

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

Friday,
August 21, 2020
1:32 p.m.

COMMITTEE MEMBERS:

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

<u>AGENDA ITEM</u>	<u>I N D E X</u>	<u>PAGE</u>
1. CALL TO ORDER		3
Roll Call and Establishment of Quorum		6
2. DISCUSSION, BRIEFING, AND ACTION ITEMS		8
A. Title and Consumer Financial Issues When a Dealer Goes Out of Business (Legislative Recommendation)		8
B. Future Meeting Schedule		81
3. PUBLIC COMMENT		(None)
4. ADJOURNMENT		82

P R O C E E D I N G S

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

MR. DORAN: Okay. All right. Good afternoon.

My name is Laird Doran, and I am pleased to open the meeting of the Consumer Protection Advisory Committee. For ease of reference, I will refer to this Advisory Committee as CPAC, which is the acronym for this Advisory Committee.

It is now 1:31 p.m., and I am calling the CPAC meeting for August 21, 2020, to order. I want to note for the record that the public notice of this meeting containing all items on the agenda was filed with the Office of Secretary of State on August 13, 2020.

This meeting is being held by telephone conference call in accordance with Texas Government Code Chapter 551 and as temporarily modified under Governor Greg Abbott's authority to suspend certain statutes due to COVID-19. Governor Abbott suspended various provisions of the Texas Open Meetings Act that require government officials and members of the public to be physically present at specified meeting locations.

Under that suspension, the public will not be able to physically attend this meeting in person. Instead, the public may attend this meeting by calling the toll-free telephone number which is posted in the agenda which was filed with the Office of the Secretary of State

1 on August 13, 2020. All Advisory Committee members,
2 including myself, will be participating remotely via
3 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 Speak clearly. Remember that there may be a slight delay
19 due to the telephone conference call meeting so please
20 wait a little longer than usual before responding to
21 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. Members should mute their
25 telephones when not speaking and should not conduct side

1 conversations during the meeting.

2 Because the number of dial-in participants is
3 limited, if you wish to address the Advisory Committee or
4 speak on an agenda item during today's meeting, please
5 send an email to gco_general@txdmv.gov. Please identify
6 in your email the specific item you are interested in
7 commenting on, your name and address, and whether you are
8 representing anyone or are speaking on behalf of yourself.

9 If your comment does not pertain to a specific
10 agenda item, we will take your comment during the general
11 public comment portion of the meeting. In accordance with
12 Department administrative rule, comments to the Advisory
13 Committee will be limited to three minutes. Then the call
14 will be muted.

15 Comments should be pertinent to the issue
16 stated in your email. When addressing the Advisory
17 Committee, please state your name and affiliation for the
18 record.

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

25 This includes the authority to determine when a

1 speaker is being disruptive of the meeting or is otherwise
2 violating the timing or presentation rules I just
3 discussed. Disruptive speakers will be muted, given a
4 warning about disruptive behavior, and then removed from
5 the meeting for any continued disruption.

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

12 And with that, we will turn to Agenda Item
13 1(a), roll call and establishment of quorum. And now I'd
14 like to have a roll call of the Advisory Committee
15 members.

16 Please let me know if I pronounce your name
17 incorrectly and when I call your name, please indicate you
18 are present by stating "here" or "present."

19 Member Brooks?

20 (No response.)

21 MR. DORAN: Member Cavender?

22 MR. CAVENDER: Present.

23 MR. DORAN: Member Peace or Colvin? You let us
24 know which one you'd like to be -- which name you'd like
25 us to refer to you by. Member Peace or Member Colvin?

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

(No response.)

MR. DORAN: Okay. Member Eshpeter?

MS. ESHPETER: Present.

MR. DORAN: Member French?

MR. FRENCH: Present.

MR. DORAN: Member Gonzalez?

MR. GONZALEZ: Present.

MR. DORAN: Member Cheryl Johnson?

MS. JOHNSON: Present.

MR. DORAN: Member McCullah?

(No response.)

MR. DORAN: Member Olah?

MR. OLAH: Present.

MR. DORAN: Member Rash?

(No response.)

MR. DORAN: Member Rigby?

MR. RIGBY: Present.

MR. DORAN: Member Smith?

MR. SMITH: Present.

MR. DORAN: Member Solis?

(No response.)

MR. DORAN: For the record, I, Laird Doran, am
present as well. We have a quorum.

Members, we are going to take up Agenda Item

1 No. 2, Discussion, Briefing and Action Items. Now, moving
2 on to Agenda Item No. 2(a), Title and Consumer Financial
3 Issues When a Dealer Goes Out of Business.

4 Members, the discussion will be led by the
5 Director of Vehicle Titles and Registration Division,
6 Jeremiah Kuntz, and Motor Vehicle attorney, LaDonna
7 Castanuela. I will now turn the meeting over to Mr. Kuntz
8 and Ms. Castanuela.

9 MR. KUNTZ: Members, for the record, this is
10 Jeremiah Kuntz, Director of the Vehicle Titles and
11 Registration Division. Good afternoon, and hopefully,
12 everybody is having a good day today.

13 The last time we got together, one of the
14 things that we were talking about were protections for
15 consumers for dealers that have gone out of business. And
16 we had previous conversations about the statute that was
17 passed during the last legislative session, as well as
18 some rules that the agency has adopted with regards to the
19 waiving of certain title and registration fees for
20 customers applying for title and registration when a
21 dealer has gone out of business and they have not done so
22 on their behalf.

23 I know that there were some questions that came
24 up during the last meeting, and I believe that Ms.
25 Castanuela has provided a memorandum that outlines some of

1 those questions and some answers that she has put together
2 in that memo. And so, LaDonna, if you would like to go
3 over those, and then we can take the discussion from
4 there.

5 MS. CASTANUELA: You laid it out exactly right.
6 On June 18, after extensive discussions about different
7 aspects of the dealer bond requirement and the bond claim
8 process, the CPAC made some specific requests of
9 Department staff.

10 So if you'll turn pages 5 through 11 of your
11 materials, you will see my memorandum with a couple of
12 attachments. So my thought is to just -- my plan is to
13 just go through it. It's not very long, and then see if
14 you have any questions.

15 I hope the material is helpful. So Department
16 staff was asked to gather and provide information
17 regarding: exhaustion of bonds; types of dealers against
18 whom consumers are bringing or making bond claims;
19 whether, to the extent it can be ascertained, consumers
20 are being made whole through claims against the bonds; why
21 the Legislature declined to make any change to the bond
22 amount in the last session; and then to research
23 alternatives to the current statutory language requiring a
24 judgment to access the bond.

25 Included at the end of my research summary is

1 the full text of the statutory bond requirement,
2 Transportation Code 503.033. And then at the end, at the
3 very end of my material, a table of data collected in
4 January 2019 -- so it's about a year and a half old at
5 this time -- showing the various bond amount requirements
6 for all 50 states. I thought that might also be helpful
7 when I found it.

8 So a general overview of the dealer bond
9 requirement. GDN dealers, independent dealers only, are
10 required to show the Department proof that they have
11 purchased a \$25,000 surety bond in order to get a license.

12 Subsection (d) of 503.033 requires that person
13 to first acquire a judgment assessing damages and
14 reasonable attorney's fees before they can make a claim
15 against the bond. The statute also includes specific
16 limits on the liability imposed by the dealer in
17 Subsection (e), and then Subsection (g) specifically
18 exempts franchised motor vehicle dealers.

19 So then my materials go through the specific
20 requests that the Committee made in June regarding -- so
21 let's start with the exhaustion of bonds. So what we
22 looked at was six months of letters that we received from
23 surety bond companies.

24 In the first six months of this year, we
25 received 1,068 letters. Of those letters, 99 percent were

1 merely notifications that a dealer bond was cancelled.
2 Usually, the date in the cancellation letter corresponds
3 to the expiration date of the GDN.

4 Twelve of the 1,068 letters include information
5 about bond claims that are made. When the bond claim
6 letter is received, it tells us the amount that the bond
7 has now been reduced if a claim has been paid, and we have
8 to contact the dealer to tell them that they no longer --
9 sorry, that they no longer meet the qualifications for a
10 bond.

11 So the following table in my document, on
12 pages -- that's pages 6 and 7, show the 12 letters and
13 some information about the underlying judgment, what the
14 eventual claim that was paid, and then the last column is
15 the GDN status and notes. Let's see. That's seven of the
16 11 -- I'm sorry -- seven of the 11 dealer bonds in the
17 table were exhausted and cancelled after the claims listed
18 below.

19 The next question that I was asked to research
20 was the types of dealers against whom consumers are
21 bringing or making bond claims. Of the 11 dealers
22 represented in the table, they are all independent motor
23 vehicle dealers. So GDNs are issued in a number of
24 categories of GDNs.

25 So they are -- those categories include trailer

1 and travel trailer and motorcycle, and also motor vehicle.

2 It just happens that the 11 dealers that are represented
3 by those letters that we received, in fact, are all used
4 car dealers. I thought it might be helpful to include
5 information about the universe of GDN dealers.

6 At the time that I was gathering this
7 information, there were 16,603 active GDNs for
8 independent motor vehicle dealers. So the 11 dealers
9 whose bond companies paid claims in early 2020 represent
10 less than one percent.

11 We were also asked to try to ascertain if the
12 consumers were being made whole, and I refer you back to
13 the table. You can see in the third and fourth columns
14 the difference between the judgments that the consumer or
15 the claimant made -- acquired, as opposed to the amount
16 that actually paid by the bond company. Of course, the
17 bond company is only responsible for up to \$25,000. If
18 the judgment was more, they paid the entire amounts, but
19 they did not pay the entire judgment.

20 Five of the 13 claim payments were made for the
21 entire judgment amount. The remaining eight claim
22 payments were made for amounts less than the associated
23 judgment because the judgment exceeded the \$25,000 bond,
24 or in a case where a previous claim payment had been made,
25 the judgment exceeded whatever was remaining on the bond.

1 We were also asked to research why the
2 Legislature declined to make any changes to the bond
3 amount in the last session. So the bill that ended up
4 becoming new Transportation Code 501.0236, when the dealer
5 goes out of business law, started as House Bill 3802.

6 The original version of that bill and the
7 version that passed out of the House did not include the
8 increase to the bond amount to \$50,000. It made it
9 through the Senate committee without including that
10 increase. And it wasn't until May 22, 2019, which you'll
11 notice is at the very end of session, within the last week
12 or so, that a floor amendment was added to the bill on the
13 Senate floor that included that \$50,000 bond increase.

14 Two days later, the conference committee
15 members were appointed, and the conference committee filed
16 its report. The \$50,000 bond increase had been removed
17 from the bill. Unfortunately, there is no documentation
18 or recording of conference committee deliberations, so I
19 was not able to find any more information than that.

20 The last request made was alternatives to the
21 current statutory language requiring a judgment to access
22 the surety bond. I talked to representatives from surety
23 bond companies and also from the Association -- Surety and
24 Fidelity Association of America, and they told me that not
25 all states require a pre-claim judgment, pre-recovery

1 judgment, and that some of them require an agency order,
2 and that some of them require no order or judgment before
3 a claim is made.

4 At the very end of my discussion, I put in
5 there a note that those representatives told me that they
6 believe that the claim payment process is faster in those
7 states that require a pre-claim judgment or administrative
8 order, because the court or the administrative agency has
9 already determined that the statutory requirements for
10 recovery have been met.

11 On the next page, which is page 9 of your
12 materials, you'll find the body -- or the statute as it
13 reads right now, in case you need it for reference. And
14 then on page 11 -- I'm sorry, 10 and 11 of the materials,
15 the end of my materials is that table including bond
16 requirements for other states.

17 And again, I'll remind you that that
18 information was collected in January 2019, so it may be a
19 little outdated. But I thought it would be -- it still
20 might be helpful for the Committee's deliberations today.

21 So that's the end of my prepared remarks.

22 I don't know if anyone has any questions for
23 me.

24 MR. DORAN: This is Presiding Officer Doran.
25 Thank you, LaDonna. This information is very, very

1 helpful. Appreciate you and staff gathering all this up.

2 I think it will be helpful for our discussion today. I
3 did want to open it up to everybody for a good discussion
4 about this.

5 One of the questions that I had, looking at the
6 memo -- I want to make sure that I'm clearly understanding
7 this issue. With only -- I guess it was 11 or 12 claims
8 being made against bonds during the first half of this
9 year, that -- and the percentage, I think, you had in your
10 memo was very, very low in terms of the -- you know, the
11 total number --

12 MS. CASTANUELA: The universe.

13 MR. DORAN: -- the universe. Yeah. So it
14 paints this picture that this is really a problem that's
15 not coming up that much given the, you know, hundreds of
16 thousands of transactions that dealers are engaged in
17 across the state. And that this is really coming up, you
18 know, very little.

19 But I want to make sure that I'm understanding
20 this correctly. What we're really looking at here with
21 these figures is just when someone has made a claim
22 against the bond. And so we don't have, necessarily, from
23 this data, the picture of when customers are encountering
24 situations where they are needing to pursue recourse or
25 something has happened because a dealer has gone out of

1 business.

2 In fact, I'm curious. With these examples that
3 we have here, the 11 or so, do we know whether those are
4 actually tied to situations where a dealer is in fact --
5 has gone out of business or is going out of business?

6 MS. CASTANUELA: So if you'll look in the last
7 column of my table, you can see that the status of the
8 GDN, the underlying GDN, that's what I can tell you from
9 the data we collected and that we maintain in our
10 database, of course, is the status of the GDN.

11 So for instance, Row 2, that GDN was revoked a
12 year ago. You know, I know that that part of this
13 business is no longer in business, but I -- that's what I
14 know.

15 MR. DORAN: Okay.

16 MS. CASTANUELA: I did want to confirm with you
17 that -- yes, these are -- the only way that we know that
18 there is a problem with the bond or a claim made against
19 the bond is if we get these letters.

20 You know, if there are customers out there or
21 persons who want -- you know, who feel that they've been
22 wronged by a dealer, we don't know about it -- in the
23 Licensing Division, we don't know about it unless we
24 receive one of these claim letters. And then we know
25 that, well, obviously, something happened, and the claim

1 was paid.

2 MR. DORAN: This is Presiding Officer Doran
3 again. Also, one of the issues that we've talked about as
4 a group on these calls is the situation with the Reagor
5 Dykes dealership out in the Lubbock area, the group of
6 dealerships out there.

7 And given the recent nature of what we're
8 looking at here, we don't -- you don't see anything from
9 your research or you didn't come up with anything that
10 showed that there were claims made against the bond for
11 that dealership out in Lubbock, did you?

12 MS. CASTANUELA: So those dealerships were
13 franchise dealerships or are franchise dealerships. We're
14 not exactly sure what the status is of those dealerships
15 right now. I didn't look into it, but as franchise
16 dealers, they weren't required to carry bonds.

17 So there wouldn't be a claim letter against
18 them, certainly not in the last six months. I didn't look
19 in their files.

20 MR. DORAN: Okay. Thank you.

21 MS. CASTANUELA: Sure.

22 MS. THOMPSON: Officer Doran, this is Corrie
23 Thompson. May I be recognized?

24 MR. DORAN: Yes, you're recognized.

25 MS. THOMPSON: Yes. So I'm glad that you

1 brought up the franchise dealers, because yes, as LaDonna
2 mentioned earlier, they are not subject to the bond
3 requirement as the independent dealers are. So that's
4 also part of the reason that you see the fewer claims
5 there.

6 Another reason is also that people may not be
7 aware of the ability to file on the bond. And so a number
8 of those people do just come directly to the Enforcement
9 Division to file complaints there, and oftentimes we're
10 able to resolve their disputes with dealerships through
11 that avenue.

12 And so you may see fewer bond filings as a
13 result of that as well.

14 MR. DORAN: Thank you. This is Presiding
15 Officer Doran. So I just want to open it up for the group
16 to ask questions.

17 (No response.)

18 MR. DORAN: This is Presiding Officer Doran
19 again. Maybe to instigate those questions, I'll just
20 throw this out there. You know, it seems like it's worthy
21 of discussion if increasing the bond amount on what could
22 be, you know, thousands of dealers in the state of Texas
23 is the right move when you have such a small percentage of
24 dealers that have in fact gone out of business.

25 And based upon the data that was in LaDonna's

1 memo, it also suggests that, you know, in some of those
2 instances, the bond was not completely exhausted, or there
3 was enough in the bond amount at 25,000 to make at least a
4 few of the customers whole. But that was not the case in
5 every instance.

6 So I think we have a couple of things that
7 we're being asked to take up and consider here.
8 Obviously, the prospect of making a recommendation to
9 increase the bond amount.

10 But also, I think, we as a group need to
11 understand what -- whether that's going to be an effective
12 thing for the public in terms of making them whole in the
13 event that a dealer goes out of business and they have
14 this type of problem.

15 MR. RICHARDS: Presiding Officer Doran?

16 MR. DORAN: Yes.

17 MR. RICHARDS: One thing that we don't know
18 about is -- and it's also a topic for discussion, I would
19 hope. LaDonna's material, which I want to thank her for,
20 it was excellent material. And I think it really sheds a
21 lot of light on the issue at hand.

22 But then one issue toward the end of her
23 material dealt with the fact that some -- I mean, we
24 obviously require a judgment, and some do. Some don't.
25 Some, you know, require an administrative order.

1 So I think that's an issue that we'd like for
2 CPAC to discuss during today's meeting, whether that
3 should be something -- a subject of a legislative change.

4 I think that there may be a lot of unsophisticated
5 consumers out there that go to the independent dealers
6 that don't want -- even if they are informed of the
7 bond -- may not have the financial wherewithal to go
8 forward to seek a judgment.

9 So that's an issue. Other than -- I mean, we
10 can talk about increasing the bond, but also I think we
11 need to look at whether or not the statute as it exists
12 now, requiring a judgment, might be keeping those numbers
13 down. And if so, then maybe, should that be changed?

14 Should it be an administrative order, or just
15 making the claim directly to the bond company? So I will
16 be quiet and let the members discuss.

17 MR. DORAN: This is Presiding Officer Doran
18 again. David, I might not let you be quiet just yet,
19 because I want to make sure that, until we understand the
20 question is really whether or not having to get the
21 judgment is a benefit or a burden to a customer in Texas.

22 And maybe you could shed some light on how
23 that -- or somebody on the staff -- how that process works
24 for the consumer. I mean, simple questions like, does it
25 require them to travel to Austin, Texas in order to

1 participate in the hearing under normal circumstances?

2 MR. RICHARDS: I don't want to go to the well
3 too often, but I do know that LaDonna has researched that,
4 and I think maybe at the last meeting in June, she gave us
5 a sample bond. So LaDonna, would you mind just kind of
6 covering that briefly?

7 MS. CASTANUELA: You want to see the sample
8 bond. So I think I found it in the materials on page --
9 it's somewhere around page 14. Yes. So a sample bond is
10 on page 14.

11 And what is it we were looking for, David?

12 MR. DORAN: This is Presiding Officer Doran. I
13 think we were --

14 MS. CASTANUELA: Yes?

15 MR. DORAN: -- I was just asking if you could
16 walk us through a little bit from the consumers'
17 standpoint, standing in their shoes. You know, what they
18 have to do to make a claim against the bond. And if
19 seeking a judgment on that before the agency first, what
20 that process looks like and if it -- trying to, I guess,
21 get an assessment of what is the time and the financial
22 burden on the consumer in order to pursue this remedy?

23 MS. CASTANUELA: So I'm sorry. I think David
24 gave me a little bit too much credit. I don't have
25 information about how much time it might take a consumer,

1 or a lot of times, these are, like, auction houses that
2 received a bunch of bad checks from the dealer who was
3 buying motor vehicles.

4 The claimant -- so I don't know how long it
5 takes and I don't know how expensive it is. I do know
6 that if they hire an attorney, that the statute allows
7 them to recover attorney's fees also. I know a couple of
8 things that I want to [audio skip] a couple of minutes
9 ago, that I'll go ahead and say right now.

10 I had a concern about looking at the [audio
11 skip] months because of COVID-19 and the pandemic. I
12 thought, well, maybe I'm not -- it's not a good example.
13 So I talked to the staff that processes those types of
14 letters, and I said, okay, we received [audio skip] claim
15 letters in six months, which means about 24 a year.

16 Does that sound right to you? And I was told
17 that that sounded exactly right. They would have guessed
18 about 20 or 25 claim letters in a whole year. So I did
19 want to say that, in case anyone had the same concern that
20 I did about the particular six months that I looked into.

21 I also did confirm -- there was a little bit of
22 discussion at the last meeting about if someone who is
23 pursuing a judgment has to hire an attorney, and we talked
24 about if it was possible for them to go to small claims
25 court, and what those limits might be.

1 So I did look that up, and it is \$10,000.
2 That's what I found. And then otherwise, you go to a
3 higher-level court, also not necessarily requiring that
4 you hire an attorney, but --

5 MR. RICHARDS: Presiding Officer Doran?

6 MR. DORAN: You're recognized.

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

8 On the sample bond, if you look at page 16, it says,
9 "Recovery against the bond may be made by a person who
10 obtains a judgment against the dealer assessing damages
11 and attorney's fees for an act or omission on which the
12 bond is conditioned if the act or omission occurred during
13 the term for which the general distinguishing number will
14 be valid."

15 So I mean, there's not a specific time period,
16 per se. And I would echo what LaDonna said, and you know,
17 the \$25,000, \$10,000 JP court jurisdictional limit, would
18 most likely bump somebody up to having to retain an
19 attorney on a lot of these cars today, being that they're
20 priced a lot more. And if you have multiple claims, then
21 they're gone before you know it.

22 So I mean, that's what the consumer would do.
23 On page 15 of the materials, which is on the back of the
24 bond, it gives instructions on what a consumer needs to do
25 in order to access the bond. So again, we don't know,

1 because of the level of sophistication of consumers and
2 whether or not they want to hire or need to hire an
3 attorney, whether or not that's holding the numbers down.

4 Could be. Could not be. I mean, I can't say
5 one way or the other, but it could a factor that might
6 need to be taken into consideration.

7 MR. DORAN: This is Presiding Officer Doran.
8 In your research on -- this is to, I think, LaDonna. But
9 on your research into the bonds, did you see any that were
10 in Spanish? Because I think these were all in English.

11 MS. CASTANUELA: I didn't. That's a really
12 good question. I didn't see any. Let me just add, even
13 though you didn't ask specifically, but I also did learn
14 that the Motor Vehicles Division receives about 20
15 requests a month that are Public Information Act requests,
16 specifically for a dealer bond.

17 And you know, we assume -- we don't ask,
18 because we can't ask under the law why they're asking for
19 this information, but the assumption is that they're
20 interested in pursuing a claim.

21 MR. GONZALEZ: Presiding Officer Doran,
22 permission to speak?

23 MR. DORAN: Yes. You're recognized, and could
24 you identify yourself?

25 MR. GONZALEZ: Yes. This is Ruben Gonzalez. I

1 have a couple of questions, if I may ask?

2 MR. DORAN: Please proceed.

3 MR. GONZALEZ: Yes. You talk about a dealer's
4 bond. Are they required now to notify the customer, the
5 retail buyer, that they may seek a bond to help them try
6 and get satisfaction if the dealer doesn't transfer title
7 on time? Are they required by law to notify the customer
8 that the bond is available as a recourse?

9 And the second question is, talking about an
10 order -- or I know a judgment has always been understood
11 for many, many years that you have to go to court, in some
12 cases hire an attorney. But what is the reference or --
13 of an order? Who would that originate from? Who would
14 issue that so-called order to the offended party?

15 Those are my questions, please.

16 MS. THOMPSON: Officer Doran, this is Corrie
17 Thompson. May I be recognized?

18 MR. DORAN: Yes, you're recognized. Yes.

19 MS. THOMPSON: I can take on the first answer,
20 Member Gonzalez. So I do not believe that there is any
21 requirement currently in statute that mandates the dealer
22 inform a consumer of the right to pursue an amount the
23 consumer feels is owed to them as a result of the
24 transaction with the dealer, to make them aware of the
25 bond. I don't believe that's a requirement in statute

1 currently.

2 MR. GONZALEZ: Okay. Thank you very much.

3 MR. FRENCH: Presiding Officer --

4 MS. JOHNSON: Mr. Chairman?

5 MR. FRENCH: -- Jim French. May I speak?

6 MR. DORAN: Yes, Member French. I think you
7 were first to speak up there. So you're recognized.

8 MR. FRENCH: You know, with the very small
9 sample we have concerning percentage exceeds the amount of
10 the bond -- in fact, it's close to two-thirds, 63 percent.

11 And if you look at the amount over 10,000 small claims
12 court, it's probably 92 or 93 percent.

13 So I -- you know, I think an attorney -- to get
14 a judgment, an attorney is going to have to be involved,
15 which may discourage the public from even pursuing it. So
16 I -- you know, I think we definitely need to look at both
17 those questions.

18 Thank you.

19 MR. SMITH: Officer Doran, Member Smith
20 requests permission to speak.

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

22 MR. SMITH: A couple of things. One, and
23 correct me if I'm wrong, but the statute does allow for
24 recovery of attorney fees. And I think what LaDonna did
25 here in her chart shows where attorney's fees were

1 collected.

2 So I think the fact that you have to get an
3 attorney is not -- you're not discouraged from that
4 because you cannot get the fees recovered. My experience
5 as a dealer has been, when you do, and thank goodness, we
6 don't have very many -- when you do have a customer upset,
7 they -- there's no hesitancy whatsoever, it seems to me,
8 to engage an attorney if a customer feels like he has been
9 wronged.

10 So I'm not sure that's deterring people at all,
11 the fact that they're requiring an attorney, because
12 that's, I think, the first place they would go. An
13 attorney, of course, is going to be familiar that he can
14 recover fees.

15 Thank you.

16 MR. DORAN: Thank you, Member Smith. And I
17 think there was another member that was wanting to speak,
18 as well.

19 MS. JOHNSON: Mr. Chairman, Member Johnson. I
20 would wish to speak.

21 MR. DORAN: You are recognized.

22 MS. JOHNSON: We're almost chasing the horse
23 chasing the cart. It doesn't seem like increasing the
24 bond, which is the question, is the solution, because the
25 bond amount seems to be adequate for most of these claims.

1 And there's only 29 -- about half of the states in the
2 country have a bond over the amount that we do, and some
3 of them are mixed.

4 What it appears is needed more is JP court
5 increasing the amount of their judgment limit. Unless the
6 Department has authority to issue judgments, which I
7 wouldn't think that it would.

8 But that would seem to be the more appropriate
9 action. Either advise the agency that there really needs
10 to be some changes in JP court which would help satisfy
11 these or determine whether the Department has the ability
12 to issue a judgment that these bond companies would
13 recognize.

14 Thank you.

15 MR. KUNTZ: Chairman Doran.

16 MR. DORAN: You're recognized.

17 MR. KUNTZ: Yeah. This is Jeremiah Kuntz, for
18 the record, Director of Vehicle Titles and Registration
19 Division. I'm going to, kind of, I guess, try and focus
20 us a little bit on the question at hand. And I'm also
21 going to, kind of, throw out a real, live example that I
22 just saw in the last, probably, three weeks, for the
23 Committee to consider.

24 The charge that I believe we are trying to
25 assess in the Consumer Protection Advisory Committee is,

1 what protections should be afforded to consumers when a
2 dealer has gone out of business? And I know that we've
3 focused a lot on bonds here, which seems to be a
4 protection that could be afforded to a consumer in the
5 instance of a dealer going out of business.

6 I don't necessarily want to, kind of, debate
7 the merits of what LaDonna has put together, because I
8 think that there is many factors that could or could not
9 playing into what's driving consumers to either claim on a
10 bond, not claim on a bond. I mean, we've heard, you know,
11 potentially attorney's fees may be causing them. Lack of
12 knowledge may be causing them not to seek recourse against
13 the bond.

14 So in order to try, and I guess, put this into
15 a real-life, contextual scenario for the Committee to
16 really think about, what would you, if you were this
17 consumer, on both sides of this equation -- and I'll tell
18 you, there's more than one consumer that's harmed in this
19 scenario. What would you as a consumer want your
20 protection to be if you found yourself in this scenario?

21 So a few weeks ago, we were contacted at our
22 Regional Service Center by a customer who -- the dealer
23 had gone out of business, seeking, through our new
24 process, a letter that they would need in order to go to
25 the county to apply for title. The situation is pretty

1 interesting in the way that it came about.

2 One customer had brought in a vehicle with a
3 value over \$40,000 for trade-in and obtained a new
4 vehicle. So they had traded in one vehicle worth 40,000,
5 they obtained a new.

6 And when I say, it was worth 40,000, there was
7 a \$40,000 lien to a lienholder that still existed on that
8 vehicle when they traded it in. So that lien of \$40,000
9 needed to be satisfied to the previous lienholder for the
10 previous consumer.

11 That consumer purchased a new vehicle and went
12 about their business, their trade-in sitting with the
13 dealership. The dealership consequently sold that vehicle
14 that he had traded in to another consumer. And this is
15 the consumer who had come into our office.

16 That consumer had obtained a lien for the
17 financing for that vehicle for \$40,000 as well. So we now
18 have two lienholders who have a claim against that
19 vehicle. Both for \$40,000, one the old lienholder, one
20 the new lienholder.

21 The dealer packed up and ghosted. They're
22 gone. The dealer doesn't exist anymore. There's a
23 \$25,000 bond. They are one of many consumers that were
24 harmed by the dealer going out of business.

25 This one transaction essentially has \$80,000

1 worth of liens on it, one to the old lienholder and one to
2 the new lienholder. The question then becomes: who is to
3 be harmed?

4 So I pose that question for the Committee to
5 consider, because statute, I don't believe, is real clear
6 on this matter of who should be the one that gets harmed
7 in this scenario, the old lienholder or the new
8 lienholder. And what protections do these consumers have
9 for their credit?

10 Both consumers are being asked by the
11 lienholders to make payments. If they don't make
12 payments, it's going to go on their credit. Should the
13 old lienholder be able to repossess the vehicle and sell
14 it? Should the new vehicle owner be able to apply for
15 title and obtain title from the county office?

16 One would say that they are not going to be
17 able to. But that then means that the old lienholder
18 would have the ability to repossess that vehicle because
19 they've got the only existing lien on that vehicle.

20 So I throw that out for this Committee to
21 really chew on. These are the scenarios that we see. We
22 don't see them often. I'm not going to say that this is a
23 daily occurrence where there's hundreds and thousands of
24 these.

25 But if you were that consumer, what would you

1 want your protections to be? This is the Consumer
2 Protection Advisory Committee. We're here to make
3 recommendations to protect consumers, innocent consumers,
4 in these situations.

5 MR. DORAN: This is Presiding Officer Doran.
6 Jeremiah, just a couple of questions about that scenario,
7 and these don't get right to the heart of what to do for
8 the customer. But with that dealer that packed up and
9 left, I'm assuming that the agency, you know, either has
10 revoked or is in the process of revoking their license so
11 that --

12 MR. KUNTZ: Correct.

13 MR. DORAN: -- they can't open up shop
14 somewhere else. And do you all contact -- is there some
15 kind of a blacklist that you then put this dealer's name
16 on, so that when they try to open up shop in another
17 state, they're not capable of doing the same thing to
18 customers outside of Texas?

19 MR. KUNTZ: I will defer to our Enforcement
20 Division on --

21 MS. THOMPSON: I am unmuted.

22 MR. KUNTZ: -- that point.

23 MR. DORAN: And you're recognized.

24 MS. THOMPSON: Thank you, Officer Doran. I
25 don't believe that there is any database. There is at

1 least not one that I'm aware of information-sharing
2 between states of people who have been revoked or have
3 been penalized in the system.

4 LaDonna or somebody from the Licensing Division
5 may be able to speak to the review that takes place when
6 somebody who has previously been in the system tries to
7 come back into our Texas licensing system. Again, past
8 revocations, any outstanding penalties owed, are
9 considered by the licensing specialist who reviews that
10 application.

11 MR. DORAN: Good.

12 MS. THOMPSON: I know we've been talking a lot,
13 you know, about the bond and about how few people have
14 filed on the bond. And I mentioned, you know, that, you
15 know, some of the people come and file with the
16 Enforcement Division.

17 So I just pulled up our annual report from last
18 fiscal year, just to let y'all know -- so we opened 8,648
19 cases last fiscal year, and we closed out 7,100. And of
20 those, just to make everybody aware, the majority of those
21 cases, 28 percent, the highest number of violations were
22 all title-related.

23 So that would be late title transfers by the
24 dealer. That could be -- they didn't forward the payoff
25 for a trade-in, anything like that, that constitutes the

1 biggest percentage of our violations and has so for the
2 last several fiscal years.

3 And then just to that into perspective a little
4 bit more, the types of ways our cases were closed. Last
5 fiscal year, 23 percent of our cases were closed as the
6 dealer being out of business. So dealer skips town,
7 disappears. That's before we even get to the case.

8 Of the other types of closures that we did in
9 the Enforcement Division, a number of those dealers will
10 have also ended up being out of business after the fact.
11 It's just that we got to the case before the license was
12 closed out.

13 So dealers going out of business is not
14 something that happens infrequently. And I do want
15 everybody to also keep in mind too, if we go back to
16 talking about the bond situation, is that we're talking
17 about the bond only covering independent dealers.

18 It does not cover franchise dealers. So if
19 we're thinking about consumer protection, we should be
20 thinking possibly holistically about consumers who
21 purchase vehicles from all types of dealers, and those
22 protections that should be applied to them all.

23 MR. GONZALEZ: Officer Doran, do I have
24 permission to speak? This is Member Gonzalez.

25 MR. DORAN: Member Gonzalez, you're recognized.

1 MR. GONZALEZ: Thank you. I'd like to
2 reference page 13, the very first paragraph, in alluding
3 to Jeremiah's statement. I think the procedure that's in
4 writing pretty much covers a lot of situations when the
5 dealer goes out of business.

6 However, his comments came to light -- brought
7 up an idea, a situation where -- on this top paragraph, it
8 says, "Additionally, a release of lien is not required if
9 the only lienholder on the vehicle record is the dealer
10 that went out of business."

11 All the vehicle records consider what's in the
12 system, unless this is being considered what's -- the
13 dealer's name is shown on the 130 title application.
14 However, if that's the case, then the release of lien is
15 not required.

16 However, if that dealer that's going -- gone
17 out of business is a floor planner and he's floor planning
18 this vehicle through a third-party lienholder, then that
19 lienholder is not going to be protected. Because the
20 dealer's gone out of business, and there's no release of
21 lien attached to this transaction, unless it's carried
22 forward.

23 Would a release of lien be required? Say in
24 here that a release of lien would be required if the lien
25 is recorded on the vehicle record. It's not recorded

1 until it's filed. So I'd like to get a clarification on
2 that, please.

3 MR. RICHARDS: So -- well, I'll try and break
4 this down a couple of ways. So the way that that notice
5 is written is: "A release of lien is required for a title
6 transaction to go forward for any new title applications."

7 So in this instance, let's, for example, use
8 the instance I laid out. You would need a release of lien
9 from the previous lienholder in order to apply for title
10 for the new lienholder. What that sentence is referencing
11 is, if the old lienholder is the dealer that went out of
12 business, in other words, it was a buy-here, pay-here
13 dealer, and they themselves were the lienholder on the
14 vehicle that somebody is applying for title on, then we
15 would extinguish that and allow the new lienholder -- the
16 new owner to be recording that title application.

17 So this is only specific to a recorded lien,
18 where that recorded lienholder is the dealer, i.e., a buy-
19 here, pay-here dealer. Floor plans are not recorded
20 traditionally on title records because most dealers do not
21 apply for title in their own name and record the floor
22 planner as the lienholder.

23 So floor planners would just be another party
24 in these instances. As you brought up, the Reagor Dykes
25 issue, Chairman, that those floor planners are not

1 recorded. Therefore, they are not -- we would not require
2 any kind of a release for a floor planner in order to
3 record title for the new owner.

4 MR. GONZALEZ: Okay. Thank you.

5 MR. OLAH: Chairman Doran, this is Member Olah.
6 Permission to speak?

7 MR. DORAN: Member Olah, you're recognized.

8 MR. OLAH: I'm hearing a number of different
9 things, and I'd like to try to frame some of the issues
10 here. And the way I see it, there's a lot going on here,
11 and maybe -- it's probably not anything we're going to be
12 able to resolve today. But if we could put some structure
13 on the issues, maybe we could start addressing them in
14 future Committee meetings.

15 The number one thing I'm hearing today is a
16 concern about the difficulty with making a claim on a
17 bond. And I guess, as a lawyer -- and this is just me
18 speaking personally as a lawyer. Obtaining a judgment,
19 whether you hire counsel, or you proceed pro se, it's a
20 difficult proposition.

21 Even if you're going into JP court, you do have
22 to meet minimum standards of proof. You have to prove up
23 records. You have to have testimony of witnesses. And
24 for a small claim, that seems to be a pretty tall order.

25 You can also go into county courts, but county

1 courts and district courts, if your claim exceeds \$10,000,
2 you're going to have to hire an attorney. There's a
3 greater expectation that you're going to meet the rules of
4 civil procedure and the rules of evidence there.

5 So it seems that, to me, with respect to the
6 difficulty of making a claim on the bond, that maybe what
7 we should consider is -- this would probably be a
8 statutory change, allowing for an administrative order,
9 you know, to be -- and to be issued by an administrative
10 law judge. And this could be attained perhaps by DMV and
11 allowing that to amount to a sufficient claim on a bond.

12 So this would actually mean a statutory change.
13 It would also mean changes to the terms of the bonds. So
14 just putting that out there.

15 The second thing that I'm hearing concern about
16 is the amount of the bond. And it seems that most
17 individual claims could probably be -- the bond could
18 probably handle a claim, a typical claim, because the bond
19 is \$25,000, that where a claim gets to be complex or where
20 there are multiple parties.

21 For instance, when you have a dealer just
22 abandoning ship and leaving town, to mix metaphors there,
23 but to leave customers high and dry, a \$25,000 bond may
24 not be enough. And just listening to the discussion
25 today, I don't know what kind of bond would be enough.

1 A higher bond means higher premiums, of course,
2 for independent dealers. But that seems to be a second
3 issue. And maybe that's something that needs to be looked
4 into by staff and maybe some recommendations, or at least,
5 some information or data that might help guide the
6 Committee in making a determination as to whether \$25,000
7 is sufficient or the bond should be higher.

8 And the third thing I heard is that this bond
9 is only required for independent dealers, but that the
10 issue may be broader than -- with respect to title issues
11 and the associated costs, that the issue may be broader
12 than just independent dealers. Because, you know, a
13 typical consumer may not just have an issue with an
14 independent dealer but may have an issue with franchise
15 dealers.

16 So that seems to entail something, you know,
17 much bigger as far as what this Committee would recommend,
18 which is potentially some sort of larger process for
19 obtaining relief for effective consumers. Perhaps, again,
20 an administrative process where administrative orders
21 could be issued or agreements facilitated by DMV and the
22 dealers and the consumers.

23 So that's the third thing. I think that's a
24 bigger thing. But I just wanted to try to put some
25 structure on what we're doing today, and maybe we could

1 start with the simple thing of the amount of the bond and
2 whether or not it should be higher than 25,000.

3 And in my view, if you're -- you know, you were
4 talking about a legal proceeding. \$25,000 is something
5 you can get to really quickly. Your average lawyer
6 probably wouldn't take on even a simple case for less than
7 \$5,000. And I would think, just based on what I know from
8 friends in private practice who have small shops, they
9 wouldn't touch anything for less than \$5- or \$10,000.

10 So maybe we need to look at, you know, what's a
11 reasonable increase in the amount of the bond? And then
12 secondly, making it -- providing for alternatives other
13 than a judgment, a court-ordered judgment, to be able to
14 perfect a claim on a bond.

15 Again, I think that's going to require a
16 statutory change because that requirement would have to be
17 imposed on the dealers. And then bond companies would
18 have to adapt and put those terms in the bond, but also
19 they might have to do a bit of underwriting and figuring
20 out how to price a bond that allows for something other
21 than a judgment to perfect a claim.

22 But just throwing those thoughts out there.

23 MR. DORAN: Member Olah, this is Presiding
24 Officer Doran. A question that you might be able to
25 answer, given your background and expertise on this, in

1 terms of incentivizing a lawyer to take a case to help a
2 consumer obtain the recourse that they need, you know,
3 looking at what could motivate that lawyer, I heard Member
4 Smith earlier say that -- and I think this is in the
5 materials -- that attorney's fees are considered or -- I'm
6 sorry -- not considered.

7 They would be included. So that would be
8 \$25,000, the amount of the bond, plus whatever attorney's
9 fees are recovered. But it sounds like what you're saying
10 is, in order to put in the time to take the case, to do
11 the research and the work necessary to kind of work it up,
12 there might not be a whole lot of incentive there, if the
13 lawyer is being paid by the consumer out of pocket on the
14 front side of it.

15 So my question then becomes one of the consumer
16 protection law. I thought that these types of claims
17 might be something that would be suitable for a Texas
18 Deceptive Trade Practices Act Claim, in which case the
19 consumer might recover, you know, assuming that they could
20 get a judgment of a financial, monetary amount from a
21 defendant, you know, potentially treble damages, if that
22 defendant wasn't judgment-proof.

23 So has that -- does that factor into this at
24 all? Is that the type of thing that the -- that you see
25 at the Attorney General's Office?

1 MR. OLAH: Well, it's not something we've been
2 looking at here. I think, because of our resources, we
3 tend to look at much larger cases.

4 But if I could go back, the way I read the
5 bond -- and I've got the sample bond called up on my
6 screen right now -- the maximum that that bond is going to
7 pay out is \$25,000. And while that could include
8 attorney's fees, I think it's pretty easy to see a
9 situation where the consumer is out, say, \$5,000 or even
10 \$10,000.

11 And the attorney does enough work to where the
12 attorney feels entitled, and especially if the matter is
13 actually litigated in court, and you know, pretrial and
14 all that. That \$25,000 cap could be reached pretty
15 easily.

16 And if you have -- and given the example that
17 was given to us before, if you have a couple of consumers,
18 if you have a dealer who's leaving town and it's more than
19 one consumer that has an issue, you might have a matter
20 that would require far greater than \$25,000. Perhaps as
21 much as, you know, \$100,000, if not more.

22 So as to whether it could be made out to be a
23 DTPA claim, there are several elements to a DTPA claim and
24 you have to basically fit your evidence under that. In
25 other words, the dealer has to be -- you have to show that

1 the dealer has been engaged in business and commerce.

2 You have to show that the consumer -- there's a
3 certain amount of reliance that they had on statements
4 made by the dealer. You'd have to show what the dealer
5 said. And there are defenses such as mere breach of
6 contract, that the whole matter was a matter of contract
7 and not a matter of representations and reliance.

8 So -- and I guess I'm saying there that there
9 would be a lot involved with that. And yes, you could get
10 treble damages, but if you have an independent dealer
11 that, you know, gets \$75- or \$100- or \$150,000 judgment
12 against them and they don't have the wherewithal to pay
13 it, you know, it's been a gigantic waste of time for the
14 consumer and the consumer's lawyer, and essentially a loss
15 of resources in pursuing that type of claim.

16 You know, to me, from what I've heard today --
17 and I think the experts on staff, it would be great to
18 hear from them. But I think two things might help in
19 particular, and that is increasing the amount of the bond,
20 but then also allowing something other than a judgment to
21 be used to perfect a claim on a bond, such as an
22 administrative order.

23 And I'm just throwing those things out, you
24 know, as items for discussion. With that, I'll mute
25 myself.

1 MR. RIGBY: Michael Rigby, permission to speak?

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

3 MR. RIGBY: Yes. So I think, generally, I'd
4 agree with Mr. Olah's observations. The amount of the
5 bond is going to be insufficient in a large number of
6 cases. DMV's own data shows that two-thirds of those
7 cases, the amount was insufficient.

8 The fact that you need a judgment from a court
9 probably discourages a lot of folks. And there are
10 administrative courts throughout the state of Texas which
11 might be available to provide that claims adjudication. I
12 agree that DTPA is not going to be a remedy for most
13 consumers.

14 And in terms of the amount of the bond itself,
15 it's really problematic because -- is 50,000 enough? Is
16 100,000 enough? Is \$1,000,000 enough? I would urge you
17 and encourage you to reconsider the whole idea of a surety
18 bond and perhaps take a look at the way the Department of
19 Insurance is set up.

20 They have four different guaranty associations,
21 where that risk of loss is pooled among the market
22 participants. And the market participants have a seat at
23 the table in terms of, how do you develop methodologies to
24 mitigate the losses once they happen.

25 So those are my thoughts. Thank you.

1 MR. KUNTZ: Chairman Doran, if I may be
2 recognized?

3 MR. DORAN: You are recognized.

4 MR. KUNTZ: So for the record, Jeremiah Kuntz.
5 So that comment -- I think, the last comment is something
6 that we have talked a little bit internally about some
7 options. And I would like to just, kind of, throw this
8 out there for consideration for the group.

9 I had some similar observations that
10 potentially a new product could be created in the
11 insurance world or the, you know, surety bond world,
12 whatever it is, that would provide coverage for any
13 vehicle bought and sold by that dealer, i.e., trade-ins,
14 as well as vehicles that are sold outright at new
15 dealerships. It's somewhat interesting to me that the
16 perception is, is that's there a low number of claims
17 against these bonds, which would seem to me, from an
18 insurance perspective or a shared pool perspective, to be
19 minimizing the premiums that would be paid on that bond if
20 there was very little risk.

21 So I would assume that, if there's very little
22 risk of claims coming against those bonds, that the
23 premiums would be lower. But even with that, for the
24 consideration of this group, something that we have talked
25 about would be the allowance for the dealer to pass on a

1 set amount to the consumer for vehicles purchased in order
2 to cover those premium costs.

3 And just as an example, I'll throw this dollar
4 amount out there -- but I mean, it could be whatever --
5 that potentially the dealers would be allowed to, you
6 know, just like the Office of Consumer Credit Commissioner
7 allows them to charge a certain amount for documentary
8 fees, add another fee line for vehicle protection.
9 Basically, a transaction protection premium that could be
10 added to the sales contracts and collected by the dealer,
11 therefore the consumers were paying for their own
12 protection.

13 And the thought there being, maybe that that
14 makes it more palatable to the dealer community to offer a
15 protection that is sufficient enough to cover any vehicle
16 or customer that's potentially harmed when a dealer fails
17 to transfer title or goes out of business.

18 MR. RIGBY: Michael Rigby. Permission to
19 speak?

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

21 MR. RIGBY: Yes. So just to clarify and kind
22 of share my experience, the idea of, like, one, giant
23 insurance policy that all dealers could buy into, I didn't
24 think of that. I haven't, you know -- I'm not familiar
25 with such a product, but maybe it's possible.

1 The way that the Department of Insurance
2 statutes work is that there are guaranty associations to
3 handle these kinds of claims. So they're associations of
4 licensees. In this case, it would be, you know, motor
5 vehicle dealers who would participate by paying a certain
6 amount into the pool of funds, and those -- that pool of
7 funds would be available to handle the claims.

8 And it operates kind of like insurance, in the
9 sense that you're pooling the risk. And therefore, you
10 would have sufficient amounts to handle any particular
11 consumer's [audio skip] loss. But that's different from,
12 like, a private insurance policy.

13 But both models might work because the concern
14 and the problem you're trying to deal with is, there's
15 just not enough money to handle a particular individual
16 claim, much less multiple claims against a dealer,
17 especially when the dealer is long gone, and I think
18 somebody said, ghosted, you know, just left. They don't
19 do business anymore.

20 The other observation I make -- I understand
21 the motive of allowing dealers to charge, you know, some
22 kind of extra fee for this guaranty, and that might work.

23 It could be a good thing. But our experience at our
24 agencies with doc fees is that there's constant pressure
25 by the industry to increase those amounts.

1 There is a lot of staff time by the agency
2 that's taken up adjudicating and figuring out and
3 calculating and considering proposals. And so be careful
4 about what you ask for. Those are my comments. Thanks.

5 MR. SMITH: Officer Doran, Member Smith.
6 Request permission to speak?

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

8 MR. SMITH: Let me just ask a question to
9 understand where we're trying to get to. Is our mission
10 here to -- I mean, as we talk about raising a bond or
11 administrative hearing -- is our intention to put whatever
12 process and whatever funds in place so that there is never
13 a possible loss on the part of a consumer?

14 And are we trying to make it to where it's
15 extremely easy -- and I understand we want to make easy as
16 possible with -- are we trying to reach for a bar, set a
17 bar, where there's never a step over it? Because I think
18 that's been cause for -- and maybe some other conversation
19 than what we're doing today.

20 That's a tall order. But where is it that
21 we're trying to reach?

22 MS. THOMPSON: Officer Doran. This is Corrie
23 Thompson. If I may be recognized?

24 MR. DORAN: You are recognized.

25 MS. THOMPSON: So I would just like to say,

1 Member Smith, that I don't think there's any line in the
2 sand that anybody's trying to get to. There's just been a
3 concern, as Jeremiah brought up, the statutory remedy that
4 came out of last session to start to find ways to help
5 people who are affected negatively by dealers who've gone
6 out of business.

7 We're just trying to look at other possible
8 remedies or areas that those people can be protected.
9 Jeremiah mentioned at the beginning of the call, like,
10 their credit gets affected when somebody doesn't forward
11 the payoff for the trade-in.

12 They're not receiving their title. They're out
13 money. Just any of the different ways that would increase
14 consumer protection. No definitive goal point in mind.

15 Thank you, Officer Doran.

16 MR. DORAN: Thank you, Corrie. This is
17 Presiding Officer Doran. Along the same lines of what
18 we've been talking about, has the agency looked at, kind
19 of, an assessment of what their licensing fees are?

20 And the idea being that if licensing fees were
21 an extra, you know, \$10 to \$15 or more annually, maybe
22 that would be -- maybe the agency will be able to deploy
23 those additional monies for the purposes of, you know,
24 credit protection and helping customers clean up their
25 credit reports when they've -- in the rare instances that

1 they've stumbled upon a truly bad experience like this
2 with a dealer.

3 In other words, to kind of build on some of the
4 things that have been suggested today but doing it on a
5 much smaller scale. Would it be within the power and
6 authority of the DMV to look at the licensing fees that
7 they charge to licensees in order to build out a modest
8 financial model that could be used to afford consumers
9 some type of -- not relief for the financial loss that
10 they're out, but at least as it relates to helping them
11 with their credit.

12 FEMALE VOICE: Officer Doran?

13 MR. DORAN: You're recognized.

14 MR. KUNTZ: Member Doran, this is Jeremiah.

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

16 MR. KUNTZ: Okay. While I recognize that that
17 might be a place to look, the only thing I caution on
18 looking at it from a licensing standpoint would be the
19 amount of money per licensee that would be required in
20 order to fund something like that.

21 And so LaDonna, if you would? I don't know how
22 many franchise and independent dealers we have in the
23 state. I mean, we can do back-of-the-napkin math real
24 quick. I'll [audio interference] that way.

25 MS. CASTANUELA: Okay. Let me go look for that

1 email.

2 MR. KUNTZ: I'm guessing about 30,000 dealers
3 or so statewide.

4 MS. THOMPSON: Jeremiah, this is Corrie.
5 Officer Doran, if I may be recognized?

6 MR. DORAN: You're recognized.

7 MS. THOMPSON: I believe there are maybe just
8 under 3,000 franchise dealers in total of approximately
9 30,000-some-odd licensed dealers.

10 MR. KUNTZ: So 33,000. If we were to create,
11 let's call it, a \$500,000 fund divided by 33,000
12 licensees. So that's about \$15 per licensee per year to
13 get a half a million dollars.

14 So I mean, depending on how large this fund
15 needs to be, you know, that could get large per dealer
16 pretty quickly -- is where I'm going with that.

17 MR. FRENCH: This is James French. May I
18 speak?

19 MR. DORAN: Yes. You're recognized.

20 MR. FRENCH: Does anybody know what these
21 independent dealers are paying for these bonds that you're
22 getting for 25?

23 MS. CASTANUELA: Officer Doran?

24 MR. DORAN: You are recognized, LaDonna.

25 MS. CASTANUELA: So I did a little googling,

1 and found that, for a \$25,000 dealer bond in Texas, as
2 advertised on the websites, they say as low as \$250. I
3 don't necessarily -- I don't know if that's true.

4 When I spoke to the vice president of policy
5 and assistant general counsel of the Surety and Fidelity
6 Association, he told me a \$25,000 bond was probably
7 somewhere between \$1- and \$2,000. And that it's -- it
8 will depend on things such as the dealer's credit history.

9 I know that a lot of these dealers have to pay
10 whatever it costs for their bond. They make a payment
11 plan with the surety company, and a lot of the letters --
12 several of the letters that we received telling us that a
13 bond has been closed specifically states that it's because
14 the dealer hasn't kept up on those payments.

15 And that's what I know about the cost of a
16 bond.

17 MR. FRENCH: This is French again.

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

19 MR. FRENCH: It seems to be, we would lower the
20 incentive of the independent dealers because their costs
21 would go down, if we spread it amongst everybody. You
22 know, so I think they would take advantage of that.

23 I think the two things that really need to
24 happen is, make an administrative judgment be available,
25 and I think we need to look at considering a \$50- to

1 \$75,000 limit on a bond.

2 MR. CAVENDER: Officer Doran, Rick Cavender,
3 Member Cavender to speak, please?

4 MR. DORAN: Member Cavender, you are
5 recognized.

6 MR. CAVENDER: Yes. Hi. I'm hearing
7 discussion, and I'm, of course, putting my feet in the
8 dealer's perspective. And I don't live in an independent
9 dealer's life, so I'm not really sure what their -- what
10 the demands are on them on the surety bonds.

11 I read in my Google that it was somewhere
12 around \$300 for \$25,000. But I just think, kind of,
13 returning to simplicity and what we're all trying to
14 evolve to, since it's been so long that we haven't changed
15 the amount of the bond from 25, I would agree that
16 possibly 50 would be a better security blanket for the
17 consumer protection.

18 And then I would say that we would need to
19 build in full disclosures at settlement with any of these
20 independent -- with any of these buyers in the independent
21 dealerships, so that they see in their settlement that
22 there is access to the surety bond. And we can direct
23 them to the Regional Centers of the DMV or small claims
24 court, but it just needs to be maybe some type of a
25 disclosure there at the time of settlement, that they'd

1 sign.

2 MR. GONZALEZ: Member Doran, this is Member
3 Gonzalez. Permission to speak?

4 MR. DORAN: Member Gonzalez, you are
5 recognized.

6 MR. GONZALEZ: Yes, sir. I want to go back and
7 kind of go back to what Mr. Kuntz reiterated, to put
8 ourselves in the consumer's shoes. I think the procedure
9 that is written up today right now is workable. I think
10 we can work with the procedure right now in place.

11 The only problem that I see is that the
12 consumer isn't aware of this process. They should be able
13 to be aware when they sign the contract at the dealership.

14 And many of the problems that are facing now -- the
15 consumer doesn't really know that this option is available
16 until the very end or after the dealer closes shop or goes
17 bankrupt and disappears.

18 So I think the procedure in place is adequate.

19 However, I do -- would want to recommend and agree to the
20 previous member's comment that I think \$50,000 is
21 adequate. We're talking about a used car lot. If you
22 look at the type of vehicles that they sell, nowadays,
23 unless they've got -- have a high-dollar type of vehicle,
24 on the average, any vehicle that they sell is not going to
25 exceed \$50,000.

1 Secondly, when they go against the bond, they
2 have to come up with a new bond immediately. Otherwise,
3 they cancel their license. So I think kicking it up to
4 50, leaving the procedure in place, and disclosing it to
5 the customer at the time of purchase, and making it known,
6 would be adequate to serve the consumer, because this is
7 quick.

8 This is -- it helps them immediately. Those
9 are my comments. Thank you.

10 MR. DORAN: Well, members, wanted to see if
11 there was any other discussion on this issue or other
12 recommendations. If not, we could propose taking what
13 Member Cavender just mentioned and maybe offering that up
14 as a recommendation via a motion.

15 MR. CAVENDER: Member Cavender with permission
16 to speak, please.

17 MR. DORAN: Member Cavender, you are
18 recognized.

19 MR. CAVENDER: I guess preparing the motion,
20 that we would increase the security bond to a \$50,000
21 level, and then present a full disclosure to all customers
22 at time of settlement.

23 MR. DORAN: Members, you have -- I'm sorry.
24 Was that a motion, Member Cavender?

25 MR. CAVENDER: If it needs to be worded

1 differently, we might have to ask some of the attorneys on
2 board to help me there.

3 MR. DORAN: I think it was worded okay, but
4 I'll defer to staff.

5 MR. RICHARDS: Presiding Officer Doran?

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

7 MR. RICHARDS: David Richards, for the record.
8 No. That was worded okay for -- to constitute a motion.

9 MR. CAVENDER: Thank you, sir.

10 MR. RICHARDS: Uh-huh.

11 MR. CAVENDER: That would be my motion, then.

12 MR. DORAN: Okay, members. Presiding Officer
13 Doran speaking, that Member Cavender has made a motion.
14 Is there further discussion on this motion?

15 MR. OLAH: Officer Doran, Member Olah.

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

17 MR. OLAH: Just a point of clarification. By
18 settlement, do we mean point of sale and signing of all
19 the documents for the sale?

20 MR. CAVENDER: Member Cavender to speak.

21 MR. DORAN: Member Cavender, you are
22 recognized.

23 MR. CAVENDER: Yes. Point of sale at the
24 closing of the sale.

25 MR. DORAN: Thank you.

1 MR. OLAH: Thank you.

2 MR. DORAN: Members, you've heard the motion,
3 as well as the clarification. Is there further
4 discussion?

5 (No response.)

6 MR. DORAN: Is there a second?

7 MR. FRENCH: Member French would second that
8 motion.

9 MR. DORAN: Okay. Members, a motion has been
10 made by Member Cavender and it has been seconded. Is
11 there any further discussion?

12 (No response.)

13 MR. DORAN: Okay. Hearing none --

14 MR. RIGBY: Michael Rigby. Permission to
15 speak.

16 MR. DORAN: Yes. Member Rigby, you are
17 recognized.

18 MR. RIGBY: Thank you. I agree that the amount
19 of the bond, if you're going to stay with the bond, needs
20 to go higher, but I'm concerned. \$50,000 may not be
21 sufficient.

22 I'm looking at the list provided by staff. I
23 see one judgment for 65,000, another one for 219,000. And
24 so I am a little concerned that, even on the limited data
25 we have here, that the amounts -- a \$50,000 amount is

1 insufficient.

2 In addition, it doesn't -- and what we're
3 missing from this is the fact that these dealers, like the
4 [audio skip] we talked about, a KamKad situation -- there
5 may be others that may provide examples that are even
6 higher than that.

7 So I'm just reluctant to say \$50,000 is enough,
8 but I'm not sure what is enough. Thank you.

9 MR. DORAN: This is Presiding Officer Doran. I
10 don't think we've really been presented with any data
11 regarding the franchise dealers. So I would be somewhat
12 reluctant, without any data, to drag them into this, when
13 we're -- the data that we have before us is just
14 involving, you know, 11 or 12 claims against bonds
15 involving independent car dealers.

16 I do think the amount of the bond, given what
17 other states have done, could be the subject of some
18 additional discussion and debate here. Fifty is probably
19 a good start. I don't know if 75 is a more adequate
20 number.

21 I'll leave that the other -- to the Committee
22 members.

23 MR. RIGBY: Michael Rigby. Permission to
24 speak.

25 MR. DORAN: You are recognized, Member Rigby.

1 MR. RIGBY: Yes. So I mean, I agree. We don't
2 have data for the franchise dealers because they've been
3 exempted from the statute, but we are familiar with Reagor
4 Dykes and KamKad and there may be others.

5 We were told that there were 71,000 enforcement
6 cases closed last year that mainly dealt with title
7 problems. And I don't know if there's a -- if staff has a
8 sense of, you know, whether those title problems involving
9 the franchise dealers were resolved through DMV action or
10 there are still some outstanding or if some consumers were
11 just kind of left taking up the scraps in bankruptcy
12 court.

13 So maybe if staff can give us a sense of that,
14 that might help inform our decision. Thank you.

15 MS. THOMPSON: Officer Doran, this is Corrie
16 Thompson. If I may be recognized?

17 MR. DORAN: You're recognized. Yes, Corrie.

18 MS. THOMPSON: To answer that question, there
19 is not going to be an answer. For part of the reason you
20 mentioned, we don't have any data on bond claims against
21 those franchise dealers because they don't have the bond
22 requirement.

23 I believe you covered that. You're aware of
24 that. As to the claims for late title transfers, I would
25 say that that's a pretty equal violation amongst the

1 different types of dealers. I don't have that data in
2 front of me right now.

3 I would have to try to pull up the information
4 on which of those were affected by franchise dealers as
5 opposed to independent dealers, by virtue of the fact that
6 there are just necessarily more independent dealers in the
7 state. My guess would be that there are more late title
8 transfers with the independent dealers for that reason.

9 But I would say that the franchise dealer
10 network is immune from late title transfers and failure to
11 forward payoff for trade-in violations.

12 MR. RIGBY: Michael Rigby. Permission to
13 speak?

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

15 MR. RIGBY: So I guess that begs the question
16 of, why are franchise dealers exempt from this
17 requirement? Why aren't they required to have a bond
18 also? Thank you.

19 MS. THOMPSON: Officer Doran, this is Corrie
20 Thompson. I was just going to say we would need to refer
21 to somebody from the Motor Vehicle Division as to what --
22 the history about why they are exempt from the bond
23 requirement.

24 MR. DORAN: Thank you, Corrie.

25 MS. CASTANUELA: Officer Doran?

1 MR. DORAN: Yes. You're recognized, LaDonna.

2 MS. CASTANUELA: So Corrie, thank you. I don't
3 have any history about why the franchise dealers are
4 exempt. From what I could tell, this bond requirement has
5 been in law since 1995.

6 And it was -- I had a hard time -- I've been
7 having a hard researching all the way back that far, but
8 at least 1997, the franchise dealers were exempt. So it
9 looks like they've pretty much always been exempt. I
10 don't know why.

11 MR. RICHARDS: Officer Doran, this is David
12 Richards. Permission to speak?

13 MR. DORAN: David, you're recognized.

14 MR. RICHARDS: Thank you. From the staff's, I
15 think, perspective, Member Cavender's motion is a good
16 start. It allows for -- addresses one concern, and --
17 i.e., it's raising the amount, so that may help. We don't
18 know.

19 We can revisit that. But more importantly, in
20 my opinion, is the notice given to a consumer, which is
21 not given now. So I appreciate that suggestion in Member
22 Cavender's motion. I think the motion is -- suffice right
23 now.

24 If we see -- you know, this makes it through
25 the Legislature and becomes law, we can gather new data to

1 see. And then we can reconvene the CPAC or some other
2 group, whichever is in existence at that time, and make
3 that determination.

4 The 25,000 amount has been there, as I think
5 Member Cavender and others have said, for some time, quite
6 a while. So I think, from staff perspective, we think --
7 I think that the 50,000 increase and the notice
8 requirement at the point of sale is definitely a step in
9 the right direction, and we would encourage the members to
10 approve that.

11 MR. DORAN: Thank you, David. Okay. Well,
12 there's been a motion made. The motion has been seconded.

13 Is there additional discussion?

14 (No response.)

15 MR. DORAN: I'm not hearing any. So we can
16 proceed forward with a vote on the motion. Just to recap,
17 it was 50,000 increasing the bond, and then the disclosure
18 requirement at the time of closing or point of sale.

19 Okay.

20 I will now call for the motion. Members, as I
21 call your name, please state your support for the --
22 your -- for the motion by saying, yes, I support the
23 motion, or no, if you do not support the motion.

24 Member Brooks?

25 MS. BROOKS: No, I do not support the motion.

1 MR. DORAN: Member Cavender?
2 MR. CAVENDER: Yes, I support the motion.
3 MR. DORAN: Member Colvin, or Peace?
4 (No response.)
5 MR. DORAN: Member Eshpeter?
6 MS. ESHPETER: Yes, I support the motion.
7 MR. DORAN: Member French?
8 MR. FRENCH: Yes, I support.
9 MR. DORAN: Member Gonzalez?
10 MR. GONZALEZ: [audio skip] the motion.
11 MR. DORAN: Member Cheryl Johnson?
12 MS. JOHNSON: Yes, I support the motion.
13 MR. DORAN: Member Olah?
14 MR. OLAH: Yes, I support the motion.
15 MR. DORAN: Member Rash?
16 (No response.)
17 MR. DORAN: Member Rigby?
18 MR. RIGBY: Yes, I support the motion.
19 MR. DORAN: Member Smith?
20 MR. SMITH: Yes, I support the motion.
21 MR. DORAN: Member Solis?
22 (No response.)
23 MR. DORAN: And I, Laird Doran, also support
24 the motion. The motion passes.
25 Members, are there any more motions that we

1 should consider with respect to this item?

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

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

5 MR. RIGBY: So with respect to the other
6 discussion we had about the exemptions for franchise
7 dealers, I don't know what -- if it's in with the scope of
8 the agenda today to propose that exemption be eliminated?
9 Perhaps David Richards can speak to that.

10 MR. RICHARDS: Officer Doran, David Richards,
11 for the record.

12 MR. DORAN: You're recognized, David.

13 MR. RICHARDS: I would respond to that, that
14 staff would need more time to -- or would like more time
15 to investigate the circumstances behind that and to do a
16 little bit more research and bring it back to a subsequent
17 CPAC meeting.

18 I don't know that we contemplated discussing --
19 well, I know we didn't contemplate discussing that today.

20 So I would request permission to research a little bit
21 further and bring the issue back to the full CPAC for
22 consideration at a future CPAC meeting.

23 MS. BROOKS: Member Brooks.

24 MR. DORAN: Member Brooks, you are recognized.

25 MS. BROOKS: Thank you. I did not vote in

1 favor of the original proposal. The reason being, I think
2 it needs to be addressed that there should be a statutory
3 change allowing for an administrative order, rather than
4 the -- requiring the person to go to get a judgment and an
5 attorney and all of those requirements at a greater
6 expense.

7 So I think it should be a change in the
8 statutory -- a statutory change for an administrative
9 order as to the 50,000. But the full disclosure should be
10 at the point of sale, and that's an extremely important
11 item that should be included, is the full disclosure of
12 access to the surety bond at the point of sale.

13 Those are my comments.

14 MR. DORAN: Thank you, Member Brooks.

15 MR. RIGBY: Michael Rigby. Permission to
16 speak?

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

18 MR. RIGBY: I guess, to follow up on that
19 comment, I agree with that, that it should be -- the
20 statute should be changed to allow for an administrative
21 adjudication rather than a court judgment. But again, I
22 would ask David Richards to comment on whether that's
23 within the scope of the agenda or DMV needs additional
24 time to explore that issue.

25 Thank you.

1 MR. RICHARDS: Presiding Officer Doran, David
2 Richards for the record.

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

4 MR. RICHARDS: I would consider the vote that
5 was just taken as being the vote of CPAC. I mean, if
6 we're going to go forward with another vote, which I think
7 might be somewhat inappropriate. I mean, that discussion
8 could have been had during the discussion period of Member
9 Cavender's motion to change it.

10 I think what Member Cavender -- and Member
11 Cavender, correct me if I'm mistaken -- his recommendation
12 was to continue the same procedure, 50 -- but raise it to
13 \$50,000 bond, and also to provide notice to the consumer
14 at the point of sale.

15 If your motion did not include the current
16 procedure which requires a judgment, please let me know
17 and then we can take a separate vote on that.

18 MR. CAVENDER: Member Cavender to speak?

19 MR. DORAN: Member Cavender, you're recognized.

20 MR. CAVENDER: Yes. Member Richards, I was
21 speaking to the protection of the consumer at the time --
22 at the point of sale. As we pass signature items to that
23 consumer, we want one of those signature items to be the
24 full disclosure of his access or her access to the surety
25 bond.

1 And I just think that is so easy to implement,
2 and just put that into the documentation of the deal. So
3 that's what I intended, and I stand by the motion that I
4 presented.

5 MR. RICHARDS: Okay. Presiding Officer Doran,
6 David Richards again. So your motion to raise the amount
7 to 50,000, as well as include the notification in the
8 point of sale, did that include or did it not include the
9 current procedure?

10 If it didn't, then Member Brooks' motion, or if
11 she cares to make one, to change what is required under
12 our statute can be a separate motion. That was my
13 question. And forgive my confusion.

14 MR. CAVENDER: Member Cavender to speak.

15 MR. DORAN: Member Cavender, you are
16 recognized.

17 MR. CAVENDER: I have just -- I guess I need to
18 understand what the current procedure is, so I can't
19 really speak to that, Member Richards. I -- you know, do
20 we need to create an additional documentation for that, or
21 are we following that procedure currently?

22 I can't speak to it because I'm not a dealer.

23 MR. RICHARDS: Presiding Officer Doran, David
24 Richards for the record. Perhaps I'm the only one
25 confused on this call.

1 The current procedure requires that the
2 consumer get a judgment. What Member Brooks is talking
3 about now is an administrative order which would not,
4 obviously, be a judgment. It might be somewhat easier and
5 less costly for the consumer to go forward with to make a
6 claim with a bond.

7 So Presiding Officer Doran, did you understand
8 Member Brooks? And Member Brooks, you can clarify, too.
9 Is your motion -- do you have a motion to make the
10 procedure change to an administrative order written into
11 statute?

12 Is that your thinking right now?

13 MS. BROOKS: Member Brooks. That would be --
14 that appears to be what would be necessary, is to make a
15 change so it is a statutory change. So that it could be
16 an administrative order.

17 MR. RICHARDS: Okay. What I'm hearing now then
18 is -- we would need, Presiding Officer Doran, a separate
19 motion if we're changing the procedure under the law that
20 currently requires a judgment be secured, to an
21 administrative order being secured.

22 And we'd need that in the form of a motion and
23 a second, and then we can have further discussion. I was
24 mistaken. I was thinking that Member Cavender's motion
25 included the current procedure.

1 But I think for clarification, and because
2 those words were not exactly used, that we can entertain a
3 motion from Member Brooks to recommend a statutory change
4 requiring an administrative order versus a judgment, if
5 that's your motion.

6 MR. SMITH: Officer Doran, Member Smith.

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

8 MR. SMITH: As we went through that vote, it
9 was my understanding that Member Cavender's motion was to
10 maintain the current procedure and make those two changes.

11 I think then we have a little confusing issue here,
12 because the vote to raise that limit might be different if
13 we were talking about changing the whole procedure.

14 Again, I was under the assumption, because he
15 said, raise the limit, that we were within the current
16 operating procedure.

17 MR. RICHARDS: Officer Doran?

18 MR. DORAN: Yes, David.

19 MR. RICHARDS: David Richards.

20 MR. DORAN: You are recognized.

21 MR. RICHARDS: Perhaps we should poll the
22 membership to determine their understanding of Member
23 Cavender's motion, if that included in their minds when
24 they voted, either for it or against it, the current
25 procedure, as well as a change to the -- I mean, the bond

1 amount to 50,000, and also the second component being that
2 there was a notice requirement to the consumer at point of
3 sale.

4 So maybe we should go through the roll of
5 membership to glean from them what their understanding of
6 the motion was when they voted.

7 MR. DORAN: This is Presiding Officer Doran.
8 I'd be happy to do that. I will share with you, David:
9 my understanding was that Mr. -- Member Cavender's motion
10 was essentially status quo, plus raise the bond amount to
11 50,000 from 25, and make sure that the consumer has
12 adequate -- is provided with adequate disclosure about the
13 bond at the time of sale.

14 And I think -- I will just share with you and
15 the group, the reason -- one of the reasons why I believe
16 it was not part of the motion is because, sitting here
17 right now, it's still not clear to me, when we talk about
18 some type of determination at the administrative level,
19 through an order, whether we're talking about sending the
20 consumer to SOAH or whether we're talking about providing
21 some type of new procedure at the DMV where there's going
22 to be a member of the staff that would, you know,
23 adjudicate this.

24 So to me, all of that was still very much open
25 for discussion and fuzzy. Therefore, I did not interpret

1 Member Cavender's motion to contemplate that.

2 MR. RICHARDS: Okay. Okay. Fair enough.

3 MR. CAVENDER: Member Cavender, to clarify,
4 please.

5 MR. DORAN: You're recognized.

6 MR. CAVENDER: Yes, exactly, Officer Doran.

7 When I presented that motion, I fully intended status quo,
8 to work with current procedure.

9 MR. RICHARDS: Okay. Thank you.

10 MR. DORAN: This is Presiding Officer Doran.

11 David, would it be appropriate then or would staff like
12 for the Presiding Officer to proceed with a roll call on
13 that, or to ask any member who may have misunderstood the
14 motion to speak up so that we can reevaluate things?

15 MR. RICHARDS: Officer Doran, I think in the
16 interest of time, let's just ask the latter, if any of the
17 members had a misunderstanding of the motion, and they can
18 state it at that time. Otherwise, I think we can conclude
19 that Member Cavender's motion did include the status quo
20 that currently exists under the statute for filing a claim
21 on the bond.

22 MR. DORAN: This is Presiding Officer Doran.
23 Okay. So members, just so we're clear for the record, did
24 everyone understand the motion that was presented and was
25 voted on?

1 If you did not understand or were under a
2 different -- if you have a misconception about what was
3 voted on, please speak up and let us know.

4 MR. RIGBY: Michael Rigby, permission to speak?

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

6 MR. RIGBY: Yeah. I don't think under I'm
7 under a misimpression. What I heard in the motion was,
8 there were two things that were being changed. One is the
9 amount of the bond and one is a requirement that
10 disclosures be given to consumers.

11 I didn't hear a third part of that motion that
12 said that the current claims process remain in place. So
13 I interpreted that, as you know, that's still open for
14 discussion and possible motion by folks who are
15 interested, and in fact, we had some conversation about
16 that.

17 So I think it's appropriate to entertain
18 motions for that. And there may be a different road on
19 it, and I can see why, you know, some folks may not
20 agree -- may agree to raise the bond and give the notice,
21 but not agree to change the process, and that's fine.

22 But I think it deserves a separate conversation
23 and a separate vote. Thank you.

24 MR. RICHARDS: Presiding Officer Doran, this is
25 David Richards, for the record.

1 MR. DORAN: You are recognized, David.

2 MR. RICHARDS: Just to make sure that we're all
3 clear, there's nothing wrong -- if Member Brooks wants to
4 make that motion to change the procedure to require an
5 administrative order versus a judgment, that can be done.

6 Those that voted for the first motion that believe that
7 they were voting for status quo can oppose it if they want
8 to.

9 So I mean, that might be one way to clarify it
10 for the record.

11 MS. BROOKS: Member Brooks.

12 MR. DORAN: Member Brooks, you're recognized.

13 MS. BROOKS: I would like to make a motion, if
14 appropriate, that there be a statutory change to allow for
15 an administrative order, as opposed to a judicial order.
16 I mean, increasing the amount to 50 is great and the --
17 also requiring the full disclosure at the point of sale is
18 appropriate.

19 MR. DORAN: Member Brooks, is your motion
20 limited to just the request to change the statute by
21 allowing for an administrative order, or are you intending
22 to also include the terms that were included in the last
23 motion?

24 MS. BROOKS: Oh, I would like for the statutory
25 change and the administrative order to be included with

1 the -- those items that were mentioned in the first vote.

2 MR. DORAN: Okay. Okay. Members, is there
3 additional discussion?

4 (No response.)

5 MR. DORAN: This is Presiding Officer Doran. I
6 do think that this motion does warrant some additional
7 discussion as to what the members understand and
8 contemplate with respect to what that administrative order
9 would be, and who would be making that determination,
10 whether that would be SOAH or the Department of Motor
11 Vehicles, or some other agency or entity.

12 MR. FRENCH: Member French would like to speak,
13 please.

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

15 MR. FRENCH: Mr. Cavender's motion, I took it
16 to be, you know, raise the limit, make sure we fully
17 disclose it at point of sale, but to leave the judgment
18 process in there. My concern is if we try to change the
19 statutory along with this other, it all may get tied up
20 and never [audio interference] effect. Mr. Cavender's
21 motion, at least, gets us a step closer in [audio
22 interference] a lot of the situations, and if we need to
23 come back and go for the statutory change to allow
24 administrative judgments.

25 Thank you.

1 MR. DORAN: Thank you, Member French.

2 MR. RICHARDS: Officer Doran?

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

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

5 I would ask, because you pointed out some good issues
6 regarding the administrative order. Staff would
7 appreciate having the opportunity to go back and look and
8 formulate and see how that would exactly look and play out
9 on paper before we take a vote on administrative order.

10 I think we're -- suffice with the order that's
11 been made now -- or the motion and vote has been taken, as
12 far as a recommendation goes, that the status quo would
13 continue. \$50,000 limit to the bond would be the new
14 standard, and also that the notice of provision would be
15 given to the consumer at the point of sale.

16 MS. BROOKS: Member Brooks.

17 MR. DORAN: Member Brooks, you're recognized.

18 MS. BROOKS: I will withdraw my comments. Mr.
19 French's comments on the potential delay in any kind of
20 action if you get into statutory changes is well-taken, so
21 I withdraw my comments.

22 MR. DORAN: Thank you, Member Brooks. Members,
23 are there additional motions or items that you'd like to
24 consider as part of this discussion?

25 MR. RIGBY: Michael Rigby.

1 MR. OLAH: Member Olah. I ask to be
2 recognized.

3 MR. DORAN: Okay. Let's start with -- I think
4 it was Mr. Rigby was -- Member Rigby was first there.
5 Member Rigby, you're recognized.

6 MR. RIGBY: Thank you. And just maybe Mr.
7 Richards can confirm this, but my understanding of the
8 motion that we did approve would require statutory changes
9 with respect to both the amount of the bond and notice to
10 a consumer.

11 Mr. Richards, can you confirm that?

12 MR. RICHARDS: David Richards, for the record.
13 You are correct. It would require -- it would be a
14 recommendation for statutory change to raise the bond,
15 which is, you know, in statute now at 25. And then the
16 second component would also be recommended for a statutory
17 change as well.

18 MR. RIGBY: Michael Rigby, can I respond?

19 MR. DORAN: Yes, Member Rigby. You're
20 recognized.

21 MR. RIGBY: Okay. Yes. Thank you. I don't --
22 it's a little bit speculative to figure out whether -- you
23 know, what we voted on wouldn't pass if we added something
24 to it, but I hear Mr. Richards' and DMV's concern that
25 they need some time to study this. And I think that's

1 appropriate to do some research and figure out exactly how
2 an administrative process would work, whether that's at
3 SOAH or at DMV or some other method.

4 So I appreciate that and encourage DMV staff to
5 do some research and bring that back to the Committee.
6 Thank you.

7 MR. DORAN: Thank you, Member Rigby. Member
8 Olah, I think you had signaled you wanted to speak as
9 well?

10 MR. OLAH: Yes. May I be recognized?

11 MR. DORAN: You are recognized.

12 MR. OLAH: I just wanted to make it clear that
13 my understanding of the motion, in the plain reading of
14 it, is that it was not a comment or decision on the status
15 quo, that it was -- it's standalone, that the bond would
16 be raised to \$50,000, and that there would be consumer
17 disclosure language at the point of sale.

18 That was my understanding.

19 MR. DORAN: Member Olah, this is Presiding
20 Officer Doran. I think my reference to status quo was
21 meaning to be geared towards the procedure that a customer
22 or a consumer, excuse me, follows today in terms of having
23 to seek a judgment.

24 Obviously, if we're changing the statute and
25 raising the bond amount and requiring new disclosures to

1 be provided to the consumer, of course, that's not
2 intended, and I didn't mean to suggest that that would be
3 status quo. Because that is in fact a very material
4 change, and I think that's why we voted on it as a group.

5 But I apologize for any maybe confusion that I
6 caused by referring to the fact that a judgment would be
7 required still as being status quo. But that's what I was
8 referring to.

9 MR. OLAH: May I respond?

10 MR. DORAN: Yes, please.

11 MR. OLAH: Oh, understood. I guess what -- or
12 what I am saying is, I see that motion as not necessarily
13 exclusive of other motions dealing with what is necessary
14 to perfect a claim on the bond.

15 In other words, I see that that's not in
16 conflict with a motion, for instance, to allow for some
17 sort of administrative order to coexist with the
18 requirement of a judgment as a way to perfect a claim on
19 the bond. I just wanted to be clear that I didn't see the
20 need to modify the motion, that it stands on its own.

21 It has a -- to me, a plain intention, which was
22 to raise the bond amount to \$50,000, and to provide for
23 consumer disclosures. But for future discussions, whether
24 today or at some other time after some study by staff, I
25 believe that there could be other motions that would not

1 necessarily be in conflict with the one that we passed
2 today.

3 MR. DORAN: Thank you. Members, are there any
4 other comments or are there any other motions?

5 (No response.)

6 MR. DORAN: Okay. If there's no further
7 motions, then --

8 MR. RICHARDS: Officer Doran?

9 MR. DORAN: Yes, David, go ahead.

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

11 I'm sorry to interrupt you. I wanted to get on the
12 record an issue that came up during the -- I believe it
13 was the June 18 meeting, the last time we discussed all of
14 this.

15 And that had to do with a concern, Reagor Dykes
16 coming to mind, where trade-ins, trade-in vehicles were
17 not being paid, paid off, and consumers of Reagor Dykes
18 transactions found themselves in a pickle. And they had
19 two outstanding lienholders that were demanding money from
20 them.

21 And the particular issue that was of concern
22 raised by one of our Board members related to negative
23 credit reporting. Some consumers might have been
24 financially -- or had the financial wherewithal to make
25 payments on both, or maybe a reduced payment on the trade-

1 in vehicle, depending upon whatever arrangement they made
2 with that lender.

3 But the issue of negative credit reports or
4 derogatory reports made to the credit reporting agencies
5 was a concern that was expressed, and we said we'd bring
6 something back to CPAC. Well, unfortunately, it doesn't
7 appear that there's a state fix to this, that the Fair
8 Credit Reporting Act, which is a federal law, addresses
9 the practices of consumer reporting agencies. And I don't
10 see any state fix right now that we would have to address
11 that.

12 So I just wanted to bring that issue back, just
13 for comment. We're not asking CPAC to come up with any
14 recommendations as to that, because we don't believe
15 there's a state fix for the issue right now.

16 Clearly, some of the things that could
17 happen -- consumer awareness, if they could negotiate with
18 the lienholder in a trade-in vehicle situation, or, you
19 know, obviously things that consumers can do on their own.

20 But the issue before CPAC is one that we really can't
21 recommend, other than maybe consumer, you know -- things
22 to do for consumers in dealing with the situation they're
23 in. There's no statutory fix that we could recommend to
24 the DMV.

25 It would be -- since it's a federal law, we

1 would have to look to federal law to rectify that. So I
2 just want to bring that back up, that we did discuss it
3 and say we'd come back with some sort of information for
4 the CPAC membership.

5 And what I've stated kind of leaves us in a
6 dead end as far as any recommendations from the CPAC for
7 statutory change. So thank you, Officer Doran.

8 MR. DORAN: Thank you, David. Appreciate that
9 explanation. Okay, members. If there's no further
10 motions, then we will move on to the next agenda item.

11 Members, moving on to Agenda Item 2(b), Future
12 Meetings. Members, the Office of General Counsel with
13 Texas DMV will send out future meeting invites to
14 determine membership availability.

15 Members, we will now take up Agenda Item No. 3,
16 public comment. David, are there any comments from the
17 public?

18 MR. RICHARDS: Officer Doran, we do not have
19 any public comments at this time.

20 MR. DORAN: Thank you. Okay. That being the
21 case, we will now move on to Agenda Item 4, adjournment.
22 Unless there is any further business, I would like to
23 entertain a motion to adjourn.

24 Do I have a motion from anyone to adjourn the
25 meeting?

1 MR. CAVENDER: Member Cavender would so move to
2 adjourn.

3 MR. DORAN: Okay. Motion is made by Member
4 Cavender. Is there a second? I'll second that motion.

5 MS. ESHPETER: Member Eshpeter will second it.

6 MR. DORAN: Okay. Thank you. Members, the
7 motion has been made and has been seconded to adjourn the
8 meeting. All in favor, say aye.

9 (A chorus of ayes.)

10 MR. DORAN: Any opposed?

11 (No response.)

12 MR. DORAN: Okay. Let the record reflect that
13 the vote was unanimous. Members, it is now 3:33 p.m., and
14 we are adjourned. Thank you, everyone.

15 (Whereupon, at 3:33 p.m., the meeting of the
16 Consumer Protection Advisory Committee 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: Webex conference call

6 DATE: August 21, 2020

7 I do hereby certify that the foregoing pages,
8 numbers 1 through 83, inclusive, are the true, accurate,
9 and complete transcript prepared from the verbal recording
10 made by electronic recording by Latrice Porter before the
11 Texas Department of Motor Vehicles.

12 DATE: August 28, 2020
13
14
15
16
17

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

21 On the Record Reporting &
22 Transcription, Inc.
23 7703 N. Lamar Blvd., Ste 515
24 Austin, Texas 78752
25
26