

TEXAS DEPARTMENT OF MOTOR VEHICLES
CUSTOMER SERVICE AND PROTECTION ADVISORY COMMITTEE
MEETING

Texas Department of Motor Vehicles
Lone Star Conference Room
4000 Jackson Ave., Building 1
Austin, Texas 78731

and

via teleconference

Tuesday,
September 19, 2023
9:00 a.m.

COMMITTEE MEMBERS:

Kristen Hoyt, Presiding Officer
Carroll Smith, 1st Vice Chair
Cheryl Johnson, 2nd Vice Chair
John Ames
Dorothy Brooks
Tina Carter
Laird Doran
Phil Elam
Christopher Gaston
Ruben Gonzalez
Mark "Jim" Hardick
Russell Hayter
Charles Hicks
Lori King
Traci McCullah
Matthew Nance
Raymond "Ray" Olah
Jackie Polk
Jeanette Rash
Bruce Stidham
Susan Sutton
Ford Wagner
Christopher Wall

Staff:

David Richards, Associate General Counsel

ON THE RECORD REPORTING
(512) 450-0342

I N D E X

| <u>AGENDA ITEM</u> | <u>PAGE</u> |
|---|-------------|
| 1. CALL TO ORDER | |
| A. Roll Call and Establishment of Quorum | 5 |
| 2. DISCUSSION, BRIEFING, AND ACTION ITEMS | |
| A. Consider Amendments to 43 Texas Administrative Code (TAC) Chapters 206, Management; 215, Motor Vehicle Distribution; 221, Salvage Vehicle Dealers; and New 43 TAC Chapter 224, Adjudicative Practice and Procedure (BRIEFING AND DISCUSSION ONLY) | 8 |
| B. Recommendations of Advisory Committee on Amendments to 43 TAC Chapters 206, Management; 215, Motor Vehicle Distribution; 221, Salvage Vehicle Dealers; and New 43 TAC Chapter 224, Adjudicative Practice and Procedure; for Presentation to the Board (DISCUSSION AND ACTION ITEM) | 44 |
| 3. PUBLIC COMMENT | none |
| 4. ADJOURNMENT | 102 |

P R O C E E D I N G S

1
2 MS. HOYT: This meeting is being held by
3 conference call in accordance with Texas Government Code
4 Chapter 551.125. Members of the public may physically
5 attend this meeting in person at 4000 Jackson Avenue,
6 Building 1, Lone Star Room, Austin, Texas, 78731, or
7 attend this meeting by calling the telephone number which
8 was both posted in our agenda which was filed with the
9 Office of the Secretary of State on September 11, 2023.

10 We have zero members in person, with the vast
11 majority of the advisory committee members participating
12 remotely.

13 At this time all attendees please mute
14 yourselves for the entire duration of this meeting. I'm
15 asking our meeting host to make sure that all
16 participants' phones are muted, except for the advisory
17 committee members and those who are presenting. Callers
18 will be removed for any disruption, including background
19 noise.

20 I'd like to remind all participants that this
21 is a conference call meeting. Because this meeting is
22 being held by conference call, there are a few things that
23 will assist in making the meeting run smoother and assist
24 the court reporter in getting an accurate record: please
25 identify yourselves before speaking, speak clearly,

1 remember that there may be a slight delay in the
2 conference call format so please wait a little longer than
3 usual before responding to participants, do not speak over
4 others, please ask the presiding officer to proceed and be
5 sure to get recognized before speaking. And for members
6 participating in the room, please remember to unmute your
7 mic before speaking, then mute again after speaking.

8 I'd like to also thank our court reporter who
9 is transcribing this meeting.

10 To make sure we have an accurate recording of
11 this meeting, it is very important that the advisory
12 committee members and anyone presenting today identify
13 themselves before speaking, and speak clearly and slowly.

14 If you wish to address the advisory committee
15 or speak on an agenda item during today's meeting, please
16 complete a speaker's sheet at the registration table.
17 Please specify the item that you are interested in
18 commenting on, your name and address, and whether you are
19 representing anyone or speaking for yourself.

20 If your comment does not pertain to a specific
21 agenda item, we will take your comment during the general
22 public comment portion of the meeting. When addressing
23 the advisory committee, please state your name and your
24 affiliation for the record.

25 Before we begin today, I'd like to remind all

1 presenters and those in attendance of the rules of conduct
2 at our advisory committee meetings. In the department's
3 rules under Title 43 Texas Administrative Code, Section
4 206.22, the presiding officer is given authority to
5 supervise the conduct of meetings. This includes the
6 authority to determine when a speaker is being disruptive
7 of the meeting or is otherwise violating the timing and
8 presentation rules I just discussed. Disruptive speakers
9 will be muted, given a warning about disruptive behavior,
10 then removed from the meeting for any continued
11 disruption.

12 Advisory committee members, if you become
13 disconnected from the call, please rejoin as soon as
14 possible. If you encounter technical difficulties, please
15 reach out to our technical support team at
16 jeff.templeton@TxDMV.gov, or zach.warden@TxDMV.gov.

17 Agenda item number 1, Roll call and
18 establishment of a quorum. I'd like to now have a roll
19 call of the advisory committee members. Please respond
20 verbally when I call your name and please indicate if you
21 are present.

22 Member Ames, are you present?

23 MR. AMES: Present.

24 MS. HOYT: Member Brooks? Member Brooks?

25 (No response.)

1 MS. HOYT: Member Carter? Member Carter?
2 (No response.)
3 MS. HOYT: Member Doran?
4 MR. DORAN: Present.
5 MS. HOYT: Member Elam?
6 MR. ELAM: Member Elam present.
7 MS. HOYT: Member Gaston?
8 MR. GASTON: Member Gaston present.
9 MS. HOYT: Thank you.
10 Member Gonzalez?
11 MR. GONZALEZ: Present.
12 MS. HOYT: Member Hardick?
13 MR. HARDICK: Present.
14 MS. HOYT: Member Hayter? Member Hayter?
15 (No response.)
16 MS. HOYT: Member Hicks? Member Hicks?
17 MR. HICKS: Member Hicks present.
18 MS. HOYT: Second Vice Chair Johnson?
19 MS. JOHNSON: Present.
20 MS. HOYT: Member King?
21 (No response.)
22 MS. HOYT: Member McCullah? Member McCullah?
23 (No response.)
24 MS. HOYT: Member Nance?
25 MR. NANCE: Member Nance present.

1 MS. HOYT: Member Olah?

2 MR. OLAH: Present.

3 MS. HOYT: Thank you.

4 Member Polk? Member Polk?

5 (No response.)

6 MS. HOYT: Member Rash? Member Rash?

7 (No response.)

8 MS. HOYT: First Vice Chair Smith?

9 (No response.)

10 MS. HOYT: Member Stidham?

11 (No response.)

12 MS. HOYT: Member Sutton?

13 MS. SUTTON: Present.

14 MS. HOYT: Thank you.

15 Member Wagner?

16 (No response.)

17 MS. HOYT: Member Wall?

18 MR. WALL: Member Wall present.

19 MS. HOYT: Thank you.

20 And I, Kristen Hoyt, am present also. We do
21 have a quorum.

22 TECHNICAL SUPPORT: Member Smith has raised his
23 hand.

24 MS. HOYT: Oh, I'm sorry. Member Smith, do you
25 have a comment?

1 MR. HICKS: This is Member Hicks. He's raising
2 his hand.

3 MS. HOYT: Can someone assist with unmuting
4 him? I don't know how to address Member Smith. I see
5 that his hand is raised. Can someone unmute him, or if
6 he's having technical difficulties, please let me know.

7 TECH SUPPORT: We have the ability to mute but
8 not the actual ability to unmute.

9 MS. HOYT: Okay. Well, I see that he's here
10 and his hand is raised. I'm not sure how you want me to
11 record his attendance or not, but I will note that he
12 seems to be on the call.

13 The purpose of this committee is to assist the
14 department in obtaining feedback regarding certain
15 legislation, policy-making and rulemaking. Advisory
16 committees, such as CSPAC, provide valuable input for the
17 department in their advising capacity concerning issues
18 related to regulation of the motor vehicle industry.

19 We'll move on to agenda item number 2,
20 Discussion, briefing and action items. Agenda item number
21 2.A., Consider amendments to 43 Texas Administrative Code
22 (TAC) Chapters 206, Management; 215, Motor Vehicle
23 Distribution; 221, Salvage Vehicle Dealers; and New 43 TAC
24 Chapter 224, Adjudicative practice and procedure.

25 Members, I will now move on to agenda item

1 2.A., Consideration of amendments 43 Administrative Code
2 Chapters 206, Management; 215, Motor Vehicle Distribution;
3 221, Salvage vehicle dealers; and New 224, Adjudicative
4 practice and procedure.

5 I will now turn the meeting over to Associate
6 General Counsel David Richards for an overview of Chapter
7 206, Management.

8 MR. RICHARDS: Thank you, Chairman Hoyt.

9 Members, David Richards, I'm associate general
10 counsel here at the DMV.

11 We're going to have an overview of agenda items
12 under 2.A. I'm responsible for 206. 206 deals with the
13 management of the Texas Department of Motor Vehicles.

14 The subchapters we looked at were Organization
15 and Responsibilities; we're going to do cleanup of that
16 and change some of the statutory references in the
17 Transportation Code. Subchapter B deals with Public
18 Hearings and Meetings, it's more of a cleanup that we've
19 done. Subchapter C, there were no changes to that,
20 Procedures for Petition to Adopt Rules.

21 Subchapter D, Procedures in Contested Cases,
22 will be repealed in 206 and placed in New Chapter 224 that
23 will be discussed later. New Subchapter D, Advisory
24 Committees, really represents only cleanup; the department
25 saw that it needed to add a new advisory committee, the

1 Household Goods Rules Advisory Committee. Subchapter E
2 deals with the Department Vehicle Fleet Management. We
3 just simply re-lettered that accordingly since we repealed
4 the original D.

5 Subchapter F, we're renaming the Subchapter
6 Digital Certificates. And then finally Subchapter G,
7 Risk-Based Monitoring and Preventing Fraudulent Activity,
8 which is primarily 206.151, we're doing that to implement
9 the statute Transportation Code 520.004.

10 Just as a reminder, members, the process that
11 we're undergoing right now is a rule review required by
12 Government Code 2001.039. We do that every four years.
13 We attempt to focus and see if the reason for initially
14 adopting a particular rule still exists.

15 We focus on changes that may have happened in
16 the legislature or legal authority, and/or any agency
17 practices that may have changed. All of that is combined
18 in our review of rules every four years.

19 A couple of housekeeping measures that I want
20 to point out to each of the members. When you're making a
21 motion to suggest an edit or a change, an amendment to a
22 particular rule, please, please recite the blue page
23 number up in the right-hand corner of your meeting
24 materials. Recite that first. Also, recite the specific
25 rule section and/or subsection that you're seeking to have

1 an amendment or a change made. So again, blue page number
2 first and then a section number or subsection number after
3 that.

4 Some members may have several suggested edits,
5 but we ask that a member give one suggested motion at a
6 time to make sure others have an opportunity to make
7 motions, should they have them. And then we'll get back
8 to that individual member.

9 One final thought is please focus on the rule
10 being discussed at the time and/or a rule that's going to
11 be reviewed. Matters which are outside the rule review
12 process that may be near and dear to the industry and
13 stakeholders, if they're not subject of a rule, then we
14 want to keep that separate and we'd be more than happy to
15 have those conversations offline with individual members.

16 But focus on the rule review, specific sections,
17 subsections, and if you have any questions, please ask
18 your presiding officer or ask staff.

19 That's all I have for now. I'll turn it back
20 over to the presiding officer.

21 MR. SMITH: This is Member Smith.

22 MS. HOYT: Yes, Member Smith.

23 MR. SMITH: Perfect. I've got it working now,
24 and I'm here.

25 MS. HOYT: Excellent, great.

1 Okay. Following Mr. Richards' comments,
2 members, are there any questions for DMV staff?

3 VOICE: [inaudible]

4 MR. RICHARDS: Presiding Officer Hoyt, this is
5 David Richards, for the record.

6 We're having technical difficulties. We could
7 not understand what was communicated just now.

8 MS. HOYT: That was Member John Ames.

9 MR. RICHARDS: Okay, could you [inaudible] --

10 MS. HOYT: I didn't hear your question.

11 MR. RICHARDS: We're seeking you to mute the
12 call while the other speaker is speaking. That might be
13 the problem. I don't know.

14 MS. HOYT: I will do that. Thank you.

15 Okay. And to clarify, Mr. Richards, we just
16 covered Chapter 206, Management. Correct?

17 MR. RICHARDS: Yes, that's correct.

18 MR. AMES: Presiding Officer Hoyt, this is John
19 Ames again. I did not hear Mr. Smith's comment.

20 MS. HOYT: Member Smith's comment was regarding
21 his ability to now speak with the group. His technical
22 issues are resolved, and he's in attendance.

23 Okay. Mr. Richards, are there any --

24 MR. SMITH: This is Mr. Smith. I'm so sorry.
25 I'm not sure whether y'all hear it. I hear an echo.

1 MR. RICHARDS: Member Smith, we could not
2 understand you.

3 MR. HICKS: This is Member Hicks.

4 Member Smith is logged in twice, that's
5 probably what's causing the echo.

6 MR. RICHARDS: Right, exactly. You need to
7 close out one, Member Smith, please.

8 MS. HOYT: Perfect. Mr. Richards, are there
9 any public comments on Chapter 206?

10 MR. RICHARDS: No, there aren't any.

11 MS. HOYT: Okay. So we'll now turn this
12 meeting over to Motor Vehicle Administration Manager Katie
13 Drummond for an overview of Chapter 215, Motor Vehicle
14 Distribution.

15 MS. DRUMMOND: Good afternoon, everyone. My
16 name is Katie Drummond, and I serve as the administration
17 manager for the Motor Vehicle Division. Our division
18 director, Monique Johnston, is out of town, so I'm
19 speaking on her behalf today.

20 First, we are very early in the process of
21 collecting input on these rules. In addition to input
22 from this group, we've gathered initial input from the
23 Motor Vehicle Industry Regulation Advisory Committee, and
24 we will also gather additional input from within the
25 department. All input will be considered as we continue

1 drafting amendments for the TxDMV Board's consideration.

2 My role today is to introduce the top amendment
3 highlights for Chapters 215 and 221.

4 Chapter 215 of the TxDMV Board rules is the
5 Motor Vehicle Distribution chapter which covers licensing
6 of motor vehicle industry participants and the operation
7 of motor vehicle industry license holders. This chapter
8 includes all licenses issued under Chapter 2301 of the
9 Texas Occupations Code or Chapter 503 of the Texas
10 Transportation Code.

11 Highlights to the amendments in Chapter 215
12 include, first, the concept of a standard license plate.
13 We're introducing the concept and definition of a
14 "standard license plate" to differentiate between the
15 basic dealer and manufacturer license plates that are
16 issued to license holders by the Motor Vehicle Division
17 and the personalized prestige license plates that are
18 ordered via the tax assessor-collectors.

19 This term is included in the definitions in
20 Section 215.2 and referenced in the following rules:
21 Section 215.102, Application Requirements; Section
22 215.120, License Plates; Section 215.139, Dealer Standard
23 License Plate Allocation; and Section 215.143, Drive-away
24 Operator and Transit License Plates.

25 Second, we have a new application rule for

1 Subchapter D which is re-lettered to Subchapter C. New
2 application rules in Subchapter D of Chapter 215 cover
3 franchised dealers, manufacturers, distributors and
4 converters. Currently, Chapter 215, Subchapter D does not
5 include an application requirements rule. The new rule is
6 in Section 215.102.

7 Next, we cover Section 215.103, Service-only
8 Facility, found on page on page 51 of your materials.
9 This rule's current language appears to exclude a
10 franchised dealer from being able to offer mobile warranty
11 repair services, a highly desired service that benefits
12 the public.

13 A review of Occupations Code Chapter 2301 shows
14 that no corresponding statutory prohibition on performing
15 offsite warranty repair services exists, as opposed to the
16 prohibition on offsite sales in Section 2301.362. Thus,
17 rule language modifications are proposed to make this
18 warranty repair services rule consistent with the statute.

19 These proposed changes would allow a licensed franchised
20 dealer to provide mobile warranty repair services either
21 directly or on a subcontracted basis.

22 Next is fingerprint requirements.
23 Fingerprinting requirements for GDN holders have
24 significantly decreased fraud in the application process
25 by enabling heightened identity verification and providing

1 a more comprehensive criminal background history.

2 Proposed amendments add a fingerprint requirement for
3 drive-a-way operators who hold in-transit licenses, found
4 in Section 215.134(S) as well as wholesale motor vehicle
5 GDN holders in Section 215.133.

6 Finally, we cover repeals. Senate Bill 604,
7 TxDMV's Sunset bill, eliminated the department's authority
8 to approve motor vehicle shows and exhibitions, effective
9 September 1, 2019. Thus, Section 215.112, titled Motor
10 Home Show Limitations and Restrictions, is proposed for
11 repeal.

12 The department has also proposed for repeal the
13 subchapters that cover contested cases, Subchapters B, G
14 and part of Subchapter J. We are also proposing
15 re-lettering the subchapters.

16 And that concludes my introduction for Chapter
17 215.

18 MS. HOYT: Thank you, Ms. Drummond.

19 Members, do you have any questions for Ms.
20 Drummond?

21 MR. DORAN: This is Member Doran. I had a
22 question.

23 MS. HOYT: Yes, Member Doran.

24 MR. DORAN: With respect to the mobile service
25 rules that were being referred to, are we referring to the

1 changes that are being made to 215.103, the Service-only
2 Facility? Or if there is another provision that staff is
3 referring to, maybe they could provide the specific
4 citation to that.

5 MS. DRUMMOND: No, sir, you're correct. We're
6 referring to updating the language in 215.103.

7 MR. DORAN: Thank you.

8 This is Member Doran again. May I ask a
9 follow-up question on the same section?

10 MS. HOYT: Sure.

11 MR. DORAN: Okay. On that Service-only
12 Facility -- and just for the record, this would be blue
13 page number 51 in the packet, I believe, which appears to
14 be proposed rule review page 23 out of 161, and again,
15 Section 215.103 where it's talking about Service-only
16 Facility, and I'm referring to that first paragraph there
17 (a).

18 I think in a prior advisory committee meeting,
19 the subject of the striking of the "and non-warranty"
20 language was discussed, and if I recall, it had to do with
21 the agency's authority not extending to non-warranty
22 repair services.

23 My question is this: when looking at warranty
24 repair services, I don't believe that terminology matches
25 what is in 2301.002, subsection 37 which is the definition

1 of warranty work. And the reason why I want to inquire
2 with staff about whether or not a clarification is
3 necessary is because if what we're talking about here with
4 the service-only facility license requirements is going to
5 be speaking to just the performance of warranty work, I
6 was hoping to get some discussion from staff or
7 clarification if recall work is also included or intended
8 to be included when we refer to warranty work.

9 Because I would argue that one of the
10 industry's reasons for examining and considering and
11 exploring service-only facilities is not just to perform
12 what we would consider to be a traditional warranty
13 repair, which means that's it's on the vehicle that's
14 still covered by warranty, but it could be a repair that
15 the dealer is performing that is to remedy a recall and
16 that vehicle could be outside the factory warranty period.

17 So I wanted to pose that question to staff.

18 MS. DRUMMOND: So, great question. I don't
19 know the definition of warranty work in 2301 offhand, and
20 as far as coverage of warranty recall type of work, I'm
21 not sure. I'd have to get some additional feedback from
22 my TxDMV colleagues. It's either that or we can take it
23 back for further consideration.

24 MR. DORAN: This is Member Doran again. And
25 I'm bringing it up because I think when staff struck, as

1 the proposal is here in line 5, the word "non-warranty" --
2 to me that's what gave rise to this question. Because as
3 an industry stakeholder, I think we're now looking at that
4 paragraph saying, okay, how does that impact the ability
5 to perform a recall repair? Because before we never had
6 to figure out whether it fit into the warranty or
7 non-warranty repair services bucket, but now it would
8 appear that it has to fit into one.

9 So maybe you all could take that back for
10 consideration. I really didn't come into the conversation
11 with a proposed change there. It's more of a concern and
12 consideration, because I think from a public interest and
13 a public safety standpoint, we probably want to err on the
14 side of ensuring that if we're going to have a service-
15 only facility, that it is licensed and capable of
16 performing those recall repairs, particularly defective
17 airbags and other serious safety concerns on the vehicle.

18 Thank you.

19 MS. DRUMMOND: Yeah, absolutely. I definitely
20 think that that is a really good thing for us to take back
21 and consider and make sure that we have everything in line
22 as it needs to be. So thank you so much for that comment.

23 MR. HARDICK: This is Member Hardick.

24 MS. HOYT: Member Hardick.

25 MR. HARDICK: With respect to what the

1 gentleman was just talking about, wouldn't all warranty
2 work be done at the dealership to kind of be protected by
3 our franchise laws?

4 MS. DRUMMOND: As to that, I mean, the rule
5 does cover that a franchised dealer is the one that would
6 be performing the warranty repair services. So the rule
7 is confined to the franchised dealer conducting those
8 services.

9 MR. HARDICK: Okay.

10 MR. DORAN: This is Member Doran. Can I follow
11 up on Member Hardick's comment and question?

12 MS. HOYT: Member Doran.

13 MR. DORAN: So what I'm trying to get at here
14 with this line of questioning for staff is ensuring that
15 we have some clarity that a licensed franchised dealer is
16 legally authorized to go out and perform a mobile repair
17 in terms of a recall repair. Because those are often
18 done -- first off, they're done with the authority of the
19 distributor or the manufacturer telling that franchised
20 dealer, Yes, you are authorized to go perform these
21 repairs outside the four walls of your licensed dealership
22 location. And so like an airbag repair could occur in
23 somebody's driveway at the owner's home, at their place of
24 work, et cetera.

25 So I think that's an area where, again, I think

1 if staff can take that back and just consider the benefit
2 to the public, honestly to the dealer, as well as the
3 manufacturer and distributor there by ensuring that the
4 scope of work that can be performed includes recall work
5 remotely.

6 MS. DRUMMOND: Absolutely. I think that that's
7 a really good comment and definitely something that staff
8 can take back and mull over and ensure, like I said, that
9 we're crossing all those t's and dotting all those i's, as
10 it were.

11 MR. HARDICK: This is Member Hardick.

12 I would just like to comment on what Member
13 Doran was talking about. I completely get it now, I
14 completely agree with him. That's all.

15 MR. DORAN: This is Member Doran. Thank you.

16 MS. HOYT: Are there any other comments from
17 members?

18 MR. HICKS: Yes. This is Member Hicks.

19 MS. HOYT: Member Hicks.

20 MR. HICKS: I want to join the conversation on
21 that same section. I think the simplistic way to solve
22 this could be simply to remove your strikeout of "and
23 non-warranty". I know it's a rather complex issue with
24 lots of perceived angles and it's only become more
25 complicated with over-the-air warranty performance, once

1 that becomes prevalent in the industry. So you may be
2 better served just to leave that language there because
3 the risk of you not having enforcement ability on
4 non-warranty work I think is less than it is creating a
5 confusion that those warranty repairs can be performed,
6 especially recalls.

7 Thank you.

8 MS. HOYT: Members, are there any other
9 questions for TxDMV staff?

10 MR. DORAN: This is Member Doran again. I had
11 a question, if I may be recognized first. Sorry.

12 MS. HOYT: Certainly, Member Doran.

13 MR. DORAN: Thank you.

14 This would be at the very bottom of page blue
15 number 59, and it's Section 215.112 that's stricken. This
16 is the Motor Home Show Limitations and Restrictions that
17 was explained a little earlier has been taken out of the
18 rules.

19 My question for staff is basically just this:
20 as it relates to motor homes, will they then be governed
21 by simply reverting back to Chapter 2301.358 of the Texas
22 Occupations Code which deals more globally with vehicle
23 show or exhibit rules for all motor vehicles? In other
24 words, you had these specialized rules that applied to
25 motor homes that were set forth in this rule which is now

1 going away. So I'm looking for some clarification in that
2 RVs moving forward would just be simply treated like any
3 other type of motor vehicle by simply reverting back to
4 what's in statute, which is 2301.358 of the Texas
5 Occupations Code.

6 MS. DRUMMOND: Yes, sir, that's correct. It
7 would just revert to falling right under 2301.358.

8 MR. DORAN: Okay. Thank you.

9 MR. ELAM: This is Member Elam. May I make a
10 comment?

11 MS. HOYT: Member Elam.

12 MR. ELAM: There's a couple of things. First
13 of all, can we go back to the issue of warranty? Could
14 you repeat what the staff's position is as to why you're
15 seeking this change and alteration of this particular
16 section?

17 MS. DRUMMOND: Sure. And I should identify,
18 this is Katie Drummond, for the record.

19 So the reason that we are seeking to amend that
20 section and to clarify it is because the way it currently
21 reads, it seems to suggest that mobile warranty repair
22 services are not allowed under the law. But in looking at
23 Occupations Code Chapter 2301, there's not that
24 prohibition. And in my opening remarks I was saying that
25 there's not that prohibition as opposed to the same sort

1 of sales prohibition, you know, selling away from your
2 licensed location.

3 That was what I was trying to get at in my
4 opening comments. And so we're seeking to clarify this
5 section of the rule as it relates to the warranty repair
6 services.

7 MR. ELAM: This is Member Elam again.

8 It would be very helpful for those of us who
9 participate if we had the staff's comments prior to the
10 conducting of these meetings so that we understand fully
11 what their goal is in suggesting the implementation of
12 some change. That's a comment, of course.

13 Then I would like to go back to Member Doran's
14 comment regarding page 59, repealing motor home show
15 rules. In last week's other meeting of the Motor Vehicle
16 Industry Regulation Advisory Committee, I filed a rather
17 lengthy response to my association and industry's position
18 on the motor home rule. And I would like to know if I
19 need to re-file so this committee is aware of our
20 objections to the striking of the motor home rule.

21 MS. MORIATY: This is Laura Moriatty. I'm the
22 general counsel for the DMV.

23 Yes, Mr. Elam, if you want to reassert those
24 requested changes, we recommend that you do it when we get
25 to the 2.B section of this. And you can do it as a motion

1 to revert this or to bring in whatever rule language you
2 feel would be more appropriate.

3 MS. HOYT: Members, are there any other
4 questions for TxDMV staff?

5 MR. HICKS: This is Member Hicks. May I be
6 recognized?

7 MS. HOYT: Yes, sir, Member Hicks.

8 MR. HICKS: Are we going to pursue additional
9 conversation about 215 beyond just staff questions? I do
10 have comments on that.

11 MS. DRUMMOND: Yes. There will be section 2.B
12 of the agenda.

13 MS. HOYT: Section 2.B will include discussion
14 and we'll accept multiple motions at that time for 2.B.

15 Any other comments from members? Are we ready
16 to move on?

17 MR. ELAM: Member Elam. I have another
18 question.

19 MS. HOYT: Member Elam.

20 MR. ELAM: Yes. On page 49 in regards to
21 manufacturers having to list -- it's at (E)(i) on page 49.
22 I'm sorry I don't have the exact list here in front of me
23 as to the exact title. I'll just make general comments
24 here.

25 But it says that a manufacturer must state all

1 of its Texas and out-of-state dealers which will be
2 selling to Texas residents. That seems to bring up two
3 issues for me.

4 How does a manufacturer list its franchised
5 dealers if sales are going to be solely over the internet
6 and those dealers must have a permanent place of business
7 in Texas? That's my first question. How does a
8 manufacturer tell the DMV its dealers who are going to be
9 selling solely over the internet when those dealers must
10 have a current place of business in our state? That's my
11 first question.

12 My second question is is if a business is
13 licensed, for example, in California by its DMV, is the
14 Texas DMV planning to issue a franchise license to those
15 California dealers just because they plan to sell directly
16 to Texas residents online?

17 MS. MORIATY: Madam Chair, this is Laura
18 Moriaty. I'm the general counsel of the DMV.

19 Mr. Elam, we have gotten this feedback and
20 understand this is poorly worded, and we are working on
21 that. But the goal here, this is a person applying for a
22 manufacturer or distributor license and we're asking them
23 to give us information about their dealership model,
24 whether it be in Texas or out of Texas, so that we can
25 research what manufacturers are doing, how they are

1 distributing and selling their vehicles.

2 We are not licensing them to sell. They can
3 only do that through a franchised dealer in Texas. But
4 we're trying to get information about it so that we can
5 investigate it because if they are committing fraud in
6 another state, we would like to be able to find that out
7 and deny them a license on that basis.

8 So this is an information-seeking effort from
9 manufacturers that are seeking licensure in Texas. It
10 would not give them the right to sell other than through a
11 franchised dealer in Texas. It would not give them the
12 right to sell in any other state. It would not change the
13 law about who can and can't sell in Texas.

14 All we are looking for is information so that
15 we can research it and see if it's a basis for a licensure
16 denial. And again, staff completely concedes this is
17 poorly written and we are looking at revisions even as we
18 speak.

19 MR. HARDICK: This is Member Hardick. May I
20 comment?

21 MS. HOYT: Yes, Member Hardick.

22 MR. HARDICK: I just want to make sure I
23 understand what she's saying. So that means that nobody
24 can sell online into the state of Texas; it's got to be a
25 franchised dealer that's located in Texas. Correct?

1 MS. MORIATY: So let me make sure I'm
2 completely clear with you. Texas has the Uniform
3 Commercial Code that allows out-of-state online sales,
4 including sales of automobiles. A Texan can buy an
5 automobile out of state through an online or telephone
6 conversation, and that's something Texas says that that's
7 okay.

8 A manufacturer cannot sell directly within the
9 state of Texas except through a franchised dealer. So
10 that is the legal difference here.

11 MR. SMITH: This is Member Smith. Can you hear
12 me?

13 MS. HOYT: Yes, Member Smith.

14 MR. SMITH: Thank you. I'm so sorry I've been
15 out of commission here. And this one, I don't know what
16 reworded looks like and what it would mean, but I'm
17 confused that the whole thing seems to contradict 2301.476
18 in the Transportation Code, which precludes a manufacturer
19 or distributor from selling in Texas without a license or
20 selling to try to avoid getting around getting a license.

21
22 I think the way I'm reading this, you
23 essentially are giving the right to a dealer in California
24 or Timbuktu, wherever, to sell into Texas, really
25 disadvantaging a Texas dealer that's licensed and going

1 through the various things we have to do to be a licensed
2 dealer. I can understand that someone else can go to
3 Oklahoma, buy a car and bring it back here and register
4 it, but if they go to Oklahoma and buy a car, they're not
5 buying a car from someone that has a presence here in
6 Texas that's required to be licensed.

7 I mean, I know you're going to reword it, so
8 maybe we're talking about something that we don't need to
9 be right now, but this seems to really contradict the
10 entire intention of our codes.

11 MS. MORIATY: If I may, Madam Chair, this is
12 Laura Moriaty again.

13 To be clear, if you see at the beginning there,
14 subsection (E), if applying for a manufacturer or
15 distributor license. So this is part of the application
16 process for the manufacturer or distributor license we're
17 asking for this information. This is not granting
18 additional rights, it is not saying that anything here is
19 something new that we're adding. We're simply asking for
20 information about their business model.

21 So what is legal now is still legal. The part
22 that we would rephrase is to change the description of the
23 sales to make it clear that this is someone who is selling
24 over the internet -- not through a franchised
25 dealership -- and selling in another state, not in Texas.

1 So that's the rephrasing we would do.

2 But again, this changes on one's rights or
3 authority. It doesn't change what you can do with a
4 manufacturer license. It's only getting applicants for
5 manufacturer licenses to give the DMV more information
6 ahead of their licensure so that we can investigate it and
7 try to find out if they've been committing wrongdoing in
8 other states.

9 MR. SMITH: Member Smith again.

10 MS. HOYT: Yes, Member Smith.

11 MR. SMITH: So question. If a dealer is in
12 another state and the manufacturer is in Texas with a
13 license, are you saying then that the dealer in another
14 state for that manufacturer can sell over the internet to
15 an individual in Texas without -- in these rules, I mean,
16 is that what you're trying to -- this law is trying to
17 say?

18 MS. MORIATY: If I may, Madam Chair, this is
19 Laura Moriaty again.

20 So it is already true under the Uniform
21 Commercial Code, which is a Texas law, that a dealer in
22 another state can sell to a Texas resident over the
23 internet because that transaction is considered to be
24 taking place in the other state legally. So that's the
25 difference here. Because the seller is in the other state

1 and the transaction is taking place with the other state's
2 laws and the other state's resident, it is considered to
3 be a sale from the other state, not a sale taking place in
4 Texas, even if it involves a Texas resident on the
5 receiving end.

6 And that's current law. That's not something
7 we can change. That's a statute, and this rule cannot,
8 will not -- nothing we do today can or will impact that
9 code.

10 MR. HARDICK: This is Member Hardick.

11 MS. HOYT: Member Hardick.

12 MR. HARDICK: I'm a resident of Texas. I can
13 order over the internet. Can I buy directly from the
14 manufacturer in another state under the Uniform Commercial
15 Code?

16 MS. MORIATY: This is Laura Moriatty again. I'm
17 sorry, sir, I'm not entirely sure of the answer to that.

18 If a manufacturer is licensed in Texas, the
19 answer would be no, but if they are not and you are
20 purchasing from a manufacturer who has no Texas presence,
21 you're purchasing in the other state, I'm not sure. But
22 again, if it's a Texas licensed manufacturer, then the
23 answer would be no. You would need to be buying
24 through -- well, you could it buy it from them in another
25 state, but you could not buy it from them in Texas.

1 MR. SMITH: This is Member Smith. This is
2 really important to understand. So when you say if a
3 manufacturer is licensed in Texas but you're buying in
4 another state, then you can do that?

5 MS. MORIATY: I'm sorry, sir -- this is Laura
6 Moriatty -- I think I made it more confusing than I
7 intended to. The Uniform Commercial Code says you can
8 purchase from out of state from a seller in another state.
9 I made it more confusing than it should be by talking
10 about what can happen in Texas too.

11 So if you have a manufacturer selling to you
12 from another state, you can purchase from that other
13 state, again, if the purchase is happening in the other
14 state.

15 MR. SMITH: So that means that that sale would
16 not be under any of the rules of Texas law. Correct?

17 MS. MORIATY: The Uniform Commercial Code is
18 Texas law, but the sale, because it would be considered to
19 be happening in the other state, would be happening under
20 the contract laws of the other state. So yes, it would be
21 carved out from the franchised dealer requirements of
22 Texas.

23 MR. SMITH: Does 503.021 preclude a
24 manufacturer or distributor from selling a vehicle in
25 Texas?

1 MS. MORIATY: A Texas licensed manufacturer or
2 distributor cannot sell in Texas. They have to use a
3 franchised dealer.

4 MR. SMITH: But they can get around that by
5 using a franchised dealer in another state?

6 MS. MORIATY: If the sale is happening outside
7 the state, then we cannot regulate it. That's the
8 problem. Our regulation, our authority is only limited to
9 transactions that are occurring in Texas with Texans, and
10 that is what Texas state law says.

11 MR. SMITH: If you're on the internet in Texas
12 buying from another state, where are you buying? Are you
13 buying in the other state or are you buying in Texas?

14 MS. MORIATY: You are buying in the other
15 state, sir.

16 MS. HOYT: I see that Member Hicks has his hand
17 raised. Member Hicks.

18 MR. HICKS: Yes, Madam Chairman, thank you.

19 Regarding the conversation we're having now,
20 once we get to agenda item 2.B, we should be able to
21 propose an amendment. This was discussed in a previous
22 committee meeting, a healthy discussion kind of along the
23 lines of what we're talking about now. So if we can get
24 to that section of the agenda, then we can talk about a
25 proposed change to what's been presented.

1 Thank you.

2 MS. HOYT: Are there any other comments or
3 questions for TxDMV?

4 MR. ELAM: This is Member Elam again.

5 MS. HOYT: Member Elam.

6 MR. ELAM: On the top of page 175 there is an
7 issue about market adjustment, and I'm curious what is the
8 definition of a market adjustment. Has that been defined?

9 MS. DRUMMOND: Katie Drummond, for the record.

10 Mr. Elam, I don't believe that that is a
11 defined term, but let me look.

12 MR. ELAM: This is Member Elam again. I think
13 many of us in the franchised area understand what a
14 potential market adjustment is, but that could be rather
15 misunderstood by a number of people if there is not a
16 definition applied to it. We have so many other
17 definitions. With everything that we do, it would seem
18 prudent that that also should be a defined item.

19 MS. DRUMMOND: Sure. So I looked and I don't
20 see that it's a defined term. But I definitely think that
21 that's something that staff can take back and we can take
22 a look at it and see about the efficacy of doing something
23 like that.

24 MR. ELAM: Thank you.

25 MR. HARDICK: This is Representative Hardick.

1 I'm sorry. Should I make a motion that we define market
2 adjustment?

3 MR. RICHARDS: Not at this time. This is David
4 Richards, for the record. 2.B is the agenda item to make
5 motions.

6 MR. HARDICK: Okay.

7 MR. RICHARDS: And members, let me please
8 remind you again, we have a court reporter recording this
9 call. Please give cites to section number before you call
10 the page number or at least after you call the page
11 number, and let everybody have time to get to it, if you
12 would, please. Thank you.

13 MS. HOYT: Member Nance has his hand raised.
14 Would you like to speak?

15 MR. NANCE: Yes. This is Member Nance.

16 I had a question for staff about the UCC and
17 interstate sales. I just wanted to know which section or
18 sections of the UCC are you guys looking at for the
19 propositions regarding interstate sales.

20 MS. MORIATY: Madam Chair, this is Laura
21 Moriatty.

22 Member Nance, if I may, can I get back to you
23 with that after this meeting?

24 MR. NANCE: Sure. Thank you.

25 MS. HOYT: There are other hands raised by

1 Member Hicks, Member Elam, Member Smith. I don't know if
2 those are from prior or if they are new questions.

3 MR. SMITH: Member Smith. This could be new.

4 MS. HOYT: Member Smith.

5 MR. SMITH: Yes. Thank you, Madam Chairman.

6 And I'm sorry I may be plowing previously
7 plowed ground but I had technology issues and couldn't
8 hear. But I want to go back again to the motor home show
9 and ask a question.

10 Can you hear me? This is Member Smith.

11 MS. HOYT: Yes, Member Smith, we can hear you.

12 MR. SMITH: Okay, thank you.

13 I'm back to the motor home show rule, and
14 again, you may have already covered it and I couldn't hear
15 it, but it seems to me that the inclusion of that rule is
16 vitally important. I understand that the Sunset
17 Commission removed the necessity for you to approve it,
18 but I don't believe that negates the need that we police
19 it in terms of its compliance with other laws.

20 So I think that this stays in here, while we
21 might take out the required approval, I think a
22 notification would be very important because otherwise,
23 how is anyone going to know that we need to enforce the
24 laws. So I think it's important for it to be in there.

25 And along those same lines, I think there needs

1 to be show rules for car dealers, for other shows, because
2 I think the public -- I think there needs to be guardrails
3 around what exhibits are, what shows are, there needs to
4 be definition of exhibits and shows. But I believe that
5 we could all in the industry be guided better by having
6 these guardrails rather than eliminating them.

7 Thank you.

8 MS. DRUMMOND: Katie Drummond, for the record.

9 Thank you for your comment. As I noted in my
10 opening comments, with the Sunset bill in 2019, it amended
11 the applicable statute, 2301.358, to where the department
12 doesn't have the authority to approve motor vehicle shows
13 or exhibitions anymore, and so that's why we're proposing
14 repealing this rule.

15 Now, that said, 2301.358 still stands. A
16 person who's been issued a license under 2301 who wants to
17 participate in a motor vehicle show or exhibition still
18 has to provide the department with notice, giving us the
19 heads up that they're going to be displaying offsite from
20 their licensed location. And all of the other various
21 sales prohibitions for certain vehicles, all of that stuff
22 that's in 2301.358 still stands.

23 To your comment as far as the need for a rule
24 that covers shows and exhibitions, you know, within the
25 confines of what the statute says, as we noted in the

1 Motor Vehicle Industry Advisory Committee, if there are
2 suggestions for a rule to cover shows and exhibitions, the
3 department is definitely happy to take that and review it,
4 absolutely.

5 MR. SMITH: Other than the approval requirement
6 that's in the 215.112, is there anything in there that you
7 wouldn't do, shouldn't do?

8 MS. MORIATY: This is Laura Moriatty, the
9 general counsel with the DMV, again.

10 The challenge, sir, is that we no longer have a
11 way to enforce it. We had used the permitting process as
12 our way of allowing these things or stopping them, and now
13 that all we get is notice, there's not a good way for us
14 to enforce any requirements. And that was the clear
15 intent of the change in statute was to remove our ability
16 to approve these things, remove our ability to be able to
17 enforce them.

18 If anyone has a creative idea of how we could
19 continue to enforce these things, we would be very open to
20 it. We're open to new wording if anyone wants to show us
21 some rule text. That would be great.

22 Our limit is the statute. We've got to stay
23 within that and we need to figure out how we could enforce
24 requirements within those constraints.

25 MS. HOYT: Are there any other questions from

1 members for Chapter 215 with Ms. Katie Drummond?

2 (No response.)

3 MS. HOYT: I see no hands raised.

4 David, are there any comments from the public
5 on Chapter 215?

6 MR. RICHARDS: No public comments.

7 MS. HOYT: I will now turn the meeting back
8 over to MVD Administration Manager Katie Drummond for an
9 overview of Chapter 221, Salvage Vehicle Dealers.

10 MS. DRUMMOND: Katie Drummond, for the record.

11 So continuing on with Chapter 221. Chapter 221
12 of the TxDMV Board rules covers salvage vehicle dealers
13 which are licensed in accordance with Texas Occupations
14 Code Chapter 2302.

15 Highlights to the amendments in Chapter 221
16 include:

17 Fingerprinting requirements, so adding the same
18 one-time requirement that we have currently for our GDN
19 license holders.

20 Adding operational flexibility similar to the
21 Chapter 215 rules. For example, adding additional
22 telephone answering options in Rule Section 221.43 and the
23 option to have a temporary sign in Section 221.44.

24 Next, premises requirements. Amendments to add
25 a few basic premises requirements in Section 221.45,

1 including that an office may not be virtual or provided by
2 a subscription for office space or office services, that
3 an office must have a physical address in Texas with an
4 assigned emergency services property address, and that the
5 office must be equipped with internet access.

6 Next, record requirements. In Section 221.73,
7 proposals would add missing record types and reference
8 existing requirements in Chapter 217 relating to rebuilt
9 salvage motor vehicles for consistency.

10 And finally, repeal. Subchapter E will be
11 repealed and will become part of new Chapter 224.

12 And this concludes my presentation of amendment
13 highlights in Chapter 221.

14 MS. HOYT: Members, are there any questions for
15 TxDMV staff?

16 (No response.)

17 MS. HOYT: Hearing no one and seeing no hands
18 raised, we'll move on.

19 David, are there any comments from the public
20 on Chapter 221?

21 MR. RICHARDS: No public comments.

22 MS. HOYT: Thank you, Katie.

23 I will now turn the meeting over to Enforcement
24 Division Director Corrie Thompson for an overview of
25 Chapter 224, Adjudicative Practice and Procedure.

1 MS. THOMPSON: Corrie Thompson, director of the
2 Enforcement Division.

3 Thank you very much, Katie, for the review of
4 215 and 221. I am presenting the proposals and overview
5 of the New Chapter 224, Adjudicative Practice and
6 Procedure.

7 As part of our rule review, one of our goals
8 was to look at ways that we can make our rules easier to
9 read, easier to follow. So contested cases are currently
10 spread out through six different subchapters across four
11 different chapters in the Texas Administrative Code, so in
12 206, 215, 218 and 219.

13 So the 218 and 219 look familiar to you as they
14 pertain to motor carriers and oversize and overweight
15 vehicles. In most cases, these rules don't have clear
16 signposts or guides that make it easy for the reader to
17 know where to go next in the contested case process steps,
18 or they're not helpful in identifying the type of
19 contested case to which the rule applies. So to that end,
20 in this package the contested case rules are proposed to
21 be reorganized into one chapter with seven new
22 subchapters.

23 So new proposed Subchapter A would apply to all
24 subchapters and it contains an expanded list of
25 definitions for us to rely on. Then Subchapter B covers

1 contested cases that Enforcement actually initiates on
2 applicants or license holders in the motor vehicle and
3 salvage industries or those who do not hold a license but
4 are engaged in those activities for which they would need
5 a license. Subchapter C contains special rules that apply
6 to statutory protests and complaints filed by a license
7 holder, like a franchised dealer against another license
8 holder, typically also a franchised dealer or a
9 distributor or a manufacturer.

10 Then Subchapter D includes rules that apply to
11 motor carriers and persons with oversize/overweight loads
12 that have federal registration requirements in addition to
13 state requirements. Subchapter E covers the cases that
14 cannot be solved informally by Enforcement staff and are
15 then referred to the State Officer of Administrative
16 Hearings for a hearing and then a proposal for decision.
17 New Subchapter F includes the procedures for cases in
18 which the Board hears a contested case after SOAH has
19 issued that proposal for decision.

20 And then finally, New Subchapter G is going to
21 contain more extensive rules that are necessary for
22 TxDMV's Office of Administrative Hearings. That division
23 has hearings examiners who hear and decide on Lemon Law
24 and warranty performance contested matters.

25 So just as with the Chapters 215 and 221, if

1 you have any comments now at this time we would welcome
2 them. And then I do believe there's another agenda item
3 after this one that will cover any suggested changes to
4 the proposed language.

5 MS. HOYT: Thank you, Ms. Thompson.

6 Members, are there any questions for TxDMV
7 staff?

8 MR. SMITH: This is Member Smith.

9 MS. HOYT: Member Smith.

10 MR. SMITH: Yes. Page 306, line 4, I would
11 suggest that we add on line 6 "items or options added by
12 dealer" just to clarify the fact that we as dealers would
13 only be responsible for options that we added.

14 MS. THOMPSON: Corrie Thompson, Enforcement
15 director.

16 Thank you for the comment, and we have made
17 note of that.

18 MS. HOYT: Member Nance has his hand raised.
19 Member Nance.

20 MR. NANCE: This is a question for staff. I
21 find in Subchapter G, the Lemon Law and warranty chapter,
22 some ways for a hearing officer to dismiss a case by
23 default if a party doesn't appear. I was just wondering
24 is there a way, like if it turned out a party was unable
25 to attend due to things outside their control, is there a

1 way to set aside that default. More familiarity is more
2 on the SOAH side and SOAH's rules have a way to set aside
3 defaults. I just wanted to know if there was a similar
4 process available here.

5 MS. THOMPSON: Corrie Thompson, director of the
6 Enforcement Division.

7 Yes, that process would exist in Lemon Law
8 matters.

9 MS. HOYT: Any other questions for staff?

10 (No response.)

11 MS. HOYT: No hands raised and I have not heard
12 from any member.

13 David, are there any comments from the public
14 on Chapter 224?

15 MR. RICHARDS: No public comments.

16 MS. HOYT: We will move on to the next agenda
17 item. Agenda item 2.B., Recommendations of advisory
18 committee for presentation to the Board.

19 Members, I will now move on to agenda item
20 2.B., Recommendations of advisory committee on amendments
21 to 43 TAC Chapters 206, Management; 215, Motor Vehicle
22 Distribution; 221, Salvage Vehicle Dealers; and New
23 Chapter 224, Adjudicative Practice and Procedure, for
24 presentation to the Board.

25 We'll start with Chapter 206 recommendations.

1 Members, now that the committee has been briefed by staff
2 on proposed amendments to Chapters 206, 215, 221 and New
3 Chapter 224, do you have any recommendations to present to
4 the TxDMV Board regarding Chapter 206, Management?

5 MR. SMITH: Member Smith.

6 MS. HOYT: Member Smith, you may speak.

7 MR. SMITH: Page 20, composition of advisory
8 committees, and you've stricken the part about having
9 interest and expertise. After spending the weekend
10 studying and reading this, it would seem to me that it
11 would be advantageous to our industry to have people that
12 either were industry interested or industry involved, so I
13 would suggest we don't strike that.

14 MS. HOYT: Are you making a motion?

15 MR. SMITH: If appropriate, yes, ma'am.

16 MR. WALL: This is Member Wall. I'll second
17 that motion.

18 MS. HOYT: Okay. I might need a little bit of
19 help here, but we have a motion from Member Smith to not
20 strike on page 20 -- where are we not striking? I
21 apologize.

22 MR. RICHARDS: Line 18.

23 MS. HOYT: Line 18, just making sure. A motion
24 from Member Smith on page 20 to not strike line 18 and 19,
25 and there's a second by Member Wall.

1 Any further discussion?

2 MR. NANCE: This is Member Nance.

3 Previously we had some language about a broad
4 range of viewpoints, so I think it is possible in the
5 interest of having a committee with a broad range of
6 viewpoints that you might have members who don't have a
7 particular expertise in the subject matter. So I'm not
8 sure.

9 And also, I might be interested in what
10 stakeholders have to say about this. So if recommending
11 this to the Board can get some more comments on this, it
12 might be worth putting out there for stakeholders. I
13 think I'd support putting it out there with the strike-
14 through.

15 MR. RICHARDS: Chairman Hoyt, David Richards,
16 for the record. May I speak?

17 MS. HOYT: Yes.

18 MR. RICHARDS: My understanding is that due to
19 a statutory change, this was stricken. I will tell the
20 members that we do try to find a good balance -- or a
21 balance, I should say, between members in the industry and
22 also non-industry members, so we do a very careful and due
23 diligence check at several levels.

24 It finally goes to the Executive Office for the
25 executive director's selection. There's a very thorough

1 look at all members, whether they're from the motor
2 vehicle industry or non, tax assessor-collectors, so we
3 actually do that on a regular basis.

4 Thank you.

5 MR. SMITH: Madam Chairman, Member Smith again.

6 I'm not trying to suggest that it be all
7 industry members. The phrase that's currently in there is
8 "have an interest in or involved in the industry." So I
9 think to Member Nance's comment that it certainly opens it
10 up to someone that has an interest in that has a different
11 perspective. Again, I mean, I don't mean to make a big
12 thing out of it, but it seems if you took somebody on the
13 street that could care less about our industry, then that
14 would not be a good solution to have them on the
15 committee.

16 MR. RICHARDS: Chairman Hoyt, David Richards,
17 for the record again.

18 This particular rule set is out for public
19 comment, so we'll be receiving comments regarding that
20 particular striking.

21 MS. HOYT: So there's still a motion and a
22 second. Members Smith, are you withdrawing your motion?

23 MR. SMITH: Is that what I need to do if it's
24 out for public comment?

25 MS. MORIATY: Chairwoman Hoyt. This is Laura

1 Moriarty with the DMV.

2 This change has been proposed to the Board.
3 It's in a packet of 206 changes that is currently before
4 the Board for adoption in October. It's open for public
5 comment, so I would recommend that the member who made the
6 motion make a public comment in that capacity. I think
7 that would be the more efficient way to do this.

8 MR. SMITH: Member Smith. I withdraw the
9 motion.

10 MS. HOYT: Member Smith has withdrawn the
11 motion.

12 Are there any other motions in regard to
13 Chapter 206?

14 MR. SMITH: Member Smith again.

15 MS. HOYT: Yes, Member Smith.

16 MR. SMITH: I'm sorry. I spent all weekend
17 reading this, and I'm on page 30. At the very first line
18 you define "day" means calendar day.

19 Throughout all of these pages there are a
20 number of different referrals to filing periods. I mean,
21 I think I even read one with 26 days, sometimes I believe
22 it has said business days. I would suggest that
23 uniformity throughout this would be a good idea.

24 I also would suggest that instead of using days
25 that we use business days. The reason for that is

1 particularly if you got caught into a long weekend, a
2 holiday weekend, 10 calendar days could really end up
3 being at the lowest as five business days. So I would
4 suggest -- I make a motion that throughout all of these
5 changes that we change it to business days and it be
6 uniform. And that is my motion.

7 MS. HOYT: Is there a second?

8 MS. JOHNSON: Member Johnson. I'll second that
9 motion for discussion.

10 MS. HOYT: Okay. So we have a motion from
11 Member Smith and a second from Member Johnson regarding
12 the use of "days" on page 30 and throughout rule changes
13 to use the term "business days" rather than just "days."
14 Is there any discussion?

15 Member Hicks, you have your hand raised.

16 MR. HICKS: Yes, ma'am, thank you.

17 This is Member Hicks. For Member Smith, this
18 topic came up as well in our previous call and it seems
19 like there's some complexity -- and I'm not trying to
20 speak for staff, they can speak up on this -- with regards
21 to measuring business days. So the alternative proposal
22 coming out of the other committee was to just extend the
23 days so we stay within a calendar day measurement period.

24 But take those ten-day periods and make them 14, make the
25 30-day period 35.

1 There was a way to adjust the number of days,
2 leaving the definition as calendar days to avoid any type
3 of interpretation of what a business day would be.

4 MS. MORIATY: Madam Chair, if I may? This is
5 Laura Moriaty with the DMV.

6 Just to clarify, the reason we're defining
7 "day" here is to make a consistent metric across the
8 chapter, and we had picked calendar day over business day
9 because they're easier to count and calculate. There are
10 holidays that differ across, you know, jurisdictions and
11 regions that make business day confusing sometimes.

12 So we had chosen calendar day and we're seeking
13 to standardize all of the measurements to be calendar days
14 rather than business days. And if we have a problem with
15 the number of calendar days in any given section that
16 we're choosing, we can definitely change the number of
17 calendar days. But staff would prefer that we put
18 calendar days because, again, there are holidays in
19 calendar days so it's very easy for us to count.

20 MS. HOYT: Member Doran, your hand is raised.

21 MR. DORAN: Thank you. This is Member Doran.

22 A question for staff. My recollection is from
23 the prior hearing that we were going to try and stay
24 consistent with whatever day, how it's defined and used in
25 the Texas Rules of Civil Procedure. And so I just want to

1 ensure that we're getting staff's perspective on that with
2 respect to this motion, if we feel like this would place
3 us in a spot where we're inconsistent with those Texas
4 Rules of Civil Procedure.

5 MS. MORIATY: So this is Laura Moriaty again,
6 with the DMV.

7 So we had discussed notice requirements in
8 accordance with the Texas Rules of Civil Procedure, which
9 would allow us to send notice by email and a variety of
10 other means. But the day-counting requirements, if you
11 did it in accordance with Texas Rules, would require you
12 to switch from calendar days to weekdays as you got closer
13 to the deadline, as it gets below 10 days.

14 That's too much for us. So we would prefer for
15 this to stick to calendar day counting and look at notice
16 requirements with regard to service and service methods
17 when we can, in accordance with the Texas Rules of Civil
18 Procedure.

19 I have to put a caveat on that. We have a lot
20 of statutory service limitations that require us to send
21 by certified mail in a lot of areas of the Government
22 Code, so we are limited in the way we could even possibly
23 look at TRCP for that part too, but I imagine we'll get to
24 that later on. Anyway, we were looking at that for
25 service requirements, not for day counting.

1 MR. DORAN: Thank you. This is Member Doran.

2 So I take it that staff was okay with -- I'll
3 call it an inconsistency but the variable ways to consider
4 days based upon notice versus what we're talking about
5 here.

6 MS. MORIATY: Right. We haven't addressed the
7 day count for notice, we have addressed the methods of
8 service. We were interested in the different methods of
9 service, especially in getting as much email opportunity
10 as possible.

11 But our goal here is to create a consistent
12 calendar day method of counting days in this chapter and
13 to apply it throughout. And to the extent there are still
14 inconsistencies that we haven't noticed or changed, please
15 let us know so that we can identify them and try to make
16 them consistent.

17 MR. DORAN: Thank you.

18 MS. HOYT: We still have a motion on the floor.
19 No one's hand is raised. Are there any other comments
20 before we take a vote on the motion that is out there?

21 MS. JOHNSON: Madam Chairman, this is Member
22 Johnson. I'd like to be recognized.

23 MS. HOYT: Yes, ma'am.

24 MS. JOHNSON: On page 34 of 311 at line 5 and
25 6, calendar days are established there. I did a word

1 search to find out how often this was used or not used,
2 and it specifically says the time on it shall be computed
3 using calendar days rather than business days unless
4 business days are specified.

5 So it is not consistent throughout here, but it
6 could be that there's references to other statute or rule
7 that is forcing one thing or another. But if you search
8 business days, you'll find a lot of references, if you
9 search calendar days, you'll find a lot of references.

10 So I would say that probably we do need the DMV
11 team to do that search and ensure that all days are
12 clearly defined one way or the other, or not at all. A
13 day is a day. And that's just my only comment.

14 MR. SMITH: Madam Chairman, Member Smith. On
15 my motion, if appropriate, then I would like to amend it.

16 And I understand, good point on the days, but what about
17 amending it to go through here and add five days to these
18 limits, which would account for the vagaries of mail
19 service and holidays, and keep it calendar days, which,
20 again, is easier for you guys.

21 So I'll amend my motion to say go through here
22 and add five days.

23 MS. MORIATY: Madam Chair, this is Laura
24 Moriatty.

25 I just want to clarify the motion. We're

1 adding five days to all day counts throughout the chapter?

2 MR. SMITH: That's my motion, yes, ma'am.

3 MS. JOHNSON: This is Member Johnson. I
4 withdraw my second. I do not second that change.

5 MS. HOYT: Okay. So we have a motion by Member
6 Smith to add five days to all deadlines or days mentioned
7 in Chapter 206, and Member Johnson has withdrawn her
8 motion -- her second. I apologize.

9 Do we have any other discussion?

10 (No response.)

11 MS. HOYT: I'm not seeing a second, so that
12 motion will die.

13 Is there any other discussion or
14 recommendations to present to the TxDMV Board regarding
15 Chapter 206?

16 MR. HICKS: Member Hicks. May I be recognized?

17 MS. HOYT: Yes, Member Hicks.

18 MR. HICKS: I'd like to bring forth a motion,
19 and I direct everybody's attention to page 36, line 20.
20 That's inside Section 215. Are we moving to 215 or are we
21 staying on 206?

22 MS. HOYT: We're still on 206.

23 MR. HICKS: Okay.

24 MR. RICHARDS: Madam Chair, David Richards, for
25 the record.

1 Are we still on 206? I thought we were on 215.

2 MS. HOYT: We are still on Chapter 206, and
3 seeing no hands raised and hearing no discussion, we can
4 move on.

5 MR. HICKS: Member Hicks. May I be recognized?

6 MS. HOYT: Yes, Member Hicks.

7 MR. HICKS: Page 30, line 20, that's in 215.83,
8 but it's page 30, line 20, you see a reference there to 10
9 calendar days. And at the end of my comments, this will
10 lead to a motion. Line 20 where you see 10 days. And I'd
11 also ask that you pull up page 53, line 8, where it again
12 references 10 days.

13 My motion would be that we amend those two
14 sections to extend that period of time to 15 days from 10
15 days.

16 MS. HOYT: Okay. To clarify, we are accepting
17 recommendations to the TxDMV Board regarding Chapter 215,
18 Motor Vehicle Distribution. We have a motion from Member
19 Hicks in regards to page 30, line 20, and page 53, line 8,
20 to change 10 days to 15 days. Do we have a second?

21 MS. MORIATY: Madam Chair, if I may clarify the
22 motion. I believe it's page 36, not page 30.

23 MS. HOYT: Thirty-six, not 30, I apologize.
24 Thank you. So page 36, line 20, page 53, line 8, from 10
25 days to 15 days.

1 Member Hayter has his hand raised.

2 MR. HAYTER: I'll second that.

3 MS. HOYT: So we have a motion by Member Hicks,
4 a second by Member Hayter. Do we have any further
5 discussion on the motion?

6 MR. DORAN: This is Member Doran. I just had a
7 quick question for Member Hicks.

8 Member Hicks, is this consistent with the
9 change that was proposed and adopted in the last advisory
10 committee meeting? I think you may have even made that
11 motion.

12 MR. HICKS: This is Member Hicks. I believe we
13 adjusted that to either 14 or 15 days, I don't recall.
14 Staff may.

15 MR. DORAN: Okay. Thank you.

16 MS. HOYT: So members, when I call your name,
17 please state your name for the record and whether you
18 support the motion or if you do not support the motion.

19 MS. HOYT: Member Ames?

20 MR. AMES: Support.

21 MS. HOYT: Member Brooks?

22 (No response.)

23 MS. HOYT: Member Carter?

24 (No response.)

25 MS. HOYT: Member Doran?

1 MR. DORAN: I support the motion.
2 MS. HOYT: Member Elam?
3 MR. ELAM: Support.
4 MS. HOYT: Member Gaston?
5 MR. GASTON: Support.
6 MS. HOYT: Member Gonzalez?
7 MR. GONZALEZ: Support.
8 MS. HOYT: Member Hardick?
9 MR. HARDICK: Support.
10 MS. HOYT: Member Hayter?
11 MR. HAYTER: Support.
12 MS. HOYT: Member Hicks?
13 MR. HICKS: Support.
14 MS. HOYT: Second Vice Chair Johnson?
15 MS. JOHNSON: Support.
16 MS. HOYT: Member McCullah?
17 (No response.)
18 MS. HOYT: Member Nance?
19 MR. NANCE: Support.
20 MS. HOYT: Member Olah?
21 MR. OLAH: Yes, I support.
22 MS. HOYT: Member Polk?
23 (No response.)
24 MS. HOYT: Member Rash?
25 (No response.)

1 MS. HOYT: First Vice Chair Smith? Member
2 Smith?

3 (Inaudible response.)

4 MS. HOYT: Member Stidham?

5 (No response.)

6 MS. HOYT: Member Sutton?

7 MS. SUTTON: I support.

8 MS. HOYT: Member Wagner?

9 (No response.)

10 MS. HOYT: Member Wall?

11 MR. WALL: Support.

12 MS. HOYT: And I, Kristen Hoyt, also support
13 this motion.

14 Let the record reflect that there are 14 votes
15 for and zero against. The motion carries. And it would
16 seem that Member Smith abstained from voting on this item.

17 MR. SMITH: This is Member Smith. You couldn't
18 hear me but I support the motion.

19 MS. HOYT: Okay. So we'll have to change that.

20 Let the record reflect that 15 votes support this motion,
21 zero against, and zero abstaining.

22 Members, are there any other recommendations
23 regarding Chapter 215 regarding Motor Vehicle Distribution
24 that we'd like to present to the TxDMV Board?

25 MR. DORAN: This is Member Doran. I have a

1 question for staff.

2 MS. HOYT: Sure.

3 MR. DORAN: This is Member Doran again. During
4 our last advisory committee meeting, I made a motion
5 regarding the language on page 49 -- that's blue page 49
6 in the packet. This is under Section 215, looking for it
7 here, 215.102 on application requirements regarding the
8 furnishing a copy of the distributor agreement as part of
9 applying for a distributor license.

10 The question for staff is since that was a
11 successful motion, do I need to re-urge that same motion
12 here in this committee to preserve that point, or will
13 that recommendation from the prior committee kind of stand
14 on its own and move forward for staff's consideration and
15 ultimately the Board?

16 MR. RICHARDS: David Richards, for the record.
17 May I have the floor, Madam Chair?

18 MS. HOYT: Yes, sir.

19 MR. RICHARDS: Member Doran, this particular
20 advisory committee stands alone from the other, so if you
21 want to make that motion here in this committee, I would
22 encourage you to do so.

23 MR. DORAN: Okay. This is Member Doran. If I
24 could be recognized, I'll give some extra information.

25 MS. HOYT: Yes, Member Doran.

1 MR. DORAN: For my fellow members on this
2 committee, during our last advisory committee hearing with
3 the Motor Vehicle Industry stakeholders that occurred last
4 week, I explained that the proposed language here that I
5 just referred to on page 49, which is set forth in letter
6 (G), is a new requirement that staff had included in here
7 that would require a distributor to provide a copy of the
8 distributor agreement as part of their license
9 application. I explained to members of that committee
10 that this would be, for lack of a better word, highly
11 inappropriate given the confidential and proprietary
12 nature of the terms of a distributor agreement that exist
13 between a manufacturer and a distributor, and that in no
14 other state that I'm aware of is such a requirement on the
15 books.

16 That being said, typically if an agency that
17 governs the motor vehicle industry wants to see proof that
18 in fact a distributor is authorized by a manufacturer to
19 be the licensed distributor of their vehicles and their
20 products, that distributor and/or manufacturer will
21 typically just furnish a letter to the agency, similar to
22 an evidence of franchise form that we see here in Texas
23 for a dealer, to establish that they are in fact an
24 authorized dealer of that manufacturer or distributor.

25 So I would like to make a motion here that (G)

1 on page 49 in blue, which consists of lines 18 and 19,
2 which sets forth this requirement that a distributor has
3 to provide a copy of their distribution agreement, be
4 stricken from the proposed rules here.

5 And just by way of background, that same motion
6 passed in the last committee.

7 MS. HOYT: Members, we have a motion from
8 Member Doran for page 49, section (G), lines 18 and 19, to
9 be stricken from the rule.

10 MR. HARDICK: Member Hardick. I would second
11 it.

12 MS. HOYT: We have a second from Member
13 Hardick. Do we have any discussion?

14 Member Nance, your hand is raised.

15 MR. NANCE: This is Member Nance.

16 I just wanted to see if we could hear from DMV
17 staff about why they need to see this agreement in the
18 licensing process, and can it stay confidential if it goes
19 to DMV staff as part of the application process?

20 MS. MORIATY: This is Laura Moriaty with the
21 DMV. Thank you so much for asking.

22 The answer is that Texas Occupations Code
23 2301.260 requires that we get as part of the application
24 the terms of the contract between the manufacturer and the
25 distributor. I'm trying to pull up that language now so

1 that I can show it to you.

2 The other thing to know is that there was a
3 recent bill in the legislature this year that made all
4 applications confidential from public information
5 requests, applications for licensure. So I believe -- and
6 I will do more research to make sure that I'm not missing
7 something because it's a new statute -- I believe that if
8 this information was required in accordance with the
9 statute, it would be confidential from a public
10 information request. So that concern about
11 confidentiality has been attenuated by that change in the
12 PIR statute.

13 MR. NANCE: Could you repeat that section that
14 says the terms need to be provided to DMV?

15 MS. MORIATY: Sure. It's 2301.260, and I will
16 share it if I can just get it together. There it is.
17 You'll see it's subsection (a)(4), the terms of the
18 contract under which the distributor will act for the
19 manufacturer.

20 MS. JOHNSON: Member Johnson. May I be
21 recognized to ask a question?

22 MS. HOYT: Member Johnson.

23 MS. JOHNSON: Terms of the license are not the
24 same as asking for a copy of the agreement. And terms --
25 I'm not sure that this information, I'd have a problem

1 with this, but I would have a problem with the agreement
2 being required. It's like overreach.

3 Thank you.

4 MS. HOYT: Do we have any other discussion?

5 MR. DORAN: This is Member Doran.

6 I would just like to add and follow up to the
7 comment that was just made that, yes, our position -- I
8 work for the Toyota distributor here in Texas and we've
9 been the licensed distributor for Toyota for over half a
10 century. We've never had to produce the agreement in its
11 entirety. I believe terms of the contract is really the
12 bare minimum necessary to establish that the distributor
13 is in fact authorized by the manufacturer.

14 A distributor agreement does contain a great
15 deal of confidential and proprietary information. And I
16 very much appreciate General Counsel's comment there about
17 the desire of the DMV to protect certain documents from
18 public information requests, but that doesn't give me as a
19 distributor enough comfort at this time, certainly to
20 withdraw my motion.

21 Again, this would set Texas up for being an
22 outlier among other states, because this is truly a
23 contract between two private parties that contain
24 confidential and proprietary terms. And so, again, to the
25 extent that the agency needs information about the length

1 of the contract and the fact that it is authorizing the
2 distributor, that's fine. But to produce it in its
3 entirety I just believe is an inappropriate request and
4 requirement.

5 Thank you.

6 MS. HOYT: Is there any other discussion before
7 we take a vote?

8 (No response.)

9 MS. HOYT: No one has their hand raised and I
10 have heard from no one.

11 We have a motion from Member Doran, a second
12 from Member Hardick, in regards to striking line 18 and 19
13 from page 49, subsection (G).

14 I will move forward with a vote. Members, when
15 I call your name, please state your name for the record
16 and whether you support the motion or if you do not
17 support the motion.

18 Member Ames?

19 MR. AMES: John Ames, support.

20 MS. HOYT: Member Doran?

21 MR. DORAN: Yes, I support the motion. Thank
22 you.

23 MS. HOYT: Member Elam?

24 MR. ELAM: Support.

25 MS. HOYT: Member Gaston?

1 MR. GASTON: Support.

2 MS. HOYT: Member Gonzalez?

3 MR. GONZALEZ: Support.

4 MS. HOYT: Member Hardick?

5 MR. HARDICK: Support.

6 MS. HOYT: Member Hayter? Member Hayter?

7 MR. HAYTER: Support.

8 MS. HOYT: Member Hicks?

9 MR. HICKS: Support.

10 MS. HOYT: Second Vice Chair Johnson?

11 MS. JOHNSON: Support.

12 MS. HOYT: Member Nance?

13 MR. NANCE: I do not support.

14 MS. HOYT: Member Olah?

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

16 MS. HOYT: First Vice Chair Smith?

17 MR. SMITH: Yes, I support the motion.

18 MS. HOYT: Member Sutton?

19 MS. SUTTON: I support.

20 MS. HOYT: Member Wall?

21 MR. WALL: Support.

22 MS. HOYT: And I, Kristen Hoyt, also support

23 this motion.

24 One moment while I tally. Let the record

25 reflect that there are 14 votes for and one against, and

1 zero members abstaining from the vote. This motion
2 carries.

3 Do we have any other recommendations to present
4 to the TxDMV Board regarding Chapter 215, Motor Vehicle
5 Distribution?

6 MR. SMITH: Madam Chairman, Member Smith.
7 Question.

8 MS. HOYT: Yes, sir.

9 MR. SMITH: Question for staff. On this same
10 page we had talked earlier about the licensing and
11 internet sales out-of-state, and I believe the comment was
12 that the wording might not be complete. Is it going to be
13 reworded and then would it be appropriate for us to look
14 at it then, or do we need to address it as it is?

15 MS. MORIATY: This is Laura Moriaty with the
16 DMV.

17 Our plan is to reword it and we would be happy
18 to circulate it again, but we can also have a motion and a
19 vote to make sure that it's clear that the committee does
20 not approve of this wording, if that would be appropriate.

21 MR. SMITH: I would just make a motion that we
22 have an opportunity to look at the new verbiage and
23 address that at such time as it's available.

24 MR. HARDICK: I would second that. This is
25 Hardick.

1 MS. HOYT: Ms. Moriaty, could you confirm the
2 motion that was made by Member Smith and seconded by
3 Member Hardick?

4 MS. MORIATY: I believe to direct to provide
5 the revised -- I'm trying to get the specific provision
6 we're talking about in front of me.

7 Member Hicks or Member Hardick, do you happen
8 to have the number in front of you? I'm so sorry.

9 MR. SMITH: It's page 49, line 7.

10 MS. MORIATY: So it's Rule 215.102(E)(i). I'm
11 going to share my screen to make sure we're all on the
12 same page.

13 MR. SMITH: I think it's (E)(ii), 215.102
14 (E)(ii).

15 MS. MORIATY: Am I on the right page right
16 here, big (E), Romanette (i). Is that right?

17 MR. HICKS: Member Hicks. Correct.

18 MS. MORIATY: Okay. I'm sorry, Madam Chair.
19 The motion is to direct staff to recirculate a revised
20 version of the Romanette (i) for further comment from the
21 committee when it is available, prior to proposal with the
22 Board.

23 MS. HOYT: I'm going to go with what you just
24 said. We have a motion from Member Smith, seconded by
25 Member Hardick in regard to Rule 215.102, page 49, line 7,

1 directing staff to circulate a new version for further
2 comment. Did I leave anything off?

3 MS. MORIATY: Madam Chair, sounds good to me.
4 This is Laura Moriaty.

5 MS. HOYT: Thank you.

6 Is there any discussion regarding the motion?

7 MR. HICKS: Madam Chair, this is Member Hicks.
8 May I speak?

9 MS. HOYT: Yes, sir, please.

10 MR. HICKS: I understand the spirit of the
11 motion made by Member Smith. I would think for clarity on
12 our side that we would possibly ask him to amend the
13 motion and/or discuss the possibility of a different
14 motion that we strike the language after the word
15 "address" to the end of that section.

16 That would be consistent with the other
17 committee and also opens the door for additional language
18 to be reviewed in the future. From line 7 after the word
19 "address" where it says "or" down to the word "and" on
20 line 10.

21 MS. HOYT: Member Smith would need to amend his
22 motion or we'll need to move forward with further
23 discussion and then a vote on the standing motion.

24 MR. SMITH: Madam Chairman, Member Smith.

25 MS. HOYT: Yes, sir.

1 MR. SMITH: I will amend my motion as expressed
2 by Member Nance.

3 MS. HOYT: By Member Hicks. Correct?

4 MR. SMITH: Hicks. Pardon me.

5 MS. HOYT: We have an amended motion by Member
6 Smith to strike the words and the line on 7 after
7 "address" through lines 7, 8, 9 and 10. Member Hardick,
8 do you maintain your second?

9 MR. HARDICK: I do on the revision. I would
10 second that.

11 MS. HOYT: We have a second on the amendment by
12 Member Hardick. Any further discussion?

13 (No response.)

14 MS. HOYT: Members, when I call your name,
15 please state your name for the record and whether you
16 support the motion or if you do not support the motion.

17 Member Ames?

18 MR. AMES: John Ames. Support the motion.

19 MS. HOYT: Member Brooks?

20 (No response.)

21 MS. HOYT: Member Doran?

22 MR. DORAN: This is Member Doran. I support
23 the motion.

24 MS. HOYT: Member Elam?

25 MR. ELAM: Member Elam. Support the motion.

1 MS. HOYT: Member Gaston? Member Gaston?

2 MR. GASTON: Support.

3 MS. HOYT: Member Gonzalez?

4 MR. GONZALEZ: Support the motion.

5 MS. HOYT: Member Hardick?

6 MR. HARDICK: Member Hardick. Support.

7 MS. HOYT: Member Hayter?

8 MR. HAYTER: Member Hayter. I do not support

9 it.

10 MS. HOYT: Member Hicks?

11 MR. HICKS: Support.

12 MS. HOYT: Second Vice Chair Johnson?

13 MS. JOHNSON: Support.

14 MS. HOYT: Member Nance?

15 MR. NANCE: Member Nance. I do not support.

16 MS. HOYT: Member Olah?

17 MR. OLAH: This is Member Olah. Yes, I support

18 the motion.

19 MS. HOYT: Member Rash?

20 (No response.)

21 MS. HOYT: First Vice Chair Smith?

22 MR. SMITH: Yes, I support.

23 MS. HOYT: Member Sutton?

24 MS. SUTTON: I support.

25 MS. HOYT: Member Wall?

1 MR. WALL: Support.

2 MS. HOYT: And I, Kristen Hoyt, do support this
3 motion as well.

4 If I have done my math correctly, let the
5 record reflect that there are eleven votes for this motion
6 and two against.

7 Members, do you have any additional
8 recommendations to present to the TxDMV Board regarding
9 Chapter 215, Motor Vehicle Distribution?

10 MR. WALL: This is Member Wall.

11 MS. HOYT: Member Wall.

12 MR. WALL: Yes. I'd like to refer to page 51,
13 Section 215.103, line 5. There was a discussion earlier
14 about the wording "and non-warranty" stricken, and the
15 concerns that that raised and the room for interpretation,
16 and so I would like to make a motion that the words "and
17 non-warranty" be reinserted.

18 MS. HOYT: Will you please restate your motion?

19 MR. WALL: Yes. I'm sorry.

20 I would like to make a motion that in line 5 of
21 Section 215.103 that the words "and non-warranty" be
22 reinserted into the proposed language.

23 MS. HOYT: We have a motion by Member Wall to
24 reinsert the words "and non-warranty" on line 5 on page
25 51, Rule 215.

1 MR. HICKS: Member Hicks. I second.

2 MS. HOYT: That has been seconded by Member
3 Hicks. Do we have any discussion?

4 MR. NANCE: This is Member Nance, and this is a
5 bit of a new issue to me. Just out of curiosity and for
6 discussion purposes, I was wondering do you even need the
7 whole phrase "warranty and non-warranty" or could it just
8 be "performs only repair services"? I don't know if any
9 thought has been given to that, or staff or any of the
10 other members have input on that.

11 MS. MORIATY: Madam Chair, if I may? This is
12 Laura Moriaty with the DMV again.

13 MS. HOYT: Yes, ma'am.

14 MS. MORIATY: So our goal and our primary goal
15 throughout this review is to remove areas where we have
16 overstated our statutory authority. And in this case, the
17 DMV does not have authority over non-warranty repair
18 services, so when we discussed this at the last committee
19 meeting, the reason we were removing this is because we
20 don't have authority over it.

21 And if we try to make it vaguer -- which is a
22 suggestion I made initially too -- if we try to make it
23 vaguer, again we step into that same puddle of overstating
24 what our authority is, which is for warranty and recall
25 work. If the recall work is a specific concern, it feels

1 like we should focus the amendment there, or the proposed
2 motion there, because, again, this is a question, from
3 staff's perspective, about the limits of our statutory
4 authority.

5 MS. HOYT: Member Hicks's hand is raised.
6 Member Hicks.

7 MR. HICKS: This is Member Hicks. That was a
8 residual hand raise. Apologies.

9 MS. HOYT: No problem.

10 Any discussion on the motion that was made by
11 Member Wall and seconded by Member Hicks?

12 Member Nance.

13 MR. NANCE: I kind of am empathetic with both
14 staff and the industry concern here, and I'm not really
15 sure of a way to fix that. I think part of the issue,
16 again, just reading this as someone who hasn't been
17 extensively involved with this, but the word "only" -- I
18 can kind of see a concern with the word "only warranty
19 repair services." And maybe that word is what's getting
20 tripped up and creating a concern about recalls.

21 But I'm not sure that the solution is to leave
22 "non-warranty" in there, but it may be that the word
23 "only" is what's getting tripped up here. But I don't
24 really have a motion at this point to fix in a way that's
25 consistent with everyone's concerns, so I'm still not

1 sure.

2 MS. HOYT: Member Smith?

3 MR. SMITH: This question is for staff. Member
4 Smith.

5 I understand a service-only facility would be
6 both a mobile service facility and also a stand-alone
7 facility. Is that correct?

8 MS. DRUMMOND: Katie Drummond, for the record.

9 I think that the schematic for it would be that
10 it's a service-only facility where this warranty repair
11 service is taking place, but that mobile repair service
12 component operates out of that service-only facility, and
13 I guess can kind of be either way as well.

14 MR. SMITH: Member Smith.

15 MS. DRUMMOND: I apologize. Our franchised
16 dealers are licensed by either sales and service at their
17 licensed location or as a licensed service-only location.

18 MS. MORIATY: This is Laura Moriaty from the
19 DMV.

20 Just to clarify, the goal of this is to allow
21 the mobile services to go forth from either the sales and
22 service facility or the service-only facility and do the
23 repair remotely and then return back to their base at one
24 of those facilities. So that's why we're striking that
25 last sentence.

1 It doesn't change the existence of service-only
2 facilities and it doesn't change the possibility of doing
3 both the sales and service location, it just gives a third
4 possibility which is that you're based at one of those,
5 you go out and do the repairs, you come back home at
6 night.

7 MR. SMITH: Member Smith.

8 If a franchised dealer were granted the
9 authority to set up a service-only facility offsite from
10 his main facility, then would not this paragraph preempt
11 his ability to do anything other than warranty work? And
12 if so, why would we want that limitation? That would be
13 detriment of our consuming public that would want to get
14 maybe warranty and non-warranty services performed.

15 MS. DRUMMOND: This is Katie Drummond, for the
16 record.

17 It would preclude the non-warranty repair
18 services taking place there. What we're trying to
19 encompass here is that the department doesn't have any
20 authority over the non-warranty repair services. And so
21 striking this, or to your point, it wouldn't preclude a
22 dealer from engaging in that activity.

23 MS. MORIATY: This is Laura Moriaty. Just to
24 clarify slightly further. I'm sorry.

25 The goal here was to talk about how you're

1 doing only repair services and not new motor vehicle
2 services. But this goes back to, I think, what Member
3 Nance said, which is that "only" may be our trip-up word,
4 and if we dropped that and said "performs warranty repair
5 services and not new motor vehicle sales" perhaps that
6 would clarify what our intent was.

7 MS. HOYT: Member Smith?

8 MR. SMITH: Yes.

9 MS. HOYT: You have your hand raised. Did you
10 have a comment?

11 MR. SMITH: I'm sorry. If you're trying to get
12 at mobile repair, should we not say that?

13 MS. MORIATY: This is Laura Moriatty from the
14 DMV.

15 Our goal here was to remove the sentence that
16 has been read to preclude mobile repair. From our reading
17 of the statute and the rule other than this one, it is
18 authorized, so we're trying to remove the roadblock that
19 has appeared in this rule.

20 MR. AMES: This is Member Ames. Can I ask a
21 question?

22 MS. HOYT: Yes, Member Ames.

23 MR. AMES: Would the maker of the initial
24 motion agree to change the motion to remove the word
25 "only" and so it would read "where the franchised dealer

1 performs warranty repair services and not new motor
2 vehicle sales"?

3 MR. WALL: This is Member Wall. I made the
4 motion.

5 I guess if I'm hearing staff's comments,
6 though, the non-warranty repairs would not be excluded,
7 and so I guess I'm struggling to understand if that's so,
8 why that couldn't be in there just to clarify that it
9 provides for performing warranty and non-warranty repair
10 services?

11 MS. MORIATY: This is Laura Moriatty with the
12 DMV.

13 We can't make a rule about where you perform
14 non-warranty repair services because we don't have
15 jurisdiction. So to the extent that we're claiming you
16 can only perform non-warranty repair services anywhere,
17 we're outside our jurisdiction.

18 You're welcome to perform them wherever you
19 would like, we can't regulate them. So that's the concern
20 here. If we keep non-warranty repair services in here, we
21 are stating a limitation that we don't have authority to
22 state.

23 MS. HOYT: The motion is still standing from
24 Member Wall and a second from Member Hicks. Do we have
25 any further discussion?

1 Member Hicks?

2 MR. HICKS: This is Member Hicks.

3 Staff, you previously mentioned something that
4 you could add clarifying language when we previously
5 discussed this topic in another committee that would
6 address the non-warranty work. Is that an option for you
7 to present to this committee?

8 MS. MORIATY: This is Laura Moriaty.

9 Absolutely. We can absolutely put a sentence
10 in the preamble -- that's what we discussed previously --
11 explaining that this does not preclude non-warranty repair
12 services, but they were not something we regulate and that
13 anyone is welcome to do them at any time.

14 MR. HICKS: Thank you.

15 MR. WALL: Presiding Officer Hoyt, this is
16 Member Wall.

17 I will agree to amend my motion to limit it to
18 removing "only".

19 MS. HOYT: We have an amended motion, so on
20 page 51, Section 103, line 5, the amendment is to remove
21 only the word "only".

22 MS. MORIATY: Madam Chair, if I may? This is
23 Laura Moriaty.

24 "Only" I believe appears on line 4.

25 MS. HOYT: My apologies. Line 4, yes.

1 Member Hicks, do you maintain your second?

2 MR. HICKS: This is Member Hicks. I support
3 that.

4 MS. HOYT: We have a motion from Member Wall, a
5 second from Member Hicks. Do we have any further
6 discussion before taking a vote?

7 Member Hicks, your hand is still raised. Do
8 you have a comment?

9 MR. HICKS: Member Hicks. I have no comment.

10 MS. HOYT: Members, when I call your name,
11 please state your name for the record and whether you
12 support the motion or if you do not support the motion.

13 MR. OLAH: This is Member Olah.

14 Could you clarify that we're about to vote on,
15 just exactly what it's for?

16 MS. HOYT: Sure. So the motion by Member
17 Wall -- sorry, there's a lot of feedback -- the motion
18 made by Member Wall is for page 51, Rule 215.103, this is
19 line 4 -- he amended his motion to remove the word "only"
20 and that was seconded by Member Hicks.

21 MR. OLAH: If I may, this is Member Olah.

22 Then exactly how would that section read with
23 the pending motion?

24 MS. HOYT: Ms. Moriaty, would you like to do
25 that?

1 MS. MORIATY: Sure. "A service-only facility
2 is a location occupied and operated by a franchised dealer
3 that is a completely separate, noncontiguous site from the
4 franchised dealer's new motor vehicle sales and service or
5 sales only location, where the franchised dealer performs
6 warranty repair services and not new motor vehicle sales."

7 MS. HOYT: Thank you.

8 We'll continue with the vote.

9 Member Ames?

10 MR. AMES: John Ames. Support the motion.

11 MS. HOYT: Member Doran?

12 MR. DORAN: Member Doran. I support the
13 motion.

14 MS. HOYT: Member Elam?

15 MR. ELAM: Member Elam supports.

16 MS. HOYT: Member Gaston?

17 MR. GASTON: Member Gaston supports.

18 MS. HOYT: Member Gonzalez?

19 MR. GONZALEZ: Member Gonzalez supports.

20 MS. HOYT: Member Hardick?

21 MR. HARDICK: Member Hardick supports.

22 MS. HOYT: Member Hayter?

23 MR. HAYTER: Member Hayter supports.

24 MS. HOYT: Member Hicks?

25 MR. HICKS: Member Hicks supports.

1 MS. HOYT: Second Vice Chair Johnson?
2 MS. JOHNSON: Member Johnson supports.
3 MS. HOYT: Member Nance?
4 MR. NANCE: Member Nance supports.
5 MS. HOYT: Member Olah?
6 MR. OLAH: Member Olah supports the motion.
7 MS. HOYT: First Vice Chair Smith?
8 MR. SMITH: Yes, Member Smith supports.
9 MS. HOYT: Member Sutton?
10 MS. SUTTON: (No audible response.)
11 MS. HOYT: Member Wall?
12 MR. WALL: Member Wall supports.
13 MS. HOYT: I don't think I heard from Member
14 Sutton but there was some feedback.
15 MS. SUTTON: Member Sutton supports.
16 MS. HOYT: Thank you.
17 And I, Kristen Hoyt, support as well.
18 Let the record reflect that 15 votes are for
19 the motion, zero against. The motion carries unanimously.
20 Are there any further recommendations for
21 Chapter 215?
22 Member Elam?
23 MR. ELAM: This is Member Elam.
24 On page 59, line 20, 215.112, Motor Home Show
25 Limitations and Restrictions. I would move that the

1 strikeout on this entire section be removed. I think it
2 is too early to support the removal of this section until
3 other conversations can be held with Texas DMV staff.

4 MS. HOYT: We have a motion from Member Elam
5 for Rule 215.112, page 59, and also on page 60, to remove
6 the strikeout, so lines 1 through 20 and it continues
7 through line 18 of page 62, until further discussion is
8 done by TxDMV staff.

9 MR. HARDICK: I'd second. Member Hardick.

10 MS. HOYT: We have a motion by Member Elam, a
11 second by Member Hardick. Is there any discussion on this
12 motion?

13 MR. AMES: Madam Chair, Member Ames here.

14 MS. HOYT: Yes, Mr. Ames.

15 MR. AMES: Can DMV give some further
16 confirmation as to why they believe this entire area
17 should be struck out?

18 MS. MORIATY: Yes, sir. This is Laura Moriatty
19 with the DMV.

20 Our position is that because the statute has
21 changed and we no longer have authority to permit these
22 operations, we can only get notice of them -- and the
23 notice comes under the statute, we don't need a rule for
24 that -- that we don't have a way to do what this rule does
25 anymore. We don't have a way to enforce it.

1 We don't have statutory authority to do what
2 we're doing here and the way that we're doing it. And we
3 haven't been able to come up with a creative way to
4 enforce it in some other way through our remaining
5 statutory authority, that's why we're recommending
6 striking it.

7 The statute itself sets the notice
8 requirements. We don't need a rule that's redundant with
9 that; the statute stands on its own. So from staff's
10 perspective, this rule is outside our jurisdiction and we
11 don't have a way accomplish the same goals in a different
12 way that we've managed to think of. So again, we're open
13 to any and all exciting new ideas in rule text.

14 MR. AMES: Thank you, ma'am. Member Ames here.

15 If the maker of the motion could explain why
16 they believe that the DMV should retain the ability to
17 have this rule, that would help me understand better.

18 MR. ELAM: This is Member Elam. I made the
19 motion.

20 We are requesting some additional time to get
21 with staff because we did not have appropriate amount of
22 time to do so prior to this being distributed and
23 considered by both this committee and the Motor Vehicle
24 Industry Advisory Committee last week. And I've also
25 submitted an explanation of our position which was given

1 to the Motor Vehicle Industry Advisory Committee last
2 week, and I'd be more than happy to circulate that again
3 to this committee. And I've already sent that to Laura so
4 that she could hopefully attach that to this particular
5 committee's meeting minutes.

6 MR. AMES: Thank you, sir. Again, Member Ames
7 here.

8 So DMV staff, is there a time limit on this?
9 It doesn't sound like it would be harmful to remove the
10 strikeout until further discussion. Would you agree?

11 MS. MORIATY: This is Laura Moriatty with the
12 DMV.

13 We are not intending on getting a final version
14 ready for proposal until the December Board meeting, so we
15 have some time. We're happy to take input on this, get
16 information, get any kind of rule language anybody wants
17 to offer. This is just a first step.

18 So there is still a couple of months before we
19 need to have a working proposal to go to the Board, and
20 then after that there's still the opportunity for public
21 comment and for the Board to make changes based on that
22 public comment. But it would be better if we could get it
23 nailed down heading into what we propose because our
24 powers to change after we propose are a little bit
25 limited.

1 So yes, there is still time to get input to
2 staff. This is just the beginning.

3 MR. AMES: Member Ames.

4 Thank you so much for that explanation, and I
5 appreciate the maker of the motion's comments and the
6 response to that. It's refreshing to see the agency back
7 off on some things, and so that's why I was just concerned
8 as to why we want the agency to continue moving forward on
9 being able to regulate certain things.

10 So I certainly see both points. And if there's
11 time, then I would certainly support the motion that we
12 take more time to discuss and review them.

13 MS. HOYT: Is there any further discussion
14 before we take a vote?

15 (No response.)

16 MS. HOYT: Members, when I call your name,
17 please state your name for the record and whether you
18 support the motion or do not.

19 Member Ames?

20 MR. AMES: John Ames. Support the motion.

21 MS. HOYT: Member Doran?

22 MR. DORAN: This is Member Doran. I support
23 the motion.

24 MS. HOYT: Member Elam?

25 MR. ELAM: This is Member Elam. I support the

1 motion.

2 MS. HOYT: Member Gaston?

3 MR. GASTON: Member Gaston. I support.

4 MS. HOYT: Member Gonzalez?

5 MR. GONZALEZ: Member Gonzalez supports the

6 motion.

7 MS. HOYT: Member Hardick?

8 MR. HARDICK: Member Hardick supports the

9 motion.

10 MS. HOYT: Member Hayter?

11 MR. HAYTER: Member Hayter supports the motion.

12 MS. HOYT: Member Hicks?

13 MR. HICKS: Member Hicks supports the motion.

14 MS. HOYT: Second Vice Chair Johnson?

15 MS. JOHNSON: Johnson supports the motion.

16 MS. HOYT: Member Nance?

17 MR. NANCE: Member Nance. Do not support.

18 MS. HOYT: Member Olah?

19 MR. OLAH: This is Member Olah. I do not

20 support the motion.

21 MS. HOYT: First Vice Chair Smith?

22 MR. SMITH: Member Smith supports the motion.

23 MS. HOYT: Member Sutton? Member Sutton?

24 (No response.)

25 MS. HOYT: Member Wall?

1 MR. WALL: Member Wall supports the motion.

2 MS. HOYT: And I, Kristen Hoyt, support the
3 motion as well.

4 Please let the record reflect that there were
5 12 votes for, two against, and one member has abstained.
6 This motion does carry.

7 Are there any other recommendations to present
8 to the TxDMV Board regarding Chapter 215, Motor Vehicle
9 Distribution?

10 Member Smith.

11 MR. SMITH: Madam Chairman, on page 87 in
12 215.135, for staff a question. Is municipality defined
13 somewhere?

14 MS. MORIATY: Madam Chair, this is Laura
15 Moriatty.

16 After polling staff, it appears that we're
17 changing "city" to "municipality" in an effort to be
18 consistent throughout the rule section, but I don't
19 believe it is actually defined.

20 MR. SMITH: Madam Chairman, it seems like that
21 might be a good idea to define it.

22 MS. HOYT: Are you making a motion?

23 MR. SMITH: Sure. I make a motion that we
24 define the term "municipality" as used in Section 215.135.

25 MS. HOYT: We have a motion from Member Smith

1 to define on line 19, page 87 the term "municipality". Is
2 there a second to this motion?

3 (No response.)

4 MS. HOYT: Member Smith, your hand is raised.
5 Did you have another comment?

6 MR. SMITH: No, ma'am.

7 MS. HOYT: Okay. So I see no other hands
8 raised and there is not a second, so this motion will not
9 move forward.

10 Member Hicks.

11 MR. HICKS: This is Member Hicks.

12 Referencing back to our previous conversation,
13 page 175, I'm not sure if we need a motion to clarify and
14 define "and market adjustments" on line 4. I know it was
15 brought up and staff indicated they would -- I don't
16 remember staff's response to that.

17 MS. MORIATY: This is Laura Moriaty with the
18 DMV.

19 We said we would take it under advisement and
20 make sure it's clear.

21 MR. HICKS: Member Hicks.

22 Is that adequate without a motion to put that
23 in the record?

24 MS. MORIATY: Yes, absolutely. Staff has a
25 directive, we will go forth.

1 MR. HICKS: Member Hicks. Thank you.

2 MS. HOYT: Are there any other recommendations
3 for the TxDMV Board regarding Chapter 215, Motor Vehicle
4 Distribution?

5 MR. SMITH: Madam Chairman, Member Smith.
6 Question for staff.

7 MS. HOYT: Yes, Member Smith.

8 MR. SMITH: Page 138, line 9, should that have
9 been 1,000 rather than 600 to make that relate back to
10 line 4 with 1,000 there?

11 MS. MORIATY: Yes. This is Laura Moriatty with
12 the DMV.

13 We agree, that's a good catch, and it should be
14 1,000 throughout. Thank you.

15 MS. HOYT: Any other recommendations regarding
16 Chapter 215, Motor Vehicle Distribution?

17 MR. SMITH: Madam Chairman, Member Smith.
18 215.244, line 171.

19 MR. RICHARDS: Which page?

20 MR. SMITH: 171. That section deals with
21 adding a dealership addendum to a vehicle when equipment
22 is added. I just think a clarification would be needed
23 here.

24 Sometimes we add equipment that we don't charge
25 anything for, so my point is if we don't charge for

1 something that we've added, floor mats, power wheel locks,
2 or something there's no charge for, I don't think it calls
3 for an addendum if it's a no charge.

4 MS. HOYT: Can you clarify your motion or are
5 you requesting staff feedback?

6 MR. SMITH: Sure. My motion would be to limit
7 the requirement for an addendum to those items which there
8 is a charge for.

9 MS. MORIATY: Madam Chair, this is Laura
10 Moriaty.

11 It looks like that would be a change to
12 subsection (6) (A) (ii) any added feature, service,
13 equipment, part or accessory for which the dealership has
14 charged the customer.

15 Are you wanting that removed?

16 MR. SMITH: No, no. I just have a caveat that
17 if we're adding something we're charging for then it would
18 require an addendum, not for free.

19 MS. HOYT: Ms. Moriaty, could you assist with
20 the motion to clarify?

21 MS. MORIATY: So we are on page 171, this is
22 subsection (6) and we are looking at (A) (ii). And I
23 believe that the motion would be to add language to (ii)
24 that's going to read "any added feature, service,
25 equipment, part or accessory for which the dealer charged

1 the customer" so it would be to add that clause "for
2 which the dealer charged the customer".

3 MS. HOYT: Thank you.

4 We have a motion from Member Smith to add
5 language to page 171, subsection (6)(A)(ii), adding the
6 language to read "any added feature, service, equipment,
7 part or accessory for which the dealer charged the
8 customer."

9 MR. HICKS: Member Hicks. I second.

10 MS. HOYT: That motion has been seconded by
11 Member Hicks, and we have a comment from Member Doran.

12 MR. DORAN: Thank you. This is Member Doran.

13 I really have a question around this motion,
14 and I hope I don't have to disagree with Member Smith
15 because I think his motion is very well intentioned as it
16 relates to the dealer providing an accessory or something
17 to the consumer without charging for it. This question is
18 both to staff and to Member Smith to kind of help me reach
19 a comfort level with this.

20 My concern here would be that if the dealer is
21 adding something to the vehicle and that is not disclosed
22 on the addendum, if there is a problem with that feature
23 that's been added to the vehicle, how is the consumer to
24 know about it or be aware of it? So for example, I think
25 some dealers add GPS tracking devices and they don't

1 charge for it, or I suppose you could have a situation
2 where -- and this is a significant example, but let's say
3 that a dealer added a lift kit to a jeep and elected not
4 to charge the consumer for it on the addendum and the
5 manufacturer or distributor and the consumer, in the event
6 that that added equipment caused a problem to the vehicle,
7 they're going to want to be able to go back and see some
8 record of that.

9 So maybe Member Smith can kind of walk me
10 through from the legal standpoint how we accomplish the
11 goals of apprising the consumer and alerting them that the
12 feature is on the vehicle. I think I understood your
13 motion to say that if the feature was going to be included
14 at no charge, it didn't have to be listed, and I guess my
15 question would be why not just say "No charge" on the
16 addendum and perhaps that would avoid this potential
17 concern.

18 Thank you.

19 MS. HOYT: Member Nance.

20 MR. NANCE: This may be a question for staff,
21 but this would add the phrase "required to be" and we're
22 in a definition section where we're defining the term
23 "dealership addendum." Is there some statute or rule
24 outside of this definition that requires this form to be
25 displayed, and if there's some other rule or statute, do

1 you have a citation to that?

2 MR. DORAN: This is Member Doran. May I just
3 comment on that?

4 MS. HOYT: Sure.

5 MR. DORAN: Following up on that, I guess that
6 would be a question for staff to maybe check with the
7 Federal Trade Commission. Because I think they might be
8 the federal agency that would have such a requirement that
9 the feature that's included on a vehicle if it's going to
10 be listed on the addendum. In other words, dealer
11 addendums, I believe, are governed by federal law in
12 addition to whatever we have here at the state level.

13 MS. MORIATY: This is Laura Moriatty with the
14 DMV.

15 I am embarrassed to say that staff that is
16 currently here is not clear on the source of this
17 particular amendment, the "required to be" language, and
18 we're going to have to go research it and figure out who
19 thought it was necessary. So I'm afraid that I will have
20 to get back -- was it Member Nance who was wondering the
21 source of that? I will have to get back to you, Member
22 Nance.

23 MR. SMITH: Madam Chairman, this is Member
24 Smith.

25 MS. HOYT: Yes, Member Smith.

1 MR. SMITH: This is a question for Member
2 Laird. If we removed the recommended additional verbiage
3 of "required to be" would that satisfy your question?
4 Just put a "form that is displayed."

5 MR. DORAN: Member Smith, this is Member Doran.
6 I guess I don't really have a position on your
7 motion because, in all honesty, I'm not understanding
8 exactly the rationale behind it.

9 MR. SMITH: Let me give you a basic example,
10 and this is simplistic. In my dealership, when we get a
11 pickup truck in, we add wheel locks. It's a bolt that
12 goes on the wheel, and we do that to keep people from
13 stealing it. I don't charge anybody for it, so it's a
14 simple thing.

15 But this new change would require me to put an
16 addendum on saying that I added a wheel lock. I'm
17 thinking that's kind of a work project and we're just
18 giving something for free. If I lifted a truck -- which I
19 don't -- but if I lifted a truck, obviously that's
20 something I understand and I'm going to charge for it.

21 But if we removed the verbiage "required to be"
22 would that satisfy your question, your concern?

23 MR. DORAN: This is Member Doran.

24 So I guess my question is -- and this goes back
25 to the question for staff about what does federal law

1 require, because if the wheel locks that were installed
2 were defective, if the manufacturer of the wheel locks had
3 a recall on the wheel locks, I think it's important that
4 the distributor or the manufacturer -- I guess in this
5 instance it would be General Motors -- have some
6 visibility to know that those wheel locks were installed
7 by the dealer as opposed to GM.

8 I'm presuming they would figure that out if
9 there was litigation that ensued. But my question really
10 is whether federal law requires that a consumer be put on
11 notice through this disclosure which is, in fact, the
12 addendum which lists out all of that.

13 So again, Member Smith, I'm struggling with
14 whether to vote yea or nay on this because I'm not sure
15 whether that language makes a difference with respect to
16 the overall practice because I can't say whether the
17 overall practice is advisable or prohibited by federal
18 law.

19 So to answer your question actually as I read
20 through it -- again, Member Doran -- I suppose if that
21 "required to be" language was removed from this, that
22 would punt this issue to just be a subject of
23 consideration and research for staff, so I guess I'm
24 inclined to support a motion that simply removed the
25 "required to be" language and then just leave it alone.

1 Thank you.

2 MR. SMITH: Member Smith.

3 I would reword my motion to state that we would
4 remove the verbiage "required to be" and leave the rest of
5 it as is.

6 MS. HOYT: Assuming I followed that clearly, we
7 have an amended motion made by Member Smith to remove the
8 verbiage on line 15 "to be."

9 MR. SMITH: "Required to be."

10 MS. HOYT: "Required to be." My apologies. So
11 the underlined text "required to be" proposing that to be
12 stricken from the verbiage.

13 Member Hicks, do you maintain your second?

14 MR. HICKS: This is Member Hicks. I would
15 support the amended motion.

16 MS. HOYT: Is there any more discussion about
17 this motion?

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

19 MS. HOYT: Yes, Member Olah.

20 MR. OLAH: My concern about removing that
21 language is the words "required to be" indicate that there
22 may be a source that sets a certain standard for what is
23 displayed on the window. So I would respectfully suggest
24 to my fellow members that we wait to hear back from DMV
25 staff to find out what the source of that is.

1 MS. HOYT: Any discussion or amendments to the
2 motion?

3 MR. DORAN: This is Member Doran. May I be
4 recognized?

5 MS. HOYT: Yes, Member Doran.

6 MR. DORAN: Following on that comment -- again,
7 I alluded to this a little while ago -- I believe that the
8 Federal Trade Commission would be the authority that
9 either does or does not have a requirement around what is
10 required to be contained in a dealer addendum. I do know
11 that there are very specific rules and requirements
12 governing Monroney Labels that are set forth, I believe,
13 by the Federal Trade Commission. I don't know whether
14 those requirements extend to a dealer addendum.

15 But the reason why I am very comfortable with
16 Member Smith's motion is if it's required by federal law,
17 what are we really adding here with this proposed language
18 of "required to be"? I mean, either the dealer has the
19 obligation to include a listing of everything that they
20 put on the vehicle or they don't, and so that's why hence
21 my comment earlier that I'm very comfortable with
22 supporting a motion that removes this language because
23 either the dealer has that legal obligation or they don't.

24 I do think it would be helpful for staff to
25 take a look at that, but I don't think it's going to make

1 that much difference today on this hearing.

2 Thank you.

3 MS. HOYT: Member Nance.

4 MR. NANCE: I think I'm in agreement with
5 Member Doran. I would be curious to know if staff can
6 show something outside of this section that requires this
7 and that would be really good to know. But whether there
8 is or isn't some requirement, if the form is displayed on
9 the window, then this lays out certain purposes for that
10 addendum, so I'm just not really seeing the necessity of
11 the phrase "required to be" unless staff can point to some
12 provision that requires it.

13 MS. HOYT: Is this an item that the staff would
14 like to review ahead of our next meeting, or is this a
15 motion -- you all decide if it's a motion that we want to
16 continue on for a vote?

17 (No response.)

18 MS. HOYT: I'm seeing no hands raised and no
19 further discussion. We will move forward with a vote.

20 Again, the motion was made by Member Smith. It
21 was actually an amendment to his original motion, and a
22 second was made by Member Hicks. And this is page 171,
23 line 15, subsection (6), removing the phrase "required to
24 be."

25 Members, when I call your name, please state

1 your name for the record and whether you support the
2 motion and do not support the motion.

3 Member Ames?

4 MR. AMES: John Ames. Abstain from this
5 motion.

6 MS. HOYT: Member Doran?

7 MR. DORAN: This is Member Doran. I support
8 the motion.

9 MS. HOYT: Member Elam?

10 MR. ELAM: Member Elam supports.

11 MS. HOYT: Member Gaston?

12 MR. GASTON: Member Gaston. I do not support.

13 MS. HOYT: Member Gonzalez?

14 MR. GONZALEZ: Member Gonzalez abstains from
15 this motion.

16 MS. HOYT: Member Hardick?

17 MR. HARDICK: Member Hardick. I support.

18 MS. HOYT: Member Hayter?

19 MR. HAYTER: Member Hayter will support.

20 MS. HOYT: Member Hicks?

21 MR. HICKS: Member Hicks supports the motion.

22 MS. HOYT: Second Vice Chair Johnson?

23 MS. JOHNSON: I support the motion.

24 MS. HOYT: Member Nance?

25 MR. NANCE: Member Nance. I support.

1 MS. HOYT: Member Olah?

2 MR. OLAH: Member Olah. I do not support the
3 motion.

4 MS. HOYT: First Vice Chair Smith?

5 MR. SMITH: Member Smith supports the motion.

6 MS. HOYT: Member Sutton?

7 MS. SUTTON: I do not support the motion.

8 MS. HOYT: Member Wall?

9 MR. WALL: Member Wall supports the motion.

10 MS. HOYT: I would also like to abstain from
11 this vote.

12 Give me a moment to calculate the votes. Let
13 the record reflect that there were nine votes supporting
14 the motion, three votes not supporting, and three members
15 abstained, so this motion will carry.

16 Are there any other recommendations for Chapter
17 215 to be presented to the TxDMV Board?

18 (No response.)

19 MS. HOYT: I see no hands raised. We'll move
20 forward down the agenda.

21 Members, do you have any recommendations to
22 present to the TxDMV Board -- I'm sorry, I saw that Member
23 Smith's hand is raised.

24 Is that for Chapter 215?

25 MR. SMITH: Yes, ma'am. Just a question.

1 Page 176, the attached graphics, are these the
2 ones that have the examples of pricing that we've seen
3 before, I mean, not in the book?

4 MS. THOMPSON: This is Corrie Thompson,
5 director of the Enforcement Division.

6 Yes, that should be referencing the graphics
7 that currently exist in rule.

8 MR. SMITH: Thank you.

9 MS. HOYT: I'll call one more time for
10 recommendation for Chapter 215, Motor Vehicle
11 Distribution.

12 (No response.)

13 MS. HOYT: Seeing none, we'll move on to
14 Chapter 221. Members, do you have any recommendations to
15 present to the TxDMV Board regarding Chapter 221, Salvage
16 Vehicle Dealers?

17 Member Smith, your hand is raised. Do you have
18 a recommendation?

19 MR. SMITH: I'm sorry. I'll lower it.

20 MS. HOYT: Thank you.

21 Seeing no hands up and no one speaking up,
22 we'll move on to Chapter 224 recommendations.

23 Members, do you have any recommendations to
24 present to the TxDMV Board regarding Chapter 224,
25 Adjudicative Practice and Procedure?

1 (No response.)

2 MS. HOYT: I see no hands raised with no one
3 speaking up.

4 I will now move on to agenda item number 3,
5 Public Comment.

6 David Richards, are there any comments from the
7 public?

8 MR. RICHARDS: No public comments.

9 MS. HOYT: We will now move on to agenda item
10 number 4, Adjournment.

11 MR. AMES: I'll move. John Ames.

12 MS. HOYT: Unless there's any further business,
13 I'd like to entertain a motion to adjourn. I have a
14 motion from Member Ames.

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

16 MS. HOYT: I have a second from Member Doran.

17 All in favor?

18 (A chorus of ayes.)

19 MS. HOYT: Thank you.

20 Let the record reflect that the vote is
21 unanimous. It is now 3:32 p.m., and we are adjourned.

22 (Whereupon, at 3:32 p.m., the meeting was
23 adjourned.)

C E R T I F I C A T E

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MEETING OF: TxDMV Customer Service and Protection
Advisory Committee

LOCATION: Austin, Texas

DATE: September 19, 2023

I do hereby certify that the foregoing pages,
numbers 1 through 103, inclusive, are the true, accurate,
and complete transcript prepared from the verbal recording
made by electronic recording by Nancy H. King before the
Texas Department of Motor Vehicles.

DATE: September 29, 2023

/s/ Nancy H. King
(Transcriber)

On the Record Reporting
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