

TEXAS DEPARTMENT OF MOTOR VEHICLES
CONSUMER PROTECTION ADVISORY COMMITTEE
MEETING

OPEN MEETING VIA CONFERENCE CALL

Austin, Texas

Tuesday,
May 19, 2020
9:00 a.m.

COMMITTEE MEMBERS:

Melissa Colvin, Designated Presiding Officer
Laird Doran
Ruben Gonzalez
Cheryl Johnson
Will Johnson (absent)
Ray Olah
Jeanette Rash
Michael Rigby
James Snell (absent)
Juan Solis (absent)

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P R O C E E D I N G S

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

7 It is 9:02 a.m., and I'm now calling the CPAC
8 meeting for May 19, 2020, to order. I want to note for
9 the record that the public notice of this meeting
10 containing all items on the agenda was filed with the
11 Office of Secretary of State on May 11, 2020.

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

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

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

1 Secretary of State on May 11, 2020. All Advisory
2 Committee members, including myself, will be participating
3 remotely via Webex.

4 At this time, please mute your phones for the
5 entire duration of this meeting. I am asking your 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 if they're speaking.

18 Speak clearly. Members, there may be a slight delay due
19 to the telephone conference call meeting so please wait a
20 little longer than usual before responding to
21 participants.

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

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

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

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

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

22 This includes the authority to determine when a
23 speaker is being disruptive of the meeting or is otherwise
24 violating the timing or presentation rules as just
25 discussed. Disruptive speakers will be muted, given a

1 warning about disruptive behavior.

2 They will be removed from the meeting for any
3 continued disruption. Advisory Committee members, please
4 let us know immediately if you are no longer able to
5 participate for any reason. If your phone call drops and
6 you are disconnected, TxDMV staff will interrupt the
7 meeting and let us know to get you back on the line before
8 we proceed with the agenda.

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

14 Member Doran?

15 MR. DORAN: Member Doran present.

16 MS. COLVIN: Member Gonzalez? Member Gonzalez?

17 (No response.)

18 MS. COLVIN: Member Cheryl Johnson? Member

19 Cheryl Johnson?

20 MS. JOHNSON: Did I get unmuted?

21 MS. COLVIN: Perfect. Member Will Johnson?

22 (No response.)

23 MS. COLVIN: Member Olah? Member Olah?

24 (No response.)

25 MS. COLVIN: Member Rash?

1 MS. RASH: Present.

2 MS. COLVIN: Member Rigby?

3 MR. RIGBY: Present.

4 MS. COLVIN: Member Snell?

5 (No response.)

6 MS. COLVIN: And member Solis?

7 (No response.)

8 MS. COLVIN: For the record, I'm Melissa Colvin
9 and present too.

10 MR. OLAH: This is member Olah. Could you hear
11 me?

12 MS. COLVIN: Yes, sir.

13 MR. OLAH: Oh, I'm sorry. I was on mute when
14 you called my name. I am present.

15 MS. COLVIN: Thank you. For the record, I'm
16 Melissa Colvin and present too. We have a quorum.
17 Members, are we going to move on to Agenda Item 2,
18 discussion, briefing and action items? Agenda 2(a),
19 Recommendations of Advisory Committee for Presentation to
20 the TxDMV Board.

21 Now, moving on to Item 2(a), Recommendations of
22 Advisory Committee for Presentation to the TxDMV Board.
23 Members, the TxDMV administrative rule on advisory
24 committees requires the Committee to report their
25 recommendations to the TxDMV Board.

1 The recommendations must be in writing and
2 include any necessary supporting material. The Presiding
3 Official of CPAC or the Presiding Officer as designated
4 may appear before our Board to present the Committee's
5 advice or recommendations.

6 In addition, CPAC can provide advice and
7 recommendations to our Executive Director, as necessary.
8 The TxDMV Board will consider CPAC's written
9 recommendations and reports that are submitted. Members,
10 I would like the Advisory Committee to discuss, consider
11 and possibly take action on the methodology of presenting
12 CPAC's written recommendations to the TxDMV Board and the
13 TxDMV Executive Director.

14 For example, CPAC can decide that several
15 members may attend the TxDMV Board meeting and make a
16 presentation in addition to submitting its written
17 recommendation. The CPAC may decide that only the
18 Presiding Officer will attend the TxDMV Board meeting or
19 it can decide any other detail about how and who will
20 submit its written recommendations to the TxDMV Board.

21 Now, I will invite discussion from the members
22 regarding the preferred method of presentation to the
23 TxDMV Board.

24 MR. DORAN: This is Member Doran. I had a
25 question for the Presiding Member Colvin or for staff, and

1 that is, if you could share with the group when the
2 anticipated Board meeting is where the presentation would
3 be made, if that's the next upcoming DMV Board meeting or
4 it's some other date in the future?

5 MR. RICHARDS: Member Doran, we are looking for
6 the June 11, 2020, Board meeting for a presentation. That
7 would be the next Board meeting.

8 MR. DORAN: Thank you.

9 MS. JOHNSON: This is Member Johnson. I do not
10 know if you require a motion. Galveston County.

11 MS. COLVIN: Member Johnson, please speak.

12 MS. JOHNSON: If you require a motion, I would
13 move that all officers attend the DMV Board meeting to
14 reflect our diversity and background to the Board.

15 MS. COLVIN: A motion has been made by Member
16 Johnson for all officers to attend the meeting. Is there
17 a second? Is there a second motion?

18 MR. OLAH: This is Member Olah. I'll second
19 the motion.

20 MS. COLVIN: Member Olah seconds the motion.
21 Members, a motion has been made and seconded to have all
22 officers attend the meeting. Is there any further
23 discussion?

24 MR. DORAN: This is Member Doran again with one
25 additional question for staff. Is it anticipated that

1 that June 11 Board meeting will be conducted in person or
2 by teleconference or some other form?

3 MR. RICHARDS: This is David Richards,
4 associate general counsel for the record. Member Doran,
5 at this time, it would appear that it's going to be a
6 remote meeting, unless we're told otherwise, but right
7 now, we're planning on having a videoconference meeting.

8 That is correct. Not in-person at this time.

9 MR. DORAN: Thank you.

10 MS. JOHNSON: Will this be by a witness
11 submission or oral presentation?

12 MR. RICHARDS: David Richards, for the record
13 again, associate general counsel. The -- CPAC is required
14 to make a -- well, not required. They're required to
15 present written recommendations for sure, and we would
16 like to make an oral presentation as well before the
17 Board.

18 So that's what's contemplated.

19 MS. COLVIN: Is there any further discussion?

20 MR. RIGBY: Michael Rigby. I have a question.
21 I have a conflict for that date. What happens if we're
22 unavailable to attend a meeting? Thank you.

23 MR. RICHARDS: David Richards, associate
24 general counsel, for the record. Member Rigby, that's
25 fine. We'd like as many members, if this is the will of

1 CPAC, to appear remotely to be there, but nothing -- that
2 would be fine, as long as we have somebody there to
3 present before the Board.

4 So your absence would be okay. It would be
5 excused.

6 MS. JOHNSON: Member Johnson. Request to be
7 recognized?

8 MS. COLVIN: Member Johnson?

9 MS. JOHNSON: My motion was for officers, so
10 the three officers that we elected, rather than the entire
11 Advisory Committee.

12 MR. RICHARDS: Thank you, Member Johnson.
13 David Richards, for the record again. Thank you for that
14 clarification. Member Colvin read, I think, in her
15 presentation that the CPAC members would be there. Thank
16 you for the clarification.

17 You're just speaking of the three officers?

18 MS. JOHNSON: Yes, sir.

19 MS. COLVIN: I will now call for the question.
20 Members, as I call your name, please state your support
21 for the motion by saying, yes, or no if you don't -- if
22 you do not support the motion. Officer Johnson?

23 (No response.)

24 MS. COLVIN: Member Doran?

25 MR. DORAN: Yes. This is Member Doran. I

1 support the motion.

2 MS. COLVIN: Member Gonzalez?

3 MR. GONZALEZ: I support the motion.

4 MS. COLVIN: Member Cheryl Johnson?

5 MS. JOHNSON: I support the motion.

6 MS. COLVIN: Member Olah?

7 MR. OLAH: I support the motion.

8 MS. COLVIN: Member Rash?

9 MS. RASH: Yes.

10 MS. COLVIN: Member Rigby?

11 MR. RIGBY: Yes.

12 MS. COLVIN: I, Melissa Colvin, vote yes. The
13 motion passes. Members, we'll now move on to Agenda Item
14 2(b), Agenda Item 2(b), Refunds by Motor Vehicle Dealers
15 and Motor Carriers Transporting Hazardous Goods for a
16 Rulemaking Recommendation.

17 This discussion will be led by the Texas DMV
18 Enforcement Division's managing attorney, Brian Ge, and
19 OGC's associate general counsel, David Richards.

20 MR. RICHARDS: Good morning, Members. David
21 Richards, again for the record, associate general counsel,
22 for the record. I would like to -- before Brian Ge,
23 managing attorney from the Enforcement Division, begins
24 his presentation, get on the record comments that were
25 submitted by Member James Snell who could not be with us

1 on this call today.

2 Brian may interject. If he wants to wait until
3 I read all of them, I just want to make sure that they are
4 made part of the record today, and also the discussion by
5 the members. On the issue of refunds by dealers, Member
6 Snell states the following, or asks the following.

7 "Will a dealer be able to respond to a
8 complaint by a consumer before a refund is ordered, and
9 who decides whether a refund is due and the amount?" The
10 second question Member Snell has: "In the Department's
11 questions for 'consideration,' the topic of 'we owes,' is
12 mentioned."

13 Dealer promised -- it says, "My concern is over
14 verbal versus written in this example. If the promise is
15 written, the dealer should reimburse the consumer. Who
16 decides if a verbal promise is legitimate?" Third
17 question: "Consumer is overcharged for tax, title and
18 license, documentary fee and other fictitious fees. I
19 believe the documentary fee issue would fall under the
20 jurisdiction of the OCCC.

21 "Wouldn't failure to pay for a third-party
22 service agreement also fall under the jurisdiction of the
23 OCCC? 'Fictitious fees' needs a better definition."
24 Number four: "If a third-party service agreement is
25 purchased by the consumer and paid for by the dealer and a

1 dispute arises over the coverage, who handles that
2 complaint?"

3 Number five: "There are also many cases
4 involving refunds or reimbursements" -- in quotations -
5 "warranty reimbursements and incentive payments by
6 manufacturers to dealers that are often disputed. Both
7 are licensees. So who decides on those refunds?"

8 Finally, on the issue of refunds, Member Snell
9 asked, "If a dealer is ordered to make a refund, will that
10 impact their license renewal?" That ends the questions
11 and comments by Member Snell, and I'll at this time turn
12 the meeting over to managing attorney from the Enforcement
13 Division, Brian Ge.

14 Brian?

15 MR. GE: Hi, everyone. My name is Brian Ge. I
16 am the managing attorney for the Enforcement Division.
17 I'm going to lead the discussion in terms of developing
18 the contours of this refund authority. I made notes in my
19 notes of Member Snell's questions. So we'll just work
20 through the questions in order, and I'll interject Member
21 Snell's comments for discussion.

22 So as part of the Texas DMV Sunset bill, the
23 DMV was given the authority to order a refund for buyers
24 and lessees of motor vehicles. If the Board determines
25 that a person is violating or has violated this chapter,

1 this chapter being Section 2301.807 of the Texas
2 Occupations Code, the Board may order the person to pay a
3 refund to the buyer or lessee of the motor vehicle that
4 this is the subject of the proceeding.

5 The Board may also order a motor carrier that
6 violates a rule in this chapter, this chapter being
7 Section 643.257 of the Texas Transportation Code, to
8 refund a customer who paid a motor carrier to transport
9 household goods.

10 So the first question for -- I would like the
11 Committee to consider is, how should "refund" be defined?

12 And a sub-part to that question: should the
13 reimbursement of expenses be considered a refund? And
14 should the TxDMV have the ability to order both full and
15 partial refunds?

16 Members?

17 MR. DORAN: This is Member Doran. May I please
18 be recognized with the question and a comment?

19 MS. COLVIN: Member Doran?

20 MR. DORAN: Thank you. So Brian, I had gone
21 back and looked at other portions of the code where
22 "refund" is mentioned or defined, and it seems to come up
23 in the context of the lemon law claims, both in the
24 Occupations Code, as well as the rules around warranty
25 performance obligations associated with lemon laws.

1 And in those context -- in that context, the
2 code -- the rules, excuse me, in the Administrative Code,
3 they list what they consider to be expenses that are
4 reasonable and verifiable. They also include
5 reimbursable, incidental expenses, including things like
6 attorneys' fees, telephone calls, sort of other things
7 that kind of go part and parcel with the, I would say,
8 negative impact on the customer with having to deal with
9 the situation arising out of the problem with their
10 vehicle.

11 And I just wanted to kind of set this up by
12 referring to that, even though it's not necessarily
13 analogous in this context. That's an example where the
14 DMV has listed out a set or series of different examples
15 of things that could be included as incidental expenses
16 along with the refund.

17 At the same time, I would like to also point
18 out that when you look at the Sunset -- the final Sunset
19 Advisory Commission results for DMV, in Section 3.2, it
20 says the following: "As part of the Department's
21 enforcement authority, authorized funds for consumers for
22 motor vehicle and motor vehicle carriers" -- and then it
23 says, "Under this authority, the Department could require
24 refunds to the amount paid by the consumer and without
25 inclusion of any additional consideration of damages or

1 harm. The refund may be in lieu of or in addition to
2 other sanctions ordered against a licensee or carrier."

3 So I would just say that I was reading the
4 report from the Sunset Committee to be somewhat more
5 limiting in what would constitute a refund, and maybe not
6 open to the types of additional charges and things that we
7 see, at least in the context of the lemon law claims.

8 So my question for you, Brian, would be: based
9 upon the Sunset report that was issued, does that shed any
10 light on the limitations or parameters around what the
11 Legislature was contemplating when they gave -- or made it
12 clear that the DMV had this authority?

13 So it's a legislative history question,
14 basically.

15 MR. GE: This is Brian Ge, for the record. I
16 don't know what's going through the heads of the
17 legislators when they pass the bill. They surely
18 considered Sunset's point of view, but they worded the
19 actual statute that passed the way they worded it.

20 So we can't bind ourselves to what Sunset
21 wanted for us, but rather, we're bound by what the
22 Legislature wanted for us, and the only assumption we can
23 make is that the Legislature intended what they wrote in
24 the bill. And that's in Texas Occupations Code 2301.807
25 and Texas Transportation Code 643.257.

1 I hope that answers your question.

2 MR. DORAN: Okay. Thank you. This is Member
3 Doran again. If no one else has a question, I'd like to
4 be recognized for a second question.

5 MS. COLVIN: Member Doran.

6 MR. DORAN: Thank you. Brian, can you also
7 address -- I'm just kind of stepping back and looking at
8 what kind of recourse a customer has. Is there some
9 interplay between the Deceptive Trade Practices Act and
10 the fund authority that we're talking about here?

11 In other words, if a customer chooses to pursue
12 a refund through this mechanism, would that preclude them
13 from also pursuing any other type of recourse against the
14 dealer?

15 MR. GE: This is Brian Ge, for the record. A
16 consumer pursuing a refund through the DMV should not
17 preclude them from any other remedies of law. Whether a
18 court will take into account any refunds that were issued
19 in terms of arriving at an equitable judgment, that's up
20 to the court, but it's not mutually exclusive.

21 MR. DORAN: Okay. Thank you.

22 MS. RASH: This is director Rash. I have a
23 question and kind of a comment. Recognized?

24 MS. COLVIN: Member Rash?

25 MS. RASH: In the scenarios listed,

1 particularly D and also G, it seems that it's more of a
2 contractual type situation, and whether a refund would be
3 given, where the other scenarios were more
4 straightforward. And I just think those two particularly
5 would do better in a justice of the peace court setting,
6 because it is a contract dispute, so to speak.

7 Following First Vice Chair Doran's thinking, I
8 think that would be my position. I would want things to
9 be more straightforward in a refund, that is a refund.
10 And also I do -- would like to hear the answer to Member
11 Snell's question about the process itself.

12 MR. GE: This is Brian Ge. We will be getting
13 to all the scenarios in order, but first, I just wanted
14 some discussion among the Committee in terms of -- does
15 the Committee recommend that reimbursement of expenses be
16 considered a "refund," and whether DMV should have the
17 ability to order full and partial refunds.

18 MR. DORAN: This is Member Doran again. May I
19 be recognized for a question?

20 MS. COLVIN: Member Doran?

21 MR. DORAN: Thank you. Brian, is this -- just
22 to kind of make sure I'm clear on this, when we're talking
23 about refund, are we talking -- we're talking about the
24 request for a refund of the vehicle price, and that comes
25 up in the context of the dealer not having to have been

1 successful in transferring title, or some other, I'll just
2 say, necessary administrative task associated with the
3 purchase or lease of the vehicle itself?

4 MR. GE: This is Brian Ge. That's why we're
5 having this discussion. The term "refund" isn't defined
6 in the statute, so it could mean what you just said. It
7 could mean anything else. So as part of developing our
8 administrative rules, we want to have a clear definition
9 of what is considered a refund. Is -- are we considering
10 as a refund the purchase price of the vehicle? Are we
11 considering refund fees that were paid? Are we
12 considering to be a refund finance fees?

13 You know, so -- but we really want to narrow
14 down what, one, we are refunding, and two, what the bounds
15 of that refund are.

16 MR. DORAN: This is Member Doran again. May I
17 follow up with a comment and a question? I don't want to
18 get in front of any other members who have questions in
19 the due course here.

20 MS. COLVIN: Member Doran?

21 MR. DORAN: Thank you. So Brian, just to be
22 kind of very candid and straightforward about it, I look
23 at it and think that this is a case-by-case analysis that
24 the agency would have to apply. And so you know, in the
25 most egregious situation where someone's trade hasn't been

1 paid off, and they've been essentially making two car
2 payments for a period of time or something, then, you
3 know, I could see maybe the purchase price of the vehicle
4 as being a ceiling on the refund, but for the most part, I
5 sort of envision this coming up in the context of, a
6 customer comes in to buy a vehicle, and the dealer is
7 unable to have that vehicle, you know, titled and
8 registered within the required 30-day period.

9 So they don't -- they end up driving around
10 maybe with an expired tag or something, and ultimately,
11 you know, the dealer has perhaps been able to remedy that
12 situation. And so this does play in a little bit to what
13 Member Snell was asking about, but as it relates to a doc
14 fee, I think a consumer, when they come in to buy a
15 vehicle and they're getting to the end of that
16 transaction, not knowing what the legal definitions are
17 around doc fees, they are typically thinking that that is
18 a fee that they are paying to the dealer to properly
19 handle all of the paperwork associated with their
20 acquisition of the vehicle.

21 And so you know, where my -- where I was
22 immediately drawn to when I was looking at this was
23 thinking, well, that is an area where the dealer has
24 failed to meet their duty as part of that -- part of the
25 purchase of the vehicle, because they failed to timely and

1 accurately handle that paperwork, and I don't recall what
2 the doc fee currently is in the state, if it's capped at
3 150 or 195.

4 But that would seem to me, if it's a situation
5 that ultimately gets remedied, to be a fair and reasonable
6 penalty, the forfeiture of that doc fee. Because, after
7 all, the customer's expectations were that the dealer was
8 going to timely handle that paperwork transaction and they
9 failed to do so.

10 Therefore, the -- that amount should be
11 refunded back to the customer for their inconvenience.
12 But again, that contemplates the dealer having ultimately
13 remedied the situation.

14 MR. GE: This is Brian Ge. Do any other
15 members have comments in response to Member Doran's, or
16 other comments regarding how a refund should be defined?

17 MS. JOHNSON: Cheryl --

18 MR. OLAH: This is Member Olah. May I be
19 recognized for a comment?

20 MS. COLVIN: Member Olah, Member Johnson spoke
21 before you. Let her comment, and then we'll get back to
22 you.

23 MR. OLAH: Okay.

24 MS. JOHNSON: Thank you. May I request to be
25 recognized? So I guess that was a recognition. Working

1 in a tax office, we reissue many refunds under the --
2 under registration and titling services, and generally
3 speaking, any overpayment is considered a refund.

4 But in the sense of looking at the context of
5 what we're doing, whether full or impartial, whether
6 reimbursement of expenses or an overpayment, any excess
7 funds expended unnecessarily regardless of cause should be
8 considered a refund.

9 That would be my position on that, to define
10 it, if that is what the Board is seeking.

11 MS. COLVIN: Member Olah?

12 MR. OLAH: I have a comment regarding what we
13 would consider incidental expenses or incidental costs,
14 and I would be concerned that that requires some sort of
15 discretion or even adjudication. And I simply think that
16 goes outside of a straightforward definition of refund.

17 And I think if the courts were taking a look at
18 the word "refund" in absence of any guiding definitions or
19 comments, would look at a dictionary definition of it, and
20 I would see that as being the money directly paid to the
21 person or entity that you're asking to pay the money back.

22 So I think there is a line, a clear line that
23 incidental would not be included in that amount of money,
24 and you know, therefore, you know, if you're asking a
25 dealer to make a refund, it would be just money paid

1 directly to that dealer and not other kinds of associated
2 expenses.

3 That is my comment.

4 MS. JOHNSON: Member Johnson. I ask to be
5 recognized.

6 MS. COLVIN: Member Johnson.

7 MS. JOHNSON: I guess then the question would
8 be to Mr. Ge: if I understand this correctly, the Board
9 would have a proceeding in which it would determine that a
10 person has violated a chapter or rule of the DMV. And if
11 that's the case, then guilt has been established through
12 the proper processes of the DMV Board.

13 Is that correct?

14 MR. GE: This is Brian Ge. What would
15 typically happen is, a consumer would make a complaint.
16 Our investigators would investigate it, and then our
17 attorneys would reach out to the dealer and essentially
18 allege a list of violations in a notice of the
19 Department's decision.

20 And depending on how the dealer responds, we
21 can arrive at a settlement or the case can go to the State
22 Office of Administrative Hearings where there would be an
23 adjudication. And in the contours of a settlement, no
24 one -- there isn't a judge deciding or adjudicating any
25 kind of guilt or anything like that.

1 It's just our enforcement attorney and the
2 respondent coming together saying, hey, I messed up on
3 this, or I violated this chapter, you assessed this amount
4 of fees or penalties. Let's meet somewhere in the middle
5 to come up with a compromise so that I can continue
6 working without violating the law.

7 This addition of refund authority is on top of
8 whatever civil penalties the Department may assess. We
9 can also order a dealer -- to say, hey, you didn't do X
10 for this complainant. We believe that you violated this
11 chapter of the rules and statutes. We're assessing this
12 amount of penalties, but we also order you to provide a
13 refund of X amount to the complainant.

14 So to answer your question, it may or may not
15 actually go before a SOAH Judge and then ultimately end up
16 at -- before the Board.

17 MS. JOHNSON: But it does in fact provide a
18 process to demonstrate that there was an overpayment of
19 some amount of funds that -- by the consumer, that then
20 the dealer would be refunding?

21 MR. BRIAN GE: There -- this is Brian Ge. Yes,
22 there would be some process that -- to determine that, but
23 it's just in the normal course of the due process that any
24 respondent would receive in an enforcement proceeding.

25 MS. JOHNSON: Thank you.

1 MR. GONZALEZ: This is Member Gonzalez.
2 Permission to speak?

3 MS. COLVIN: Member Gonzalez?

4 MR. GONZALEZ: Thank you. Yes, ma'am. My
5 familiarity and experience with refunds has generally been
6 when somebody has overpaid, which falls into the category
7 of a partial payment, and that could also include some
8 type of fraud fee -- fraudulent fee that the dealer may
9 have charged a customer.

10 The second occasion has been when there's a
11 double payment for a service, and a refund is justified.
12 And the third portion would be when services are not
13 provided by a dealer that would justify a fee, and that
14 may or may not include promises that the dealer keeps or
15 to work on a vehicle or add an additional component to the
16 sale.

17 But this is strictly restricted to the sales
18 event, the processes of transferring a title. So those
19 three categories, I think, would be relevant for possibly
20 the Board's consideration to determine whether a refund
21 should be warranted to the dealer or to the consumer.

22 Those are my thought processes for your
23 consideration. Thank you.

24 MR. GE: Hi. This is Brian Ge. So collecting
25 everyone's comments, it seems that the consensus is that a

1 refund should be defined as monies that are paid to a
2 dealer, including any overpayments and payments for
3 services and products that -- services that weren't
4 rendered or products that weren't delivered.

5 Is that about right? Or perhaps we just want
6 to put it to a vote, whether the definition I just said is
7 good with everyone.

8 MR. DORAN: I'll -- this is Member Doran to be
9 recognized to make a motion to adopt what Mr. Ge just
10 recited as a way to define "refund."

11 MR. RICHARDS: Madame Chair, may I have the
12 floor? This is David Richards.

13 MS. COLVIN: Yes, Mr. Richards.

14 MR. RICHARDS: Brian, would you mind restating?
15 Member Doran said he echoes your thoughts. But could you
16 restate so we have a record of it for the court reporter
17 what that motion actually is? And then Member Doran,
18 would you make a formal motion and then we'll need a
19 second and a vote.

20 Thank you.

21 MR. GE: This is Brian Ge. I propose that a
22 refund be defined as any monies paid to a dealer including
23 overpayments, fees paid for services not rendered, and any
24 other payments made for products not delivered.

25 MR. DORAN: This is -- go ahead. Sorry.

1 MS. COLVIN: Member Doran, please go ahead.

2 MR. DORAN: Sure. I was just going to move
3 forward with a motion to adopt as the definition of a
4 refund, the definition just given by Mr. Ge, which I
5 believe was a refund would be defined as monies paid to a
6 dealer, including overpayment and fees paid for services
7 not rendered and for payments -- and/or for payment of
8 products not delivered.

9 MS. COLVIN: A motion has been made by Member
10 Doran. Is there a second?

11 MR. OLAH: Member Olah seconds.

12 MS. COLVIN: A second has been made. Any
13 further discussions?

14 MR. RIGBY: Michael Rigby. I'd like to make a
15 comment.

16 MS. COLVIN: Mr. Rigby?

17 MR. RIGBY: Yeah. I'm concerned with the
18 definition, where you say "paid." Frequently there's
19 dispute about whether the money is actually paid. Perhaps
20 something along the lines of "paid or contracted for" or
21 "obligated under the contract" would cover situations
22 where there's still an obligation to pay but payment is in
23 dispute.

24 MR. GE: This is Brian Ge. I agree with Member
25 Rigby's suggestion.

1 MS. COLVIN: A motion has been made by Member
2 Rigby to modify the motion made by Doran with the
3 definition. Is there a second?

4 MR. DORAN: This is Member Doran. I second the
5 motion.

6 MS. COLVIN: A second has been made. Any
7 further discussion?

8 (No response.)

9 MS. COLVIN: Hearing none, I'll move for the
10 vote. Members, we'll now call your name. Please state
11 yes if you favor the motion and no if you're opposed to
12 the motion. Member Doran?

13 MR. DORAN: In favor of the motion.

14 MS. COLVIN: Member Gonzalez?

15 MR. GONZALEZ: Member Gonzalez. And I favor
16 the motion.

17 MS. COLVIN: Member Cheryl Johnson?

18 MS. JOHNSON: I'm in favor of the motion.

19 MS. COLVIN: Member Olah?

20 MR. OLAH: I'm in favor of the motion.

21 MS. COLVIN: Member Rash?

22 MS. RASH: Yes.

23 MS. COLVIN: Member Rigby?

24 MR. RIGBY: Yes.

25 MS. COLVIN: I, Melissa Colvin, vote yes.

1 Members, the vote was unanimous in favor of the motion.

2 The motion passes.

3 MR. GE: This is Brian Ge. Now that we have a
4 motion on how a refund should be defined, I'd like to move
5 onto tab -- or question No. 2, which is under what
6 circumstances should TxDMV order a licensee or registrant
7 to provide a refund?

8 I believe some of that was covered in the way
9 that we defined "refund," which was overpayments, or for
10 services not rendered, or products not delivered, but are
11 there any additional circumstances where TxDMV should be
12 ordered or should be given the authority to order a
13 refund?

14 Before I turn it over for discussion, Member
15 Snell also had two questions that were directed at this
16 topic, the first being, "Will a dealer be able to respond
17 to a complaint by a consumer before a refund is ordered?
18 And who decides whether a refund is due and the amount?"

19 To answer the first part of Member Snell's
20 question, a dealer would absolutely be able to respond to
21 a complaint before a refund is ordered. And who would
22 decide whether a refund is due and the amount? That would
23 be ultimately the Board, but some of that discretion could
24 be delegated to the attorney who is prosecuting the case.

25 The second question that Member Snell had was,

1 "If a dealer is ordered to make a refund, will that impact
2 their license renewal?" That is up for discussion between
3 y'all. I don't believe that ordering a refund would
4 affect a license renewal unless -- if the dealer can
5 actually pay the refund.

6 But it's up to y'all if you want to have a
7 refund that's ordered affect a licensed dealer -- have
8 their ability to renew their license be affected.

9 MS. THOMPSON: This is Corrie Thompson with a
10 comment.

11 MS. COLVIN: Ms. Thompson?

12 MS. THOMPSON: Yes. I just wanted to make the
13 members aware that -- I'm not sure if we have anybody from
14 Motor Vehicle Division on here. But I do know that they
15 consider any amounts due pursuant to orders issued by the
16 Department as a factor that is considered when an
17 application comes in for renewal.

18 And so it may be the case that that division
19 would consider an amount that is owed by a dealer in the
20 form of a refund similarly, just to put that on everyone's
21 radar.

22 MS. RASH: This is Member Rash. I'd like to be
23 recognized.

24 MS. COLVIN: Member Rash.

25 MS. RASH: I think whenever you're looking at

1 somebody's license and the way that, you know, they do
2 business, a consideration should be given to, if a refund
3 was paid after being ordered to pay, and what the
4 circumstances are, but not to directly, you know, have
5 somebody lose their license over that.

6 I think that the Department should use its
7 discretion in that respect, because we're dealing with
8 imperfect people and the public is imperfect. So I think
9 the Department has to have discretion in considering
10 someone who's not -- hasn't been given a refund after
11 being required to, but not to take a license because a
12 refund had been given.

13 That's my opinion.

14 MS. JOHNSON: Member Johnson asks to be
15 recognized.

16 MS. COLVIN: Member Johnson.

17 MS. JOHNSON: To some extent, I understand what
18 Member Rash is saying. At the same time, being in an
19 office where we have 60,000 vehicle transfers happening
20 every year, it's not the reputable dealers, but the
21 un reputable dealers that this creates a scenario for, and
22 I absolutely do believe that that license should minimally
23 be suspended until an ordered refund is paid.

24 The quickest way to get somebody to do what
25 they're obligated to do is to have that threat of removal

1 there, and you have to have some authority in order to
2 make it happen in many instances.

3 MS. COLVIN: I would agree with that.

4 MS. RASH: This is Member Rash for another
5 comment, please.

6 MS. COLVIN: Member Rash.

7 MS. RASH: Having dealt with the Department of
8 License and Regulation as chair and being on that
9 committee representing a lot of small businesses, there
10 are a lot of considerations to be made, and even good
11 companies can get caught up in process.

12 So again, I think that it should be part of the
13 consideration, but I don't think it should be an automatic
14 consideration for someone to lose their license.

15 MR. GE: This is Brian Ge. So, so far, between
16 the discussion of Member Johnson and Member Rash, what I
17 jotted down in my notes is that the Department should be
18 able to suspend or revoke a license if a refund is
19 ordered, but not paid, the emphasis being on -- to be able
20 to -- so it's within the Department's discretion, and not
21 an automatic -- and not result in an automatic revocation.

22 Is that about right? Is there any more
23 discussion on that topic?

24 MS. JOHNSON: Johnson asks to be recognized,
25 please?

1 MS. COLVIN: Member Johnson.

2 MS. JOHNSON: I would concur with that.

3 MS. RASH: This is -- I'm sorry.

4 MR. GONZALEZ: This is Member Gonzalez.

5 Permission to speak.

6 MS. COLVIN: Member Gonzalez?

7 MR. GONZALEZ: Yes. Back here in El Paso, we
8 see a lot of situations where the dealer fails to comply,
9 and there's a lot of avenues to make them or encourage
10 them to comply, and since we're in the status mode of
11 trying to seek compliance, whether you deny them the
12 possibility of transferring title or monitoring their VIP
13 taxes, there's other methods available to persuade the
14 dealer or educate them to comply with the promises to the
15 consumer.

16 So I would -- the suspending of a dealer is an
17 option, but I don't think it should be a requirement
18 immediately. I think consideration needs to be given to
19 seek compliance voluntarily from the dealer, from the
20 violator, than just an automatic suspension.

21 Those are my thought processes. Thank you.

22 MR. GE: This is Brian Ge again. So looking
23 over everyone's comments and incorporating Member
24 Gonzalez's comment, I would say that there is some
25 concurrence among the Committee that if a dealer is

1 ordered to pay a refund but fails to pay it, that failure
2 to pay could be considered against renewing that dealer's
3 license, but it should not result in any kind of automatic
4 suspension or revocation of that dealer's license.

5 If that's an accurate statement and y'all want
6 to vote on it, please do so. If you have comments or if I
7 misstated anything, please let me know. Thank you.

8 MS. JOHNSON: Member Johnson, Galveston County,
9 requests permission to speak and be recognized.

10 MS. COLVIN: Member Johnson?

11 MS. JOHNSON: It appears we're getting a little
12 squishy on this, when what we're really looking at -- and
13 if you require a motion, I would make the motion that the
14 Department or the Board have the ability to suspend or
15 revoke a license when appropriate after all other
16 considerations or all other methods have been exhausted.

17 MS. COLVIN: A motion has been made by Member
18 Johnson to have the Department given the ability to
19 suspend or revoke a license after all methods have been
20 exhausted. Is there a second?

21 MR. GONZALEZ: And this is Member Gonzalez.
22 Permission to speak?

23 MS. COLVIN: Member Gonzalez?

24 MR. GONZALEZ: I concur with Member Johnson on
25 that recommendation.

1 MR. DORAN: This is Member Doran. Permission
2 to speak?

3 MS. COLVIN: Member Doran?

4 MR. DORAN: I was just wondering if Member
5 Johnson could explain or give a little more detail around
6 what is meant by exhausts -- exhausting all options or
7 methods -- I think is what she said?

8 MS. JOHNSON: Permission to speak. Member
9 Johnson.

10 MS. COLVIN: Member Johnson.

11 MS. JOHNSON: If you've already gone through a
12 process of SOAH hearing and the determination has been
13 made that a refund should be paid, and then the dealer
14 fails to pay it -- you renew your license, I believe,
15 every year. If that had happened, say, nine months ago,
16 you've already had an opportunity to -- for that refund to
17 have been made, and maybe it's not timely.

18 But the other method is, you could build in the
19 ability for the Department to have a time limit for those
20 refunds to be issued and then at that point, and maybe
21 after the other methods that have been exhausted, that a
22 time frame be instituted for the refund to be issued, and
23 failure to do so then would give the Department the
24 ability to suspend or revoke the license.

25 MR. DORAN: Thank you.

1 MS. RASH: This is Member Rash. I ask for
2 permission to speak.

3 MS. COLVIN: Member Rash.

4 MS. RASH: Well, whenever I'm talking about
5 giving a refund, I didn't realize that we were talking
6 about the whole process of going to SOAH to get that
7 refund. I thought we were trying to make an easy way for
8 a consumer to get a refund and this is -- since this is
9 fairly new, I just want -- feel like the Department needs
10 some leverage in whenever they're dealing with dealers.

11 But not to the point that they would -- someone
12 would lose their license over just a refund, particularly
13 with what we're looking at now with the pandemic and the
14 shape the dealers are in, I -- you know, I just have a
15 concern about that, and I think that giving the Department
16 the discretion without saying that it's a revocation, to
17 me, is as far as we need to go at this point in time.

18 MR. DORAN: This is Member Doran. May I be
19 recognized for a comment?

20 MS. COLVIN: Member Doran.

21 MR. DORAN: I do -- I find myself agreeing with
22 a lot of these comments, but I think to the last one, I
23 would agree as well. The discretion is needed for the
24 Department to be able to take action prior to going
25 through a full-blown SOAH hearing and all of that, I

1 believe.

2 You know, one of the things that's been in the
3 news for our industry so much, I think in the last few
4 years, is a dealership group in Lubbock that apparently
5 had hundreds of vehicles that they had not paid off to
6 customers trade. And so while I would agree that a
7 dealer's license should not be, you know, necessarily on
8 the line if they fail to make one refund, if you're
9 talking two-, three-, 400 vehicles, that is an entirely
10 different story and an egregious offense to the consuming
11 public in some instances.

12 And I would want to see the agency have the
13 authority to be able to take swifter action to try and
14 correct that behavior by the dealer and to try and protect
15 the consumers, either by getting their money back or
16 taking the license away so other consumers were not
17 likewise hurt in the same manner.

18 So just a comment. But I think the last member
19 who made a comment, I thought, struck a -- made the
20 appropriate point, that it is going to be a case-by-case
21 situation, but that it -- and maybe I'm mischaracterizing
22 this, but I understood her comment to be that it is
23 important that the DMV have that authority if needed, that
24 discretion.

25 MR. GE: This is Brian Ge. So what if we were

1 to modify the conversation a little bit and instead of
2 ordering -- the Department ordering a refund in that
3 initial finding against the dealer, how -- what if we only
4 ordered refunds as part of a settlement?

5 So instead of going through the entire SOAH
6 process, it's just the Department talking with the dealer
7 and they come to a settlement, and the settlement being, I
8 will provide a refund to this customer. If they don't
9 provide it, the Department can take additional action and
10 if they do provide it, the consumer gets their full
11 recourse?

12 MS. THOMPSON: This is Corrie Thompson here
13 with a comment to tack onto what Brian just said. So just
14 for educational purposes for the members of the Committee,
15 in an initial notice of Department decision, that's the
16 initial charging document in an administrative case, where
17 we're starting formal case processing there.

18 So that document has numerated allegations that
19 says, hey, this licensee on or about this date did this
20 thing that we're alleging they did, in violation of
21 whatever particular code it is, and then we are
22 recommending a sanction, essentially, at the bottom.

23 That could be, right, an administrative
24 penalty. It could be a revocation that's being
25 recommended. It could be both, but in all instances, that

1 initial charging document gives the dealer 26 days to
2 respond, either by just paying the sanction, at which
3 point we would issue a final order and close the case.

4 If it also included revocation, the license
5 would just be revoked, if they wanted to agree to it at
6 that point. They can also contact the Department to
7 either request an administrative hearing before the State
8 Office of Administrative Hearings, or they can engage in
9 settlement discussions with the attorney assigned to that
10 case.

11 So that's where it can go the different paths
12 from that point based on what we're initially alleging as
13 the sanction in that document. Now, if you're engaging in
14 settlement discussions with the attorney, then that either
15 penalty and/or revocation amount can change based on
16 things that the dealer agrees to do.

17 So what Brian is saying, in that initial
18 document, that we don't put, at that point, we're ordering
19 a refund pursuant to this allegation that we're alleging
20 here. That we save that, and if a dealer contacts and
21 asks us to engage in settlement discussions, that that
22 could be one of the settlement terms, that, hey, you know,
23 we were going to revoke your license initially or we were
24 going to institute this large penalty, but since you've
25 agreed to contact us and engage in settlement discussions,

1 we'll now bring in the refund authority option, and if you
2 want to agree to refund money to a consumer, then we can
3 record that, memorialize it, as part of settlement.

4 So --

5 MR. RIGBY: Michael Rigby. If I can make a
6 comment?

7 MS. COLVIN: Member Rigby?

8 MR. RIGBY: I just had a question. Why
9 wouldn't you include refund in the initial charging
10 documents? Why wouldn't that be part of the contested
11 case? In other words, why save it for a settlement
12 conversation rather than initial resolution under the
13 charging document?

14 Thank you.

15 MS. THOMPSON: Could be a number of reasons.
16 Corrie Thompson, for the record. So we may not have any
17 initial complaint by the consumer that they feel they're
18 owed a refund, but the dealer may have had these
19 discussions with the consumer, and the consumer may not
20 have expressed that as something that would make them
21 whole, because a lot of times consumers just contact us
22 and they're angry, and they think that we have a lot of a
23 reach that we don't necessarily have sometimes.

24 Sometimes people think that we can impose
25 criminal offenses on people. Sometimes people seek out

1 the Department thinking that we can impart more civil
2 remedies, not just administrative. Administrative law is
3 basically the result of errors, mistakes and
4 misunderstandings.

5 So there's a law. You apply with this
6 department to get this license. You agree to comply with
7 those laws and regulations. You did not comply with them.
8 There is a violation, regardless of what your intent is.
9 And so our evidence is to prove those violations.

10 So when you ask, why would we maybe not include
11 that initially, it might not be clear from the outset of
12 the case, or it might be something that isn't readily
13 apparent on the face of the case. The consumer might
14 contact the dealer later, and say, you know what?

15 If you just give me back my \$1,500 deposit,
16 like, that would be great. That will make me happy. And
17 the dealer tells us that, and they're able to work that
18 out amongst themselves, and we can later in the case get
19 confirmation that that amount has been paid.

20 We can use that to settle with the dealer.
21 That happens with other things, too. Like, we would never
22 include in an initial charging document, Hey, dealer,
23 you're going to agree to voluntarily surrender your
24 license.

25 But could we do that as part of the settlement

1 agreement, if the dealer agreed to give up a license,
2 whereas we maybe would have initially wanted to revoke it?

3 Yes, we can do that. I hope that answers your question.

4 MR. RIGBY: Michael Rigby. If I could ask
5 another question?

6 MS. COLVIN: Member Rigby.

7 MR. RIGBY: Yeah. I just -- I'm confused.
8 Like, if there were a -- we are overcharged by the dealer,
9 why wouldn't you initially order or require a refund? Why
10 would you want to wait until the consumer figures out how
11 much they're owed and asks for it in a settlement
12 conversation?

13 If I could add, too, it sounds like you -- that
14 DMV has not had refunding authority before the last
15 legislative session, and that it just acquired it on
16 September 1, 2019. So I can see why you may not have done
17 that before you had authority, but why not do it now -- is
18 my question.

19 MS. THOMPSON: Are we there? Sorry. This is
20 Corrie Thompson. I was getting disconnected, and I'm not
21 able to unmute myself. I'm just saying, in all instances,
22 it might not be clear. So if we send a notice of
23 Department decision out and we say, hey, dealer, there are
24 five cars that consumers -- that we believe you owe
25 consumers refunds on, and we're going to order full refund

1 for payment of all of those vehicles, and then the dealer
2 doesn't get the notice of Department decision.

3 So as long as we send it to the correct mailing
4 address and we give them the right amount of time to
5 respond. If they never receive that and they never
6 respond to it, or if they do receive it and they don't
7 respond to it, then we issue a final order.

8 So our final order then says, these five
9 refunds for this amount are now ordered by the dealer.
10 Dealer doesn't pay it. So then we are left with, at a
11 certain period of time, going after the dealer for
12 contempt of that order.

13 So then that's just a penalty on top of that
14 order. So that draws out the process, and doesn't again
15 necessarily -- I'm trying to think of instances where we
16 would just want to say -- do our order from the outset to
17 pay this consumer this money?

18 If you could give me an example, that would
19 maybe help shed a little bit more light on that. But what
20 we initially do in a document is, we institute a penalty
21 for each violation, or if the violation is severe enough
22 or if there is numerous violations, as Member Doran
23 mentioned earlier, then we would just put revocation of
24 the license is recommended at the outset, that we go with
25 those effective sanction there.

1 MS. JOHNSON: Member Johnson, Galveston, asks
2 to be recognized to speak.

3 MS. COLVIN: Member Johnson?

4 MS. JOHNSON: So Ms. Thompson, we have a list
5 from A to H, and particularly, A to G, for dealers on
6 whether a refund should be ordered in certain scenarios,
7 and all of these seem logical to me and justified. So
8 you'd never get that under these scenarios.

9 So is it scenarios such as these that you're
10 questioning, whether they would occur, I mean, we see
11 frequently where dealers -- frequently, we see often,
12 particularly in the used car dealer industry in poorer
13 sections of town, where dealers are not transferring title
14 timely, and there's -- or there's real, legal
15 consequences.

16 There's also legal consequences for the person
17 driving that vehicle.

18 MS. THOMPSON: Sure. Corrie Thompson here, for
19 the record. So right now, failure to timely transfer
20 title is the number one violation that we receive each
21 fiscal year, and the standard is to include a penalty at
22 the outset of the late title transfer violation, and as
23 you have more late title transfer violations that come up
24 in your case history, the penalty gets steeper for that.

25 So I mean, that's for group discussion. Is the

1 refund to the consumer on top of the sanction? Is it in
2 lieu of the penalty sanctions? I mean, I have no
3 preference either way. I'm just offering the group
4 options for consideration.

5 MR. DORAN: This is Member Doran. May I be
6 recognized?

7 MS. COLVIN: Member Doran.

8 MR. DORAN: To the last point that Ms. Thompson
9 made, yes, I do believe it should be on top of whatever
10 penalty is issued, because it's not like the penalty money
11 is going to that consumer to make them whole. And as you
12 mentioned, you know, we want to make them whole, at least
13 to the extent that they're getting a refund for something
14 that they paid for and didn't get, whether that was -- in
15 this case, I think we're talking about the failure of
16 completing the title work accurately and properly by the
17 dealer, which is part of the sale.

18 So yes. I do believe it should be on top of
19 whatever fine and penalty the agency is choosing to impose
20 upon that dealer.

21 MS. THOMPSON: And this is Corrie Thompson
22 again. So I'm not sure who was speaking earlier before
23 you, Member Doran, but there was a comment about if
24 someone from the tax office with regard to costs
25 associated with late title transfers for the consumers.

1 So yes, in some cases, a consumer will have
2 gone and purchased their own 30-day permits, things like
3 that, had some cost outlays. Sometimes the dealer is
4 actually purchasing those extra 30-day permits too,
5 whenever they've not transferred title after the issuance
6 of the initial buyer tag.

7 So again, as we discussed at the beginning of
8 this conversation, it is very case-specific as to how
9 these things play out.

10 MR. GE: This is Brian Ge. Would any member
11 like to make a motion for when TxDMV should be able to
12 order a refund?

13 (Pause.)

14 MS. COLVIN: Member David Richards, are you
15 there?

16 MR. RICHARDS: Madame Chair, I'm here.

17 MS. COLVIN: Would you like to step in, sir?

18 MR. RICHARDS: I'm sorry. I didn't hear the
19 question. Go ahead. Can you repeat the question?

20 MS. COLVIN: If there is any Member that would
21 like to make a motion?

22 MR. RICHARDS: Has a member made a motion? Is
23 that what you're asking?

24 MS. COLVIN: No, sir. Nobody has made a
25 motion.

1 MR. RICHARDS: Okay. And what is -- I don't
2 understand your question. I'm sorry.

3 MS. COLVIN: I don't think anybody is going to
4 make a motion for when Texas DMV should be able to order a
5 refund.

6 MR. RICHARDS: Okay. So you're saying,
7 nobody's making a motion?

8 MS. COLVIN: No, sir.

9 MR. RICHARDS: Okay. Well, then we -- Brian
10 can move on to the next item.

11 MR. OLAH: This is Member Olah. May I speak on
12 the issue of whether we're going to have a motion now?

13 MS. COLVIN: Member Olah, please?

14 MR. OLAH: It seems to me that there are just a
15 multitude of circumstances where DMV could order a refund.

16 And may I throw this back to staff to perhaps word
17 something that the members can support or not support,
18 perhaps for consideration at our next meeting?

19 MR. RICHARDS: Member Olah, this is David
20 Richards, for the record. May I have the floor?

21 MR. OLAH: Yes.

22 MR. RICHARDS: Yes, we can definitely do that
23 for you. I think Brian touched on it earlier, that the
24 decision or the motion, the vote you took on Item No. 1
25 pretty much gives you a springboard to answer No. 2. But

1 we'll definitely come up with a statement that y'all can
2 vote on as your position regarding Item No. 2.

3 MR. OLAH: Thank you.

4 MR. GE: Hi, this is Brian Ge. While Member
5 Olah and Mr. Richards were talking, I kind of jotted
6 something down already. If you want to consider it, the
7 statement that I have is: the Department may order a
8 refund as a part of the initial notice of Department
9 decision, as well as have the ability to order a refund as
10 part of settlement negotiations.

11 MR. OLAH: This is Member Olah. May I speak?

12 MS. COLVIN: Member Olah?

13 MR. OLAH: I will make a motion based on what
14 Mr. Ge just said.

15 MS. COLVIN: The motion has been made by Member
16 Olah in reference to Mr. Ge's comment. Is there a second?

17 MS. JOHNSON: Member Johnson. I'll second that
18 motion.

19 MS. COLVIN: A second has been made. Any
20 further discussion?

21 (Pause.)

22 MS. COLVIN: Brian Ge?

23 MR. GE: No, I have no additional comments.

24 MS. COLVIN: Hearing none, I will call for the
25 vote. Members, when I call your name, please state yes in

1 favor of the motion and no if you're opposed to the
2 motion. Member Doran?

3 MR. DORAN: Member Doran. In favor of motion.
4 Yes.

5 MS. COLVIN: Member Gonzalez?

6 MR. GONZALEZ: Member Gonzalez. I'm in favor
7 of the motion.

8 MS. COLVIN: Member Cheryl Johnson?

9 MS. JOHNSON: I'm in favor of the motion.

10 MS. COLVIN: Member Olah?

11 MR. OLAH: Member Olah. Yes.

12 MS. COLVIN: Member Rash?

13 MS. RASH: Yes.

14 MS. COLVIN: Member Rigby?

15 MR. RIGBY: Yes.

16 MS. COLVIN: I, Melissa Colvin, vote yes.

17 Brian Ge, are you -- do you need to move on?

18 MR. GE: Yes. I was just waiting to -- for you
19 to say the motion passed.

20 MS. COLVIN: The motion passed.

21 MR. GE: Okay. All right. This is Brian Ge.

22 The next point to discuss is time limits.

23 So when a consumer makes a complaint to the
24 Department, they're not limited in time. So they could
25 potentially buy a car in 2015 and just now, in 2020,

1 complain about something that the dealer did.

2 Do we want to limit the time frame by which a
3 complaint has to be made in order for the DMV to order a
4 refund?

5 MR. DORAN: Member Doran. I ask to be
6 recognized for a question.

7 MS. COLVIN: Member Doran.

8 MR. DORAN: Brian, what is the required time
9 period that a dealer has to keep a record of the -- like,
10 the deal jacket and the transaction? I used to remember
11 this, but I can't recall. And I think there's a period
12 where it has to remain on site at the dealership, and then
13 there's a period of time where it can be transferred
14 offsite to maybe a central location.

15 MR. GE: This is Brian Ge. The dealer
16 typically has to keep that information for 48 months.

17 MS. THOMPSON: Yes. And so -- this is Corrie
18 Thompson here, for the record -- 13 months must be
19 maintained at the licensed occupation, Member Doran.

20 MR. DORAN: Thank you. This is Member Doran,
21 again, just for an additional comment. I guess you guys
22 can kind of see where I'm going with this, but I think
23 it's a bit burdensome if the dealer no longer has the
24 paperwork associated with the transaction because state
25 law doesn't require them to keep it beyond that time, to

1 then have a customer be able to come back and have a
2 complaint.

3 I think it makes it difficult for the dealer to
4 defend themselves.

5 MR. GE: This is Brian Ge. I completely agree
6 with that statement. It's just a matter of the Committee
7 coming together to decide how long is too long? Do we
8 want to keep it at 13 months, for when they have to have
9 documents on site?

10 Do we want to limit it to four years, which
11 would be the 48 months? Do they need to keep the
12 documents related to a sale? Do we want it somewhere in
13 between?

14 MR. DORAN: Member Doran requesting to be
15 recognized.

16 MS. COLVIN: Member Doran.

17 MR. DORAN: Well, the statute of limitations on
18 a breach of contract claim, if I recall, is four years,
19 and the requirement to keep these transaction documents by
20 the dealer is four years. So that would be my
21 recommendation.

22 I'm not making a motion yet. I'm just
23 commenting that that's how I feel about it.

24 MR. OLAH: This is Member Olah. May I speak?

25 MS. COLVIN: Member Olah?

1 MR. OLAH: Yes. A typical statute of
2 limitations for tort claims is two years and for
3 contracts, it's four years. And this sounds like more of
4 an equitable type of situation, an equitable remedy which
5 would be more likely to fall within that two-year statute
6 of limitations.

7 So I would propose, just consistent with
8 general tort laws, a two-year limitation.

9 MR. RIGBY: Michael Rigby. If I can comment?

10 MS. COLVIN: Michael -- Member Rigby?

11 MR. RIGBY: Yeah. So I guess my perspective
12 would be -- you're talking about a sale of a motor
13 vehicle. That's a contractual claim, not a tort claim.
14 And so the four-year statute of limitations makes more
15 sense. I hear you when you say, this is kind of an
16 equitable remedy in a sense.

17 It is -- you know, administrative law is
18 different from contract disputes that might be heard in
19 district court, but oftentimes, you're attempting to reach
20 a resolution with the consumer, and so you want to make
21 sure that there's an opportunity to do that within the
22 structure.

23 And so I would recommend a four-year limitation
24 period.

25 MS. COLVIN: A motion has been made by Member

1 Rigby for a four-year. Is there a second?

2 MR. DORAN: This is Member Doran. I'll second
3 the motion.

4 MS. COLVIN: A second has been made by Member
5 Doran. Members, when I call your name, please state yes
6 if you're in favor of the motion, no if you're opposed to
7 the motion. Member Doran?

8 MR. DORAN: In favor of motion.

9 MS. COLVIN: Member Gonzalez?

10 MR. GONZALEZ: I favor the motion.

11 MS. COLVIN: Member Cheryl Johnson?

12 MS. JOHNSON: I'm in favor of the motion.

13 MS. COLVIN: Member Olah?

14 MR. OLAH: Let me unmute. I'm against the
15 motion. No.

16 MS. COLVIN: Member Rash?

17 MS. RASH: Yes, in favor.

18 MS. COLVIN: Member Rigby?

19 MR. RIGBY: Yes, in favor.

20 MS. COLVIN: I, Melissa Colvin, vote yes.

21 We're at six votes in favor and one against. The motion
22 passes.

23 MR. GE: This is Brian Ge. Now that we have
24 resolution 2.3, let's move on to the various scenarios.
25 Hopefully, the scenarios that I wrote down for y'all make

1 sense and -- in terms of both how it reads and situations
2 where we may want to order a refund, starting with the --
3 subpoint A.

4 So in situations where a consumer has to
5 purchase 30-day permits because the dealer failed to
6 transfer title on time, or before the buyer's tag expired,
7 which would be 60 days, how would the Committee recommend
8 the Department be given the authority to order a refund in
9 that situation?

10 MR. DORAN: This is Member Doran. I do have a
11 comment on this, but I would like to get the answer to
12 Member Snell's question about -- I think it was about doc
13 fees being administered by the OCCC. If you don't mind
14 answering that question at this time?

15 MR. GE: This is Brian Ge. So before a retail
16 seller can charge a document -- or a documentary fee
17 greater than \$150, then that seller must provide the OCCC
18 with written notification of the maximum amount of the
19 documentary fee that the seller intends to charge.

20 But that's the extent of what I know about
21 documentary fees. If there's someone else with more
22 knowledge, I would welcome additional comment.

23 MR. RIGBY: Michael Rigby. I can comment.

24 MS. COLVIN: Member Rigby.

25 MR. RIGBY: Yeah. So the doc fee is set by

1 OCCC rule at \$150 and a dealership can charge greater than
2 the 150 if they justify that. That's an exceedingly rare
3 circumstance when a fee greater than 150 would be
4 justified.

5 There is kind of a bit of a jurisdictional
6 question, because the OCCC rules are intended for
7 transactions in which there's a retail installment
8 contract financing the purchase. And so if it's a cash
9 sale and there's a doc fee in excess of 150, that would
10 probably lie within DMV's jurisdiction.

11 MR. DORAN: This is Member Doran again with a
12 comment.

13 MS. COLVIN: Member Doran.

14 MR. DORAN: The reason I'm asking the question
15 is because I feel as though, you know, the consumer has
16 paid a doc fee, whether they've financed the vehicle or
17 not, and they have the expectation that the dealer was
18 going to accurately and timely take care of the paperwork
19 necessary to consummate that sale for them. And they
20 haven't done that in 4(a), and so just -- I know the
21 question is, should a refund be ordered in that scenario?

22 But secondary to the question of should,
23 there's probably some thought about -- well, what is an
24 appropriate amount? And it is my opinion that that is --
25 that fits within the definition of refund that we

1 discussed and passed by a motion earlier during this
2 hearing, as being a service that the customer was -- the
3 consumer was paying for, but was not rendered properly or
4 timely.

5 MR. GE: This is Brian Ge. What I originally
6 contemplated with this question is -- the tax office, they
7 charge 30, \$60 for a 30-day permit. And so if a consumer
8 has to go out and buy two permits, two 30-day permits,
9 should -- I'm not asking from which bucket of money do we
10 allocate the refund from, but rather just -- can TxDMV
11 order a dealer to refund those two -- the fees paid for
12 those two 30-day permits?

13 MR. GONZALEZ: Permission to speak? This is
14 Ruben Gonzalez.

15 MS. COLVIN: Member Gonzalez?

16 MR. GONZALEZ: Thank you. I believe that
17 the -- any fees like the 30-day permits or the -- even the
18 safety inspection fees, is so authorized, where the dealer
19 has to pay these fees, that they refund these fees either
20 directly back to the Department or directly to the
21 consumer.

22 However, I'm concerned if a decision is made
23 that the county tax office should provide a refund and
24 generate a check and forward it to the consumer, that
25 would create extra work activity that I believe the county

1 tax office cannot handle.

2 So I would be cautious and maybe make a
3 recommendation that the Department, if a refund is granted
4 and justified, that the Department handle that with either
5 themselves and not consider generating a refund check or
6 state inspection or a 30-day permit through the county tax
7 office.

8 Thank you.

9 MR. GE: This is Brian Ge. It was never
10 considered that we would ask the county tax office to
11 provide any of these refunds. As the enforcement case
12 would be against our licensee, the dealer, anything
13 ordered of that dealer would have to come from that
14 dealer.

15 So if we were to order a dealer to refund a
16 safety inspection and two 30-day permits, we wouldn't be
17 going to DPS to have them refund the \$14 or the \$7, and
18 then to the tax office to refund the \$30 or \$60. It would
19 just order the dealer to refund -- say, if it was two plus
20 the inspection, \$70, to the consumer.

21 (Pause.)

22 MS. JOHNSON: Member Johnson. Ask to be
23 recognized and to speak?

24 MS. COLVIN: Member Johnson?

25 MS. JOHNSON: I'm going to step out just a

1 little bit and make a motion that a refund be ordered in
2 the scenarios of A through G.

3 MS. COLVIN: A motion has been made by Member
4 Johnson to issue a refund for orders A through G. Is
5 there a second?

6 MR. GONZALEZ: This is Member Gonzalez. I
7 second the motion.

8 MS. COLVIN: A second has been made. I'll call
9 for the vote. Members, when I call your name, please
10 state yes in favor of the motion --

11 MR. RICHARDS: Madame Chair?

12 MS. COLVIN: Yes?

13 MR. RICHARDS: This is David Richards with the
14 DMV. I believe, and Brian can correct me, that we
15 intended to have discussion on each of these items. There
16 hasn't been a discussion on A through G. Brian, was that
17 your intent, that we have discussion by the membership,
18 rather than go to a vote at this time?

19 If I'm incorrect, let me know.

20 MR. GE: This is Brian Ge. Yes, the intent was
21 to talk through all of the --

22 MS. JOHNSON: Member Johnson. Request to
23 speak.

24 MS. COLVIN: Member Johnson?

25 MS. JOHNSON: Perhaps I'm misreading this, but

1 these are pretty clear-cut, where the purchaser has had to
2 expend funds due to failure by the dealer to act. My
3 assumption would be, based on the previous discussion,
4 that these -- the Enforcement Division has already
5 concluded that.

6 And if that's incorrect, then I would withdraw
7 the motion. But all of the fees are expenses to a
8 consumer that would be unnecessary, had the dealer
9 fulfilled their obligation.

10 (Pause.)

11 MR. GE: Hi, this is Brian Ge. I had suffered
12 a brief disconnection. I didn't hear the second part of
13 what Member Johnson said.

14 MS. JOHNSON: Member Johnson. Wish to speak.

15 MS. COLVIN: Member Johnson.

16 MS. JOHNSON: I'm not sure how much you heard.

17 So in essence, what I'm saying is that when I read Item A
18 through G, these appear to be clear-cut situations in
19 which Enforcement likely already reviewed the fact that a
20 consumer was fined because the dealer failed to act.

21 If we need to go through each one of those
22 individually, because there's -- because that is not --
23 that's mistaken, then I'll withdraw the motion.

24 Otherwise, these are pretty clear-cut situations, in which
25 it appears that the dealer failed to act.

1 MR. GE: This is Brian Ge. I think it's
2 probably best that we just at least stated if we come to a
3 quick vote for each one, that would be fine. But we
4 should at least read it out for the record.

5 MR. DORAN: Member --

6 MS. JOHNSON: Member Johnson withdraws the
7 motion.

8 MR. DORAN: This is Member Doran asking to be
9 recognized.

10 MS. COLVIN: Member Doran.

11 MR. DORAN: I understand we're now going to go
12 through each of them, which I support. I look forward to
13 our discussion on D, because I don't feel, in reading D,
14 that it is clear-cut. I think it's very open-ended in
15 terms of what types of obligations might be included in
16 this refund authority.

17 So I look forward to the discussion on D, and I
18 will reserve my comments until we get to that.

19 MR. RIGBY: Michael Rigby. I had a comment.

20 MS. COLVIN: Member Rigby?

21 MR. RIGBY: Or actually, it's a question. In
22 these -- the list of items, A through G, Brian, do any of
23 those arise out of something other than a failure to honor
24 the contract? And kind of related to that, you confused
25 me a little when you said, well, I'm not looking to a

1 particular pot of money or a line item on a contract to
2 get the refund from.

3 And if so, what's the contractual obligation
4 that they're violating? Thank you.

5 MR. GE: Hi. This is Brian Ge. We are not
6 trying to enforce a contract. We are trying to remedy
7 situations where -- okay. So I should back that up. The
8 dealer promises to do X, and the consumer agreed to it by
9 paying Y money.

10 So that is a contract. But we're not enforcing
11 the contract. We're just trying to make the buyer whole.

12 It's a little difficult to -- because the two things I'm
13 saying is obviously contradictory if you're a lawyer. But
14 without enforcing the contract, we are using our
15 enforcement powers or administrative powers to attempt to
16 right some wrong.

17 And I think that's where Corrie was coming from
18 earlier when she suggested that this only come up in
19 situations of agreed orders. Because we have -- we're
20 trying to get the dealer to agree to pay some amount of
21 money to the consumer to make them whole.

22 So we're enforcing a contract without enforcing
23 the contract, as we do not have the jurisdiction to
24 enforce the contracts. We do have the jurisdiction to
25 regulate the business activities of our licensees. Does

1 that answer your question?

2 MR. RIGBY: It does and it doesn't. My
3 confusion arises out of our initial vote to limit the
4 DMV's refund authority to amounts paid or obligated under
5 the contract. I guess that you're not enforcing the
6 contract because you're not a court of law, but you're
7 still referencing the contract and the obligations under
8 that to determine the refund and to get authority to
9 refund.

10 So can you help me understand that? If it's
11 not the contract, what do you -- like, is it extra-
12 contractual or something else?

13 MR. GE: We're not talking -- we weren't
14 talking about additional damages, if that's what you're
15 asking. Like, say, the dealer fails to transfer title on
16 time. By rule, they have a set amount of time to transfer
17 title.

18 If they don't, sure, it's part of the contract
19 that they would transfer title, but if they eventually do
20 it, they're not in breach of the contract, but they are in
21 violation of our rules. So we would usually charge a
22 penalty.

23 But if the buyer also incurred costs because of
24 that failure, the penalty that we assess the dealer isn't
25 going to make the buyer whole, but refunding -- ordering

1 the buyer -- or rather, ordering the dealer to give the
2 buyer a refund of the fees that the buyer paid for the 30-
3 day permits would make them whole.

4 So it's -- it both is and isn't in the
5 contract.

6 MR. RICHARDS: This is David Richards. May I
7 have the floor, please? DMV.

8 MS. COLVIN: Richards?

9 MR. RICHARDS: Correct me if I'm wrong, but
10 members, did we not vote on a definition that said, for
11 all amounts paid directly by the consumer to the dealer
12 and/or contracted for? So I think that's -- to Brian's
13 point, that's what we're trying to get at, not necessarily
14 looking or solely focusing upon a contract, but all costs,
15 all fees, everything paid by a consumer directly to the
16 dealer and those that are contracted for.

17 So I think that speaks to Brian's point.

18 (Pause.)

19 MR. GE: If there isn't any additional -- I'm
20 sorry. This is Brian Ge. If there isn't any additional
21 discussion on point A, would a member like to make a
22 motion?

23 MS. JOHNSON: Member Johnson requests to be
24 recognized and to speak?

25 MS. COLVIN: Member Johnson?

1 MS. JOHNSON: I make a motion that a refund be
2 ordered in the instance of Scenario A, where a consumer
3 has to purchase 30-day permits because the dealer failed
4 to transfer title before buyer tags expired.

5 MS. COLVIN: A motion has been made by Member
6 Johnson. Is there a second?

7 MR. DORAN: Member Doran. I'll second that
8 motion.

9 MS. COLVIN: A second has been made. Members,
10 when I call your name, please state yes if in favor the
11 motion and no if you're opposed to the motion. Member
12 Doran?

13 MR. DORAN: Yes. In favor of the motion.

14 MS. COLVIN: Member Gonzalez?

15 MR. GONZALEZ: Yes. In favor of the motion.

16 MS. COLVIN: Member Cheryl Johnson?

17 MS. JOHNSON: Yes. In favor of the motion.

18 MS. COLVIN: Member Olah?

19 MR. OLAH: Yes. In favor of the motion.

20 MS. COLVIN: Member Rash?

21 MS. RASH: Yes.

22 MS. COLVIN: Member Rigby?

23 MR. RIGBY: Yes.

24 MS. COLVIN: I, Melissa Colvin, vote yes.

25 Members, the vote was unanimous in favor of the motion.

1 MR. GE: All right. This is Brian Ge. The
2 next point that I would like member input on is when a
3 consumer has to make additional payments on a trade-in
4 vehicle to their lender because the dealer took in the
5 trade, but was late in making the agreed payoff or they
6 just don't do it altogether.

7 Should the DMV be authorized to order a refund
8 of those payments that the consumer had to make to their
9 original lender?

10 MR. DORAN: This is Member Doran asking to be
11 recognized.

12 MS. COLVIN: Member Doran?

13 MR. DORAN: Yes. I unequivocally believe that
14 this is an example where authority should rest to provide
15 a refund, and as I mentioned earlier in the call, there's
16 been a real black mark on the industry in Texas with
17 respect to a dealership group that was not doing this --
18 not timely paying off trades or not paying off trades.

19 And in order for us to demonstrate, for the
20 agency to demonstrate, I think, that it's complying with
21 its mission to protect the public and to promote the motor
22 vehicle industry in the state of Texas, this is an
23 important example.

24 So I hope there's a motion on this.

25 MS. JOHNSON: Member Johnson requests to speak

1 and be recognized.

2 MS. COLVIN: Member Johnson?

3 MS. JOHNSON: I would like to make a motion
4 that a refund should be ordered in the scenario where a
5 consumer has to make an additional payment on a trade-in
6 vehicle to their lender because the dealer was late in
7 making an agreed-upon payoff.

8 MS. COLVIN: A motion has been made by Member
9 Johnson. Is there a second?

10 MR. DORAN: This is Member Doran. I'll second
11 the motion.

12 MS. COLVIN: A second has made. I will call
13 for the vote. Members, when I call your name, please
14 state yes in favor of the motion, and no if you're opposed
15 to the motion. Member Doran?

16 MR. DORAN: Member Doran. I am for the motion.
17 Yes.

18 MS. COLVIN: Member Gonzalez?

19 MR. GONZALEZ: Yes, I'm in favor of the motion.

20 MS. COLVIN: Member Cheryl Johnson?

21 MS. JOHNSON: I'm in favor of the motion.

22 MS. COLVIN: Member Olah?

23 MR. OLAH: Yes, I'm in favor of the motion.

24 MS. COLVIN: Member Rash?

25 MS. RASH: Yes, I'm in favor.

1 MS. COLVIN: Member Rigby?

2 MR. RIGBY: Yes.

3 MS. COLVIN: I, Melissa Colvin, vote yes.

4 Members, the vote was unanimous in favor of the motion.

5 The motion passes.

6 MR. GE: This is Brian Ge. Thank you for that
7 prompt response. The next point is when a consumer has to
8 pay for a safety inspection that should have been
9 completed by the dealer but wasn't, and so in those
10 situations the consumer has to go and get their own
11 inspection, should the DMV be able to order a refund of
12 that inspection fee?

13 MR. GONZALEZ: Permission to speak?

14 MS. COLVIN: Member Gonzalez?

15 MR. GONZALEZ: Yes. I believe that when the
16 dealer sells a vehicle and they are required to provide
17 a -- get the vehicle inspected as part of their
18 transaction, they should be responsible to require that
19 inspection, and if they don't do so, and the consumer pays
20 for that inspection to be legal on the roadways, the
21 dealer should be held accountable.

22 So I favor this very much. Thank you.

23 MR. DORAN: This is Member Doran asking to be
24 recognized?

25 MS. COLVIN: Member Doran.

1 MR. DORAN: I was just wondering if staff could
2 comment on whether having a vehicle be inspected and
3 having it pass inspection is actually a requirement of the
4 sale? Because if it's not, for example, if you had a
5 dealer that didn't have either someone trained -- because
6 you have to go through a certain training and be certified
7 to perform an inspection.

8 And I don't think to be -- to get a dealer
9 license in the state of Texas you necessarily have to be a
10 vehicle inspector. So there may be instances where either
11 the dealer can't inspect the vehicle or maybe the dealer
12 chooses not to.

13 I would imagine that, if this is permissible,
14 so long as the dealer apprises the customer and discloses,
15 you know, Hey, your inspection is not current. I'm not
16 going to -- you know, I'm not charging you for that
17 inspection. Then I'm assuming that's still permissible to
18 sell the vehicle.

19 So I guess that's just a quick question for
20 staff. Is there any prohibition on a licensed dealer
21 selling a vehicle in Texas that both parties know is not
22 currently -- has not currently passed inspection?

23 MR. GE: This is Brian Ge. I think Corrie
24 wants to answer?

25 MS. THOMPSON: I was just going to say, just

1 very quickly, a very fact-specific scenario, but just to
2 speak to other requirements imposed on the dealer, one
3 being that the dealer issue a dealer's temporary tag upon
4 the completion of every sale, and that the buyer's tag can
5 only placed on a vehicle that has a current inspection.

6 MR. GE: This is Brian Ge. So to answer your
7 question, Member Doran, yes. A vehicle has to be
8 inspected when it's sold. The dealer doesn't have to
9 inspect the vehicle themselves. They can take it to any
10 inspection station.

11 MR. DORAN: This is Member Doran again. Just
12 to clarify: is the requirement that the dealer has to
13 inspect it, or just that the vehicle be in good standing,
14 in other words, that the inspection has not yet expired?

15 MR. GE: This is Brian Ge. The vehicle has
16 to -- I believe the vehicle has to be inspected.

17 MR. KUNTZ: I'll jump in here a little bit.
18 This is Jeremiah Kuntz, director of the Vehicle Titles and
19 Registration Division.

20 It depends on the vehicle itself and when it
21 was last inspected. It must have -- I believe there's a
22 180-day requirement that the vehicle was last inspected,
23 at least within 180 days, in order for that inspection to
24 still be in good standing.

25 So it was the latter of your statement, Member

1 Doran. The vehicle must have an inspection that is in
2 good standing.

3 MR. DORAN: Thank you. Very helpful.

4 (Pause.)

5 MR. GE: This is Brian Ge. Would any member
6 like to make a motion on this subsection?

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

9 MS. COLVIN: Member Johnson.

10 MS. JOHNSON: I move that a refund be ordered
11 in the scenario of a consumer having to pay for a safety
12 inspection that should have been completed by the dealer.

13 MS. COLVIN: A motion has been made by Member
14 Johnson. Is there a second?

15 MR. OLAH: Member Olah seconds.

16 MS. COLVIN: A second has been made. Any
17 further discussion?

18 (No response.)

19 MS. COLVIN: Hearing none, I will call for the
20 vote. Members, when I call your name, please state yes if
21 in favor of the motion, and no if you're opposed to the
22 motion. Member Doran?

23 MR. DORAN: In favor of the motion. Yes.

24 MS. COLVIN: Member Gonzalez?

25 MR. GONZALEZ: Yes, in favor of the motion.

1 MS. COLVIN: Member Cheryl Johnson?

2 MS. JOHNSON: In favor of the motion.

3 MS. COLVIN: Member Olah?

4 MR. OLAH: Yes, in favor of the motion.

5 MS. COLVIN: Member Rash?

6 MS. RASH: In favor of the motion.

7 MS. COLVIN: Member Rigby?

8 MR. RIGBY: Yes, in favor of the motion.

9 MS. COLVIN: I, Melissa Colvin, vote yes.

10 Members, the vote was unanimous in favor of the motion.

11 The motion passes.

12 MR. GE: This is Brian Ge. Moving on to the
13 next point, which I believe some members wanted additional
14 discussion on. Should the TxDMV have the authority to
15 order a refund in situations where customers have out-of-
16 pocket expenses because the dealer failed to honor the
17 written legal portion of the contract?

18 Member Snell, he had a question which was:
19 what about verbal promises? As the original question only
20 contemplated the written portion, I would say that verbal
21 promises were not considered but it's up to discussion
22 between the Committee.

23 MR. DORAN: This is Member Doran, asking to be
24 recognized to ask a question.

25 MS. COLVIN: Member Doran.

1 MR. DORAN: As part of the recordkeeping
2 requirements for a dealer, are they required to keep any
3 we-owe sheets within the deal jacket that they have to
4 maintain for 48 months?

5 MS. THOMPSON: This is Corrie Thompson. The
6 dealers are required to maintain any documents that relate
7 to the sales transaction in the deal jacket. There's a
8 provision in rule that says any other documents in
9 addition to the ones that are specifically enumerated.

10 MR. DORAN: Okay. Thank you. This is Member
11 Doran again asking to be recognized with a comment.

12 MS. COLVIN: Member Doran?

13 MR. DORAN: So I -- reading 4-D, I understand
14 the we-owe portion and the things that are contractually
15 set out in the we-owe contract, where a dealer has said,
16 we're going to give you an extra key. We're going to --
17 maybe we're going to tint your windows or we're going
18 to etch your vehicle identification number in the glass.

19 Those are the things that I'm used to seeing in
20 a we-owe portion of a contract. There was a question that
21 was posed at the beginning of our meeting that Mr. Ge read
22 from Member Snell that related to the -- it was a question
23 about warranties and it referenced a manufacturer.

24 And so I was wondering, as we put these
25 together, 4-D(Roman numeral I), and then Example 2, if

1 there was some context that staff had for that example?
2 Because that is a warranty -- it appears from here that
3 it's being provided by the dealer, and it could be --
4 there's different types of warranties.

5 So we're kind of getting into an area where you
6 can have different remedies under the law, and a dealer
7 can't sell a manufacturer warranty. They can sell an
8 extended service contract. But I'm just -- I'm wondering
9 if you guys could maybe shed a little bit more light on
10 4-D-2, Example 2.

11 MR. GE: This is Brian Ge. I believe that
12 example came from a question that was posed to me of, if a
13 consumer purchased -- or like, dealer offers a warranty on
14 something, that's specific to that dealer, like, say, you
15 have -- say, the manufacturer warranty is four years,
16 60,000 miles, but that dealer is offering a warranty of
17 10 years and 100,000 miles, and say, at year five -- and
18 this is without requiring the purchase of any service
19 contracts.

20 And so say, at year five, when the manufacturer
21 warranty has run out and there's no service contract and
22 the engine gives out and the consumer incurs a \$3,000
23 fee -- or a \$3,000 cost to replace the engine that should
24 have been covered in that 10-year, 100,000-mile warranty,
25 should the DMV be able to order a refund in that

1 situation?

2 MR. DORAN: Okay. Thank you. That's helpful.

3 (Pause.)

4 MR. GONZALEZ: Member Gonzales. Permission to
5 speak?

6 MS. COLVIN: Member Gonzalez?

7 MR. GONZALEZ: In regards to this type of
8 transaction in Item D, I believe that the new car dealers
9 are covered by their warranty. And when it's addressing a
10 used car dealer, when someone is basically buying it, as
11 is, and unless the dealer has identified it in the
12 contract that they're going to promise to do something for
13 the consumer, then at that point, they should be obligated
14 to make that promise whole, and if the consumer has had to
15 pay extra, I'm not sure -- I'm not quite clear who would
16 be determining that factor, whether it would be the DMV or
17 who would make that decision if they didn't comply?

18 So I would like that point of clarification.
19 As I understand it, the car dealer -- the consumer is
20 buying it as-is, and unless it's on the contract, there's
21 nothing to argue about or complain about. So could I have
22 some clarification on that, please?

23 Thank you.

24 MS. THOMPSON: This is Corrie Thompson with a
25 comment. We could be -- as Member Gonzales stated, we

1 could be referencing something in a used vehicle that
2 pertains to the buyer's guide, whereas the customer is
3 either buying it as-is, or there are specific items that
4 are warrantied that would be spelled out on that document
5 that would be reviewed by the Department, and in those
6 particular scenarios, I would envision the consumer would
7 be complaining that something specified on that document,
8 that the dealer would agree to complete, had not occurred.

9 MR. GONZALEZ: Permission to speak? This is
10 Ruben.

11 MS. COLVIN: Member Gonzalez?

12 MR. GONZALEZ: Yes. I'm glad Ms. Thompson
13 clarified that, but again, I think if it's written on the
14 contract and the used car dealer has promised to make it
15 whole and then failed to do so, and the consumer has
16 evidence to show that they did work or expend money to fix
17 that item, I would vote in favor that the consumer be
18 reimbursed.

19 Thank you.

20 MR. GE: This is Brian Ge. Just to add on to
21 that, again, based on the vote for -- in Item No. 1 of how
22 should a refund be defined, the out-of-pocket expenses in
23 D here, it would be capped at the monies that the consumer
24 paid to the dealer.

25 So if a consumer paid \$1,500 for a car, but

1 then -- and the dealers agree to warranty, let's say, the
2 engine again, and the engine gives out, and it costs
3 \$3,000 to fix, DMV, we are not -- we're not contemplating
4 ordering the dealer to completely make the consumer whole,
5 just the amount that was paid to the dealer.

6 So if the consumer paid 1,500 and the engine
7 gives up for 3,000, they're going to get 1,500 back.

8 MR. DORAN: This is Member Doran. I just
9 wanted to make a comment.

10 MS. COLVIN: Member Doran?

11 MR. DORAN: Thank you. Brian, I really
12 appreciate that clarification. I think that's very, very
13 helpful, because I know we're talking about looking at
14 this in the context of some type of engine failure or
15 mechanical issue.

16 But one of the areas that in the past you've
17 seen, I think, on the we-owe, might be a limited warranty
18 that is -- a product with a limited warranty on it that is
19 included in the car sale such as, like, a LoJack theft
20 device, and based on what you just said -- you know, prior
21 to what you said, I -- somebody could have argued that a
22 consumer has the out-of-pocket cost associated with the
23 theft of that vehicle.

24 And I think what you're saying is, no, the --
25 there's going to be a cap -- or maybe this is what the

1 question is. Is the cap on the transaction price of the
2 product that was on the we-owe for which the customer
3 believes they paid for, but the dealer is not honoring the
4 warranty, or is it capped at the overall contract price
5 for the vehicle?

6 I think it's the former, but maybe you can
7 verify that.

8 MR. GE: This is Brian Ge. I would say the cap
9 for refunds in general, overall, is the cost of the
10 purchase price, essentially. All the monies that were
11 paid, so that could be the purchase price plus any fees.

12 So in your situation, say, the dealer
13 promises -- or owes a LoJack, and they install a LoJack,
14 but they install a bad LoJack, I mean, so long as they
15 didn't install what they knew to be a bad LoJack and the
16 car gets stolen and they can't recover the car. I mean,
17 that's not really a situation that you would expect a
18 dealer to be able to address.

19 Now, on the other hand, if they knew they were
20 installing what the customer thought was a LoJack but was
21 actually a brick, then I think that opens up more
22 possibilities. Does that answer your question?

23 MS. COLVIN: Member Doran, did that answer your
24 question?

25 (No response.)

1 MS. COLVIN: Is there any further discussion?

2 (No response.)

3 MS. COLVIN: Would any member like to make a
4 motion?

5 MS. JOHNSON: Cheryl Johnson, Galveston County.
6 Request to speak and be recognized.

7 MS. COLVIN: Cheryl Johnson?

8 MS. JOHNSON: I would move that the -- a refund
9 be ordered in the scenario of a consumer having to pay
10 for -- or I'm sorry -- a consumer having an out-of-pocket
11 expense because a dealer failed to honor a written we-owe
12 portion of the contract.

13 MS. COLVIN: The member -- a motion has been
14 made by Member Johnson. Is there a second?

15 MR. GONZALEZ: I second the motion. This is
16 Gonzalez speaking.

17 MS. COLVIN: A second has been made. Any
18 further discussion?

19 (No response.)

20 MS. COLVIN: Hearing none, I will call for the
21 vote. Members, when I call your name, please state yes if
22 you're in favor of the motion, and no if you're opposed to
23 the motion. Member Doran?

24 MR. DORAN: Yes, I'm in favor of the motion.

25 MS. COLVIN: Member Gonzalez?

1 MR. GONZALEZ: Yes, I'm in favor of the motion.

2 MS. COLVIN: Member Cheryl Johnson?

3 MS. JOHNSON: I'm in favor of the motion.

4 MS. COLVIN: Member Olah?

5 MR. OLAH: Yes, I support the motion.

6 MS. COLVIN: Member Rash?

7 MS. RASH: In favor of the motion.

8 MS. COLVIN: Member Rigby?

9 MR. RIGBY: Yes.

10 MS. COLVIN: I, Melissa Colvin, vote yes.

11 Members, the vote was unanimous in favor of the motion.

12 The motion passes.

13 MR. GE: This is Brian Ge. The next point for
14 consideration is whether TxDMV should be allowed to order
15 a refund where a consumer has to obtain a bonded title
16 because the dealer failed to provide title or obtain a
17 bonded title for the consumer.

18 So this will come up in a situation where the
19 dealer sells a car that they don't have title to. They
20 think they're getting it, but they don't get it. They
21 sell the car anyway, and now, they don't have the title.

22 They don't want to pay for a bonded title for
23 the consumer, and so the only way the consumer can get a
24 title to the car is if they put up a bond, and then they
25 get a title that way.

1 So should the consumer be refunded from the
2 purchase price of the vehicle plus all associated fees,
3 the cost to obtain that bond for that title?

4 (Pause.)

5 MS. COLVIN: Is there any further discussion?

6 MS. JOHNSON: -- requesting to be recognized
7 and to speak.

8 MS. COLVIN: Member Johnson?

9 MS. JOHNSON: Mr. Ge, I am assuming that a
10 title hearing could not resolve this issue, that that is
11 basically a no cost, except for certified mail, to a
12 purchaser?

13 MR. GE: This is Brian Ge. That's up for
14 discussion. I mean, if the members of this Committee want
15 to be able to provide a refund for the certified mail fee
16 to have that hearing, that could -- that's perfectly fine
17 as well.

18 MS. JOHNSON: So my question, I guess, would be
19 to the Second Vice President or President, whether
20 everybody fully understands that there's different options
21 available to a purchaser if they cannot get title. You
22 can request a title hearing or a bonded title.

23 A title hearing is where it would come before
24 me as tax assessor-collector to make the determination
25 that title should have been passed. And although there is

1 correspondence that has to be exchanged or certified mail
2 that has to be refused or not delivered, this is
3 essentially a no-cost method of trying to transfer that
4 title, and then a bonded title is, like, your last resort.

5 MR. GONZALEZ: This is Gonzalez. Permission to
6 speak?

7 MS. COLVIN: Member Gonzalez.

8 MR. GONZALEZ: Yes. I echo Member Johnson's
9 comments. Also, there's another point to consider.
10 Why -- one of the reasons that a dealer goes into becoming
11 a dealer -- I mean, one of the conditions is for them to
12 provide a bond, \$25,000 bond.

13 And the main purpose of that bond was to
14 guarantee title to the consumer. Is that not being
15 enforced, or is that not being seeked, or is that being
16 left up to the consumer to take the dealer to court? In
17 either case, a bonded title has been a quick solution, but
18 the tax collector's hearing has also been a recommended
19 solution for the consumer because there's basically a time
20 element of 11 days to wait before they can get their title
21 processed, and that's the cheapest option to the consumer.

22 But I wholly agree that if the consumer asks to
23 pay for any vehicle title transaction, they should get a
24 refund for that, but keep in mind that the title hearing
25 process is a -- should be a recommended option for them

1 and should be offered to them.

2 Thank you.

3 MR. GE: This is Brian Ge. Based on the two
4 previous comments, I think perhaps the wording of this
5 section be modified to read: "A consumer has" -- or "a
6 consumer has out-of-pocket expenses to obtain title,
7 including a bonded title, because the dealer failed to
8 provide title or obtain a bonded title for the consumer."

9 And that would cover situations where the
10 consumer only has to incur some fees for certified mail
11 versus however many hundreds or thousands of dollars it
12 would be to get a bonded title.

13 MS. JOHNSON: Member Johnson requests to be
14 recognized to speak.

15 MS. COLVIN: Member Johnson?

16 MS. JOHNSON: I will do the best I can here. I
17 would move that a refund be ordered in a scenario where a
18 consumer has incurred out-of-pocket expenses because a
19 dealer failed to provide title or obtain a bonded title
20 for the consumer.

21 MS. COLVIN: A motion has been made by Member
22 Johnson. Is there a second?

23 MR. OLAH: Member Olah seconds.

24 MS. COLVIN: A second has been made. Any
25 further discussion?

1 (No response.)

2 MS. COLVIN: Hearing none, I will call for the
3 vote. Members, when I call your name, please state yes if
4 you're in favor of the motion, and no if you're opposed to
5 the motion. Member Doran?

6 MR. DORAN: Yes, in favor of the motion.

7 MS. COLVIN: Member Gonzalez?

8 MR. GONZALEZ: Yes, in favor of the motion.

9 MS. COLVIN: Member Cheryl Johnson?

10 MS. JOHNSON: Yes, in favor of the motion.

11 MS. COLVIN: Member Olah?

12 MR. OLAH: Yes, in favor of the motion.

13 MS. COLVIN: Member Rash?

14 MS. RASH: Yes, in favor of the motion.

15 MS. COLVIN: Member Rigby?

16 MR. RIGBY: Yes.

17 MS. COLVIN: I, Melissa Colvin, vote yes.

18 Members, the vote was unanimous in favor of the motion.

19 The motion has passed.

20 MR. GE: This is Brian Ge. The next question
21 to consider is, should a consumer be -- or should the DMV
22 be authorized to order a refund where a consumer is
23 overcharged for tax, title and license fees, documentary
24 fees or other fictitious fees?

25 In response to this question, Member Snell had

1 the comments of -- he believes the documentary fee falls
2 under the OCCC, which Member Rigby confirmed earlier, and
3 also that the term "fictitious fees" needs better
4 definition. This is Brian Ge again.

5 So for this question, we were contemplating
6 situations where a dealer just makes up an official-
7 sounding fee, like a home-delivery fee. And I think
8 that's valid in the current situation that we're in, where
9 a lot of dealers are doing online sales.

10 But say, they represent to the consumer that,
11 yes, we have to charge a \$300 home-delivery fee to deliver
12 the vehicle to your home because you didn't come pick it
13 up at the dealership. That's not a fee that any
14 government entity requires of them, and so that would
15 be -- that would count as a fictitious fee.

16 If the consumer believes that this was a fee
17 that the government mandated and they paid it, and they
18 later find out that it's not, and they want a refund for
19 that fee, should DMV be able to order a refund of that
20 fee, or rather, those kinds of fees?

21 MR. RIGBY: Michael Rigby. I'd like to
22 comment.

23 MS. COLVIN: Member Rigby?

24 MR. RIGBY: Yeah. Just to clarify on the
25 adopting of the documentary fee. The OCCC does set the

1 limit in that. There's some federal law under Truth in
2 Lending that requires a dealer to charge that same amount
3 to both cash buyers and credit buyers.

4 And so you could have a cash sale in which a
5 doc fee is imposed and collected. It would have to be the
6 same as that charged to a credit buyer. There's kind of a
7 complex jurisdictional question about this, but I think if
8 there were a cash sale or even a credit sale where the
9 amount of doc fee was excessive, I think DMV could order a
10 refund.

11 If the OCCC also ordered a refund for an
12 excessive doc fee, the dealer would not pay that twice.
13 It would only pay a refund of the excessive amount once.

14 MS. JOHNSON: Member Johnson requesting to be
15 recognized and speak?

16 MS. COLVIN: Member Johnson?

17 MS. JOHNSON: Based on the previous discussion,
18 I would move that the refund be ordered in a scenario of a
19 consumer being overcharged for Texas title and license,
20 documentary fees or other fictitious fees.

21 MS. COLVIN: A motion has been made by Member
22 Johnson. Is there a second?

23 MR. DORAN: Member Doran. I'll second.

24 MS. COLVIN: A second has been made. Any
25 further discussion?

1 (No response.)

2 MS. COLVIN: Hearing none, I will call for the
3 vote. Members, when I call your name, please state yes if
4 in favor of the motion, and no if you're opposed to the
5 motion. Member Doran?

6 MR. DORAN: Yes, in favor of the motion.

7 MS. COLVIN: Member Gonzalez?

8 MR. GONZALEZ: Yes, in favor of the motion.

9 MS. COLVIN: Member Cheryl Johnson?

10 MS. JOHNSON: Yes, in favor of the motion.

11 MS. COLVIN: Member Olah?

12 MR. OLAH: Yes, in favor of the motion.

13 MS. COLVIN: Member Rash?

14 MS. RASH: Yes.

15 MS. COLVIN: Member Rigby?

16 MR. RIGBY: Yes.

17 MS. COLVIN: I, Melissa Colvin, vote yes.

18 Members, the vote was unanimous in favor of the motion.

19 The motion passes.

20 MR. GE: This is Brian Ge. The next question
21 to consider is the situation of a consumer purchasing a
22 third-party sales contract or extended warranty that's
23 offered by the dealer, and the dealer either doesn't
24 submit the paperwork for that warranty fee to the
25 service -- to the company that administers the service

1 contract or they don't pay it.

2 So the consumer pays for it but the dealer,
3 they just pocket the money. They don't pay for the
4 warranty. And then the consumer ends up needing repairs
5 that would have been covered by that warranty, and they
6 discover that they don't have a warranty.

7 Should the DMV be able to order a refund in
8 that situation? Member Snell, he had two comments
9 relating to this question, the first being: if the
10 consumer buys a warranty and the dealer pays for the
11 warranty, but there's a dispute over coverage with the
12 warranty administrator, who would handle that complaint?

13 The second question being: that manufacturers
14 are also licensees in addition to dealers, and if there's
15 a warranty dispute between the manufacturer and the
16 dealer, who would handle that? To answer the first of
17 Member Snell's question of, if a consumer buys a warranty
18 and the dealer pays for it, but the warranty -- but
19 there's a dispute over warranty coverage, who would handle
20 that complaint, I would say that is outside the purview of
21 the DMV, and that is -- that's a contract issue that the
22 consumer would have to take up with the warranty company.

23 For the second question of warranty disputes
24 between manufacturers and dealers, the refund authority
25 that DMV has is limited to the person who buys or sells a

1 motor -- or rather, is limited to the person being the
2 dealer to pay a refund to the buyer or lessee of a motor
3 vehicle.

4 And so the situation of manufacturer-dealer
5 disputes over warranty coverage, that would also be
6 outside the purview of this refund authority. I invite
7 any discussion on the topic.

8 MS. JOHNSON: Member Johnson, request to be
9 recognized and speak.

10 MS. COLVIN: Member Johnson?

11 MS. JOHNSON: I guess the only outstanding
12 question I have would be, who resolves the cost of
13 repairs? Is that something for the courts to decide?
14 Because you still -- in addition to the outstanding
15 question of the warranty which I'm prepared to make a
16 motion on that portion, there's still the question of the
17 consumer incurring the cost of those repairs.

18 If you can at least address that for me?

19 MR. GE: This is Brian Ge. I would say that in
20 the situation where the consumer purchases a warranty and
21 the dealer doesn't submit the paperwork for the warranty
22 or they don't pay for the warranty, then the dealer should
23 cover the costs incurred by the consumer up to the monies
24 that the consumer paid to that dealer.

25 Now, if the dealer did everything they were

1 supposed to in submitting the paperwork for the warranty
2 and paying for the warranty and there's a dispute between
3 the consumer and the warranty company about warranty
4 coverage, we don't license the warranty company, and that
5 would be a contract dispute to be played out in the
6 courts.

7 MS. JOHNSON: So request for a follow-up
8 question, please. Cheryl Johnson.

9 MS. COLVIN: Member Johnson?

10 MS. JOHNSON: So strictly reading this as it's
11 written, the -- that the money or the paperwork has not
12 been submitted, that's clear. Is it fair for us to add
13 the cost of repairs as covered by the warranty, had that
14 been done, an appropriate addition to this?

15 MR. GE: This is Brian Ge. Yes, I think that
16 makes sense.

17 MS. JOHNSON: Then I would like to make a
18 motion, please.

19 MS. COLVIN: A motion has been made by Member
20 Johnson. Is there a second?

21 MR. DORAN: This is Member Doran. I'll second.

22 MS. COLVIN: A second has been made. Any
23 further discussion?

24 MR. OLAH: This is Member Olah. May I speak?

25 MS. COLVIN: Member Olah?

1 MR. OLAH: I would just like a clarification of
2 exactly what the motion is.

3 MS. COLVIN: Member Johnson?

4 MS. JOHNSON: That a consumer purchasing a --
5 that the DMV have the authority to order a refund when a
6 consumer purchases a third-party extended warranty offered
7 by the dealer, and the dealer fails to submit the
8 paperwork or funds, the consumer needs repairs that need
9 to be made, and that additionally, the cost of the
10 repairs, as they would have been covered by the warranty,
11 are also refunded.

12 MR. OLAH: Thank you.

13 MS. COLVIN: I'm going to restate that. A
14 motion has made by Member Johnson. Is there a second?

15 MR. OLAH: Member Olah seconds.

16 MS. COLVIN: A second has been made. Any
17 further discussion?

18 (No response.)

19 MS. COLVIN: Hearing none, I will call for the
20 vote. Members, when I call your name, please state yes if
21 in favor of the motion, and no if you're opposed to the
22 motion. Member Doran?

23 MR. DORAN: Yes, in favor of the motion.

24 MS. COLVIN: Member Gonzalez?

25 MR. GONZALEZ: Yes, in favor of the motion.

1 MS. COLVIN: Member Cheryl Johnson?

2 MS. JOHNSON: Yes, in favor of the motion.

3 MS. COLVIN: Member Olah?

4 MR. OLAH: Yes, in favor of the motion.

5 MS. COLVIN: Member Rash?

6 (No audible response.)

7 MS. COLVIN: Member Rash?

8 (No audible response.)

9 MS. COLVIN: Member Rigby?

10 MR. RIGBY: Yes.

11 MS. COLVIN: I, Melissa Colvin, vote yes.

12 Members, the vote was unanimous in favor of the motion.

13 The motion passes.

14 MR. GE: This is Brian Ge. The next question
15 to consider is -- as relates to household good movers, so
16 we're not talking about car dealers anymore. So a little
17 background on this. A household good mover, they need to
18 file a tariff with the Department, which essentially lists
19 out all things that they charge for in a move.

20 And in a situation where a consumer is charged
21 for costs that are not listed on their tariff, after the
22 household goods mover takes possession of the consumer's
23 property and the movers refuse to unload the goods until
24 those charges are paid, can the DMV authorize a refund?

25 We have one of our assistant motor carrier

1 investigative chiefs on the line, Luis Perez. He can give
2 a little bit more background on that, so you have a
3 more -- so you can have more informed discussion.

4 Luis?

5 MR. PEREZ: Yes. Good morning. This is Luis
6 Perez with the Texas Department of Motor Vehicles. I am
7 one of the assistant chief investigators for the Motor
8 Carrier Section. And in regards to household good
9 carriers -- we'll just call them movers in this
10 discussion -- they are required to file a tariff with the
11 Department under statute and rule, and that tariff
12 basically, like Brian said, lists all their rates and
13 charges that they are going to impose on a consumer for
14 the move.

15 Those rates and charges must be agreed upon
16 prior to the items being loaded on the vehicle, but there
17 are some instances where, you know, amendments are made to
18 that initial contract, when the customer decides that they
19 want to go pick something up at the storage lot or drop
20 something off at another location, prior to the load
21 getting to the final destination.

22 A lot of that, too, is agreed upon on the
23 contract and agreed to by both parties, but there are
24 occasions when a household good carrier, mover, will tack
25 on fees just because of, let's say, an inconvenience;

1 let's say, a waiting charge for -- they have to go up to
2 the third floor or something like that.

3 If these charges are not listed on your tariff,
4 technically, they should not be allowed to charge these to
5 the consumer. Is there any questions that I can answer
6 for you guys?

7 MS. JOHNSON: Member Johnson. Ask to be
8 recognized and to speak?

9 MS. COLVIN: Member Johnson?

10 MS. JOHNSON: So how do the people get their
11 goods?

12 MR. PEREZ: This is Luis Perez. There are
13 instances where movers will try to extort consumers for
14 additional funds. Now, with a licensed moving company,
15 you typically don't get this scenario, but we do have
16 instances where moving companies are operating unlicensed
17 or unregistered with the Department, which they're
18 required to have, and they will try to extort additional
19 funds from consumers.

20 Now, in some cases, law enforcement is called
21 out there, and sometimes we're able to negotiate the
22 release of the shipment. But in this case for the refund,
23 what we're talking about is additional fees that they're
24 trying to tack onto the contract without it being listed
25 on their rate list, on their tariffs.

1 MS. JOHNSON: So if they're not licensed
2 movers, how would DMV have any authority over them?

3 MR. PEREZ: And that may be something to
4 consider also, if they're unlicensed, would we require
5 them to refund that entire move cost.

6 MS. JOHNSON: I guess I have a question of Mr.
7 Ge, whether that's something the DMV would have the
8 authority to do, so we could make that part of the motion?

9 (No response.)

10 MS. JOHNSON: Are we still connected? Member
11 Johnson asking a question.

12 MR. GE: Oh, I'm sorry. This is Brian Ge. I
13 was on mute the entire time I was talking.

14 So I was saying, in situations where we have
15 unlicensed movers, there really isn't any way we can force
16 an order against them. Really, the bite to our bark is
17 the ability to revoke your operating authority, and if
18 you're operating outside of the law already and you have
19 no intention of coming into compliance -- so for
20 situations where -- we're not talking about movers who
21 just didn't know they needed to register.

22 We're talking about movers who knew they had to
23 register to move people's household goods, and they just
24 said, no, I'm not going to do that. I'm going to move
25 people's stuff, and if I get in trouble for it, I get in

1 trouble for it, and then I'll just change my name and go
2 about the same business.

3 We're not talking about these people. We're
4 talking about people who either are licensed or want to
5 come into compliance with the law. So for those people,
6 if they're not licensed and we issue an order against them
7 when they go to register, they'll have to pay those fees
8 or penalties: in this situation, a refund, if we order a
9 refund.

10 For licensed movers, if they don't pay it, much
11 like with the car dealers, if it comes to it, we would be
12 able to revoke their operating authority. Does that
13 answer your question?

14 MS. JOHNSON: Yes, sir, it does. Thank you.

15 MS. COLVIN: Member Colvin. I have a question.

16 Wouldn't we be able to turn them into the FMCSA, and
17 since you're going to revoke their operating authority,
18 would you pursue a case with them?

19 MR. PEREZ: This is Luis Perez with the
20 Enforcement Division. We have jurisdiction at the Texas
21 DMV for intrastate household good carriers only. FMCSA
22 would only handle interstate motor carriers, moving
23 companies that cross state lines.

24 Now, they have given us authority to
25 investigate and conduct enforcement actions against those

1 if we receive a complaint, but again, it's going to be on
2 a registered motor carrier.

3 MS. COLVIN: But if that company is operating
4 within the state, wouldn't the state officials for the
5 Texas DMV be able to seek enforcement?

6 MR. PEREZ: This is Luis Perez. On a
7 registered carrier, yes.

8 MS. COLVIN: Thank you.

9 MR. GE: This is Brian Ge. On an unregistered
10 carrier, we could refer to law enforcement, but in terms
11 of what we can do, it would be very limited, and again,
12 that's for unlicensed carriers.

13 MR. GONZALEZ: This is Ruben Gonzalez.
14 Permission to speak?

15 MS. COLVIN: Member Gonzalez.

16 MR. GONZALEZ: Yes. In regards to the tariff
17 document, is there a uniform tariff document that's signed
18 by the customer, the consumer, when they contract with a
19 mover so that they are aware of these circumstances or
20 exceptions of when they can load or unload, or if they ask
21 for special favors, special requests to make extra stops?

22 Is the tariff document a form so that the
23 consumer knows what they're getting into? Thank you.

24 MR. PEREZ: This is Luis Perez with
25 Enforcement. Good morning, Ruben. There is a standard

1 format that we provide to all the movers that apply for
2 and receive their Texas DMV certificate to -- authority to
3 operate.

4 When they apply for their Texas DMV number, we
5 provide them an example of a standard tariff form. It
6 does not have to be that format. It's -- there's no
7 requirements that it has to follow that form, except for
8 the fact that it does have to list anything and everything
9 that the mover plans to be able to assess to a customer.

10 For example, they're going to charge for boxes,
11 for walking over a certain percentage or going up three
12 flights of stairs. Whatever the mover plans to charge for
13 has to be on that list. So once we provide them a copy of
14 that format, they are required to submit it, and in this
15 case, prior to them getting their certificates.

16 So they need to submit a listing of their
17 charges. That tariff is made available to the public on
18 our website under the Truckstop Database. Once you call
19 the motor carrier, you can see that they have a tariff on
20 file.

21 If they don't or if we get reported that one
22 has expired or has been removed, we can initiate an
23 investigation on that carrier. But it is available for
24 public viewing. It is on our website. If they don't see
25 it there -- for example, a mover can also submit their

1 interstate tariff in order to comply with this
2 requirement.

3 Sometimes those PDF files are too large to put
4 on our website based on our security rules, and we'll have
5 a copy available, made to the public, but the mover is
6 also required under rule to provide a copy to the consumer
7 if they ask for it.

8 So it is supposed to be made publicly
9 available.

10 MR. RIGBY: Michael Rigby. I have a question.

11 MS. COLVIN: Member Rigby.

12 MR. RIGBY: Yeah. Brian, can you help me
13 understand? When you said earlier that if there's a
14 person that's unregistered that's engaged in this
15 activity, that you wouldn't normally order refunds. Is
16 that because you don't have authority to do that?

17 Or just as a practical matter, they're unlikely
18 to comply with your refund order, given that they failed
19 to comply with the registration requirement? Thank you.

20 MR. GE: This is Brian Ge. We've never had the
21 authority to order refunds before this, and until this
22 Committee presents its recommendation to the Board, we
23 again don't have the authority to order refunds. So until
24 that's built into our rules, it's just not something we
25 would have done in the past.

1 But in terms of orders against unlicensed
2 carriers, there is only so much we can do. Like, it's all
3 bark, no bite. We can refer you to law enforcement, but
4 that's incumbent on law enforcement to take the referral.

5 MR. RIGBY: Could I have a follow-up question,
6 please?

7 MS. COLVIN: Member Rigby?

8 MR. RIGBY: Yes. So the top part of this
9 particular agenda item quotes the new statute, which seems
10 to have broad authority that, if a person is violating the
11 chapter, the statute or the rules that we're about to
12 recommend, then you could order a refund.

13 So I just want to make sure. Are you saying
14 that just as a practical matter historically you haven't
15 been able to force these unregistered folks to pay
16 refunds, or that it's somehow prohibited or don't have the
17 authority to do it in the future?

18 Thank you.

19 MR. GE: This is Brian Ge. We can certainly
20 order unlicensed entities to do any number of things, but
21 whether -- in terms of enforcing that order, we have
22 little to no recourse.

23 MS. THOMPSON: This is Corrie Thompson. What
24 Brian is trying to say is, an unlicensed entity, be it on
25 the motor carrier side or on the motor vehicle dealer

1 side, has little incentive to comply. These are usually
2 bad actors who have no aspiration of ever being registered
3 or paying operating authority or being licensed by the
4 Department, and so you're essentially -- you know, if
5 you -- you're judgment-proof, basically.

6 We might be able to get something out of you,
7 but you're never going to be coming to us to try to get
8 into our system. So we can have an order that's in place,
9 but we don't really have any additional reach with that.
10 I think that's why the statute contemplates the fact that
11 not registering properly under the Chapter 643 provisions
12 is also a criminal offense.

13 And as to issuance of refunds in the past,
14 Brian did correctly state that this is new authority that
15 was granted last legislative session, so we would not have
16 been authorizing refunds or ordering refunds either in the
17 past because we did not have that sanction authority, just
18 like we did not with motor vehicle dealers.

19 MS. JOHNSON: Member Johnson requests to be
20 recognized.

21 MS. COLVIN: Member Johnson?

22 MS. JOHNSON: I'm going to take a shot at this,
23 and it's somewhat of a two-step motion that I'm hoping is
24 going to be acceptable, and I think it would concur with
25 the conversation I'm hearing, that a refund be ordered in

1 a scenario concerning charge for costs listed under tariff
2 after the household goods mover takes possession of the
3 consumer's property, and a mover refused to unload until
4 those charges were paid, and that further, we encourage
5 referral by the Board of unregistered carriers to law
6 enforcement authorities.

7 MS. COLVIN: A motion has been made by Member
8 Johnson. Is there a second?

9 MR. OLAH: Member Olah seconds.

10 MS. COLVIN: A second has been made. Any
11 further discussion?

12 (No response.)

13 MS. COLVIN: Hearing none, I will call for the
14 vote. Members, when I call your name, please state yes if
15 in favor the motion and no if you're opposed to the
16 motion. Member Doran?

17 MR. DORAN: Yes. In favor of the motion.

18 MS. COLVIN: Member Gonzalez?

19 MR. GONZALEZ: Yes. In favor of the motion.

20 MS. COLVIN: Member Cheryl Johnson?

21 MS. JOHNSON: Yes. In favor of the motion.

22 MS. COLVIN: Member Olah?

23 MR. OLAH: Yes. In favor of the motion.

24 MS. COLVIN: Member Rash?

25 MS. RASH: (No audible response.)

1 MS. COLVIN: Member Rigby?

2 MR. RIGBY: Yes.

3 MS. COLVIN: I, Melissa Colvin, vote yes.

4 Members, the vote was unanimous in favor of the motion.

5 The motion passes.

6 MR. GE: This is Brian Ge. I don't know if
7 David Richards has anything to add, but I believe this
8 concludes the house -- the refund portion of today's
9 agenda. And Mr. Richards might have additional guidance
10 on how to present these passed motions to the Board at the
11 next meeting.

12 Thank you.

13 MR. RICHARDS: Madame Chair, may I speak?

14 MS. COLVIN: Yes, sir.

15 MR. RICHARDS: Members, this is David Richards,
16 the Office of General Counsel. We will package these as
17 we will with the other issue items or subject matter areas
18 for you, for presentation. As for Mr. Ge's presentation,
19 I have nothing further to add.

20 I want to commend each of you on a really good,
21 spirited discussion, and thank Mr. Ge, as well, on a great
22 presentation of the issues before us. I would have
23 nothing else to add on this particular agenda item.

24 MS. COLVIN: Members, we're now going to move
25 forward to Agenda Item 2(c). Agenda Item 2(c), "Temporary

1 Tags (Legislative Recommendation)," TxDMV VTR Division.
2 Members, I will now turn the meeting over to OGC's
3 associate general counsel David Richards and Mr. Jeremiah
4 Kuntz, director of VTR Division.

5 MR. RICHARDS: Members, thank you. I thank
6 you, Madame Chair. What I would like to do before we get
7 into discussion is, we don't have a list of -- similar to
8 what Brian Ge prepared and submitted to you to go down. I
9 will say, in reading or reviewing the meeting transcript
10 from April 23, we had a lot of comments made by various
11 members.

12 I'm just going to go over those just briefly to
13 remind those members and the members as a whole what was
14 discussed, and invite you to continue that discussion,
15 which we would hope will lead to the formulation of
16 motions, recommendations that make their way to motions
17 and votes.

18 So some of those items that were discussed
19 last -- at the last meeting on April 23, also by Mr.
20 Kuntz, who I welcome to chime in as well -- entry and
21 validation of a driver's license number or identification
22 card number into the eTAG system before the issuance of an
23 eTAG, that was an item that was discussed which y'all may
24 want to entertain a motion on.

25 MR. KUNTZ: Hey, David?

1 MR. RICHARDS: Yeah?

2 MR. KUNTZ: So if I can jump in here just real
3 quick? So a --

4 MR. RICHARDS: Certainly.

5 MR. KUNTZ: -- point of clarification. I
6 believe, if I'm looking at the agenda correctly, this
7 agenda item is titled, when a motor vehicle dealer goes
8 out of business.

9 Is that correct?

10 MR. RICHARDS: No, no. It's temp tags.

11 MR. KUNTZ: I must be looking at the wrong
12 sheet. Sorry.

13 MR. RICHARDS: It should be temp tags.

14 MR. KUNTZ: Sorry. I read the wrong agenda.

15 MR. RICHARDS: Members, we purposely placed on
16 the agenda all four items for discussion so that we will
17 discuss basically two today. The intention was refunds
18 and temp tags be discussed today, and the remaining issues
19 of title when a dealer goes out of business, and DTPA,
20 will just be discussed at the next meeting.

21 So I'm wanting to go over this, unless someone
22 would rather take up another item.

23 (Pause.)

24 MR. RICHARDS: Is that fine? Okay. I'm going
25 to just continue on this one. We'll deal with temp tags.

1 Again, to restate what I did initially, the issue of
2 entry invalidation of a driver's license number,
3 identification card, into the eTAG system before issuance
4 an eTAG. Member Johnson had comments the last time on
5 dealer agent specific tags that she believes, at that
6 time, should have a DL, a Texas DL, entered into.

7 She talked about her concern with buyers' tags,
8 so I'm sure that will be an issue we discuss. Member Will
9 Johnson, Chief Johnson, had some suggestions for -- or at
10 least consumer protection recommendations, such as
11 informing buyers of protections they had, whether that be
12 in rulemaking or otherwise.

13 Also, he suggested that we require dealers to
14 give buyers an info sheet as to their rights and
15 obligations. There was some discussion of whether or not
16 that was already being done, and I think Corrie Thompson
17 indicated it wasn't, and she may correct me if I'm wrong
18 on that.

19 Another suggestion, which may or may not make
20 it to a vote today, pertained to Member Johnson's
21 suggestion, Member Will Johnson -- establishment of a
22 complaint hotline. And so those were some of the issues.
23 Mr. Kuntz being -- and also, let's see.

24 What else do we -- oh, I'm sorry. I've got a
25 couple more. Jim Snell, Member Snell recommended -- had a

1 recommendation about dealer deputies. I think Jeremiah
2 clarified for him at the last meeting that TACs have
3 discretion.

4 Not all counties approve of having dealer
5 deputies, but he believed that, you know, dealers could
6 provide the hard tags at the time of a sale, and that
7 would solve a lot of problems. So that was something he
8 recommended.

9 Also, let's see. He did talk about the
10 misperception that dealers are the problem in delaying
11 consumers see the plates, and also made a comment that
12 many times buyers or consumers don't come in timely, and
13 it's not always the dealer's issue.

14 Those are some of the issues that were
15 discussed. I know, members, that y'all may have more that
16 you've brought to this meeting today. So I would --
17 either if Mr. Kuntz would like to discuss anything, that's
18 great.

19 If not, Madame Chair, we may want to open it up
20 to discussion, and hopefully, with the goal of formulating
21 some motions on these issues that were raised last
22 meeting, and any issue that the members want to discuss
23 today.

24 MS. COLVIN: Is there any further discussion?

25 MS. JOHNSON: Member Johnson. Request to be

1 recognized and to speak?

2 MS. COLVIN: Member Johnson?

3 MS. JOHNSON: As I recall, the note I put on
4 essentially how the presentation was that the Board wanted
5 to work on obtaining Texas Dealer License on these
6 particular tags due to misuse. Is that correct?

7 MR. KUNTZ: Yes. That is one of the possible
8 recommendations that could be made. Yes.

9 MS. JOHNSON: Okay. And then on dealers
10 providing hard tags, we -- if our dealers agree to pay for
11 the bond to be in possession of inventory, then they can
12 issue the hard tags. Many of them choose not to pay the
13 bond to avoid that cost, and therefore have no inventory
14 of hard plates.

15 Is that also your understanding, Mr. Kuntz?

16 MR. KUNTZ: It is. There are some additional
17 challenges that I believe the Committee should be aware of
18 as it relates to the issuance of the hard tag at the time
19 of sale.

20 So just for everybody's edification, the
21 WebDEALER application that dealers utilize in order to
22 issue a tag for a vehicle that they've sold, that
23 application allows for the allocation of license plates to
24 a consumer's vehicle associated with a sale.

25 The dilemma with that, in relying upon that for

1 a vehicle that is leaving the lot, let's say, that day is
2 that in order for those tags to be recorded in the
3 registration and title system, the title must be
4 submitted -- the application for title must be submitted
5 immediately to the tax office, reviewed and approved by
6 the tax office, in order for that hard-metal plate to get
7 activated.

8 Until the dealer gets confirmation that the
9 county tax assessor-collector has approved the
10 transaction, that tag is not actually live in the
11 registration and title system for law enforcement to see.

12 And so there's some challenges with a dealer potentially
13 issuing that tag and then holding that application for
14 title for 30 days, submitting it to a county tax assessor-
15 collector, and then the county tax assessor-collector
16 potentially not approving it for whatever amount of time
17 it takes them to approve it.

18 So you have a potential where a customer is
19 operating a vehicle on a metal license plate, and that
20 metal license plate is not in the registration and title
21 system at that time. So there are some challenges
22 associated with that.

23 I would also go back and just make sure that
24 everybody is under the understanding, and if this is going
25 to be changed in law, that's fine, but every vehicle sold

1 is required to have a buyer's tag, a paper tag issued,
2 regardless of whether or not the metal plate is affixed to
3 the vehicle or not.

4 So even if they are a dealer deputy, they still
5 have to issue a temporary buyer's tag to that vehicle at
6 the time of sale.

7 (Pause.)

8 MS. JOHNSON: Member Johnson requesting to be
9 recognized and to speak?

10 MS. COLVIN: Member Johnson?

11 MS. JOHNSON: With regard to a converter
12 vehicle and the driver's license -- well, with regard to
13 the TDL necessity and giving direction to the Board, I
14 would check that a converter vehicle -- a TDL be tied to
15 the converter vehicle, either to the converter, whoever
16 the owner is, whether that's the purchaser or the
17 converter.

18 There's no need to tie a TDL to the dealer's
19 vehicle dealer tag. A dealer agent-specific tag must have
20 a TDL tied to it, because it's issued to an individual,
21 not to a vehicle. And the buyer's tag be tied to the TDL
22 of the buyer, and internet-down tags be tied to a TDL --
23 be tied to the buyer.

24 Therefore, the only exception would be a dealer
25 vehicle-specific tag -- would be tied, rather than to a

1 TDL, but be tied to a licensed dealer. So I guess I offer
2 that in the form of a motion with regard to the like TDL
3 aspect of this topic.

4 MS. COLVIN: I have a motion from Member
5 Johnson. Is there a second?

6 MR. OLAH: This is Member Olah. Permission to
7 be recognized and speak?

8 MS. COLVIN: Member Olah?

9 MR. OLAH: I would just like clarification
10 again on the motion. What exactly is the motion? How
11 would you propose that it be worded?

12 MS. JOHNSON: Member Johnson, requesting to
13 respond.

14 MS. COLVIN: Member Johnson?

15 MS. JOHNSON: With regard to the question on
16 the DMV wanting and obtaining TDL, that the motion be that
17 DMV obtain driver's license to tie to the tags known as a
18 converter vehicle --

19 (Audio momentarily disconnected.)

20 MR. DORAN: -- say segregate out vehicles. So
21 then you don't have the requirement for the driver's
22 license, and specifically what I'm talking about is, if
23 you're dealing with a commercial fleet vehicle, it may
24 be -- I would think it may not be appropriate to have to
25 tie that to a driver's license number.

1 So it's a technical question, from the
2 standpoint of -- does that capacity exist with the agency
3 to be able to not require it on certain vehicles?

4 MR. KUNTZ: So I believe what you're
5 essentially asking is if a business entity, and I'm going
6 to parse your words a little bit, because I think you said
7 the word "commercial." But if a business entity was
8 purchasing a motor vehicle, would we be able to tell the
9 difference between a business entity purchasing that
10 vehicle and a just private citizen purchasing that
11 vehicle?

12 And the answer to that would be no. I would
13 further go on to say, a commercial vehicle faces the same
14 dilemma in that the database does not identify
15 specifically that a vehicle is a commercial vehicle, and I
16 will say that -- kind of explaining it this way.

17 Our database is identifying vehicles based on
18 the weight of the vehicle, not so much on the use of the
19 vehicle. So I say that because you can have an F-150
20 pickup truck that is owned by an air conditioning
21 contracting company, that is owned by a delivery company,
22 or that is owned by a person for their own personal use,
23 and I cannot tell the difference between that F-150 being
24 a commercial vehicle that is regulated under commercial
25 purposes versus one that is being utilized for just

1 personal use.

2 Does that help answer your question?

3 MR. DORAN: Yes, I think it does. I was -- I
4 guess I was hoping that, as we talk about attaching a
5 driver's license number to the -- you know, in theory,
6 assigning it to the plate, that there would be a way to
7 take a population of those and not require it.

8 Because in the instance of a rental car fleet,
9 for example, or like you said, maybe you're talking about
10 Orkin Pest Control or something like that, where you have
11 a lot of vehicles that are used in a fleet for commercial
12 purposes that they would -- this would seem like an
13 appropriate way to cull out those vehicles.

14 But I understand what you said. It doesn't
15 sound like the technical ability exists to do that.

16 MR. KUNTZ: So -- again, I'm Jeremiah Kuntz,
17 for the record. I'm going to kind of -- I think I'm going
18 to do one thing and kind of answer your question. Then
19 I'm probably going to confuse and pose some additional
20 considerations for questions as we discuss this here, by
21 making this statement.

22 All vehicles that are purchased in the state of
23 Texas require an identification document in order to title
24 that vehicle. Driver's license being one of those
25 documents that's required. There is no exception for

1 commercial companies, for commercial carriers or anybody
2 else from that requirement to produce an identification
3 document.

4 So we tie that identification document to an
5 authorized agent of that business, be it the owner of the
6 business, be it somebody that they have granted authority
7 to purchase that vehicle on their behalf. That person
8 who's applying for title, their driver's license number or
9 other identification document is utilized in the titling
10 process for the purposes of ensuring that we know who
11 brought that paperwork into the office.

12 Now, I say that because -- here's where I'm
13 going to muddy the water. We allow for identification
14 documents other than a Texas driver's license for the
15 purpose of titling a vehicle. Military IDs. You can use
16 other governmental identification documents, albeit if
17 they're like a federal governmental agency-issued
18 identification document, i.e., a visa or other -- you
19 know, passports, those kind of things, can be used for the
20 purposes of titling those vehicles.

21 The distinction here -- and I want to make sure
22 that we're very cognizant as we talk about that.
23 Obviously, a passport cannot be utilized to operate on the
24 roadway. You would require a driver's license in order to
25 operate a vehicle on the roadway.

1 So for the purposes of titling, a passport is a
2 perfectly legitimate document for identifying the person
3 who is applying for title. However, to operate that
4 vehicle on the roadway, obviously, a Texas driver's
5 license would be a required document.

6 You would be required to have that in order to
7 operate. Buyers' tags are utilized for the operation of
8 vehicles on Texas roadways, and therefore, what we have
9 requested -- or what has been requested of us from law
10 enforcement in another working group is that the
11 operator's driver's license -- the person that is
12 primarily going to be operating that vehicle, utilizing
13 the tag that has been displayed on the vehicle, that their
14 driver's license is entered into the database, so that if
15 they are pulled over, law enforcement can identify the
16 individual operating the vehicle affirmatively and make
17 sure that these are not fraudulently-issued tags.

18 The primary thing that we would be doing with
19 that is that we would be validating that the person that
20 is being listed as the operator of a vehicle, we have
21 verified and validated that they had a valid driver's
22 license in order for that tag to be issued for that
23 vehicle for operation on the roadway.

24 So I'm sure that that will generate some
25 conversation, but I want to make sure that we kind of lay

1 it out, the whole scenario.

2 MR. DORAN: Thanks, Jeremiah. This is Laird.
3 Can I ask a follow-up question on that? Or I guess I
4 should pose the question to our Presiding Officer. May
5 I --

6 MS. COLVIN: You may have the floor.

7 MR. DORAN: Okay. So Jeremiah, just so we're
8 clear, is any -- does it have to be tied to a Texas
9 driver's license? Because the scenario I'm envisioning,
10 you know, given in some instances, the wait time
11 associated with going to the DPS office to get a driver's
12 license if you're moving from out of state -- so if you
13 had a business and it was relocating to Texas, and the
14 employees were relocating to Texas, and they needed to,
15 you know, get these vehicles titled and registered, but
16 all they had was, say, a California driver's license, how
17 would that scenario work?

18 MR. KUNTZ: So I think that's really the
19 question that we're trying to pose to the Committee. For
20 the purposes of verification and validation of a driver's
21 license, the Department only has the ability, technically,
22 from a technical -- technological standpoint, to validate
23 a Texas driver's license.

24 If the Committee would like other
25 identification documents to be allowed to be entered into

1 the system for the purposes of identifying who the
2 operator of the vehicle is, then those other documents --
3 the Department does not have an electronic method by way
4 to verify and validate that the driver's license is a
5 valid driver's license from those other states, as we do
6 not have an interface that can be, you know, integrated
7 into our system, like we do with the Texas driver's
8 license.

9 So that really becomes kind of the question
10 of -- and I think law enforcement has this concern -- is
11 that they are really trying to tie down and prevent fraud
12 from occurring. We can affirmatively do that if we are
13 using a Texas driver's license, because we can verify and
14 validate the authenticity of the numbers that are being
15 entered into our system.

16 If other documentation is allowed to be entered
17 into the system, we would lose that ability to prevent
18 fraudulent issuance, because somebody could just type in a
19 fraudulent California number, for example, and we would
20 not be able to validate that it is a true and valid
21 driver's license.

22 (Pause.)

23 MS. JOHNSON: Member Johnson. Request to be
24 recognized.

25 MS. COLVIN: Member Johnson?

1 MS. JOHNSON: So we're sort of at an impasse,
2 Mr. Kuntz, because it appears you're limited to a Texas
3 driver's license, although it might not always be
4 available. And I have bought vehicles in other states,
5 purchased them, had a buyer's tag, drove it to Texas, and
6 titled it within 10 days, I believe, and then that was no
7 longer an issue because I had obtained Texas title and
8 paid all the necessary fees.

9 But this conversation is predominantly focused
10 on temporary tags. Is that correct?

11 MR. KUNTZ: That is correct. The question
12 that's before the Committee is whether or not certain
13 temporary tags -- and I think primarily this discussion
14 has been around tags issued by dealers. We do have the
15 other issue of timed permits, which would be the 30-day
16 and one-trips, that could be discussed as well and whether
17 or not driver's license would be required for those.

18 MS. JOHNSON: So there's no other legitimate
19 option in RTS except a TDL? And that's why a modification
20 would be required to the system to allow a -- say, a
21 military ID or a passport number as at least a legitimate
22 means of tying a person -- because ultimately you want to
23 tie a responsible party to a vehicle.

24 So how much time would it take for the agency
25 to make that adjustment in the system?

1 MR. KUNTZ: The issue that I believe, from a
2 technological standpoint, and we can do some more research
3 on this, is -- I'm not aware that there are systems
4 available for national identification and verification to
5 departments in an electronic format that we can access.

6 I know that the Texas driver's license used
7 something called the TOAS system, T-O-A-S, which is
8 available to the Department for validating Texas driver's
9 licenses. When you get into military IDs or other
10 governmental-issued IDs, I'm not aware that every one of
11 those identification documents has an electronic system
12 that would be available to the Department for verification
13 and validation.

14 MS. JOHNSON: So a follow-up question. REALID
15 is not going to establish a national database then of
16 driver's licenses?

17 MR. KUNTZ: So I am not aware, and we can --
18 like I said, we can do some research for driver's
19 licenses, but as to other -- because I'm trying to make
20 sure I cover everything. Our rule allows for other
21 documents at the time of title, and so those documents,
22 like a military ID.

23 I'm not aware of any database or systems that
24 we can tie into to verify military IDs or other things
25 like passports for folks that are here on visas and those

1 kind of things. I'm not aware that they have web services
2 available for us to tie into, to do verifications.

3 For driver's licenses, there may be, but we
4 would have to do some additional research to see what the
5 feasibility of doing that would be.

6 MS. JOHNSON: Then Madame Chair, I would say
7 that we might need additional information to proceed.

8 MS. COLVIN: David Richards, could you comment
9 on that, please?

10 MR. RICHARDS: David Richards, OGC, for the
11 record. Member Cheryl Johnson, are you asking strictly on
12 this issue of the entry of the driver's license that the
13 Department do further research and come back at, say, the
14 next meeting or the meeting after that?

15 Is that your question?

16 MS. JOHNSON: I guess -- that, and I mean,
17 we're looking at temporary permits and temporary tags.
18 And so with regard to that, what are the Department's
19 limitations or what is acceptable -- what are the
20 Department's limitations and what would be involved if we
21 wanted to tie these to those different forms of
22 identification that would be acceptable?

23 I'm not sure that we're going to be able to
24 give you an answer to whether -- I certainly think it's
25 appropriate for anybody driving a vehicle on Texas roads

1 to have a Texas driver's license, although I --
2 particularly, purchasing one.

3 Although I myself have bought an out-of-state
4 vehicle and brought it to Texas. So I understand that, as
5 well. But what is the capacity for the Department?

6 Because you do have so much time to title. But
7 when somebody drives that car away, law enforcement needs
8 to tie a responsible party to that vehicle.

9 MR. RICHARDS: David Richards for the record.
10 Jeremiah, do you want to respond to that?

11 MR. KUNTZ: Yeah. So there's a couple of
12 different approaches that, I guess, could be taken on
13 this. Right now, buyers' tags are issued to all vehicles
14 sold by a dealer in the state of Texas. There is not a
15 restriction or a waiver, I guess, if you will, for an out-
16 of-state purchaser who comes into Texas to purchase a
17 vehicle to take out of state.

18 If the will of the body was to make that change
19 in statute, then obviously that could be an option to look
20 at, limiting those tags to only being sold to -- or only
21 being placed on vehicles sold in the state. But that
22 would also then pose a problem for anybody coming into
23 this state to purchase a vehicle. They would have to get
24 a temporary tag from their own state in order to move the
25 vehicle back home, if you will.

1 As to timed permits, I believe there's a
2 greater latitude for the Department to limit the issuance
3 of those to residents of the state of Texas for, you know,
4 30-day and one-trip permits, that you know, if somebody is
5 needing a one-trip permit from another state, that they
6 would need to go to their state in order to obtain those
7 permits from their own jurisdiction, and that the permits
8 would only be issued for Texas citizens.

9 But again, these are questions and
10 considerations I think the Advisory Committee should take
11 up and consider, whether or not there should be limits on
12 who can obtain these permits, and then what documentation
13 would be required for those issuance.

14 The Department staff can obviously go and
15 investigate whether or not there are systems for verifying
16 and validating other states' driver's licenses in our
17 systems. You know, that's something we can take on and do
18 some research, to find out if those, you know, databases
19 or web services are available to the state in order to do
20 validations, and come back to the Committee with that
21 information.

22 MS. JOHNSON: And to further that, with regards
23 to the commercially-owned vehicles, the owner of the
24 company is the person whose driver's license is being
25 captured. I know, in our office, we -- with permission --

1 actually, I think the person walking in with the paperwork
2 with the permission of the owner of the company whose TDL
3 that we're using.

4 That poses a whole 'nother can of worms, so
5 that might have to be handled separately on the solution
6 for that.

7 MR. KUNTZ: Madame Chair, this is Jeremiah
8 Kuntz. If I may?

9 MS. COLVIN: Yes, sir.

10 MR. KUNTZ: So as to the requirement, I believe
11 that what law enforcement is wanting is a valid driver's
12 license that can be tied to that vehicle in some form or
13 fashion. I don't know that they are as concerned, whether
14 it's the owner of the company or an employee of the
15 company.

16 As you're very aware, I mean, these are 30-day
17 permits most of the time. If you're coming from a
18 dealership, they've got a, you know, expiration of 30
19 days. And really, what the -- what law enforcement is
20 wanting to prevent is the just fraudulent issuance of a
21 buyer's tag to somebody who is not a customer.

22 So we have seen in law enforcement and in
23 enforcement cases that dealerships that had access to the
24 WebDEALER system for the issuance of buyers' tags are
25 selling tags on Craigslist, or you know, Facebook

1 Marketplace, whatever. That if you need a tag for a
2 vehicle, that you could come to their dealership, purchase
3 a tag for \$50, \$100.

4 They are issuing those tags to people that are
5 not customers of theirs. And what I think law enforcement
6 is wanting to do is affirmatively tie a driver's license
7 number in the system to somebody involved in that
8 transaction to prevent, you know, customers from coming in
9 and talking to a dealership, and the dealership just
10 issuing them a tag. And there not being any kind of
11 accountability that somebody was involved in that
12 transaction, that their driver's license has been verified
13 and validated.

14 So I think that's really what law enforcement
15 is looking for, as we look at this recommendation, is the
16 ability to just capture somebody's driver's license that's
17 involved in the transaction to make sure that they have
18 somebody to go back and talk to about the transaction, and
19 somebody to hold accountable.

20 MS. JOHNSON: Member Johnson. Would like to
21 speak and be recognized.

22 MS. COLVIN: Member Johnson.

23 MS. JOHNSON: So any driver's license would
24 work, Mr. Kuntz, and we wouldn't necessarily have to tie
25 anything to a buyer if they're taking it out of state,

1 because a reputable dealer or a legitimate transaction
2 could be the dealer's driver's license that's tied to
3 that, which would be a legitimate driver's license that
4 could be validated.

5 Correct?

6 MR. KUNTZ: If that's the recommendation of the
7 Advisory Committee, yes, that would be an option.

8 MS. JOHNSON: So do you think we could be less
9 concerned about whether it is a valid out-of-state
10 driver's license in the instance that it's an out-of-state
11 purchaser if, at a minimum, it had the driver's license --
12 the Texas driver's license number of the dealer?

13 MR. KUNTZ: That would be an option.

14 MS. JOHNSON: Then I would require assistance
15 in making a motion to make that -- put that in the form of
16 a motion for recommendation back to the Board, unless
17 we're going to obtain additional information.

18 MR. KUNTZ: Madame Chair, if you'd like for me
19 to assist in this?

20 MS. COLVIN: Please, sir.

21 MR. KUNTZ: So if I'm hearing you correctly,
22 the motion would be that a valid Texas driver's license
23 for either the dealer, converter or purchaser of a vehicle
24 would be required for the issuance of a dealer, converter
25 or buyer's tag, and that a valid driver's license of an

1 agent would be required for agent tags.

2 MS. JOHNSON: Member Johnson concurs. Would so
3 make that motion.

4 MS. COLVIN: I have a motion from Member
5 Johnson. Is there a second?

6 MR. OLAH: Member Olah seconds.

7 MS. COLVIN: A second has been made by Member
8 Olah. Is there any further discussion?

9 (No response.)

10 MS. COLVIN: Hearing none, I will call for the
11 vote. Members, when I call your name, please state yes if
12 you are in favor of the motion and no if you are opposed.
13 Member Doran?

14 MR. DORAN: In favor of the motion. Yes.

15 MS. COLVIN: Member Gonzalez?

16 MR. GONZALEZ: I'm in favor the motion.

17 MS. COLVIN: Member Cheryl Johnson?

18 MS. JOHNSON: In favor of the motion.

19 MS. COLVIN: Member Olah?

20 MR. OLAH: Yes. I'm in favor of the motion.

21 MS. COLVIN: Member Rash? Member Rash?

22 (No response.)

23 MS. COLVIN: Member Rigby?

24 MR. RIGBY: Yes.

25 MS. COLVIN: I, Melissa Colvin, vote yes. Let

1 the record reflect that we were unanimous in the vote.
2 The motion has passed.

3 MR. KUNTZ: Madame Chair, if I might?

4 MS. COLVIN: Mr. Kuntz?

5 MR. KUNTZ: Yes. And I know that our general
6 counsel, David Richards, had laid out some other
7 discussions, and I did have another one. And we can talk
8 through a couple of these.

9 One other possible consideration has to do with
10 a dealer who has violated -- and as I've mentioned, we
11 have dealers that potentially issue temporary tags that
12 are in violation of the system. They're issuing tags to
13 vehicle that are not in their inventory, that they have
14 not sold. And I know another recommendation that was made
15 by law enforcement, something that they have requested is,
16 whether or not there should be any suspension of the
17 dealer's ability to access the temporary tag database
18 after due process has been met.

19 And I'm going to have Corrie Thompson help me
20 out a little bit on this recommendation, as this has come
21 up in some discussions with law enforcement. So some
22 things to keep in -- to consider as we're going through
23 this. There is a requirement statutorily that a dealer
24 issue a buyer's tag to every vehicle that they've sold, as
25 I've referenced before, and they are required to issue

1 those tags by accessing the Department's electronic system
2 for the issuance of those tags.

3 So there is a dilemma that we have in that to
4 terminate access to that system is to essentially prevent
5 an automotive dealer from being able to process
6 transactions through the system. So there would have to
7 be statutory changes as it relates to turning off or
8 suspending access to the temporary tag database, even if
9 due process has been made, in that there would --
10 statutorily today, there is not an alternative process for
11 them to obtain permits for display on vehicles that they
12 have sold.

13 There could be, potentially, a requirement that
14 somebody whose access has been terminated would have to
15 obtain those tags either from a tax assessor-collector or
16 from the Department in order to allow them to continue to
17 operate their business.

18 But we did want to pose this to the Committee
19 for consideration and discussion. And Corrie, I don't
20 know if you've got any other discussion that you would
21 like to have on this?

22 MS. THOMPSON: Corrie Thompson, for the record.
23 Just to add a little bit of additional detail here. As
24 Jeremiah has laid out, this would be a potential statutory
25 change recommendation that would be pushed forward at next

1 session, potentially, depending on how the discussion goes
2 here with the Committee.

3 But what we would be looking to do is, tack
4 onto the provision in Transportation Code that currently
5 says, the Department cannot deny access to the system for
6 our licensees. And so we would want to make that -- yes,
7 we cannot deny access, except in certain situations. And
8 those situations would be, you know, things like we have a
9 pending enforcement case that alleges misuse or abuse of
10 the temp-tag system, and we're able to put on evidence
11 that that abuse or misuse is occurring.

12 This, I envision, would be something we would
13 use for very serious cases where hundreds or thousands of
14 tags are being issued, where we can prove that the dealers
15 have not sold the vehicles that they've issued buyer tags
16 for. And I would envision this as a dealer-protective
17 measure also, being something that would have an expedited
18 hearing process attached to it.

19 Because currently, now, if a case is contested,
20 it can take upwards of nine months to a year, potentially,
21 if the case becomes contested and actually ends up going
22 to a hearing at SOAH, and then ultimately being heard by
23 the Board after a proposal for a decision issued by a SOAH
24 ALJ. It can take a long time.

25 So here, we would need to give the dealer due

1 process, right. And we would also need to give them a way
2 to continue doing business, as Jeremiah mentioned. So the
3 way I would like to see this work -- to stop these abuses
4 from occurring, which we've had a serious problem with, as
5 Jeremiah had mentioned, and we've had discussions with law
6 enforcement about, would be that the Department issue the
7 notice that we have suspended access to the system, and
8 then afford the dealer the opportunity to respond to
9 request that hearing, and of course, that would go to the
10 State Office of Administrative Hearings.

11 Agencies who have similar expedited hearing
12 processes like this call for the hearing to be held or the
13 case to be docketed within a certain period of time,
14 usually 20 or 30 days. The cases go to SOAH for the
15 decision.

16 And I'm not -- I'm just going to assume that
17 not everybody is familiar with the administrative case
18 process. So you can either have SOAH be the final
19 decision-maker in a case, or it can be the Board who's the
20 final decision-maker in a case.

21 And so if SOAH is going to be the final
22 decision-maker in a case, that has to be spelled out in
23 statute. And currently, for motor vehicle cases, which is
24 what we're talking about here, the Board is listed as the
25 final decision-maker for cases that involve sanctions on a

1 dealer.

2 So that would be anything that ultimately gets
3 docketed at the State Office of Administrative Hearings,
4 has a full-blown hearing where there is evidence put on,
5 witnesses, and a SOAH ALJ actually issues a proposal for a
6 decision, saying, you know, what the outcome of the case
7 is, in their opinion, based on how they've weighed the
8 evidence.

9 That proposal for decision then comes back to
10 the Department. It gets docketed -- it gets added to the
11 agenda for a Board meeting and is ultimately heard before
12 the Board, who then issues the actual final order in the
13 case.

14 So with this particular situation, my
15 preference -- and again, as a matter of dealer protection
16 and making sure that the Department is not delaying on
17 cases where we've cut off access like this, that these be
18 expedited hearings, or we call out SOAH as the final
19 decision-maker.

20 MS. JOHNSON: Member Johnson asks to be
21 recognized and to speak?

22 MS. COLVIN: Member Johnson?

23 MS. JOHNSON: So, Ms. Thompson, would this
24 mean, then, though, that you could suspend access -- the
25 DMV could -- the Board could move forward with a

1 legislative change that the Department may suspend access
2 to the electronic system, pending due process by an
3 expedited SOAH hearing. But in the meantime, an
4 alternative process to allow that business to operate
5 would be all in-person transactions in county tax offices?

6 MS. THOMPSON: That part has not been
7 discussed. So as Jeremiah mentioned, we would need to
8 give them a way to continue to access tags. So I would
9 contemplate they would still have access to their internet
10 down tags.

11 They would have their stash of those that they
12 could use, just as they normally would, and they should
13 have those preprinted by the time their access is
14 terminated, so that would give them, you know, however
15 long of a period of time to continue operating, until they
16 have to go to wherever it is to get tags.

17 And so is that the tax office? Is that an RSC
18 with the Department of Motor Vehicles? That, we have not
19 contemplated. So we are bringing that to the group for
20 discussion.

21 MR. DORAN: This is Member Doran, asking to be
22 recognized with a question.

23 MS. COLVIN: Member Doran.

24 MR. DORAN: So Corrie, I had never really
25 thought about this prior to the COVID situation, but if I

1 could just run a hypothetical past you. So I know there's
2 a statutory provision that says, if a dealer is not
3 operating in the ordinary course of business or for a
4 certain number of days, you know, that can serve as one of
5 the grounds for a franchiser to terminate the franchisee.

6 I mean, they have to meet good cause and all
7 these other things in the statute, but in terms of the
8 agency's determination about whether or not the dealership
9 is operational, you know, you're typically looking at
10 whatever the prescribed timeline is in terms of days where
11 those operations are considered to be nonexistent or the
12 dealership is not engaged in ongoing business.

13 And so my concern here -- and I -- maybe you
14 can put this concern to rest -- would be that you have a
15 rogue employee at a franchise dealership that has been
16 doing this. And the system -- the access is shut off,
17 then, to that dealership, and then they don't have the
18 ability because of a government order or the shutdown of
19 the local tax assessor's office, et cetera, to be able to
20 continue to do that processing that we've been talking
21 about.

22 So maybe you can just kind of put my fears or
23 concerns aside by walking through that hypothetical to
24 make sure that the dealership wouldn't find themselves in
25 a termination situation with their franchiser simply

1 because they have this inability to continue to do the
2 tags because of extenuating circumstances.

3 MS. THOMPSON: So I'm a little confused about
4 your question. This is Corrie Thompson. So we're talking
5 about a situation potentially, that would come up as a
6 protest case which would be filed with the Motor Vehicle
7 Division?

8 There is abuse, and we're talking rampant abuse
9 of the system. So that would mean the issuance of, let's
10 say, by an independent dealer, within the span of three
11 months, 5,000 tags, 5,000 buyer tags. And we pull their
12 vehicle inventory reports and we see that they have sold
13 zero vehicles in the last three months.

14 Why would they have issued 5,000 buyers tags?
15 We're talking about situations like that, that the
16 Enforcement Division has evidence of serious abuse of the
17 system, in which we would be looking at temporarily
18 suspending that access until we have completed our
19 investigation and determined whether or not that license
20 should proceed to be revoked or not.

21 MR. DORAN: Okay.

22 MS. THOMPSON: This would not be something that
23 we would talking about doing as part of a Motor Vehicle
24 Division protest case. Is that --

25 MR. DORAN: Right. And I guess what I'm just

1 getting at is (audio break) need to continue to seek out
2 and obtain tags, due to these other circumstances.

3 MS. THOMPSON: Corrie Thompson again. Because
4 of the COVID-like situation, as you mentioned --

5 MR. DORAN: Uh-huh. Yes.

6 MS. THOMPSON: -- I would think that that would
7 be an instance where we could potentially request a
8 waiver, if we were -- of any law that were to be in place,
9 any new law, if we were to find ourselves in a similar
10 situation, so that they could continue operating. Because
11 as you know, there would be measures taken to allow motor
12 carriers to continue operating during this time, to allow
13 dealers to have waiver of late transfer penalties and
14 things of that nature.

15 The Department would work with dealers to
16 ensure that they could continue business, if we were to
17 ever find ourselves in another situation like this, should
18 we have a new statute in place.

19 MR. DORAN: Okay. Great. Thank you. I just
20 wanted to hear that you guys have that authority and
21 discretion, or you believe that you would. So thank you.

22 MS. THOMPSON: And that was all I had on that,
23 unless anybody has any questions? Jeremiah, did you have
24 anything else to add to that?

25 MR. KUNTZ: I did not. Just was hoping the

1 Committee would provide either comments or suggestions.

2 MS. THOMPSON: Corrie Thompson again. Chair
3 Colvin, if I may?

4 MS. COLVIN: Ms. Thompson.

5 MS. THOMPSON: Yes. So the Department would
6 like the opportunity to bring forth before the Committee,
7 possibly at the next meeting, proposed statutory change
8 language, if that would be all right with the Committee?

9 MS. JOHNSON: Member Johnson requests to be
10 recognized and speak.

11 MS. COLVIN: Member Johnson?

12 MS. JOHNSON: I greatly appreciate that,
13 because I've made notes, and it appears as though the
14 Department statute needs to be written to authorize the
15 Department to suspend access to the electronic system.
16 But I would like to see, because you will take into -- you
17 have all the proper language for the excessive abuse and
18 so forth.

19 So I would like to see that for the next
20 meeting. Yes, please.

21 MS. THOMPSON: Okay. Corrie Thompson again.

22 MS. COLVIN: Ms. Thompson?

23 MS. THOMPSON: Yes. We will plan to bring that
24 proposed language to the next meeting. Thank you.

25 MR. GONZALEZ: Madame Chair, permission to

1 speak?

2 MS. COLVIN: Member Gonzalez?

3 MR. GONZALEZ: Yes, ma'am. I'm very much
4 interested in getting some feedback from Mr. Kuntz. In
5 the temporary permits and dealer tags and temporary-time
6 permits, I can see where there's opportunities to address
7 the issuance process, and an example of requiring IDs in
8 certain situations. But I would like to see maybe,
9 specifically, the concern that he has -- or if you would
10 welcome recommendations on the dealer portion, and also on
11 the timed permits.

12 This -- we see a lot of violations out here in
13 this neck of the woods, and there are some concerns that
14 we've had specifically, from our local law enforcement
15 community regarding these permits. And since we're close
16 to the border, there's a high multitude of violations that
17 we see on the dealer side, in the dealer community, the
18 agent's tags, the time permits.

19 So if Mr. Kuntz would be gracious enough to
20 provide maybe an outline of the questions like -- it was
21 not previously on the refunds -- I would be more active in
22 providing or contributing to the conversation. And maybe
23 we can do that for the next time around.

24 Thank you.

25 MR. KUNTZ: We will be more than happy to try

1 and come up with alternative solutions. I will tell you,
2 this is a topic that the Department has been thinking
3 about and mulling over for quite some time. I think the
4 recommendations that you've seen pretty much encapsulate
5 the recommendations to this point as far as statutory or
6 rule-language type changes that could be made to
7 strengthen the enforcement and prevention of fraudulent
8 use.

9 We have done quite a bit of -- or had taken
10 quite a bit of effort to make system changes to try and
11 prevent misuse, and you know, duplication or fraudulent,
12 you know, production of temporary tags, and trying to
13 provide our assistance to law enforcement.

14 This is one of those very difficult situations,
15 and we are kind of all ears, if the Committee sees that
16 there are other recommendations that we have not thought
17 about. We are all ears for any other recommendations that
18 the Committee would see fit to either assist in the
19 prevention of fraudulent issuance or misuse of tags, but
20 also for the potential prosecution on the other side, as
21 we've talked about here, or you know, turning folks off on
22 their ability to issue these tags, as in the case that
23 we've talked about here, dealers.

24 You know, some of the things that we talked
25 about last time, as far as the tags that are available

1 online, the timed permits, 30-day, one-trip, 72-hours,
2 those things, we have code changes that we are waiting to
3 implement when we have sufficient IT resources to get to
4 those. And until such time as those resources are
5 available and we can make changes -- for example, 30-day
6 and one-trip permits are not available online anymore.

7 We took those off, and those can only be issued
8 out of a tax assessor-collector's office. If tax
9 assessor-collectors believe that there are additional
10 restrictions that they would need on their employees'
11 ability to issue 30-day or one-trip permits or any other
12 security features that they would like to see on those,
13 and we would be more than happy to evaluate those.

14 But at this time, those -- you know, those can
15 only be issued in our offices, the DMV offices, and the
16 tax assessor-collector offices. So that primarily -- the
17 primary point where fraudulent use was occurring was
18 online, and that is not available for those timed permits
19 at this point.

20 But again, the dealer tags seems to be the
21 primary focus of law enforcement that we've seen lately.
22 So we are definitely open to any suggestions that the
23 Advisory Committee would have to assist the Department and
24 law enforcement in helping to prevent fraudulent
25 production and misuse of tags.

1 MR. GONZALEZ: Thank you, Jeremiah. I am on
2 board with your thought process and I fully support it.
3 So I will be getting back to the Committee and offer some
4 suggestions. Thank you very much.

5 MS. COLVIN: David Richards?

6 MR. RICHARDS: That's fine. Sure.

7 MS. COLVIN: Is that the conclusion of your
8 presentation?

9 MR. RICHARDS: I did -- thank you. I was just
10 getting ready to ask to be heard. What I would like to
11 run by -- as I mentioned earlier, there were a couple of
12 suggestions that were made at the prior meeting.
13 Unfortunately, Chief Johnson is not with -- on this call
14 today.

15 I'm going to throw these out for the members'
16 consideration, and if they want to wait until he's back,
17 to maybe further explain what he means, although they're
18 fairly self-explanatory, we can do that. But just for the
19 sake of bringing these up again, Chief Johnson suggested a
20 buyer's information sheet, that we require, the Department
21 require dealers to give buyers an information sheet
22 regarding rights and obligations.

23 That was one of his suggestions. Establish a
24 complaint hotline. And again, members, these are just
25 your recommendations to the Board. Whether they -- you

1 know, we hope -- I mean, it's a good suggestion, I think,
2 both of these, but they're just a recommendation.

3 Member Gonzalez, at the last meeting -- and
4 Member Gonzalez, you can chime on this as well --
5 mentioned providing training and education to dealers
6 regarding these tags. I'm not sure that's not already
7 being done.

8 Corrie Thompson might want to interject on that
9 one. But these are a couple other items that, at today's
10 meeting, if you would like to discuss them further and
11 maybe entertain a motion for any one of these, we can do
12 that.

13 If no member is inclined to want to discuss
14 these, that's fine, too. But Member Gonzalez, since
15 you're on the line, on this call, you mentioned training
16 and education of the dealers. Is that something you still
17 want to be put forward, and if so, could you explain what
18 it is you mean by that, and what sort of training,
19 anything else that would aid the rest of the members in
20 understanding that particular suggestion?

21 MR. GONZALEZ: Yes, sir. What we see a lot out
22 here is, in the dealer community, I know that the
23 Enforcement Division comes out once a year and gives them
24 an update as to what their responsibilities are. A lot of
25 these dealers that do attend these meetings are the more

1 legitimate dealers.

2 There's not 100 percent coverage, because here
3 in El Paso, we have over 700 dealers. And pretty much,
4 when the dealers are having a meeting hosted by the
5 Enforcement Division, there's more lien holders and banks
6 attending these meetings, and franchised dealers, than the
7 independent used car dealers. And a lot of the problem
8 areas that we see is from used car dealers, where they
9 tend to be a little bit more on the abuse side, either
10 through ignorance or intentionally, and the training will
11 be helpful for them.

12 On the enforcement side, we -- I'm fortunate
13 that I have an Enforcement Division here, which I make
14 them specialize in the use of those tags and what the --
15 the kind of cases they can file with the County Attorney.

16 But in many cases, we provide training for the
17 constables, the sheriff's office. Our local DPS has come
18 out and asked for our assistance.

19 So we clarify for them, when using these tags,
20 and go into detail as to what they can do. And their
21 biggest concern is not being able to have probable cause
22 to stop a vehicle, as they cannot read the purpose of the
23 tag. If it's a 72-hour permit or a one-trip permit,
24 sometimes they can't see that on the road.

25 The numerical digits assigned to them, they

1 don't understand if there's a secret to them or they're
2 valid. With the dealers reproducing cardboard tags --
3 paper tags. They're out there, and there's no connection
4 to the vehicle at times, unless we get them stopped. So
5 unless there's a probable cause from enforcement to stop
6 them, they're not going to stop them because they don't
7 feel comfortable.

8 So those are the types of issues that we see
9 that they are asking is to make enforcement better so that
10 these folks can comply with the regulations and the
11 statutes to operate a vehicle on the street. So those are
12 the things that I'd like to maybe highlight and share with
13 the Committee, and maybe we can address them through Mr.
14 Kuntz and also Ms. Thompson down the road.

15 MS. THOMPSON: Yes, Presiding Officer Colvin?
16 Corrie Thompson. If I can make a comment?

17 MS. COLVIN: Ms. Thompson.

18 MS. THOMPSON: Yes. I just wanted to
19 mention -- I don't see Daniel Avitia, director of the
20 Motor Vehicle Division, on the line, but he worked
21 through -- worked with Sunset for some language and an
22 education requirement during last legislative session that
23 is now in statute at Transportation Code 503.0296, which
24 requires independent motor vehicle dealers -- if I could
25 speak, sorry, I'm getting hangry -- motor vehicle dealer

1 education and training.

2 And so that says that the Department creates
3 rules that require an applicant for an original or renewal
4 general distinguishing number complete a web-based
5 education training. And I know that a lot of those
6 trainings are being developed by different people within
7 the industry that will be available for dealers to take.

8 But that will now be a requirement as of the
9 last legislative session, and that is in current statute
10 now. As to training on temporary tags, yes, the
11 Enforcement Division does temporary tag training for law
12 enforcement upon request, so that if you know of any area
13 that has a need for that temporary tag training, I'm happy
14 to set them up with somebody from my division who can
15 provide them with that training, to help educate.

16 MR. RICHARDS: Madame Chair, David Richards.
17 May I speak?

18 MS. COLVIN: Yes, sir.

19 MR. RICHARDS: Thank you. Member Gonzalez,
20 were you focusing primarily your concerns on the used car
21 dealers, that they be trained? I don't know that they
22 would be trained on the tags. I haven't seen the training
23 program, the curriculum.

24 I'm hoping that will be the case if they are
25 required under the statute and under the rules of the DMV,

1 to take the tags. That may solve your concern or your
2 main concerns. Would that take care of it?

3 MR. GONZALEZ: The training is one aspect of
4 it, but there a lot of individuals that may not be related
5 to the dealer community that are taking the liberty of
6 manufacturing these fictitious tags. And, of course,
7 they're selling them and that's what the issue is.

8 So it's a combination of maybe a little bit
9 more training or understanding. But at the same time,
10 it's more of an enforcement issue, so that they can be
11 identified when they sell them to the consumer and they're
12 driving that vehicle, that they can be possibly stopped.

13 And unfortunately, the driver, the operator of
14 the vehicle is the one that's going to get ticketed, and
15 the person that sold the paper tag is long gone, in many
16 cases. So those are some of the things that we see quite
17 a bit out here, where there's all kind of agent tags out
18 there, and there's no control over them, and just --
19 people are just reproducing paper tags left and right, and
20 driving out there without any payment of the tag or proper
21 use of the tag.

22 And who knows? Maybe no insurance also. So
23 those are multiple things that are -- we can include in
24 the concern, but that's where we need to kind of focus and
25 hopefully identify and enforce and prevent the abuse of

1 it.

2 MR. RICHARDS: Thank you, Member Gonzalez.
3 Madame Chair, I have nothing else, unless one of the
4 members wants to take up one of the issues that I raised
5 or at least brought to your attention that Chief Johnson
6 brought the last time.

7 That would conclude everything that I had to
8 say. I will defer also to Jeremiah Kuntz, if he has
9 something else that he'd like to bring up while we're on
10 this particular agenda item, or Corrie Thompson as well.

11 MS. JOHNSON: Member Johnson asking to be
12 recognized and to speak?

13 MS. COLVIN: Member Johnson?

14 MS. JOHNSON: Based on the recommendation David
15 just made, I would like to make a motion that the
16 Committee recommend to the Board that it direct the
17 Department to create a buyer information sheet that
18 includes a consumer's rights and obligations and establish
19 a buyer's -- and examine or research establishing a
20 buyer's hotline.

21 MS. COLVIN: I have a motion from Member
22 Johnson. Is there a second?

23 MR. GONZALEZ: I second the motion.

24 MS. COLVIN: A second motion has been made by
25 Member Gonzalez. Is there any further discussion?

1 (No response.)

2 MS. COLVIN: Hearing none, I'll call for the
3 vote. Members, when I call your name, please state yes if
4 you are in favor of the motion and no if you are opposed.
5 Member Doran?

6 MR. DORAN: Yes, in favor of the motion.

7 MS. COLVIN: Member Gonzalez?

8 MR. GONZALEZ: Yes, in favor of the motion.

9 MS. COLVIN: Member Cheryl Johnson?

10 MS. JOHNSON: Yes, in favor of the motion.

11 MS. COLVIN: Member Olah?

12 MR. OLAH: Yes, an enthusiastic yes.

13 MS. COLVIN: Member Rash?

14 (No response.)

15 MS. COLVIN: Member Rigby?

16 MR. RIGBY: Yes.

17 MS. COLVIN: I, Melissa Colvin, vote yes. Let
18 the record reflect that the vote was unanimous, and the
19 motion has passed. Members, we're now moving on to --
20 members, we're going to table Agenda Items 2(d) and 2(e).
21 We're going to move on to Agenda Item 2(f). Agenda Item
22 2(f), "Future Meeting Schedule."

23 Members, our next meeting is scheduled for
24 May 28, 2020, beginning at 9:00 a.m. Would any members
25 like to discuss this item today, or do any of you have any

1 thoughts regarding our next meeting, meetings or the
2 meeting schedule?

3 MR. RICHARDS: Madame Chair, David Richards.

4 MS. COLVIN: Mr. Richards?

5 MR. RICHARDS: I didn't mean to cut off any of
6 the members who would like to speak. But members, what
7 we're looking at here -- we have a May meeting, as the
8 Chair has indicated, May 28. We're hoping to set the
9 meeting schedule for the next three months, at least three
10 months out.

11 I realize today you may not be able to make a
12 motion, look at your calendars, and say, I want it to be
13 June 9, or whatever. We can clearly -- or be happy to let
14 y'all go back to your offices and check your calendars,
15 and take up this item at the May 28 meeting next week.

16 But we thought maybe if we could nail a set
17 meeting schedule over the next two to three months, that
18 way, it would ensure that we have a quorum at each meeting
19 to address the issues that are before you. And if you
20 would like to do that, we can clearly wait until May 28 to
21 set a meeting schedule.

22 We think that might be a better road to go. We
23 do know that people may -- I say, may -- travel during the
24 summer, and they may not. So getting a set date -- and it
25 doesn't have to be the same day, clearly, obviously. Say,

1 the month of June or the month of July or the month of
2 August, but a date where it appears that we can have at
3 least a quorum, if not everybody present on the call.

4 So I'm going to put my phone on mute and let
5 the members indicate what their thinking is, and if they
6 would prefer to wait until the next meeting?

7 MR. OLAH: Member Olah would like to speak.

8 MS. COLVIN: Member Olah?

9 MR. OLAH: Yes. Generally, as per my
10 particular situation, generally Thursday afternoons are
11 not good. I have conference calls -- actually, I've had
12 conference calls on Thursday afternoons for the past three
13 or four years.

14 So that -- as far as any other time or day of
15 the week, I'm open.

16 MS. COLVIN: I would recommend that at the next
17 meeting we agree upon a set date and time for our next two
18 meetings. For example, June and July, and that this
19 discussion be an agenda item at our May 28, 2020 meeting.

20 Members, we will now move on to Agenda Item No. 3, public
21 comment.

22 Members, the next agenda item is public
23 comment, Item No. 3. David, are there any comments from
24 the public?

25 MR. RICHARDS: Madame Chair, David Richards,

1 for the record. I believe we have -- we had one that
2 indicated -- I don't see him on the call, but Ted Endicott
3 had submitted written comments to us, and we were under
4 the impression he would be on the call to make comments.

5 So I will ask, Mr. Endicott, are you on this
6 call?

7 MR. ENDICOTT: Yes, I'm on this call. Yes, I
8 am.

9 MR. RICHARDS: Okay. Great. Thank you. Thank
10 you, sir. Madame Chair, Ted Endicott is wanting to
11 comment. So if you'll -- do you have some comments you
12 need to address him with?

13 MS. COLVIN: Yes, sir. We will now hear from
14 Ted Endicott. You will need to unmute your line to
15 comment, and please be mindful about limiting any
16 background noise. Also, please state your name for the
17 record and if you're representing anyone.

18 You will have three minutes.

19 MR. ENDICOTT: Yeah. Hello. My name is Ted
20 Endicott, E-N-D-I-C-O-T-T. And a little bit of my
21 background experience is that I have been a car dealer, or
22 have been in the car business since 1992, and gave up my
23 license in 2013, but I've remained assisting my son in his
24 business.

25 And so I have some experience in the automobile

1 industry when it comes to automobile sales, and I've come
2 across something that's been bothering me for several
3 years, and it has to do primarily with the sale, public
4 sale of motor vehicles to the public by vehicle storage
5 facilities and tow companies. My concern is that these
6 companies, which I know are monitored by the Texas
7 Department of Licensing and Regulations, but my concern is
8 that there has been, and still does exist, some consumer
9 protection issues.

10 When you buy from a vehicle storage yard, you
11 don't have a vehicle that's been inspected and prepared
12 for sale to the public, in the same way that a motor
13 vehicle dealer does. And looking at the Texas Occupations
14 Code, 2303.157(b), it states, "an operator entitled to
15 dispose of a vehicle under this section may sell the
16 vehicle at a public sale without obtaining a release of
17 discharge of lien on the vehicle, regardless of whether or
18 not they were provided mail-in notice or publication -- or
19 by publication under this chapter."

20 It goes on to say, "the operator shall pay any
21 excess fees to the persons entitled to those proceeds."
22 Those are other issues that go along with this, but as I
23 read the information provided to me by the Texas
24 Department of Licensing and Regulations, the above code
25 only gives an authority to sell at a public sale, but does

1 not specify how they are supposed to conduct that sale.

2 This is where I believe the Texas Department of
3 Motor Vehicles should be involved. Excuse me. Excuse me.

4 I'm sorry. I believe this is where the Texas Department
5 of Motor Vehicles should be involved.

6 My interpretation is that, yes, tow companies
7 and vehicle storage yards do fall under the enforcement by
8 the Texas Department of Motor Vehicles when selling motor
9 vehicles directly to the public. And let me go on to
10 explain a little bit further --

11 MR. RICHARDS: Madame Chair?

12 MS. COLVIN: Yes, Mr. Richards?

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

14 I'm sorry. As all commenters are informed, and this
15 commenter was informed as well, he had three minutes
16 within which to comment. The system automatically muted
17 his line.

18 We do have his written comments at the agency.

19 I will work with the Enforcement Division on responses to
20 Mr. Endicott's comments, and we'll bring that back to you,
21 or at least make the Committee aware of what our responses
22 are, and what those are.

23 So apologizes to Mr. Endicott, but we run a
24 fairly strict time limit on comments. Public comments to
25 open meetings are just that. They're comments. We don't

1 engage in discussion with them. But we'll definitely
2 bring this to -- or some of the issues back to you at the
3 next meeting or the meeting after that, and inform the
4 Committee of our correspondence.

5 MS. COLVIN: David, are there any other
6 comments?

7 MR. ENDICOTT: Okay, I understand that, and I'm
8 so sorry. It's just a little bit lengthy --

9 MR. RICHARDS: Madame Chair?

10 MS. COLVIN: David, are there any other
11 comments?

12 MR. RICHARDS: Madame Chair, David Richards,
13 for the record. There are no further comments.

14 MS. COLVIN: We will now move on to Agenda
15 Item 4, adjournment. Unless there's any further business,
16 I would like to entertain a motion to adjourn. Do I have
17 a motion from anyone to adjourn this meeting?

18 MR. DORAN: This is Member Doran. I'll make
19 the motion to adjourn this meeting.

20 MS. JOHNSON: Member Johnson. Second.

21 MS. COLVIN: A motion is made by Member Doran
22 and second by Member Johnson. The motion has been made
23 and second to the adjournment of this meeting. All in
24 favor? Let the reflect that the vote is unanimous. It is
25 now 1:17 p.m.

1 We are adjourned.

2 (Whereupon, at 1:17 p.m., the meeting was
3 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: Austin, Texas

6 DATE: May 19, 2020

7 I do hereby certify that the foregoing pages,
8 numbers 1 through 155, 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: May 26, 2020
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16
17

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

21 On the Record Reporting &
22 Transcription, Inc.
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