

TEXAS DEPARTMENT OF MOTOR VEHICLES

CONSUMER PROTECTION ADVISORY COMMITTEE

MEETING

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

Thursday,
June 25, 2020
9:01 a.m.

COMMITTEE MEMBERS:

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

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P R O C E E D I N G S

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

7 It is now 9:01 a.m. and I am calling the CPAC
8 meeting for June 25, 2020 to order. I want to note for
9 the record that the public notice of this meeting,
10 containing all items on the agenda, was filed with the
11 Office of Secretary of State on June 17, 2020.

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

16 Governor Abbott suspended various provisions of the Texas
17 Open Meetings Act that require government officials and
18 members of the public to be physically present at
19 specified meeting locations.

20 Under that suspension, the public will not be
21 able to physically attend this meeting in person.
22 Instead, the public may attend this meeting by calling the
23 toll-free number, which is posted in the agenda, which was
24 filed with the Office of the Secretary of State on June
25 17, 2020. All Advisory Committee members, including

1 myself, will be participating today remotely via Webex.

2 At this time, please mute your phone for the
3 entire duration of this meeting. I am asking our Webex
4 meeting host to make sure all participants' phones are
5 muted, except for Advisory Committee members and those who
6 are presenting. Callers will be removed for any
7 disruption, including background noise.

8 I would like to remind all participants that
9 this is a telephone conference call meeting. Because this
10 meeting is being held by telephone conference call, there
11 are a few things that will assist in making the meeting
12 run smoother and assist the court reporter in getting an
13 accurate record.

14 Department staff, committee members, and any
15 commenters should identify themselves clearly before
16 speaking. Speak clearly. Remember that there may be a
17 slight delay, due to the telephone conference call
18 meeting.

19 So, please wait a little longer than usual
20 before responding to participants. Please do not speak
21 over others. And speakers should ask the presiding
22 officer to proceed and be sure to get recognized prior to
23 speaking.

24 Because the number of dial-in participants is
25 limited, if you wish to address the Advisory Committee or

1 speak on an agenda item during today's meeting, please
2 send an email to gco_general@txdmv.gov. That is
3 gco_general@txdmv.gov.

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

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

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

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

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

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

10 And now, I would like to move on to Agenda Item
11 1A: roll call and establishment of a quorum. I would
12 like to have a roll call of the Advisory Committee
13 members.

14 Let me know if I pronounce your name correctly.
15 Or, I am sorry, please let me know if I pronounce your
16 name incorrectly. When I call your name, please indicate
17 that you are present by stating here, or present. Member
18 Brooks.

19 MS. BROOKS: Here.

20 MR. DORAN: Member Cavender.

21 MR. CAVENDER: Here.

22 MR. DORAN: Member Colvin.

23 (No response.)

24 MR. DORAN: Member Colvin.

25 (No response.)

1 MR. DORAN: Member Eshpeter.
2 (No response.)
3 MR. DORAN: Member French.
4 MR. FRENCH: Present.
5 MR. DORAN: Member Gonzalez.
6 MR. GONZALEZ: Present.
7 MR. DORAN: Member Gonzalez.
8 MR. GONZALEZ: Present.
9 MR. DORAN: Member Cheryl Johnson.
10 (No response.)
11 MR. DORAN: Member Cheryl Johnson.
12 (No response.)
13 MR. DORAN: Member McCullah.
14 (No response.)
15 MR. DORAN: Member McCullah.
16 MR. DORAN: Member Olah.
17 MR. OLAH: Present.
18 MR. DORAN: Member Rash.
19 (No response.)
20 MR. DORAN: Member Rash.
21 (No response.)
22 MR. DORAN: Member Rigby.
23 MR. RIGBY: Here.
24 MR. DORAN: Member Smith.
25 MR. SMITH: Present.

1 MR. DORAN: Member Solis.

2 (No response.)

3 MR. DORAN: Member Solis.

4 (No response.)

5 MR. DORAN: Okay. For the record, I am Laird
6 Doran and I am present as well. We have eight present, so
7 we do have a quorum. So, we can proceed.

8 Members, we are going to take up Agenda Item 2,
9 Discussion, Briefing, and Action Items. Now, moving on to
10 Agenda Item 2A, Refunds by Motor Vehicle Dealers and Motor
11 Carriers Transporting Household Goods. I would like to
12 turn it over to the Office of General Counsel, Associate
13 General Counsel David Richards for a few opening remarks.

14 MR. RICHARDS: Thank you, Officer Doran. David
15 Richards, Associate General Counsel for the DMV, for the
16 record. Members, good morning. I hope each of you and
17 your families are continuing to do well and staying safe.

18 I wanted to make a few remarks before we got
19 into Agenda Item 2A. The Agenda Item, of course --
20 refunds made by motor vehicle dealers and motor carriers
21 transporting household goods. I want to discuss with you
22 why the Sunset Advisory Commission recommended agenda
23 items back before you for your consideration and
24 recommendations.

25 You will recall that the Sunset Advisory

1 Commission's refund recommendation led to legislative
2 amendments to both the Occupations Code and the
3 Transportation Code. Also, as you are aware, the Board of
4 the Texas Department of Motor Vehicles appointed each of
5 you to serve on the CPAC.

6 In appointing each of you to the CPAC, the
7 Board is seeking the needed expertise from you as
8 stakeholders and other interested parties. No Board
9 members are serving on the CPAC, because to do so might
10 undermine the independent external expertise and
11 recommendations that the Advisory Committee is charged
12 with providing to the full Board.

13 On June 11, 2020, the Board received a
14 presentation from your presiding officer, Laird Doran,
15 setting forth CPAC's recommendation on the refund issue.
16 During the Board's discussion of this Agenda Item, several
17 Board members expressed a desire that the CPAC
18 recommendations be further clarified, and be presented in
19 a more user-friendly, everyday common language.

20 To that end, the Enforcement staff who --
21 Director Corrie Thompson and Associate Director Brian Ge.

22 They have addressed the Board's concerns and have revised
23 the refund recommendation document for the purposes of our
24 discussion this morning. As we discussed in our previous
25 meeting, ultimately the CPAC recommendations will assist

1 the Board in the formulation of administrative rules which
2 set forth parameters for applying this new refund
3 sanction.

4 Thank you, Members, for your time and
5 indulgence. I will now turn the meeting back over to the
6 presiding officer, Laird Doran.

7 MR. DORAN: Thank you, David. Members, the
8 discussion today will be led by the Director of the
9 Enforcement Division, Corrie Thompson. And Brian Ge,
10 managing attorney for the Enforcement Division. I will
11 now turn the meeting over to Mr. Ge.

12 MR. GE: Thank you, Officer Doran. Hi,
13 everyone. My name is Brian Ge. I am the managing
14 attorney for the Enforcement Division. We had the
15 pleasure of discussing these items about a month ago.

16 And as David Richards mentioned earlier, the
17 Board had a desire for us to clarify some of our
18 recommendations. And so, I went ahead and prepared
19 materials for you. It should start showing up on page 5.

20 And so, for each question that we discussed
21 back in May, I have revisited it. I have included a
22 printed block of a proposed recommendation. And
23 underneath almost every item, I have included a small
24 talking point, which explains the Department's rationale
25 for that recommendation.

1 If no one has any questions, I am going to
2 start with the one on, how should a refund be defined.

3 MR. DORAN: Brian -- Laird Doran, for the
4 record. Can you repeat again what page of the materials
5 the explanations are contained on?

6 MR. GE: Yes, Officer Doran. Each -- starting
7 from page 5, you will see something titled Refund
8 Authority. And then, it is numbered one through four, I
9 believe, with subsections.

10 And underneath where it says, "proposed
11 recommendation," you will see an indented paragraph that
12 says "talking points." And that is where it contains the
13 Department's rationale.

14 MR. DORAN: Okay. And this is on -- Sorry.
15 Laird Doran, again. And you said, this is on page 5.
16 Okay.

17 MR. GE: Yes. It starts on page 5 in the
18 materials that Micah sent yesterday.

19 MR. DORAN: Okay. And I am looking at it right
20 now. And I am only seeing the questions. I am not seeing
21 any explanations. So, maybe I am -- well, I believe I am
22 looking at an old version. I apologize. Sorry. Please
23 proceed.

24 MR. GE: No worries.

25 MR. SMITH: Officer Doran.

1 MR. DORAN: Yes.

2 MR. SMITH: Question. Permission to speak.

3 MR. DORAN: Yes. Please. Mr. Smith, you are
4 recognized.

5 MR. SMITH: And I have a question for Mr. Ge.
6 And I apologize. I know that I am going to have several
7 questions and you guys have already been through a lot of
8 discussion on this. But not having been there, I probably
9 will ask questions.

10 But Mr. Ge, in Section 2301.807, which granted
11 the authority that we are talking about today, it begins
12 and says, "if after a proceeding."

13 Can you give me kind of an understanding of
14 what a proceeding is that would obviously lead to these
15 refunds we are talking about? What is the proceeding?
16 What is the due process?

17 MR. GE: Absolutely, Member Smith. So, a
18 proceeding is an enforcement proceeding. So, typically, a
19 complaint gets submitted to the Department. Our
20 investigators go out and investigate the complaint. They
21 will make note of any violations.

22 Those violations then get sent over to one of
23 the Enforcement attorneys, who will perform their own
24 review to see what the evidence supports in a charge. And
25 then, we will send those charges over to the dealer or

1 motor carrier, explaining either the violations, and this
2 is the proposed penalty or sanction.

3 At which point, the Respondent dealer or the
4 motor carrier can go back to the attorney and ask for a
5 hearing before the State Office of Administrative
6 Hearings, or they can informally settle the case with the
7 attorney without a hearing. If it goes to hearing, an
8 administrative law judge will hear the case and issue a
9 proposal for decision.

10 That will come back to the Department, and it
11 will go before the full Board, the TxDMV. At which point,
12 they will either recommend adoption of it or modify it, as
13 per their authority.

14 If it is just settled, we will enter into an
15 agreed final order with the Respondent. At which case, it
16 will lay out exactly what they did wrong and steps going
17 forward to remediate the problem.

18 Does that answer your question?

19 MR. SMITH: Yes, it does. Thank you, Mr. Ge.

20 MR. GE: Absolutely. If there are no other
21 questions, I will start with number one. How should a
22 refund be defined?

23 (No response.)

24 MR. GE: Hearing none. All right. So, the
25 recommendation that the TxDMV is proposing for how a

1 refund should be defined is, a refund should be defined as
2 the return of any percentage of funds or other
3 consideration that a consumer paid or contracted to pay to
4 a licensee or registrant, whether those funds are
5 documented as a separate line item, or included in the
6 overall amount paid by the consumer, including
7 overpayments, fees paid for services not rendered and
8 payments made for products not delivered.

9 A refund is limited to what the consumer paid
10 or contracted to pay the dealer, which would be the
11 licensee for household goods and wares, which would be the
12 registrant. If the consumer has to pay a third party
13 because of harm caused by the dealer or household goods
14 mover, that would not be included in this definition of
15 refund. That would be a separate legal concept called
16 restitution.

17 And so, the Department's reasoning behind that
18 recommendation is that when we order a refund, we would
19 only be ordering a dealer or a mover to return money and
20 other items of value that was given to the dealer or the
21 household goods mover. We wouldn't be ordering a dealer
22 or mover to give back more money than consumer paid to the
23 dealer or mover.

24 And the Department wouldn't order a dealer or
25 mover to give money to a consumer for something that the

1 consumer hasn't paid the dealer or the mover for. I am
2 here to entertain any questions regarding that.

3 MR. SMITH: Officer Doran, Member Smith
4 requesting permission to speak.

5 MR. DORAN: Yes. Member Smith. Please
6 proceed.

7 MR. SMITH: Again, several questions. First of
8 all, one of the comments -- or the end of the part of the
9 definition that kind of felt weak is when you said whether
10 or not a charge or a fee was itemized or not. If it is
11 not itemized, I would question how you would ascertain
12 what that amount was.

13 But that being said, a couple of things, and I
14 am sure this group knows this, but from a dealers'
15 perspective, you know, you guys carry a very large stick
16 and -- that stick being the ability to issue a civil
17 penalty of \$10,000 and that is for a number of violations.
18 I believe there are 14 of them.

19 You also have the ability to go and they revoke
20 or suspend the license, place on probation. So, you guys
21 have a real strong stick that would -- I believe would
22 influence -- have a great influence, certainly on me. A
23 great influence to make you do, quote, the right thing.

24 In defining the refund -- and I am reading
25 through all of these talking points, and the particular

1 items that you discussed. And it seems to me that most
2 all of those are things that you might say after a finding
3 of fact, and not things to be included in the definitions.

4 I can give you examples. And I will give you
5 one, if you might give me that privilege to talk about it.
6 Usually where you talk about the [inaudible 19:32].

7 From a dealer's perspective, it is not that
8 simple, because there may be times when a customer might
9 refuse to come back in to get something. There might be a
10 time when a customer had a different understanding from
11 what the We Owe says.

12 Or in the extreme case of a guy that buys a
13 pickup truck, and you know, and in the deal, we had agreed
14 to put a service body on it. And then later on, he
15 decides he really doesn't want the service body.

16 He would rather have the money back. Well, if
17 it is a financed deal, now that money really was advanced
18 by the finance company. And the money should go back --
19 if there is a refund, the money should go back there. Or
20 what if the dealer has already bought the body?

21 So, things are not quite as black and white as
22 we always wish they were. And I believe that the DMV
23 would be limiting itself extremely by putting [inaudible
24 20:22] particular cases as part of the definition.

25 I think that the definition should be really

1 simple. And I would propose that that is what we do
2 rather than having it so defined that you limit yourself.

3 You know, a refund is pretty simple. If you
4 look it up in the dictionary, it is the return or
5 repayment of money, period. And I don't know why we don't
6 define it as such.

7 Because then, you are going to have an
8 investigation and the proceeding that you just [inaudible
9 20:55]. And I believe that you would find yourself not so
10 tied down by a particular [inaudible 21:06] that we might
11 have, but by looking at the overall path [phonetic 21:07].

12 So, that having been said, if it comes to a point to
13 making recommendations or a motion for a definition, I
14 would like to do that.

15 MR. GE: Officer Doran, this is Brian Ge. May
16 I be recognized?

17 MR. DORAN: Yes. Please, Brian. Proceed.

18 MR. GE: Mr. Smith, so originally, we had
19 thought of a rather broad definition of refund. And after
20 the Board heard that recommendation, along with the other
21 recommendations, they really wanted additional clarity.

22 They didn't want situations where a dealer
23 could be held to a very open-ended definition. And so, we
24 have narrowed it down to the situations where we would
25 think we would order a refund.

1 And to address your other point, where there is
2 a lot of -- like with your example with the We Owe. So,
3 we are not going to just order a refund without looking
4 into it. So, first you have the investigator going out.

5 He is going to -- he or she will be going out
6 and looking through supporting documentation, making notes
7 of what the cost of things were of what part of that
8 transaction -- what the cost of it was. And then, that is
9 going to go to the attorney.

10 And the attorney is going to examine all of the
11 facts. He is going to talk to the dealer. He is going to
12 talk to the consumer, and they will figure out something
13 equitable.

14 But we are not just going to go in black and
15 white and say, hey. This says here that you owe this
16 part, and you didn't install it, so we are going to order
17 a refund. Nothing is ever that simple.

18 And we would hope that we have enough trust
19 with the dealer community where dealers believe that we
20 are not arbitrary like that. Does that address your
21 question, Mr. Smith?

22 MR. SMITH: Well, I don't know that I was --
23 mine was just impression. I guess if I had fashioned the
24 question, it might be why -- I mean, these examples might
25 be somewhat of a guideline if the facts -- I mean, every

1 one of them call for a fact-finding investigation, as you
2 said, you know, but a lot of them have what ifs that would
3 be in them that I really want to [indiscernible 23:58].

4 So if that -- are you suggesting that these would be
5 incorporated as a part of the definition, or is this just
6 things that -- examples of what you think you might do?

7 MR. GE: These are just examples of things that
8 we might do, like the definition for refund. It is just
9 number one. Number two, three, four, and all the subpart
10 of four, those are separate.

11 So, we are defining refund in that one, like
12 two and a half paragraphs under number one, and that is
13 it. That is the definition of refund that we're
14 proposing.

15 Everything else is just tweaking it a little
16 bit. And the scenarios that we had in four are just
17 things to get people talking about common scenarios that
18 may come up.

19 MR. SMITH: Okay. Then one question on your
20 proposed recommendation. When you say, is a separate line
21 item, or included in an overall amount. I am seeing that
22 as what, I am going to sell you a car for \$25,000. And
23 there is something in there that we disagree about.

24 How would it break out? Then it seems to me
25 that that's, again, something that might be a part of an

1 overall fact-finding but not a part of a definition.

2 MR. GE: This is Brian Ge. I mean, what you
3 say makes sense. It really does. But the Board asked for
4 a certain degree of clarity, and that is what we came up
5 with. If you have suggestions to modify the language, we
6 are certainly open to that.

7 MS. THOMPSON: Officer Doran? Corrie Thompson.
8 If I may speak.

9 MR. DORAN: Yes, Ms. Thompson. Please proceed.

10 MS. THOMPSON: Member Smith, as Mr. Ge
11 mentioned, the information contained herein the
12 information materials for the CPAC was to help inform the
13 members who do not have dealer backgrounds about -- or
14 household good mover backgrounds about the types of
15 scenarios that we might possibly encounter during the
16 pendency of an enforcement action.

17 And so, not all of this language is going into
18 the rule. And when we do come up with that proposed rule
19 language that we hope to bring before the Board at the
20 August meeting, that if that gets approved for proposal,
21 to be published in the *Texas Register*, that those rules
22 will be just like any other rules.

23 They will be open for public comment. People
24 will be able to have that period of time to speak on why
25 they think things should or should not be in the rule, or

1 if the Department is missing anything at that time period.

2 And so, we can talk about those things here,
3 too. But as Brian is saying, the changes that were made,
4 since the last time we met to discuss reasons with the
5 group, was to help provide greater clarity that the Board
6 sought during the last meeting.

7 MR. SOLIS: Officer Doran.

8 MR. SMITH: I apologize, because I know that
9 you guys talked about this a lot. But another question
10 that I have asked. You know, when we talk about this
11 refund, why is it limited to a dealer or household goods,
12 period?

13 If the statute says person violated, shouldn't
14 that be any licensee, not just the dealer? I mean, why
15 are we being -- we. I am a dealer. Why are we being
16 singled out and pointed to?

17 MS. THOMPSON: Officer Doran? This is Corrie
18 Thompson. If I may speak?

19 MR. DORAN: Yes. Ms. Thompson, please proceed.

20 MS. THOMPSON: Member Smith, this is simply put
21 together based on the authority that Sunset granted us.
22 And so, the provisions that were added were in 2301, and
23 in, I believe, 643, when it speaks to household goods
24 movers. And so, those are the only entities that we are
25 allowed to attach the refund sanction authority to. And

1 that is based on where it was placed in statute.

2 MR. SOLIS: Officer Doran, if I may speak.

3 MR. DORAN: Yes. Can you please identify
4 yourself, though, prior to speaking?

5 MR. SOLIS: Yes. This is Johnny Solis.

6 MR. DORAN: I am sorry. Could you repeat that?

7 MR. SOLIS: Solis.

8 MR. DORAN: Okay. Yes. Member Solis. Please
9 proceed. Thank you.

10 MR. SOLIS: Thank you. I think that if we look
11 at this -- I am a dealer as well. And I think the clarity
12 of the item and the refund is very good, because this way,
13 we know the specifics of it.

14 However, back into what Member Smith was
15 referring to as part of a whole, as a dealer, if we use a
16 number, \$20,000 and it includes the tires, does that --
17 how would we determine the price that was actually to be
18 refunded, if we are trying to get full clarity? So, it is
19 kind of like, in my view, two different things here.

20 One, we are trying to be specific, yet the
21 other one puts it into as a whole.

22 MR. GE: Officer Doran. This is Brian Ge. May
23 I be recognized?

24 MR. DORAN: Yes. Brian, please proceed.

25 MR. GE: Member Solis, and Member Smith. So,

1 these are fact questions that will be developed over the
2 course of the investigation, and the negotiations between
3 the DMV attorney and the dealer.

4 The dealer, we are not just going to come out
5 and take a number. The dealer is going to have
6 opportunity to provide what -- like, if we identify one
7 item, say a tire.

8 I mean, the dealer is going to be able to
9 present their evidence on what that tire is worth, and the
10 consumer will, as well. And this is all assuming that the
11 dealer and the consumer doesn't just work it out
12 beforehand. This is only if it gets to this stage.

13 And even if it gets to this stage, everyone is
14 going to have a say in it. We are not just going to be
15 mandating certain amounts for things. This isn't that
16 type of sanction.

17 MR. FRENCH: Sir. This is James French. May I
18 be recognized?

19 MR. DORAN: Member French. You are recognized.

20 MR. FRENCH: Thank you. From a household goods
21 perspective, there are certain areas included in our
22 tariff and in the rules of the Texas DMV, such as claims
23 for loss and damage -- very clearly defined as to what has
24 to happen, and when it has to happen, including a
25 mediation between the carrier and the consumer. Is that

1 going to be included, or should it be excluded from any
2 refund situation? And furthermore, [inaudible 31:27]
3 especially, when, for a mover, we are required to quote
4 prices, either guaranteed not to exceed or at a guaranteed
5 price.

6 And when it is a guaranteed price or a not to
7 exceed, it is treated more as a lump sum kind of activity.

8 You know, then you could have a huge discrepancy between
9 what the examiner feels or what the attorneys of Texas DMV
10 feel.

11 I don't know. Without some limits to where
12 this is going, I would certainly have a hard time saying
13 yes, I think we ought to do this. Thank you, sir.

14 MR. GE: This is Brian Ge. Officer Doran, may
15 I be recognized?

16 MR. DORAN: Please proceed, Brian. Thank you.

17 MR. GE: So, Member French, as far as household
18 good movers is concerned, the Department is really only
19 concerned with one situation. And that is when a mover
20 takes possession of a consumer's goods, and then refuses
21 to unload it unless the consumer pays more than what was
22 in the tariff, or what they agreed to.

23 So, it is really a fairly limited situation,
24 when it comes to household good movers. We are not going
25 to start reexamining the deal between the mover and the

1 consumer. We are not trying to help the consumer
2 renegotiate anything for both either the movers or our
3 dealers. We are not trying to renegotiate anything for
4 anyone.

5 It is just if there is a violation of a rule or
6 statute, part of our sanction. Instead of saying hey, you
7 are going to owe us this civil penalty and we may or may
8 not revoke your registration or license, we are going to
9 say, hey, maybe you want to give a refund to this consumer
10 for this item. And that is in lieu of other penalties.

11 So, that is typically how we imagine this
12 refund authority will be used. I hope that addresses your
13 concern.

14 MR. FRENCH: This is Member French. May I be
15 addressed?

16 MR. DORAN: Yes. Member French, please
17 proceed.

18 MR. FRENCH: I understand what you are saying.
19 I hope I understand what you are saying about the limited
20 scope, as far as household good carriers are concerned.
21 Any rule or definition needs to be written that way. It
22 is certainly not that way now.

23 In the particular situation that you said you
24 were really concerned about, I think what you will find is
25 that when a mover loads some stuff, changes the price

1 after it is loaded, and then refuses to deliver, it's not
2 coming from the registered or licensed carrier or mover.
3 It is coming from what I call rogue movers that, in most
4 cases, aren't even based in Texas. They are on the
5 internet.

6 And you know, when you see a deal that looks
7 too good to be true, it usually is. So, I don't know how
8 you are going to enforce anything on these rogues as they
9 come up. Thank you.

10 MR. SMITH: Member Smith. I request permission
11 to speak.

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

13 MR. SMITH: I have a question, and possibly a
14 response. First of all, what is the scope of the number
15 of complaints the Department handles with regard to the --
16 what that would lead to a dealer refund, or to a motor
17 carrier refund. I mean, is this -- how common is this?

18 MS. THOMPSON: Household good mover complaints?
19 Corrie Thompson. I am sorry. Officer Doran, if I may be
20 recognized?

21 MR. DORAN: Yes. Ms. Thompson. You are
22 recognized.

23 MS. THOMPSON: My apologies. So, with regard
24 to household good mover cases, if -- Luis Perez, our
25 assistant chief investigator is on the line. He can jump

1 in and correct me at any time.

2 But, to the best of my knowledge, we receive
3 approximately 300 household good mover specific complaints
4 in a fiscal year, many of which could potentially be
5 subject to this new refund sanction authority. It would
6 probably be far fewer than that, as a lot of those may
7 pertain to advertising, or things of that nature.

8 With regard to motor vehicle cases, we handle
9 about 7,000 cases per year. The most -- the majority of
10 those violations being failure to timely transfer title,
11 which comes along with some of the things that Brian is
12 going to talk to, in the examples, when we get into that
13 discussion -- that could potentially subject a dealer to
14 the refund section.

15 MR. SMITH: Okay. Of the 300 or so motor
16 carrier, are those all licensed carrier complaints?

17 MR. PEREZ: This is Luis Perez. Can I be
18 recognized?

19 MR. DORAN: Well, there was a question posed by
20 Member Smith, and I believe it was directed to either Mr.
21 Ge or Ms. Thompson. So, just to keep the record clear, I
22 would ask staff if they could address that question. And
23 then, we could move on immediately to you, Member Solis.

24 MS. THOMPSON: It was Luis Perez that spoke.
25 He is Department staff.

1 MR. DORAN: Okay.

2 MS. THOMPSON: This is Corrie Thompson.

3 MR. DORAN: Okay. Great. All right. Sorry.

4 MS. THOMPSON: No problem.

5 MR. DORAN: Ms. Thompson. Mr. Perez, you can
6 proceed as well.

7 MR. PEREZ: Yes. Thank you. Luis Perez,
8 assistant investigator with the -- Assistant Chief
9 Investigator with the Enforcement Division. The question,
10 I am sorry. Can you repeat the question?

11 MR. SMITH: It was made -- this is Member
12 Smith. The comment was made that there were approximately
13 300 complaints with regard to motor vehicle carriers. And
14 my question was, are those 300 complaints all regarding
15 licensed carriers?

16 MR. PEREZ: Luis Perez again. No, sir. They
17 are not all in regards to licensed carriers. We do
18 receive complaints in regards to some unlicensed moving
19 companies. So, it is a good mix.

20 MR. SMITH: Okay. So, you half and half or
21 something like that. Is that --

22 MR. PEREZ: Yes. I would say that the majority
23 of the complaints are coming in regards from consumers, I
24 would say three-fourths are coming in on registered moving
25 companies, and then, the other quarter is coming in on

1 unregistered moving companies.

2 MR. SMITH: So, what do you do about an
3 unregistered? When, I think, the Code, the 2301.807 says
4 that you -- if you determine a person. Do you have any
5 jurisdiction over those non-licensed carriers to order a
6 refund?

7 MS. THOMPSON: Corrie Thompson. If I may,
8 Presiding Officer Doran?

9 MR. DORAN: Yes. Ms. Thompson, you are
10 recognized.

11 MS. THOMPSON: The motor carriers are in a
12 different statute. So, we are looking at Transportation
13 Code 643 under a different authority when we are talking
14 about the household good movers.

15 MR. SMITH: Thank you. Again, Member Smith.
16 One last question. When the Board -- I don't have, and
17 maybe, if I do, I don't know where it is, the original
18 definition that was presented to the Board. So, I don't
19 know that whole story.

20 But in that definition, did the DMV present to
21 the Board -- the staff present to the Board a definition
22 that the Board didn't like? And what was that definition?
23 And exactly what was their direction?

24 MS. RASH: This is Member Rash. I would like
25 to be recognized.

1 MR. DORAN: Yes. Member Rash, I am not sure if
2 that question by Member Smith though was directed to
3 staff, who was also participating at the Board meeting
4 that might want to respond with perhaps maybe some
5 elaboration as to what transpired at the Board
6 presentation.

7 MS. THOMPSON: Corrie Thompson, Officer Doran.

8 MR. DORAN: Yes. Ms. Thompson. Please
9 proceed.

10 MS. THOMPSON: So, for everybody's education
11 here, for those who were not able to attend the last Board
12 meeting that was held, I gave the primer on why we were
13 present before the Board. Being that Sunset through our
14 bill, last session, gave us additional sanction authority
15 to add refunds as a sanction against household good
16 movers, and against motor vehicle dealers.

17 And this is situations as laid out in statute.

18 And that Officer Doran read off all of the points of
19 agreement that the group discussed during the last
20 meeting. I do not have the specific definition in front
21 of me, but I heard Mr. Ge chime in a second ago, and he
22 might have that specific language.

23 MR. GE: Hi. This is Brian Ge. May I be
24 recognized?

25 MR. DORAN: Yes. Mr. Ge, please proceed.

1 MR. GE: So, the original definition for refund
2 that was proffered to the Board was, a refund should be
3 defined as any monies paid or contracted to be paid to a
4 dealer, including overpayments, fees paid for services not
5 rendered, and any other payments made for products not
6 delivered.

7 And so, since then, we have added some
8 additional language stating the situations where TxDMV
9 would not order a refund. And I believe that addressed
10 the clarity issues that the Board had with regard to how a
11 refund should be defined.

12 MR. SMITH: Member Smith again request --

13 MR. DORAN: Sure. Member Smith, I just wanted
14 to add, also, before we get to your question, since I was
15 the one who presented.

16 My recollection was, we presented the
17 definition that this committee had unanimously agreed to,
18 as well as a number of different scenarios that were what
19 we would think of as suggestive examples for where the
20 Department's authority could be triggered, but that these
21 were merely examples as to where the Department, you know,
22 might act.

23 And Member Gillman and Member Graham chimed in
24 and had you know, specific questions, not that dissimilar
25 from some of the things you have asked today, Member

1 Smith, in terms of, well, if you altered the facts of the
2 situation and considered you know, X, Y, or Z, you know,
3 that would be an inappropriate situation to grant a refund
4 in. And without getting bogged down in sort of addressing
5 each and every hypothetical factual twist that could come
6 out of these examples, the decision was made during the
7 meeting, the Board meeting, that CPAC would take the
8 concerns of the Board back, and would get with staff and
9 that staff would take another look at that issue.

10 So, that is my recollection of what went on at
11 the Board meeting. So, with that, Member Smith, please
12 proceed with your question.

13 MR. SMITH: And I think these examples --
14 Member Smith. I think these examples are certainly
15 helpful, you know, given that the facts were exactly as
16 the example professes them to be. But I -- so, I am now
17 understanding they are not to be made a part of the
18 definition. They are just for discussion purposes. Is
19 that correct?

20 MR. DORAN: Member Smith, I will defer to
21 staff. But that was my understanding, and that is how I
22 represented it to the Board.

23 MR. GE: This is Brian Ge. May I be
24 recognized?

25 MR. DORAN: Yes. Mr. Ge, please proceed.

1 MR. GE: Member Smith, you are absolutely
2 correct. These examples, starting with number four, they
3 are just examples. It is for us to talk through.

4 They are illustrative of how we might use our
5 refund authority. It is not going to be incorporated into
6 a rule. In fact, even the recommendations, the language
7 of the recommendations, even if they seem kind of legal-y
8 for lack of a better term, that will not be the wording of
9 the rule, either.

10 These are just recommendations that we are
11 making to the Board, and then rule language is separate.
12 And then, there will be opportunity for the public to
13 comment on the actual rule language. So, these are just
14 recommendations for the Board. And how it is worded is
15 not going to be how the rule is worded.

16 (Simultaneous discussion.)

17 MR. DORAN: Okay. I think there were two
18 coming at me at the same time, there. But Member Smith,
19 you were following up on your line of questioning. And
20 then, we will move on to the other members.

21 MR. SMITH: Sure.

22 MR. DORAN: Please proceed.

23 MR. SMITH: In the interest of then moving
24 forward, I would like to make a motion. And that motion
25 would be that we define refund as quote, a refund is

1 defined as the return or repayment of money, period.
2 Under Section 2301.807, a refund is limited to the amount
3 paid by the consumer, and without inclusion of any
4 additional consideration of damages or harm, period.

5 And my argument for that is, it takes
6 essentially a dictionary definition of refund, but then
7 points out exactly what the Sunset Commission staff said,
8 that it should be limited to the amount paid. And then,
9 all these examples are great to be able to answer
10 questions.

11 But I believe that we keep it simple. It gives
12 the DMV, the Department, the ability to do what they do
13 best with investigation and fact-finding, and applying the
14 appropriate action and direction and refund if needed.
15 So, that is a motion. And there you go.

16 MR. DORAN: Okay. Member Smith. Thank you for
17 the motion. As the Presiding Officer, I need to ensure
18 that we have exhausted all discussion before we take up
19 the motion. And with at least two other members that
20 wanted to speak on this topic, we can't move forward with
21 the motion at this time.

22 So, we will table it for the time being. But
23 we will come back to this motion.

24 And with that, I would recognize, I believe
25 there were two members that had wanted to be recognized to

1 speak on this topic. I think, Member Cavender was one.
2 And I believe it may have been Member Johnson.

3 MR. CAVENDER: Thank you, Officer Doran. This
4 is Member Cavender.

5 MR. DORAN: Okay. Member Cavender, please
6 proceed.

7 MR. CAVENDER: Yes. I am in concurrence with
8 Member Smith on the motion. But at this time, I do want
9 to just respectfully draw our attention back to a talking
10 point that I think is very important, in the how should
11 refund be defined at number 1 on refund authorities.

12 The talking point says, the Department should
13 not order a dealer or household goods mover to give more
14 money back to the consumer than the consumer paid to the
15 dealer. The Department should not order a dealer or
16 household goods mover to give money to a consumer for
17 something the consumer has not paid the dealer or
18 household goods mover for.

19 Basically, as Member Smith mentions, no
20 additional damages should be considered, nor additional
21 harm. It should be limited to the amount paid and a very
22 simple *Webster's Dictionary* definition of refund, I
23 believe, is the way to make this just as clear as
24 possible.

25 MR. GE: This is Brian Ge. May I be recognized

1 for a moment.

2 MR. DORAN: Yes. Please, Mr. Ge. Proceed.

3 MR. GE: So, Member Smith and Member Cavender,
4 I am fine with your definition. I would suggest one
5 modification to where Member Smith said money. I would
6 replace money with consideration.

7 Because it is not just money that could be paid
8 to a dealer. I mean, if you think about trade ins.
9 Technically, you are giving the car as consideration. It
10 might be treated as a sum of money, but you are not
11 actually paying money to the dealer. But you are paying
12 something to the dealer.

13 So, I would make that suggestion. But
14 otherwise, I mean, the Committee is free to define refund
15 however they want. Thank you.

16 MR. RIGBY: Michael Rigby. May I be
17 recognized?

18 MR. DORAN: Member Rigby. You are recognized.

19 MR. RIGBY: Thank you. So, I had a question.
20 I guess I am getting more confused as we discuss this.
21 But my first question would be, Brian, you said the
22 proposed recommendation is not actually proposed language
23 for the rule. I am wondering if there is some proposed
24 language.

25 The second question I have is, you make a

1 distinction between refund and restitution, which I think
2 I understand. You gave the example of the warranty, where
3 the dealer -- the customer paid for the warranty, but the
4 dealer didn't file the paperwork. Customer, you know, has
5 problems with the car. So, he pays \$200 but has \$2,000
6 worth of repairs.

7 That is called restitution for the repairs and
8 refund for the amount paid. But my question is, what is
9 the remedy for the consumer for the amount of the repairs?

10 How do they get restitution? Is that through
11 some civil suit against the dealer, or how do they get
12 compensated for that? Thank you.

13 MR. GE: This is Brian Ge. May I be
14 recognized?

15 MR. DORAN: Yes. Mr. Ge, you are recognized.

16 MR. GE: So, Member Rigby, as you alluded to,
17 there are limits to the Department's authority. So, one
18 order to refund, or to sanction licensees in general.

19 So, in the example that you gave, if the
20 consumer suffered more damages than the Department has the
21 authority to give relief for, yes. They would have to
22 pursue other civil remedies, including suing in small
23 claims court, or even District Court.

24 MR. RIGBY: Thank you. I have a follow-up
25 question. This is Michael Rigby.

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

2 MR. RIGBY: So, if you could help me
3 understand. Like I said, I was getting confused about
4 what the concern of the Board is, about our original
5 definition.

6 It sounded like our original definition was too
7 broad, and the Board was asking us to narrow it, or
8 clarify it. But I am not quite sure at this point, given
9 the conversation, what we are being asked to do. Thank
10 you.

11 MR. GE: This is Brian Ge, again. May I be
12 recognized?

13 MR. DORAN: Yes. Mr. Ge, please proceed.

14 MR. GE: So, the Board just really wanted us to
15 clarify when a refund would not be ordered. So, that
16 would be situations of restitution, or not -- like, I
17 think, originally in our meetings, we discussed if the
18 consumer paid \$30,000 to a dealer. And you know, like
19 that warranty example came up, and he suffered \$25,000
20 worth of harm or damages or repair costs.

21 Originally, it was contemplated hey, maybe we
22 could refund \$25,000 of that \$30,000. Now, the
23 clarification is, if the cost of that warranty was \$200,
24 and you get \$2,000 worth of repairs, you are going to be
25 refunded that \$200, assuming the dealer didn't actually

1 forward that \$200 off to the service contract company.

2 So, we are just narrowing down what we are
3 actually talking about. We are not -- we are specifically
4 excluding any kind of restitution or other considerations
5 of harm or anything more than what the consumer gave to
6 the dealer or the mover.

7 MR. RIGBY: Michael Rigby. Could I follow up?

8 MR. DORAN: Yes. Member Rigby. You are
9 recognized.

10 MR. RIGBY: And can you tell me what in the
11 original definition left that uncertain? What was it
12 about the original definition that caused that concern
13 that somehow the definition might include restitution and
14 not be limited to refunds? Thank you.

15 MR. GE: This is Brian Ge. May I be
16 recognized?

17 MR. DORAN: Yes. Mr. Ge, please proceed.

18 MR. GE: So, it wasn't the definition that gave
19 the Board members pause. It was reading through the whole
20 document and then, commenting on it, kind of like this
21 Committee is doing right now.

22 We are asking about number 1, but we are
23 talking about everything in numbers 2, 3, and 4 as well.
24 So, it is obviously, 2, 3 and 4 have some impact or
25 some -- it will affect your thinking on number 1.

1 But -- so that was what kind of triggered the
2 wanting additional clarification. It is looking at
3 everything else, and then thinking back to the first
4 question. So, we have tried to narrow the first item
5 down, of refund. And so, to address the Board's concerns.

6 And then, for purposes of any rulemaking,
7 number 4 can be stricken altogether. You don't have to
8 think about that. That is not going to be included in any
9 way, shape, or form, in the final rule. That is just for
10 us to talk through, to give everyone who isn't a dealer or
11 a mover some example of when the refund situation would
12 come up.

13 But I mean, it is a nullity. You can vote on
14 it, but it is not going to actually result in anything.
15 And I am just being perfectly blunt.

16 MS. THOMPSON: Corrie Thompson. Officer Doran,
17 may I be recognized?

18 MR. DORAN: Yes. Ms. Thompson, please proceed.

19 MS. THOMPSON: I do think that it is important
20 about what Brian really said. Because we had no problem
21 initially breezing through the definition with the Board.

22 It was where the hang-up came was when we got
23 the examples. And so, I don't want to say, our bad, for
24 including them in the discussion with the Board. Because
25 you know, we want to come forward and be transparent about

1 the things that were discussed, that the members were in
2 agreement on.

3 And everyone was in agreement on the examples
4 that we discussed, but for example, Member Gillman brought
5 up something that we have now added, that if the consumer
6 has any hand in why something didn't pass on as quickly as
7 it should, they were a part of the problem. We are
8 thinking about including those things in the definition
9 now, whereas we would not have before.

10 Because that is something that just happens
11 during the investigative process. That is why we have
12 investigators. That is why we have attorneys.

13 And so, I think it will be more helpful for the
14 group to talk through the definition after we go through
15 and look at the examples. As Brian said, looking at those
16 examples, and what they really mean will help inform how
17 that plays back into the definition.

18 Because when he said, we shouldn't say money,
19 we should say consideration, that is going to come out
20 when we talk about the examples for money the consumer has
21 to pay to obtain a temp tag. Money that the consumer has
22 to pay to continue paying off the vehicle that they
23 already traded in.

24 That is not necessarily what you traditionally
25 think of money that you pay to the dealer when you

1 purchase your new vehicle. But it is consideration that
2 was part of that transaction for the sale of that vehicle.

3 And so, we are trying to figure out how to wiggle all of
4 those different scenarios into the definition language.

5 And we are doing that, because it is about
6 consumer protection. And it is about trying to make the
7 consumer whole in this transaction, based on the
8 Transportation Code 501.0234 duty that a dealer has upon
9 the sale of vehicles to the consumer public.

10 And so, I think to get us moving, and to get
11 some momentum on what the definition really should be, and
12 if we should make changes, it would benefit us to go
13 through the examples, if nobody has a problem with that.

14 MR. SMITH: Member Smith. Officer Doran,
15 permission to speak?

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

17 MR. SMITH: Thanks to Corrie. I will amend my
18 motion at such time as it is appropriate for you to take
19 it up to use consideration rather than money. So,
20 whenever you think it appropriate, I will parallel Mr.
21 Ge's agreement.

22 MR. DORAN: Thank you, Member Smith. This is
23 Presiding Officer Doran. It is my recommendation that we
24 go ahead and take up each of these examples in our
25 materials.

1 And then, Member Smith, we will revisit your
2 motion, and the language that you laid out for the
3 Committee. With that, I would like to turn it back over
4 to Mr. Ge and Ms. Thompson to continue with their
5 presentation.

6 MR. GE: All right. This is Brian Ge. So, if
7 we are getting started with the examples, let's start with
8 the very first one.

9 The scenario is, the consumer has to purchase
10 one or more 30-day permits because the dealer did not
11 transfer title before the buyer tag expired. In that
12 scenario, the Department is proposing the following
13 recommendations.

14 The Department may order a refund where a
15 consumer has to purchase one or more 30-day permits
16 because the dealer failed to transfer title before the
17 buyer tag expired, and where nothing outside of the
18 control of the dealer prevented the transfer, like the
19 consumer's actions, or a natural disaster. And you might
20 have noticed that the tail end of that language seemed
21 oddly specific.

22 And the reason for that was, during discussion
23 with the Board, several Board members brought up a very
24 valid point, hey. Sometimes it is not the dealers' fault
25 that they weren't able to transfer title on time.

1 Sometimes the consumer did something or
2 wouldn't come in to get their tags, or somehow contributed
3 to a delay. From my perspective as an attorney, I would
4 say yes, obviously, that makes sense. And the attorney
5 would have addressed that before ordering a refund.

6 But we thought it wise to include it in the
7 definition to make it perfectly obvious to everyone that
8 yes, you will get your due process. And we will take into
9 consideration all the factors before ordering a dealer to
10 refund the cost of any 30-day permits.

11 And then, further to tie it back to the
12 definition of a refund, the thought is that unless a
13 consumer is buying a salvage or a non-repairable vehicle,
14 implicit in the purchase price of that vehicle is the
15 expectation of the consumer that they are getting a
16 vehicle that can be legally operated on the road. That is
17 in typical situations, not right now in COVID, after a
18 temporary tag expires, the consumer can no longer operate
19 their car on the road without getting a 30-day permit.

20 And so, it is our thinking and belief that the
21 costs of the 30-day permit is within the bounds of how we
22 define refund. If there are any questions, I am happy to
23 field them.

24 MR. DORAN: This is Presiding Officer Doran.
25 Just to build on what you were saying, Mr. Ge, my

1 recollection from the Board meeting was one of the
2 specific examples that Member Gillman brought up, which I
3 believe you addressed here today, with your language, is a
4 situation where, let's say a couple is getting divorced
5 and perhaps the title and registration was being mailed to
6 the buyers' home.

7 But because of marital discord, or people no
8 longer living under the same roof -- so through no fault
9 of the dealer, that particular owner individual was unable
10 to get their license plate and their registration. And it
11 was explained during the Board meeting that -- I believe
12 Ms. Thompson explained this, that those would be exactly
13 the types of the facts and factors that the Agency would
14 take into consideration prior to assessing a refund
15 against the dealer.

16 MS. THOMPSON: Officer Doran, if I may?

17 MR. DORAN: Yes. Please.

18 MS. THOMPSON: That is correct. That was what
19 I explained. And yes, that is the same. And that is true
20 with any sanction that the Department initially sets out
21 to impose upon a licensee or registrant under the
22 Department's authority. Yes.

23 That is part of the investigative process. We
24 gather facts from both sides and we determine that if the
25 allegation that we initially set out to charge the

1 licensee with sticks, based on that evidence that is
2 received during the administrative case process.

3 And if it doesn't, we remove allegations or we
4 reduce any sanctions if there was some mitigating
5 evidence, but there was still a violation. Yes. That is
6 all part of the administrative process.

7 MR. DORAN: Thank you.

8 MR. GE: This is Brian Ge. May I be
9 recognized?

10 MR. DORAN: Yes. Mr. Ge, please proceed.

11 MR. GE: It doesn't seem like we have too many
12 comments or questions regarding this particular example.
13 I believe we are still going with the format of making the
14 motion and adopting it, if no one has any objection. So,
15 if no one has any questions with regard to the 30-day
16 permits, I think a motion would be in order if anyone
17 wants to make one.

18 MS. THOMPSON: Corrie Thompson.

19 MR. DORAN: Ms. Thompson, you are recognized.

20 MR. DORAN: Thank you, Officer Doran. I just
21 wanted to say something really quick, so that the group
22 was clear. I think the process that Brian is recommending
23 does make the most sense.

24 Because again, we are talking about, do you
25 agree with this situation. Should the Department be

1 allowed -- and remember, we are thinking about the outward
2 limits of the Department's authority. So, the people who
3 really need this sanction imposed. Should the Department
4 have the ability to do this in this scenario.

5 I think it is wise to go through, take member
6 votes on the scenarios, if everyone is okay with that.
7 Because again -- and we can go back and look at the
8 definition and see how our agreement or disagreement with
9 any of the scenarios posed affects how we decide to define
10 refund.

11 MR. DORAN: This is Presiding Officer Doran,
12 question for Ms. Thompson and Mr. Ge. So, essentially,
13 what we are doing is based on the fact that we have new
14 members. And the direction that we have been given by the
15 Board to take these back and have additional discussion,
16 we are in essence going to revote on these individual
17 scenarios through different motions that we would offer
18 for each one of those scenarios.

19 Saying that, yes, this is a scenario in which
20 we believe the DMV should have authority, if the
21 circumstances justified it, to have the authority to issue
22 a refund in this type of situation. But again, this is
23 not going. This is not actual language that is going into
24 the rule itself.

25 This is just a recommendation to the Board,

1 saying the Committee has agreed that in these types of
2 situations, the Department should have -- this would be
3 the type of situation where the Department could be able
4 to exercise their refund authority. Is that correct?

5 MS. THOMPSON: Officer Doran, Corrie Thompson?

6 MR. DORAN: Yes. Please proceed.

7 MS. THOMPSON: Yes. You are correct. And so,
8 the way that this would work at a Board meeting would be,
9 again, reading out the recommendations potentially that
10 CPAC members agreed to. The scenarios. The new
11 definition. But then separately, as a different agenda
12 item, separate and apart from talking about what the group
13 discussed, then we have rule language that we are able to
14 present in connection with that, as the goal.

15 MR. DORAN: Okay. Presiding Officer Doran
16 again. And so what staff is looking for, from the
17 Committee, is a motion then that asks for, in the event of
18 a customer failing to receive their 30-day permit, as part
19 of the transaction, that the Agency have the authority to
20 order a refund in that circumstance, considering all
21 relevant facts, of course.

22 MS. THOMPSON: This is Corrie Thompson.
23 Officer Doran, that is correct.

24 MR. DORAN: Okay. Thank you.

25 MR. OLAH: Officer Doran, Member Olah asks to

1 be recognized.

2 MR. DORAN: Okay. Member Olah, you are
3 recognized.

4 MR. OLAH: I would like to make a motion along
5 the lines of what you just described.

6 MR. DORAN: Okay. Happy to entertain a motion.
7 I did note that Member Smith was trying to get in there
8 with a question or a comment as well.

9 So, if we could, prior to taking up your
10 recommended motion, if we give him an opportunity to be
11 recognized and make his question or comment known to the
12 group. Then we will come right back to your motion,
13 Member Olah.

14 MR. OLAH: Fair enough.

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

16 MR. SMITH: Thank you, Officer Doran. I have
17 concern over what we are doing here, because I think that
18 first of all, are all the facts laid out in your
19 description? Probably not.

20 Any one of us could come up with those twists
21 and turns. I mean, I think it is great to say, if the
22 facts were exactly this and no more, this is what we would
23 do. But I think you have got to be awful careful saying,
24 you know, if you need a 30-day permit.

25 I think, how many different scenarios can we

1 possibly come up with. And it is an infinity. Because I
2 know that at 45 years as a dealer, every time I think I
3 have heard it all, I find out that I haven't. Because we
4 have twists and turns.

5 So, are these things that you are trying to
6 come up with answers to the Board questions? And I
7 believe that at the end of the day, rather than to
8 memorialize it, that somehow we have to have confidence
9 and trust in the investigators of the Department that when
10 they get to the bottom of it, they are going to make the
11 right decision, not a decision driven by some motion made
12 by CPAC.

13 I just think it is very problematic as we go
14 down these rabbit trails, that they are followed. They
15 have a motion, that this is what we would do. I hope
16 that, again, the confidence in the DMV would override
17 having to define. Because for every one situation you
18 got, there is a hundred more.

19 I am just -- I am going to vote against the
20 motion. I mean, I agree with what he just said, and the
21 fact, and what we would do if given this set of facts.
22 But a motion to memorialize that, I believe, is the wrong
23 way to go.

24 MR. GE: This is Brian Ge. May I be
25 recognized?

1 MR. DORAN: Yes. Mr. Ge, you are recognized.

2 MR. GE: Thank you, Mr. Smith for your
3 confidence in the DMV. It is appreciated, actually. In
4 terms of the examples given, I wrote the examples and I
5 meant them exactly as they are worded.

6 I tried to be as precise as possible. So,
7 exactly as how is laid out in this scenario is only what
8 we are considering. We are not talking about any of the
9 twists and turns. It is just, this is the one
10 hypothetical with no twists. And this is how the
11 Department would be able to respond. And that is the
12 situation for all of these scenarios.

13 There is no deeper layer. There is no extra
14 meaning. It is just exactly what is on the paper.

15 MS. THOMPSON: Officer Doran, Corrie Thompson.

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

18 MS. THOMPSON: And again, we are only talking
19 about sanction authority available to the Department.
20 Example: we have the authority to revoke a license in a
21 number of scenarios. Does that revocation sanction get
22 included to every single case that we sent out to a
23 dealer? No, it does not. That is within the Department's
24 discretion, the attorney's discretion.

25 After [inaudible 1:13:49] attached to the case,

1 as to what is appropriate to start out the initial
2 charging point of the document, that the dealer gets
3 noticed on. And even that starting point can morph
4 throughout the administrative process.

5 So we -- again, these are examples to talk
6 about the outward limits of the authority, so that the
7 Department knows basically how the Advisory Committee
8 feels about this authority, and how it should be used by
9 the Department. And so, it is basically just a parameter
10 for guidance, for us going forward.

11 Is there going to be mention in the rule
12 language about 30-day permits paid for when the dealer
13 doesn't transfer title. No. That is not appropriate for
14 rule language.

15 We would have the longest rules in the world if
16 we did that for every specific scenario that could
17 possibly crop up. As you have mentioned, there could be
18 hundreds of ways that things could happen. And so, that
19 is why we are limiting it as guidance for the Department.

20 MR. FRENCH: Officer Doran, this is Jim French.

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

22 MR. FRENCH: I think we are chasing down a
23 wrong path, in that we could talk about these scenarios
24 and these examples and, yes, maybe they'd be used as
25 guidance. But two years from now, this conversation will

1 be forgotten when an examiner, you know, goes out on a
2 case.

3 I think the important thing we need to be
4 looking at is, what is the proposed rule. And you know,
5 how -- whatever the rule says, and how it would be
6 applied.

7 MR. GE: This is Brian Ge. If I may be
8 recognized?

9 MR. DORAN: Mr. Ge, you are recognized.

10 MR. GE: So, to address Member French's
11 concern, it wouldn't be appropriate to introduce any rule
12 language right now, in front of the Committee. There will
13 be a time where the Committee and all members of the
14 public can address or provide comments to any proposed
15 rule language.

16 It will also be proposed to the Board at the
17 Board meeting, at which point the Board can ask us to
18 publish those rules in the *Texas Register*, and that is
19 when the comments would come in. It is not the
20 Committee's -- it is not within the Committee's purview to
21 be voting on rules, if that makes sense.

22 MR. DORAN: This is Presiding Officer Doran.
23 It sounds like what we are taking up today and examining
24 is going to help inform the Department's rulemaking, as
25 they sit down to draft the rules. Is that accurate?

1 MR. GE: Yes.

2 MR. DORAN: Okay. Presiding Officer Doran
3 again. I haven't really chimed in to express my opinion
4 on this. But I will just say this.

5 As a lawyer that has represented manufacturers,
6 distributors, and dealer's interests for almost 20 years,
7 there is one thing that all three of those stakeholders
8 can agree on, and that is regulatory certainty. And so,
9 having the ability to advise a client that comes to you,
10 whether they are a dealer, or a distributor, or a
11 manufacturer, to say, I can't tell you exactly what is
12 going to happen. But what I can tell you is that this is
13 the type of situation in which the motor vehicle -- the
14 DMV has the authority to issue a refund.

15 That has value, as a practitioner, to be able
16 to provide that advice and counsel to your client, no
17 matter who they are. To help them in their compliance
18 efforts.

19 And so, you know, my take on what we have
20 discussed today is that these are illustrative or
21 illustrative examples by which practitioners and licensees
22 and the public, frankly, would be able to look to, as
23 examples in which the DMV has the authority or has the
24 discretion, but may not exercise it, based upon the facts
25 of that particular situation, to have within their toolbox

1 of remedies, which Member Smith mentioned earlier. There
2 is license revocation, suspension, and I think fines,
3 even.

4 But this would be another tool in that toolbox.

5 But the advantage of this tool is that while the
6 revocation is a stick upon which the licensee gets hit
7 with, this is the one tool in the toolbox that actually
8 helps, hopefully, make the customer whole without them
9 having to go through the process of going to court, and
10 having a full-blown legal trial to seek redress against
11 that dealer.

12 So, that is just my take on it. So, I am going
13 to, of course, listen very carefully to the motion that is
14 made. But my personal thoughts and opinions on this are
15 that these examples are helpful to the public and to
16 industry stakeholders to know where the guardrails are,
17 and where the Agency's authority might be triggered, where
18 they could end up issuing a refund in certain
19 circumstances.

20 MR. SMITH: Member Smith. Officer Doran,
21 request permission to speak.

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

23 MR. SMITH: I think -- I don't believe that I
24 know a single manufacturer or dealer that would allow a
25 complaint over a 30-day tag or a safety inspection could

1 ever rise to the level of being before the DMV. But that
2 having been said, I think we are talking about things that
3 may be more way out in left field.

4 Early on, when we talked about these, Mr. Ge
5 said these examples were for discussion. So, I guess I
6 need maybe a little more explanation, why now we think
7 that we should have a motion to accept these.

8 Again, I think they are so narrow and so fact-
9 specific and so instance-specific that it forms not a
10 broad guardrail which the DMV should have. But it so
11 focuses on a particular issue, that it doesn't answer the
12 big question.

13 I think again, the big question is how do we
14 define a refund. And then from there have confidence and
15 trust in our Department.

16 MS. RASH: Officer Doran, this is Member Rash.
17 If I might speak.

18 MR. DORAN: Member Rash, you are recognized.

19 MS. RASH: Having been regulated and been on an
20 advisory board for 15 years, the guardrails that Officer
21 Doran is talking about is important. But I agree that you
22 don't want to be very specific.

23 And you do want to give the Department the
24 ability to work with the licensee, whichever one that
25 might be. Because it is -- like Officer Doran said,

1 having lived this myself, it is much easier to work with
2 the Department and make the consumer whole, and be done
3 with it.

4 And that is really the goal that benefits
5 everybody involved, all the stakeholders. So, after
6 taking out the third-party issue that we originally
7 discussed at the beginning, and such things as attorneys'
8 fees, I feel real comfortable with where we are today,
9 with the general rule for refund.

10 MR. GONZALEZ: Chairman Doran, permission to
11 speak?

12 MR. DORAN: Yes. Can you identify yourself for
13 the record, and I will recognize you.

14 MR. GONZALEZ: Yes, sir. I am sorry. Member
15 Gonzalez.

16 MR. DORAN: Member Gonzalez, you are
17 recognized.

18 MR. GONZALEZ: Thank you, sir. I have been
19 listening to the conversation. And in my past experience,
20 I would agree that a refund is due where a dealer -- if it
21 is proven the dealer had possession of a title at the time
22 of the sale.

23 If he fails to transfer title within the 20- to
24 45-day opportunity to transfer title that is part of the
25 statute, if he fails to do this, then I would agree that a

1 refund should be authorized for the 30-day permit.
2 However, many dealers in this day and time, once they get
3 a vehicle physically in their lot, they don't want to lose
4 a sale.

5 And unfortunately, they go ahead and commit
6 themselves to a retail consumer and create a contract of
7 sale, hoping that they are going to be receiving the title
8 from the lienholder or hopefully, that the auction where
9 they bought the vehicle has been true to them, and there
10 is no complications to the vehicle.

11 In the two examples that I have cited for the
12 lienholder, many lienholders don't provide title
13 immediately to the dealer. So, that puts the dealer in a
14 bind. Many auctions may say that they are selling a
15 vehicle that is not salvage, has no brands on it.

16 Come to find out that the dealer has the
17 vehicle, and subsequently gets a title that has a brand on
18 it. And they were misled, and purchased the vehicle. And
19 they want it to be corrected and they already been
20 committed to the consumer.

21 So, I would be concerned, or I would be in
22 favor of making sure that if the dealer has possession of
23 the title, and they committed to sell this, and they fail
24 to transfer title in 20 to 45 days. Yes. A refund should
25 be due. And that would be my observation for this

1 situation. Thank you.

2 MR. DORAN: Members, is there further
3 discussion on this particular example?

4 MR. CAVENDER: Mr. Doran, Member Cavender to
5 speak, please.

6 MR. DORAN: Member Cavender, you are
7 recognized.

8 MR. CAVENDER: Yes. I think that as these
9 talking points are laid out, that is exactly what they
10 should be. I don't think we really should move ourselves
11 into making a motion to approve, and as Member Smith said,
12 to memorialize these.

13 I think it would be dangerous because they are
14 limited in their scope. I just think there is too much
15 that could change in the readings, in the details of
16 these. I agree that we should go through these talking
17 points and insist, and hear input from the Committee. But
18 I would not approve moving into motions for approval on
19 them as presented.

20 MR. DORAN: This is Presiding Officer Doran.
21 Question for staff. If, in lieu of motions, is there any
22 other way to memorialize that there are situations that
23 the Department would consider imposing their authority.

24 In other words, even if we didn't come forward
25 with these motions today on these scenarios, are there

1 avenues available to the Agency, such as pointing out
2 comments to be adopted during the rulemaking process, or
3 some way to build a -- I don't want to say legislative
4 history, but a regulatory history into the interpretation
5 of those rules such as, you know, dealer guides and
6 training materials that the Department would issue in the
7 future, based upon this new authority that it has?

8 MS. THOMPSON: Officer Doran, this is Corrie
9 Thompson.

10 MR. DORAN: Ms. Thompson, you are recognized.

11 MS. THOMPSON: I will leave the ultimate
12 comment on that to the Office of General Counsel to speak
13 to. But I think that you didn't mean to say legislative
14 intent, but I would liken it to the same thing. So, we
15 have a court reporter who is taking down a transcript of
16 the meeting being held today.

17 Just like you can search legislative intent
18 when you are reading a statute that has been codified and
19 you are looking for guidance as to why that statute is in
20 place, and to what legislators meant, you would go and
21 search the legislative intent. You would look up the
22 legislative history of the discussion points that were
23 brought up when that statute was being implemented, after
24 a session.

25 And I would think that this would be something

1 similar. This was a discussion to help the Department
2 develop rulemaking and rule language for implementation of
3 this new statutory authority.

4 And I think the transcript would be available.

5 If anybody was looking back to see what had been
6 discussed in the development of the authority. But again,
7 OGC may want to speak to that, as well.

8 MR. RICHARDS: Presiding Officer Doran. This
9 is David Richards. May I have permission to speak?

10 MR. DORAN: Yes. Mr. Richards, please.

11 MR. RICHARDS: Members, the Department
12 contemplates and the Board contemplates through its
13 Advisory Committee structure that we take votes. Again, I
14 think -- not to beat a dead horse, but I think both Ms.
15 Thompson and Mr. Ge have explained that these are just
16 examples.

17 These specific scenarios are not going to find
18 themselves into the rulemaking process whatsoever. So,
19 with that in mind, I mean, this just kind of gives us an
20 idea of the Department -- or Ms. Thompson's division as an
21 enforcement division, a good idea of what the thinking is.

22 I have heard somewhat contradictory comments
23 made. That on one hand, there might be twists and turns.

24 And then, on the other hand, they are too fact-specific.

25 Again, we are not trying to pin anybody down as

1 to a position. This is -- your votes on a motion for
2 these individual scenarios is merely a guidance tool for
3 the rulemaking process that, again, the DMV Board will
4 approve. And let's not lose sight of the fact, too, that
5 there are due process procedures in place, that this
6 decision to order a refund by the Board is made, it
7 obviously will come back to the Board. And they can look
8 at each scenario and determine, based on the facts before
9 them and the law, whether or not a refund, in the
10 particular situation that they are presented with, should
11 be, in fact, ordered.

12 So, you know, this isn't anything that is going
13 to be written in stone. This is just a guidance document.

14 You are perfectly willing -- able to vote against the
15 motion.

16 But what we contemplate through our Advisory
17 Committee process is that, in fact, motions are made and
18 votes are taken. And again, on recommendations. Strictly
19 recommendations. And those who are not in favor, that
20 will be noted, as Ms. Thompson said, in the transcript.
21 And the reasons why.

22 So, all of this is being taken down by a court
23 reporter. And that will be something that the Board will
24 consider as well, when making rules. But I can assure you
25 that these specific examples or scenarios are not going to

1 be in the rules. We are looking at more simplistic,
2 straightforward rule language that mirrors the statute
3 that the Legislature gave us, and marching orders.

4 So, to kind of lay out some guardrails as
5 Member Doran mentioned. So, Presiding Officer Doran, and
6 members, I would ask that we do take motions. You can
7 vote them up. Vote them down. But that way, we can at
8 least have something to present.

9 We presented this particular format to the
10 Board at our June 11th meeting. So, we would like to
11 maintain the same format, if we could. Thank you.

12 MR. DORAN: Thank you. This is Presiding
13 Officer Duran. I believe Member Olah was wanting to make
14 a motion on this particular item. And then, I believe our
15 plan was to go back at the conclusion of taking up each of
16 these items and revisit Member Smith's motion regarding
17 the definition of refund.

18 MR. GE: That is correct.

19 MR. DORAN: Well, Member Olah, we could
20 entertain your motion.

21 MR. OLAH: With all the discussion, I kind of
22 lost the wording that I had contemplated for a motion. If
23 I may ask Mr. Ge to suggest the wording of a motion.

24 MR. GE: This is Brian Ge. May I be
25 recognized?

1 MR. DORAN: Mr. Ge, you are recognized.

2 MR. GE: The proposed recommendation language
3 is, the Department may order a refund where a consumer had
4 to purchase one or more 30-day permits because the dealer
5 did not transfer title before the buyer tag expired, and
6 where nothing outside of the control of the dealer
7 prevented the transfer, like the consumers action, or a
8 natural disaster.

9 MR. OLAH: Officer Doran. This is Member Olah.
10 May I speak?

11 MR. DORAN: You are recognized, Member Olah.

12 MR. OLAH: I will adopt the suggested motion by
13 Mr. Ge, and so make the motion.

14 MR. DORAN: Member Olah has made the motion.
15 Is there a second?

16 MS. JOHNSON: Cheryl Johnson. I just would
17 like to second that motion.

18 MR. DORAN: Okay. Member Johnson has made a
19 second. I will now call for the -- if there is no further
20 discussion, I will now call for a vote. Please, as I call
21 your name, please state your support for the motion by
22 saying yes, or no if you do not support the motion.
23 Member Brooks.

24 MR. SMITH: Officer Doran. Member Smith.
25 Request permission to speak.

1 MR. DORAN: Member Smith. You are recognized.

2 MR. SMITH: With regard to the discussion.

3 MR. DORAN: Yes.

4 MR. SMITH: When I read this [inaudible
5 1:34:10] and I'm thinking now what we experience in car
6 dealers on almost -- in a daily fashion. And if I look at
7 the totality of the -- and we get into the talking point.

8 For instance, it says additional. Unless
9 consumer is buying a salvaged or non-reparable vehicle
10 implicitly in the purchase [inaudible 1:34:26].

11 You know, it carries that to such depth that I
12 am concerned that when we talk about a consumer's
13 expectations. I mean, that is not hearsay. I don't know
14 what the legal term would be, but when we start writing
15 and approving things that are based on a customer's
16 expectation, I believe again, I will vote against it. But
17 I believe that we are getting too narrow. And where a
18 guardrail becomes a roadblock.

19 MR. DORAN: Okay. Thank you, Member Smith.
20 Members, we have heard some additional commentary from
21 Member Smith. We have a motion that is pending. It has
22 been seconded.

23 And we were about to commence with a vote. If
24 there is no further discussion, we will move forward with
25 that vote.

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

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

4 MR. RIGBY: Can you just read the motion back a
5 little slowly, so I can make sure I understand it. Thank
6 you.

7 MR. DORAN: Sure. Thank you. I am, again,
8 Presiding Officer Doran. I am actually going to ask Mr.
9 Ge to read the motion back for the group.

10 MS. JOHNSON: Officer Doran, this is Cheryl
11 Johnson, asking to be recognized to speak.

12 MR. DORAN: Member Johnson, would it be
13 beneficial to hear the motion prior to your question?

14 MS. JOHNSON: Well, if every member would look
15 on page 2 of their agenda, it is the proposed
16 recommendation. The only change is "fails" was "did not
17 transfer title." It is softer words, but it is exactly as
18 the proposed recommendation in the agenda.

19 MR. DORAN: Okay. Presiding Officer Doran.
20 Mr. Ge, just for those who might not have the agenda up in
21 front of them, and for the record, would you mind reading
22 it one more time?

23 MR. GE: Absolutely. This is Brian Ge. The
24 Department's proposed recommendation is, the Department
25 may order a refund where a consumer had to purchase one or

1 more 30-day permits because the dealer did not transfer
2 title before the buyer tag expired, and where nothing
3 outside of the control of the dealer prevented the
4 transfer, like the consumers' actions, or a natural
5 disaster.

6 MR. DORAN: Thank you. Okay. Members, you
7 have heard the motion. If there is no further discussion,
8 we will call for the roll. I am sorry. We will call for
9 the vote. Member Brooks.

10 MS. BROOKS: Agree.

11 MR. DORAN: You are voting in favor of the
12 motion, as agreed?

13 MS. BROOKS: Yes, sir.

14 MR. DORAN: Okay. Member Cavender.

15 MR. CAVENDER: Against.

16 MR. DORAN: Against. Okay. Member Colvin.

17 (No response.)

18 MR. DORAN: Member Eshpeter.

19 (No response.)

20 MR. DORAN: Member French.

21 MR. FRENCH: Yes.

22 MR. DORAN: Okay. Member Gonzalez.

23 MR. GONZALEZ: Yes. I support the motion.

24 MR. DORAN: I am sorry, Member Gonzalez. Can
25 you repeat your vote, as if you are in agreement. You

1 approve or do not approve of the motion.

2 MR. GONZALEZ: I approve of the motion. Did
3 you hear me?

4 MR. DORAN: I did. Yes, sir. Thank you.

5 MR. GONZALEZ: Thank you.

6 MR. DORAN: Member Johnson.

7 MS. JOHNSON: I approve of the motion.

8 MR. DORAN: Member McCullah.

9 (No response.)

10 MR. DORAN: Member Olah.

11 MR. OLAH: Yes.

12 MR. DORAN: Okay. Member Rash.

13 MS. RASH: Yes.

14 MR. DORAN: Member Rigby.

15 MR. RIGBY: Yes.

16 MR. DORAN: Member Smith.

17 MR. SMITH: Opposed.

18 MR. DORAN: Member Solis.

19 MR. SOLIS: Yes.

20 MR. DORAN: And I am Member Doran. I vote yes
21 on the motion as well. The motion passes. Members, I
22 would like to call for a five-minute recess. And so, we
23 will go off the record here at 10:40. And we will come
24 back at 10:46. We are now off the record.

25 (Whereupon, a short recess was taken.)

1 MR. DORAN: This is Presiding Officer Doran, it
2 is now 10:47. Going back on the record. And having taken
3 a vote on the last motion, I would like to proceed
4 forward, Mr. Ge, with continuing on with your
5 presentation.

6 MR. GE: All right. This is Brian Ge for the
7 record. The second example that I have is when a consumer
8 has to make additional payments on a trade-in vehicle to
9 their original lender, because the dealer was late in
10 making, or did not make the agreed-upon payoff.

11 And the recommendation that we propose is that
12 the Department may order a refund, where a consumer has to
13 make additional payments on a trade-in vehicle to their
14 original lender, where the dealer was late in making or
15 did not make an agreed-upon payoff within a reasonable
16 time frame after the consumer submitted all the necessary
17 paperwork to the dealer, to legally process the trade-in.

18 Since those additional payments were already built into
19 the purchase price of the vehicle.

20 And the rationale behind that recommendation is
21 the consideration given by the consumer. And by that, I
22 mean, what the consumer paid to the dealer was the vehicle
23 that was traded in to the dealer.

24 Additional consideration could be negative
25 equity from that trade, or if that amount was rolled into

1 the new loan or purchase price of the new vehicle. And
2 so, when a dealer doesn't make that trade payoff for a
3 consumer, after the consumer has given them the car, the
4 dealer is really getting more than what the dealer
5 negotiated for.

6 So, at the time a trade-in is made, that car is
7 appraised as of that day. And part of that appraisal is
8 how much the consumer has paid off on the car, how much is
9 left on it, and what not.

10 And so, when the dealer doesn't make the
11 payoff, and the consumer has to make additional payments,
12 the dealer is now getting what they originally bargained
13 for, which was that vehicle. But now, they are also
14 getting the extra of that extra payment that the consumer
15 made to the lender. So, the amount that the dealer would
16 have had to pay to the lender as a payoff lessens.

17 And so, in that regard, the Department views
18 this situation as an overpayment by the consumer. And so,
19 that is how we fit it into our definition of refund. I am
20 here to field any questions.

21 MR. RIGBY: Michael Rigby. Permission to
22 speak?

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

24 MR. RIGBY: Is there a statute or a rule that
25 requires a dealer to pay off a trade-in within a

1 particular period of time? Thank you.

2 MS. THOMPSON: Corrie Thompson. Officer Doran,
3 if I may be recognized?

4 MR. DORAN: Ms. Thompson, you are recognized.

5 MS. THOMPSON: Yes. There is a statute. And I
6 knew someone was going to ask. And so, I should have dug
7 it out, but I do believe they have ten days.

8 MR. SMITH: Member Smith. Officer Doran,
9 permission to speak?

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

11 MR. SMITH: To sort of answer that question,
12 yes. But the problem we have is the amount of time it
13 takes the lienholder to return it by. That becomes the
14 issue, oftentimes, in the problem.

15 MR. DORAN: Member Smith, this is Presiding
16 Officer Doran. I was wondering if you and Member
17 Cavender, just from a dealer perspective, could share with
18 the group during a transaction, when a dealer has to call
19 the lender to get the payoff loan amount?

20 I am thinking in terms of what happens when you
21 are buying a house. You get a snapshot in time for that
22 day. But if that loan amount, they can change if the
23 transaction doesn't close on that day.

24 So, if you don't mind, would you mind just kind
25 of explaining how that works from a process standpoint?

1 When a customer comes in, and they are in month 42 on a
2 48-month car loan?

3 MR. SMITH: Sure. Member Smith. Thank you for
4 the question. The general process of course, is that the
5 dealer would need to always call and get a payoff.

6 And when we do that, we are given most
7 generally a payoff number and a date until that payoff is
8 no longer good. And then many times, after that date,
9 they will tell you what the per diem is for days exceeding
10 that.

11 So, we get -- usually, it is a week or ten days
12 that the payoff is good. So, it is incumbent upon
13 dealers, and certainly, their intention to get that car
14 paid off just as quickly as we possibly can.

15 I can say, the problem often comes once the
16 lienholder has the payoff. Sometimes they take forever to
17 get a lien, or they hold your check.

18 And many times, we have to send a cashier's
19 check to get a title. And then, they will still hold the
20 check. So, the cashier's check clears.

21 But we, most of the time, we know the payoff.
22 We know our time window. And we rush to get it
23 accomplished.

24 MR. DORAN: Thank you.

25 MR. CAVENDER: Member Cavender. Permission to

1 speak?

2 MR. DORAN: Member Cavender, you are
3 recognized.

4 MR. CAVENDER: We are certainly working with
5 our lenders that we know are qualified to help us. So, we
6 really have kind of a limited selection of these lenders
7 that we work with. We do have great fiduciary
8 relationships with these lenders here in San Antonio,
9 where I am a dealer.

10 And as Carroll says, it is at full dispatch.
11 Once we have the opportunity to make a sale, we are
12 certainly going to make the payoff as fast as we can.
13 Typically, two and three days would be the dispatch on the
14 pay-off for the title to clear.

15 And so, we really take these scenarios as they
16 come. But again, as this talking point is arranged here,
17 there is just so much gray area in there, that I would
18 feel compelled to probably vote against the motion.

19 MR. DORAN: Thank you, Member Cavender. This
20 is Presiding Officer Doran again. And this is a question
21 for the whole group, and particularly maybe the
22 independent dealer could speak to how the process might
23 differ if you are a buy-here pay-here dealer, as opposed
24 to a franchise new dealer that is working with some
25 preferred lenders?

1 (Pause.)

2 MR. SMITH: Member Smith, Officer Doran.

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

4 MR. SMITH: A couple of things, other things
5 that kind of cloud this issue that we do run into, is we
6 do have occasions where a lienholder might give us a
7 payoff. And then, their customer, who then said, I was
8 going to trade the car in, stops payment on the check.

9 And the lienholder had considered that amount
10 of payment. So, now the payoff changes. One thing that
11 happens to us. Not regularly, but it certainly happens on
12 a number of times. Maybe a couple of times a month for
13 me.

14 The other thing that we run into that creates a
15 huge issue for us, is the credit union. Many times we
16 will get the payoff. We will send the check.

17 And then, when we don't get the title, we find
18 out that the customer has to pay off another lien before
19 they release the vehicle, the title that we traded for.
20 So, then we end up in the midst of problem that we have
21 got no control whatsoever. Thank you.

22 MR. DORAN: Thank you, Member Smith. This is
23 Presiding -- I am sorry.

24 MR. GE: This is -- I am sorry.

25 MR. DORAN: Go.

1 MR. GE: This is Brian Ge. I was asking to be
2 recognized.

3 MR. DORAN: Mr. Ge, you are recognized.

4 MR. GE: To respond to Member Smith's concern,
5 again, these are all -- the scenarios that he brought up,
6 they will all be considered by our investigatory staff,
7 and our legal staff. The example as laid out on paper is
8 exactly what we are trying to address.

9 We are not really trying to go down all the
10 rabbit holes. Obviously, we know the rabbit holes exist.

11 And that it is a fact-specific inquiry when it comes to
12 potentially ordering a refund in any given situation.

13 But I don't think Mr. Smith needs to worry
14 about those situations, because the facts of any specific
15 case will be considered before any refund is ordered.
16 Thank you.

17 MR. DORAN: This is Presiding Officer Doran
18 with a question for staff. So, based upon the description
19 that Member Cavender and Member Smith gave, it sounds like
20 there a lot of balls in motion during a typical
21 transaction.

22 And I guess I was just wondering if it was --
23 if staff had in mind what they would consider to be sort
24 of a safe harbor period of time. Because it sounds like
25 there could be situations where, through no fault of the

1 dealer, things -- that is just the way the cookie
2 crumbles, and the way things have transpired, due to the
3 lending company and actions by the customer, it is just
4 not possible for all those ducks to line up in a row, such
5 that an additional payment isn't made.

6 Is staff considering a threshold period of
7 time, before which they would, you know, consider this?
8 In other words, okay. They have had to make two months of
9 payments or three, or --

10 MS. THOMPSON: Officer Doran? This is Corrie
11 Thompson. If I may?

12 MR. DORAN: Yes. Please.

13 MS. THOMPSON: So, I confused my language. So,
14 the ten days comes from Transportation Code 501.115(a)
15 about discharge of a lien. So, there could be a violation
16 for failure to release a lien within ten days of payment.

17 The scenario that we are talking about now is
18 actually from Finance Code 348.408, Part C, that says, a
19 retail seller must pay in full the outstanding balance of
20 a vehicle traded in, not later than the 25th day after the
21 date that -- and so, here is your guidance, then -- the
22 retail installment contract is signed by the retail buyer,
23 and the retail buyer receives delivery of the motor
24 vehicle, and the retail seller receives delivery of the
25 motor vehicle traded in, and the necessary and appropriate

1 documents to transfer title from the buyer. And again,
2 that is Finance Code 348.408. So, that is 25 days.

3 MR. DORAN: Okay. Thank you.

4 MR. SMITH: Member Smith. Officer Doran.

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

6 MR. SMITH: Is that jurisdiction OCCC, or is
7 that DMV on payoffs?

8 MS. THOMPSON: So, it is a dealer duty and we
9 in this particular -- Member Doran, I apologize. Corrie
10 Thompson.

11 MR. DORAN: Member Thompson, you are
12 recognized. Sorry.

13 MS. THOMPSON: And so, we cite back to -- we
14 have provisions where we can cite any other statute that
15 is a violation of motor vehicle sales and distribution.
16 And we connect that back through Occupations Code
17 2301.651. I believe that we have a representative from
18 OCCC through the General Counsel's office, if they have
19 any additional guidance on that, as well.

20 MR. RIGBY: Michael Rigby. Permission to
21 speak?

22 MR. DORAN: Member Rigby. You are recognized.

23 MR. RIGBY: Yes. So, I am General Counsel with
24 the OCCC. But I think that Ms. Thompson's representations
25 are accurate. I don't have anything to add.

1 MR. GONZALEZ: Officer Doran, Member Gonzalez.
2 Permission to speak?

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

5 MR. GONZALEZ: Thank you, sir. I would like to
6 ask the staff, how prominent is this, all of this
7 situation? Do they find more violations along the border?
8 Or is this a problem in East Texas, North Texas, Central
9 Texas?

10 Is it very often or common that this happens,
11 where the dealer makes the consumer pay off? I would like
12 to get a general feeling of the problem that we have.
13 Thank you.

14 MS. THOMPSON: Corrie Thompson. Officer Doran.
15 If I may be recognized?

16 MR. DORAN: Ms. Thompson, you are recognized.

17 MS. THOMPSON: I believe the last I saw of our
18 violation report, from last fiscal year, total violations,
19 now consider the fact that there are multiple violations
20 in some cases. Some cases may only have one violation.

21 I believe we had 31,000 some-odd violations
22 across all of our cases. I would say that these
23 particular violations probably make up 1 percent of those
24 violations that occur.

25 So, we also have this come up in different

1 scenarios this year. So, for instance, those of you have
2 been members of the group through the past couple of
3 meetings, we have talked about when larger dealerships go
4 out of business, or they are going bankrupt. And then,
5 they could just completely fall off with paperwork for
6 hundreds of consumers.

7 We have seen people this past year affected
8 that way, more so than in prior years. And as to whether
9 or not there are any particular hot spots in the state, I
10 do not have that information to be able to speak to.

11 MR. GONZALEZ: Thank you very much.

12 MR. DORAN: Is there further discussion on this
13 item?

14 (No response.)

15 MR. DORAN: Again, this is Presiding Officer
16 Doran. I guess the part that I am uncomfortable with here
17 is, it seems like there is a lot going on during the
18 immediate period following when the customer comes into
19 the dealership.

20 And I guess it is not clear to me, after -- at
21 what point would the DMV find the situation to be
22 egregious enough that a refund would be owed? And I
23 guess, in this particular instance, you know, the
24 recommendation could lend itself to the interpretation
25 that -- I guess, I need to better understand when that is

1 going to trigger, I think.

2 That is the part I am also struggling with.
3 When staff would envision it coming into play.

4 MR. GE: This is Brian Ge. If I may be
5 recognized?

6 MR. DORAN: Yes, Brian. You are recognized.

7 MR. GE: So, the concern here isn't so much
8 when. Like, if the consumer has to make payments, and it
9 is through no fault of the dealer, we are not going to
10 order a refund in that situation.

11 If the dealer fulfilled its part of the deal,
12 so to speak, if they did everything they were supposed to,
13 we are not going to order a refund. Because the consumer
14 had a second lien that was undisclosed, or anything like
15 that. So, we are really -- like the language that is
16 pointed at in the recommendation is, an agreed-upon payoff
17 was made, within a reasonable time frame.

18 So, once the dealer makes the payment, they
19 have completed their side of that transaction. All the
20 other wheels spinning, that is not on the dealer. So, we
21 are not trying to hold the dealer liable for other
22 people's actions or inactions.

23 MR. DORAN: Thank you. This is Presiding
24 Officer Doran again. Just a follow up question, and this
25 may again go to our dealer members, possibly.

1 So, what evidence is contained in the deal
2 jacket that shows when the dealer initiated that payoff?
3 Is it a wire? Is it a photocopy of a check that goes to
4 the lender, on the trade-in vehicle?

5 It is not clear to me, and I am wondering if
6 maybe somebody could speak to that.

7 MR. SMITH: Member Smith, Officer Doran.
8 Request permission to speak?

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

10 MR. SMITH: We would keep a copy of a check.
11 Our process would be, keep a copy of the payoff check. It
12 actually would be in the file for the vehicle that had
13 been traded in, the car that was actually paid off. And
14 of course, the check would be dated in most cases, for us.

15 When it requires a check payoff, the payoffs
16 that we do through our captive lenders go electronically.

17 But for a required check, we would have a copy of it.
18 And typically in our case, we sent the amount either
19 overnight, or some kind of mail to have copies.

20 So, we know when they have received it. But
21 yes, we obviously have copies.

22 MR. DORAN: Thank you, Member Smith. Question
23 for staff, then. This is Presiding Officer Doran. In
24 terms of the record-keeping requirements that the DMV
25 imposes on dealers of what needs to be contained in the

1 deal jacket, is it safe to assume then, that this type of
2 documentation is required by the Agency, by the
3 Department?

4 MS. THOMPSON: Corrie Thompson, Member Doran.

5 MR. DORAN: Yes. Ms. Thompson, you are
6 recognized.

7 MS. THOMPSON: Yes. So, there is a laundry
8 list of items that need to be maintained in the deal
9 jacket, including of course, a catch-all about all
10 documents related to a sale or purchase of a vehicle.
11 They would have to be retained by the dealer for the 48-
12 month retention period outlined in Administrative Code
13 Title 43, Rule 215.144.

14 MR. DORAN: Thank you. Members, is there
15 further discussion on this particular item?

16 (No response.)

17 MR. DORAN: I think we would be ready to
18 entertain a motion at this point, from any member on this
19 item.

20 MS. JOHNSON: Officer Doran, Cheryl Johnson,
21 requesting to be recognized to speak.

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

23 MS. JOHNSON: I am going to try and go through
24 this simply. I would like to propose -- I would like to
25 move that the Committee adopt the proposed recommendation

1 as included in the agenda. I can either read that, or if
2 that is sufficient, then I will stop there.

3 MR. DORAN: Is there a second to Ms. Johnson's
4 motion?

5 MR. OLAH: Member Olah seconds.

6 MR. DORAN: Okay. All right. Members, I will
7 now -- unless there is any further discussion, I will call
8 for the motion.

9 And as I call your name, please state whether
10 you support the motion by stating yes or no -- no being if
11 you do not support the motion. Member Brooks.

12 MS. BROOKS: Yes.

13 MR. DORAN: Okay. Member Cavender.

14 MR. CAVENDER: No.

15 MR. DORAN: Okay. Member Colvin.

16 (No response.)

17 MR. DORAN: Member Eshpeter.

18 (No response.)

19 MR. DORAN: Member French.

20 (No response.)

21 MR. DORAN: Member French.

22 (No response.)

23 MR. DORAN: Member Gonzalez.

24 MR. GONZALEZ: Yes.

25 MR. DORAN: Member Johnson.

1 MS. JOHNSON: Yes.

2 MR. DORAN: Member Johnson.

3 MS. JOHNSON: Yes.

4 MR. DORAN: Okay. Member McCullah.

5 (No response.)

6 MR. DORAN: Member Olah.

7 MR. OLAH: Yes.

8 MR. DORAN: Member Rash.

9 MS. RASH: Yes.

10 MR. DORAN: Member Rigby.

11 MR. RIGBY: Yes.

12 MR. DORAN: Member Smith.

13 MR. SMITH: Opposed.

14 MR. DORAN: Okay. Member Solis.

15 MR. SOLIS: Yes.

16 MR. DORAN: Okay. And I am Member Doran. I

17 also vote yes. Okay. The motion passes. All right.

18 Presiding Officer Doran again. I turn it back over to Mr.

19 Ge.

20 MR. GE: Thank you. This is Brian Ge. The
21 third scenario is where a consumer has to pay for a safety
22 inspection that should have been completed by the dealer.

23 The proposed recommendation is the Department
24 may order a refund where a consumer explicitly paid a
25 dealer for a safety inspection and the dealer did not

1 complete the inspection or take the vehicle to be
2 inspected, or where a dealer sold a vehicle that could not
3 have legally been sold without first having obtained a
4 safety inspection. As the cost of that safety inspection
5 was built into the over amount that the consumer paid for
6 the vehicle.

7 Our reasoning behind that recommendation is
8 that usually the cost of an inspection is a line item on a
9 sales transaction. So, if the dealer doesn't actually
10 take the car to be inspected, they are just not fulfilling
11 their end of the contract. And so, we would be ordering
12 just a straight refund, as everyone understands the term
13 refund.

14 Where the costs of the inspection isn't broken
15 out, it is, as we discussed at our last meeting, certain
16 vehicles that haven't been inspected in a certain amount
17 of time before they can be sold, they need to be inspected
18 again. And so, in that situation, we would say the cost
19 of the inspection is built into the purchase price. And I
20 am here for any questions.

21 MR. DORAN: This is Presiding Officer Doran. I
22 did have a question.

23 I am curious as to how often this actually
24 comes up, because I think the general impression from the
25 consuming public is that with the Texas Two Step, the one-

1 sticker situation, that as part of the vehicle
2 registration process, the vehicle has to have a valid
3 inspection on it. Therefore, if the vehicle is able to be
4 registered, the consumer in all likelihood, believes that
5 the vehicle has been inspected.

6 So, I guess I am struggling with how often this
7 would occur, if the impression is that the vehicle
8 couldn't be registered if the inspection was stale, or
9 about to expire.

10 MR. SMITH: Member Smith. Officer Doran,
11 request permission.

12 MR. DORAN: Sure. I will defer to Member Smith
13 here.

14 MR. SMITH: Yes. Officer Doran, you are on to
15 something there. We cannot register a vehicle without it
16 being inspected.

17 And I would venture a guess and tell you that
18 there are in the low single digits numbers of vehicles
19 that do not carry a lien. So, certainly we cannot get our
20 money until we are able to register. So, the number of
21 times this would happen would be just minutiae.

22 MR. DORAN: Mr. Ge, I think you had a comment
23 as well.

24 MR. GE: Yes. Thank you. This is Brian Ge.
25 Member Smith is correct. This situation doesn't come up

1 all that often. But when it does, usually it is with a
2 used car, and for someone who is putting tags on vehicles
3 in a manner that they shouldn't.

4 And that is really where it comes up.
5 Typically, for a used car, if it hadn't been inspected in
6 a period of time -- I forget the exact number, but they
7 wouldn't be able to attach a buyer's temporary tag onto
8 that vehicle without getting it inspected first.

9 And sometimes, either through negligence or
10 just inexperience, a dealer fails to understand that
11 obligation of theirs. And they just print off the buyer's
12 tag, put it on, and send the customer on their merry way.

13 And then, they find out when they -- through
14 the course of registration or some other process that,
15 hey, this car needs an inspection. And usually, the
16 dealer will just take the car back and get it inspected
17 for the consumer.

18 But sometimes they don't. Sometimes, they just
19 say you know, tough cookies. And so, again, this really
20 doesn't happen all that often. But when it does, as you
21 can imagine, the consumer is upset.

22 MR. DORAN: This is Presiding Officer Doran
23 again. I know firsthand that there are times, in fact it
24 happens more often than we would like, where the state
25 inspection system goes down. And you know, you are not

1 able to complete the inspection.

2 So, I know there are situations where a dealer
3 may not be able to complete that inspection. And if you
4 are talking about a customer that lives outside the area
5 of that dealer, they are not going to be able to bring
6 that vehicle back to get it inspected.

7 My knowledge is a little rusty here. But
8 aren't we talking about \$12.95 for an inspection on a used
9 vehicle? That would be to staff, or anybody who knows. I
10 don't think it is very much money, is what I am saying.

11 MS. THOMPSON: Corrie Thompson. I don't --
12 Member Doran, if I may be recognized?

13 MR. DORAN: Yes. Ms. Thompson.

14 MS. THOMPSON: I don't recall the exact amount,
15 but yes. We are talking about less than \$50. And it is a
16 rare occurrence. But again, we are tasked with
17 identifying items that will allow for additional consumer
18 protection by the Department.

19 MR. DORAN: Okay. Members, is there further
20 discussion on this item?

21 MR. CAVENDER: Member Cavender, request to
22 speak, please.

23 MR. DORAN: Member Cavender, you are
24 recognized.

25 MR. CAVENDER: Yes. I think we need to

1 understand that safety inspections, state inspection does
2 protect the consumer as well. And it does protect others
3 in the driving situations.

4 So, I would yield that, you know, although our
5 state inspection that I charge is \$7 on itemized sales
6 receipt here. I would certainly understand that a refund
7 would be due if a dealer failed to make that inspection.

8 MR. DORAN: This is Presiding Officer Doran,
9 again. This question is for Brian. So, really, kind of
10 looking at it, there is the failure to perform the
11 inspection.

12 But there's -- it seems to me from your
13 comments that there is -- the trouble here is that there
14 has been a representation in the paperwork that the
15 inspection has, in fact, been performed. And that seems a
16 little different to me.

17 MS. THOMPSON: Member Doran, this is Corrie
18 Thompson.

19 MR. DORAN: Yes. Ms. Thompson.

20 MS. THOMPSON: I know you posed the question to
21 Brian. But I would also like to say that we can't lose
22 sight of the fact that there are also other violations
23 that the Department is allowed to allege against dealers
24 in connection with some of these other things that may
25 trigger refunds for consumers.

1 So, we are talking about, you didn't timely
2 transfer the title. You put a tag on a vehicle that
3 couldn't have a buyer's tag on it because it didn't have a
4 safety inspection.

5 There is other things connected, that the
6 Department would potentially be charging in connection
7 with things that could trigger this refund authority. So,
8 I just want to make everybody aware of that, as well.

9 MR. DORAN: Ms. Thompson, thanks for addressing
10 the elephant in the room. I think what we were all saying
11 is, it is hard to think of an occurrence where a customer
12 would pursue recourse to get \$7 back on its own. And that
13 a dealer wouldn't simply just take care of that, if they
14 were able to, without having to go through the agency to
15 deal with all of that. So, thank you for your explanation
16 there.

17 MS. JOHNSON: Mr. Doran. Cheryl Johnson
18 requesting to be recognized and to speak.

19 MR. DORAN: Ms. Johnson, you are recognized.

20 MS. JOHNSON: I can tell everybody that from
21 the standpoint of working in a tax office, the people
22 vehemently complain when this happens. Because not only
23 is there a fee paid at the inspection station, we also
24 collect a portion of that fee and send it to the state.

25 So, it is not just -- there might be some

1 amount that the dealer is paying, but there is more that
2 the consumer is having to pay. And they get upset about
3 the least amount of things, it appears. So with that
4 said, I would like to move that the Committee adopt the
5 proposed recommendation as presented in the agenda.

6 MR. DORAN: Members.

7 MS. JOHNSON: Pay for the inspections that
8 should have been completed by the dealer.

9 MR. DORAN: Members, Ms. Johnson has made a
10 motion. Is there any further discussion before we ask for
11 a second?

12 (No response.)

13 MR. DORAN: Not hearing any. I will ask for a
14 second for Ms. Johnson's motion.

15 MR. OLAH: Member Olah seconds.

16 MR. DORAN: Okay. There has been a motion made
17 and it has been seconded. I will call for the question.
18 Members, as I call your name, please state your support
19 the motion by saying yes, or no if you do not support the
20 motion. Member Brooks.

21 MS. BROOKS: Yes.

22 MR. DORAN: Member Cavender.

23 MR. CAVENDER: Yes.

24 MR. DORAN: Member Colvin.

25 (No response.)

1 MR. DORAN: Member Eshpeter.
2 (No response.)
3 MR. DORAN: Member French.
4 (No response.)
5 MR. DORAN: Member Gonzalez.
6 MR. GONZALEZ: Yes.
7 MR. DORAN: Member Johnson.
8 (No response.)
9 MR. DORAN: Member Johnson.
10 (No response.)
11 MR. DORAN: I will come back to you. I know it
12 was your motion. Member McCullah.
13 (No response.)
14 MS. JOHNSON: Member Johnson votes yes.
15 MR. DORAN: Okay. Thank you. Member McCullah.
16 (No response.)
17 MR. DORAN: Member Olah.
18 MR. OLAH: Yes.
19 MR. DORAN: Okay. Member Rash.
20 MS. RASH: Yes.
21 MR. DORAN: Okay. Member Rigby.
22 MR. RIGBY: Yes.
23 MR. DORAN: Member Smith.
24 MR. SMITH: Opposed.
25 MR. DORAN: Okay. Member Solis.

1 (No response.)

2 MR. DORAN: Member Solis.

3 (No response.)

4 MR. DORAN: And I am Member Doran. I also vote
5 yes. Okay. The motion passes. Mr. Ge, I will turn it
6 back over to you.

7 MR. GE: All right. The next scenario is where
8 a consumer has out-of-pocket expenses because a dealer
9 failed to honor their bid on the We Owe portion of the
10 contract.

11 The proposed recommendation is that the
12 Department may order a refund where a consumer has to pay
13 an out-of-pocket expense because a dealer failed to honor
14 the written We Owe portion of the contract. The
15 Department may not order a refund where the dealer agreed
16 to obtain the products or services of a third party for
17 the consumer in the We Owe portion of the contract,
18 obtains the products and services of a third party for the
19 consumer, and the consumer is unhappy with the performance
20 of the third party.

21 Here, again, the reasoning behind the
22 recommendation is that the Department is ordering a refund
23 of something that the consumer explicitly contracted with
24 the dealer for, and the dealer failed to deliver. And
25 that, I believe, takes care of Member Smith's original

1 concern, when we were talking about Item 1, where
2 sometimes the customer changes his mind, or where they ask
3 for a refund of that item, but it has already been
4 financed and it can't be refunded to the consumer.

5 Or where the dealer already purchased the
6 parts, and the consumer doesn't want it. In those cases,
7 I mean, the dealer would be able to present that evidence
8 and obviously, the Department is not going to pursue
9 ordering a refund in situations like that. It is just, we
10 are really focused on situations where the consumer wants
11 what is in the We Owe, and the dealer fails to provide
12 what's in the We Owe.

13 MR. DORAN: Members, is there discussion? That
14 sounded like Member Smith.

15 MR. SMITH: This is Member Smith. Here, this
16 one may be the most cloudy, in my opinion, because the
17 devil is in the details. And I will give you a couple of
18 examples.

19 For the most part, it would be my expectation
20 that when you look at a We Owe, and it may say We Owe, I
21 am going to use a set of new tires. Or whatever it is
22 that we owe. I think that you would find that very seldom
23 is there any sort of a breakout of what the value of that
24 We Owe is.

25 The tire is \$500. I don't think you are going

1 to see a number on that. I think that anything that we
2 provide is going to be consideration that would have been
3 included in the price of the automobile.

4 So, I think that the Department would have a
5 very difficult time to know what a correct refund would
6 be. And therefore, how could you offer a refund when the
7 value of that We Owe is not ever disclosed or even talked
8 about.

9 The other thing about it -- I tell you, it was
10 cloudy on this, is just another example. If I put on a We
11 Owe, and I sold a car, a used car, that set of new tires,
12 and then, it begs the argument, when the guy comes back.
13 And you say, I am putting Cooper Tires on your car. And
14 he says, oh no. I wanted Corelli.

15 And so, then you end up with a disagreement
16 over what was promised. And again, how do you value the
17 difference between a Cooper Tire and a Corelli Tire, or
18 what was promised?

19 So this one is an extremely cloudy example.
20 And I believe difficult for -- based upon the fact, even
21 the facts that you have got here, it would be very
22 difficult to make a conclusion that the consumer was due a
23 refund.

24 MS. THOMPSON: Officer Doran, Corrie Thompson.
25 If I may be recognized?

1 MR. DORAN: Yes. Ms. Thompson. You are
2 recognized.

3 MS. THOMPSON: And so, I do think, Member
4 Smith, to address your comment, that there are particular
5 scenarios that come up, even in cases we do today, every
6 single day, where the remedy available is more
7 appropriately sought through a private civil action
8 between the consumer and the dealer. And so, we are
9 weeding out cases like that on a routine basis.

10 That may be the case here, with one of these We
11 Owe type agreements, in the event that somebody didn't
12 specify which brand of tire was going to be put on the
13 car. As to ones that are appropriate for the
14 administrative refund authority, I would say that no,
15 maybe they are not. Maybe there is not a way to determine
16 the amount from the outset, but that is why we talk about
17 using the sanction authority at different points of the
18 administrative process.

19 So, it may not be something in the initial
20 charging document that we allege, like hey. You owe the
21 consumer a refund in this specific dollar amount. But it
22 may be something in a settlement agreement that after
23 discussions with the consumer at the dealer, we have
24 arrived at an amount that satisfies both the dealer and
25 the consumer, that can be repaid to the consumer as part

1 of that settlement agreement. And we could use the
2 authority that way.

3 MR. SMITH: Member Smith. Thank you, Corrie.
4 And this goes exactly to my point, is that we would have
5 confidence in the Department to come to a correct and fair
6 conclusion. And I believe it points out, again, my point
7 that we are down rabbit trails trying to come up with
8 specific examples that can have all sort of different
9 variations. Thank you.

10 MR. DORAN: This is Presiding Officer Doran
11 with a question for staff. So, let's go through a couple
12 of hypotheticals. Let's say you have a situation where a
13 consumer is buying a car.

14 And on the We Owe, the dealer has said that
15 they were going to provide window etching. Let's say,
16 they are going to, let's say, install satellite radio,
17 LoJack. And then, let's say, the customer also believed
18 that they were purchasing a service contract as part of
19 the deal.

20 And then, lo and behold, months later, they
21 discover that there is a problem with one of those.
22 Whether it is, you know, the satellite radio, they thought
23 they were getting twelve months, and they got three
24 months, or whatnot.

25 So, I guess, my question for Corrie and Brian

1 is, to what extent does the Agency, when they are
2 investigating this, contact or try and get information
3 from those third parties?

4 Because in the service contract context, it is
5 going to be important to know, you know, what was the date
6 that that service contract went into effect? Because a
7 refund of a service contract, according to normally the
8 terms and conditions of that service contract is not the
9 full amount paid. But typically, if you are turning the
10 vehicle in, and it has been in effect, you are getting a
11 prorated amount.

12 So, if you had a situation, and I am just going
13 to stay on the service contract example for a minute.
14 Let's say, in month five of ownership, the customer had
15 paid for the service contract. It hadn't been activated.

16 I guess I am thinking that might be a situation
17 where the customer wouldn't be -- well, let me back up.
18 The question was simply, to what extent does DMV staff
19 seek information from these third-party service providers
20 or product providers in order to get information as part
21 of an investigation?

22 MR. GE: This is Brian Ge. If I may be
23 recognized?

24 MR. DORAN: Yes. Mr. Ge, you are recognized.

25 MR. GE: So, our investigators are -- they are

1 consummate professionals. They look at everything,
2 sometimes too carefully. But they look at everything.

3 If the deal jacket isn't clear on the terms of
4 any length of agreement, I mean, I would take the position
5 that this is a consumer issue. If they had the
6 wherewithal to have the item included in the We Owe, but
7 not any details of it, I mean, that is not for us to
8 decide if the consumer is right or the dealer is right.

9 We are not going to assess a penalty or a
10 sanction against the dealer for something -- for lack of
11 clarity that the consumer should have insisted upon, if
12 that makes sense. I mean, I don't think that is
13 necessarily the most consumer-friendly move, but it is the
14 fairest thing that the Department can do. So, we resolve
15 ambiguity in favor of what is actually written down.

16 MR. DORAN: Okay. Thank you. Members, is
17 there further discussion on this item?

18 MR. GONZALEZ: Chairman Doran.

19 MR. CAVENDER: Mr. Cavender. Permission to
20 speak?

21 MR. GONZALEZ: Permission to speak?

22 MR. DORAN: Okay. I heard Mr. Cavender first,
23 but then we will come right to you, Member Gonzalez, right
24 after that. Member Cavender. You are recognized.

25 MR. CAVENDER: Yes. Thank you. In regards to

1 a We Owe, it is a very -- monitored very carefully through
2 one person in our dealerships. And it has to be monitored
3 carefully. But it also is a two-way street. The We Owe
4 is consumer and dealer.

5 And frequently, we will put a We Owe out, and
6 the consumer will fail to come back for the service or for
7 the -- and I am thinking about, as an example, the Clear
8 Shield that we provide, the pay protection that we
9 provide.

10 So, sometimes, very rarely, we sell to an out-
11 of-town customer and that customer will not come back.
12 So, there is some weight on the consumer to come back to
13 us, as well. So that the dealer is not always the only
14 one who is guilty of the not completing the We Owe.

15 MR. GE: This is Brian Ge. If I may be
16 recognized?

17 MR. DORAN: Yes. And then we do need to come
18 back to Member Gonzalez who'd asked to be recognized.

19 MR. GE: Yes. I will be brief. I just wanted
20 to address Member Cavender's concern. Absolutely in that
21 situation, the Department would not be assessing a refund.

22 It is, like you said, it is a two-way street.
23 The consumer has obligations. The dealer has obligations.
24 So long as the dealer offers to perform, it is not -- the
25 Department isn't going to order a refund where the

1 consumer refuses it. That's it for me.

2 MR. DORAN: Thank you. Member Gonzalez. You
3 are recognized.

4 MR. GONZALEZ: Thank you, sir. I have a
5 question. Since we are dealing with a contract, I want to
6 know if there is a standardized contract for all dealers.

7 But normally, during a contract, there is a 72-
8 hour clause for cancelling the contract. Is there a
9 standard, 30-day time period before the consumer can come
10 back to the dealer and complain about the product?

11 Is there any rule or policy that would prevent
12 the consumer from coming back to the dealer under this
13 clause in the contract? That is a question for my
14 information.

15 MS. THOMPSON: This is Corrie Thompson. And if
16 I may be recognized?

17 MR. DORAN: Ms. Thompson, you are recognized.

18 MS. THOMPSON: There is nothing specific in
19 statute that allows a consumer to rescind after a 72-hour
20 period. I will let any of the dealer members speak to any
21 offers that they have.

22 There are some dealers that do specifically say
23 in their advertisements or otherwise that they will allow
24 a consumer to bring a vehicle back within a specified
25 number of days. As to how that would be affected by this

1 agreement, I mean, by the refund sanction, that would be
2 very case-specific, and we would have to look at the
3 details of that specific case to make sure that it didn't
4 overlap with any of that, any of those agreements offered
5 by the dealer.

6 MR. GONZALEZ: So, Ms. Thompson, so this means
7 that the consumer has possibly -- if it is not identified
8 in the contract, they could come back and file a complaint
9 six months later, because the dealer failed to do a
10 promise, to guarantee a product. There is no limit here,
11 that -- where it kind of expires?

12 MR. GE: This is Brian Ge, if I may.

13 MS. THOMPSON: Go ahead. Sorry.

14 MR. DORAN: Mr. Ge, you are recognized.

15 MR. GE: So, to address Member Gonzalez'
16 concern, we are only talking about a situation where the
17 dealer doesn't at least offer to perform on their
18 obligation. So, if six month passes, and the dealer --
19 sorry about that.

20 In a situation like Mr. Cavender said, about
21 putting the clear film on. If the customer purchases it,
22 and the dealer offers to put it on, and the customer
23 doesn't, for some reason, go back and get the service
24 performed, we are not going to sanction the dealer for the
25 customer's refusal.

1 Likewise, if -- six months down the line, if
2 the customer has been asking for this clear film the whole
3 time, and the dealer has said, we'll get to you. Or at
4 some point, they just say, no. We are not going to do it.

5 I mean, in that situation, yes. I think it is perfectly
6 fair to order a refund.

7 MR. GONZALEZ: Okay. Thank you very much for
8 the clarification.

9 MR. DORAN: Members, is there any further
10 discussion on this item?

11 MS. JOHNSON: Member Johnson wishes to be
12 recognized, and to speak, Officer Doran.

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

14 MS. JOHNSON: I would like to move that we
15 approve the proposed recommendation, in the instance where
16 the consumer has out-of-pocket expenses because the dealer
17 failed to honor the written We Owe portion of the
18 contract.

19 MR. DORAN: Members, there has been a motion
20 made. Is there a second?

21 MR. OLAH: Member Olah seconds.

22 MR. DORAN: Okay. All right. Members, if
23 there is no further discussion, we will move forward with
24 calling the question for vote. As I call your name,
25 please state your support for the motion by saying yes, if

1 you support. No, if you oppose. Member Brooks.
2 MS. BROOKS: Yes.
3 MR. DORAN: Member Cavender.
4 MR. CAVENDER: No.
5 MR. DORAN: Okay. Member Colvin.
6 (No response.)
7 MR. DORAN: Member Eshpeter.
8 (No response.)
9 MR. DORAN: Member French.
10 (No response.)
11 MR. DORAN: Member Gonzalez.
12 MR. GONZALEZ: Yes.
13 MR. DORAN: Member Johnson.
14 MS. JOHNSON: Yes.
15 MR. DORAN: Member McCullah.
16 (No response.)
17 MR. DORAN: Member Olah.
18 MR. OLAH: Yes.
19 MR. DORAN: Member Rash.
20 MS. RASH: Yes.
21 MR. DORAN: Member Rigby.
22 MR. RIGBY: Yes.
23 MR. DORAN: Member Smith.
24 MR. SMITH: No.
25 MR. DORAN: Member Solis.

1 (No response.)

2 MR. DORAN: And I, Member Doran, vote yes. The
3 motion passes. Okay. Mr. Ge, we will turn it back over
4 to you.

5 MR. GE: Thank you, Officer Doran. The next
6 situation that we have is where a consumer has to get a
7 bonded title, because the dealer could not provide title,
8 or did not get a bonded title for the consumer.

9 The Department's proposed language is that the
10 Department may order a refund where a consumer has to pay
11 an out of pocket expense, where a dealer does not provide
12 title, or get a bonded title for the consumer, when the
13 consumer's actions did not prevent the dealer from
14 providing title, as the title is built into the overall
15 amount the consumer pays for the vehicle.

16 And our rationale behind that recommendation is
17 that when a consumer purchases a car, they are implicitly
18 paying the dealer for title to that car. I mean,
19 otherwise, it would just be leasing the car, or renting
20 the car.

21 And while the consumer didn't pay the dealer to
22 obtain a bonded title for them, they did pay for a title.

23 And if the best title that the consumer can get to a
24 vehicle is that bonded title, then we would argue that by
25 virtue of selling the consumer that car, the cost of that

1 bonded title is built into the purchase price of the
2 vehicle. And that the dealer is under an obligation to
3 get that consumer that bonded title.

4 I know that this one is a bit of a doozy. And
5 I know it doesn't affect franchise dealers all that much.
6 So, this usually comes up with our independent dealers.
7 I am happy to answer any questions or offer any
8 explanations.

9 MR. DORAN: Members, is there discussion on
10 this item?

11 MR. GONZALEZ: Member Doran. Permission to
12 speak? This is Member Gonzalez.

13 MR. DORAN: Member Gonzalez, you are
14 recognized.

15 (No response.)

16 MR. DORAN: Member Gonzalez, you are
17 recognized.

18 MR. GONZALEZ: Thank you. I would like to ask
19 the staff, what type of fees are you considering to
20 refund? The bought amount, the title fees, registration
21 fees, inspection fees, or just anything related to the
22 bond title itself, of obtaining it and presenting it.

23 Could you elaborate on what type of fees you
24 want to address under this refund process? Thank you.

25 MR. GE: This is Brian Ge. If I may be

1 recognized?

2 MR. DORAN: Yes. Mr. Ge, you are recognized.

3 MR. GE: Member Gonzalez. It is our view that
4 if it comes down to a situation where the only way a
5 consumer can get a title is through a bonded title, then
6 the dealer should bear the cost of getting that bonded
7 title for the consumer. And that includes the entire
8 process of getting that title, and all the fees associated
9 with it.

10 MR. GONZALEZ: Okay. Permission to speak?

11 MR. DORAN: Member Gonzalez, you are
12 recognized.

13 MR. GONZALEZ: Yes. Now, there is a -- there
14 could be a conflict. If you are asking the dealer to get
15 a bond, then his name is going to be on the surety bond.

16 It is not going to be the customers. So, in
17 essence, to get a surety bond, the customer themselves has
18 to be bondable, and they have to put their name on the
19 surety so the title can be issued.

20 You are asking the dealer to get a bond in his
21 name, then they have to go through all the qualification.

22 Once they get the bond, then they have to establish title
23 in their name before they can transfer it to the consumer.

24 Has that been thought out, as to what procedural aspect
25 it is going to take regarding obtaining the bond?

1 MR. GE: This is Brian Ge. May I be
2 recognized?

3 MR. DORAN: You are recognized, Mr. Ge.

4 MR. GONZALEZ: Member Gonzalez, the consumer
5 would be getting the bond themselves. The dealer would
6 just be paying for it. We are not expecting the dealer to
7 apply for the bond and title for the consumer.

8 MR. GONZALEZ: Oh, forgive me. So, the dealer,
9 because he is obligated to provide title, you are not
10 making him establish a title record in his name?

11 MR. GE: Well, I mean, if we are getting to the
12 point where -- oh, this is Brian Ge, by the way. If we
13 are at the point where the consumer can only get title via
14 upon the title, I think we are a little past that step.

15 MR. GONZALEZ: Thank you very much for your
16 input.

17 MR. DORAN: This is Presiding Officer Doran.
18 Mr. Ge, would the dealer always know that a bonded title
19 is needed? Or are there situations like, say a dealer is
20 buying a vehicle at auction and maybe they thought it was
21 going to come in with a normal blue title. And then they
22 discover later on that, no.

23 In fact, it is a bonded title. And you know,
24 they weren't able to make that representation timely to
25 the retail customer. Is that something that occurs? I am

1 just trying to make sure that this isn't a situation where
2 dealers might get caught flatfooted.

3 MR. GE: This is Brian Ge. So, before a dealer
4 sells a car, they should have the title in hand. We get
5 into these situations because a dealer is selling the car
6 before they get the title to the vehicle that they are
7 selling.

8 And so, if they just waited until they got
9 title, this would never come up. And they would
10 absolutely know if they needed to get a bonded title for
11 the consumer. Because they would know they themselves did
12 not get title to the car.

13 MR. DORAN: Right.

14 MR. GE: So, these kind of things would come
15 up, not necessarily out of the consumer seeking payment
16 for the bonded title, but more complaining that they
17 didn't receive the title at all. And that failure to
18 transfer leads us to advising the consumer that they need
19 to get a bonded title.

20 And with this extra authority, we are thinking
21 of perhaps as a settlement option against the dealer,
22 instead of assessing a civil penalty, they pay for the
23 consumer's bonded title. And Jeremiah Kuntz was the
24 Director of Vehicle, Titles, and Registration. He would
25 be able to speak to that as well.

1 MR. DORAN: Thank you. Members, is there
2 additional discussion on this item?

3 (No response.)

4 MR. DORAN: Members, we could entertain a
5 motion at this time, on this item.

6 MS. JOHNSON: Officer Doran, Cheryl Johnson
7 requesting to speak and to be recognized.

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

9 MS. JOHNSON: I move that in the instance when
10 the consumer has to obtain a bonded title because the
11 dealer could not provide title and did not get a bonded
12 title for the consumer, that the proposed recommendation
13 be adopted.

14 MR. DORAN: Members, there has been a motion
15 made. Is there a second?

16 MR. OLAH: Member Olah seconds.

17 MR. DORAN: There has been a second. Members,
18 unless there is any further discussion, we will move
19 forward with calling the question. Members, as I call
20 your name, please state your support for the motion by
21 saying yes, if you agree; no, if you oppose. Member
22 Brooks.

23 MS. BROOKS: Yes.

24 MR. DORAN: All right. Member Cavender.

25 MR. CAVENDER: No.

1 MR. DORAN: Okay. Member Colvin.
2 (No response.)
3 MR. DORAN: Member Eshpeter.
4 (No response.)
5 MR. DORAN: Member French.
6 (No response.)
7 MR. DORAN: Member Gonzalez.
8 MR. GONZALEZ: Yes.
9 MR. DORAN: Member Johnson.
10 (No response.)
11 MR. DORAN: Member Johnson.
12 (No response.)
13 MR. DORAN: Member McCullah.
14 MS. JOHNSON: Yes.
15 MR. DORAN: Okay. Member McCullah.
16 (No response.)
17 MR. DORAN: Member Olah.
18 MR. OLAH: Yes.
19 MR. DORAN: Member Rash.
20 MS. RASH: Yes.
21 MR. DORAN: Member Rigby.
22 MR. RIGBY: Yes.
23 MR. DORAN: Member Smith.
24 MR. SMITH: Opposed.
25 MR. DORAN: Member Solis.

1 (No response.)

2 MR. DORAN: And I am Presiding Officer Doran
3 and support the motion, vote yes, as well. And the motion
4 passes. Mr. Ge, we will turn it back over to you, to
5 continue with your presentation.

6 MR. GE: Our next scenario is situations where
7 the consumer is overcharged for tax, title, and license,
8 documentary fees or other non-government regulated or
9 mandated fees. The Department's proposed recommendation
10 for this scenario is the Department may order a refund
11 where a consumer was overcharged for government-regulated
12 fees, such as tax, title, and license or documentary fees,
13 provided that the dealer did not already return those fees
14 to the consumer through the regulatory action of another
15 governmental body.

16 So, if say a dealer overcharges on the dock
17 fee, and OCCC catches wind, orders the refund, and the
18 dealer refunds the overpayment, we are not going to come
19 back in and say, hey, refund the guy again. We are just
20 not going to do that.

21 But we would also like to be able to order a
22 refund where the consumer is charged an unregulated fee,
23 and where those fees were made to appear that they were
24 regulated or mandated by a governmental body, but they
25 weren't. So, if a dealer passes off say, like a COVID-19

1 cleaning fee.

2 And it is one thing if they say, hey. This is
3 a fee we are imposing. It is another thing if they are
4 saying, yes. The State of Texas is requiring that we
5 assess this fee.

6 That wouldn't be true. And if the customer
7 believed that statement to be true and paid it, and then
8 later learned that it wasn't, we want to be able to order
9 a refund in that situation.

10 MR. DORAN: This is Presiding Officer Doran.
11 Question for staff. Have you seen examples of that type
12 of conduct? The -- I will call it the fake COVID-19
13 state-mandated claim for a fee.

14 MR. GE: This is Brian Ge. In developing these
15 scenarios, I consulted with our chief investigator. And
16 this was one of the examples that he provided, where a
17 customer is charged like \$900 for a cleaning fee.

18 And you know, the customer didn't know. He
19 couldn't not pay it. So, it does come up. I don't know
20 how often it comes up. But it came up enough for it to
21 turn into an example.

22 MR. DORAN: Okay. Thank you. Members, is
23 there a discussion on this item?

24 MS. JOHNSON: Officer Doran, Member Johnson,
25 request to be recognized and to speak.

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

2 MS. JOHNSON: I would like to move that we
3 adopt the proposed recommendation in [inaudible 1:03:49] a
4 consumer is overcharged for TT&L, documentary fees, or a
5 non-government regulated or mandated fee.

6 MR. DORAN: Members, a motion has been made.
7 Is there any further discussion?

8 (No response.)

9 MR. DORAN: Okay. Is there a second to Ms.
10 Johnson's motion?

11 MR. OLAH: Member Olah seconds.

12 MR. DORAN: Okay. The motion has gotten a
13 second. I will now call the question. Members, as I call
14 your name, please state your support for the motion by
15 saying yes, if you support the motion; no, if you do not
16 support the motion. Member Brooks.

17 MS. BROOKS: Yes.

18 MR. DORAN: Member Cavender.

19 MR. CAVENDER: No.

20 MR. DORAN: Member Colvin.

21 (No response.)

22 MR. DORAN: Member Eshpeter.

23 (No response.)

24 MR. DORAN: Member French.

25 (No response.)

1 MR. DORAN: Member Gonzalez.

2 MR. GONZALEZ: Yes.

3 MR. DORAN: Member Johnson.

4 MS. JOHNSON: Yes.

5 MR. DORAN: Member McCullah.

6 (No response.)

7 MR. DORAN: Member Olah.

8 MR. OLAH: Yes.

9 MR. DORAN: Member Rash.

10 MS. RASH: Yes.

11 MR. DORAN: Member Rigby.

12 MR. RIGBY: Yes.

13 MR. DORAN: Member Smith.

14 MR. SMITH: No.

15 MR. DORAN: Member Solis.

16 (No response.)

17 MR. DORAN: And I, Presiding Officer Doran,
18 also vote yes. The motion passes. Members, we are going
19 to take another five-minute break. This will probably be
20 our last break this morning. And we will -- we are going
21 to go off here at 11:55 and we will come back at 12 noon.
22 But we are now off the record.

23 (Whereupon, a short recess was taken.)

24 MR. DORAN: Twelve noon, we are going back on
25 the record. And I just wanted to -- I know we have been

1 going for quite a while, and wanted to let the CPAC
2 members know that it is our intent to finish this agenda
3 item, and then take up the remaining two agenda items at
4 future meetings.

5 So, when we get to the point that we finish 2A,
6 we will move on to public comment and then, adjournment.
7 So, I appreciate everybody's time today, as we go through
8 this very carefully. And with that, if Mr. Ge is back on,
9 I will turn it over to him.

10 MR. GE: The next scenario [inaudible 1:06:45].

11 The Department recommendation [inaudible] --

12 MS. JOHNSON: Officer Doran, I cannot hear the
13 speaker.

14 MR. DORAN: Member Johnson, yes. I am also
15 struggling as well. Mr. Ge, if you wouldn't mind getting
16 a little closer to the microphone, that way the CPAC
17 members can hear your presentation better.

18 MR. GE: Is this better?

19 MR. DORAN: That is wonderful. Thank you.

20 MR. GE: Okay. Sorry about that. I was
21 saying, the next scenario is where the consumer purchases
22 a third-party extended warranty that is offered by a
23 dealer, and the dealer does not submit the paperwork or
24 the funds for that warranty.

25 The consumer later finds out that they need

1 repairs. And they discover that they don't have a
2 warranty. This recommendation was modified, based on
3 feedback from the Board.

4 The Department now recommends that the we have
5 the authority to order a refund of the cost of that third-
6 party extended warranty, where the consumer paid a dealer
7 for the warranty, and the dealer failed to obtain said
8 warranty for the consumer. The Department will not order
9 a refund for the cost of repairs, as the cost of those
10 repairs were not paid to the dealer, and it would
11 constitute restitution. And I believe that covers my
12 talking points as well.

13 MR. DORAN: Members, is there any discussion on
14 this item?

15 MR. OLAH: This is Member Olah. I ask to be
16 recognized.

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

18 MR. OLAH: I just wanted to be clear that what
19 we are talking about essentially, is the premium that is
20 paid for that warranty. Is that correct, Mr. Ge?

21 MR. GE: This is Brian Ge. Yes.

22 MR. OLAH: Okay. Thank you.

23 MR. DORAN: Mr. Ge, Laird Doran again,
24 Presiding Officer. So, if I understood you correctly,
25 really, the cap on the ceiling on the type of refund in

1 this instance would be the cost that the customer paid the
2 dealer for the service contract or third-party warranty?

3 MR. GE: This is Brian Ge. Yes. You are
4 correct. We are talking about a very specific situation
5 where the customer buys a third-party warranty or a
6 service contract and pays for it.

7 And then, the dealer takes the money, but never
8 gets that service contract for the consumer. So, it is, I
9 have paid you for X, and I did not deliver X, so we will
10 order a refund of X.

11 MR. DORAN: Okay. Thank you. Members, is
12 there any discussion on this item?

13 (No response.)

14 MR. DORAN: Members, we could entertain a
15 motion on this. If there is no discussion.

16 MS. JOHNSON: Officer Doran, Member Johnson
17 requests to be recognized and to speak.

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

19 MS. JOHNSON: I would move that we adopt the
20 proposed recommendation in the instance when a consumer
21 purchases a third party [inaudible 1:10:45] offered by the
22 dealer, and the dealer does not submit the paperwork or
23 funds, and the consumer needs repairs and discovers they
24 have no warranty.

25 MR. DORAN: Member Johnson has made a motion.

1 Is there a second?

2 MR. OLAH: Member Olah seconds.

3 MR. DORAN: Okay. Members, the motion has been
4 made. It has been seconded. As I call your name, please
5 state your support for the motion by saying yes, if you
6 agree; no, if you do not support the motion, if you
7 oppose. Member Brooks.

8 MS. BROOKS: Yes.

9 MR. DORAN: Okay. Member Cavender.

10 MR. CAVENDER: No.

11 MR. DORAN: Okay. Member Colvin.

12 (No response.)

13 MR. DORAN: Member Eshpeter.

14 (No response.)

15 MR. DORAN: Member French.

16 (No response.)

17 MR. DORAN: Member Gonzalez.

18 (No response.)

19 MR. DORAN: Member Johnson.

20 MS. JOHNSON: Yes.

21 MR. DORAN: Member McCullah.

22 (No response.)

23 MR. DORAN: Member Olah.

24 MR. OLAH: Yes.

25 MR. DORAN: Member Rash.

1 MS. RASH: Yes.

2 MR. DORAN: Member Rigby.

3 MR. RIGBY: Yes.

4 MR. DORAN: Member Smith.

5 (No response.)

6 MR. DORAN: Member Smith.

7 (No response.)

8 MR. DORAN: Member Solis.

9 (No response.)

10 MR. DORAN: And I, Laird Doran, also support
11 the motion. There being five yeses and one no, the motion
12 passes. Question for counsel. David, Presiding Officer
13 Laird.

14 MR. RICHARDS: Yes, sir.

15 MR. DORAN: If it appears we have dropped below
16 quorum, is that a cause for concern?

17 MR. RICHARDS: Yes, it is. Have we actually
18 dropped, or is someone just not answering?

19 MR. DORAN: Well, I know we didn't get a vote
20 out of Ms. Johnson on that one, but she did offer the
21 motion.

22 MS. JOHNSON: I apologize. I did vote for
23 that.

24 MR. DORAN: Okay. Great. So, that would be --
25 I guess that is seven ayes and one no.

1 MR. RICHARDS: I believe that is correct.

2 MR. DORAN: Okay. That would keep us at eight.

3 Okay.

4 MR. RICHARDS: Keep us at eight. Right. Yes.

5 MR. DORAN: Okay. All right. Thank you,
6 everybody. I will turn it back over to Mr. Ge.

7 MR. GE: Thank you, Officer Doran. The final
8 talking point today is for household goods movers. So,
9 for all the household good movers on the Committee, this
10 is the time to pay attention.

11 The scenario is where a consumer is charged for
12 costs that are not listed on their tariff after the
13 household goods mover takes possession of the consumer's
14 property, and the mover refuses to unload goods until
15 those charges are paid. And that is a very specific
16 scenario.

17 And I imagine that is the only scenario we
18 would be ordering a refund for. The Department proposed
19 recommendation is that the Department may order a refund
20 where a consumer is charged for costs not listed under a
21 household goods movers tariff, and the household goods
22 mover takes possession of the consumer's property and the
23 household goods mover refuses to unload the customer's
24 property until those charges were paid.

25 Based on the conversation at our first or

1 second meeting, the initial recommendation was also for
2 the Department to refer unregistered carriers to law
3 enforcement authorities. Happy to answer any questions.

4 MR. DORAN: Presiding Officer Doran. A
5 question for you, Mr. Ge. I think it was maybe Member
6 French earlier on, who was describing how this worked.

7 And it sounded as though there were a number of
8 regulatory requirements already imposed on household good
9 movers that specified what they could and couldn't charge
10 for. I am not familiar with what those are.

11 So, my question would be more along the lines,
12 are there charges that are customary in this industry that
13 would typically be on a customer's bill, but might for
14 some reason be inadvertently left off, like fuel or
15 mileage or something like that? Or are all of those types
16 of line items or charges, if they exist, specified in the
17 regulations that Member French was referring to, that
18 already governs that part of the industry?

19 MS. BROOKS: Member Brooks. May I speak?

20 MR. DORAN: Yes, you may.

21 MS. BROOKS: Thank you. The household goods
22 industry is highly regulated. We -- each mover is
23 required to have a maximum tariff on file with TxDMV.

24 If those charges -- if they have fee charges
25 and the proper paperwork on file with TxDMV and apply

1 that, then those charges are payable by the customer. If
2 the mover does not provide for all the charges in the
3 proposal for work, then certainly, a refund is obviously
4 required.

5 And there are instances where a mover will get
6 a contract signed and go to location. And the customer,
7 once the mover gets there, the customer will say, I was
8 going to move the things in the garage myself but didn't
9 have time. Can you do that.

10 The mover at that point then has the option to
11 either refuse that, because it is not on the contract, or
12 they can issue what is called an addendum to the contract
13 and get the customer to sign it. What frequently happens
14 is that a mover has not provided the necessary charges and
15 filed it with TxDMV. Or they do not complete the addendum
16 and perform the services, and expect to be paid when they
17 get to location.

18 So, as the rule is written, it appears to be
19 appropriate to ask for a refund if the mover has not
20 provided those specific charges in their tariff and it is
21 on file with TxDMV and/or when they have failed to issue
22 the appropriate paperwork when additional services are
23 required beyond what is on the contract.

24 MR. PEREZ: This is Luis Perez, staff.
25 Permission to be recognized.

1 MR. DORAN: Mr. Perez, you are recognized.

2 MR. PEREZ: Thank you. And Ms. Brooks is
3 correct. There are some regulations in place for these
4 household good movers, in that they can basically charge
5 our consumers anything that they want, as long as it is
6 listed in their tariff that is on file with the
7 Department. We have made changes to where a household
8 good carrier would not get their certificate to operate
9 unless they do file that tariff.

10 There are some instances, however, where a
11 mover will want to throw on some sort of ad hoc fee. For
12 example, let's say they have to wait for a couple of hours
13 for the consumer to be ready to move. Or they had to
14 serve up maybe an additional laborer that they do not have
15 listed in that tariff items.

16 And they will want to do this with a verbal
17 agreement on the move. And we do get complaints
18 afterwards to where there becomes an issue that they were
19 overcharged because that item is not listed in their
20 tariff. So, there are instances where there are some
21 household good movers that don't have all the items that
22 they wish to charge their consumers on the tariff.

23 MR. DORAN: This is Presiding Officer Doran.
24 Another question for staff. The way I read the call of
25 this question, it is a situation where the mover is

1 refusing to unload the goods or release the goods. It is
2 a poor choice of words, but it is almost like ransom.

3 Would this not -- this would not come into
4 effect where there is a dispute over how many hours the
5 mover ended up working. So, the example being, if the
6 mover said, I think it is going to take me eight hours to
7 move all of your stuff. And it ended up taking ten hours.

8 And the argument is between the customer and
9 the mover over the actual time spent moving. This
10 wouldn't come into effect. Right?

11 MR. PEREZ: Luis Perez. Permission to speak?

12 MR. DORAN: Yes. Permission granted. You are
13 recognized.

14 MR. PEREZ: You are correct. Typically, when
15 the move is agreed to up front, if it is based on an
16 hourly move, the customer acknowledges up front that they
17 understand that they don't need to get the number of hours
18 total to get that move completed until they get to the end
19 of the move.

20 And I may need to ask Brian for some
21 clarification on this, on that last part. I am not sure
22 if that was intended for maybe the unlicensed moving
23 companies. We have more problems with the unlicensed
24 moving companies that would want to, you know, refuse to
25 unload a move, or unload a shipment until they get paid.

1 Most of the registered carriers typically have
2 that agreement already upfront. They dictate, or they put
3 on their contract when the payment is required, and when
4 they are going to unload the items. So, that is already
5 known upfront.

6 We do have an issue with unlicensed movers,
7 which we do push over to law enforcement. But that is an
8 issue. And like I said, I am wondering if that is what
9 that was meant for, Brian?

10 MR. GE: This is Brian Ge. If I may be
11 recognized?

12 MR. DORAN: Mr. Ge, you are recognized.

13 MR. GE: So, the intent of any of these
14 refunds, both for household good movers and for dealers is
15 not to unjustly enrich the consumer. So, in a situation
16 where you know, you hire movers. They quote you like an
17 hourly fee, but it is capped at ten hours max. And the
18 move takes twelve hours.

19 Well, in your written agreement, you said ten
20 hours max. And so, anything you try to charge above that,
21 we would try to seek a refund for. But if the customer
22 asks the movers to do extra work, and that extra work
23 takes extra time, I think out of fairness, even if it
24 wasn't listed on the contract, we wouldn't necessarily
25 pursue a refund in that situation.

1 So, I think I may have misspoke or spoke too
2 soon earlier, when I said it is only limited to this very
3 specific situation where the mover refuses to unload
4 goods. But I can't see other situations where there is a
5 legitimate reason why we may want to order a refund.

6 And also, situations where even if on paper, it
7 seems legitimate, we wouldn't pursue that. Because it
8 wouldn't be equitable to the mover.

9 MS. BROOKS: Member Brooks. May I speak?

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

11 MS. BROOKS: Thank you. The problem -- the
12 issue comes about where many independent movers, those
13 that are not members of an association, tariff, or they
14 are not agents for a van line will file minimal revisions
15 with TxDMV in order to get their license.

16 And then, it appears that at that point, they
17 totally ignore what they put in a tariff with TxDMV and
18 charge whatever they choose. Our position would be -- is
19 if it is in the tariffs, and it is on the paperwork, then
20 the mover is -- and accepted, and charged the customer, if
21 it is not in their tariff and is not on their paperwork,
22 and the mover charges it, then definitely a refund is due.

23 MR. DORAN: Thank you. Members, any additional
24 discussion on this item?

25 MR. FRENCH: I am sorry. Member French wishes

1 to speak.

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

3 MR. FRENCH: I quite honestly agree with what
4 Ms. Brooks said. When you start holding somebody's
5 household goods, that is what it is. It is an illegal
6 act. And you know, in the old days, I would say get a
7 rope. But I can't say that anymore.

8 But anyway, it is -- in this scenario, it is
9 [inaudible 1:25:58] to demand a refund. Unfortunately, in
10 those cases, the money had been paid, so there is not a
11 refund. It is illegal.

12 MR. DORAN: Thank you, Member French. Is there
13 any additional discussion?

14 (Pause.)

15 MS. JOHNSON: Officer Doran, Member Johnson,
16 requesting to speak and to be recognized, please?

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

18 MS. JOHNSON: While I would really love Member
19 French to make this motion I would move that we adopt the
20 proposed recommendation regarding household goods, when a
21 consumer is charged, but it is not listed on the tariff,
22 and the mover takes possession of the property, and the
23 mover refuses to unload goods until charges are paid.

24 MR. DORAN: Members, you have heard the motion.
25 Is there a second?

1 MR. FRENCH: How about if I second that?

2 MR. DORAN: Okay. Member French seconds the
3 motion. Members, I will now call for the vote. Members,
4 as I say your name, please state your support for the
5 motion by saying yes, or no, if you do not support the
6 motion. And Members, if you wouldn't mind putting your
7 phones on mute, so we can hear each of the members vote
8 accurately, that would be helpful. Member Brooks.

9 MS. BROOKS: Yes.

10 MR. DORAN: Okay. Member Cavender.

11 MR. CAVENDER: Yes.

12 MR. DORAN: Okay. Member Colvin.

13 (No response.)

14 MR. DORAN: Member Eshpeter.

15 (No response.)

16 MR. DORAN: Member French.

17 MR. FRENCH: Yes.

18 MR. DORAN: Member Gonzalez.

19 MR. GONZALEZ: Yes.

20 MR. DORAN: Member Johnson.

21 MS. JOHNSON: Yes.

22 MR. DORAN: Member McCullah.

23 (No response.)

24 MR. DORAN: Member Olah.

25 MR. OLAH: Yes.

1 MR. DORAN: Member Rash.

2 MS. RASH: Yes.

3 MR. DORAN: Member Rigby.

4 MR. RIGBY: Yes.

5 MR. DORAN: Member Smith.

6 (No response.)

7 MR. DORAN: Member Solis.

8 (No response.)

9 MR. DORAN: And I, Presiding Officer Doran,
10 vote yes as well. Okay. The motion passes. Okay.

11 Members, I believe when we started down this
12 road today on Item 2A, we had tabled Member Smith's motion
13 with respect to the definition of refund. And I think
14 that is the only part of this that we still need to close
15 out before finishing up this item.

16 MR. GE: This is --

17 MR. DORAN: I am sorry. Go ahead, Mr. Ge.

18 MR. GE: Thank you. This is Brian Ge. There
19 are two items and one talking point. I think I will start
20 with the talking point first, since that is not coming up
21 for a vote.

22 Originally, the thought was, we presented to
23 the Committee the question of how long is too long to
24 order a refund. And it was the Committee's decision that
25 four years was good, because that coincided with the

1 amount of time a dealer had to keep paperwork for.

2 After consultation with Counsel, the Department
3 determined that we should not treat our refund authority,
4 which is a sanction, differently from our other sanctions.

5 And those sanctions have no time limit. So, we are not
6 going to impose a time limit on the Department's authority
7 to order a refund.

8 Now, that said, before we would ever get to the
9 point of ordering a refund, we have to, one, have
10 evidence. And two, that evidence has to be strong enough
11 to prove our case of a violation.

12 The thing is, after a certain amount of time,
13 let's say, around that four-year mark, when the dealer no
14 longer has to keep records, that evidence goes away. We
15 are going to have a harder and harder time to prove our
16 case as time passes.

17 So, I don't think it will be a concern. It
18 obviously affects some of that regulatory clarity that you
19 were speaking about earlier.

20 But it will be treated like any of our other
21 sanction authority, and all the due process that
22 accompanies that. If anyone has any comments on that, I
23 am happy to address them. If not, I will move on.

24 MR. DORAN: This is Presiding Officer Doran. I
25 think, in fact, when we initially discussed this, myself

1 and maybe one of the other attorneys that is a member of
2 the Committee, had recommended four years.

3 Because that was, I believe, the statute of
4 limitations in Texas on contract actions. As well as, as
5 you mentioned, the recordkeeping requirement that is
6 imposed on dealers by DMV.

7 I was just wondering if you could speak a
8 little bit more to why the Department would want to go
9 beyond four years. I think what you were saying was, the
10 Department would take into consideration the fact that a
11 dealer is not legally obligated to keep documentation
12 related to the transaction in question beyond four years.

13 But just perhaps you could speak a little bit
14 more to this. Because it does, I think, open up a certain
15 level of uncertainty from a compliance standpoint for
16 dealers. And I, as a practitioner in this area, would
17 struggle, kind of, with the guidance to give a dealer as
18 to how long they need to hold on to paperwork, if they
19 thought that there was a reasonable probability that it
20 would be exculpatory in some way, beyond four years.

21 MR. GE: This is Brian Ge. If I may be
22 recognized?

23 MR. DORAN: Yes. You are recognized.

24 MR. GE: So, yes. You are correct that the
25 original basis for that four years was one, the

1 recordkeeping requirement, and two, it coincides with a
2 contract cause of action.

3 The thing is, this is a civil sanction. We are
4 acting as the role of a prosecutor, essentially. And we
5 are charging you, the dealer, with violations. Not
6 criminal, obviously, but violations of our rules and our
7 statutes.

8 Just because we can't order a refund -- and
9 this is assuming this goes off course. But even if we
10 can't order a refund, we would still be able to sanction
11 you, based on that activity that was passed four years
12 ago. So, it is not really -- this ability to order a
13 refund isn't any more of a stick than the penalty already
14 is.

15 And we want to treat all of our sanctions the
16 same. So, it didn't make sense to introduce an artificial
17 limitation on one sanction, when every other sanction can
18 be applied evenly and equally. Does that make sense?

19 MR. DORAN: Yes. Thank you.

20 MR. GE: And, this is Brian Ge again.
21 Especially in the context in which we are planning to use
22 this refund authority, it is going to mostly be a
23 settlement tool.

24 So, say five years down the line, there is
25 evidence of a violation. And the consumer is out of --

1 let's say, an extended warranty. So, the extended
2 warranty was for six years.

3 On year five, the consumer goes in and tries to
4 use that warranty, but discovers hey, the dealer never
5 paid for it. And suddenly why, that at year four, we
6 could order a refund of that warranty. But at year five,
7 we can't.

8 And at year five, if the alternative is to
9 sanction you for \$1,000 for a civil penalty for that
10 misrepresentation, wouldn't it be better if, instead of
11 assessing that as a penalty, we say, hey. Maybe as a
12 settlement, you just refund the money to the consumer for
13 what they paid for that warranty. And we, given the age
14 in this case, we just settle and call it even.

15 MR. FRENCH: This is Mr. French. May I speak?

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

17 MR. FRENCH: Got a little conflict in the rules
18 governing consumer protection subchapter S and 218-51,
19 item F states, household good carrier or agent shall keep
20 records of whatever shipment it sells or handles for at
21 least two years after the date of the shipment. Once two
22 years goes by, those records, they totally disappear.

23 MR. GE: This is Brian Ge. If I may respond?

24 MR. DORAN: Yes. Brian, you are recognized.

25 MR. GE: Member French, so it is the

1 Department's policy. Well, I don't know if it is official
2 policy, but it is my policy, that we don't go after
3 dealers or movers for records-type violations after they
4 no longer have to keep those records.

5 And as I said before, in relation to one of the
6 examples, we typically resolve ambiguity in terms of what
7 is in the documents. If there are no documents, one, we
8 won't be able to prove our case.

9 And two, out of fairness, I don't think the
10 case ever would have been brought in the first place.
11 Does that address your concern?

12 MR. FRENCH: No, it doesn't. Because it
13 implies that people wanting to complain or whatever has
14 four years to do it. The rule, the household goods rules
15 clearly states the dates. Like, after a move, the
16 consumer has 90 days in which to file a claim for loss
17 [inaudible 1:38:04].

18 The records are kept for two years. If we are
19 going to -- Texas DMV rules should be consistent and not
20 jump around, you know, and what an adjuster thinks, or
21 examiner thinks. Because everybody has a different
22 opinion. We need a firm rule that is livable. Thanks.

23 MR. GE: This is Brian Ge. If I may be
24 recognized?

25 MR. DORAN: Mr. Ge, you are recognized.

1 MR. GE: Member French, the rules concerning
2 the Department's sanction authority is six. It is in for
3 218, it is as you said, Subchapter F, for dealers it is in
4 215.

5 But there are no limitations to, or time
6 limitations on the Department's sanction authority. It --
7 this refund authority doesn't affect that part of it. It
8 is just, we are treating it as any other sanction.

9 It's -- you say you don't want to be subject to
10 the whims of any person. But it's -- I mean, in any of
11 these cases, you are. That is what is happening.

12 I mean, you are not subject to the whims of
13 that person. But they are following the Department's
14 rules, and if the Department's rules allows for sanctions
15 in these enumerated instances, whether or not there is
16 approval to add refunds to that list, it won't affect
17 anything else.

18 So, I don't know if that addresses your
19 question, or if it is just -- or if it sounds like I am
20 saying, too bad. Because I am not trying to do that. I
21 just don't know of a more eloquent way of saying it.

22 This is a sanction. It will be treated like
23 every other sanction.

24 MR. FRENCH: Member French wishes to speak.

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

1 MR. FRENCH: I hear what you are saying. Do I
2 like it? No. You know, there has been several occasions
3 in my career in the moving and storage business which
4 there has been a difference of opinion between an examiner
5 and you know, the mover, that I am aware of.

6 And you know, I guess we are down to the point
7 of, too bad, then. And so be it. Thank you.

8 MR. GE: This is Brian Ge, if I may be
9 recognized?

10 MR. DORAN: You are recognized, Mr. Ge.

11 MR. GE: Member French, not to get too far into
12 the weeds, but absolutely, movers will be able to be
13 heard. There is, we are not just working off the
14 consumer's complaint.

15 We have investigators, often with dozens of
16 years of experience going out and assessing the situation.

17 They have their supervisors which approve their
18 recommendations. Once they have that supervisor approval,
19 it goes to an attorney who exercises their legal judgment.

20 After they make their recommendation, their
21 manager, which in this case, would be me, goes in and
22 approves it. So, before anything even comes out of our
23 mail to you, you will already have had four layers worth
24 of checks.

25 Then, on top of that, once you receive that

1 notice of the Department's decision, you can reach out to
2 us. You can tell us your side of the story. We will
3 listen. We will work with you. We will try to settle it,
4 if we can.

5 If we can't, it will go in front of an
6 administrative law judge. That judge will make a
7 decision. And you know, if you are not happy with that,
8 you can file a motion for rehearing, and see if you can
9 appeal that.

10 If that gets denied, you can appeal it to
11 District Court. There are many, many levels of review.
12 And so, there will always be due process with regards to
13 any sanctions. Not just refunds.

14 I mean, you get that level of attention from
15 that many personnel every time one of these things even
16 get alleged. So, I hope that gives you some reassurance.

17 It is definitely not a situation where we are just
18 saying, tough, live with it. Because it is not. We give
19 everyone an opportunity to be heard, and sometimes,
20 multiple.

21 MR. DORAN: Members, is there further
22 discussion on this? It is a talking point now, according
23 to Mr. Ge, and not a recommendation to be voted on, via a
24 motion. Is that correct, Mr. Ge?

25 MR. GE: This is Brian Ge. Yes.

1 MR. DORAN: Okay.

2 MR. CAVENDER: Member Cavender. Permission to
3 speak, please.

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

6 MR. CAVENDER: I can't speak for all 1,400
7 franchise dealers in Texas on their records keeping. But
8 I just know that franchise dealers have become very
9 successful in DMS systems and maintaining records.

10 So, the four-year issue, if you are talking
11 about that, I think as dealers, I can see no reason to
12 oppose the Agency's desire for a time limit. But of
13 course, discovery would become problematic, I am sure,
14 after four years.

15 Especially if they need to see deal jackets and
16 that kind of thing, the physical deal jacket. Because
17 that is when we kind of move that into archive, as I
18 understand. I may have to ask my office management staff.

19 But I believe that is true.

20 But I would like to try to re-center us back to
21 the original motion that our Member Smith had proposed, in
22 the essence of time. If we could go ahead and get back to
23 that. I would appreciate that.

24 MR. DORAN: Thank you, Member Cavender.

25 MR. GE: This is Brian Ge. If I may be

1 recognized?

2 MR. DORAN: You are recognized.

3 MR. GE: If there is no further discussion on
4 that, I would love to move on to how a refund should be
5 defined.

6 MR. DORAN: Please proceed, Mr. Ge.

7 MR. GE: All right. I believe that Mr. Smith
8 proposed that we modify the proposed recommendation to
9 read, a refund should be defined as the return of any
10 consideration that a consumer paid or contracted to pay to
11 a licensee or registrant. If I am restating that
12 incorrectly, please let me know.

13 MR. DORAN: Presiding Officer Doran here. You
14 said registrant? Is that the distinction.

15 MR. GE: This is Brian Ge. A registrant refers
16 to a motor carrier in, for our purposes, household good
17 movers. And a licensee refers to dealers.

18 MR. DORAN: Thank you. Members, is there
19 further discussion on the definition?

20 MR. GONZALEZ: Member Doran, permission to
21 speak? This is Member Gonzalez.

22 MR. DORAN: Member Gonzalez, you are
23 recognized.

24 MR. GONZALEZ: Thank you. In the interest of
25 layman's terms, why not use that terminology that you just

1 mentioned, Mr. Ge?

2 Instead of licensee, show dealer. Instead of
3 registrant, show motor carrier or household goods mover.
4 I think that would be simpler to understand. And that
5 specific definition of licensee or registrant, I was a
6 little bit thrown off.

7 The registrant could be a vehicle owner, you
8 know. This term in this sense, we are talking about a
9 household good mover, or a licensed dealer. If you mean a
10 licensee and refer to it as a dealer, a license dealer, or
11 in the case of a registrant, a motor carrier or household
12 good mover.

13 That would be my comment. Thank you.

14 MR. GE: This is Brian Ge. If I may be
15 recognized?

16 MR. DORAN: Mr. Ge, you are recognized.

17 MR. GE: Member Gonzalez, I apologize. I, in
18 my training, I try to be as precise as I can in my
19 language. In this case, because we are dealing with
20 licensees in 2301 and registrants in 645, I used those
21 terms.

22 But again, as I mentioned previously, these are
23 just recommendations. And it is not the actual rule
24 language.

25 So, absolutely. If you prefer that the

1 recommendation is -- or rather, if it is the Committee's
2 preference to switch out licensee and registrant for
3 dealer and household good mover, I have absolutely no
4 qualms with that, whatsoever.

5 MR. DORAN: Mr. Ge, this is Presiding Officer
6 Doran. Can you refer us or remind us what the Sunset
7 Commission directed on this? What was in the legislation.
8 Did it say dealer, or did it say licensee?

9 Because legislative intent is probably pretty
10 important here. And it is not clear to me whether the
11 Legislature was intending to include a manufacturer, a
12 distributor, a converter, other types of licensees, beyond
13 just dealers.

14 MR. GE: This is Brian Ge. I will look that up
15 for you right now.

16 MR. DORAN: Thank you.

17 (Pause.)

18 MR. CAVENDER: Member Cavender. Permission to
19 speak, please.

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

22 MR. CAVENDER: I believe we are having some
23 technical issues with Member Smith. He is on the call,
24 but he cannot -- for some reason, he is muted. So, can
25 somebody look at him on the technical side, to see if we

1 can bring Mr. Smith back to the discussion?

2 MR. SMITH: This is Member Smith. Can you hear
3 me now?

4 MR. DORAN: Yes. We can, Member Smith. You
5 are recognized.

6 MR. SMITH: Thank you. A couple of things. I
7 mean, you have a question there for Mr. Ge.

8 I think the 2301.807, to answer Officer Doran's
9 question, it says, determines that a person -- so I assume
10 that would mean a manufacturer, a dealer, or a
11 distributor. But that is a question for Mr. Ge.

12 And then, after that is answered, I would like
13 to again, talk about my motion.

14 MR. GE: This is Brian Ge. If I may be
15 recognized?

16 MR. DORAN: Mr. Ge, you are recognized.

17 MR. GE: So, as part of TxDMV Sunset Bill
18 2301.807, it says, if after a proceeding under this
19 Chapter and Board rules, the Board determines that a
20 person is violating or has violated this Chapter or rule
21 adopted, or order issued under this Chapter. So, we are
22 talking about 2301, which is related to the licensees
23 regulated under 2301.

24 MR. DORAN: Understood. Thank you, Mr. Ge.

25 MR. GE: And the same goes for -- this is Brian

1 Ge, again. The same goes for 643, where the refund
2 authority for motor carriers is found. So, to answer
3 Member Smith's question, it is relating to the sale or
4 lease of motor vehicles, so persons regulated under that
5 Chapter.

6 MR. SMITH: So, I am not clear. This is Member
7 Smith, again. So, that would apply to manufacturers,
8 distributors and dealers, all three?

9 MR. GE: My understanding is that it is
10 dealers. But I can seek further clarification on that.

11 MR. SMITH: My comment would say that it says
12 buyer. And of course, dealers are buyers from the
13 factory, or for the distributor, but I am not the lawyer.

14 MS. THOMPSON: Corrie Thompson. I can say that
15 Sunset's intent was for this to be a dealer refunding a
16 public purchaser, as a consumer, is the intent behind the
17 implementation of the statute.

18 MR. SMITH: Member Smith, Officer Doran.

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

20 MR. SMITH: When you are ready to move forward,
21 I would like to restate my motion.

22 MR. DORAN: Members, is there any further
23 discussion on this item before we proceed to Member
24 Smith's motion?

25 (No response.)

1 MR. DORAN: Not hearing any. Member Smith, you
2 are recognized.

3 MR. SMITH: My motion was to adopt a definition
4 for a refund as quote, a refund is defined as the return
5 or repayment of consideration, period. Under Section
6 2301.807, a refund is limited to the amount paid by the
7 consumer, and without the inclusion of any additional
8 consideration of damages or harm. Period.

9 MR. DORAN: Members, you have heard the motion.
10 Is there a second to the motion?

11 MR. CAVENDER: Cavender seconds.

12 MR. DORAN: Okay. The motion has been
13 seconded. Okay. Members, I will now call for the
14 question. Members, as I call your name, please state your
15 support for the motion by stating yes, or no if you do not
16 support the motion. Member Brooks.

17 MS. BROOKS: Yes.

18 MR. DORAN: Okay. Member Cavender.

19 MR. CAVENDER: Yes.

20 MR. DORAN: Member Colvin.

21 (No response.)

22 MR. DORAN: Member Eshpeter.

23 (No response.)

24 MR. DORAN: Member French.

25 MR. FRENCH: Yes.

1 MR. DORAN: Member Gonzalez.

2 MR. GONZALEZ: Yes.

3 MR. DORAN: Member Johnson.

4 MS. JOHNSON: Yes.

5 MR. DORAN: Member McCullah.

6 (No response.)

7 MR. DORAN: Member Olah.

8 MR. OLAH: Yes.

9 MR. DORAN: Member Rash.

10 MS. RASH: Yes.

11 MR. DORAN: Member Rigby.

12 MR. RIGBY: Yes.

13 MR. DORAN: Member Smith.

14 MR. SMITH: Yes.

15 MR. DORAN: Member Solis.

16 (No response.)

17 MR. DORAN: And I, Laird Doran, Presiding
18 Officer, also vote yes. The motion is unanimous, or the
19 motion passes unanimously.

20 MR. GE: This is Brian Ge. If I may be
21 recognized?

22 MR. DORAN: You are recognized, Mr. Ge.

23 MR. GE: Okay. And the very last thing that we
24 have to talk about is, under what circumstances should
25 TxDMV order a dealer or household good mover to provide a

1 refund. I believe in the course of our discussion, with
2 all the examples, we have made it or at least hopefully
3 made it very obvious and clear.

4 While we can use this refund authority as any
5 other sanction, we do intend to use it judiciously, and as
6 part of -- just as another sanction in our toolbox. So,
7 we would be following our normal enforcement process.

8 And all the due process would be there. And it
9 would be governed by our rules as any other sanction that
10 we could impose.

11 So, with that in mind, I propose the following
12 recommendation for when TxDMV should be able to order a
13 refund. As the refund is just one sanction or tool that
14 the Department or that Enforcement can use as part of the
15 Department's normal enforcement process, including during
16 settlement negotiations, the Department may order a refund
17 from a dealer or household goods mover after they have
18 established that a violation was committed as part of the
19 enforcement process outlined in the Department's rules.

20 MR. DORAN: Members, do we have a motion to --
21 well, let me take a step back. This is Presiding Officer
22 Doran. This is a question for staff. Do you need a
23 motion to put forth your proposal for the Committee to
24 vote on?

25 MR. GE: This is Brian Ge. Yes, that would be

1 preferred.

2 MR. DORAN: Okay.

3 MR. SMITH: Member Smith --

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

5 MR. SMITH: Can he repeat the motion, please?

6 MR. GE: Yes, sir. This is Brian Ge. The
7 proposed recommendation as written is, the refund is just
8 one sanction or tool that Enforcement can use, as part of
9 the Department's normal enforcement process, including
10 during settlement negotiations.

11 The Department may only order a refund from a
12 dealer or household good mover after they have established
13 that a violation was committed, as part of the enforcement
14 process as outlined in the Department's rules.

15 MR. DORAN: This is Presiding Officer Doran.
16 Question for staff. So, in the proposal and the language
17 you just laid out there, in describing this refund
18 authority as being a sanction or tool that the Department
19 can use, is it the Department's position that this is a --
20 the procedures around this, and the treatment of this
21 particular sanction are to be considered on par or the
22 same as the other tools that the Department?

23 MR. GE: This is Brian Ge. Yes.

24 MR. DORAN: Thank you.

25 MR. SMITH: Member Smith, Officer Doran.

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

2 MR. SMITH: Again, is this in writing somewhere
3 that we can read it? I tried to listen to it. But I
4 think he said that it was only limited to dealers. It
5 seems to me that maybe that ought to be broader.

6 MR. GE: This is Brian Ge. If I may be
7 recognized?

8 MR. DORAN: Yes. Mr. Ge, you are recognized.

9 MR. GE: Member Smith, everything that we have
10 talked about today is written down and included in the
11 meeting materials that were distributed to you yesterday.
12 It is on page 5 of the TxDMV packet materials. And yes,
13 it is --

14 MR. SMITH: Under number two?

15 MR. GE: Yes. Under number two.

16 And as to the second part of your question or
17 your comment, as we said earlier, the intention was -- for
18 Sunset was to apply this to dealers and household good
19 movers. If you would like to broaden that in a motion, I
20 have no objection.

21 MR. SMITH: Member Smith, Officer Doran.

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

23 MR. SMITH: I would like to strike a part that
24 says from a dealer or household good mover and put in
25 there, from a license holder.

1 MR. DORAN: Members, Member Smith is seeking to
2 amend the motion. Is there discussion?

3 MR. FRENCH: This is Member French. May I
4 speak?

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

6 MR. FRENCH: I did not hear the substitution
7 very well. Would you repeat that, please, Mr. Smith?

8 MR. SMITH: Yes, sir. Thank you. In the third
9 sentence down, order a refund from a dealer or household
10 good mover is the verbiage. I omitted that by just
11 saying, a refund from a license holder.

12 MR. GE: This is Brian Ge. If I may be
13 recognized?

14 MR. DORAN: Mr. Ge, you are recognized.

15 MR. GE: So, the problem with saying license
16 holder, one, is that while we license household goods,
17 they have a registration. That is their operating
18 authority. That is what we regulate. So, that is why I
19 have been referring to the motor carriers as registrants.

20 Second, in the event that we -- that there is
21 unlicensed activity, say from an unlicensed mover, if we
22 can somehow get them to agree to a refund, we would
23 certainly like to be able to include them in that
24 definition. Whereas, if we just say license holder, it
25 precludes all the unlicensed activity that may go on.

1 But again, this ultimately -- rule language
2 will be developed for public comment. And the verbiage
3 used in this recommendation will be superseded by that.

4 MR. SMITH: Member Smith.

5 MR. DORAN: Member Smith. You are recognized.

6 MR. SMITH: What if we said licensee or
7 registrant? It seems to me that you are going to be
8 [inaudible 21:31] when you say dealer or household good
9 mover.

10 There are others that might be party to some
11 sort of complaint that you might want to order a refund.
12 I would amend my motion to say licensee or registrant if
13 that works for Mr. Ge.

14 MR. GE: This is Brian Ge. If I may be
15 recognized?

16 MR. DORAN: Member -- I am sorry. Mr. Ge, you
17 are recognized.

18 MR. GE: If it would be easier, we can even
19 just replace that with person.

20 MR. DORAN: This is Presiding Officer Doran.
21 Since we are discussing this particular amendment to the
22 motion, I just want to come back to something Ms. Thompson
23 said, because I want to make sure that all the members
24 understand what I think she described as the legislative
25 intent behind this.

1 It sounded like, from a prior question that we
2 asked, that it was the direction of the Sunset Committee
3 and that direction was carried through by the Legislature,
4 that this would be limited to dealers and to household
5 movers. I understand that the language of 2301.807 is not
6 so [inaudible 22:43].

7 So, that is kind of a question that I want to
8 turn back to, one more time, for staff to opine on.
9 Because I personally want to stay true to whatever the
10 legislative intent is.

11 Not trying to be antagonistic towards any
12 particular group of stakeholders. But want to make sure
13 that we are not taking this in a direction that was beyond
14 what the Legislature contemplated.

15 MR. RICHARDS: Officer Doran? This is David
16 Richards. May I have permission to speak?

17 MR. DORAN: You are recognized.

18 MR. RICHARDS: Members, the housekeeping
19 measure, please mute your phones if you are not -- if you
20 haven't been recognized, or you are not speaking.

21 We are getting a lot of background noise. And
22 I don't think everybody can hear the discussion. Thank
23 you.

24 MR. DORAN: Member Smith. Officer Doran.

25 MR. DORAN: Member Smith, I will get to you. I

1 think my question was really posed to Ms. Thompson, since
2 she focused on this initially during our discussion.

3 MS. THOMPSON: Yes.

4 MR. DORAN: So, I will get back to you.

5 MS. THOMPSON: Corrie Thompson.

6 MR. DORAN: Mr. Smith, after Ms. Thompson
7 speaks.

8 MS. THOMPSON: Yes. Officer Doran. Corrie
9 Thompson. If I may.

10 MR. DORAN: You are recognized.

11 MS. THOMPSON: Yes. And so, I was part of the
12 Department Sunset review.

13 I sat in all the meetings with them, and the
14 discussion of this authority came up only ever around
15 additional protections for the consumer public purchasing
16 vehicles from dealers. So, that is the reason for the
17 proposed language in the definition.

18 You will note that other points at the statute,
19 too, make reference to the term "person" when they are
20 making the definition of a dealer. But that is the
21 specific reason for the definition language that is
22 proposed currently.

23 MR. DORAN: Thank you. Mr. Smith, or Member
24 Smith, you are recognized.

25 MR. SMITH: Thank you. Thanks to Mr. Ge for

1 putting us on the right track. I am perfectly content
2 with substituting the word "person" instead of dealer or
3 household good mover. And so, I put that in my motion.
4 Thank you, Mr. Ge.

5 MR. DORAN: Thank you, Member Smith.

6 MS. RASH: I am Member Rash. I have a
7 question.

8 MR. DORAN: Member Rash, you are recognized.

9 MS. RASH: Probably for the Department, because
10 would this hamper, if you sent a letter to a dealer that
11 said that an NOV, like a notice of a possible violation.
12 And the dealer, especially for one that is larger, there
13 was an error made.

14 And they are willing to up-front refund. This
15 doesn't hamper you all's ability to do that. Correct?

16 MR. GE: This is Brian Ge. If I may be
17 recognized?

18 MR. DORAN: Mr. Ge, you are recognized.

19 MR. GE: No. It would not hamper our ability.
20 These sanctions, they are a last resort. Like if we can
21 resolve this informally, before we ever issue a charging
22 document, that is our preference. If we never had to
23 bring one of these, I would be perfectly content.

24 MS. RASH: Okay. That is great. The reason I
25 asked is because it said, you know, that you had to

1 establish the violation. I guess, that is when you have
2 to enforce the refund, not if the refund is given because
3 the dealer wants to go ahead and do the refund.

4 Correct?

5 MR. GE: Yes. Yes, ma'am. This is Brian Ge.
6 This -- that sentence is just saying, we will give the
7 dealer or the mover their full due process. We are not
8 just going to assess a refund without proving up
9 everything else.

10 MS. RASH: Okay. Thank you.

11 MR. DORAN: This is Presiding Officer Doran.
12 Just one last comment I had, responding to the proposed
13 change of moving it away from just being a dealer to
14 person.

15 Given the fact that we know Tesla Motors is
16 selling vehicles currently, and they are technically a
17 manufacturer, I do believe that "person" could be
18 interpreted to cover entities such as that, that are
19 engaging in transactions directly with the public -- the
20 public consumer. So, I too, would support the change from
21 dealer to person, to coincide with 2301.807.

22 (Pause.)

23 MR. DORAN: Members, is there any further
24 discussion?

25 MR. OLAH: Member Olah asks to be recognized.

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

2 MR. OLAH: Again, with all the discussion, I
3 have lost the handle on whether we actually have a motion
4 by Member Smith, and actually how that motion would be
5 worded. If I may ask for clarification.

6 MR. DORAN: My understanding -- this is
7 Presiding Officer Doran, and if I am wrong, staff, please
8 step in here. But my understanding is the motion has been
9 made to take the language that is set out in the agenda
10 that currently defines refund, and where that referred to
11 dealer, use the word "person."

12 I will defer to staff, if there were additional
13 amendments that were suggested by Member Smith to the
14 suggested definition for refund that was in the agenda.

15 MR. GE: This is Brian Ge. If I may be
16 recognized?

17 MR. DORAN: You are recognized.

18 MR. GE: I believe a correct restatement of
19 Member Smith's motion was, the Department may only order a
20 refund from a person after they have established that a
21 violation was committed as part of the enforcement process
22 outlined in the Department's rules.

23 MR. SMITH: Member Smith. That is correct.

24 MR. DORAN: Members, you have heard the motion.
25 Is there a second?

1 MR. CAVENDER: Cavender to second.

2 MR. DORAN: The motion has been seconded by
3 Member Cavender. I will now -- if there is no further
4 discussion, I will now call for the question.

5 Members, as I call your name, please state your
6 support for the motion by saying yes, if you agree. No,
7 if you are not in support of the motion. Member Brooks.

8 MS. BROOKS: Yes.

9 MR. DORAN: Okay. Member Cavender.

10 MR. CAVENDER: Yes.

11 MR. DORAN: Member Colvin.

12 (No response.)

13 MR. DORAN: Member Eshpeter.

14 (No response.)

15 MR. DORAN: Member French.

16 MR. FRENCH: Yes.

17 MR. DORAN: Member Gonzalez.

18 MR. GONZALEZ: Yes.

19 MR. DORAN: Member Johnson.

20 MS. JOHNSON: Yes.

21 MR. DORAN: Member McCullah.

22 (No response.)

23 MR. DORAN: Member Olah.

24 MR. OLAH: Yes.

25 MR. DORAN: Member Rash.

1 MS. RASH: Yes.

2 MR. DORAN: Member Rigby.

3 MR. RIGBY: Yes.

4 MR. DORAN: Member Smith.

5 MR. SMITH: Yes.

6 MR. DORAN: Member Solis.

7 (No response.)

8 MR. DORAN: And I, Presiding Officer Laird
9 Doran, also vote yes. The motion is unanimous and passes.

10 Members, are there any other motions?

11 (No response.)

12 MR. DORAN: If there is no further motions,
13 then I would like to -- Members, we are going to table
14 Agenda Items 2(b) and 2(c) for a future meeting. And we
15 are now going to move on to Item 2(d), future meeting
16 schedule.

17 Members, we currently do not have any future
18 meeting dates scheduled. The Office of General Counsel
19 will send out future meeting invites to determine
20 membership availability.

21 Members, we will now move on to take up Agenda
22 Item 3, which is public comment. David, are there any
23 public -- I am sorry. Are there any comments from the
24 public?

25 MR. RICHARDS: David Richards for the record.

1 Presiding Officer Doran, we do not have any public
2 comments today.

3 MR. DORAN: Thank you, David. We do not have
4 any comment sheets from the public, so we will move on to
5 Agenda item 4, adjournment. Unless there is any further
6 business, I would like to entertain a motion to adjourn.

7 MS. JOHNSON: Member Johnson moves to adjourn.

8 MR. DORAN: Motion is made by Member Johnson.
9 Is there a second?

10 MR. CAVENDER: Cavender, second.

11 MR. DORAN: Okay. The motion has been made and
12 seconded to adjourn the meeting. All in favor, say aye.

13 (A chorus of ayes.)

14 MR. DORAN: Let the record reflect that the
15 vote was unanimous. I would like to thank all the members
16 and staff for their time today. It is now 1:08 p.m. And
17 we are adjourned.

18 MR. RICHARDS: Thank you, Members.

19 MR. DORAN: Thank you, everyone.

20 (Whereupon, at 1:08 p.m., the meeting was
21 adjourned.)

C E R T I F I C A T E

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3 MEETING OF: TxDMV Consumer Protection Advisory
4 Committee

5 LOCATION: Austin, Texas

6 DATE: June 25, 2020

7 I do hereby certify that the foregoing pages,
8 numbers 1 through 160, inclusive, are the true, accurate,
9 and complete transcript prepared from the verbal recording
10 made by electronic recording by Elizabeth Stoddard before
11 the Texas Department of Motor Vehicles.

12 DATE: July 6, 2020
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17

18 /s/ Carol Bourgeois
19 (Transcriber)
20

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