TEXAS DEPARTMENT OF MOTOR VEHICLES
CONSUMER PROTECTION ADVISORY COMMITTEE MEETING

OPEN MEETING VIA CONFERENCE CALL

Austin, Texas

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

COMMITTEE MEMBERS:

Melissa Colvin, Designated Presiding Officer
Laird Doran
Ruben Gonzalez
Cheryl Johnson
Will Johnson (absent)
Ray Olah
Jeanette Rash
Michael Rigby
James Snell (absent)
Juan Solis (absent)
<table>
<thead>
<tr>
<th>AGENDA ITEM</th>
<th>INDEX</th>
<th>PAGE</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. CALL TO ORDER</td>
<td></td>
<td></td>
</tr>
<tr>
<td>A. Roll Call and Establishment of Quorum</td>
<td></td>
<td>6</td>
</tr>
<tr>
<td>2. DISCUSSION, BRIEFING, AND ACTION ITEMS</td>
<td></td>
<td></td>
</tr>
<tr>
<td>A. Recommendations of Advisory Committee for Presentation to the Board</td>
<td></td>
<td>7</td>
</tr>
<tr>
<td>B. Refunds by Motor Vehicle Dealers and Motor Carriers Transporting Household Goods (Rulemaking Recommendation)</td>
<td></td>
<td>12</td>
</tr>
<tr>
<td>C. Temporary Tags (Legislative Recommendation)</td>
<td></td>
<td>104</td>
</tr>
<tr>
<td>D. Title When Motor Vehicle Dealer Go Out of Business (Legislative Recommendation)</td>
<td></td>
<td>--</td>
</tr>
<tr>
<td>E. Protecting DPPA Information (Legislative Recommendation)</td>
<td></td>
<td>--</td>
</tr>
<tr>
<td>F. Future Meeting Schedule</td>
<td></td>
<td>148</td>
</tr>
<tr>
<td>3. PUBLIC COMMENT</td>
<td></td>
<td>150</td>
</tr>
<tr>
<td>4. ADJOURNMENT</td>
<td></td>
<td>154</td>
</tr>
</tbody>
</table>
MS. COLVIN: Good morning. My name is Melissa Colvin, and I'm pleased to open the second meeting of the Consumer Protection Advisory Committee. For the ease of reference, I will refer to this Advisory Committee as CPAC, which is the acronym for this Committee.

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

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

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

Instead, the public may attend this meeting by calling a toll-free telephone number which is posted in the agenda which was filed with the Office of the
Secretary of State on May 11, 2020. All Advisory Committee members, including myself, will be participating remotely via Webex.

At this time, please mute your phones for the entire duration of this meeting. I am asking your Webex meeting host to make sure all participants' phones are muted except for Advisory Committee members and those who are presenting.

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

Department staff, Committee members and any commenters should identify themselves if they're speaking. Speak clearly. Members, there may be a slight delay due to the telephone conference call meeting so please wait a little longer than usual before responding to participants.

Do not speak over others, and speakers should be -- speakers should ask the Presiding Officer to proceed and be sure to get recognized before speaking. Because the number of dial-in participants is limited, if you wish
to address the Advisory Committee or speak on an agenda item during today's meeting, please send an email to gco_general@txdmv.gov.

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

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

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

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

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

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

Member Doran?

MR. DORAN: Member Doran present.

MS. COLVIN: Member Gonzalez? Member Gonzalez?

(No response.)

MS. COLVIN: Member Cheryl Johnson? Member Cheryl Johnson?

MS. JOHNSON: Did I get unmuted?

MS. COLVIN: Perfect. Member Will Johnson?

(No response.)

MS. COLVIN: Member Olah? Member Olah?

(No response.)

MS. COLVIN: Member Rash?
MS. RASH: Present.

MS. COLVIN: Member Rigby?

MR. RIGBY: Present.

MS. COLVIN: Member Snell?

(No response.)

MS. COLVIN: And member Solis?

(No response.)

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

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

MS. COLVIN: Yes, sir.

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

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

Now, moving on to Item 2(a), Recommendations of Advisory Committee for Presentation to the TxDMV Board. Members, the TxDMV administrative rule on advisory committees requires the Committee to report their recommendations to the TxDMV Board.
The recommendations must be in writing and include any necessary supporting material. The Presiding Official of CPAC or the Presiding Officer as designated may appear before our Board to present the Committee's advice or recommendations.

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

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

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

MR. DORAN: This is Member Doran. I had a question for the Presiding Member Colvin or for staff, and
that is, if you could share with the group when the
anticipated Board meeting is where the presentation would
be made, if that's the next upcoming DMV Board meeting or
it's some other date in the future?

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

MR. DORAN: Thank you.

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

MS. COLVIN: Member Johnson, please speak.

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

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

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

MS. COLVIN: Member Olah seconds the motion.

Members, a motion has been made and seconded to have all
officers attend the meeting. Is there any further
discussion?

MR. DORAN: This is Member Doran again with one
additional question for staff. Is it anticipated that
that June 11 Board meeting will be conducted in person or
by teleconference or some other form?

MR. RICHARDS: This is David Richards,
associate general counsel for the record. Member Doran,
at this time, it would appear that it's going to be a
remote meeting, unless we're told otherwise, but right
now, we're planning on having a videoconference meeting.
That is correct. Not in-person at this time.

MR. DORAN: Thank you.

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

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

So that's what's contemplated.

MS. COLVIN: Is there any further discussion?

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

MR. RICHARDS: David Richards, associate
general counsel, for the record. Member Rigby, that's
fine. We'd like as many members, if this is the will of
CPAC, to appear remotely to be there, but nothing -- that
would be fine, as long as we have somebody there to
present before the Board.

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

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

MS. COLVIN: Member Johnson?

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

MR. RICHARDS: Thank you, Member Johnson.

David Richards, for the record again. Thank you for that
clarification. Member Colvin read, I think, in her
presentation that the CPAC members would be there. Thank
you for the clarification.

You're just speaking of the three officers?

MS. JOHNSON: Yes, sir.

MS. COLVIN: I will now call for the question.

Members, as I call your name, please state your support
for the motion by saying, yes, or no if you don't -- if
you do not support the motion. Officer Johnson?

(No response.)

MS. COLVIN: Member Doran?

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

MS. COLVIN: Member Gonzalez?

MR. GONZALEZ: I support the motion.

MS. COLVIN: Member Cheryl Johnson?

MS. JOHNSON: I support the motion.

MS. COLVIN: Member Olah?

MR. OLAH: I support the motion.

MS. COLVIN: Member Rash?

MS. RASH: Yes.

MS. COLVIN: Member Rigby?

MR. RIGBY: Yes.

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

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

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

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

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

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

"Wouldn't failure to pay for a third-party service agreement also fall under the jurisdiction of the OCCC? 'Fictitious fees' needs a better definition."

Number four: "If a third-party service agreement is purchased by the consumer and paid for by the dealer and a
dispute arises over the coverage, who handles that complaint?"

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

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

Brian?

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

So as part of the Texas DMV Sunset bill, the DMV was given the authority to order a refund for buyers and lessees of motor vehicles. If the Board determines that a person is violating or has violated this chapter,
this chapter being Section 2301.807 of the Texas Occupations Code, the Board may order the person to pay a refund to the buyer or lessee of the motor vehicle that this is the subject of the proceeding.

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

So the first question for -- I would like the Committee to consider is, how should “refund” be defined? And a sub-part to that question: should the reimbursement of expenses be considered a refund? And should the TxDMV have the ability to order both full and partial refunds?

Members?

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

MS. COLVIN: Member Doran?

MR. DORAN: Thank you. So Brian, I had gone back and looked at other portions of the code where “refund” is mentioned or defined, and it seems to come up in the context of the lemon law claims, both in the Occupations Code, as well as the rules around warranty performance obligations associated with lemon laws.
And in those context -- in that context, the code -- the rules, excuse me, in the Administrative Code, they list what they consider to be expenses that are reasonable and verifiable. They also include reimbursable, incidental expenses, including things like attorneys' fees, telephone calls, sort of other things that kind of go part and parcel with the, I would say, negative impact on the customer with having to deal with the situation arising out of the problem with their vehicle.

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

At the same time, I would like to also point out that when you look at the Sunset -- the final Sunset Advisory Commission results for DMV, in Section 3.2, it says the following: "As part of the Department's enforcement authority, authorized funds for consumers for motor vehicle and motor vehicle carriers" -- and then it says, "Under this authority, the Department could require refunds to the amount paid by the consumer and without inclusion of any additional consideration of damages or
harm. The refund may be in lieu of or in addition to other sanctions ordered against a licensee or carrier."

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

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

So it's a legislative history question, basically.

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

So we can't bind ourselves to what Sunset wanted for us, but rather, we're bound by what the Legislature wanted for us, and the only assumption we can make is that the Legislature intended what they wrote in the bill. And that’s in Texas Occupations Code 2301.807 and Texas Transportation Code 643.257.
I hope that answers your question.

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

MS. COLVIN: Member Doran.

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

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

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

MR. DORAN: Okay. Thank you.

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

MS. COLVIN: Member Rash?

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

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

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

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

MS. COLVIN: Member Doran?

MR. DORAN: Thank you. Brian, is this -- just to kind of make sure I'm clear on this, when we're talking about refund, are we talking -- we're talking about the request for a refund of the vehicle price, and that comes up in the context of the dealer not having to have been
successful in transferring title, or some other, I'll just say, necessary administrative task associated with the purchase or lease of the vehicle itself?

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

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

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

MS. COLVIN: Member Doran?

MR. DORAN: Thank you. So Brian, just to be kind of very candid and straightforward about it, I look at it and think that this is a case-by-case analysis that the agency would have to apply. And so you know, in the most egregious situation where someone's trade hasn't been
paid off, and they've been essentially making two car
payments for a period of time or something, then, you
know, I could see maybe the purchase price of the vehicle
as being a ceiling on the refund, but for the most part, I
sort of envision this coming up in the context of, a
customer comes in to buy a vehicle, and the dealer is
unable to have that vehicle, you know, titled and
registered within the required 30-day period.

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

And so you know, where my -- where I was
immediately drawn to when I was looking at this was
thinking, well, that is an area where the dealer has
failed to meet their duty as part of that -- part of the
purchase of the vehicle, because they failed to timely and
accurately handle that paperwork, and I don't recall what the doc fee currently is in the state, if it's capped at 150 or 195.

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

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

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

MS. JOHNSON: Cheryl --

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

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

MR. OLAH: Okay.

MS. JOHNSON: Thank you. May I request to be recognized? So I guess that was a recognition. Working
in a tax office, we reissue many refunds under the --
under registration and titling services, and generally
speaking, any overpayment is considered a refund.

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

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

MS. COLVIN: Member Olah?

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

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

So I think there is a line, a clear line that
incidental would not be included in that amount of money,
and you know, therefore, you know, if you're asking a
dealer to make a refund, it would be just money paid
directly to that dealer and not other kinds of associated expenses.

That is my comment.

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

MS. COLVIN: Member Johnson.

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

Is that correct?

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

And depending on how the dealer responds, we can arrive at a settlement or the case can go to the State Office of Administrative Hearings where there would be an adjudication. And in the contours of a settlement, no one -- there isn't a judge deciding or adjudicating any kind of guilt or anything like that.
It's just our enforcement attorney and the respondent coming together saying, hey, I messed up on this, or I violated this chapter, you assessed this amount of fees or penalties. Let's meet somewhere in the middle to come up with a compromise so that I can continue working without violating the law.

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

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

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

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

MS. JOHNSON: Thank you.
MR. GONZALEZ: This is Member Gonzalez. Permission to speak?

MS. COLVIN: Member Gonzalez?

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

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

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

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

MR. GE: Hi. This is Brian Ge. So collecting everyone's comments, it seems that the consensus is that a
refund should be defined as monies that are paid to a dealer, including any overpayments and payments for services and products that weren't rendered or products that weren't delivered.

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

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

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

MS. COLVIN: Yes, Mr. Richards.

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

Thank you.

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

MR. DORAN: This is -- go ahead. Sorry.
MS. COLVIN: Member Doran, please go ahead.

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

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

MR. OLAH: Member Olah seconds.

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

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

MS. COLVIN: Mr. Rigby?

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

MR. GE: This is Brian Ge. I agree with Member Rigby's suggestion.
MS. COLVIN: A motion has been made by Member Rigby to modify the motion made by Doran with the definition. Is there a second?

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

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

(No response.)

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

MR. DORAN: In favor of the motion.

MS. COLVIN: Member Gonzalez?

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

MS. COLVIN: Member Cheryl Johnson?

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

MS. COLVIN: Member Olah?

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

MS. COLVIN: Member Rash?

MS. RASH: Yes.

MS. COLVIN: Member Rigby?

MR. RIGBY: Yes.

MS. COLVIN: I, Melissa Colvin, vote yes.
Members, the vote was unanimous in favor of the motion. The motion passes.

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

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

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

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

The second question that Member Snell had was,
"If a dealer is ordered to make a refund, will that impact their license renewal?" That is up for discussion between y'all. I don't believe that ordering a refund would affect a license renewal unless -- if the dealer can actually pay the refund.

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

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

MS. COLVIN: Ms. Thompson?

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

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

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

MS. COLVIN: Member Rash.

MS. RASH: I think whenever you're looking at
somebody's license and the way that, you know, they do business, a consideration should be given to, if a refund was paid after being ordered to pay, and what the circumstances are, but not to directly, you know, have somebody lose their license over that.

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

That's my opinion.

MS. JOHNSON: Member Johnson asks to be recognized.

MS. COLVIN: Member Johnson.

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

The quickest way to get somebody to do what they're obligated to do is to have that threat of removal
there, and you have to have some authority in order to make it happen in many instances.

    MS. COLVIN: I would agree with that.

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

    MS. COLVIN: Member Rash.

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

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

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

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

    MS. JOHNSON: Johnson asks to be recognized, please?
MS. COLVIN: Member Johnson.

MS. JOHNSON: I would concur with that.

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

MR. GONZALEZ: This is Member Gonzalez.

Permission to speak.

MS. COLVIN: Member Gonzalez?

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

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

Those are my thought processes. Thank you.

MR. GE: This is Brian Ge again. So looking over everyone's comments and incorporating Member Gonzalez's comment, I would say that there is some concurrence among the Committee that if a dealer is
ordered to pay a refund but fails to pay it, that failure
to pay could be considered against renewing that dealer's
license, but it should not result in any kind of automatic
suspension or revocation of that dealer's license.

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

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

MS. COLVIN: Member Johnson?

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

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

MR. GONZALEZ: And this is Member Gonzalez.

Permission to speak?

MS. COLVIN: Member Gonzalez?

MR. GONZALEZ: I concur with Member Johnson on
that recommendation.
MR. DORAN: This is Member Doran. Permission to speak?

MS. COLVIN: Member Doran?

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

MS. JOHNSON: Permission to speak. Member Johnson.

MS. COLVIN: Member Johnson.

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

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

MR. DORAN: Thank you.
MS. RASH: This is Member Rash. I ask for permission to speak.

MS. COLVIN: Member Rash.

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

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

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

MS. COLVIN: Member Doran.

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

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

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

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

MR. GE: This is Brian Ge. So what if we were
to modify the conversation a little bit and instead of
ordering -- the Department ordering a refund in that
initial finding against the dealer, how -- what if we only
ordered refunds as part of a settlement?

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

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

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

That could be, right, an administrative
penalty. It could be a revocation that's being
recommended. It could be both, but in all instances, that
initial charging document gives the dealer 26 days to respond, either by just paying the sanction, at which point we would issue a final order and close the case.

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

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

So what Brian is saying, in that initial document, that we don't put, at that point, we're ordering a refund pursuant to this allegation that we're alleging here. That we save that, and if a dealer contacts and asks us to engage in settlement discussions, that that could be one of the settlement terms, that, hey, you know, we were going to revoke your license initially or we were going to institute this large penalty, but since you've agreed to contact us and engage in settlement discussions,
we'll now bring in the refund authority option, and if you
want to agree to refund money to a consumer, then we can
record that, memorialize it, as part of settlement.

So --

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

MS. COLVIN: Member Rigby?

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

Thank you.

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

Sometimes people think that we can impose
criminal offenses on people. Sometimes people seek out
the Department thinking that we can impart more civil
remedies, not just administrative. Administrative law is
basically the result of errors, mistakes and
misunderstandings.

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

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

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

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

But could we do that as part of the settlement
agreement, if the dealer agreed to give up a license,
whereas we maybe would have initially wanted to revoke it?
Yes, we can do that. I hope that answers your question.

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

MS. COLVIN: Member Rigby.

MR. RIGBY: Yeah. I just -- I'm confused.

Like, if there were a -- we are overcharged by the dealer,
why wouldn't you initially order or require a refund? Why
would you want to wait until the consumer figures out how
much they're owed and asks for it in a settlement
conversation?

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

MS. THOMPSON: Are we there? Sorry. This is
Corrie Thompson. I was getting disconnected, and I'm not
able to unmute myself. I'm just saying, in all instances,
it might not be clear. So if we send a notice of
Department decision out and we say, hey, dealer, there are
five cars that consumers -- that we believe you owe
consumers refunds on, and we're going to order full refund
for payment of all of those vehicles, and then the dealer
doesn't get the notice of Department decision.

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

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

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

If you could give me an example, that would
maybe help shed a little bit more light on that. But what
we initially do in a document is, we institute a penalty
for each violation, or if the violation is severe enough
or if there is numerous violations, as Member Doran
mentioned earlier, then we would just put revocation of
the license is recommended at the outset, that we go with
those effective sanction there.
MS. JOHNSON: Member Johnson, Galveston, asks to be recognized to speak.

MS. COLVIN: Member Johnson?

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

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

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

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

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

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

MS. COLVIN: Member Doran.

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

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

MS. THOMPSON: And this is Corrie Thompson again. So I'm not sure who was speaking earlier before you, Member Doran, but there was a comment about if someone from the tax office with regard to costs associated with late title transfers for the consumers.
So yes, in some cases, a consumer will have gone and purchased their own 30-day permits, things like that, had some cost outlays. Sometimes the dealer is actually purchasing those extra 30-day permits too, whenever they've not transferred title after the issuance of the initial buyer tag.

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

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

(Pause.)

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

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

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

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

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

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

MS. COLVIN: No, sir. Nobody has made a motion.
MR. RICHARDS: Okay. And what is -- I don't understand your question. I'm sorry.

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

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

MS. COLVIN: No, sir.

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

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

MS. COLVIN: Member Olah, please?

MR. OLAH: It seems to me that there are just a multitude of circumstances where DMV could order a refund. And may I throw this back to staff to perhaps word something that the members can support or not support, perhaps for consideration at our next meeting?

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

MR. OLAH: Yes.

MR. RICHARDS: Yes, we can definitely do that for you. I think Brian touched on it earlier, that the decision or the motion, the vote you took on Item No. 1 pretty much gives you a springboard to answer No. 2. But
we'll definitely come up with a statement that y'all can vote on as your position regarding Item No. 2.

MR. OLAH: Thank you.

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

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

MS. COLVIN: Member Olah?

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

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

MS. JOHNSON: Member Johnson. I’ll second that motion.

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

(Pause.)

MS. COLVIN: Brian Ge?

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

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

    MR. DORAN: Member Doran. In favor of motion.

    Yes.

    MS. COLVIN: Member Gonzalez?

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

    MS. COLVIN: Member Cheryl Johnson?

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

    MS. COLVIN: Member Olah?

    MR. OLAH: Member Olah. Yes.

    MS. COLVIN: Member Rash?

    MS. RASH: Yes.

    MS. COLVIN: Member Rigby?

    MR. RIGBY: Yes.

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

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

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

    MS. COLVIN: The motion passed.

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

The next point to discuss is time limits.

    So when a consumer makes a complaint to the Department, they're not limited in time. So they could potentially buy a car in 2015 and just now, in 2020,
complain about something that the dealer did.

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

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

MS. COLVIN: Member Doran.

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

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

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

MR. DORAN: Thank you. This is Member Doran, again, just for an additional comment. I guess you guys can kind of see where I'm going with this, but I think it's a bit burdensome if the dealer no longer has the paperwork associated with the transaction because state law doesn't require them to keep it beyond that time, to
then have a customer be able to come back and have a complaint.

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

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

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

MR. DORAN: Member Doran requesting to be recognized.

MS. COLVIN: Member Doran.

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

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

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

MS. COLVIN: Member Olah?
MR. OLAH: Yes. A typical statute of limitations for tort claims is two years and for contracts, it's four years. And this sounds like more of an equitable type of situation, an equitable remedy which would be more likely to fall within that two-year statute of limitations.

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

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

MS. COLVIN: Michael -- Member Rigby?

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

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

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

MS. COLVIN: A motion has been made by Member
Rigby for a four-year. Is there a second?

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

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

MR. DORAN: In favor of motion.

MS. COLVIN: Member Gonzalez?

MR. GONZALEZ: I favor the motion.

MS. COLVIN: Member Cheryl Johnson?

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

MS. COLVIN: Member Olah?

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

MS. COLVIN: Member Rash?

MS. RASH: Yes, in favor.

MS. COLVIN: Member Rigby?

MR. RIGBY: Yes, in favor.

MS. COLVIN: I, Melissa Colvin, vote yes. We're at six votes in favor and one against. The motion passes.

MR. GE: This is Brian Ge. Now that we have resolution 2.3, let's move on to the various scenarios. Hopefully, the scenarios that I wrote down for y'all make
sense and -- in terms of both how it reads and situations where we may want to order a refund, starting with the -- subpoint A.

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

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

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

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

MR. RIGBY: Michael Rigby. I can comment.

MS. COLVIN: Member Rigby.

MR. RIGBY: Yeah. So the doc fee is set by
OCCC rule at $150 and a dealership can charge greater than the 150 if they justify that. That's an exceedingly rare circumstance when a fee greater than 150 would be justified.

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

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

MS. COLVIN: Member Doran.

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

But secondary to the question of should, there's probably some thought about -- well, what is an appropriate amount? And it is my opinion that that is -- that fits within the definition of refund that we...
discussed and passed by a motion earlier during this hearing, as being a service that the customer was -- the consumer was paying for, but was not rendered properly or timely.

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

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

MS. COLVIN: Member Gonzalez?

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

However, I'm concerned if a decision is made that the county tax office should provide a refund and generate a check and forward it to the consumer, that would create extra work activity that I believe the county
tax office cannot handle.

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

Thank you.

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

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

(Pause.)

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

MS. COLVIN: Member Johnson?

MS. JOHNSON: I'm going to step out just a
little bit and make a motion that a refund be ordered in
the scenarios of A through G.

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

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

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

MR. RICHARDS: Madame Chair?

MS. COLVIN: Yes?

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

If I'm incorrect, let me know.

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

MS. JOHNSON: Member Johnson. Request to
speak.

MS. COLVIN: Member Johnson?

MS. JOHNSON: Perhaps I'm misreading this, but
these are pretty clear-cut, where the purchaser has had to expend funds due to failure by the dealer to act. My assumption would be, based on the previous discussion, that these -- the Enforcement Division has already concluded that.

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

(Pause.)

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

MS. JOHNSON: Member Johnson. Wish to speak.

MS. COLVIN: Member Johnson.

MS. JOHNSON: I'm not sure how much you heard. So in essence, what I'm saying is that when I read Item A through G, these appear to be clear-cut situations in which Enforcement likely already reviewed the fact that a consumer was fined because the dealer failed to act.

If we need to go through each one of those individually, because there's -- because that is not -- that's mistaken, then I'll withdraw the motion. Otherwise, these are pretty clear-cut situations, in which it appears that the dealer failed to act.
MR. GE: This is Brian Ge. I think it's probably best that we just at least stated if we come to a quick vote for each one, that would be fine. But we should at least read it out for the record.

MR. DORAN: Member --

MS. JOHNSON: Member Johnson withdraws the motion.

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

MS. COLVIN: Member Doran.

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

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

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

MS. COLVIN: Member Rigby?

MR. RIGBY: Or actually, it's a question. In these -- the list of items, A through G, Brian, do any of those arise out of something other than a failure to honor the contract? And kind of related to that, you confused me a little when you said, well, I'm not looking to a
particular pot of money or a line item on a contract to get the refund from.

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

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

So that is a contract. But we're not enforcing the contract. We're just trying to make the buyer whole. It's a little difficult to -- because the two things I'm saying is obviously contradictory if you're a lawyer. But without enforcing the contract, we are using our enforcement powers or administrative powers to attempt to right some wrong.

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

So we're enforcing a contract without enforcing the contract, as we do not have the jurisdiction to enforce the contracts. We do have the jurisdiction to regulate the business activities of our licensees. Does
that answer your question?

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

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

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

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

But if the buyer also incurred costs because of that failure, the penalty that we assess the dealer isn't going to make the buyer whole, but refunding -- ordering
the buyer -- or rather, ordering the dealer to give the buyer a refund of the fees that the buyer paid for the 30-day permits would make them whole.

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

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

MS. COLVIN: Richards?

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

So I think that speaks to Brian's point.

(Pause.)

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

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

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

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

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

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

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

MS. COLVIN: Member Gonzalez?

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

MS. COLVIN: Member Cheryl Johnson?

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

MS. COLVIN: Member Olah?

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

MS. COLVIN: Member Rash?

MS. RASH: Yes.

MS. COLVIN: Member Rigby?

MR. RIGBY: Yes.

MS. COLVIN: I, Melissa Colvin, vote yes. Members, the vote was unanimous in favor of the motion.
MR. GE: All right. This is Brian Ge. The next point that I would like member input on is when a consumer has to make additional payments on a trade-in vehicle to their lender because the dealer took in the trade, but was late in making the agreed payoff or they just don't do it altogether.

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

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

MS. COLVIN: Member Doran?

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

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

So I hope there's a motion on this.

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

    MS. COLVIN:  Member Johnson?

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

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

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

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

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

    MS. COLVIN:  Member Gonzalez?

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

    MS. COLVIN:  Member Cheryl Johnson?

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

    MS. COLVIN:  Member Olah?

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

    MS. COLVIN:  Member Rash?

    MS. RASH:  Yes, I'm in favor.
MS. COLVIN: Member Rigby?

MR. RIGBY: Yes.

MS. COLVIN: I, Melissa Colvin, vote yes. Members, the vote was unanimous in favor of the motion. The motion passes.

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

MR. GONZALEZ: Permission to speak?

MS. COLVIN: Member Gonzalez?

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

So I favor this very much. Thank you.

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

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

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

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

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

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

MS. THOMPSON: I was just going to say, just
very quickly, a very fact-specific scenario, but just to speak to other requirements imposed on the dealer, one being that the dealer issue a dealer’s temporary tag upon the completion of every sale, and that the buyer's tag can only be placed on a vehicle that has a current inspection.

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

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

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

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

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

So it was the latter of your statement, Member
Doran. The vehicle must have an inspection that is in good standing.

MR. DORAN: Thank you. Very helpful.

(Pause.)

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

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

MS. COLVIN: Member Johnson.

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

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

MR. OLAH: Member Olah seconds.

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

(No response.)

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

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

MS. COLVIN: Member Gonzalez?

MR. GONZALEZ: Yes, in favor of the motion.
MS. COLVIN: Member Cheryl Johnson?

MS. JOHNSON: In favor of the motion.

MS. COLVIN: Member Olah?

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

MS. COLVIN: Member Rash?

MS. RASH: In favor of the motion.

MS. COLVIN: Member Rigby?

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

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

Members, the vote was unanimous in favor of the motion. The motion passes.

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

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

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

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

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

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

MS. COLVIN: Member Doran?

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

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

And so I was wondering, as we put these together, 4-D(Roman numeral I), and then Example 2, if
there was some context that staff had for that example?
Because that is a warranty -- it appears from here that
it's being provided by the dealer, and it could be --
there's different types of warranties.

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

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

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

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

(Pause.)

MR. GONZALEZ: Member Gonzales. Permission to speak?

MS. COLVIN: Member Gonzalez?

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

So I would like that point of clarification.

As I understand it, the car dealer -- the consumer is buying it as-is, and unless it's on the contract, there's nothing to argue about or complain about. So could I have some clarification on that, please?

Thank you.

MS. THOMPSON: This is Corrie Thompson with a comment. We could be -- as Member Gonzales stated, we
could be referencing something in a used vehicle that
pertains to the buyer's guide, whereas the customer is
either buying it as-is, or there are specific items that
are warrantied that would be spelled out on that document
that would be reviewed by the Department, and in those
particular scenarios, I would envision the consumer would
be complaining that something specified on that document,
that the dealer would agree to complete, had not occurred.

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

    MS. COLVIN: Member Gonzalez?

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

    Thank you.

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

    So if a consumer paid $1,500 for a car, but
then -- and the dealers agree to warranty, let's say, the engine again, and the engine gives out, and it costs $3,000 to fix, DMV, we are not -- we're not contemplating ordering the dealer to completely make the consumer whole, just the amount that was paid to the dealer.

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

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

MS. COLVIN: Member Doran?

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

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

And I think what you're saying is, no, the -- there's going to be a cap -- or maybe this is what the
question is. Is the cap on the transaction price of the product that was on the we-owe for which the customer believes they paid for, but the dealer is not honoring the warranty, or is it capped at the overall contract price for the vehicle?

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

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

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

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

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

(No response.)
MS. COLVIN: Is there any further discussion?
(No response.)
MS. COLVIN: Would any member like to make a motion?
MS. JOHNSON: Cheryl Johnson, Galveston County. Request to speak and be recognized.
MS. COLVIN: Cheryl Johnson?
MS. JOHNSON: I would move that the -- a refund be ordered in the scenario of a consumer having to pay for -- or I'm sorry -- a consumer having an out-of-pocket expense because a dealer failed to honor a written we-owe portion of the contract.
MS. COLVIN: The member -- a motion has been made by Member Johnson. Is there a second?
MR. GONZALEZ: I second the motion. This is Gonzalez speaking.
MS. COLVIN: A second has been made. Any further discussion?
(No response.)
MS. COLVIN: Hearing none, I will call for the vote. Members, when I call your name, please state yes if you're in favor of the motion, and no if you're opposed to the motion. Member Doran?
MR. DORAN: Yes, I'm in favor of the motion.
MS. COLVIN: Member Gonzalez?
MR. GONZALEZ: Yes, I'm in favor of the motion.

MS. COLVIN: Member Cheryl Johnson?

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

MS. COLVIN: Member Olah?

MR. OLAH: Yes, I support the motion.

MS. COLVIN: Member Rash?

MS. RASH: In favor of the motion.

MS. COLVIN: Member Rigby?

MR. RIGBY: Yes.

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

Members, the vote was unanimous in favor of the motion. The motion passes.

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

So this will come up in a situation where the dealer sells a car that they don't have title to. They think they're getting it, but they don't get it. They sell the car anyway, and now, they don't have the title. They don't want to pay for a bonded title for the consumer, and so the only way the consumer can get a title to the car is if they put up a bond, and then they get a title that way.
So should the consumer be refunded from the purchase price of the vehicle plus all associated fees, the cost to obtain that bond for that title?

(Pause.)

MS. COLVIN: Is there any further discussion?

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

MS. COLVIN: Member Johnson?

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

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

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

A title hearing is where it would come before me as tax assessor-collector to make the determination that title should have been passed. And although there is
correspondence that has to be exchanged or certified mail
that has to be refused or not delivered, this is
essentially a no-cost method of trying to transfer that
title, and then a bonded title is, like, your last resort.

MR. GONZALEZ: This is Gonzalez. Permission to

speak?

MS. COLVIN: Member Gonzalez.

MR. GONZALEZ: Yes. I echo Member Johnson's

comments. Also, there's another point to consider.

Why -- one of the reasons that a dealer goes into becoming
a dealer -- I mean, one of the conditions is for them to
provide a bond, $25,000 bond.

And the main purpose of that bond was to

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

But I wholly agree that if the consumer asks to

pay for any vehicle title transaction, they should get a
refund for that, but keep in mind that the title hearing
process is a -- should be a recommended option for them
and should be offered to them.

Thank you.

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

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

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

MS. COLVIN: Member Johnson?

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

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

MR. OLAH: Member Olah seconds.

MS. COLVIN: A second has been made. Any further discussion?
(No response.)

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

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

MS. COLVIN: Member Gonzalez?

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

MS. COLVIN: Member Cheryl Johnson?

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

MS. COLVIN: Member Olah?

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

MS. COLVIN: Member Rash?

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

MS. COLVIN: Member Rigby?

MR. RIGBY: Yes.

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

Members, the vote was unanimous in favor of the motion. The motion has passed.

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

In response to this question, Member Snell had
the comments of -- he believes the documentary fee falls under the OCCC, which Member Rigby confirmed earlier, and also that the term “fictitious fees” needs better definition. This is Brian Ge again.

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

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

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

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

MS. COLVIN: Member Rigby?

MR. RIGBY: Yeah. Just to clarify on the adopting of the documentary fee. The OCCC does set the
limit in that. There's some federal law under Truth in Lending that requires a dealer to charge that same amount to both cash buyers and credit buyers.

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

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

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

MS. COLVIN: Member Johnson?

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

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

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

MS. COLVIN: A second has been made. Any further discussion?
MS. COLVIN: Hearing none, I will call for the vote. Members, when I call your name, please state yes if in favor of the motion, and no if you're opposed to the motion. Member Doran?

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

MS. COLVIN: Member Gonzalez?

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

MS. COLVIN: Member Cheryl Johnson?

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

MS. COLVIN: Member Olah?

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

MS. COLVIN: Member Rash?

MS. RASH: Yes.

MS. COLVIN: Member Rigby?

MR. RIGBY: Yes.

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

Members, the vote was unanimous in favor of the motion. The motion passes.

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

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

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

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

For the second question of warranty disputes between manufacturers and dealers, the refund authority that DMV has is limited to the person who buys or sells a
motor -- or rather, is limited to the person being the dealer to pay a refund to the buyer or lessee of a motor vehicle.

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

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

MS. COLVIN: Member Johnson?

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

If you can at least address that for me?

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

Now, if the dealer did everything they were
supposed to in submitting the paperwork for the warranty and paying for the warranty and there's a dispute between the consumer and the warranty company about warranty coverage, we don't license the warranty company, and that would be a contract dispute to be played out in the courts.

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

MS. COLVIN: Member Johnson?

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

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

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

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

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

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

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

MS. COLVIN: Member Olah?
MR. OLAH: I would just like a clarification of exactly what the motion is.

MS. COLVIN: Member Johnson?

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

MR. OLAH: Thank you.

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

MR. OLAH: Member Olah seconds.

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

(No response.)

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

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

MS. COLVIN: Member Gonzalez?

MR. GONZALEZ: Yes, in favor of the motion.
MS. COLVIN: Member Cheryl Johnson?

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

MS. COLVIN: Member Olah?

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

MS. COLVIN: Member Rash?

(No audible response.)

MS. COLVIN: Member Rash?

(No audible response.)

MS. COLVIN: Member Rigby?

MR. RIGBY: Yes.

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

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

The motion passes.

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

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

We have one of our assistant motor carrier
investigative chiefs on the line, Luis Perez. He can give
a little bit more background on that, so you have a
more -- so you can have more informed discussion.

Luis?

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

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

A lot of that, too, is agreed upon on the
contract and agreed to by both parties, but there are
occasions when a household good carrier, mover, will tack
on fees just because of, let's say, an inconvenience;
let's say, a waiting charge for -- they have to go up to the third floor or something like that.

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

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

MS. COLVIN: Member Johnson?

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

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

Now, in some cases, law enforcement is called out there, and sometimes we're able to negotiate the release of the shipment. But in this case for the refund, what we're talking about is additional fees that they're trying to tack onto the contract without it being listed on their rate list, on their tariffs.
MS. JOHNSON: So if they're not licensed movers, how would DMV have any authority over them?

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

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

(No response.)

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

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

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

We're talking about movers who knew they had to register to move people's household goods, and they just said, no, I'm not going to do that. I'm going to move people's stuff, and if I get in trouble for it, I get in
trouble for it, and then I'll just change my name and go about the same business.

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

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

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

MS. COLVIN: Member Colvin. I have a question. Wouldn't we be able to turn them into the FMCSA, and since you're going to revoke their operating authority, would you pursue a case with them?

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

Now, they have given us authority to investigate and conduct enforcement actions against those
if we receive a complaint, but again, it's going to be on a registered motor carrier.

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

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

MS. COLVIN: Thank you.

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

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

MS. COLVIN: Member Gonzalez.

MR. GONZALEZ: Yes. In regards to the tariff document, is there a uniform tariff document that's signed by the customer, the consumer, when they contract with a mover so that they are aware of these circumstances or exceptions of when they can load or unload, or if they ask for special favors, special requests to make extra stops? Is the tariff document a form so that the consumer knows what they're getting into? Thank you.

MR. PEREZ: This is Luis Perez with Enforcement. Good morning, Ruben. There is a standard
format that we provide to all the movers that apply for
and receive their Texas DMV certificate to -- authority to
operate.

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

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

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

If they don't or if we get reported that one
has expired or has been removed, we can initiate an
investigation on that carrier. But it is available for
public viewing. It is on our website. If they don't see
it there -- for example, a mover can also submit their
interstate tariff in order to comply with this requirement.

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

So it is supposed to be made publicly available.

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

MS. COLVIN: Member Rigby.

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

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

MR. GE: This is Brian Ge. We've never had the authority to order refunds before this, and until this Committee presents its recommendation to the Board, we again don't have the authority to order refunds. So until that's built into our rules, it's just not something we would have done in the past.
But in terms of orders against unlicensed carriers, there is only so much we can do. Like, it's all bark, no bite. We can refer you to law enforcement, but that's incumbent on law enforcement to take the referral.

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

MS. COLVIN: Member Rigby?

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

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

Thank you.

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

MS. THOMPSON: This is Corrie Thompson. What Brian is trying to say is, an unlicensed entity, be it on the motor carrier side or on the motor vehicle dealer
side, has little incentive to comply. These are usually bad actors who have no aspiration of ever being registered or paying operating authority or being licensed by the Department, and so you're essentially -- you know, if you -- you're judgment-proof, basically.

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

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

MS. JOHNSON: Member Johnson requests to be recognized.

MS. COLVIN: Member Johnson?

MS. JOHNSON: I'm going to take a shot at this, and it's somewhat of a two-step motion that I'm hoping is going to be acceptable, and I think it would concur with the conversation I'm hearing, that a refund be ordered in
a scenario concerning charge for costs listed under tariff after the household goods mover takes possession of the consumer's property, and a mover refused to unload until those charges were paid, and that further, we encourage referral by the Board of unregistered carriers to law enforcement authorities.

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

MR. OLAH: Member Olah seconds.

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

(No response.)

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

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

MS. COLVIN: Member Gonzalez?

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

MS. COLVIN: Member Cheryl Johnson?

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

MS. COLVIN: Member Olah?

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

MS. COLVIN: Member Rash?

MS. RASH: (No audible response.)
MS. COLVIN: Member Rigby?

MR. RIGBY: Yes.

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

Members, the vote was unanimous in favor of the motion. The motion passes.

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

Thank you.

MR. RICHARDS: Madame Chair, may I speak?

MS. COLVIN: Yes, sir.

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

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

MS. COLVIN: Members, we're now going to move forward to Agenda Item 2(c). Agenda Item 2(c), "Temporary
Tags (Legislative Recommendation)," TxDMV VTR Division.

Members, I will now turn the meeting over to OGC's associate general counsel David Richards and Mr. Jeremiah Kuntz, director of VTR Division.

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

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

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

MR. KUNTZ: Hey, David?
MR. RICHARDS: Yeah?

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

MR. RICHARDS: Certainly.

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

Is that correct?

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

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

MR. RICHARDS: It should be temp tags.

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

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

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

(Pause.)

MR. RICHARDS: Is that fine? Okay. I'm going to just continue on this one. We'll deal with temp tags.
Again, to restate what I did initially, the issue of entry invalidation of a driver's license number, identification card, into the eTAG system before issuance an eTAG. Member Johnson had comments the last time on dealer agent specific tags that she believes, at that time, should have a DL, a Texas DL, entered into.

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

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

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

What else do we -- oh, I'm sorry. I've got a couple more. Jim Snell, Member Snell recommended -- had a
recommendation about dealer deputies. I think Jeremiah clarified for him at the last meeting that TACs have discretion.

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

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

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

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

MS. COLVIN: Is there any further discussion?

MS. JOHNSON: Member Johnson. Request to be
recognized and to speak?

    MS. COLVIN: Member Johnson?

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

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

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

    Is that also your understanding, Mr. Kuntz?

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

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

    The dilemma with that, in relying upon that for
a vehicle that is leaving the lot, let's say, that day is
that in order for those tags to be recorded in the
registration and title system, the title must be
submitted -- the application for title must be submitted
immediately to the tax office, reviewed and approved by
the tax office, in order for that hard-metal plate to get
activated.

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

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

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

I would also go back and just make sure that
everybody is under the understanding, and if this is going
to be changed in law, that's fine, but every vehicle sold
is required to have a buyer's tag, a paper tag issued, regardless of whether or not the metal plate is affixed to the vehicle or not.

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

(Pause.)

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

MS. COLVIN: Member Johnson?

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

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

Therefore, the only exception would be a dealer vehicle-specific tag -- would be tied, rather than to a
TDL, but be tied to a licensed dealer. So I guess I offer that in the form of a motion with regard to the like TDL aspect of this topic.

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

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

MS. COLVIN: Member Olah?

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

MS. JOHNSON: Member Johnson, requesting to respond.

MS. COLVIN: Member Johnson?

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

(Audio momentarily disconnected.)

MR. DORAN: -- say segregate out vehicles. So then you don't have the requirement for the driver's license, and specifically what I'm talking about is, if you're dealing with a commercial fleet vehicle, it may be -- I would think it may not be appropriate to have to tie that to a driver's license number.
So it's a technical question, from the standpoint of -- does that capacity exist with the agency to be able to not require it on certain vehicles?

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

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

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

Does that help answer your question?

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

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

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

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

All vehicles that are purchased in the state of Texas require an identification document in order to title that vehicle. Driver's license being one of those documents that's required. There is no exception for
commercial companies, for commercial carriers or anybody else from that requirement to produce an identification document.

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

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

The distinction here -- and I want to make sure that we're very cognizant as we talk about that. Obviously, a passport cannot be utilized to operate on the roadway. You would require a driver's license in order to operate a vehicle on the roadway.
So for the purposes of titling, a passport is a perfectly legitimate document for identifying the person who is applying for title. However, to operate that vehicle on the roadway, obviously, a Texas driver's license would be a required document.

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

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

So I'm sure that that will generate some conversation, but I want to make sure that we kind of lay
it out, the whole scenario.

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

MS. COLVIN: You may have the floor.

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

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

If the Committee would like other identification documents to be allowed to be entered into
the system for the purposes of identifying who the 
operator of the vehicle is, then those other documents -- 
the Department does not have an electronic method by way 
to verify and validate that the driver's license is a 
valid driver's license from those other states, as we do 
not have an interface that can be, you know, integrated 
into our system, like we do with the Texas driver's 
license.

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

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

(Pause.)

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

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

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

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

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

So how much time would it take for the agency to make that adjustment in the system?
MR. KUNTZ: The issue that I believe, from a technological standpoint, and we can do some more research on this, is -- I'm not aware that there are systems available for national identification and verification to departments in an electronic format that we can access.

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

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

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

I'm not aware of any database or systems that we can tie into to verify military IDs or other things like passports for folks that are here on visas and those
kind of things. I'm not aware that they have web services available for us to tie into, to do verifications.

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

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

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

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

Is that your question?

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

I'm not sure that we're going to be able to give you an answer to whether -- I certainly think it's appropriate for anybody driving a vehicle on Texas roads
to have a Texas driver's license, although I -- particularly, purchasing one.

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

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

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

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

If the will of the body was to make that change in statute, then obviously that could be an option to look at, limiting those tags to only being sold to -- or only being placed on vehicles sold in the state. But that would also then pose a problem for anybody coming into this state to purchase a vehicle. They would have to get a temporary tag from their own state in order to move the vehicle back home, if you will.
As to timed permits, I believe there's a greater latitude for the Department to limit the issuance of those to residents of the state of Texas for, you know, 30-day and one-trip permits, that you know, if somebody is needing a one-trip permit from another state, that they would need to go to their state in order to obtain those permits from their own jurisdiction, and that the permits would only be issued for Texas citizens.

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

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

MS. JOHNSON: And to further that, with regards to the commercially-owned vehicles, the owner of the company is the person whose driver's license is being captured. I know, in our office, we -- with permission --
actually, I think the person walking in with the paperwork with the permission of the owner of the company whose TDL that we're using.

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

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

MS. COLVIN: Yes, sir.

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

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

So we have seen in law enforcement and in enforcement cases that dealerships that had access to the WebDEALER system for the issuance of buyers' tags are selling tags on Craigslist, or you know, Facebook
Marketplace, whatever. That if you need a tag for a vehicle, that you could come to their dealership, purchase a tag for $50, $100.

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

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

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

MS. COLVIN: Member Johnson.

MS. JOHNSON: So any driver's license would work, Mr. Kuntz, and we wouldn't necessarily have to tie anything to a buyer if they're taking it out of state,
because a reputable dealer or a legitimate transaction could be the dealer's driver's license that's tied to that, which would be a legitimate driver's license that could be validated.

Correct?

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

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

MR. KUNTZ: That would be an option.

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

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

MS. COLVIN: Please, sir.

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

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

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

MR. OLAH: Member Olah seconds.

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

(No response.)

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

Member Doran?

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

MS. COLVIN: Member Gonzalez?

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

MS. COLVIN: Member Cheryl Johnson?

MS. JOHNSON: In favor of the motion.

MS. COLVIN: Member Olah?

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

MS. COLVIN: Member Rash? Member Rash?

(No response.)

MS. COLVIN: Member Rigby?

MR. RIGBY: Yes.

MS. COLVIN: I, Melissa Colvin, vote yes. Let
the record reflect that we were unanimous in the vote.

The motion has passed.

MR. KUNTZ: Madame Chair, if I might?

MS. COLVIN: Mr. Kuntz?

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

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

And I'm going to have Corrie Thompson help me
out a little bit on this recommendation, as this has come
up in some discussions with law enforcement. So some
things to keep in -- to consider as we're going through
this. There is a requirement statutorily that a dealer
issue a buyer's tag to every vehicle that they've sold, as
I've referenced before, and they are required to issue
those tags by accessing the Department's electronic system for the issuance of those tags.

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

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

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

MS. THOMPSON: Corrie Thompson, for the record. Just to add a little bit of additional detail here. As Jeremiah has laid out, this would be a potential statutory change recommendation that would be pushed forward at next
session, potentially, depending on how the discussion goes here with the Committee.

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

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

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

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

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

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

And so if SOAH is going to be the final decision-maker in a case, that has to be spelled out in statute. And currently, for motor vehicle cases, which is what we're talking about here, the Board is listed as the final decision-maker for cases that involve sanctions on a
So that would be anything that ultimately gets docketed at the State Office of Administrative Hearings, has a full-blown hearing where there is evidence put on, witnesses, and a SOAH ALJ actually issues a proposal for a decision, saying, you know, what the outcome of the case is, in their opinion, based on how they've weighed the evidence.

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

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

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

MS. COLVIN: Member Johnson?

MS. JOHNSON: So, Ms. Thompson, would this mean, then, though, that you could suspend access -- the DMV could -- the Board could move forward with a
legislative change that the Department may suspend access to the electronic system, pending due process by an expedited SOAH hearing. But in the meantime, an alternative process to allow that business to operate would be all in-person transactions in county tax offices?

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

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

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

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

MS. COLVIN: Member Doran.

MR. DORAN: So Corrie, I had never really thought about this prior to the COVID situation, but if I
could just run a hypothetical past you. So I know there's 
a statutory provision that says, if a dealer is not 
operating in the ordinary course of business or for a 
certain number of days, you know, that can serve as one of 
the grounds for a franchiser to terminate the franchisee.

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

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

So maybe you can just kind of put my fears or 
concerns aside by walking through that hypothetical to 
make sure that the dealership wouldn't find themselves in 
a termination situation with their franchiser simply
because they have this inability to continue to do the tags because of extenuating circumstances.

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

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

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

MR. DORAN: Okay.

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

MR. DORAN: Right. And I guess what I'm just
getting at is (audio break) need to continue to seek out and obtain tags, due to these other circumstances.

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

MR. DORAN: Uh-huh. Yes.

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

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

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

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

MR. KUNTZ: I did not. Just was hoping the
Committee would provide either comments or suggestions.

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

MS. COLVIN: Ms. Thompson.

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

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

MS. COLVIN: Member Johnson?

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

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

MS. THOMPSON: Okay. Corrie Thompson again.

MS. COLVIN: Ms. Thompson?

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

MR. GONZALEZ: Madame Chair, permission to
speak?

MS. COLVIN: Member Gonzalez?

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

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

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

Thank you.

MR. KUNTZ: We will be more than happy to try
and come up with alternative solutions. I will tell you, this is a topic that the Department has been thinking about and mulling over for quite some time. I think the recommendations that you've seen pretty much encapsulate the recommendations to this point as far as statutory or rule-language type changes that could be made to strengthen the enforcement and prevention of fraudulent use.

We have done quite a bit of -- or had taken quite a bit of effort to make system changes to try and prevent misuse, and you know, duplication or fraudulent, you know, production of temporary tags, and trying to provide our assistance to law enforcement.

This is one of those very difficult situations, and we are kind of all ears, if the Committee sees that there are other recommendations that we have not thought about. We are all ears for any other recommendations that the Committee would see fit to either assist in the prevention of fraudulent issuance or misuse of tags, but also for the potential prosecution on the other side, as we've talked about here, or you know, turning folks off on their ability to issue these tags, as in the case that we've talked about here, dealers.

You know, some of the things that we talked about last time, as far as the tags that are available
online, the timed permits, 30-day, one-trip, 72-hours, those things, we have code changes that we are waiting to implement when we have sufficient IT resources to get to those. And until such time as those resources are available and we can make changes -- for example, 30-day and one-trip permits are not available online anymore.

We took those off, and those can only be issued out of a tax assessor-collector's office. If tax assessor-collectors believe that there are additional restrictions that they would need on their employees' ability to issue 30-day or one-trip permits or any other security features that they would like to see on those, and we would be more than happy to evaluate those.

But at this time, those -- you know, those can only be issued in our offices, the DMV offices, and the tax assessor-collector offices. So that primarily -- the primary point where fraudulent use was occurring was online, and that is not available for those timed permits at this point.

But again, the dealer tags seems to be the primary focus of law enforcement that we've seen lately. So we are definitely open to any suggestions that the Advisory Committee would have to assist the Department and law enforcement in helping to prevent fraudulent production and misuse of tags.
MR. GONZALEZ: Thank you, Jeremiah. I am on board with your thought process and I fully support it. So I will be getting back to the Committee and offer some suggestions. Thank you very much.

MS. COLVIN: David Richards?

MR. RICHARDS: That's fine. Sure.

MS. COLVIN: Is that the conclusion of your presentation?

MR. RICHARDS: I did -- thank you. I was just getting ready to ask to be heard. What I would like to run by -- as I mentioned earlier, there were a couple of suggestions that were made at the prior meeting. Unfortunately, Chief Johnson is not with -- on this call today.

I'm going to throw these out for the members' consideration, and if they want to wait until he's back, to maybe further explain what he means, although they're fairly self-explanatory, we can do that. But just for the sake of bringing these up again, Chief Johnson suggested a buyer's information sheet, that we require, the Department require dealers to give buyers an information sheet regarding rights and obligations.

That was one of his suggestions. Establish a complaint hotline. And again, members, these are just your recommendations to the Board. Whether they -- you
know, we hope -- I mean, it's a good suggestion, I think, both of these, but they're just a recommendation.

Member Gonzalez, at the last meeting -- and Member Gonzalez, you can chime on this as well -- mentioned providing training and education to dealers regarding these tags. I'm not sure that's not already being done.

Corrie Thompson might want to interject on that one. But these are a couple other items that, at today's meeting, if you would like to discuss them further and maybe entertain a motion for any one of these, we can do that.

If no member is inclined to want to discuss these, that's fine, too. But Member Gonzalez, since you're on the line, on this call, you mentioned training and education of the dealers. Is that something you still want to be put forward, and if so, could you explain what it is you mean by that, and what sort of training, anything else that would aid the rest of the members in understanding that particular suggestion?

MR. GONZALEZ: Yes, sir. What we see a lot out here is, in the dealer community, I know that the Enforcement Division comes out once a year and gives them an update as to what their responsibilities are. A lot of these dealers that do attend these meetings are the more
legitimate dealers.

There's not 100 percent coverage, because here in El Paso, we have over 700 dealers. And pretty much, when the dealers are having a meeting hosted by the Enforcement Division, there's more lien holders and banks attending these meetings, and franchised dealers, than the independent used car dealers. And a lot of the problem areas that we see is from used car dealers, where they tend to be a little bit more on the abuse side, either through ignorance or intentionally, and the training will be helpful for them.

On the enforcement side, we -- I'm fortunate that I have an Enforcement Division here, which I make them specialize in the use of those tags and what the -- the kind of cases they can file with the County Attorney. But in many cases, we provide training for the constables, the sheriff's office. Our local DPS has come out and asked for our assistance.

So we clarify for them, when using these tags, and go into detail as to what they can do. And their biggest concern is not being able to have probable cause to stop a vehicle, as they cannot read the purpose of the tag. If it's a 72-hour permit or a one-trip permit, sometimes they can't see that on the road.

The numerical digits assigned to them, they
don't understand if there's a secret to them or they're valid. With the dealers reproducing cardboard tags -- paper tags. They're out there, and there's no connection to the vehicle at times, unless we get them stopped. So unless there's a probable cause from enforcement to stop them, they're not going to stop them because they don't feel comfortable.

So those are the types of issues that we see that they are asking is to make enforcement better so that these folks can comply with the regulations and the statutes to operate a vehicle on the street. So those are the things that I'd like to maybe highlight and share with the Committee, and maybe we can address them through Mr. Kuntz and also Ms. Thompson down the road.

MS. THOMPSON: Yes, Presiding Officer Colvin? Corrie Thompson. If I can make a comment?

MS. COLVIN: Ms. Thompson.

MS. THOMPSON: Yes. I just wanted to mention -- I don't see Daniel Avitia, director of the Motor Vehicle Division, on the line, but he worked through -- worked with Sunset for some language and an education requirement during last legislative session that is now in statute at Transportation Code 503.0296, which requires independent motor vehicle dealers -- if I could speak, sorry, I'm getting hangry -- motor vehicle dealer
education and training.

And so that says that the Department creates rules that require an applicant for an original or renewal general distinguishing number complete a web-based education training. And I know that a lot of those trainings are being developed by different people within the industry that will be available for dealers to take.

But that will now be a requirement as of the last legislative session, and that is in current statute now. As to training on temporary tags, yes, the Enforcement Division does temporary tag training for law enforcement upon request, so that if you know of any area that has a need for that temporary tag training, I'm happy to set them up with somebody from my division who can provide them with that training, to help educate.

MR. RICHARDS: Madame Chair, David Richards. May I speak?

MS. COLVIN: Yes, sir.

MR. RICHARDS: Thank you. Member Gonzalez, were you focusing primarily your concerns on the used car dealers, that they be trained? I don't know that they would be trained on the tags. I haven't seen the training program, the curriculum.

I'm hoping that will be the case if they are required under the statute and under the rules of the DMV,
to take the tags. That may solve your concern or your main concerns. Would that take care of it?

MR. GONZALEZ: The training is one aspect of it, but there a lot of individuals that may not be related to the dealer community that are taking the liberty of manufacturing these fictitious tags. And, of course, they're selling them and that's what the issue is.

So it's a combination of maybe a little bit more training or understanding. But at the same time, it's more of an enforcement issue, so that they can be identified when they sell them to the consumer and they're driving that vehicle, that they can be possibly stopped.

And unfortunately, the driver, the operator of the vehicle is the one that's going to get ticketed, and the person that sold the paper tag is long gone, in many cases. So those are some of the things that we see quite a bit out here, where there's all kind of agent tags out there, and there's no control over them, and just -- people are just reproducing paper tags left and right, and driving out there without any payment of the tag or proper use of the tag.

And who knows? Maybe no insurance also. So those are multiple things that are -- we can include in the concern, but that's where we need to kind of focus and hopefully identify and enforce and prevent the abuse of
it.

MR. RICHARDS: Thank you, Member Gonzalez.

Madame Chair, I have nothing else, unless one of the members wants to take up one of the issues that I raised or at least brought to your attention that Chief Johnson brought the last time.

That would conclude everything that I had to say. I will defer also to Jeremiah Kuntz, if he has something else that he'd like to bring up while we're on this particular agenda item, or Corrie Thompson as well.

MS. JOHNSON: Member Johnson asking to be recognized and to speak?

MS. COLVIN: Member Johnson?

MS. JOHNSON: Based on the recommendation David just made, I would like to make a motion that the Committee recommend to the Board that it direct the Department to create a buyer information sheet that includes a consumer's rights and obligations and establish a buyer's -- and examine or research establishing a buyer's hotline.

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

MR. GONZALEZ: I second the motion.

MS. COLVIN: A second motion has been made by Member Gonzalez. Is there any further discussion?
(No response.)

MS. COLVIN: Hearing none, I'll call for the vote. Members, when I call your name, please state yes if you are in favor of the motion and no if you are opposed.

Member Doran?

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

MS. COLVIN: Member Gonzalez?

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

MS. COLVIN: Member Cheryl Johnson?

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

MS. COLVIN: Member Olah?

MR. OLAH: Yes, an enthusiastic yes.

MS. COLVIN: Member Rash?

(No response.)

MS. COLVIN: Member Rigby?

MR. RIGBY: Yes.

MS. COLVIN: I, Melissa Colvin, vote yes. Let the record reflect that the vote was unanimous, and the motion has passed. Members, we're now moving on to -- members, we're going to table Agenda Items 2(d) and 2(e). We're going to move on to Agenda Item 2(f). Agenda Item 2(f), "Future Meeting Schedule."

Members, our next meeting is scheduled for May 28, 2020, beginning at 9:00 a.m. Would any members like to discuss this item today, or do any of you have any
thoughts regarding our next meeting, meetings or the
meeting schedule?

MR. RICHARDS: Madame Chair, David Richards.

MS. COLVIN: Mr. Richards?

MR. RICHARDS: I didn't mean to cut off any of
the members who would like to speak. But members, what
we're looking at here -- we have a May meeting, as the
Chair has indicated, May 28. We're hoping to set the
meeting schedule for the next three months, at least three
months out.

I realize today you may not be able to make a
motion, look at your calendars, and say, I want it to be
June 9, or whatever. We can clearly -- or be happy to let
y'all go back to your offices and check your calendars,
and take up this item at the May 28 meeting next week.

But we thought maybe if we could nail a set
meeting schedule over the next two to three months, that
way, it would ensure that we have a quorum at each meeting
to address the issues that are before you. And if you
would like to do that, we can clearly wait until May 28 to
set a meeting schedule.

We think that might be a better road to go. We
do know that people may -- I say, may -- travel during the
summer, and they may not. So getting a set date -- and it
doesn't have to be the same day, clearly, obviously. Say,
the month of June or the month of July or the month of August, but a date where it appears that we can have at least a quorum, if not everybody present on the call.

So I'm going to put my phone on mute and let the members indicate what their thinking is, and if they would prefer to wait until the next meeting?

MR. OLAH: Member Olah would like to speak.

MS. COLVIN: Member Olah?

MR. OLAH: Yes. Generally, as per my particular situation, generally Thursday afternoons are not good. I have conference calls -- actually, I've had conference calls on Thursday afternoons for the past three or four years.

So that -- as far as any other time or day of the week, I'm open.

MS. COLVIN: I would recommend that at the next meeting we agree upon a set date and time for our next two meetings. For example, June and July, and that this discussion be an agenda item at our May 28, 2020 meeting.

Members, we will now move on to Agenda Item No. 3, public comment.

Members, the next agenda item is public comment, Item No. 3. David, are there any comments from the public?

MR. RICHARDS: Madame Chair, David Richards,
for the record. I believe we have -- we had one that indicated -- I don't see him on the call, but Ted Endicott had submitted written comments to us, and we were under the impression he would be on the call to make comments.

So I will ask, Mr. Endicott, are you on this call?

MR. ENDICOTT: Yes, I'm on this call. Yes, I am.

MR. RICHARDS: Okay. Great. Thank you. Thank you, sir. Madame Chair, Ted Endicott is wanting to comment. So if you'll -- do you have some comments you need to address him with?

MS. COLVIN: Yes, sir. We will now hear from Ted Endicott. You will need to unmute your line to comment, and please be mindful about limiting any background noise. Also, please state your name for the record and if you're representing anyone.

You will have three minutes.

MR. ENDICOTT: Yeah. Hello. My name is Ted Endicott, E-N-D-I-C-O-T-T. And a little bit of my background experience is that I have been a car dealer, or have been in the car business since 1992, and gave up my license in 2013, but I've remained assisting my son in his business.

And so I have some experience in the automobile
industry when it comes to automobile sales, and I've come across something that's been bothering me for several years, and it has to do primarily with the sale, public sale of motor vehicles to the public by vehicle storage facilities and tow companies. My concern is that these companies, which I know are monitored by the Texas Department of Licensing and Regulations, but my concern is that there has been, and still does exist, some consumer protection issues.

When you buy from a vehicle storage yard, you don't have a vehicle that's been inspected and prepared for sale to the public, in the same way that a motor vehicle dealer does. And looking at the Texas Occupations Code, 2303.157(b), it states, "an operator entitled to dispose of a vehicle under this section may sell the vehicle at a public sale without obtaining a release of discharge of lien on the vehicle, regardless of whether or not they were provided mail-in notice or publication -- or by publication under this chapter."

It goes on to say, "the operator shall pay any excess fees to the persons entitled to those proceeds."

Those are other issues that go along with this, but as I read the information provided to me by the Texas Department of Licensing and Regulations, the above code only gives an authority to sell at a public sale, but does
not specify how they are supposed to conduct that sale.

This is where I believe the Texas Department of Motor Vehicles should be involved. Excuse me. Excuse me. I'm sorry. I believe this is where the Texas Department of Motor Vehicles should be involved.

My interpretation is that, yes, tow companies and vehicle storage yards do fall under the enforcement by the Texas Department of Motor Vehicles when selling motor vehicles directly to the public. And let me go on to explain a little bit further --

MR. RICHARDS: Madame Chair?

MS. COLVIN: Yes, Mr. Richards?

MR. RICHARDS: David Richards, for the record.

I'm sorry. As all commenters are informed, and this commenter was informed as well, he had three minutes within which to comment. The system automatically muted his line.

We do have his written comments at the agency. I will work with the Enforcement Division on responses to Mr. Endicott's comments, and we'll bring that back to you, or at least make the Committee aware of what our responses are, and what those are.

So apologizes to Mr. Endicott, but we run a fairly strict time limit on comments. Public comments to open meetings are just that. They're comments. We don't
engage in discussion with them. But we'll definitely bring this to -- or some of the issues back to you at the next meeting or the meeting after that, and inform the Committee of our correspondence.

MS. COLVIN: David, are there any other comments?

MR. ENDICOTT: Okay, I understand that, and I'm so sorry. It's just a little bit lengthy --

MR. RICHARDS: Madame Chair?

MS. COLVIN: David, are there any other comments?

MR. RICHARDS: Madame Chair, David Richards, for the record. There are no further comments.

MS. COLVIN: We will now move on to Agenda Item 4, adjournment. Unless there's any further business, I would like to entertain a motion to adjourn. Do I have a motion from anyone to adjourn this meeting?

MR. DORAN: This is Member Doran. I'll make the motion to adjourn this meeting.

MS. JOHNSON: Member Johnson. Second.

MS. COLVIN: A motion is made by Member Doran and second by Member Johnson. The motion has been made and second to the adjournment of this meeting. All in favor? Let the reflect that the vote is unanimous. It is now 1:17 p.m.
We are adjourned.

(Whereupon, at 1:17 p.m., the meeting was adjourned.)
CERTIFICATE

MEETING OF: TxDMV Consumer Protection Advisory Committee
LOCATION: Austin, Texas
DATE: May 19, 2020

I do hereby certify that the foregoing pages, numbers 1 through 155, inclusive, are the true, accurate, and complete transcript prepared from the verbal recording made by electronic recording by Latrice Porter before the Texas Department of Motor Vehicles.

DATE: May 26, 2020

/s/ Adrienne Evans-Stark (Transcriber)

On the Record Reporting & Transcription, Inc.
7703 N. Lamar Blvd., Ste 515
Austin, Texas 78752