and whether, to the extent they can ascertain this,  
6 if consumers are being made whole through claims against  
7 these bonds?

8 MS. JOHNSON: Member Johnson. So move.

9 MR. DORAN: Members, is there a second?

10 MR. SMITH: Officer Doran? Member Smith.

11 MR. DORAN: Member Smith, you are recognized.

12 MR. SMITH: In the line with the question  
13 someone raised earlier, I wonder if in that investigation  
14 we should also try to learn a little bit more about why  
15 the legislature declined to make any change to the bond  
16 amount in the last session?

17 MR. DORAN: Members? Oh, go on. Go ahead.

18 MR. RICHARDS: Officer Doran? David Richards  
19 for the record. Member Johnson, would you like to amend  
20 your motion to include Member Smith's suggestion that we  
21 look into the -- and try to find any reasoning why the  
22 Legislature declined, please?

23 MS. JOHNSON: Yes, please, sir.

24 MR. DORAN: Members, you have -- members, this  
25 is Presiding Officer Doran -- you've heard the amended

1 motion. Is there a second?

2 MR. RIGBY: Michael Rigby. Permission to  
3 speak?

4 MR. DORAN: Member Rigby, you're recognized.

5 MR. RIGBY: Thank you. I am interested in  
6 alternatives to the current structure of the bond. We  
7 went over that idea of the requirement of the judgment,  
8 and I'd like to hear from staff their thoughts on how the  
9 current statute might be amended to allow consumers to  
10 directly access those bond funds.

11 So if Member Johnson's willing to amend to her  
12 motion to also include possible alternatives to the  
13 current statute, I'd appreciate it.

14 MR. DORAN: David, this is Presiding Officer  
15 Doran. Might we take up Member Rigby's suggestion in a  
16 separate standalone motion immediately following the  
17 voting on Member Johnson's motion?

18 MR. RICHARDS: Officer Doran, yes, I would  
19 recommend that. And members, let me also say this. I've  
20 gotten a note from our court reporter that there's a lot  
21 of background noise. So when you're not speaking or  
22 you've not been recognized to speak, please leave your  
23 phones on mute status, so she is able to catch everything  
24 we say. So appreciate that.

25 But yes, Officer Doran, I would take up Member

1 Rigby's suggestion in a separate motion, please.

2 MR. DORAN: Thank you. So Member Rigby --  
3 again, Presiding Officer Doran, for the record -- it would  
4 be our intent to take up your motion separately,  
5 immediately following voting on this motion, and this  
6 motion being the motion brought by Member Johnson.

7 MR. RIGBY: Michael Rigby. That's fine. I  
8 withdraw my motion to amend the current one pending.  
9 Thank you.

10 MR. DORAN: Member --

11 MR. OLAH: This is Member Olah.

12 MR. DORAN: Member Olah, you are recognized.

13 MR. OLAH: I'd like to second the pending  
14 motion.

15 MR. DORAN: Members, there is a second. Okay.

16 Members, I will now call for the motion. As I call your  
17 name, please state your support for the motion by stating  
18 yes or no, no being if you do not support the motion.

19 Member Brooks?

20 MS. BROOKS: Yes.

21 MR. DORAN: Okay. Member Cavender? Member  
22 Cavender?

23 MR. CAVENDER: Yes.

24 MR. DORAN: Okay. Member Eshpeter?

25 MS. ESHPETER: Yes.

1 MR. DORAN: Member Gonzalez?

2 MR. GONZALEZ: Yes.

3 MR. DORAN: Member Gonzalez?

4 MR. GONZALEZ: Yes.

5 MR. DORAN: Okay. Member Johnson?

6 MS. JOHNSON: Yes.

7 MR. DORAN: Member Olah?

8 MR. OLAH: Yes.

9 MR. DORAN: Member McCullah?

10 MS. McCULLAH: Yes.

11 MR. DORAN: Member Rigby?

12 MR. RIGBY: Yes.

13 MR. DORAN: Member Smith?

14 MR. SMITH: Yes.

15 MR. DORAN: Member Solis?

16 (No response.)

17 MR. DORAN: And I, Laird Doran, vote yes as  
18 well. The motion, being unanimous, passes. This is  
19 Presiding Officer Doran again. I wanted to recognize  
20 Member Rigby to make a motion.

21 MR. RIGBY: Michael Rigby. I would move that  
22 the Committee direct staff to research alternatives to the  
23 current statutory language requiring a judgment to access  
24 the surety bond.

25 MR. DORAN: Members, is there a second?

1 MR. GONZALEZ: Second the motion.

2 MR. DORAN: Okay. Can you identify yourself  
3 for the record?

4 MR. GONZALEZ: Forgive me. Ruben Gonzalez.

5 MR. DORAN: Okay. Member Gonzalez has seconded  
6 the motion. Members, we will now move on the motion --  
7 I'm sorry. A motion has been made. We will now vote on  
8 the motion.

9 Members, when I call your name, please state  
10 your support for the motion by saying yes, or no if you do  
11 not support the motion. Member Brooks?

12 MS. BROOKS: Yes.

13 MR. DORAN: Okay. Member Cavender? Member  
14 Cavender?

15 MR. CAVENDER: Yes.

16 MR. DORAN: Okay. Member Eshpeter?

17 MS. ESHPETER: Yes.

18 MR. DORAN: Member Gonzalez?

19 MR. GONZALEZ: Yes.

20 MR. DORAN: Member Johnson?

21 MS. JOHNSON: Yes.

22 MR. DORAN: Member McCullah?

23 MS. McCULLAH: Yes.

24 MR. DORAN: Member Olah?

25 MR. OLAH: Yes.

1 MR. DORAN: Member Rigby?

2 MR. RIGBY: Yes.

3 MR. DORAN: Member Smith?

4 MR. SMITH: Yes.

5 MR. DORAN: Member Solis?

6 (No response.)

7 MR. DORAN: And I, the Presiding Officer, also  
8 vote yes. The motion is unanimous.

9 David -- again, Presiding Officer -- I believe  
10 there was another aspect to this topic that was included  
11 in the introduction of the topic today, and that had to do  
12 with impacts on consumer credit or credit scores, if I'm  
13 not mistaken.

14 So I'd like to, if this is appropriate, turn it  
15 over to Mr. Kuntz to see if there's any additional  
16 information or discussion that he would like to make  
17 regarding that issue.

18 MR. RICHARDS: David Richards for the record.

19 May I be allowed to speak?

20 MR. DORAN: Yes, David, please proceed.

21 MR. RICHARDS: Officer Doran and members, we  
22 are not prepared at this time for this meeting to present  
23 on that particular topic or those particular topics. At  
24 some point we do want to discuss the issues of consumer  
25 financing and credit reports scoring.

1           Those are two issues that were part and parcel  
2 of the Reagor Dykes bankruptcy. Particularly, we had  
3 consumers that were paying on a vehicle that they traded  
4 in as well as a new one, so their credit scores were being  
5 impacted, obviously, adversely.

6           So we'll bring that back to you at a subsequent  
7 meeting, and -- but we're not prepared to present on that  
8 today. There was one other issue, and I don't know, for  
9 the purposes of this meeting, if -- and Mr. Kuntz touched  
10 on it -- as it relates to Transportation Code 501.0236,  
11 and, Jeremiah, you know, jump in and correct me if I'm  
12 wrong, but I think you threw out there for consideration,  
13 not necessarily as a recommendation, but maybe a statutory  
14 change that would allow the county to be added to that  
15 statute.

16           Am I correct, Jeremiah? Or is that a figment  
17 of my imagination?

18           MR. KUNTZ: No -- yeah. Because I believe that  
19 that recommendation was brought up last time, and I'll  
20 defer to Member Gonzalez, if that's still something that  
21 he would like considered, because I believe that that -- I  
22 believe that he was the one that brought that up last  
23 time.

24           MR. DORAN: Member Gonzalez, you are  
25 recognized.

1 MR. GONZALEZ: Yes. Thank you. I still am  
2 interested in seeking a procedure or a statutory change or  
3 an amendment to allow counties to receive their proper  
4 credit on any of these type of transactions. I think it  
5 would -- now in today's time, COVID-19 issues, counties  
6 are hurting with the revenue shortages and stuff like  
7 that.

8 So I think an amendment or a consideration to  
9 amend the statute to include county tax collectors to get  
10 the proper credit would be very fair and appropriate.

11 MR. KUNTZ: So Member Doran, this is Jeremiah  
12 Kuntz.

13 MR. DORAN: Jeremiah, you are recognized.

14 MR. KUNTZ: So I believe that, for the  
15 consideration of the Committee, that there are two ways  
16 that that could be pursued. One would be to expand upon  
17 the Department's authority for -- because we currently  
18 have access to recover on the fees that are waived here.

19 Potentially it could be amended to where the  
20 Department could pursue on behalf of the county any fees  
21 that were waived for the county, so that it would be  
22 expanded from just title or permit fees issued, but to  
23 include also local fees, or the option would be for the  
24 county to become a named party that could recover against  
25 the surety bond.

1           But I would throw those two different  
2 approaches for the Committee's consideration.

3           MS. JOHNSON: Member Johnson. Requesting to be  
4 recognized and speak.

5           MR. DORAN: Member Johnson, you are recognized.

6           MS. JOHNSON: We no longer have a county legal  
7 department, and so if we would intend to pursue anything  
8 in our county, it would involve a minimum of \$275 an hour  
9 to hire an attorney to pursue that for us, so my  
10 preference would be that the DMV Board collect on behalf  
11 of the counties.

12           And then, Mr. Kuntz, I would imagine that the  
13 Department has some way to credit the counties with those  
14 fees.

15           MR. KUNTZ: I would imagine that there would  
16 probably be some rulemaking or something that would be put  
17 in place, but from a procedural standpoint, I'm sure that,  
18 yes, there would be a way for us to get the money to you  
19 if it was recovered against the surety bond.

20           MR. DORAN: Members, were any members wanting  
21 to make a motion? I know Member Gonzalez had laid out his  
22 points here, and was just wondering if it was his intent  
23 to make a motion?

24           MR. GONZALEZ: Member Doran?

25           MR. DORAN: Yes, you are recognized.

1 MR. GONZALEZ: I would like to make a motion to  
2 expand the authority for the Texas DMV to collect on  
3 behalf of the county any respective fees that are due.

4 I don't know if that's properly worded or not,  
5 but just as Member Johnson mentioned, I think if it's  
6 convenient for us to do to allow the DMV to give us the  
7 proper credit quarterly, as determined by the collection  
8 and the bonding capability of seeking judgment against  
9 this -- the bonding company.

10 So I would make that motion.

11 MR. DORAN: Members, Presiding Officer Doran.  
12 Member Gonzalez has made a motion. Is there a second, or  
13 is there further discussion?

14 MR. KUNTZ: Member Doran, if I might have  
15 assist, and I'm going to have General Counsel help me out  
16 with this as well, this is where I believe your motion  
17 would need to be potentially crafted, and that would be  
18 make -- the Committee make a recommendation to the Texas  
19 Department of Motor Vehicles Board that they recommend to  
20 the legislature a legislative change to increase  
21 operational efficiencies in accordance with Chapter 1001  
22 of the Transportation Code, a recommendation to expand the  
23 types of fees that may be recovered under -- hold on; let  
24 me find it -- under Transportation Code -- where's my  
25 Transportation Code reference?

1                   General Counsel, you're going to have to help  
2 me out here.

3                   MR. RICHARDS: 501.0236(e).

4                   MR. KUNTZ: Thank you. The ability to recover  
5 local fees that are waived.

6                   MR. RICHARDS: And Member Doran -- or Officer  
7 Doran, if Member Gonzalez just wants to state, so moved,  
8 we'll take it from there.

9                   MR. DORAN: Thank you, David.

10                  MR. GONZALEZ: So moved.

11                  MR. DORAN: Okay.

12                  MS. JOHNSON: Member Johnson seconds.

13                  MR. DORAN: Okay. We have a second. All  
14 right. Members we will move toward with voting on the  
15 motion, unless there's any further discussion?

16                  (No response.)

17                  MR. DORAN: Hearing none, I'll call for the  
18 vote. Members, when I call you name if you're in favor of  
19 the motion and no if you're opposed. Member Brooks?

20                  MS. BROOKS: Yes.

21                  MR. DORAN: Member Cavender?

22                  MR. CAVENDER: Yes.

23                  MR. DORAN: Okay. Member Eshpeter?

24                  MS. ESHPETER: Yes.

25                  MR. DORAN: Member Gonzalez?

1 MR. GONZALEZ: Yes.

2 MR. DORAN: Member Johnson?

3 MS. JOHNSON: Yes.

4 MR. DORAN: Member McCullah? Member McCullah?

5 (No response.)

6 MR. DORAN: Member Olah?

7 MR. OLAH: Yes.

8 MR. DORAN: Member Rigby?

9 MR. RIGBY: Yes.

10 MR. DORAN: Member Smith?

11 MR. SMITH: Yes.

12 MR. DORAN: And I, Laird Doran, vote yes on the  
13 motion. The motion passes.

14 MR. FRENCH: Officer Doran?

15 MR. DORAN: Yes?

16 MR. FRENCH: James French.

17 MR. DORAN: Member French, you are recognized.

18 MR. FRENCH: Thank you. For some reason,  
19 you're leaving me out of these vote sessions. I agree  
20 with them, all yes, yes, yes, but I just wanted to make  
21 you aware of that.

22 MR. DORAN: Member French, thank you for -- for  
23 the record, this is Presiding Officer Doran. Member  
24 French, thank you for making me aware of that. I  
25 apologize. The script I'm reading off of -- your name was

1 stricken, and it was certainly not intentional to leave  
2 you out on any of these motions.

3 So let the record reflect that you are in the  
4 support of each of the motions that the Committee has  
5 voted on so far today. Is that accurate, Member French?

6 MR. FRENCH: Yes, that is accurate. Thank you.

7 MR. DORAN: Thank you, Member French, for the  
8 clarification, and again, apologize for missing you on the  
9 vote. Okay. Is there any -- for the record, Presiding  
10 Officer Doran -- is there any further discussion on this  
11 Agenda Item 2a that the Committee wanted to take up today?

12 (No response.)

13 MR. DORAN: It doesn't sound like there is. So  
14 David, is appropriate now to move on to Item 2b?

15 MR. RICHARDS: David Richard, for the record.  
16 Officer Doran, yes, it is. We can -- we're ready to move  
17 on. I believe Mr. Kuntz is going to give an introduction,  
18 particularly for the new membership, of the subject  
19 matter, and then we'll get into it in further detail at a  
20 future meeting.

21 But yes, it's okay to move on.

22 MR. DORAN: Okay. Thank you, David. Members,  
23 we will now turn to consider Agenda Item 2b, which is  
24 Protecting DPPA Information, talking about legislative  
25 recommendations.

1           And members, I am now going to turn the meeting  
2 over to Mr. Jeremiah Kuntz, Director of the Vehicle Titles  
3 and Registration Division, for a presentation.

4           MR. KUNTZ: Thank you, Chairman Doran. For the  
5 record, Jeremiah Kuntz, Director of Vehicle Titles and  
6 Registration Division. So for the benefit -- again, our  
7 new members and hopefully a refresher for the other  
8 members that have already heard me talk about DPPA, or the  
9 Driver's Privacy Protection Act, both state and federal  
10 protect the personal information that are contained within  
11 our database, and so we collect information when a member  
12 of the public titles and registers a vehicle in the state  
13 of Texas; namely, we collect information specific to the  
14 vehicle.

15           So as an example, I own a 2016 Chevy Suburban.  
16 We have that information contained within our database.  
17 Our database also contains information specific to the  
18 owner, any lienholders that have an ownership interest in  
19 the vehicle, and their address information, of where the  
20 vehicle is located, physical address, mailing address.

21           We have up to three addresses on a vehicle.  
22 And state and federal law protect that information from  
23 disclosure under the Open -- under the PIA, the Public  
24 Information Act. What it -- what state and federal law do  
25 is, they define personal information -- means information

1 that identifies a person, including the individual's  
2 photograph or computerized image, Social Security numbers,  
3 driver identification number, name, address, but not the  
4 zip code, telephone number and medical or disability  
5 information.

6 So all of that information is protected under  
7 DPPA, and so we start with the premise of -- all that  
8 information is protected. The state and federal law then  
9 go on to say that there are certain disclosures that are  
10 required, certain disclosures that are prohibited, and  
11 certain disclosures that are permissive.

12 And so the agency -- and really where this  
13 really starts to mainly get down to the -- I would say the  
14 line that is drawn in the sand, if you will, comes to  
15 disclosure for marketing purposes or for any purpose that  
16 is not allowed for or permitted for.

17 So required disclosures: The Department's  
18 required to disclose personal information when it is used  
19 for any matter of motor vehicle or motor vehicle operator  
20 safety, motor vehicle theft, motor vehicle emissions,  
21 motor vehicle product alterations, recalls or advisories,  
22 performance monitoring of motor vehicle or motor vehicle  
23 dealers by a motor vehicle manufacturer, removal of non-  
24 owner records from the original owner, record of a motor  
25 vehicle manufacturer to carry out the purposes of the

1 Automobile Information Act.

2 Then there's other various -- any car theft  
3 acts, any other statute or regulation enacted or adopted,  
4 or in relation to the laws included above. And I'm  
5 reading right now from page 23 of your packet, looking at  
6 the Chapter 730 of the Transportation Code.

7 Also a required disclosure is for child support  
8 enforcement, enforcement by the Texas Workforce Commission  
9 or voter registration or the administration of elections  
10 by the Secretary of State. So the Department is  
11 required -- for any of those purposes, the Department is  
12 required to disclose personal information that is  
13 contained within our database for any of those purposes.

14 As you can imagine, those purposes have a very  
15 specific use for that information that the Legislature has  
16 sought -- that the Department's required to provide that  
17 information.

18 Going beyond that then, we move into permitted  
19 disclosures, and I won't read all of these; there are  
20 quite a few of them. But there's permitted disclosures,  
21 and I'll use some examples, because there probably are  
22 primary examples that we see on a day-to-day basis.

23 Dealerships have a permitted purpose to obtain  
24 our information, motor vehicle records, and the primary  
25 purpose that we see is -- and it falls under the

1 provisions in 730.007(c), "which is used in the normal  
2 course of business by a legitimate business or an  
3 authorized agent of the business, but only to verify the  
4 accuracy of personal information submitted by the  
5 individual to the business or agent of the business."

6 What we see primarily from dealerships is  
7 relating to trade-in vehicles. So the scenario -- we get  
8 many dealerships that come to us and say, we would like to  
9 have access to the motor vehicle records to verify that a  
10 person that's trading in a vehicle is the owner of the  
11 vehicle, to verify if there are any liens on the vehicle  
12 that would need to be paid off, so they can identify the  
13 lienholders.

14 And so they are verifying the information.  
15 They have a consumer who's brought the vehicle in. The  
16 consumer has made a claim to them that they are the owner  
17 of that vehicle, and whether -- and they've also made a  
18 claim, whether or not there's a lienholder present.

19 Our interpretation of that is that is a  
20 permitted purpose, and the Department is authorized to  
21 disclose the information to those dealerships requesting  
22 it for that specific permitted purpose.

23 We also see a very large number that would fall  
24 under the provisions relating to a tow-truck operator who  
25 is required to notify the owner of a vehicle that the

1 vehicle has been put into their impound lot. So that's  
2 under (g), and it's used in providing to an owner of a  
3 towed or impounded vehicle.

4 So what we generally see are what are known as  
5 VSFs, which are vehicle storage facilities. That is  
6 generally where, you know, somebody's parked in a no-  
7 parking zone. The tow truck company has been called out  
8 to remove the vehicle and impound it at their vehicle  
9 storage facility lot, and they are required under statute  
10 to notify the owner of that vehicle that the -- that they  
11 have the vehicle, so that the owner can come and make a  
12 claim to get their vehicle back.

13 So you can see that statute has definitely  
14 contemplated that there are permitted purposes by which  
15 there's a legitimate reason for somebody to access the  
16 data contained within our database. That being said, we  
17 have quite a few number of individuals who obtain data  
18 from us in really one of two ways, and I'll kind of walk  
19 through that a little bit.

20 Most of the entities that access our data are  
21 accessing our data through what is known as MVINet, which  
22 is our Motor Vehicle Information system. They are issued  
23 a user name and password. It's a secure login. They are  
24 able to log in, and they can run a motor vehicle record,  
25 utilizing either the license plate number or the VIN

1 number, and it will return to them the owner and address  
2 of that vehicle.

3 It does not contain all the information  
4 contained within our database, so it would not necessarily  
5 have sales information. It would not necessarily have  
6 previous owners, those kind of things, although it may  
7 have some information about, you know, previous owners of  
8 the vehicle.

9 But it is limited in nature in what is returned  
10 to them. It does not have all of the fields of data. So  
11 we have about 2,600 entities that access our Motor Vehicle  
12 Information system to obtain information for one of those  
13 permitted purposes.

14 I mean, if you look on -- I believe it is on  
15 page 30 of your documentation, you will see a listing of  
16 entities by their grouping, if you will, that potentially  
17 have access to our information currently. The other  
18 method by which people access our data is known as our  
19 master file and weekly updates.

20 Entities that receive the master file and  
21 weekly updates are receiving all of the records in our  
22 database. That would be the master file, and then they  
23 would receive a weekly update so that they can update  
24 their system.

25 And you would have to actually set up a server

1 and download basically the master file into your system,  
2 and then set up a method by which to keep those records  
3 updated weekly when we receive a weekly file out to those  
4 individuals that receive it.

5 That is a substantial group of individuals that  
6 have access to that system. There's, I believe, 30 or so  
7 different companies or governmental entities really that  
8 have access to the master file and weekly updates, and  
9 those could be toll road entities.

10 It could be research institutions like the  
11 Texas Transportation Institute at A&M, and then there are  
12 also what we refer to as resellers that have access to  
13 that data, which is contemplated in Transportation Code  
14 730.

15 Those resellers could be entities like  
16 LexisNexis, you know, Polk, who -- or actually, I believe  
17 it used to be Polk; I cannot remember the current name of  
18 entity now -- that provide services to other business  
19 entities and potentially are not utilizing the personal  
20 information in their services.

21 So some of those entities may be assisting the  
22 dealership community by giving the average sales price by  
23 zip code of vehicles sold in their area, and so they are  
24 required to repackage that information.

25 In fact, statute says that they cannot disclose

1 the information in substantially the same way that they  
2 obtained it from the Department; it has to be altered in  
3 some way. And generally what we see is that they are  
4 changing that information, utilizing a database, and they  
5 are packaging it in a way for their customers to utilize  
6 that information. Maybe they're running statistical  
7 analysis or other things.

8           So those are kind of the two methods by which  
9 entities are obtaining information from the Department.  
10 The Department approximately a year ago started an effort  
11 to start looking at those entities and vetting the  
12 entities in a different way than had been vetted before,  
13 and there were new rules that were put in place by the  
14 Department concerning the method by which people apply for  
15 access to this data and the different information that the  
16 Department would require an entity to provide the  
17 Department in order for them to gain access to our  
18 systems.

19           So about a year ago we started a project --  
20 it's called the Master Data Contract Initiative -- in  
21 which we developed a new contract and a new application  
22 process by which entities can apply and be granted access  
23 to the Department's systems.

24           Through that, we have learned quite a bit about  
25 the customers that are receiving this information, the

1 business entities that are receiving this information, and  
2 we have terminated access to numerous entities that we  
3 believe did not rise to the level of needing access to our  
4 systems on an ongoing basis.

5 And we are looking at, you know, potentially  
6 other enhancements to that process and potentially some  
7 rules and statutory changes that would assist the  
8 Department in ensuring that we have a good process by  
9 which to vet those companies and making sure that we have  
10 adequate contracting provisions in place for them to  
11 protect the consumer's information when they have it.

12 So at this point, I will answer any questions  
13 that y'all have around DPPA. I believe that we'll be  
14 working on getting y'all some information for another  
15 Consumer Protection Advisory Committee meeting where we'll  
16 take up some recommendations for potentially some changes  
17 to either statute or administrative rule to assist the  
18 Department in continuing to protect this information.

19 But I will answer any questions at this point.

20 MR. DORAN: Jeremiah, this is Presiding Officer  
21 Doran. So is the takeaway here that DMV will be coming  
22 back to the CPAC -- excuse me -- the CPAC Committee with  
23 some recommendations for us to discuss, consider, and  
24 evaluate?

25 Is that what you're saying.

1           MR. KUNTZ: Yeah. We will bring back some  
2 additional discussion points, if you will, for you to take  
3 up and consider.

4           Obviously, the CPAC, if there are  
5 recommendations from your own members on what could be  
6 changed to our administrative rule or statute, the  
7 Committee could definitely take those up as well.

8           But yes, we will -- we'll bring some additional  
9 information and potential discussion items back at a  
10 future meeting for y'all to consider, as we look to make  
11 some changes to the DPPA.

12           MR. DORAN: Thank you, Jeremiah. Quick follow-  
13 up question. Again, this is Presiding Officer Doran. Can  
14 you speak to -- you mentioned that some entities are now  
15 being -- their requests to access the system are being  
16 denied.

17           Are there any particular accounts or examples  
18 of nefarious use that the DMV has come across that you  
19 feel would be helpful to share with the Committee?

20           MR. KUNTZ: So there's -- I'll address it in a  
21 couple of ways. So as far as nefarious use, the  
22 Department has in the past terminated access to  
23 individuals who have had the master file and weekly  
24 updates for breaches in their system and misuse of the  
25 data.

1           We have been made aware that they have used the  
2 data for marketing purposes, to send out marketing fliers,  
3 or to try and -- you know, some of the misuse that we  
4 discovered was related to warranty, like extended  
5 warranties.

6           You get -- you know, a lot of times, you'll get  
7 extended warranty mailers and that kind of stuff. We  
8 terminated somebody for identifying potentially that they  
9 were using it for that purpose, for mailing out like  
10 dealer service mailers, where an entity was receiving our  
11 information and it was not a dealership that was receiving  
12 it, but the entity that was receiving apparently -- either  
13 there was a breach or they sold the data and it showed up  
14 in the marketing materials for a dealership.

15           So we've seen instances like that, where there  
16 was, if you will, nefarious actions that were occurring,  
17 misusing the data for marketing purposes and access to  
18 those entities to the weekly file -- I mean, the master  
19 file and weekly updates, which terminated in those  
20 instances.

21           The -- through our vetting of entities that  
22 receive our data, we have come across some entities that  
23 previously had been granted access to MVINet, that in  
24 reviewing their stated use of the information, we did not  
25 believe was in the spirit of the permitted purpose that

1 was laid out in statute, and as such, their access was not  
2 granted when we were going through our vetting of those  
3 applications, in looking to move everybody to the new  
4 master data contract.

5 Through that vetting process, we've determined  
6 that, no, they did not rise to the level of what we  
7 believe should have been permitted under the permitted  
8 purpose, and I will use a couple of examples.

9 One would be title service companies, and they  
10 have attempted to say that they are using that -- and I  
11 read from the statute earlier, in the normal course of  
12 business to verify information provided to them.

13 When we look at that and we say, well, you're a  
14 title service company. You are not relying upon that  
15 information yourself in making a determination or granting  
16 something, or you know, you're not relying on that  
17 financially in a financial decision.

18 You're basically a runner that is taking a  
19 title application down to the county tax assessor-  
20 collector, and we did not believe that that fit within the  
21 permitted purpose that is listed there for verifying  
22 information that is provided to them in the normal course  
23 of business.

24 Another instance that we have seen is related  
25 to private investigators. While private investigators are

1 allowed to receive our data under 730.007(h), the mere  
2 fact that you're a private investigator does not in and of  
3 itself grant you access, because you also have to have  
4 another permitted purpose above.

5 And so what we've determined, in looking  
6 through some of these applications from private  
7 investigators, is that they are doing private  
8 investigations that have nothing to do with the vehicle  
9 itself.

10 They're maybe doing family private  
11 investigations. They're looking for -- you know, they're  
12 doing child custody cases. They're doing divorce cases,  
13 those kind of things, where they're doing private  
14 investigations for actions that have nothing to do with  
15 the vehicle.

16 They may also do some vehicle cases, but we  
17 could tell, based on what they had presented, that their  
18 primary business was not for doing claims investigations  
19 for insurance companies, or something of that nature, and  
20 for that reason, we've turned certain private  
21 investigators off because their primary purpose was not  
22 investigations of, you know, insurance claims or insurance  
23 fraud or any of that kind of stuff, related to the vehicle  
24 itself.

25 Does that help a little bit?

1 MR. DORAN: Thank you. That is very, very  
2 helpful. Appreciate it.

3 MR. KUNTZ: Do we have any other questions from  
4 the Committee related to the Driver's Privacy Protection  
5 Act?

6 (No response.)

7 MR. DORAN: Presiding Officer Doran. Just --  
8 so again, just to recap, staff's going to come back with  
9 some recommendations for us to review and discuss the next  
10 time we convene to talk about this particular topic?

11 MR. KUNTZ: Yes. We'll bring back some  
12 discussion points, for sure, for the Committee to take up  
13 and consider.

14 MR. DORAN: Okay. Okay. Not hearing any  
15 questions from the members for further discussion. I  
16 believe, David, it's appropriate to move on to Agenda --  
17 I'm sorry -- Agenda Item 2c?

18 MR. RICHARDS: Yes, sir, it is.

19 MR. DORAN: Okay. Thank you, David. Members,  
20 we currently have a meeting scheduled for Thursday,  
21 June 25, 2020, beginning at 9:00 a.m. The Office of  
22 General Counsel will send out future meeting invites to  
23 determine member availability -- membership availability.

24 Members, we would now -- we will now take up  
25 Agenda Item No. 3, public comment. David, are there any

1 comments from the public?

2 MR. RICHARDS: David Richards, for the record.  
3 Officer Doran, we do not have any comments from the  
4 public today.

5 MR. DORAN: Okay. Thank you. All right.  
6 Well, we will now move to Agenda Item No. 4, adjournment,  
7 or -- unless there's any further business?

8 (No response.)

9 MR. DORAN: Members, do I hear a motion -- or  
10 do I have a motion from anyone to adjourn this meeting?

11 MR. CAVENDER: Member Cavender votes to adjourn  
12 meeting.

13 MR. DORAN: Okay. Member Cavender has made a  
14 motion to adjourn. Is there a second?

15 MR. FRENCH: Member French seconds.

16 MR. DORAN: Okay. Member French provided the  
17 second. The motion has been made and seconded to the  
18 meeting. All in favor, please say, aye.

19 (A chorus of ayes.)

20 MR. DORAN: Let the record reflect that the  
21 vote is unanimous. Members, it is now 11:18 a.m., and we  
22 are adjourned. Thank you, everyone.

23 (Whereupon, at 11:18 a.m., the meeting of the  
24 was adjourned.)

C E R T I F I C A T E

1  
2  
3 MEETING OF: TxDMV Consumer Protection Advisory  
4 Committee  
5 LOCATION: via WebEx  
6 DATE: June 18, 2020

7 I do hereby certify that the foregoing pages,  
8 numbers 1 through 89, inclusive, are the true, accurate,  
9 and complete transcript prepared from the verbal recording  
10 made by electronic recording by Elizabeth Stoddard before  
11 the Texas Department of Motor Vehicles.

12 DATE: June 25, 2020  
13  
14  
15  
16  
17

18 /s/ Adrienne Evans-Stark  
19 (Transcriber)  
20

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