TEXAS DEPARTMENT OF MOTOR VEHICLES

CONSUMER PROTECTION ADVISORY COMMITTEE

MEETING

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

Thursday,
June 18, 2020
9:04 a.m.

COMMITTEE MEMBERS:

Laird Doran, Presiding Officer
Dorothy Brooks
Richard Cavender
Melissa Colvin (absent)
Tiffen Eshpeter
James French
Ruben Gonzalez
Cheryl Johnson
Traci McCullah
Ray Olah
Jeanette Rash (absent)
Michael Rigby
Carroll Smith
Juan Solis (absent)
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MR. DORAN: Good morning. My name is Laird Doran, and I'm pleased to open the meeting of the Consumer Protection Advisory Committee. For ease of reference, I will refer to this Advisory Committee as CPAC, which is the acronym for this Committee.

It is now 9:04, and I am now calling the CPAC meeting for June 18, 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 June 10, 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 June 10, 2020. All Advisory Committee members, including myself, will be participating remotely via WebEx.

At this time, please mute your phone for the entire duration of this meeting. I am asking our 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 before speaking. Please speak clearly. Remember that 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 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 are speaking on behalf of yourself. If your comment does not pertain to a specific agenda item, 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 Texas Department of Motor Vehicles public meetings. In the Department's rules, under 43 TAC, or Texas Administrative Code, 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 I just
discussed. Disruptive speakers will be muted, given a warning about disruptive behavior, and then 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, Texas DMV staff will interrupt the meeting to let us know to get you back on the line before we proceed with the agenda.

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

MR. DORAN: Member Brooks?

MS. BROOKS: Here, present.

MR. DORAN: Member Brooks, I want to welcome you and all the other new members to the Committee, and we'd like to just take a minute for you to introduce yourself to the Committee members and tell us a little bit about your background.

MS. BROOKS: Thank you. I am director of Operations for Southwest Movers Association. I've been there 20 years, working with the movers. Prior to that, I
was with Texas Trucking Association, and for about 40 years.

So this is an opportunity and a pleasure and an honor for me to participate on this Committee.

MR. DORAN: Thank you, Ms. Brooks. We appreciate having you.

Member Cavender?

MR. CAVENDER: Present. Good morning.

MR. DORAN: Good morning. Member Cavender, would you please introduce yourself as well, and if you wouldn't mind sharing a little bit of your background?

MR. CAVENDER: Yes. Good morning, fellow members. I am Rick Cavender from the Cavender Auto Family in San Antonio, Cedar Park, Columbus, and Weimar. We have dealerships in Texas, and we have been in business 80 years, celebrating that.

I am a long-time automobile dealer, currently dealer principal at Audi Dominion in San Antonio. I'm the past chairman of Texas Automobile Dealers Association and the past chairman of the San Antonio Automobile Dealers Association, and it is indeed a great pleasure to move into participation on this Committee.

Looking forward to our future together.

MR. DORAN: Thank you, Member Cavender. We are very pleased to have you.
Member Eshpeter? Did I pronounce that
correctly? Member Eshpeter?

MS. ESHPETER: Oh, sorry. Yes. Here. It kept
re-muting on me.

MR. DORAN: Okay. Wonderful. Would you mind
sharing a little bit about your background as well with
the Committee?

MS. ESHPETER: Yes. I've been with Better
Business Bureau for 20 years. I'm the chief operating
officer, and oversee all of our reporting and the
information that we provide on companies.

MR. DORAN: Wonderful. Well, so pleased to
have you joining us.

Member French?

MR. FRENCH: Yes. Present.

MR. DORAN: Member French, welcome. If you
wouldn't mind sharing just a little bit about your
background as well?

MR. FRENCH: Okay. I have been involved in the
movement and storage industry for some 53 years, and
represented -- or represent Scobey Moving & Storage here
in San Antonio. The company is also represented in El
Paso, Austin, Killeen, two operations here in San Antonio,
so we're a pretty good-sized industry.

I have been involved with Southwest Movers as
chairman several years ago, and will continue to work with them in the future. I've also just been involved with Meals on Wheels San Antonio for the last six years as a member of their board of trustees.

I think that's it. I'm glad to be involved and see what we can do to contribute.

MR. DORAN: Well, welcome, Member French. We are delighted to have you.

Continuing with the roll call, Member Gonzalez?

MR. GONZALEZ: Present.

MR. DORAN: Member Cheryl Johnson?

MS. JOHNSON: Present.

MR. DORAN: Okay. Member McCullah?

MR. McCullah?

(No response.)

MR. DORAN: Okay. Member Olah?

MR. OLAH: Present.

MR. DORAN: Okay. Member Rigby?

MR. RIGBY: Present.

MR. DORAN: Okay. Member Smith?

MR. SMITH: Present.

MR. DORAN: Welcome, Member Smith. I wanted to give you an opportunity to introduce yourself to the group as well.

MR. SMITH: Thank you, Mr. Chairman. I am a
45-year Chevrolet dealer in Pasadena, Texas. I have served on the board of the Houston Auto Dealers Association, and as chairman, Texas Auto Dealers Association, and as chairman, and served 16 years representing the dealers of Texas on the National Auto Dealers Association board.

I'm certainly excited and looking forward to serving with this group and will look forward to contributing, and thank you very much. Good to be with you.

MR. DORAN: Glad to have you, Member Smith.

Member Solis? Member Solis?

(No response.)

MR. DORAN: Okay. For the record, I am Laird Doran. I am present as well, and I do believe that we have a quorum.

MR. RICHARDS: Mr. Doran?

MR. DORAN: Yes?

MR. RICHARDS: David Richards for the record. I believe Ms. McCullah is on the call. Maybe she was muted before.

Traci, are you on the call now?

MS. McCULLAH: Yes, I am.

MR. RICHARDS: Could you give us some background information, please?
MS. McCULLAH: Absolutely. I am 40 years in the moving industry. I am past chairman of Southwest Movers, past president of Houston Movers. I'm a second-generation mover. I am a past Household Good Advisory Committee member under Johnny Walker, and I've spent 20 years with the Houston Livestock Show and Rodeo as a volunteer.

MR. DORAN: Well, Member McCullah, we are delighted to have you. Thank you for joining us.

MS. McCULLAH: Thank you.

MR. DORAN: Okay. Members, we are going to now take up Agenda Item No. 2, Discussion, Briefing and Action Items, as we move to Item No. 2a, which is Title and Consumer Issues When a Dealer Goes Out of Business.

Members, you will recall that we began a discussion on this agenda item back on May 28, 2020 at our CPAC meeting.

We need to continue that discussion and decide upon recommendations that will be made to the Texas Department of Motor Vehicles Executive Director, as well as the Board. You will also notice that since our last meeting, this agenda item has been expanded to include a discussion involving consequences to consumer financing and credit scoring when a dealer goes out of business.

Members, the discussion will be led today by
Director of Vehicle Titles and Registration Division, Mr. Jeremiah Kuntz. I will now turn the meeting over to Mr. Kuntz. Jeremiah?

MR. KUNTZ: Thank you, Chairman Doran. So the last time -- and we'll kind of go over this a little bit for the benefit of our new members, so I'll try and cover this quickly so as to not completely repeat the presentation that we did the last time.

But during the last legislative session, statutes were amended to put in place some provisions related to the waiving of certain fees when a dealer goes out of business and specifically relating to the waiving of the title and registration fees for dealers that have gone out of business.

And that is -- and obviously, in order to provide consumers with the benefit of not having to pay for those fees again, because the way it's set out is they would have potentially already paid the dealership for the title, the registration for a vehicle, and that dealership has gone out of business and has basically not applied for title in accordance with state law.

So the Department recently adopted rules related to when those fees can be waived, and so we have certain conditions that would be met when those fees can be waived, and specifically, if a dealer has ceased
operations as determined by the Department, and for example, if our Enforcement Division went out to do a site inspection and saw that the dealership was boarded up or they had a closed sign or something on their business property, but they hadn't necessarily notified the department.

They had just basically closed up and we weren't aware until we actually saw that they were -- they appear to be closed, or if they have surrendered their license, so they've, you know, told the Department -- not going to be operating as a dealership anymore.

They've, you know, stopped operating, and so their license has not been renewed, and they've told the Department, we're going out of business. In those instances, a consumer that has potentially been harmed has the ability to come to our Regional Service Center and notify our staff that they believe that the dealership has gone out of business.

We would do exactly like I said. We would do some kind of investigation, determine that, yes, indeed, that dealership has gone out of business, and then we would issue that consumer a letter that they could take with them to the county tax assessor-collector's office to apply for title and registration, and we would itemize all of the fees that would be waived by the county tax
assessor-collector.

And so what we would be looking at is they would show us either a sales contract or some kind of receipt that they have for the vehicle and something that would show to us that, yes, they had paid the dealership the title fees; they had paid the registration fees.

And if that is the case, then we would itemize those on that letter to the tax assessor-collector and instruct them to go ahead and waive those fees and allow the person to obtain title and registration for their vehicle.

The other provision in state law allows for a consumer to obtain a 30-day permit free of charge so that in case they are going through a process and trying to work through all of this, that they have an opportunity to get a 30-day permit so they can operate the vehicle while all of this is going on and not be charged for that.

So that's kind of a broad overview of what this is. So I'll stop for just a second in case any of our new members have any questions about the dealer going out of business provisions.

(No response.)

MR. KUNTZ:  Okay. So if there aren't any questions, some of the things that we talked about last time -- I know we talked about bankruptcy as one of those
issues that is not currently a provision that's allowed for in our rules, and I think that there was some good discussion last time that during a bankruptcy, that may prove to be difficult to consider that dealer out of business and just because of all of the federal issues and federal laws around bankruptcy and kind of who is in charge at that point, because usually during a bankruptcy there is a court that is involved that is making determinations about the financial status of an entity.

And so we had raised that issue as to whether or not that was something that we should be adding to the rules, and I believe that what we heard last time was that that may prove to be problematic to add that provision to the rules, to say bankruptcy was considered a dealer out of business for this purpose.

Did I capture that correctly for the members that were here? I just want to make sure I'm --

MR. DORAN: Mr. Kuntz? Yeah. This is Presiding Officer Doran. I believe you did capture the concerns about bankruptcy accurately.

MR. KUNTZ: Okay. The other item that was discussed centered around the surety bond that is posted by a dealer when they are licensed, and currently under state law, the surety bond that a dealer provides, I believe, is $25,000.
During the legislative session, when the bill was being considered, there was consideration for increasing that bond amount. That did not pass. However, what did pass was the ability of the Department to actually be a party that could seek damages against that bond.

And so the way that that is -- a lot of the discussion that came out centered around what that would look like if the Department was seeking to call that bond and whether or not the bond had been sufficiently amended to make sure that that was addressed.

And I believe that there were some members of the Committee that brought up some very good points about what is required to be in those bonds, and I believe that discussion, I believe, warranted some further evaluation and research by the Department.

I think our legal counsel and potentially our Licensing Division were going to need to look at how those bonds work, because there are specific provisions in the Transportation Code. I believe it was pointed out in Transportation Code, Chapter 503, related to that bond, and I believe that that bond has to be looked at by the Attorney General, if I'm remembering correctly.

So I don't know if General Counsel has had time to evaluate those provisions of the Transportation Code or
look at whether or not we needed to -- I believe there was discussion that we would need to amend our administrative rules in order to further define that bond to make sure that we are a party that could seek, I guess, damages or whatever you would call it, in order to get funds to repay the State for any fees that were waived.

MR. RICHARDS: Officer Doran?

MR. DORAN: Yes, David?

MR. RICHARDS: David Richards. Permission to speak?

MR. DORAN: Yes. Proceed.

MR. RICHARDS: Thank you. Members, we have the benefit of a Motor Vehicle Division attorney on the call today, LaDonna Castanuela. She has done some research on the bond, and I think in pretty much, in very simplistic form, lay out for you what is required under the bond that we're talking about.

It's a -- as Jeremiah said, it's a $25,000 bond, security bond.

LaDonna, are you on the call? And can you answer some of the questions Jeremiah posed?

MS. CASTANUELA: Yes, I'm here. Is it working?

I'm here, David. Can you hear me?

MR. RICHARDS: Yes, we can hear you.

MS. CASTANUELA: All right, then. So you know,
on page 7 of the materials, you'll actually see an example of an actual dealer bond, and then page 8 is the back of that bond, the next page, and then page 9 is the sample form that is approved by the Attorney General. It says at the bottom of it -- you'll see that it was approved in July of 1985.

That form is provided to a GDN dealer applicant through our eLicensing system when he or she is applying for the license. So the question about do we need to update the language on the bond -- if you'll look at the -- page 7, it has a statement already in there that says, "Recovery against the bond may be made by a person who obtains a judgment against a dealer, assessing damages."

Under the Government Code, person -- the definition of "person" includes government agencies. So I don't think that we need to update the language on the bond -- or the bond language or the approved bond language to implement our new Transportation Code 501.036.

I think there was a question also about how the bonds work, but I can tell you about Motor Vehicles Division's part in this. Of course, we require the $25,000 bond when an applicant applies for a GDN. If someone wants to recover against that bond, the first thing that -- the only way that we know is that we'll get
a request for a copy of the dealer's bond.

We'll require that person to make an open records request, and then we will provide the bond. You'll notice the back page of the bond has that information about how to make claims. It will include [inaudible] for the bond company, and also for the Department of Insurance.

That page is a requirement under insurance rules. So that's what -- the person who wishes to recover will start out by contacting the surety company and/or TDI, who will probably contact the insurance company. The next time that we know anything about what happens on those efforts to recover against the bond right now is that we'll get a letter.

It's required under the bond, in the various sentence of the bond or the sample bond, but we get notice -- Motor Vehicle Division gets notice of any recovery against a -- any judgment. So we'll incorporate it into the bond. And sometimes those letters tell us that -- you know, it's sent to us by the surety company, and it will tell us that a judgment has been made against this bond and it will tell us that amount.

Oftentimes -- well, all the time, the amount exceeds the $25,000. It will also tell us that the bond was closed. We of course have to follow up with the
dealer. [inaudible] the dealer wants to remain in business and have a $25,000 bond.

But we also get notice of judgments that are less than $25,000. So say, for instance, the letter says the judgment is $10,000 that is made against this bond, then we've also got to follow up with the dealer and tell them, okay, now, you only have $15,000 left on your bond, and so you need to do something about that so you have $25,000 at all times while you are licensed.

So did I miss anything? Any questions that I'm supposed to answer? Or do I have any more questions?

MR. DORAN: This is Presiding Officer Doran. I actually had a question for you. The bond recovery process, is that something that a customer would need to retain a lawyer to help them, or is it the type of thing that the consumer could essentially accomplish on their own, in your opinion?

MS. CASTANUELA: Oh, gosh. Officer Doran, I really don't know what that process is like. Like I said, all we do, as far as the actual bonds is the open records request and then the letter. We -- of course, we haven't had to recover or -- as far as I know, there hasn't been an effort by the Department to recover under the new statute.

MR. DORAN: Okay.
MR. RICHARDS: Officer Doran?

MR. DORAN: Yes, David?

MR. RICHARDS: David Richards for the record. May I have permission to speak?

MR. DORAN: Yes, please.

MR. RICHARDS: To answer your question, I don't know necessarily that an attorney would have to be retained by a consumer. If we're talking an amount that the consumer's trying to recoup that's, say, for example, within a justice court's jurisdiction -- I know years ago, and it's probably been up since then -- it was 5,000.

$5,000 was the maximum jurisdictional amount that one could sue, and as I think most of the members and attendees know, a justice court is likened to a people's court, where you can go in and represent yourself.

So I think it's possible for a consumer to go in, depending upon the amount in question to a justice court and represent himself or herself to obtain a judgment after they've, you know, followed the procedures, as LaDonna's laid out, on the back of the bond for notifying the surety bond company, and going through that procedure.

So I don't think necessarily that has to take place. I will say this, for the benefit of the new members who haven't been a part of the discussion, and
just as a reminder to everybody: we're hoping that CPAC will offer some recommendations to the Executive Director and Board, as Presiding Officer Doran laid out.

One of the items that was discussed for the benefit of the new members is the amount of the bond, and as I think Mr. Kuntz pointed out, there was a move to raise that amount to $50,000. It did not make it -- make the final cut in the legislation.

So that was something that, during the discussion we've had previously -- that some of the members that were originally on Board -- or the Committee talked about maybe raising it. So I mean, that might be something, for the purposes of our discussion today, a discussion of whether or not that's an item that the Advisory Committee wants to recommend to Ms. Brewster and the Board, raising the amount, and that would be obviously a legislative change. So that's one thing.

But I did want to explain my understanding of the mechanics of a consumer going to JP court or justice court to obtain a judgment, that I think they can do that without retaining an attorney. So I will give the floor back to Officer Doran.

MS. CASTANUELA: Officer Doran?

MR. DORAN: Yes?

MS. CASTANUELA: LaDonna Castanuela. Just one
note: I reminded myself here that the attorneys' fees are in fact a cost that can be recovered under the bond, specifically mentioned and itemized in 503.123

MR. DORAN: Well, thank you. This is Member Doran for the record. I think at this point we wanted to open it up for some discussion by the Committee members, for questions.

MR. SMITH: Officer Doran, Carroll Smith.

MR. DORAN: Mr. Smith, please proceed.

MR. SMITH: Thank you. I am asking a question which obviously is from a newbie. But can you kind of -- as quickly -- what is the scope of this problem? I mean, how often is the public experiencing a dealership out of business or broke?

I mean, what is the size of the problem?

MR. DORAN: Member Smith, I'm going to defer that to staff, but I will say that on our prior call, May 28, we did have some pretty extensive discussion about the Reagor Dykes situation, the dealer group out of Lubbock, and some of the challenges that consumers were having in being able to obtain title for their vehicles there and not having trades paid off, things of that nature.

So that did come up as a real-world example.

But I'm --
MS. THOMPSON: Mr. Doran?

MR. DORAN: -- going to turn it over to --

MS. THOMPSON: Ms. Thompson.

MR. DORAN: -- Ms. Thompson, please.

MS. THOMPSON: Thank you. Mr. Carroll, Corrie Thompson, Director of the Enforcement Division. We are familiar with each other. Thank you for being part of the Committee. We appreciate your participation. I did want to say that it's cyclical, the way the Department sees these things happen.

Sometimes it could be one consumer affected by a dealer who's gone out of business. This past year, however, we've had a number of large dealerships go out of business, and the Department has received hundreds and hundreds of complaints on the same dealership within a matter of weeks.

And so this past legislative session, that is actually what prompted the state to come forward to help kind of get relief for these consumers that are affected by the dealers going out of business.

So it goes either way. It could be one person affected, it could be hundreds affected. And we do routinely see this throughout the fiscal year as we process cases.

MS. THOMPSON: Thank you.
MR. OLAH: Officer Doran? Ray Olah. I ask to be recognized to speak.

MR. DORAN: Yes, Mr. Olah -- or Member Olah. You're recognized.

MR. OLAH: You know, as -- I have the bond sample up on my computer screen, and as I read it, it just occurs to me that it's exceedingly difficult for a consumer or an affected purchaser of a vehicle to make a claim on this bond.

There's a point at which an affected person will probably just give up on it and decide, I'm just going to have to take the loss. And I wonder if we can't come up with a way for a consumer, instead of having to go to JP court or otherwise hiring a lawyer to establish damages, if a consumer could not make a claim directly with the surety bond company.

In other words, is it possible to define under the Administrative Code what a consumer needs in order to perfect a claim and set forth the procedures of things that they have to do in order to make a claim, and then allow the consumer to make a claim directly with the surety bond company?

And this is in line with, you know, traditional notions of insurance coverage. You know, for instance, when you make a claim for auto body damages that you've
had on your car with an auto insurance company, it just seems to me that there are so many steps here, that we're actually dissuading or making it difficult for a consumer to make a claim against the bond.

So just an idea for discussion.

MR. RIGBY: Officer Doran, Michael Rigby.

Permission to speak?

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

MR. RIGBY: Thank you. Yeah. I would agree with those comments. I think the statute now provides that the consumer has to get this judgment. Even if they were able to do that on their own in JP court, I think that's a significant hurdle for most consumers to obtain a recovery.

And so I'd agree with those comments. I'm also curious for -- I have a question for Ms. Castanuela, if she has any sense of like what is the average amount of a claim under these bonds, and how often do the aggregate claims exceed the $25,000 amount?

Thank you.

MS. CASTANUELA: LaDonna Castanuela. So I said to our staff that see these notices of judgment come in, and she told me that we get about 50 of them a month. So I did not ask her to break down, you know, what the amounts are.
That -- I don't -- I wouldn't expect that that is something that she necessarily is checking, but she said probably half of those she has to follow up with the dealership, to look up a dealer's license each time she gets one of those letters, and oftentimes the date that the bond company tells her we're closing the bond is actually the date that the dealer has told us that he's closing his license.

But if that's not true and there's still a judgment, she's got to follow up with the dealer and make it right so that there is a $25,000 bond in place again.

I also note that we receive probably 15 or 20 open-records requests a month from -- for dealer bonds, and many times they tell us that that's exactly why they're requesting the dealer bond, is to pursue recovery against it.

MR. RIGBY: Michael Rigby. I have a follow-up question.

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

MR. RIGBY: Thank you. I guess it's a little hard to say whether, you know, we need to recommend an increase in the $25,000 bond without some analysis of those kinds of numbers, whether the claims against the bond frequently exceed the $25,000 amount, and if so, by how much?

I mean, it may be that we need to recommend,
you know, no change or a change to 50,000 or a change to 100,000, but without that kind of research and analysis, I think it's difficult to reach some kind of conclusion about what the appropriate amount might be.

Thank you.

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

MR. DORAN: Member Johnson, you're recognized.

MS. JOHNSON: An additional question -- and I don't know if Mr. Kuntz can answer this or not -- is what was the objection by the legislature in the committee to increasing the amount? Because that could factor into the equation.

MR. KUNTZ: So for the record, Jeremiah Kuntz, Director of Vehicle Titles and Registration Division. I do not have the specific information on what the objections were in committee. We could go back and try and look at the tapes and see if there's anything in the committee, but I do not remember a specific objection that was voiced on the record or anything.

MS. JOHNSON: So cost associated with that would likely have been the reason. We just really have no clue? And I do believe that there would be benefit to determine what is the additional cost for the dealers in obtaining the higher-cost bonds?
If it's a minimal amount, then it would be logical to increase the amount.

MR. KUNTZ: Yeah.

MR. FRENCH: This is James French, requesting permission to speak.

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

MR. FRENCH: Thank you. I'll tell you -- tell a real quick story from personal experience. Back in the late '80s, I bought a vehicle on a consignment lot, wrote the guy a check, drove off with the car. A few weeks later, I was approached by the guy who had put it up for consignment, that he had never been paid and it turned out that title transfer had never been filed.

Yes, I got an attorney, because I had no idea of that bond that was out there. What ended up happening is, I got -- you know, recovered the monies, paid the guy that had it up for consignment sale, and you know, we came to a good agreement. They actually paid my legal fees.

But the bottom line, what I found out then is this was about an $18,000 purchase, and it's first-come, first-serve on these bonds. Fortunately I had an attorney. He got to it first.

I don't know how many other people were left hanging, but it seems to me that 25,000 is very, very low in today's world when we're dealing with $100,000
vehicles. Thank you.

MR. GONZALEZ: Chairman, do I have permission to speak?

MR. DORAN: Is that Member Gonzalez?

MR. GONZALEZ: Yes, sir.

MR. DORAN: Okay. Yes, you are recognized.

MR. GONZALEZ: Thank you. I've been aware of this program for quite some time, and along the lines for -- to help the consumer, would it be possible for the DMV to provide a checklist of any customer that comes in, where they have this problem with the dealer that failed to provide them ownership documents or transfer title, a checklist of what the consumer is required to obtain?

For example, in many cases, the price of a vehicle is going to be over $10,000, so a referral to a justice of the peace is probably not going to be adequate for them to get some type of a judgment from the justice of the peace, so they almost automatically have to go to county court or district court.

And I think that would kind of help them follow the guidance, because in the past, whenever a person complains to the DMV, the automatic answer was, you've got to talk to an attorney. And there again, an attorney who has a fee that's going to be, in many cases, excessive. Then again, it might be moderate. But the consumer is
referred to an attorney, so they're kind of at a loss. If we could help them with some type of checklist of what they would need to do, with basic stuff like you need to get a copy of the bond under the open-records requirement, petition a judge to seek award -- be awarded ownership for this reason, I think it would make it flow better and help the consumer.

Nowadays a vehicle, when it's sold by a dealership, a used car dealership, they sell some late model stuff that's more than $25,000. So consideration of raising the bond would be very apropos in this type of situation.

That's my comments that I would like to give the membership. Thank you.

MR. DORAN: Thank you, Member Gonzalez. Are there further questions by the members? This is Presiding Officer Doran. I wanted to just follow up with staff on a comment and a question. I would -- as it relates to the discussion about raising the amount of the bond and the failed legislative initiative on that last session, just for the record, the average price of a new vehicle in the United States in 2019 was $36,000.

And as it relates to -- here comes the question -- as it relates to the discussion we've been having about whether a lawyer is required, about, you
know, a consumer understanding the steps necessary to follow this process of making a claim against the bond, I believe Member Gonzalez was talking about a checklist. My question to the DMV would be, you know, without providing legal advice to the public, per se, would -- is it possible that this checklist or an explanation of the steps necessary for a consumer to follow could that be something that was published on your website or accessible on your website as an agency?

MR. RICHARDS: Officer Doran?

MR. DORAN: And I mean that, as opposed to just citing the statute. I guess that's the distinction.

MR. RICHARDS: Officer Doran?

MR. DORAN: Yes, David. Go ahead.

MR. RICHARDS: David Richards for the record. I don't see why we could not do that. I would like to back up a minute. In the materials that Ms. Castanuela sent to everyone, and they're in your Advisory Committee meeting materials, on the back side of the bond, it refers a customer or a consumer to the Texas Department of Insurance, if -- and particularly in the event that they are getting nowhere with the surety bond company.

I don't see why it would not be a good public service or consumer service, I guess, the choice on our part to post something on the website, and we could refer
them to the Department of Insurance and we could post a checklist if we needed to.

So I think that's something that's doable.

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

MR. DORAN: Member Johnson, you're recognized.

MS. JOHNSON: Probably the most direct -- because the website tends to be difficult, even for me, and [audio skip] when that website was created -- so it would be very beneficial to have that checklist available in every county tax office, because ultimately that's where [audio skip] are going to come in.

They're going to receive -- try to obtain the title, and then waiving these fees, that could be something that is automatically provided to them by the county tax assessor-collectors' offices; it would be very beneficial to have that.

MS. THOMPSON: This is Corrie Thompson, Officer Doran. I just wanted to make a comment, if I could?

MR. DORAN: Yes, Ms. Thompson. You're recognized.

MS. THOMPSON: With that, I do just want to acknowledge something that you pointed out as well. The Department does have to be very careful with information that's provided, because we are not permitted to provide
the public with legal advice.

MR. AVITIA: Officer Doran, this is Daniel Avitia. Permission to speak?

MR. DORAN: Yes, Daniel. You're recognized.

MR. AVITIA: Thank you, sir. I concur with Corrie's comments. Before we go too far down the road on this issue, the Department is not allowed to provide legal advice outside of the Department, so I would prefer that we table this opportunity so that we have an opportunity to speak with the TxDMV's General Counsel and gain a perspective on the matter.

MR. DORAN: Thank you, Daniel. We're referring to the specific issue -- this is a question for you. But are we referring to the specific question about the posting of a checklist that staff would come up with and/or any other guidance beyond a mere citation to the legal authority necessary to pursue this process?

Is that what we're tabling?

MR. AVITIA: I'm -- thank you, sir -- I'm referring specifically to the checklist. Yes, sir.

MR. DORAN: Okay. Thank you.

MR. SMITH: Officer Doran? Member Smith. May I speak?

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

MR. SMITH: Kind of follow-up to my earlier
question. But is there any data that the Department has with regard to how many times perhaps that the bond has not been adequate to meet the demand?

MS. CASTANUELA: Excuse me. LaDonna Castanuela.

MR. DORAN: You are recognized.

MS. CASTANUELA: So I don't believe there's any data. I think it probably [audio skip] asking my many questions about this process, but I know who receives those letters about the judgment and those letters include the judgment amounts.

We can -- I'm sure that I can work with staff and come up with some kind of data from, you know, the last couple of months, for instance, and we can get sort of a little snapshot of what those amounts look like.

MR. GONZALEZ: Member Doran, may I speak? This is Member Gonzalez.

MR. DORAN: Member Gonzales, you are recognized.

MR. GONZALEZ: Yes, sir. Thank you. Concern about the bond amount. A lot of times in this process, it's the person that comes -- first-come, first-served basically on the bond issue. There's -- there have been occasions where a dealership fails to provide title and somebody files a claim and they've already exceeded the
$25,000 amount to be able to claim that.

And then there's a second customer that comes into play that has the same problem. And does the DMV plan on addressing those secondary -- second or third complainants that come in? If they come in and file a -- show a contract that they've bought a vehicle legitimately, what is the alternative for that second or third buyer if the bond has already been exhausted?

What is the recommendation for them to do as consumers if they get hit by this dealer that's failed to provide title? That would be my question, one question.

MS. THOMPSON: Member Doran, this is Corrie Thompson. If I may make a comment?

MR. DORAN: Yes, Ms. Thompson, please. You're recognized.

MS. THOMPSON: Officer Doran. My apologies. I did just want to say that I want everybody to be very clear that there's different areas of law that provide remedies for people. So there's criminal, there's civil, there's administrative.

The agency is charged with administrative law. Those are the cases that we take against the dealers and that we sanction them for, and we've talked about the Department's traditional sanction authority, which includes imposition of administrative penalties, as well
as revocation of licenses.

In these earlier meetings with CPAC, we've discussed new sanction authority that the Department has that we're trying to develop rules for, and that's the refund authority. So that would be separate and apart from the civil remedy that the consumer has to go against the dealer's bond.

So if, per se, the bond were to be exhausted because two or three consumers decided to pursue civil remedies and go against the dealer's bond, the consumer who files the complaint with the Department of Motor Vehicles and has a case ongoing can still be subject to that refund authority that we're talking about, as another agenda item separate and apart from the bond issue.

So I do want to make sure that we're kind of keeping those separate, because that's separate authority that the Department can order on the dealer, that they can agree to pay, and that's not part of the bond being paid out.

So I would say that would be remedy, potentially, Member Gonzalez. If we do not have any future legislation that increases the bond amount, that would still be an option.

MR. GONZALEZ: Thank you. Thank you very much, Corrie.
MR. KUNTZ: Chairman Doran, this is Jeremiah Kunz.

MR. DORAN: Jeremiah, you're recognized.

MR. KUNTZ: So what I want to -- and I'm going to piggyback a little bit on what Corrie has said here. There's really a couple of questions that are coming up. Under the legislation that passed this last session that we are talking about today or that we've talked about today, House Bill 3842, regardless of whether there's a sufficient bond or not, the Department and the county are instructed to issue title and waive fees.

And so the remedy at least for obtaining title is already there for the consumer to protect their interest. The State is essentially out the money at that point. The State would basically have damages against it if the consumer has come in and gotten title and we've waived those fees.

So just wanted to make sure that we kind of clarified that, that there is a remedy for them to still be able to get a title and registration. The State just would not -- kind of like you said, if the bond has already been exhausted, if we get -- as Ms. Thompson said, if we get hundreds of title applications that come in and we are waiving all of those fees, there is a potential that the State would exceed that $25,000 and not be able
to be made whole.

And I believe there is one other recommendation that came up that I believe Member Gonzalez raised, which was the county being able to be made whole through this for any local fees that are waived as well. I think that that's a recommendation that this Committee can consider, is changing it to statute that would allow the county to potentially be a party to the bond as well.

MS. JOHNSON: Member Johnson requesting the Chair recognize me and I be allowed to speak?

MR. DORAN: Yes, Member Johnson. You are recognized.

MS. JOHNSON: I don't think it's premature. And I just researched on the internet the cost of these $25,000 bonds. So I would like to move that the DMV Board pursue legislatively an increase in the amount of surety bond required of motor vehicle dealers.

MR. DORAN: Ms. Johnson, before we move forward with entertaining your motion, I do need to make sure that we have really exhausted our discussion as a group. So let me ask our Committee members here if there are further questions before we take up and entertain the motion?

So actually, I have one question for LaDonna and Corrie. Ms. Thompson talked about some of the tools in the toolbox that the DMV has in terms of recourse
against the dealer. I was just wondering if you could
speak to whether the consumer, who has had to go out and
retain counsel in some instances, if he or she has a cause
of action or a potential claim under the Texas Deceptive
Trade Practices Act?

And I'm speaking specifically of instances
where a customer has paid for the vehicle but has not been
able to obtain title and therefore doesn't legally own
that vehicle.

MS. THOMPSON: Member -- or Officer Doran?

Corrie Thompson with a comment.

MR. DORAN: Yes, Ms. Thompson. You're
recognized.

MS. THOMPSON: Yes. Thank you for bringing up
yet another potential remedy. Herein lies the maze that
is the Department's function. So yes. So consumers can
file private civil actions for civil Deceptive Trade
Practices actions, which allow for treble damages, or they
can seek representation through the Attorney General
Consumer Protection Division, which sometimes decides to
pick up consumer cases like these as well on the civil
side.

MR. DORAN: Thank you. Let me go back to the
Committee members and ask one more time if there were any
further questions or discussion before taking up Ms.
Johnson's motion?

MR. GONZALEZ: Chairman Doran? Permission to speak?

MR. DORAN: Yes, Member Gonzalez.

MR. GONZALEZ: Yes. We're out here on the border next to New Mexico, and I just wanted to ask Mr. Kunz, is there a provision where if a New Mexico resident comes to El Paso and buys a vehicle and he has also failed to provide a title document so he can apply for title in New Mexico, and he wishes to complain, is there an opportunity for this non-resident to go through this process, even though he's not a resident of this state?

However, he did purchase a vehicle from a Texas dealer. Is there any provision or any avenue for this non-resident to seek remedy through this process? Has that been thought out or is that an exception that will be made at the Regional Service Center when it's presented to them?

We do get occasions for that situation here. So I just, out of curiosity, would like to ask Mr. Kuntz if that has been put out? Thank you.

MR. KUNTZ: So for the record, Jeremiah Kunz, Director of Vehicle Titles and Registration Division. I'm going to answer that in a couple of different ways, and one, the dealership is licensed in the state of Texas and
any claims that a consumer has against that dealer can be made regardless of where they are located.

I think Corrie would tell you that if an individual from New York came down and bought a vehicle in Texas and they were harmed by that dealer, you know, in a way, for not doing something in accordance with state law, that she has the authority through administrative code to take action against their license.

As for the waiving of the title and registration fees, we have no jurisdiction. Our laws have no jurisdiction in the state of New Mexico. So if a consumer purchased a vehicle at a dealership in El Paso and was bringing this vehicle back to New Mexico to obtain title, we do not have the authority to require that the State of New Mexico waive those fees.

So if they'd paid the dealership for the New Mexico taxes, title and registration, we have no way to compel the State of New Mexico to waive the fees for that consumer. So that's just -- unfortunately, that's the way that that would have to work.

I think that the scenarios are going to be somewhat different depending on whether it's a cash sale or if there's a lien involved. So if a consumer from New Mexico came across the border and purchased a vehicle from a dealership in Texas and paid cash, hypothetically I
would believe that that dealership is going to hand them the title and send them to go apply for title and registration in New Mexico on their own.

However, if there's a lien involved, a lienholder would require that the dealership perfects their lien and most likely that dealership would be contacting the State of New Mexico to apply for title in New Mexico.

So just kind of depends on the scenario as --

MR. GONZALEZ: Thank you, Mr. Kuntz.

MR. SMITH: Officer Doran? Member Smith.

Permission to speak?

MR. DORAN: Member Smith, you are recognized.

MR. SMITH: I apologize to the Committee because certainly, as I've joined the discussion on this in the middle, I'm sure that I've missed a lot of information and a lot of facts. I'm concerned that, just by raising a bond amount, as somebody said earlier -- what is the correct amount?

But I believe that, at least from my joining in the middle of this, I have not seen enough data to understand whether this is a solution to the problem or it's just a raising of a fee? I think we need to know more about how this is happening and whether or not this will really solve the problems that the public is having.
Where are the problems coming from? What are they created by? Is there not maybe some other way besides affecting the thousands of dealers when maybe this is a specific problem that can be addressed in another manner?

So certainly me coming in the middle -- I would be against the motion, because I don't have enough information to think that this may be a solution to a problem I don't understand. Thank you.

MR. DORAN: So --

MR. KUNTZ: This is Jeremiah Kuntz, Chairman Doran?

MR. DORAN: You are recognized, Jeremiah.

MR. KUNTZ: I guess I will answer this the best way that I can, and I know I've heard Corrie talk about this, you know, a little bit today. The bond is like insurance and you never need insurance until you need it, and so what I would say is that generally when we see a dealership that goes out of business, it's very bad for lots of consumers.

I would say, and I'll, you know, let LaDonna and Corrie kind of jump here: We have thousands of dealers in the state of Texas. I would contend to you that most of those dealers, on an annual basis, don't go out of business.
They continue to operate their business and are in good standing, as far as a business owner. But when we do have dealerships that go out of business, it is generally not a good situation for all parties involved, and I know that we've talked a little bit about Reagor Dykes, because I think that's probably somewhat relevant to this conversation.

It's a little bit different in that it was a bankruptcy that took place, but that was a major franchise dealer in the state of Texas, and there were hundreds of consumers that were harmed by them not going to the county tax assessor-collector and applying for title and paying title and registration fees.

That caused a lot of disruption for many, many people who had bought brand-new vehicles, had potentially traded in vehicles, that their trade-ins had not been paid off, and it is an ongoing and very large problem for many consumers in the state of Texas.

So kind of back to what I started with: It's like insurance. You don't really need it until you really need it, and I think that that's kind of the discussion we're having here is -- when these things have been exercised, when a dealer has actually gone out of business, that the bond in these situations very well may not be sufficient.
And I'll say, in the Reagor Dykes scenario, it
definitely was not sufficient to be able to cover all of
the damages that occurred.

MR. RIGBY: Michael Rigby. Permission to
speak?

MR. DORAN: Member Rigby, you are recognized.

MR. RIGBY: Thank you. So I hear from staff
that the amount, the $25,000 amount is not sufficient, but
I don't hear a recommendation about what might be or would
be sufficient. And I concur with some of the other
members that it's difficult to make a decision without
that information, and I'd prefer for that to be [audio
skip], but you're got to look at the historical experience
of DMV and analyze what came in and how much the claims
exceeded the bond amount. So that's a concern I share.

In addition, I'm also concerned about
whether -- how the bankruptcy piece plays into this. You
know, perhaps it is like insurance, but if in order to
access the surety bond you have to get a judgment and the
dealer files a bankruptcy action and all of those lawsuits
are stayed automatically in bankruptcy court, and any
claim may be discharged by the bankruptcy court, then is
this bond really a solution, or is it kind of an illusion?

So if you can help me understand the bankruptcy
piece and any recommendations you have for the bond
amount, that would be helpful.

MR. RICHARDS: Officer Doran?

MR. DORAN: Yes, David. Please proceed.

MR. RICHARDS: David Richards, for the record.

For the purposes of discussion and also the new members, the bankruptcy scenario, as Member Rigby has pointed out, pretty much shuts everything down. What we talked about -- and for the benefit of the new members, the last time what I talked about -- Member Olah had mentioned about working with the AG's Office, which is exactly what we did.

I was assigned the Reagor Dykes oversight, and I worked with the Attorney General's Office regarding all of those consumers who were unable to get their titles transferred or to get their trade-in amounts paid off.

And most recently -- it was in the last several months -- the Attorney General's Office represented those consumers, or at least the Department, by advocating for the appointment of an ombudsman to represent the interests of consumers that were left high and dry.

The bankruptcy court judge was very sympathetic and entered an order appointing an individual to serve as ombudsman. The -- several of the secured creditors ponied up money. There's a fund, initial fund, I believe, of $100,000 -- it may be a little bit more -- to allow the
ombudsman to go forward and sue the bankruptcy court, mind
you, to get these consumers -- or at least hopefully make
them whole.

So by and large, there's not lot that can be
done if we go to the scenario that Member Rigby laid out.
Once the case is filed with bankruptcy -- and he
accurately said everything is stayed -- we would have to,
through the Attorney General's Office -- and Member Olah
mentioned the last time -- seek what they call "leave of
court" to deal with this, and that's what was done by the
Attorney General in Reagor Dykes about a couple of months
ago.

But we'll continue to do that, where we
hopefully -- not -- well, in the -- hopefully not in the
event that we have it, but in the event we have this
happen again, we will work with the Attorney General's
Office to see if we can't get an ombudsman or someone
that's appointed to help consumers out.

But once the petition is filed in bankruptcy,
it pretty much shuts everything down, including any
actions or claims or judgments on the bond. That's pretty
much the size of it and what we can do and what we intend
to do as a Department, should we face another Reagor Dykes
type bankruptcy situation with a franchise dealer.

MR. RIGBY: Michael Rigby. Permission to
MR. DORAN: Member Rigby, you are recognized.

MR. RIGBY: Yes. So I guess just kind of a follow-up question. I can see where that might work, where you've got a large dealership that shuts down, but with any kind of dealer, a small, buy-here, pay-here dealer, could do the same thing and file bankruptcy, and I'm not sure, you know, if you're going to devote all those resources to, you know, asking leave of court, from the bankruptcy court.

And so I guess my general question is whether the current statute that requires a judgment to access the bond is an effective way to address the consumer's loss? Is there another way that the consumer could directly access those bond funds without obtaining a judgment?

And I don't know the answers and I don't know if that's even possible, but I'd be interested in hearing your thoughts about whether there's a way to revise the statute to allow a quicker and more efficient to access the bond funds and make the consumers whole.

Thank you.

MR. RICHARDS: Officer Doran?

MR. DORAN: Yes, David?

MR. RICHARDS: It's David Richards for the record. I'll just step and say, clearly -- I know that
Member Olah mentioned earlier rulemaking, but I think our vehicle is statutory change. Clearly the securing of a judgment is required for a consumer to go forward, and there would have to be some sort of statutory change.

And again, we haven't outlined that, but I mean, that's why we have the CPAC, to make recommendations.

If it's the CPAC's will to recommend to the Board and to Ms. Brewster that the statutory change be made to allow consumers to access the bond without having to obtain a judgment, then it should be a recommendation, and that part of that looks -- we could -- staff could work with CPAC to see -- I mean, see how that would unfold and how that would play out, but right now, that is the -- if you will, the impediment to a consumer going directly, you know, filing with the surety company a claim, and you know, they have to go forward with obtaining a judgment.

The bonds require it. It's stated in the bond. Statute requires it. So I mean, that could be a recommendation from the CPAC that a statutory change be made to allow consumers to go straight to the bond without obtaining a judgment.

And I'll defer to Ms. Thompson and anybody else who wants to speak on it, but that's my position on it.

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

MR. DORAN: Member Johnson, you're recognized.

MS. JOHNSON: Maybe I lost track of the conversation, but it appeared to me that the purpose of this agenda item was the Board was trying to determine whether this Committee believed that it is -- that the DMV Board should pursue legislatively an increase in the bond amount, and further -- and if that's the question, that did not reference an amount, because I think it's up for them to determine what amount needs to be.

But also what -- I think what everybody is losing sight of is the consumer has a car. What we're looking at predominantly right now in recovery is the fees that they're incurring in order to obtain ownership of the vehicle.

Am I totally off? Have I lost track somewhere of what we're trying to accomplish?

MR. KUNTZ: So this is Jeremiah Kuntz.

Member --

MR. DORAN: You're recognized, Jeremiah.

MR. KUNTZ: Thank you. Thank you, Member Doran. Yes and no. So I don't believe that this discussion is limited just to the fees for the title and registration. I think that question has essentially been answered by the legislation.
What we are talking about, at least what I thought we were charged with talking about, was any other consumer protections that could be implemented when a dealer goes out of business, and the example was given before of -- and I can't remember which member gave this story, about purchasing a vehicle from a dealer on consignment and that title not transferring.

So you don't just necessarily have the fees at risk. You could potentially have other items that are problematic from a financial standpoint to a consumer. One of those could be that, you know, there's a disagreement.

The -- you know, the person who put the vehicle up on consignment never gets paid by the dealership. Therefore they're out, you know, potentially the entire value of the vehicle because they no longer have the vehicle and they're seeking that against the person that has the vehicle.

Well, the person that has the vehicle doesn't have a title to it, so the original owner is really the original owner until that title transfers. So you've got a dispute then between two private parties, and the dealership has taken the money and left.

Another scenario that potentially comes up is a trade-in vehicle. I know from, again, personal
experience -- I had a -- my stepbrother traded in a vehicle. The dealership never paid off his trade-in, and so he kept getting notices from his lienholder saying, hey, you're delinquent on the payment of your vehicle payment, because the dealership had never paid it off.

So there are other issues for the Committee to consider that potentially have harm to consumers.

MS. JOHNSON: But Jeremiah, would not -- in that trade-in -- that seller -- that trade-in vehicle had transferred title, effectively, to the dealership and therefore could have filed a form removing their name from ownership of that vehicle?

MR. KUNTZ: No, because they -- the title they may have assigned to the dealership, but remember: the dealer never applied for title in their name because they just do an assignment.

If that dealership disappears, there's no evidence that that transaction took place, because our system is not -- is -- our system still going to show the lienholder with a lien on that vehicle, and you as the titled owner of it.

MR. DORAN: This is Member -- Officer Doran. I wanted to -- I know we've been talking about the bond for a while, and I wanted to come back to that issue real quickly before we move on to other angles and efforts to
protect the consumer here.

But as it relates to the bond -- and I'm inviting discussion on this -- but you know, the purpose of the bond, I guess you could argue, is twofold. Perhaps it's to try and make the consumer whole, but at only $25,000, it's possible that the very first consumer that makes a claim against the bond is going to exhaust that bond, and that consumer may not even be made fully whole.

So that purpose in terms of the bond meeting that purpose is a bit in question in my mind. And then the second purpose potentially that a bond might have -- and I would actually defer to our dealer members on the Committee as to their opinion on this -- but perhaps it's to discourage that conduct.

And so if having a bond that is, you know, $50,000 versus $25,000 really likely to make a dealer more careful in the way in which they are handling a customer's transaction? I think that could very much be up for debate, and I don't know -- it was mentioned earlier -- what would be the increased burden on -- let's call it -- the good dealers that have never had an issue resulting from that.

So I'm kind of challenged here to see the bond as that helpful in accomplishing the goal here of protecting the consumer. Therefore I'm wondering -- and
this is a question for staff -- is there a different type of bond that could be required of dealers specifically to address these certain types of claims?

And maybe the requirement to carry this type of bond doesn't come into effect for a licensee or a dealer until there has been a complaint made against that dealer, because they have had a problem in the past?

Is that something -- I'm not a bond surety expert, but I'm just wondering if there might not be some type of specialty bond that could be required by the agency of dealers that have had some type of problem in the past with correctly paying off trades and handling the title and registration transactions?

MS. THOMPSON: This is Corrie Thompson.
Officer Doran, just a comment.

MR. DORAN: Yes, Ms. Thompson, you're recognized.

MS. THOMPSON: To me, what -- the comment that you've just made, and that suggestion to me -- if someone else would like to speak up on it, I'd like to hear everyone else's thoughts -- but to me, that sounds like mixing the civil remedy available to the consumers through recovery of the bond with the administrative remedy available through the Department, and so I'm not sure how feasible that suggestion would be.
MR. DORAN: Okay. Thank you.

MR. CAVENDER: Member Cavender, requesting permission to speak?

MR. DORAN: Member Cavender, you've recognized.

MR. CAVENDER: Yes. You all -- you know, with eyes on our community and especially on the dealer body that we have in Texas, I've witnessed the good dealers that are operating in good ways for consumers, and I do think that this would be a burden for the good dealers to have just an arbitrary $50,000 bond called into their expense structure.

I would think the dealers might agree to look at transaction pricing, and Officer Doran mentioned this a little earlier today, that $37,000 being the transaction price in 2019. Perhaps a compromise where we could look at that and just measure the annual transaction pricing as that surety bond amount.

And with that, I'm just going to let that be part of the discussion, if it's something you all might consider.

MR. DORAN: Thank you, Member Cavender.

MS. CASTANUELA: Officer Doran, LaDonna Castanuela?

MR. DORAN: LaDonna, you are recognized.

MS. CASTANUELA: I just want to say that the
requirement -- the security requirement for the bond for a GDN license holder specifically does not apply to franchise dealers, and I just haven't heard it mentioned. I don't -- I want to make sure everyone is aware of that.

MR. DORAN: Thank you, LaDonna. That does seem like a very material piece of information.

MR. SMITH: Officer Doran? Member Smith. May I speak?

MR. DORAN: Member Smith, you are recognized.

MR. SMITH: I think maybe it was Jeremiah, but someone just recently mentioned the case of a consignment dealership, and that seems to me to be probably the most egregious thing that could happen to consumers -- one, the guy selling the car and the other the guy buying the car.

Just a question: would it be appropriate that, depending on the operation of a dealership, that maybe the bond amount should be different? Should the bond amount for the exposure of a consignment operation be different from that of a dealership that just sells cars that they own?

MR. DORAN: Member Smith, I'm going to kick that one over to staff to ask if that is something from a legal and an agency standpoint is possible to bifurcate, so to speak, certain different types of dealer license holders, in terms of the requirements?
I guess it sounds like we're already doing
that, with the distinction between a franchise dealer and
a non-franchise dealer.

MR. KUNTZ: So Chairman Doran, this is Jeremiah
Kuntz.

MR. DORAN: Jeremiah, you are recognized.

MR. KUNTZ: I'm going to go out on a limb and
again, and I'll have to let my counterparts in the other
divisions speak up. You know, I used to do a lot of
legislative work. I would answer it this way: anything
can be done through legislation.

I don't know that there is sufficient statutory
authority for the Department to bifurcate that, because I
believe that the statute is just a requirement, as was
laid out for all dealers that are not franchised, but I'll
kind of defer to General Counsel and others.

But I believe that that could potentially be a
legislative recommendation.

MR. DORAN: Thank you.

MR. RICHARDS: Officer Doran?

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

MR. RICHARDS: David Richards, for the record.

I would concur with Division Director Kuntz. It would be
a legislative recommendation that would need to be made.

MR. DORAN: And David, this is Presiding
Officer Doran. Is that the type of thing that you would need a motion for?

MR. RICHARDS: David Richards, again, for the record. Yes. We hope, through this Committee, members, that we not only get recommendations of a legislative nature, but also if the Committee believes that we should promulgate rules, that would be something we'd want recommended.

And yes, to answer your question: a legislative change, we would ask for a motion from the membership and a vote, if that is what they would like to do.

MR. AVITIA: Officer Doran, this is Daniel Avitia. Permission to speak?

MR. DORAN: Daniel, you are recognized.

MR. AVITIA: Thank you, sir. I believe there's already a motion currently in play that requested the bond amount be increased. I just want to make sure we don't lose sight of that and that we address the motion or that it be redacted or taken away if it's not a motion.

And I also want to concur with David and Corrie's -- or maybe Jeremiah's recommendation about any changes would require legislative action.

MR. DORAN: Okay. Thank you. All right. We can -- this is Presiding Officer Doran. We can go back to
the motion that Member Johnson brought up, although I will say that it's my impression that there was still a desire by some Committee members to want to see the data behind whether the bonds are being exhausted and -- prior to really making an informed decision on whether to recommend raising the bond.

Is that still the case, members?

MR. RICHARDS: Officer Doran? Oh, go ahead.

I'm sorry.

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

MR. DORAN: Yes, Member Johnson. You are recognized.

MS. JOHNSON: I would withdraw that motion, although I do believe the Board is still trying to pursue that legislatively and I still -- I do believe that we do need additional information to determine what that amount should be, if the Department would agree to bring that information back.

MR. DORAN: Thank you, Member Johnson.

David -- again, Presiding Officer Doran -- do you need a motion from us as a Committee to request that the agency gather that information to present it to CPAC?

MR. RICHARDS: Yes, if you would, please.

MR. DORAN: Okay. Members, is there a motion
to -- members, would someone like to make a motion to
request that DMV provide -- gather and provide information
regarding the exhaustion of bonds, the types of dealers
that consumers are bringing or making claims against
bonds, and whether, to the extent they can ascertain this,
if consumers are being made whole through claims against
these bonds?

MS. JOHNSON: Member Johnson. So move.

MR. DORAN: Members, is there a second?

MR. SMITH: Officer Doran? Member Smith.

MR. DORAN: Member Smith, you are recognized.

MR. SMITH: In the line with the question

someone raised earlier, I wonder if in that investigation
we should also try to learn a little bit more about why
the legislature declined to make any change to the bond
amount in the last session?

MR. DORAN: Members? Oh, go on. Go ahead.

MR. RICHARDS: Officer Doran? David Richards

for the record. Member Johnson, would you like to amend
your motion to include Member Smith's suggestion that we
look into the -- and try to find any reasoning why the
Legislature declined, please?

MS. JOHNSON: Yes, please, sir.

MR. DORAN: Members, you have -- members, this

is Presiding Officer Doran -- you've heard the amended
motion. Is there a second?

MR. RIGBY: Michael Rigby. Permission to speak?

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

MR. RIGBY: Thank you. I am interested in alternatives to the current structure of the bond. We went over that idea of the requirement of the judgment, and I'd like to hear from staff their thoughts on how the current statute might be amended to allow consumers to directly access those bond funds.

So if Member Johnson's willing to amend to her motion to also include possible alternatives to the current statute, I'd appreciate it.

MR. DORAN: David, this is Presiding Officer Doran. Might we take up Member Rigby's suggestion in a separate standalone motion immediately following the voting on Member Johnson's motion?

MR. RICHARDS: Officer Doran, yes, I would recommend that. And members, let me also say this. I've gotten a note from our court reporter that there's a lot of background noise. So when you're not speaking or you've not been recognized to speak, please leave your phones on mute status, so she is able to catch everything we say. So appreciate that.

But yes, Officer Doran, I would take up Member
Rigby's suggestion in a separate motion, please.

MR. DORAN: Thank you. So Member Rigby --
again, Presiding Officer Doran, for the record -- it would
be our intent to take up your motion separately,
immediately following voting on this motion, and this
motion being the motion brought by Member Johnson.

MR. RIGBY: Michael Rigby. That's fine. I
withdraw my motion to amend the current one pending.

Thank you.

MR. DORAN: Member --

MR. OLAH: This is Member Olah.

MR. DORAN: Member Olah, you are recognized.

MR. OLAH: I'd like to second the pending
motion.

MR. DORAN: Members, there is a second. Okay.
Members, I will now call for the motion. As I call your
name, please state your support for the motion by stating
yes or no, no being if you do not support the motion.

Member Brooks?

MS. BROOKS: Yes.

MR. DORAN: Okay. Member Cavender? Member
Cavender?

MR. CAVENDER: Yes.

MR. DORAN: Okay. Member Eshpeter?

MS. ESHPETER: Yes.
MR. DORAN: Member Gonzalez?

MR. GONZALEZ: Yes.

MR. DORAN: Member Gonzalez?

MR. GONZALEZ: Yes.

MR. DORAN: Okay. Member Johnson?

MS. JOHNSON: Yes.

MR. DORAN: Member Olah?

MR. OLAH: Yes.

MR. DORAN: Member McCullah?

MS. McCULLAH: Yes.

MR. DORAN: Member Rigby?

MR. RIGBY: Yes.

MR. DORAN: Member Smith?

MR. SMITH: Yes.

MR. DORAN: Member Solis?

(No response.)

MR. DORAN: And I, Laird Doran, vote yes as well. The motion, being unanimous, passes. This is Presiding Officer Doran again. I wanted to recognize Member Rigby to make a motion.

MR. RIGBY: Michael Rigby. I would move that the Committee direct staff to research alternatives to the current statutory language requiring a judgment to access the surety bond.

MR. DORAN: Members, is there a second?
MR. GONZALEZ: Second the motion.

MR. DORAN: Okay. Can you identify yourself for the record?

MR. GONZALEZ: Forgive me. Ruben Gonzalez.

MR. DORAN: Okay. Member Gonzalez has seconded the motion. Members, we will now move on the motion -- I'm sorry. A motion has been made. We will now vote on the motion.

Members, when I call your name, please state your support for the motion by saying yes, or no if you do not support the motion. Member Brooks?

MS. BROOKS: Yes.

MR. DORAN: Okay. Member Cavender? Member Cavender?

MR. CAVENDER: Yes.

MR. DORAN: Okay. Member Eshpeter?

MS. ESHPETER: Yes.

MR. DORAN: Member Gonzalez?

MR. GONZALEZ: Yes.

MR. DORAN: Member Johnson?

MS. JOHNSON: Yes.

MR. DORAN: Member McCullah?

MS. McCULLAH: Yes.

MR. DORAN: Member Olah?

MR. OLAH: Yes.
MR. DORAN: Member Rigby?

MR. RIGBY: Yes.

MR. DORAN: Member Smith?

MR. SMITH: Yes.

MR. DORAN: Member Solis?

(No response.)

MR. DORAN: And I, the Presiding Officer, also vote yes. The motion is unanimous.

David -- again, Presiding Officer -- I believe there was another aspect to this topic that was included in the introduction of the topic today, and that had to do with impacts on consumer credit or credit scores, if I'm not mistaken.

So I'd like to, if this is appropriate, turn it over to Mr. Kuntz to see if there's any additional information or discussion that he would like to make regarding that issue.

MR. RICHARDS: David Richards for the record. May I be allowed to speak?

MR. DORAN: Yes, David, please proceed.

MR. RICHARDS: Officer Doran and members, we are not prepared at this time for this meeting to present on that particular topic or those particular topics. At some point we do want to discuss the issues of consumer financing and credit reports scoring.
Those are two issues that were part and parcel of the Reagor Dykes bankruptcy. Particularly, we had consumers that were paying on a vehicle that they traded in as well as a new one, so their credit scores were being impacted, obviously, adversely.

So we'll bring that back to you at a subsequent meeting, and -- but we're not prepared to present on that today. There was one other issue, and I don't know, for the purposes of this meeting, if -- and Mr. Kuntz touched on it -- as it relates to Transportation Code 501.0236, and, Jeremiah, you know, jump in and correct me if I'm wrong, but I think you threw out there for consideration, not necessarily as a recommendation, but maybe a statutory change that would allow the county to be added to that statute.

Am I correct, Jeremiah? Or is that a figment of my imagination?

MR. KUNTZ: No -- yeah. Because I believe that that recommendation was brought up last time, and I'll defer to Member Gonzalez, if that's still something that he would like considered, because I believe that that -- I believe that he was the one that brought that up last time.

MR. DORAN: Member Gonzalez, you are recognized.
MR. GONZALEZ: Yes. Thank you. I still am interested in seeking a procedure or a statutory change or an amendment to allow counties to receive their proper credit on any of these type of transactions. I think it would -- now in today's time, COVID-19 issues, counties are hurting with the revenue shortages and stuff like that.

So I think an amendment or a consideration to amend the statute to include county tax collectors to get the proper credit would be very fair and appropriate.

MR. KUNTZ: So Member Doran, this is Jeremiah Kuntz.

MR. DORAN: Jeremiah, you are recognized.

MR. KUNTZ: So I believe that, for the consideration of the Committee, that there are two ways that that could be pursued. One would be to expand upon the Department's authority for -- because we currently have access to recover on the fees that are waived here.

Potentially it could be amended to where the Department could pursue on behalf of the county any fees that were waived for the county, so that it would be expanded from just title or permit fees issued, but to include also local fees, or the option would be for the county to become a named party that could recover against the surety bond.
But I would throw those two different approaches for the Committee's consideration.

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

MR. DORAN: Member Johnson, you are recognized.

MS. JOHNSON: We no longer have a county legal department, and so if we would intend to pursue anything in our county, it would involve a minimum of $275 an hour to hire an attorney to pursue that for us, so my preference would be that the DMV Board collect on behalf of the counties.

And then, Mr. Kuntz, I would imagine that the Department has some way to credit the counties with those fees.

MR. KUNTZ: I would imagine that there would probably be some rulemaking or something that would be put in place, but from a procedural standpoint, I'm sure that, yes, there would be a way for us to get the money to you if it was recovered against the surety bond.

MR. DORAN: Members, were any members wanting to make a motion? I know Member Gonzalez had laid out his points here, and was just wondering if it was his intent to make a motion?

MR. GONZALEZ: Member Doran?

MR. DORAN: Yes, you are recognized.
MR. GONZALEZ: I would like to make a motion to expand the authority for the Texas DMV to collect on behalf of the county any respective fees that are due. I don't know if that's properly worded or not, but just as Member Johnson mentioned, I think if it's convenient for us to do to allow the DMV to give us the proper credit quarterly, as determined by the collection and the bonding capability of seeking judgment against this -- the bonding company.

So I would make that motion.

MR. DORAN: Members, Presiding Officer Doran. Member Gonzalez has made a motion. Is there a second, or is there further discussion?

MR. KUNTZ: Member Doran, if I might have assist, and I'm going to have General Counsel help me out with this as well, this is where I believe your motion would need to be potentially crafted, and that would be make -- the Committee make a recommendation to the Texas Department of Motor Vehicles Board that they recommend to the legislature a legislative change to increase operational efficiencies in accordance with Chapter 1001 of the Transportation Code, a recommendation to expand the types of fees that may be recovered under -- hold on; let me find it -- under Transportation Code -- where's my Transportation Code reference?
General Counsel, you're going to have to help me out here.

MR. RICHARDS: 501.0236(e).

MR. KUNTZ: Thank you. The ability to recover local fees that are waived.

MR. RICHARDS: And Member Doran -- or Officer Doran, if Member Gonzalez just wants to state, so moved, we'll take it from there.

MR. DORAN: Thank you, David.

MR. GONZALEZ: So moved.

MR. DORAN: Okay.

MS. JOHNSON: Member Johnson seconds.

MR. DORAN: Okay. We have a second. All right. Members we will move toward with voting on the motion, unless there's any further discussion?

(No response.)

MR. DORAN: Hearing none, I'll call for the vote. Members, when I call you name if you're in favor of the motion and no if you're opposed. Member Brooks?

MS. BROOKS: Yes.

MR. DORAN: Member Cavender?

MR. CAVENDER: Yes.

MR. DORAN: Okay. Member Eshpeter?

MS. ESHPETER: Yes.

MR. DORAN: Member Gonzalez?
MR. GONZALEZ: Yes.

MR. DORAN: Member Johnson?

MS. JOHNSON: Yes.

MR. DORAN: Member McCullah? Member McCullah?

(No response.)

MR. DORAN: Member Olah?

MR. OLAH: Yes.

MR. DORAN: Member Rigby?

MR. RIGBY: Yes.

MR. DORAN: Member Smith?

MR. SMITH: Yes.

MR. DORAN: And I, Laird Doran, vote yes on the motion. The motion passes.

MR. FRENCH: Officer Doran?

MR. DORAN: Yes?

MR. FRENCH: James French.

MR. DORAN: Member French, you are recognized.

MR. FRENCH: Thank you. For some reason, you're leaving me out of these vote sessions. I agree with them, all yes, yes, yes, but I just wanted to make you aware of that.

MR. DORAN: Member French, thank you for -- for the record, this is Presiding Officer Doran. Member French, thank you for making me aware of that. I apologize. The script I'm reading off of -- your name was
stricken, and it was certainly not intentional to leave you out on any of these motions.

So let the record reflect that you are in the support of each of the motions that the Committee has voted on so far today. Is that accurate, Member French?

MR. FRENCH: Yes, that is accurate. Thank you.

MR. DORAN: Thank you, Member French, for the clarification, and again, apologize for missing you on the vote. Okay. Is there any -- for the record, Presiding Officer Doran -- is there any further discussion on this Agenda Item 2a that the Committee wanted to take up today?

(No response.)

MR. DORAN: It doesn't sound like there is. So David, is appropriate now to move on to Item 2b?

MR. RICHARDS: David Richard, for the record. Officer Doran, yes, it is. We can -- we're ready to move on. I believe Mr. Kuntz is going to give an introduction, particularly for the new membership, of the subject matter, and then we'll get into it in further detail at a future meeting.

But yes, it's okay to move on.

MR. DORAN: Okay. Thank you, David. Members, we will now turn to consider Agenda Item 2b, which is Protecting DPPA Information, talking about legislative recommendations.
And members, I am now going to turn the meeting over to Mr. Jeremiah Kuntz, Director of the Vehicle Titles and Registration Division, for a presentation.

MR. KUNTZ: Thank you, Chairman Doran. For the record, Jeremiah Kuntz, Director of Vehicle Titles and Registration Division. So for the benefit -- again, our new members and hopefully a refresher for the other members that have already heard me talk about DPPA, or the Driver's Privacy Protection Act, both state and federal protect the personal information that are contained within our database, and so we collect information when a member of the public titles and registers a vehicle in the state of Texas; namely, we collect information specific to the vehicle.

So as an example, I own a 2016 Chevy Suburban. We have that information contained within our database. Our database also contains information specific to the owner, any lienholders that have an ownership interest in the vehicle, and their address information, of where the vehicle is located, physical address, mailing address.

We have up to three addresses on a vehicle. And state and federal law protect that information from disclosure under the Open -- under the PIA, the Public Information Act. What it -- what state and federal law do is, they define personal information -- means information
that identifies a person, including the individual's
photograph or computerized image, Social Security numbers,
driver identification number, name, address, but not the
zip code, telephone number and medical or disability
information.

So all of that information is protected under
DPPA, and so we start with the premise of -- all that
information is protected. The state and federal law then
go on to say that there are certain disclosures that are
required, certain disclosures that are prohibited, and
certain disclosures that are permissive.

And so the agency -- and really where this
really starts to mainly get down to the -- I would say the
line that is drawn in the sand, if you will, comes to
disclosure for marketing purposes or for any purpose that
is not allowed for or permitted for.

So required disclosures: The Department's
required to disclose personal information when it is used
for any matter of motor vehicle or motor vehicle operator
safety, motor vehicle theft, motor vehicle emissions,
motor vehicle product alterations, recalls or advisories,
performance monitoring of motor vehicle or motor vehicle
dealers by a motor vehicle manufacturer, removal of non-
owner records from the original owner, record of a motor
vehicle manufacturer to carry out the purposes of the
Automobile Information Act.

Then there's other various -- any car theft acts, any other statute or regulation enacted or adopted, or in relation to the laws included above. And I'm reading right now from page 23 of your packet, looking at the Chapter 730 of the Transportation Code.

Also a required disclosure is for child support enforcement, enforcement by the Texas Workforce Commission or voter registration or the administration of elections by the Secretary of State. So the Department is required -- for any of those purposes, the Department is required to disclose personal information that is contained within our database for any of those purposes.

As you can imagine, those purposes have a very specific use for that information that the Legislature has sought -- that the Department's required to provide that information.

Going beyond that then, we move into permitted disclosures, and I won't read all of these; there are quite a few of them. But there's permitted disclosures, and I'll use some examples, because there probably are primary examples that we see on a day-to-day basis.

Dealerships have a permitted purpose to obtain our information, motor vehicle records, and the primary purpose that we see is -- and it falls under the
provisions in 730.007(c), "which is used in the normal course of business by a legitimate business or an authorized agent of the business, but only to verify the accuracy of personal information submitted by the individual to the business or agent of the business."

What we see primarily from dealerships is relating to trade-in vehicles. So the scenario -- we get many dealerships that come to us and say, we would like to have access to the motor vehicle records to verify that a person that's trading in a vehicle is the owner of the vehicle, to verify if there are any liens on the vehicle that would need to be paid off, so they can identify the lienholders.

And so they are verifying the information. They have a consumer who's brought the vehicle in. The consumer has made a claim to them that they are the owner of that vehicle, and whether -- and they've also made a claim, whether or not there's a lienholder present.

Our interpretation of that is that is a permitted purpose, and the Department is authorized to disclose the information to those dealerships requesting it for that specific permitted purpose.

We also see a very large number that would fall under the provisions relating to a tow-truck operator who is required to notify the owner of a vehicle that the
vehicle has been put into their impound lot. So that's under (g), and it's used in providing to an owner of a towed or impounded vehicle.

So what we generally see are what are known as VSFs, which are vehicle storage facilities. That is generally where, you know, somebody's parked in a no-parking zone. The tow truck company has been called out to remove the vehicle and impound it at their vehicle storage facility lot, and they are required under statute to notify the owner of that vehicle that the -- that they have the vehicle, so that the owner can come and make a claim to get their vehicle back.

So you can see that statute has definitely contemplated that there are permitted purposes by which there's a legitimate reason for somebody to access the data contained within our database. That being said, we have quite a few number of individuals who obtain data from us in really one of two ways, and I'll kind of walk through that a little bit.

Most of the entities that access our data are accessing our data through what is known as MVINet, which is our Motor Vehicle Information system. They are issued a user name and password. It's a secure login. They are able to log in, and they can run a motor vehicle record, utilizing either the license plate number or the VIN
number, and it will return to them the owner and address of that vehicle.

It does not contain all the information contained within our database, so it would not necessarily have sales information. It would not necessarily have previous owners, those kind of things, although it may have some information about, you know, previous owners of the vehicle.

But it is limited in nature in what is returned to them. It does not have all of the fields of data. So we have about 2,600 entities that access our Motor Vehicle Information system to obtain information for one of those permitted purposes.

I mean, if you look on -- I believe it is on page 30 of your documentation, you will see a listing of entities by their grouping, if you will, that potentially have access to our information currently. The other method by which people access our data is known as our master file and weekly updates.

Entities that receive the master file and weekly updates are receiving all of the records in our database. That would be the master file, and then they would receive a weekly update so that they can update their system.

And you would have to actually set up a server
and download basically the master file into your system, and then set up a method by which to keep those records updated weekly when we receive a weekly file out to those individuals that receive it.

That is a substantial group of individuals that have access to that system. There's, I believe, 30 or so different companies or governmental entities really that have access to the master file and weekly updates, and those could be toll road entities.

It could be research institutions like the Texas Transportation Institute at A&M, and then there are also what we refer to as resellers that have access to that data, which is contemplated in Transportation Code 730.

Those resellers could be entities like LexisNexis, you know, Polk, who -- or actually, I believe it used to be Polk; I cannot remember the current name of entity now -- that provide services to other business entities and potentially are not utilizing the personal information in their services.

So some of those entities may be assisting the dealership community by giving the average sales price by zip code of vehicles sold in their area, and so they are required to repackage that information.

In fact, statute says that they cannot disclose
the information in substantially the same way that they obtained it from the Department; it has to be altered in some way. And generally what we see is that they are changing that information, utilizing a database, and they are packaging it in a way for their customers to utilize that information. Maybe they're running statistical analysis or other things.

So those are kind of the two methods by which entities are obtaining information from the Department. The Department approximately a year ago started an effort to start looking at those entities and vetting the entities in a different way than had been vetted before, and there were new rules that were put in place by the Department concerning the method by which people apply for access to this data and the different information that the Department would require an entity to provide the Department in order for them to gain access to our systems.

So about a year ago we started a project -- it's called the Master Data Contract Initiative -- in which we developed a new contract and a new application process by which entities can apply and be granted access to the Department's systems.

Through that, we have learned quite a bit about the customers that are receiving this information, the
business entities that are receiving this information, and
we have terminated access to numerous entities that we
believe did not rise to the level of needing access to our
systems on an ongoing basis.

And we are looking at, you know, potentially
other enhancements to that process and potentially some
rules and statutory changes that would assist the
Department in ensuring that we have a good process by
which to vet those companies and making sure that we have
adequate contracting provisions in place for them to
protect the consumer's information when they have it.

So at this point, I will answer any questions
that y'all have around DPPA. I believe that we'll be
working on getting y'all some information for another
Consumer Protection Advisory Committee meeting where we'll
take up some recommendations for potentially some changes
to either statute or administrative rule to assist the
Department in continuing to protect this information.

But I will answer any questions at this point.

MR. DORAN: Jeremiah, this is Presiding Officer
Doran. So is the takeaway here that DMV will be coming
back to the CPAC -- excuse me -- the CPAC Committee with
some recommendations for us to discuss, consider, and
evaluate?

Is that what you're saying.
MR. KUNTZ: Yeah. We will bring back some additional discussion points, if you will, for you to take up and consider.

Obviously, the CPAC, if there are recommendations from your own members on what could be changed to our administrative rule or statute, the Committee could definitely take those up as well.

But yes, we will -- we'll bring some additional information and potential discussion items back at a future meeting for y'all to consider, as we look to make some changes to the DPPA.

MR. DORAN: Thank you, Jeremiah. Quick follow-up question. Again, this is Presiding Officer Doran. Can you speak to -- you mentioned that some entities are now being -- their requests to access the system are being denied.

Are there any particular accounts or examples of nefarious use that the DMV has come across that you feel would be helpful to share with the Committee?

MR. KUNTZ: So there's -- I'll address it in a couple of ways. So as far as nefarious use, the Department has in the past terminated access to individuals who have had the master file and weekly updates for breaches in their system and misuse of the data.
We have been made aware that they have used the data for marketing purposes, to send out marketing fliers, or to try and -- you know, some of the misuse that we discovered was related to warranty, like extended warranties.

You get -- you know, a lot of times, you'll get extended warranty mailers and that kind of stuff. We terminated somebody for identifying potentially that they were using it for that purpose, for mailing out like dealer service mailers, where an entity was receiving our information and it was not a dealership that was receiving it, but the entity that was receiving apparently -- either there was a breach or they sold the data and it showed up in the marketing materials for a dealership.

So we've seen instances like that, where there was, if you will, nefarious actions that were occurring, misusing the data for marketing purposes and access to those entities to the weekly file -- I mean, the master file and weekly updates, which terminated in those instances.

The -- through our vetting of entities that receive our data, we have come across some entities that previously had been granted access to MVINet, that in reviewing their stated use of the information, we did not believe was in the spirit of the permitted purpose that
was laid out in statute, and as such, their access was not granted when we were going through our vetting of those applications, in looking to move everybody to the new master data contract.

Through that vetting process, we've determined that, no, they did not rise to the level of what we believe should have been permitted under the permitted purpose, and I will use a couple of examples.

One would be title service companies, and they have attempted to say that they are using that -- and I read from the statute earlier, in the normal course of business to verify information provided to them.

When we look at that and we say, well, you're a title service company. You are not relying upon that information yourself in making a determination or granting something, or you know, you're not relying on that financially in a financial decision.

You're basically a runner that is taking a title application down to the county tax assessor-collector, and we did not believe that that fit within the permitted purpose that is listed there for verifying information that is provided to them in the normal course of business.

Another instance that we have seen is related to private investigators. While private investigators are
allowed to receive our data under 730.007(h), the mere fact that you're a private investigator does not in and of itself grant you access, because you also have to have another permitted purpose above.

And so what we've determined, in looking through some of these applications from private investigators, is that they are doing private investigations that have nothing to do with the vehicle itself.

They're maybe doing family private investigations. They're looking for -- you know, they're doing child custody cases. They're doing divorce cases, those kind of things, where they're doing private investigations for actions that have nothing to do with the vehicle.

They may also do some vehicle cases, but we could tell, based on what they had presented, that their primary business was not for doing claims investigations for insurance companies, or something of that nature, and for that reason, we've turned certain private investigators off because their primary purpose was not investigations of, you know, insurance claims or insurance fraud or any of that kind of stuff, related to the vehicle itself.

Does that help a little bit?
MR. DORAN: Thank you. That is very, very helpful. Appreciate it.

MR. KUNTZ: Do we have any other questions from the Committee related to the Driver's Privacy Protection Act?

(No response.)

MR. DORAN: Presiding Officer Doran. Just -- so again, just to recap, staff's going to come back with some recommendations for us to review and discuss the next time we convene to talk about this particular topic?

MR. KUNTZ: Yes. We'll bring back some discussion points, for sure, for the Committee to take up and consider.

MR. DORAN: Okay. Okay. Not hearing any questions from the members for further discussion. I believe, David, it's appropriate to move on to Agenda -- I'm sorry -- Agenda Item 2c?

MR. RICHARDS: Yes, sir, it is.

MR. DORAN: Okay. Thank you, David. Members, we currently have a meeting scheduled for Thursday, June 25, 2020, beginning at 9:00 a.m. The Office of General Counsel will send out future meeting invites to determine member availability -- membership availability. Members, we would now -- we will now take up Agenda Item No. 3, public comment. David, are there any
comments from the public?

MR. RICHARDS: David Richards, for the record.

Officer Doran, we do not have any comments from the public today.

MR. DORAN: Okay. Thank you. All right.

Well, we will now move to Agenda Item No. 4, adjournment, or -- unless there's any further business?

(No response.)

MR. DORAN: Members, do I hear a motion -- or do I have a motion from anyone to adjourn this meeting?

MR. CAVENDER: Member Cavender votes to adjourn meeting.

MR. DORAN: Okay. Member Cavender has made a motion to adjourn. Is there a second?

MR. FRENCH: Member French seconds.

MR. DORAN: Okay. Member French provided the second. The motion has been made and seconded to the meeting. All in favor, please say, aye.

(A chorus of ayes.)

MR. DORAN: Let the record reflect that the vote is unanimous. Members, it is now 11:18 a.m., and we are adjourned. Thank you, everyone.

(Whereupon, at 11:18 a.m., the meeting of the was adjourned.)
CERTIFICATE

MEETING OF:    TxDMV Consumer Protection Advisory Committee

LOCATION:     via WebEx

DATE:      June 18, 2020

I do hereby certify that the foregoing pages, numbers 1 through 89, inclusive, are the true, accurate, and complete transcript prepared from the verbal recording made by electronic recording by Elizabeth Stoddard before the Texas Department of Motor Vehicles.

DATE:  June 25, 2020

/s/ Adrienne Evans-Stark
(Transcriber)

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