

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
Austin, Texas

Friday,
January 15, 2021
9:00 a.m.

COMMITTEE MEMBERS:

Laird Doran, Presiding Officer
Dorothy Brooks
Richard Cavender
Melissa Colvin, 1st Vice Chair (absent)
Tiffen Eshpeter (absent)
James French
Ruben Gonzalez
Cheryl Johnson
Traci McCullah (absent)
Ray Olah
Jeanette Rash (absent)
Michael Rigby, 2nd Vice Chair
Carroll (William) Smith
Juan Solis (absent)

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P R O C E E D I N G S

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

7 It is now 9:00 a.m., and I am calling the CPAC
8 meeting for January 15, 2021 to order. I want to note for
9 the record that the public notice of this meeting,
10 containing all items on the agenda, was filed with the
11 Office of Secretary of State on January 7, 2021.

12 This meeting is being held by telephone
13 conference call in accordance with Texas Government Code
14 Chapter 551, as temporarily modified under Governor Greg
15 Abbott's authority to suspend certain statutes due to
16 COVID-19. Governor Abbott suspended various provisions of
17 the Texas Open Meetings Act that require government
18 officials and members of the public to be physically
19 present at specified meeting locations.

20 Under that suspension, the public will not be
21 able to physically attend this meeting in person.
22 Instead, the public may attend this meeting by calling the
23 toll-free telephone number which is posted in the agenda
24 which was filed with the Office of the Secretary of State
25 on January 7, 2021.

1 All advisory committee members, including
2 myself, will be participating remotely via Webex. At this
3 time please mute your phone for the entire duration of
4 this meeting. I'm asking our Webex meeting host to make
5 sure all participants' phones are muted except for
6 advisory members and those who are presenting today.
7 Callers will be removed for any disruption, including
8 background noise.

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

15 First, department staff, committee members and
16 any commenters should identify themselves before
17 speaking. Second, speak clearly and remember that there
18 may be a slight delay due to the telephone conference call
19 meeting, so please wait a little bit longer than usual
20 before responding to participants.

21 Last, do not speak over others and speakers
22 should ask the presiding officer to proceed and be sure to
23 get recognized before speaking. Members should mute their
24 telephones when not speaking and should not conduct side
25 conversations during the meeting.

1 Because the number of dial-in participants is
2 limited, if you wish to address the advisory committee or
3 speak on an agenda item during today's meeting, please
4 send an email to the following email address:

5 GCO general@TxDMV.gov.

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

12 In accordance with department administrative
13 rule, comments to the advisory committee will be limited
14 to three minutes, then your line may be muted by the
15 meeting host when your time is up. Comments should be
16 pertinent to the issues stated in your email. When
17 addressing the advisory committee, please state your name
18 and affiliation for the record.

19 Before we begin today, I'd like to remind all
20 presenters and those in attendance of the rules of conduct
21 at Texas DMV public meetings. In the department's rules
22 under 43 Texas Administrative Code, Section 206.22, the
23 presiding officer is given authority to supervise the
24 conduct of meetings. This includes the authority to
25 determine when a speaker is being disruptive of the

1 meeting or is otherwise violating the timing or
2 presentation rules I just discussed. Disruptive speakers
3 will be muted, given a warning about disruptive behavior,
4 and then removed from the meeting for any continued
5 disruption.

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

12 And now I'd like to move forward with a roll
13 call of the advisory committee members. This would be
14 agenda item number 1, Roll call and establishment of
15 quorum. Please let me know if I pronounce your name
16 incorrectly. When I call your name, please indicate you
17 are present by stating here or present.

18 Member Brooks, are you here?

19 MS. BROOKS: Present.

20 MR. DORAN: Member Cavender?

21 MR. CAVENDER: Present.

22 MR. DORAN: Member Colvin?

23 (No response.)

24 MR. DORAN: Member Eshpeter?

25 (No response.)

1 MR. DORAN: Member French?

2 MR. FRENCH: Present.

3 MR. DORAN: Member Gonzalez?

4 MR. GONZALEZ: Present.

5 MR. DORAN: Member Cheryl Johnson?

6 MS. JOHNSON: Present.

7 MR. DORAN: Member McCullah?

8 (No response.)

9 MR. DORAN: Member Olah?

10 MR. OLAH: Present.

11 MR. DORAN: Member Rash?

12 (No response.)

13 MR. DORAN: Member Rigby?

14 MR. RIGBY: Present.

15 MR. DORAN: Member Smith?

16 (No response.)

17 MR. DORAN: Member Solis?

18 (No response.)

19 MR. DORAN: And I, Laird Doran, am present as
20 well.

21 It looks like we have eight, which I believe is
22 a quorum, David. We have a quorum?

23 MR. RICHARDS: Yes, Presiding Officer Doran, we
24 do have a quorum. You may proceed.

25 MR. DORAN: Thank you.

1 Members, we're going to proceed to take up
2 agenda item number 2. Discussion and possible action
3 items. We'll move to item 2.A. Recommendations for
4 potential statutory changes to the 87th Legislature under
5 Transportation Code Section 1001.025. The action item is:
6 Preventing, deterring and detecting the misuse of dealer
7 temporary tags.

8 We will now move on to the first item under
9 agenda item 2.A. Members, the discussion will be led by
10 Associate General Counsel David Richards, Office of the
11 General Counsel, the director of the Enforcement Division,
12 Corrie Thompson, and Roland Luna, director of the Vehicle
13 Titles and Registration Division.

14 I will now turn the meeting over to Mr.
15 Richards, Ms. Thompson, and Mr. Luna.

16 MR. RICHARDS: CPAC members, TxDMV staff and
17 guests, good morning, and Happy New Year to each of you.
18 I hope this will be a great year for all of us.

19 For the record, my name is David Richards. I'm
20 associate general counsel in the Office of General
21 Counsel.

22 This morning, CPAC members, we're asking CPAC
23 to revisit two issues that were agenda items in previous
24 CPAC meetings. The first pertains to preventing,
25 deterring, and detecting the misuse of dealer temporary

1 tags, and the second issue focuses on consumer protection
2 and financial issues when a franchise or independent
3 dealer goes out of business, including independent and
4 franchise dealer surety bonds, dealer statutory duties and
5 consumer reporting and credit issues.

6 Previous recommendations on these two
7 particular items from CPAC were presented to the TxDMV
8 Board on December 10, 2020, at their regular called
9 meeting. They were presented as legislative
10 recommendations. After a lengthy discussion from board
11 members, these two recommendations were tabled and
12 ultimately not adopted by the board.

13 The board recognizes the importance of these
14 two issues and asked staff to work with CPAC and
15 stakeholders on further considerations. The TxDMV Board
16 and the department are very interested in receiving CPAC's
17 additional input and recommendations on these two
18 topics. Recommendations are not limited to being
19 legislative in nature and can include department
20 rulemaking suggestions, administrative actions that would
21 not require rulemaking, or legislative changes that allow
22 the department under Transportation Code Section 1001.025.

23 Members, I would like to refer you now to your
24 meeting book materials. I would like you to go to page
25 7. That particular page is entitled "Considerations for

1 CPAC regarding consumer issues to curb temp tag abuse and
2 financial and consumer issues when dealers go out of
3 business."

4 These considerations that are in your book will
5 help CPAC narrowly focus on potential options or for
6 addressing each of these two particular agenda items that
7 we'll be discussing this morning. In a few minutes we'll
8 come back to these considerations and take up each one
9 separately.

10 We thought as a department, to help facilitate
11 our discussion on the issue of temp tag abuse in
12 particular, that it might be instructional to conduct a
13 very high-level overview of the various agency
14 administrative rules and statutes that govern this
15 issue. To that end, I would ask that you turn to page 9
16 in your meeting book materials.

17 As you may recall, the department has provided
18 you with sample temp tags and sample temp tag receipts for
19 each type of tag in your meeting book materials. We
20 haven't, however, taken a look over the source of the
21 agency's legal authority regarding issuance and regulation
22 of temp tags.

23 So with that being said, I'm going to take
24 y'all on a very high-level review before we get started
25 with our other presenters on this issue, on the first

1 issue, and I'm going to focus in on some of the important
2 rules, statutes and sections in those rules or statutes,
3 as we have a lot of work to do today, several presenters
4 and many commenters that want to comment on these items.

5 So I think probably the best place to start
6 would be with administrative rules. They tend to be, as
7 you know, more detailed in nature than our governing
8 statutes. Page 9 begins with Section 215.150 which is the
9 authorization to issue temp tags.

10 Subsection (a) provides that a dealer that
11 holds a GDN -- so you have to have a GDN -- may issue the
12 dealer temp tag, buyer's temp tag, or a preprinted
13 internet-down temporary tag for each type of vehicle the
14 dealer is licensed to sell. Subsection (b), I want to
15 call your attention to, states that a license holder may
16 issue these tags until his/her license is canceled,
17 revoked, or suspended.

18 Moving on to page 11, which is obtaining
19 numbers for issuance of temp tags. 215.152 requires the
20 dealer to have internet access to connect to the database
21 and also other requirements of the dealer before a temp
22 tag may be issued and displayed on a vehicle are set forth
23 in subsection (1) and (2).

24 The next provision I want to highlight is on
25 page 26 which is the buyer's temp tags, which is front and

1 center to our discussion today. Subsection (a) provides
2 that such a tag may be displayed only a vehicle that can
3 be legally operated on public streets or highways, and
4 number two, for which a sale has been consummated. The
5 buyer's temp tag may be only displayed on a vehicle that
6 has a valid inspection unless it's exempted under Chapter
7 41 of the Trans Code.

8 The dealer is required to ensure certain
9 information is placed on the temp tag, and that's set
10 forth in numbers (1) through (5), vehicle specific number,
11 year and make of the vehicle, VIN of the vehicle, month,
12 day, and year the temp tag expires, name of the dealer.

13 Moving on to page 28, Section 251.156, buyer's
14 temp tag receipt, requires that the dealer must provide a
15 buyer's temporary tag receipt to the buyer of each
16 vehicle. So that's a requirement of the dealer, a dealer
17 duty. And the list of information that must appear on the
18 receipt is included in subsections (1) through (7) of
19 .156.

20 The other one I want to touch on just briefly,
21 page 29 of your meeting materials, Section 215.157, which
22 pertains to advanced numbers, preprinted internet-down
23 temp tags, and that provides that a dealer may obtain an
24 advance supply of temporary tags with specific numbers and
25 buyer's temp tag receipts to issue in lieu of being able

1 to access the internet. That is when access is not
2 available to the dealer.

3 If they're unable to access, the dealer must
4 complete a preprinted buyer's tag and buyer's tag receipt
5 with the details of the sale, assigning the buyer's tag
6 receipt and keeping a copy. The information that's
7 required under the rule and under statute must be entered
8 into the temp tag database the next business day that
9 internet access is available. So there are several
10 actions or acts of due diligence that is required of a
11 dealer when issuing these tags, including entering the
12 information into the database here at DMV.

13 215.158 on page 30 deals with allocations of
14 preprinted internet-down temp tag numbers. Clearly the
15 dealer is responsible of the duty for safekeeping of the
16 preprinted internet tags. They must be stored in a secure
17 area, and the dealer is required within 24 hours of
18 discovery to report any loss, theft or disruption to the
19 DMV.

20 The preprinted internet-down temp tags are
21 valid up to 12 months from the date of creation. There
22 are qualifications that are also provided, qualifiers in
23 there that may change that.

24 The number of preprinted internet-down temp
25 tags a dealer may create is equal to the greater of: one,

1 the number previously allotted by the DMV to the dealer,
2 30 preprinted tags, or one fifty-second of a dealer's
3 total annual sales. And there is a provision in this rule
4 that allows for a dealer to obtain additional preprinted
5 internet-down tags.

6 The standard is that good cause must be shown,
7 that the dealer must show to receive an additional
8 allotment it's necessary for the continuation of the
9 dealer's business. The VTR director and/or his/her
10 delegatee will look at past sales, inventory, and other
11 factors, such as emergency situations, that require an
12 additional amount be allotted. The dealer, finally, must
13 state specifically why the allotment is necessary for the
14 continuation of the business in order to pass muster and
15 get additional tags.

16 If you move quickly to page 37, I'm just going
17 to run over the statutes real quick that are relevant, and
18 we put them in your books for your reference. The first
19 one is Section 503.062 of the Trans Code, dealers
20 temporary tags. That provision sets forth limitations on
21 use. Section 503.0625 pertains to converters temporary
22 tags. Also, there are contained in that section the
23 limitations on the use of converter tags.

24 The database for both of those is found in
25 503.0626 on page 40, and the one that's front and center

1 for us, at least for our discussion purposes today,
2 Section 503.063, the buyer's temp tags on page 41. The
3 database also is in .0631 on page 43. That contains, as
4 you may recall, the provision in Subsection (c) that
5 provides the DMV may not deny access to someone who is
6 licensed, which bears an importance to our discussion
7 today and the issue of abuse and trying to deter
8 unauthorized temp tag production and issuance. Finally,
9 503.067 deals with unauthorized reproduction, purchase,
10 use and sale of temp tags on page 45.

11 Now, before I turn the meeting over to
12 Directors Thompson and Luna for the temp tag agenda item,
13 I would ask that you would turn to page 7 in your board
14 meeting materials. As I mentioned earlier, they deal with
15 considerations for CPAC regarding consumer issues designed
16 to curb temp tag abuse and financial and consumer issues
17 when dealers go out of business. Our presenters will
18 address, maybe Ms. Thompson or Mr. Luna, these options
19 that are available to CPAC.

20 And with that, Presiding Officer Doran, I would
21 turn the meeting over to Director Thompson who will take
22 up the discussion on the first part of 2.A. Thank you.

23 MR. DORAN: Thank you, David.

24 Ms. Thompson, you're recognized.

25 MS. THOMPSON: Thank you, Officer Doran.

1 Corrie Thompson, director of the Enforcement Division.
2 Nice to have everybody back with CPAC. It's been a couple
3 of months since we last got together to discuss these
4 items for possible legislative recommendations for the
5 session.

6 So as David Richards mentioned a second ago,
7 the items that came out of CPAC from our last couple of
8 meetings were presented to the board during the December
9 meeting, and the board tabled these items and asked that
10 CPAC bring them back for further discussion to see if
11 there was any additional options.

12 And David did also mention that there's a
13 couple of things that can come out of the meeting today:
14 CPAC can recommend that we push forward the same
15 recommendation that we already have -- which I will detail
16 in just a moment -- we can also change the recommendation
17 by adding or removing information, or CPAC can opt to put
18 forth no legislative change recommendation and we can
19 continue to work through this advisory committee on
20 department actions that can be changed without statutory
21 changes. So, things that we do with system enhancements,
22 things that we can do by rule and other things of that
23 nature.

24 So the item that we presented to the board
25 during the December meeting was the department getting new

1 authority to be allowed to suspend a dealer's access to
2 the temporary tag system early on in the case and to allow
3 them the opportunity for an expedited hearing solely on
4 that issue, whether the department has the right to
5 continue holding that suspension in place while the
6 remainder of the case proceeds and the additional
7 sanctions, if any, are determined based on the evidence
8 gathered during the investigation. So that's one option
9 that we can still talk about today, having that expedited
10 hearing in place and pushing that recommendation forward
11 where we are allowed to suspend that tag access.

12 We can also have the option of not having an
13 expedited hearing at all. We could cut off access, give
14 the dealer an alternate means to still obtain tags during
15 the pendency of the enforcement case, and then ultimately
16 all of the sanction actions would end up moving together,
17 so if there was a penalty, a revocation, a suspension,
18 that could all move through the normal process we have
19 now. We would just be adding in that ability to suspend
20 the access.

21 Or we could do nothing, which is current
22 law. And so just to refresh everybody's memory -- I know
23 I've gone through this before but it's been a couple of
24 months, again, since we met -- the timeline about how
25 things occur here and why we're gathered here today to

1 talk about this is pursuant to the Government Code 2001 we
2 follow, the Administrative Procedure Act. And so there is
3 a notice period and information that the department has to
4 share with somebody who we are looking at allegations of
5 wrongdoing pursuant to our rules and statutes.

6 So the timeline goes as such: The department
7 receives a complaint, be that from the public, another
8 dealer, one we self-initiate, or from law enforcement, and
9 we start the case. We assign it to an investigator, and
10 our investigators try to complete their case within a
11 90-day time frame. That would be where oftentimes we are
12 substantiating an allegation of misuse or abuse of the
13 temporary tag system.

14 So if there are violations that the
15 investigator finds that are substantiated, yes, we believe
16 there is abuse or misuse of the system, we need to take
17 action on this, then that case gets pushed to an
18 attorney. An attorney in the Enforcement Division then
19 reviews that case for evidentiary sufficiency, and if it's
20 determined that, yes, we see abuse or misuse of the system
21 here, then we send out our initial charging document, and
22 that's in the form of a notice of department decision.

23 And what happens when we send that notice is
24 the dealer receives it, and they have 26 days to respond
25 to us. And with that response, they can either request a

1 hearing or they can contact us and say, hey, we want to
2 talk about this, we have mitigating evidence, we want to
3 settle with you, we don't want to take this to hearing.
4 So it can go either way, or they can not respond to us.

5 After that period of time, so let's say there's
6 no response, then the quickest process would be to
7 immediately flow to the final order at the conclusion of
8 that 26-day time period. The final order reiterates the
9 same allegations: Hey, Dealer, we believe that you have
10 abused or misused the temporary tag system by issuing X
11 number of tags within a certain time period in violation
12 of department statute and rule.

13 And in response to that final order, the dealer
14 again has a 25-day period to respond to that document, and
15 the response to that document comes in the form of a
16 motion for rehearing. So then the Motor Vehicle Division
17 director considers that motion that was filed, if any.

18 Again, it's an option. They don't have to
19 file, sometimes those final orders are completely
20 ignored. But if they do respond, then there's the
21 decision that that motion is either granted or denied.

22 If the motion for a rehearing is granted, then
23 what happens in the process is the case goes all the way
24 back to the attorney and the attorney again engages in
25 discussions with the dealer about what's going on with

1 their temp tag account and the tags that are being issued
2 through the system.

3 If we take a couple of steps back, if it goes
4 to a SOAH hearing because someone wants to contest the
5 allegations that the department has put forth against
6 them, then we must docket the case at SOAH for the dealer
7 who is alleged of committing these violations and then we
8 wait for the hearing to be held. Sometimes there's
9 continuances that can happen that push the case hearing
10 date months out.

11 And then if a hearing is ultimately held, then
12 the way the department's authority works is that SOAH, the
13 State Office of Administrative Hearings, has an
14 administrative law judge that will, within 60 days of
15 conclusion of the hearing, issue what's called a proposal
16 for decision. And I know we've gone over this before but
17 just to reiterate again, that decision is not final
18 pursuant to the department's authority and how it's set up
19 with SOAH.

20 Sometimes SOAH is the final decision-maker in
21 agency cases, but in this instance for the Department of
22 Motor Vehicles, it is not. And so that proposal for
23 decision comes out. Then my staff and the dealer have an
24 opportunity of approximately 20 days after that proposal
25 for decision comes out to then file exceptions to say, oh,

1 there's technical or legal errors with how the proposal
2 for decision was issued, we recommend the following
3 changes. And then again we wait for SOAH to issue an
4 amended or revised proposal for decision if they want to
5 change anything based on those exceptions that were
6 received.

7 Then ultimately, any case heard by SOAH comes
8 back to the department. We must wait to find an
9 appropriate board meeting to set the case as a board
10 meeting agenda item, and then the full board will actually
11 hear the facts of the case. They'll see the proposal for
12 decision that was issued by the administrative law judge,
13 and then the board will actually issue the final order.

14 And the process is the same as the final order
15 issued internally by the department, where there's a
16 period to respond and request a motion for rehearing. And
17 then we get to the point where there is ultimate sanctions
18 filed. So quick pass.

19 That's not even talking about the very end of
20 the administrative process where if there's an ultimate
21 penalty that ends up in the final order, then we must go
22 through debt collection. We issue a first demand letter
23 after the debt becomes delinquent, wait 30 days, issue a
24 second demand letter for payment of the sanction, wait 30
25 days.

1 And then ultimately if the amount is \$2,500 or
2 below for the penalty, there is a Comptroller vendor hold
3 placed with the Comptroller of Public Accounts for that
4 amount, and if it is greater than the \$2,500 for the
5 penalty that is imposed, then the case also gets referred
6 to the Attorney General's Bankruptcy and Collection
7 Division for additional collection efforts.

8 So all in all, if we get a no response on
9 these, we're looking at four, five, six months to move
10 through the administrative process. And so when we got
11 together to come up with a recommendation, it was because
12 we mentioned to CPAC that the department was seeing on our
13 own and being told through external sources that there
14 appears to be rampant misuse and abuse of temporary tags
15 from our system.

16 So to differentiate those from actual
17 counterfeit tags that people are just creating on their
18 own, these are actual tags from our system being created
19 by users in our eTAG system. So we came up with a
20 recommendation through CPAC to basically stop the bleeding
21 of those tags going out. And to refresh everybody's
22 memory on the type of volume we're talking about, we're
23 seeing upwards of 50,000 tags issued in eight months,
24 25,000 tags issued in four months time period, things like
25 that.

1 When we talked about this recommendation, we
2 were talking about trying to nab blatant bad actors in the
3 system so that we could stop those tags from making their
4 way into the world.

5 I'm having a little bit of an allergy issue so
6 excuse me if I'm drinking water throughout this process.

7 So we came up with, yes, let's give the
8 department the authority to suspend the access. Once we
9 have reasonable evidence that misuse or abuse is
10 occurring, the investigation happens. It moves to the
11 attorney. We say, hey, yes, definitely this is a truly
12 bad actor, we have thousands of tags going out the door
13 every day, every week and we need a way to cut the
14 bleeding off.

15 And so what CPAC recommended was, yes, send the
16 notice cutting the dealer's access to the tag system
17 off. The way we have it written currently is that the
18 notice goes out, the suspension takes place five days
19 after the notice goes out, and within ten days of the
20 notice going out, the dealer needs to respond to the
21 department to say, hey, I have some mitigating
22 information, I shouldn't be placed on hold, or yes, hey, I
23 want a hearing on this.

24 It could go either way. And so this gives them
25 the right to request an expedited hearing at SOAH within

1 20 days on that issue of whether or not the department has
2 the right to continue the hold on the dealer's access.

3 Also, part of the recommendation was ensuring
4 that the dealer did have a way to still issue tags from
5 the system, and so we didn't detail that completely, but
6 we talked about it as being able to go to a TAC's office
7 or to a regional service center to obtain tags. We did
8 not get into whether that would need to be in person,
9 whether that would need to be an electronic means for
10 getting the tags. We have stated in the statutory
11 recommendation that that would be determined by department
12 rule.

13 So that's what we presented to the board at the
14 last board meeting, and again, we're here today to talk
15 about other options because that's what the board has
16 asked us to do is to -- they were concerned at the board
17 meeting that maybe we would be catching people in that net
18 of cutting them off that were truly innocent that
19 shouldn't be on hold and that would drastically affect
20 their business. And so the department is coming back to
21 CPAC today to ask if y'all had any other ideas about how
22 we could either amend the recommendation, how we could
23 amend what we have currently that includes the expedited
24 hearing as one, or not having an expedited hearing and
25 letting it still be suspended but ultimately be determined

1 with the remainder of the sanctions in the case.

2 I'm going to have to get a cough drop at some
3 point. Can y'all still hear me?

4 MR. DORAN: Yes. This is Presiding Officer
5 Doran. We can hear you loud and clear.

6 Ms. THOMPSON: Okay. Or we can make no
7 recommendation and do nothing and continue on that current
8 timeline that I've laid out. And so I would just like to
9 open that up for any discussion right now.

10 MR. DORAN: This is Presiding Officer Doran.
11 Members, are there any questions regarding the
12 presentation by Ms. Thompson or Mr. Richards?

13 (No response.)

14 MR. DORAN: Well, this is Presiding Officer
15 Doran. I guess I'll kick off a couple of the questions,
16 Corrie. One of the questions I had related to the
17 authority that currently exists with DMV, and I know in
18 the packet today we were cited to the statutory provision
19 in the Transportation Code that talks about the DMV not
20 being able to deny access to the eTAG database to a
21 licensed dealer.

22 My question is -- and it goes to your point
23 about stopping the bleeding -- you also included in
24 today's packet the statutory provision from 2301 of the
25 Occupations Code, I think it's 802, that gives the board

1 the ability to issue a cease-and-desist order. Can you
2 talk a little bit about the interplay between these two
3 statutes?

4 Because if one reads the Occupations Code
5 section, it leads you to believe that the board would have
6 the authority to notice the licensee and to bring them
7 into -- essentially issue a cease-and-desist order to
8 "stop the bleeding." So maybe you could speak to that a
9 little bit.

10 MS. THOMPSON: Sure. So cease-and-desist
11 authority is, yes, detailed in statute -- of course I'm
12 having issues with this right now, that's how it goes. I
13 do have a cough drop now, I'm just waiting for it to kick
14 in.

15 So the cease-and-desist authority would involve
16 the department issuing a notice saying, hey, bad actor, we
17 have noticed that you're potentially violating department
18 rule, we ask you to stop. So I don't know if OGC wants to
19 interject anything on that, but I don't read anything into
20 that department rule or into the statute that would allow
21 us to effectuate in any way denial of access to the tag
22 system by issuance of one of those cease-and-desist
23 orders.

24 And it approximates the same thing as what we
25 were proposing with the expedited hearing, interjecting an

1 additional process to the beginning of the regular
2 administrative procedure process that is telling the
3 dealer, hey, we have our eyes on you, but instead of
4 actually to go back and say yes, it is an option, we can
5 issue a cease-and-desist order. But is it letting us
6 touch the tag system, I would say no, it's not letting us
7 touch the tag system.

8 MR. RICHARDS: Presiding Officer Doran?

9 MR. DORAN: Yes, David, you're recognized.

10 MR. RICHARDS: David Richards for the record.

11 I would agree with Ms. Thompson on her
12 assessment of 2301.802, for the record.

13 MS. THOMPSON: And so again this is Corrie
14 Thompson. It would be an issue. Yes, we could issue a
15 cease-and-desist order, but if that is contested too, we
16 still go through the process of having a hearing to
17 determine whether or not the cease-and-desist order
18 becomes permanent, and then that does ultimately flow
19 through a similar administrative process. And so, yes, it
20 is something the department currently has as a tool but as
21 to whether or not it allows us to touch the tag system to
22 stop those tags from being issued, I would say no, it does
23 not.

24 MR. DORAN: Okay. This is Officer Doran. What
25 would be the consequences then for the dealer violating

1 that cease-and-desist order? One would think that that's
2 a pretty serious offense in the eyes of the DMV if you're
3 violating a cease-and-desist order. Are there enhanced
4 penalties or things that the agency can do in that type of
5 situation?

6 MS. THOMPSON: Well, since I've been with the
7 department almost eight years now, we have not actually
8 ever utilized the authority to issue a cease-and-desist
9 order. I believe that if somebody was found to be
10 violating a cease-and-desist order, there would be a
11 further way to escalate enforcement of the order, but I
12 believe that that would be outside of the department.
13 Again, I would need to refer to OGC on that procedure
14 process.

15 MR. RICHARDS: Officer Doran?

16 MR. DORAN: Yes, you're recognized, David.

17 MR. RICHARDS: David Richards for the record.

18 Yes, we would need to refer that out from the
19 department. I, too, echoing Ms. Thompson's remark, have
20 been here for a little short of how long she's been here
21 and I'm not aware that it's ever been exercised by the
22 department. But in the event that it was, I suspect that
23 it would be outside of the department for further
24 enforcement action.

25 MR. SMITH: Officer Doran, Member Smith.

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

2 MR. SMITH: Thank you.

3 Of course, I'm sort of new on the committee so
4 apologize for maybe asking questions that were addressed
5 before I arrived. But at any rate, this consideration is
6 profound to a car dealer because the fact is, without the
7 ability to issue temporary tags, quite frankly, we're out
8 of business.

9 And the options that we've talked about so far
10 of either tax assessor or a regional office issuing temp
11 tags in the interim of that 20 days is not a viable
12 option. I mean, we do in a new car dealership I would
13 expect probably 80 percent of our sales and deliveries at
14 either evening hours or on Saturdays when those offices
15 would be closed, and the inability to deliver a car when
16 you need to, like I say, quite frankly, it puts a dealer
17 out of business. So it's very profound what we're talking
18 about here.

19 I go back. Again, I'm astounded at Ms.
20 Thompson's number of somebody issuing 50,000 tags. I
21 mean, obviously I can't comprehend that, but it seems like
22 we're talking about -- I mean, are we talking about a few
23 outliers? Are we talking about a bunch?

24 And it seems to me that perhaps -- and I go
25 back, initially y'all talked about the limits that you

1 place on tags to start out. How does that happen if you
2 have a limit that somebody can issue 50,000 tags? Again,
3 is this an outlier? How many cases of over-printing of
4 buyer's temporary tags is Enforcement currently pursuing?

5 MS. THOMPSON: I am glad that you asked, Member
6 Smith. This is Corrie Thompson, so I can speak a little
7 bit to that.

8 So when this solution was posed -- again, it
9 was brought up by board members as a concern that we would
10 be catching potentially innocent actors in this net. And
11 I will say that in 2019 I have before me reference to
12 eight cases that this occurred in.

13 And so the big example that I gave, 50,000-plus
14 tags issued in a two-month period with zero reported
15 sales. So a licensee issued 50,000 tags and had no sales
16 to back up issuance of those tags. And when you speak to
17 limits in the system on how many can be printed, that is
18 not currently in place within eTAG. There is no limit
19 currently set in place. But that is a point of discussion
20 for today's meeting later on as another agenda item, and
21 so we will be bringing that up too.

22 The way I do this, there's different points
23 during the process when you're involved with the
24 department that you can catch bad acts or prevent bad acts
25 from happening. And so that can happen at the licensing

1 stage: what are we looking at when we license people,
2 what are the affiliations that we're looking at. We can
3 look at the tag system itself and any safeguards that we
4 can set up or red flags that we can have come up when
5 there's certain issuance or a transaction happens a
6 certain way. And what we're discussing now is the back-
7 end.

8 So do we need to talk about the other two
9 points at which we could introduce safeguards? Yes. I
10 think those are definite and meaningful important points
11 of discussion. And this point would be to catch the bad
12 actors who slip through those cracks on the other areas.

13 And if there were safeguards in place in the
14 future to stop the number of tags that can go out, then,
15 yes, you're correct, we wouldn't see 50,000 tags going out
16 in a two-month time period with no reported sales. And so
17 we are here to talk about that today too, in addition to
18 this back-end potential fix that I would like the group to
19 discuss today.

20 So for 2019, I'm looking at eight cases here.
21 I've got an instance of 2,000 tags issued in a six-month
22 period with one reported sale, I've got another for 2,000
23 tags with 17 sales. These are the types of instances that
24 we're talking about using the suspension. We're not
25 talking about, oh, somebody didn't issue a buyer tag when

1 they should have, or somebody issued three buyer tags
2 because they were late transferring the title.

3 We deal with those cases every day and there is
4 absolutely no way that my attorneys would be able to keep
5 up with expedited hearings on all of those. We're talking
6 about truly excessive issuance with minimal or no reported
7 sales to validate that those tags were properly going out.

8 So when I'm looking at FY20 here, I see about
9 18 to 20 cases that we've completed. I see one where
10 there's 15,000 tags over a seven-month period, 12,000 tags
11 over a three-month period, 20,000 tags over a two-month
12 period, most of these with no or a handful of reported
13 sales. So this was brought before CPAC to address the
14 really truly bad acts that we're seeing in the system, and
15 again, it would not be feasible for the department to be
16 suspending everybody who has a minor tag infraction.

17 MR. SMITH: Officer Doran, Member Smith. Can I
18 follow up question?

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

20 MR. SMITH: Ms. Thompson, from the beginning of
21 when they start issuing tags, whoever this is that issues
22 50,000 tags, how long is it before a red flag is raised or
23 an indication that, hey, we've got a problem brewing out
24 there?

25 MS. THOMPSON: I'm sorry, I didn't hear the

1 last part of that, Member Smith.

2 MR. SMITH: I'm sorry. I'll begin again. What
3 is the time frame between when a bad actor begins to issue
4 tags without sales and 50,000 tags later -- what is the
5 time frame between when they start that and when the
6 department realizes, hey, there's a bad actor out there?

7 MS. THOMPSON: Well, what we're doing right now
8 in Enforcement, since we don't have anything on the
9 front-end in terms of a system limitation, what we have
10 started doing is just proactively running a monthly report
11 where we're looking at, let's say, 500 or more tags issued
12 during a monthly time period, and we are looking at
13 initiating cases based off of those reports that we are
14 running. We're also getting notifications from law
15 enforcement that they're seeing tags out on the street and
16 that prompts us to pull reports or refine the way we're
17 pulling reports so that we can self-initiate cases. But
18 right now it is more of a reactive measure with what we're
19 currently doing.

20 MR. SMITH: Thank you.

21 MS. JOHNSON: Chairman Doran, Member Johnson
22 wishes to ask a question. If I can be recognized, please.

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

24 MS. JOHNSON: Ms. Thompson, as I recall, this
25 legislative recommendation first assumed there is a

1 confirmed bad actor, and as you said, you might find that
2 through a report when your harm is predominantly done
3 after 30 days potentially if somebody is printing those
4 tags. But was that not our first assumption in making
5 this recommendation, that somebody was doing something
6 wrong?

7 MS. THOMPSON: Correct.

8 MS. JOHNSON: Okay. So I think that that is
9 important for everybody to keep in mind. This isn't the
10 department just saying we're going to suspend access to
11 the eTAG system, we're suspending access for somebody who
12 is a defined bad actor, which I would think even the
13 dealer industry would appreciate getting the bad actors
14 out of the way to protect the reputations of the people
15 who are doing it right.

16 So from my perspective -- and I know nobody is
17 asking a question at this point in time or made a
18 motion -- I would say that the recommendation that we made
19 empowers the DMV to deal with those bad actors. It's not
20 them going out there and just cutting off people's access
21 randomly.

22 Thank you.

23 MR. SMITH: Officer Doran, Member Smith.

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

25 MR. SMITH: Certainly make no mistake that

1 dealers are very interested in making the system a system
2 of integrity. Again, I go back to the point that if this
3 were to follow through and remove the ability to issue
4 tags, it puts a dealer out of business, so it is quite a
5 serious consideration.

6 But I'm wondering here about if we have eight
7 cases or twelve cases and we have, what, 20,000 or some-
8 odd licensed dealers, are we going with a hammer when we
9 need to get somehow a more finite way to look at this and
10 prevent it. You're proposing legislation that would
11 affect 20,000 businesses in the state to try to catch
12 eight or ten. We need to figure out a way to catch those
13 and stop it not 30 days later, not 90 days later. We need
14 a system that can be proactive.

15 So I certainly would think that dealers are
16 very interested in doing something about it but the
17 draconian measure of removing the ability to issue dealer
18 plates is profound.

19 Thank you.

20 MS. THOMPSON: Officer Doran, this is Corrie
21 Thompson again. If I may comment?

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

23 MS. THOMPSON: So yes, again I mentioned that
24 later on in this agenda we are slated to discuss some
25 other potential actions that could take place as non-

1 legislative recommendations or potentially legislative
2 recommendations that speak to things that could touch the
3 system earlier on or touch other divisions and keep people
4 from getting into the dealer licensee business in the
5 first place. This is just a proposal for the back-end
6 measure to catch the people who have already been here.

7 So to just give a little bit more of an example
8 about how this is currently being dealt with -- because as
9 I mentioned, we're on a minimum four- to six-month time
10 frame -- what we are finding is with the people that we
11 have identified as these actors who are issuing these
12 tags, selling them, using them to commit criminal offenses
13 or selling them to people who are then using them in the
14 furtherance of criminal offenses, is that when we send the
15 notice to these people, the notice of department decision
16 because we can't suspend right now, when we send that
17 notice of department of decision, one of two things is
18 happening. They are either not responding to us and
19 disappearing off the face of the earth and never issuing
20 tags again, or they are getting the notice, noting that we
21 have our eye on them and ramping up their abuse of the tag
22 system until we can ultimately get to the point where
23 we're able to revoke the license which then lets us cut
24 off the access.

25 And so we do have that currently existing in

1 the system, and so this proposal was just strictly to
2 correct this measure that is happening right now. But we
3 do still have the opportunity to talk about things that
4 can happen before we get to this point, to address Member
5 Smith's concern, and we hope to do that today.

6 MR. DORAN: Ms. Thompson, this is Presiding
7 Officer Doran.

8 Of the cases that you just mentioned where when
9 you send this notice out they're either not responding or
10 they're getting the notice but ramping up their abuse, are
11 there any franchise dealers included in the cases that you
12 just referenced?

13 MS. THOMPSON: Not on my list, no.

14 MR. DORAN: Okay. Just to follow up, so coming
15 at this from the distributor/manufacturer perspective, one
16 thing to consider would be if we end up going down this
17 road, if the agency was to provide notice simultaneously
18 to the franchisor, be it the manufacturer or distributor,
19 I can tell you from our standpoint we would be contacting
20 that dealer within a few hours of being contacted by the
21 DMV. And that would either be our legal department, our
22 market rep department, potentially the president of our
23 company, and we would probably have a member of our field
24 team in that dealership within 24 to 48 hours trying to
25 help that dealer figure out what the heck is going on.

1 Because, number one, the manufacturer and distributor,
2 they want to protect the consumer, they want to protect
3 the brand, and they don't want to see that dealer getting
4 inadvertently shut down if there's a problem that could be
5 rectified.

6 So I'm relieved to hear that the data is
7 showing that this is not a franchise dealer issue. I know
8 in the past when we've discussed this, there's been a
9 hesitancy to distinguish or differentiate between
10 franchise dealers and independent dealers, but I struggle
11 to find a situation where the franchise dealers are the
12 bad actors here where this would get out of control with
13 25- or 50,000 temporary tags being issued.

14 So anyway, that's a little bit of a comment and
15 also a re-inviting of the question as to whether staff
16 would be willing to consider differentiating between
17 franchise dealers and independent dealers.

18 MR. CAVENDER: Officer Doran, Member Cavender
19 to speak, please?

20 MR. DORAN: Member Cavender, you're recognized.

21 MR. CAVENDER: Yes. Just kind of following up
22 on franchise dealers and the disciplines that we have in
23 place in our stores. Just for y'all's knowledge, we
24 represent Cavender Toyota and Audi Dominion here in San
25 Antonio. We processed 1,381 transactions in December. We

1 have 103 salespeople at our Toyota dealership. All of
2 them have access to a 30-day temporary permit. My team of
3 36 salespeople at my Audi store, all have access to the
4 30-day permit.

5 We have to have it, it's the lifeblood of our
6 dealerships. And then, of course, we have only our
7 finance and insurance contractors and our loaner fleet
8 operators who have access to printing temporary tags. We
9 print the receipts, we print the tags, we are disciplined
10 in that. We have the internet-down tags safely secured in
11 our vault.

12 So I just want people to understand just from
13 the perspective of the good player. Hopefully the
14 franchise dealers can be taken out of the equation here
15 because I think that the division has a good policing
16 power, especially with that ten-day dealer response
17 period. I think that's fine, we ought to just leave that
18 in the statute and resubmit what we talked about last time
19 to the board.

20 MR. DORAN: This is Presiding Officer Doran.

21 Ms. Thompson or Mr. Richards, can you just take
22 a moment and walk us through again what the recommendation
23 was to the board? Because my recollection was there was a
24 recommendation coming out of our May 28 hearing, which was
25 a close vote, maybe four to three, that dealt with

1 shutting off the access prior to notice, I think, and then
2 based on what was described earlier on this call, I
3 understand the recommendation that was ultimately made to
4 the board was that there would be notice given, it would
5 be at least five days prior to the DMV taking some type of
6 action with respect to the system.

7 So just for the benefit of the group and
8 everybody who is listening who is not on the committee, if
9 you could kind of slowly walk through what that proposal
10 is, what the recommendation was again.

11 MS. THOMPSON: Absolutely. Corrie Thompson,
12 Officer Doran.

13 The recommendation, as proposed to the board at
14 the December meeting, was the ability to suspend access to
15 the temporary tag system upon reasonable evidence that the
16 tag system was being abused or misused, and that would
17 involve an expedited hearing. So the way the process
18 would go: investigation occurs, case moves to attorney,
19 attorney determines yes, this is a bad actor.

20 Let's, for example, say we have 15,000 tags
21 that have been issued in a three-month period. There is
22 no vehicle inventory tag statements to back up any sales
23 ever having occurred. So we would issue a notice and we
24 would say: Hey, Dealer, here is this notice, if you don't
25 respond to us within five days of this notice being

1 issued -- is how it's currently worded -- then we are
2 going to suspend your access. So send the notice, suspend
3 the access, and then within ten days of the notice being
4 sent they would have the opportunity to request a hearing.

5 Now, the way I envision it is, they requested
6 the hearing. And while we're waiting for the hearing to
7 happen, they presented us with credible evidence that, you
8 know, there is some other explanation. Their computer got
9 hacked, I don't know, whatever have you.

10 It's always on a case-by-case basis what
11 happens with any particular situation. The department
12 would still have the authority to lift any suspension that
13 was placed before we move to the hearing, and that would
14 be at our discretion.

15 If the department was not satisfied that the
16 misuse was not at the fault of the dealer and it was
17 something that we needed to pursue, then the case would be
18 docketed at the State Office of Administrative Hearings,
19 that we would have the hearing expedited within 20 days,
20 and that SOAH would actually be the final decision-maker
21 on that one issue and that one issue alone whether or not
22 the department has the right to suspend access.

23 And so if SOAH came back and said at the
24 conclusion of that hearing, No, department, you do not
25 have the right to hold this dealer's access. You don't

1 have enough evidence. You must reinstate it now; it would
2 be reinstated. During that time period, though, they
3 would still be offered an opportunity to get tags through
4 an alternate means.

5 The rest of the case would still proceed as
6 usual through the normal administrative procedure
7 process. Any other sanctions, penalties, other
8 violations, whatnot, possible revocation, would still go
9 before the board. It would just be about whether or
10 not -- that's the only new process we're interjecting, is
11 whether or not the department would have the right to
12 suspend that access during the middle of the hearing.

13 And I was going to say something else in
14 connection with that and I completely lost my train of
15 thought, so maybe if you say something else to spark my
16 memory, it will come back to me. But that was the
17 recommendation as proposed.

18 I remember now. So we did receive some comment
19 from SOAH -- and so just for everybody's educational
20 purposes who may not be as familiar with SOAH, there are
21 very few agencies that SOAH does expedited hearings
22 for. And in comments back from them when this information
23 was posed to them, they did come back and say, Hey, the
24 instances where we do do expedited hearings for people,
25 there is an imminent and obvious direct risk to public

1 health and safety.

2 Which here I would say there is. People are
3 issuing tags and they are doing so to sell them and then
4 those people who are purchasing them are using them in the
5 furtherance of committing crimes, or the dealer themself
6 could also be the one directly using the tags to commit
7 crimes and other offenses, human trafficking, drug
8 trafficking, whatnot, any number of crimes are on the
9 table there.

10 So SOAH said that those expedited hearings
11 involve that imminent and obvious direct risk to public
12 health and safety, so they usually do it for like doctors,
13 nurses, things like that. They also said it involves the
14 total deprivation of the licensee's ability to conduct
15 business, so they're saying, Hey, we do these fast
16 hearings when someone cannot do business at all.

17 And so I know that when we hear from the
18 dealers that having to use an alternate means to get tags
19 is going to put them out of business, I want to again say
20 that we have not discussed what department rule would look
21 like for how they would be able to obtain tags. We
22 haven't talked about whether that would be an electronic
23 means, whether that would be an in-person means, it would
24 just be some sort of additional check before those tags
25 are released to the licensee. And SOAH is saying, Hey, if

1 there's not a total deprivation of their ability to
2 conduct business, we may see a means for an expedited
3 hearing.

4 But at CPAC here we discussed the need for the
5 expedited hearing so that if we did, for some instance,
6 the department catch a non-bad actor in the net, that they
7 would be able to more quickly resolve that suspension and
8 get back to business as normal, which is why that was
9 floated and came out of the recommendation initially.

10 MR. DORAN: Thank you, Ms. Thompson.

11 Presiding Officer Doran. Just a follow-up. I
12 want to focus on that five-day period, just so I'm
13 clear. So DMV notifies the dealer, and then during that
14 five-day period prior to their access being shut off,
15 would they have an opportunity to -- it sounds like they
16 would -- to speak with DMV to prevent that access from
17 being shut off?

18 So I'm trying to come up with a scenario in my
19 head where this would impact the franchise dealer and I'm
20 struggling.

21 MS. THOMPSON: Yes. I'm sorry, Officer Doran.

22 MR. DORAN: Go ahead.

23 MS. THOMPSON: To answer your question, yes,
24 they would have the opportunity to contact the department
25 to prevent the suspension from ever occurring during that

1 time period, yes.

2 MR. DORAN: Okay. So it's not a foregone
3 conclusion that it would be shut off. Okay, that's
4 helpful. Thank you.

5 MR. SMITH: Officer Doran, Member Smith.

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

7 MR. SMITH: A question first and then a
8 comment. Does the department have any data with regard to
9 how many traffic stops or occurrences where law
10 enforcement checks on a tag and finds that it's false or
11 improperly issued or a copy or a duplicate, or something
12 like that?

13 Are there records to know how many times on the
14 street people are getting caught with tags? Because,
15 like, my mind is boggled with this 50,000 tags issued and
16 sold, presumably. I mean, if a guy is that bad an actor,
17 just cutting off his tag, I mean, I'm not sure he's not
18 going to go print tags on his own.

19 I think the important thing that we all could
20 get behind is that we want to pursue prevention and stop
21 it on the front-end rather than afterwards go through
22 this. So I think there's opportunities to do that, but
23 again, the fear of shutting off the tags from a car
24 dealer's perspective is devastating.

25 Thank you.

1 MS. THOMPSON: Officer Doran, Corrie Thompson.
2 If I may comment?

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

4 MS. THOMPSON: I in Enforcement do not have
5 data on law enforcement stops that I can speak to. I
6 don't know if we have either a law enforcement
7 representative on the call that would be willing to speak
8 to their personal experience, or if potentially -- if
9 anybody from our Compliance and Investigations could speak
10 generally, not directly connected to any active criminal
11 cases. But if they could speak more to occurrences, we
12 might have the opportunity to hear somebody in that
13 respect.

14 MR. RICHARDS: Officer Doran?

15 MR. DORAN: David, you're recognized.

16 MR. RICHARDS: David Richards for the record.

17 We will have, members, a public comment period
18 after the presentation and discussions by CPAC have been
19 completed and before any motions are made. I will tell
20 you that we do have a member of law enforcement that will
21 offer public comment during that public comment period,
22 and I would ask that he make a note, if he has that
23 information that Member Smith -- that he address that
24 during the public comment period that we'll have a little
25 bit later this morning.

1 Thank you.

2 MS. THOMPSON: Officer Doran, Corrie Thompson
3 again.

4 MR. DORAN: You're recognized.

5 MS. THOMPSON: I wanted to offer that it may be
6 helpful, since we are talking about some items that are
7 supposed to come up later on in the agenda, if it might be
8 helpful to kind of put this discussion on hold so that we
9 can get to both Motor Vehicle Division Director Martin
10 Luna's presentation about what other states are doing with
11 regard to their access to their systems and then how we
12 look at other parts of the system as well. And then maybe
13 get into discussion of those other non-legislative items
14 that I've mentioned are potentially coming up later on in
15 the agenda.

16 And then we could come back to this legislative
17 recommendation, if members think that that might be
18 beneficial to the discussion.

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

21 MR. DORAN: Mr. Rigby, you're recognized.

22 MR. RIGBY: Thank you.

23 I'm trying to make sure I'm understanding this
24 correctly. It sounds like staff brought our
25 recommendation to the board and the board had some

1 concerns about cutting off access. I think Member Smith
2 articulated those concerns and the reasons for them, and
3 those make sense to me. I understand where he's coming
4 from.

5 And I also assume that if we can't do it on the
6 front-end, if we can't cut off access, that there are
7 methods available on the back-end after the 50,000 tags
8 are already printed to, I guess, not only do a cease and
9 desist but also revoke that person's license, which
10 ultimately would eliminate the access to the temporary tag
11 system.

12 And so Member Smith recommended we take a look
13 at the front-end. Well, the front-end is how do you vet
14 your licensees, how do you initially give them access to
15 the system. So maybe there's some ways to tighten up
16 that.

17 And then finally, I do have, like, a specific
18 question. When a dealer issues a temporary tag, why is
19 that not tied to a specific VIN number that the dealer has
20 ownership rights over? In other words, it's got to be in
21 the dealer's inventory before the tag can be printed.

22 Is there some technical reason why that can't
23 be done? It seems that might eliminate the problem
24 altogether if you have to, using DMV's own system or the
25 certificate of title system, have some evidence that you

1 already have that vehicle in your inventory before you
2 issue a temporary tag purporting to sell it to a consumer.

3 Thank you.

4 MS. THOMPSON: Officer Doran, this is Corrie
5 Thompson.

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

7 MS. THOMPSON: I know that we have a couple of
8 representatives from Vehicle Titles and Registration on
9 the line who may have some additional information that
10 they can pose to help us clarify the question you just
11 posed.

12 MR. THOMPSON: Good morning. I was trying to
13 find the mute button. Officer Doran, this is Clint
14 Thompson, chief of Title Services.

15 MR. DORAN: Good morning. You're recognized,
16 Mr. Thompson.

17 MR. THOMPSON: Thank you.

18 I appreciate the comment. I think that's what
19 Director Thompson was kind of asking us to move toward
20 some of these other discussion items.

21 To Member Rigby's point, we've certainly talked
22 about other programming efforts to try and prevent the
23 fraudulent tag issuance just specifically to entering a
24 VIN in the inventory. We have looked at that, but I'll
25 tell you, these folks that are issuing 50,000 tags in two

1 months, three months without vehicle sales, you know, we
2 would have to have a validation that that vehicle is in
3 fact in their inventory.

4 You know, we talked about requiring the dealer
5 to enter the VIN and declare it's in their inventory
6 first, but if we don't have a true validation that they
7 have that vehicle and have the legal right to possess and
8 sell it, then that's just an extra step before these folks
9 are going to fraudulently issue tags.

10 And I don't know if we want to go ahead and go
11 into the programming; I'm glad to speak to that. If we
12 want to cover the other items sequentially, I defer to
13 y'all.

14 MR. DORAN: This is Presiding Officer Doran.

15 Before we jump into that -- and this follows
16 along with what Member Smith was saying about the
17 front-end -- it's a question on how the system works. So
18 of these eight or nine cases that Ms. Thompson mentioned,
19 are these dealers that are within a relatively short
20 period of time of being issued a license -- are
21 essentially hanging up a shingle, so to speak, you know,
22 and engaging in this, or are these dealers that have been
23 in business for a long time?

24 Because if the issue is having people apply for
25 a dealer license, get that dealer license and then within,

1 you know, 30 to 60 to 90 days you're having this kind of
2 trouble with them, then there probably is an opportunity
3 to do something on the front-end. I mean, if there's no
4 proven sales history for that new dealer, then there's
5 probably room for discussion about an allotment of like a
6 probationary period for that new dealer.

7 So that would be my question is, how many of
8 the cases that Ms. Thompson mentioned deal with what I
9 would call established dealers that have been in business
10 for a year or more? Or are they dealers that have
11 recently gotten their license and the agency is
12 discovering that they're engaged in this bad conduct?

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

15 MR. DORAN: You're recognized.

16 MS. THOMPSON: So I don't have a definitive
17 number that I can spit out for you, but I will say that
18 it's a mixed bag. So we're seeing some people -- on
19 closed cases is what I'm speaking to -- is that, you know,
20 they might have had the license a couple of years and then
21 the abuse starts, or it could be also new users who are in
22 the system a relatively short period of time and then the
23 abuse starts up right away. It goes both ways.

24 MR. DORAN: Okay. Thank you.

25 So members, I think we should turn to Mr.

1 Luna's presentation then, if there aren't any further
2 questions for the time being on Ms. Thompson and Mr.
3 Richards's presentation.

4 Mr. Luna, you're recognized, if you're on.

5 MR. LUNA: Thank you, Officer Doran. Roland
6 Luna, Motor Vehicle Division director. Good morning,
7 everyone.

8 I would like to talk about some research that
9 we conducted, reaching out to other states, the states of
10 Florida, Georgia, and Tennessee, to see how temp tags were
11 regulated. But I want to start by just mentioning a few
12 things about the temp tag system with DMV.

13 Each dealership has a designated administrator
14 for access to the temp tag system. Each administrator is
15 subject to a criminal history check. That administrator
16 then authorizes access to the temp tag system.

17 There is no limit on the number of users that
18 can be added to the temp tag system, and there is no
19 background check or criminal history check for the
20 additional users, just the administrator.

21 When we reached out to the other states -- and
22 we met with them several times -- we learned from the
23 State of Florida that all users to the temp tag system,
24 that they are subject to a criminal history check. One of
25 the other things that Florida does is they run a daily

1 report for temp tags and registration, and it's shared
2 with each of their regional service centers, and then
3 suspicious activity is also shared with those regional
4 service centers. They have an emergency order to suspend
5 the eTAG system or access to the eTAG system. There is a
6 maximum number of temp tags that can be printed from the
7 system; it's based by number of vehicles sold by license
8 type.

9 So let's say that you're a franchise dealer,
10 and they would look at the franchise dealer that sold the
11 most amount of vehicles in a given month and let's say
12 that was 500. So 500 would be the maximum for franchise
13 dealers, and then there would be some exceptions that were
14 built in, as well, should someone exceed the 500 limit.
15 And they do that for every license type, for independent
16 dealers, for franchise dealers and so on.

17 They also use software to detect fraudulent
18 VINs. It's called VINTelligence. They've been using it
19 for a few months, and they've been pleased with it. I
20 didn't get all the nuts and bolts of the software and how
21 it really ties into the system and how it helps detect
22 fraud, and that's a subsequent meeting that we'll be
23 having so that I can better understand the software.

24 In the State of Georgia, one of the things that
25 they do in Georgia when there's an allegation of fraud

1 related to temp tags is that the case is immediately
2 referred to the Office of Special Investigations through
3 fruition. Right now when there is an allegation of any
4 type of fraud involving the temp tag system, we're going
5 to have our Vehicle Titles and Registration, our
6 Enforcement, our Motor Vehicle Division, there's going to
7 be a number of divisions that are involved and assisting
8 along the way. In the State of Georgia when there's an
9 allegation of fraud for temp tags, it is handled
10 exclusively by their Office of Special Investigations.

11 That's what I've learned over the last few
12 months working with these other states. I'm happy to take
13 any questions that you may have about what I've learned
14 from the other states.

15 MR. DORAN: Members, are there any questions
16 regarding the presentation by Mr. Luna?

17 (No response.)

18 MR. DORAN: Mr. Luna, this is Presiding Officer
19 Doran.

20 During your research and investigation into
21 what other states were doing, were these measures that
22 have been in place for a long period of time, or did they
23 identify that there was obviously an issue and then took
24 some type of administrative or regulatory action or
25 legislative action in order to bring about these changes?

1 MR. LUNA: Most of these changes have been by
2 rule, Officer Doran. The additional users being subject
3 to criminal history checks, I believe that was by rule.
4 And the temporary suspension of the system, that's by rule
5 as well in the State of Florida. That was their most
6 recent implementation was the temporary suspension.

7 MR. DORAN: Thank you.

8 MR. RIGBY: Michael Rigby. Permission to
9 speak?

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

11 MR. RIGBY: Thank you.

12 So I guess just applying that research from
13 other states, I do have a question which is, does DMV
14 perform a criminal history background check on every
15 person that has access to the temp tag system -- is the
16 first question. And does DMV set limits on the number of
17 tags that a particular dealer type issues?

18 And I guess a third question is, if neither of
19 those are true or currently being used, does that require
20 a legislative change or a rule change, or just a
21 procedural change?

22 Thank you.

23 MR. LUNA: Officer Doran?

24 MR. DORAN: You're recognized, Mr. Luna.

25 MR. LUNA: So for the temp tag system now, the

1 only individual that receives a criminal history check is
2 the administrator. Additional users for that entity are
3 not subject to a criminal history check. And there is not
4 a limitation on the amount of tags that can be printed
5 from the system or users for a particular entity.

6 And I'll defer to OGC if we have someone from
7 OGC on the line that could speak to the last question.

8 MR. RICHARDS: This is David Richards for the
9 record.

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

11 MR. RICHARDS: I'm sorry, Roland, you were
12 cutting out when I was trying to listen. Could you repeat
13 what it is you're asking me?

14 MR. LUNA: Can you hear me, David?

15 MR. DORAN: Mr. Luna, I can hear you loud and
16 clear. This is Presiding Office Doran.

17 MR. LUNA: David, can you hear me?

18 MR. RICHARDS: I can now. I got an error
19 message regarding connectivity to the network and I think
20 we're good now.

21 MR. LUNA: I apologize. The last question from
22 the member was how would we eventually -- criminal history
23 checks for additional users, would it be something that
24 would have to be by statute or rule, so I thought that the
25 OGC would be best to answer that part of the question.

1 MR. RICHARDS: I would suggest to you that if
2 it's not in the statute right now that that would be
3 something that we -- again, I'd have to check. Clearly,
4 if we have the ability to do the administrator, I would
5 think we would also have the ability to extend that to all
6 users through our rulemaking process.

7 MR. SMITH: Officer Doran, Member Smith.

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

9 MR. SMITH: Question with regard to that check
10 that goes on now. Are there set criteria?

11 So, I mean, if someone is a convicted felon,
12 they can't have access, or is it if they've had a speeding
13 ticket? I'm exaggerating here, but does the law actually
14 fit the criteria for what person could be granted access
15 or not, is a question.

16 And then another question would be, I'm not
17 sure that this would be a great way for us to go down to
18 try to eliminate -- is that going to really solve
19 anything? I mean, if a guy has got a convicted felon that
20 can't pass muster, is he just going to get someone else in
21 his office to do it?

22 I mean, again, we're talking about bad actors
23 to do something like this, this is not run of the mill.
24 You'll have to set criteria for what can pass and what
25 doesn't.

1 And finally, how long does it take the DMV to
2 do a background check?

3 MR. LUNA: Officer Doran?

4 MR. DORAN: You're recognized. Can you just
5 identify yourself?

6 MR. LUNA: Roland Luna, Motor Vehicle Division
7 director.

8 MR. DORAN: Thank you, Mr. Luna. Go ahead.

9 MR. LUNA: On the criminal history checks, sir,
10 they're very quick. We can run a criminal history check
11 in about 30 seconds. Our system is tied into the
12 Department of Public Safety into their national and Texas
13 crime information center.

14 So we run the criminal history by name and date
15 of birth -- we can use driver's license as well, and then
16 if there is a criminal history we can see it in a matter
17 of seconds.

18 MR. SMITH: What then becomes the criteria
19 that's a pass and fail?

20 MR. LUNA: Generally, sir, as long as there is
21 not an offense that is related to the motor vehicle
22 industry. There are not automatic exclusions, if you
23 will, for particular offenses or types of offenses.

24 MR. SMITH: Thank you.

25 MR. RIGBY: Michael Rigby. Permission to

1 speak?

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

3 MR. RIGBY: Thank you.

4 I did have a second part to my third question
5 which was, what would it take to limit the number of temp
6 tags that a dealer could issue? For example, the
7 gentleman was talking about in other states they look at
8 the license type and they say, well, on average the
9 highest amount is 500, so you can have 500 available.

10 Is there a way to do that through just flipping
11 a switch in the system? Would that require a rule, or
12 would that require a legislative change?

13 Thank you.

14 MR. RICHARDS: David Richards, for the record,
15 Officer Doran.

16 MR. DORAN: You're recognized, Mr. Richards.

17 MR. RICHARDS: Yes. On this particular issue,
18 Member Rigby, I think that this item to limit the number
19 of tags would be a legislative recommendation, not a
20 rule. And there would need to be some sort of criteria
21 set forth that makes that determination, and we'd also
22 need a reporting mechanism.

23 We currently don't get -- and Mr. Luna, correct
24 me if I'm wrong. We currently don't get sales information
25 from dealers, so there would be, I would venture to say, a

1 requirement also to get that data sent to the department
2 so we would have some sort of criteria by which we could
3 measure that.

4 But to answer your question, your second part,
5 Member Rigby, it would, in my opinion, require a
6 legislative change.

7 Thank you.

8 MR. DORAN: David, this is Presiding Officer
9 Doran.

10 If we get to a point where we don't have
11 further questions from our members on the presentations
12 that have been made, let me know when we should open it up
13 for comments which may, in turn, invite, I would assume,
14 both questions of those commenters as well as a general
15 discussion and comments, general discussion and questions
16 among the members after the commenters have concluded
17 their comments.

18 MR. RICHARDS: Officer Doran, David Richards
19 for the record. May I be recognized?

20 MR. DORAN: You're recognized.

21 MR. RICHARDS: Thank you.

22 We could, Officer Doran, at this time, because
23 I know the commenters are hanging on this call for quite a
24 while, as well, so we could take their comments. I know
25 there were some that want to comment on the temp tag issue

1 and there are some that want to comment on the second
2 issue dealing with financial and consumer issues, and
3 there are some that want to comment on both.

4 So I think perhaps this might be a nice segue
5 by seeking those commenters who want to address the temp
6 tag issue which will help further the discussions we're
7 going to have on this issue, those that have been
8 presented by Ms. Thompson, but also reminding you to go
9 back to the considerations page on page 7.

10 There are other types of considerations that
11 CPAC may take. Perhaps those commenters might want to
12 comment on those as well. I've been reminded page 6, I'm
13 looking at page 7 on mine.

14 But anyway, this may be a good segue to go to
15 the commenters. I would ask that staff let me know who is
16 first on the list to comment on this temp tag issue. If
17 y'all want to take a break for five or ten minutes before
18 we get into that, if the membership would like to do
19 that.

20 I'll defer to you, Officer Doran.

21 MR. DORAN: Thank you, David.

22 Officer Doran here. Yes, I think given how
23 long we've gone, it would be helpful for the group to have
24 a five-minute break and then we could reconvene at, let's
25 say, 10:35 and begin with the public commenters that want

1 to speak to this first item on temp tags.

2 MR. RICHARDS: Okay, great. So you'll just
3 need to recess for five minutes till 10:35.

4 MR. DORAN: Okay. This is Presiding Officer
5 Doran.

6 Members, we will now recess for five minutes
7 and we will get back on and reconvene at 10:35.

8 (Whereupon, a brief recess was taken.)

9 MR. DORAN: Okay. Members and staff, this is
10 Presiding Officer Doran. My watch shows that it's
11 10:35. I'd like to get back on the record after taking a
12 short five-minute break.

13 David, perhaps we could proceed forward then,
14 if there's no further input or questions from members.
15 Perhaps we could proceed forward with inviting our
16 commenters to address the CPAC committee.

17 MR. RICHARDS: Yes, sir, we'll do so. David
18 Richards for the record.

19 Members, we have several individuals that are
20 appearing today on this telephone conference call to offer
21 comments. The one we're seeking right now are public
22 comments regarding the temp tag issue.

23 As a housekeeping measure for the public
24 commenters, please state your name, who you're affiliated
25 with for the record so the court reporter can get that

1 information, if you will.

2 And we're not limiting, Officer Doran and
3 members, the commenter to three minutes during the agenda
4 items themselves. Commenters are limited to three minutes
5 during the general public comment agenda item, which is
6 number 3 in today's meeting materials.

7 So I'll go ahead and start off. The first one
8 that I have listed to comment on this first issue
9 regarding temp tags is Sgt. Jose Escribano.

10 Sgt. Escribano, you now have the floor. Thank
11 you.

12 MR. DORAN: Sgt. Escribano, if you wouldn't
13 mind stating your name for the record and if you're
14 representing anyone. You may proceed.

15 SGT. ESCRIBANO: Mr. Chairman and members of
16 the board, I am Sgt. Jose Escribano with the Travis County
17 Constable's Office, Precinct No. 3, Clean Air Task Force,
18 and I wish to speak today about the preventing, deterring,
19 and detecting the misuse of dealer temporary tags.

20 Preventing could be accomplished two ways:
21 legislative and Texas DMV rules. On the legislative, we
22 are proposing the Texas Transportation Code. We already
23 have two statutes that give the Texas DMV authority to
24 shut a dealer down. If we just cut the second paragraph
25 of 503.0626(c), this would make Section 503.038,

1 cancellation of general distinguishing numbers, the ruling
2 and authority to suspend or revoke.

3 The second would be tampering with a government
4 record, Chapter 37 under definitions. Adding this
5 temporary tag to the definitions under the Penal Code 37
6 would clear up the definition of governmental records and
7 temporary tags and assist law enforcement. Under (c), we
8 would add temporary tags as defined by Texas
9 Transportation Code, Chapter 502 and 503. By adding 502
10 and 503, it would include all tags, buyer tags and dealer
11 permits.

12 The third would be the Texas Motor Vehicle
13 Dealer Manual, 3.5, license applications. By adding the
14 applicant must have a valid Texas driver's license or some
15 other form of valid ID, the applicant must go in person to
16 any Department of Motor Vehicle office to be vetted in the
17 manner prescribed by the DMV via fingerprints, so forth
18 and so on.

19 Finally, we believe that the Texas temporary
20 tags pose a serious officer safety threat to not only the
21 Texas peace officers but to all in the continental United
22 States and beyond. Based on my law enforcement training
23 and experience with Texas temporary tags, the altered
24 tags -- I know that they can be used to mask offenses such
25 as, and not limited to, robberies, burglaries, capital

1 murder, human trafficking, smuggling salvage motor
2 vehicles, registered motor vehicles and vehicles that
3 cannot pass inspection.

4 Texas buyer's tags are being sold to
5 drivers/owners of vehicles that were never bought from the
6 identified seller. I know that such tags are being
7 generated from the Texas DMV eTAG system, a secured
8 system, and are being sold in various social media sites.

9 In addition, over one million fraudulent
10 temporary tags information has been entered into TLETS,
11 the Texas Law Enforcement Telecommunication System, using
12 the Texas Department of Motor Vehicles webDEALER portal.
13 This in turn makes TLETS temporary tag registration used
14 daily by all peace officers unreliable and dangerous to
15 unsuspecting officers.

16 Lastly, we are currently working with the FBI
17 Houston office and we are involved in the investigation
18 concerning this since 2018, and this is not about
19 franchise dealers.

20 That is my comments.

21 MR. DORAN: Thank you, Sergeant.

22 Members, is there discussion or questions?

23 (No response.)

24 MR. DORAN: This is Presiding Officer Doran.

25 One follow-up question I have for our

1 commenter. Obviously today we're talking about what would
2 be within the authority that the legislature would give to
3 the DMV to take action.

4 But as a member of law enforcement, what are
5 some of the other penalties and recourse that law
6 enforcement has to go after these bad actors, whether it's
7 authority found in the Penal Code or authority of the
8 Attorney General? What other tools are currently in your
9 toolbox to go after someone that is essentially printing
10 and selling these things out in a fraudulent manner?

11 SGT. ESCRIBANO: May I speak, Chairman?

12 MR. DORAN: Yes, please. Can you identify
13 yourself again?

14 SGT. ESCRIBANO: This is Sgt. Escribano with
15 the Clean Air Task Force, Constable Precinct 3.

16 MR. DORAN: Please proceed.

17 SGT. ESCRIBANO: It is twofold for us. We
18 start out with the unauthorized use of a temporary tag,
19 which ranges from Class C all the way through a state jail
20 felony.

21 The second is tampering with a government
22 record, which ranges from a Class A misdemeanor to a state
23 jail felony. And secondly, we also work with the FBI in
24 the fraud section because these things are going
25 everywhere in the United States, at least 32 states that

1 we have identified. And we are working, again, with those
2 states to try to remedy this situation of all these influx
3 of tags.

4 MR. DORAN: Thank you.

5 Members, any additional questions for our
6 commenter?

7 MR. SMITH: Officer Doran, Member Smith.

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

9 MR. SMITH: Seriously, as we've been talking, I
10 just went on eBay. You can buy a Texas temporary tag on
11 eBay right now.

12 Where is that enforcement, is that DMV, or who
13 would be investigating that?

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

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

17 MS. THOMPSON: So to answer the member's
18 question, it can go different ways. So we routinely find
19 tags being sold on the platform you identified, as well as
20 Craigslist, Facebook Marketplace, other avenues. We've
21 tried to contact those entities before to let them know
22 that those tags shouldn't be being offered for sale on
23 their platforms.

24 But what we do is, if we find that that is
25 actually connected to a licensed dealer account, then

1 Enforcement does take that case. And we move it through
2 the administrative process that I detailed at the
3 beginning of this meeting, where it's taking us a minimum
4 of the investigative period plus an additional four to six
5 months on the attorney end to stop that abuse from
6 happening in the system, and that's under current law and
7 current practice.

8 If there is a non-dealer identified in the
9 creation of those tags, we refer those matters over, or
10 oftentimes CID will find them on their own -- that's our
11 internal TxDMV Compliance and Investigations Division.
12 And they are charged with working with law enforcement to
13 curb fraudulent misuse and abuse of the tag system by bad
14 actors that are non-dealers, and they also do look at very
15 serious abuses by dealers in the system as well.

16 MR. OLAH: Officer Doran, this is Ray Olah.
17 May I be recognized?

18 MR. DORAN: Member Olah, you're recognized.

19 MR. OLAH: I'm intrigued by the commenter's
20 very specific suggestions. And I would like to ask staff,
21 Ms. Thompson, if it's possible to have some analysis done
22 of the specific suggestions and their impact or whether
23 they would be effective.

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

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

2 MS. THOMPSON: So a great discussion by
3 Commenter Escribano. I did catch the one main thing at
4 the beginning which was in reference to 503.0626-0631,
5 which is the specific provision that says the department
6 may not deny access to somebody who is a licensee by the
7 department.

8 And so with the proposal from CPAC that we did
9 take to the board meeting in December, we were removing
10 that provision from statute. And so I do believe he was
11 speaking to that, the removal of that provision would help
12 us because it's taking out that language that currently
13 says we cannot deny access to the system by anybody who is
14 currently licensed.

15 And so unless somebody wants to correct me on
16 that or provide additional clarification, I would say that
17 the recommendation as posed by CPAC during our last
18 meeting and that was brought to the board does that. It
19 calls for removal of that language. It just also details
20 the process by which we would go about offering that
21 expedited hearing for anybody who was subject to the
22 suspension of the tag access.

23 MR. DORAN: Corrie, this is Presiding Officer
24 Doran again.

25 Going back to the cease-and-desist authority of

1 the board, would it be possible for the agency to consider
2 issuing cease-and-desist orders to these different
3 platforms like eBay, like Craigslist, Facebook? When I
4 read Section 2301.802, it doesn't appear that the board's
5 authority to issue a cease-and-desist order is limited to
6 licensees.

7 MS. THOMPSON: Corrie Thompson again. If I may
8 be recognized, Officer Doran?

9 MR. DORAN: You're recognized.

10 MS. THOMPSON: So OGC may want to step in and
11 correct me on this, but they are not entities that we
12 regulate. And so I would say no. And it's not in fact
13 that entity that is offering the tag for sale.

14 It's the person who is posting the tag for sale
15 that is the violator of the statute, and so issuing a
16 cease-and-desist letter to eBay or to Craigslist would, in
17 my opinion, be outside of the scope of the regulatory
18 authority of the agency.

19 MR. DORAN: Ms. Thompson, follow-up. Presiding
20 Officer Doran.

21 I hear what you're saying, but if the item is
22 prohibited from being sold because it's illegal to sell it
23 unless you're a dealer, then perhaps there's room for
24 discussion on that from an agency level. Maybe that's not
25 appropriate for today's call but that would be something

1 that I think it would be beneficial for the agency to have
2 discussions with these different platforms that are
3 facilitating some of this.

4 Thank you.

5 MR. RICHARDS: Officer Doran?

6 MR. DORAN: Member Richards -- David, go ahead.

7 MR. RICHARDS: I could be a member if you'd
8 like to me to be.

9 (General laughter.)

10 MR. RICHARDS: I would echo what Ms. Thompson
11 is saying. We don't have authority to go after these
12 folks that are on these platforms. Our authority focuses
13 on whether somebody is a dealer or not a dealer.

14 And if they're not operating as a dealer -- and
15 that's where we see a lot of this, and Sgt. Escribano
16 touched on it, Member Smith just touched on it regarding
17 the sale on eBay. Currently we do not have the authority
18 to go after those folks, so that would have to be looked
19 at further, but I would agree with Ms. Thompson.

20 Thank you.

21 MR. DORAN: Members, are there any additional
22 questions for our commenter?

23 (No response.)

24 MR. DORAN: If not, Sergeant, I really want to
25 thank you for your time and coming before us today to

1 share your comments. Appreciate that. Thank you.

2 SGT. ESCRIBANO: Yes, sir.

3 MR. DORAN: This is Presiding Officer Doran.

4 David, then if we would, I guess, proceed with
5 the next commenter.

6 MR. RICHARDS: Yes, sir. The next commenter on
7 this particular item, and I believe I'm correct in saying
8 Det. David Kohler with Travis County as well, a member of
9 law enforcement.

10 Det. Kohler, would you state your name for the
11 record and who you represent and proceed with your
12 comment? Thank you.

13 DET. KOHLER: Can you hear me now?

14 MR. DORAN: Yes, Detective, we can hear you
15 loud and clear. Please proceed.

16 DET. KOHLER: Thank you, Mr. Doran and board
17 members. Appreciate your time and assistance on this
18 matter.

19 To reiterate something that Corrie Thompson
20 said earlier, is that we're trying to find ways to stop
21 the bleed on the fraudulent sale of Texas buyer's tags.
22 And I'm one that works with Sgt. Escribano, and we are in
23 the middle of the bleed out there on the street because
24 this is what I work every day and I see this.

25 To reiterate Board Member Smith's concern, and

1 there was another gentleman earlier, the things that we
2 have tried to meet with DMV on, this has nothing to do
3 with franchise dealers. This is not directed at the
4 legitimate used car dealers, i.e., Riata Ford, Henna
5 Chevrolet, the place down in San Antonio, the Toyota
6 place.

7 These are the people that apply for a GDN who
8 do not sell cars. There are no cars on their lot, and all
9 they're doing is they're selling tags. And again, the
10 figures that Sgt. Escribano brought up with over a million
11 tags, those are documented so the numbers are very high.

12 So the thing that we are trying to propose is
13 giving DMV the authority that we thought they had, that
14 when these dealers are identified -- not the legitimate
15 ones, the ones that are only in business to sell tags --
16 turn their eTAG access off. And I can guarantee you if
17 there's a legitimate one that's out there, they're going
18 to pick up the phone and say, Why is my eTAG access turned
19 off? The ones that we've identified, I guarantee you they
20 will more than likely not call to get that eTAG access
21 turned back on so they don't exist.

22 The second thing that we've asked is on our
23 user end. When I run a buyer's tag, the return that I'm
24 looking at on my computer, we've asked that seller,
25 whether it's King's Ranch Auto Land or Texas Motor

1 Company, that information be put on our return because
2 that gives us instant access to detect the fraud that
3 we're trying to look for.

4 And I appreciate your time. Thank you.

5 MR. DORAN: Thank you, Detective.

6 Members, are there any questions for our
7 commenter? Members, any discussion on our commented's
8 comments?

9 MR. RICHARDS: Officer Doran?

10 MR. DORAN: Yes.

11 MR. RICHARDS: David Richards for the record.
12 I'm sorry.

13 I just wanted to state for the record, remind
14 our membership that we're continuing to have discussions
15 after these commenters comment. We want to explore all
16 possibilities for further communication with law
17 enforcement, stakeholders, and whatnot.

18 So after the commenters finish on this
19 particular segment of agenda item 2, we'll continue the
20 discussions. And as a reminder, we do have other options
21 that are listed on page 6, I believe, of your meeting
22 packet, including limiting the number of eTAGs.

23 Thank you.

24 MR. DORAN: Thank you, David.

25 Well, Detective, I'd like to thank you for your

1 testimony today, your comments. We certainly appreciate
2 your input and thank you for coming on.

3 David, again Presiding Officer Doran. Perhaps
4 we could proceed with the next commenter.

5 MR. RICHARDS: Absolutely. David Richards for
6 the record.

7 Our next commenter is Mr. Jeff Martin with
8 TIADA.

9 Jeff, will you state your name for the record
10 and who you're affiliated with, and please proceed with
11 your comments.

12 MR. DORAN: Mr. Martin, you may proceed.

13 (No response.)

14 MR. DORAN: This is Presiding Officer Doran.

15 David, do you and staff see him in the queue?

16 MR. RICHARDS: No, we do not. I just got word
17 from a staff member. We do not see him in the queue.

18 MR. DORAN: Okay.

19 MR. RICHARDS: So we could move on to the next
20 one then, I guess.

21 MR. DORAN: Okay.

22 MR. RICHARDS: The next -- I'm getting more
23 staff recommendations, sorry.

24 Jeff, if you could use the instructions to
25 raise your hand, we'll know you're in the queue and we can

1 come back to you. In the meantime we'll go to Phil Elam
2 who wants to address the first agenda item today.

3 Mr. Elam, please state your name for the record
4 and who you're with. Thank you.

5 MR. DORAN: Mr. Elam, you may proceed.

6 (No response.)

7 MR. DORAN: This is Presiding Officer Doran
8 again.

9 David, it sounds like we're having a little bit
10 of an issue getting folks from the dugout into the
11 batter's box here.

12 MR. RICHARDS: He is also, I'm told, not in the
13 queue. So Mr. Elam, if you're on the call, please follow
14 the instructions to participate, also raise your hand as
15 well.

16 I will move on, Officer Doran, to the next
17 person in the lineup, and that's Karen Phillips.

18 Ms. Phillips, please state your name for the
19 record and who you're with. Thank you very much.

20 MS. PHILLIPS: Can you hear me?

21 MR. DORAN: We can hear you, Ms. Phillips.

22 And Member Smith, if you wouldn't mind just
23 muting your line, that would be great.

24 MS. PHILLIPS: Good morning. My name is Karen
25 Phillips with the Texas Automobile Dealers Association,

1 and I appreciate the opportunity to speak to CPAC on this
2 issue as it's one that is very integral to the way my
3 members do business. In other words, when we sell a car,
4 we need to take that vehicle and deliver it to the
5 customer as quickly and as soon as possible so they can be
6 on their way. And so being able to issue the temporary
7 buyer's tag is necessary for any dealer that's in
8 business.

9 I also want to reiterate that the association,
10 all our franchise dealers, are very concerned about the
11 safety of the public as well as law enforcement. That's
12 always been uppermost with respect to how we do business.

13 So it appears to me that from the discussion,
14 and from the concerns that have been expressed by law
15 enforcement, that prevention of having someone being
16 issued a license and prevention of someone being able to
17 have temp tags easily available or being issued is where
18 we need to start the discussion. And I recognize that
19 that's the second thing on the list on page 6 that we have
20 not been able to get to yet, but that's where TADA is
21 focused and mentioned that at the board meeting on
22 December 10, when I spoke to the board about this issue.

23 So we think that it's obviously necessary not
24 to allow a customer not to be waiting to obtain their
25 vehicle and not to make a dealer go have to stand in line

1 at a TAC office or at the regional office, and which they
2 are not open on the weekends or after hours, because we
3 need to get that customer into their automobile. And so
4 we think that limiting things on the front-end is
5 preferable.

6 And as has been discussed already by Ms.
7 Thompson and Mr. Richards, the allocation of preprinted
8 internet-down tags is already available by rule. In
9 addition to that, by rule there's also a limitation on the
10 number of metal dealer license plates that can be issued
11 to someone who is initially going into business or who is
12 continuing in business. Now, there is the ability to
13 obtain additional dealer plate tags with justification and
14 a request to the agency.

15 And so it would appear to me that by rule --
16 and of course, I defer to Mr. Richards on this issue --
17 but it would appear to me if we can limit the number of
18 internet-down tags that are being printed, as well as
19 limit the number of dealer hard tags that are issued by
20 rule, that that would be another way to easily limit the
21 number of electronic buyer's tags that a dealer could be
22 able to print. I think we just need to be able to work
23 together to come up with a quantifiable metric to make a
24 determination as to what that number would be.

25 Now, I noted also that Mr. Rigby discussed the

1 background check issue, as well as Mr. Luna, and that to
2 me may be another source of trying to get a handle on who
3 actually obtains a license. As you know, the OCCC --
4 which Mr. Rigby can expound on even more -- has very
5 strict requirements and has sent out the various types of
6 offenses for which a person may not be or may be at risk
7 of losing their license over with the OCCC, so that to me
8 is something that could be explored also by the agency.

9 So doing a background check, perhaps expanding
10 that particularly. I was encouraged to learn from Mr.
11 Luna that it only takes 30 seconds for them to do their
12 background checks, and also exploring a metric with
13 respect to the limitation on the number of buyer's tags
14 that could be printed at the outset instead of waiting for
15 the problem to occur on the back-end.

16 I think that for all the reasons that have been
17 expounded on by law enforcement that the safety of them,
18 as well as the public, we need to have a prevention
19 mechanism in place and limit the eTAGs as well as limit
20 who is obtaining a license.

21 And I'm more than happy to respond to any
22 questions.

23 MR. DORAN: Members, are there any questions
24 for Ms. Phillips?

25 (No response.)

1 MR. DORAN: This is Presiding Officer Doran.
2 Karen, question. During the whole COVID
3 situation that we've been in now for so many months, we've
4 heard today about alternative ways that a dealer would
5 have to go about getting the tags and registration,
6 including going down to their local tax assessor office.
7 Have you found that during the COVID situation that hours
8 are limited or there's other impediments for dealers right
9 now to do that, and therefore, dealers are more reliant on
10 the eTAG system than ever?

11 MS. PHILLIPS: Laird, thank you for that
12 question. And that is an excellent question and you are
13 absolutely correct. The TAC offices, for the most part,
14 have been closed to individuals coming to the TAC office.

15 And oftentimes all we are able to do is to put
16 our documentation into a box and put it outside the door
17 and then somebody will, hopefully, will come and get our
18 paperwork and process it. We've had to go to other tax
19 assessor-collectors because some tax assessor-collectors
20 have been so backed up in being able to process paperwork
21 and get things done in a very timely manner.

22 Because as you know, we are limited on the
23 number of days that we can go ahead and process paperwork
24 for purposes of bankruptcy issues, so we have to perfect
25 that title in a very timely fashion. And so we've had to

1 go to alternative tax assessor-collectors and ask for
2 their permission to process paperwork. So yes, you are so
3 correct that it has been an issue during COVID.

4 And also, after speaking to some of my members,
5 they've indicated that the majority of their sales, maybe
6 as much as 75 percent of their sales are in the evening
7 hours, which would be after five o'clock, as well as on a
8 weekend. And so again, if I have to wait several days to
9 go and get a tag and wait in line, then that's going to be
10 very hard on the consumer, especially if they're needing
11 that vehicle right then.

12 So I appreciate that question and it has been
13 an issue and very much of a problem.

14 MR. DORAN: Thank you.

15 MS. JOHNSON: Mr. Chairman, Member Johnson.
16 Can I please make a comment in response to the speaker?

17 MR. DORAN: Sure, Member Johnson, you're
18 recognized.

19 MS. JOHNSON: As the tax assessor-collector in
20 Galveston County, I would like to apologize on behalf of
21 any of the county tax offices that have not been open to
22 the public. I know that Harris County has been a
23 problem. I'm not ashamed to say that publicly.

24 We have had an immense number of dealers coming
25 from Harris County in particular seeking our services and

1 we have had to deny every single one of them because we
2 can barely serve our own public. We were closed two weeks
3 while plexiglass was installed and we've not missed a day
4 since, except for holidays and weekends.

5 So I'm really sorry. Y'all really need to put
6 pressure on your elected tax assessor-collectors and tell
7 them to get back to the work of the public.

8 MR. DORAN: Thank you, Member Johnson.

9 Members, any additional questions for Ms.
10 Phillips?

11 (No response.)

12 MR. DORAN: Okay. Not hearing any, thank you,
13 Karen, appreciate your time today.

14 MS. PHILLIPS: Thank you very much.

15 MR. DORAN: This is Presiding Officer Doran.

16 So David, maybe we can bring up the next
17 commenter.

18 MR. RICHARDS: Absolutely. I'm told we now
19 have Mr. Jeff Martin in the queue.

20 Mr. Martin, please state your name and who you
21 represent for the record and go ahead and provide your
22 comment. Thank you.

23 MR. MARTIN: Thank you, Mr. Richards. Can you
24 guys hear me now?

25 MR. DORAN: Loud and clear. Thank you, Mr.

1 Martin. Please proceed.

2 MR. MARTIN: Thanks, Chairman. Apologize for
3 the technical difficulties. My name is Jeff Martin. I
4 represent the Texas Independent Automobile Dealers
5 Association, and we certainly applaud the effort of DMV to
6 try to address this temporary tag issue. I personally
7 want to thank Corrie Thompson and Caroline Love both for
8 reaching out to us on this issue.

9 We share some of the concerns that Member Smith
10 pointed out as it relates to method A, and I know that Ms.
11 Phillips addressed this issue as well. We're a little
12 concerned and the biggest issue, and I know Member Smith
13 brought this up -- but the biggest issue that have is we
14 are effectively closing down a dealership if we take their
15 ability to print a temporary tag away from them. And not
16 knowing the details of how they would be able to access
17 the temporary tag if that was taken away from them is
18 something that we are very concerned about.

19 I know there has been a lot of talk within the
20 committee about method B, but I do believe that method B,
21 we may be on the right track here if we try and address
22 this issue on the front-end and identify the number of
23 tags that someone might be eligible for, and if they are
24 to apply for more tags they would have to have that
25 conversation with the Department of Motor Vehicles. And

1 so I think that as a committee if we could vet that
2 process out a little bit more, I certainly know that the
3 members of our organization would support that.

4 Certainly we support method D as well,
5 increasing the monitoring, which I think that probably
6 goes hand-in-hand here. Obviously, the devil's in the
7 details when it comes to increasing the monitoring, but
8 our association would certainly encourage the committee to
9 look at options to address this on the front-end, as
10 opposed to eliminating the ability for a dealer to be able
11 to print a temporary tag on the back-end.

12 I recognize that we're really focusing on the
13 bad actors here, but I want to make sure that we don't
14 have dealers that get caught up in that kind of unintended
15 consequences.

16 So I'll be happy to take any questions, and
17 certainly, again, I thank the committee for your time and
18 thank you for working on this issue.

19 MR. DORAN: Members, are there questions for
20 Mr. Martin?

21 (No response.)

22 MR. DORAN: Mr. Martin, this is Presiding
23 Officer Doran. I have a question for you.

24 So you touched on this a little bit, but maybe
25 you could speak to how a limitation would work or possibly

1 a probationary period for a new licensee. You mentioned
2 that limitations would be something that your members
3 would be open to. Maybe you could just speak to how that
4 would work for the committee.

5 MR. MARTIN: Number one, thank you for the
6 question. I think it would be in the licensing
7 application process where an applicant would state or
8 communicate to the agency how many buyer's tags -- and I'm
9 assuming that we're primarily talking about buyer's tags
10 here -- about how many buyer's tags they believe that they
11 would be issuing. And then if they needed to apply for
12 more, they could apply for more, but there would be some
13 explanation given as to why they believe they would need
14 more tags than requested.

15 MR. DORAN: Great. Thank you.

16 MR. MARTIN: Thank you.

17 MR. DORAN: Members, any further questions for
18 Mr. Martin?

19 (No response.)

20 MR. DORAN: Okay. Not hearing any, Mr. Martin,
21 thank you for your comments and thank you for your time
22 today. We appreciate your participation.

23 MR. MARTIN: Thank you.

24 MR. DORAN: David, Presiding Officer Doran
25 here. I'll turn it back over to you to bring up the next

1 commenter.

2 MR. RICHARDS: Yes, sir. I show the next
3 commenter to be Jennifer Szimanski.

4 Ms. Szimanski, I hope I'm pronouncing your name
5 correctly; if I'm not, please forgive me. Please state
6 your name for the record and who you're affiliated with
7 and then proceed to provide the committee with your
8 comments.

9 MR. DORAN: Ms. Szimanski, you may proceed.

10 MR. RICHARDS: Officer Doran?

11 MR. DORAN: Yes, David.

12 MR. RICHARDS: David Richards for the record.

13 I am told by staff that she's currently not in
14 the queue. She's on the phone, so hopefully she can
15 follow the instructions and get in the queue here
16 shortly. I do not show anyone else that wants to offer
17 public comment to this first agenda item.

18 And again, just remind the presiding officer
19 and members, we do have other options in B, C and D that
20 the department would like for you to discuss before we
21 move on. So thank you.

22 MR. DORAN: David, this is Presiding Officer
23 Doran.

24 Just for purposes of the flow of the meeting,
25 and perhaps there was some confusion on my part -- I know

1 we've had some of the commenters say we've been focusing
2 on A which is the expedited hearing -- I want to properly
3 make sure that we're discussing and vetting B, C and D as
4 well. And so am I to assume that there's no further
5 presentation specifically geared towards B, C and D from
6 staff and that it's just a matter of turning our attention
7 to B, C and D for purposes of discussion?

8 MR. RICHARDS: Yes, sir, that is correct.

9 MR. DORAN: Okay. Well, with that, members,
10 perhaps we could take up B and open that up for
11 discussion. This is: limit the number of eTAGs a dealer
12 may issue.

13 We've heard some of our commenters,
14 particularly Mr. Martin, mention this as being a potential
15 measure that could be taken. Members, is there any
16 discussion on B?

17 MR. CAVENDER: Member Cavender wishes to speak.

18 MR. DORAN: Member Cavender, you're recognized.

19 MR. CAVENDER: Yes. Just to reflect back on
20 what Ms. Phillips was saying that the limitation should be
21 on the down internet tags. I would agree with that, so
22 some limitation could be voiced on that. But to take a
23 limitation away -- or put a limitation on a franchise
24 dealer would be extremely penalizing and impacting.

25 MR. DORAN: Thank you, Member Cavender.

1 This is Presiding Officer Doran. Question for
2 staff. So when an applicant for a dealer license today
3 applies for their license, does the DMV do any inquiry
4 into how many tags they need or does the dealer just --
5 how does the dealer communicate what their projected
6 number of tags will be?

7 MS. CASTANUELA: Presiding Officer Doran, this
8 is LaDonna Castanuela. May I be recognized?

9 MR. DORAN: Good morning, LaDonna. You may be
10 recognized. Thank you.

11 MS. CASTANUELA: For the record, LaDonna
12 Castanuela. I'm an attorney in the Motor Vehicle
13 Division.

14 And I just want to say that on application, the
15 dealers -- GDN only dealers or franchise dealers do not
16 have to give us a projected number of sales in order to
17 get the buyer tag access; they just have access.

18 On renewal for franchise dealers specifically,
19 they do indicate a sales range, a sales volume range, and
20 that is because in the Occupations Code their renewal
21 application fee is going to be calculated on how many
22 sales they made in the previous calendar year. So while
23 they're going through the application, there is a
24 drop-down menu for them to provide how many sales they
25 made in the previous calendar year.

1 It has a choice of ranges that correspond to
2 the fee statute, 2301.224, I believe. So then they choose
3 a range; they are not required to submit any kind of
4 documentation to prove that range. That number is only
5 used to calculate the fee, and that is only for franchise
6 dealers on renewal for the purposes of calculating the
7 application fee. The GDN only dealers do not have to
8 report any sales numbers to us on the application.

9 There is another rule that Ms. Phillips
10 mentioned also regarding metal dealer plates. So that
11 department rule limits the number of metal dealer plates
12 depending on the type of license the dealer holds, and
13 there is like a baseline number.

14 If the dealer on renewal, either a franchise or
15 a GDN dealer, wishes to request more than the baseline
16 number allowed in the rule, then they do, in fact, have to
17 show us some sales information, some past sales
18 information. But what I'm told from the license
19 specialists is that very few dealers on renewal request
20 more than the allotment for metal dealer plates.

21 When they request above the basic allotment,
22 they do in fact upload into the eLICENSING system their
23 VIT reports to show us that they've made more sales or
24 however many sales they've made.

25 MR. DORAN: Thank you.

1 This is Presiding Officer Doran again. So
2 LaDonna, it would seem like there might be the lowest
3 hanging fruit here to "stop the bleeding" would be to go
4 after those applicant dealers that are just getting a
5 license to print tags and are not really in the business
6 of selling cars.

7 I mean, I know in the licensing process the DMV
8 has certain requirements to demonstrate that you're a bona
9 fide dealer, like you have to have a chair and a telephone
10 and internet access, et cetera, et cetera, but it would
11 seem like if that is one of the problem areas -- and I
12 think Ms. Thompson said that's not all of the problem
13 areas, but that's one of the problem areas is these
14 nefarious people that just apply for a license. They're
15 granted a license; there's no limit on what they can do in
16 terms of how many tags they can print.

17 And then it's months right now before the DMV
18 can step in and shut them down -- that that might be one
19 of the areas that we could perhaps focus on with a
20 recommendation to go after putting some reasonable
21 limitations then on a recently licensed independent dealer
22 that doesn't yet have a sales history.

23 MR. SMITH: Officer Doran, Member Smith.
24 Question.

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

1 MR. SMITH: To implement this, is this a
2 legislative thing or could it be done by rule?

3 MR. RICHARDS: Officer Doran?

4 MR. DORAN: David, you're recognized.

5 MR. RICHARDS: David Richards for the record.

6 This is listed in your book, Member Smith, as a
7 legislative recommendation, so we would go that route.
8 Thank you.

9 MR. SMITH: This seems to be something that
10 everybody can get behind and I think could be very
11 effective. Officer Doran, would it be appropriate at this
12 point to make a motion that this be the solution we
13 entertain at this point?

14 MR. DORAN: David, keep me honest here, I don't
15 want to screw up from a flow and process standpoint
16 here. Obviously I think there is some consensus among the
17 members that this is a good place to start. Is now the
18 appropriate time to take up that motion?

19 MR. RICHARDS: I think in the interest of time
20 we could take up the motion, but I would ask that the
21 membership also consider items C and D and have a
22 discussion on that to determine whether or not they want
23 to include that as a recommendation to the TxDMV Board.

24 All the commenters have spoken and so I think
25 that's perfectly in order if Member Smith would like to

1 make such a motion. Thank you.

2 MR. SMITH: Officer Doran?

3 MR. GONZALEZ: Member Doran, permission to
4 speak?

5 MR. DORAN: Okay. One at a time. I think
6 Member Gonzalez, go ahead, you're recognized.

7 MR. GONZALEZ: Thank you.

8 Do we know which paper tag is more widely used
9 or abused of the current tags that a dealer uses? Perhaps
10 maybe the most abused tag could be limited in this
11 program, that way we don't hurt like the franchise
12 dealers.

13 I know that there might be some violations on
14 the dealer's temporary tag, maybe less on the buyer's tag,
15 and maybe a little bit more on the preprinted internet
16 tags, but do we have any type of statistic which tag is
17 more commonly abused to maybe establish a limit on which
18 to control for enforcement and fraud purposes? That's my
19 question.

20 MR. DORAN: Thank you, Member Gonzalez.

21 MR. THOMPSON: Officer Doran, this is Clint
22 Thompson, chief of Title Services.

23 MR. DORAN: Mr. Thompson, you're recognized.

24 MR. THOMPSON: Thank you.

25 Ruben, thank you for that. I think we've seen

1 quite a bit of abuse with buyer's tags, obviously, and the
2 exorbitant issuance of those. But I want to make sure
3 that everybody is aware if we try to focus on one specific
4 tag type, folks may shift their focus to agent tags or
5 vehicle specific tags. So I think it's important, as we
6 look at curbing this abuse, we examine the system as a
7 whole and all tags and trying to shore up the gaps that we
8 have to make sure that we identify and prevent abuse of
9 all tag types.

10 And the same thing is true, I hear folks saying
11 franchise dealers are not the bad actors, there's always
12 the potential for someone to be a bad actor. And so we
13 need to evaluate the system and make sure we put the same
14 measures in place to prevent those bad actors.

15 MR. RICHARDS: Officer Doran?

16 MR. DORAN: David, you're recognized.

17 MR. RICHARDS: David Richards for the record.

18 Thank you.

19 I have just received notice that Jennifer
20 Szimanski is now in the queue or should be in the queue to
21 offer her public comment. She represents the last person
22 who wants to comment on this particular agenda item, so I
23 will ask Ms. Szimanski to state her name for the record
24 and who she's affiliated with and please proceed with her
25 comment. Thank you.

1 MR. DORAN: Thank you.

2 MS. SZIMANSKI: Yes. Can you hear me?

3 MR. DORAN: Yes, loud and clear. Please
4 proceed.

5 MS. SZIMANSKI: I'm sorry about that, I got in
6 this late in the game, but thank you for allowing me to
7 speak today. I'm Jennifer Szimanski with the Combined Law
8 Enforcement Associations of Texas, or CLEAT. I'm a member
9 of law enforcement and I currently serve in public affairs
10 and legislative affairs at CLEAT.

11 I reached out to the DMV over a year ago and we
12 were able to establish a working group between law
13 enforcement, DMV officials and other stakeholders. The
14 group included Joe Escribano, who spoke earlier, and
15 Corrie Thompson, who is on this call as well. And I
16 appreciate the DMV's willingness to hear law enforcement
17 concerns as they pertain to the compromised eTAG system.

18 I would like to reiterate a concern, though,
19 that we expressed at our initial meeting, which is the
20 lack of DMV cooperation with law enforcement as it
21 pertains to requests for information as part of a criminal
22 investigation. Our investigators across the state of
23 Texas are unable to obtain information that they need to
24 move their cases forward against these eTAG criminals
25 they're encountering out on the streets.

1 We recommended a possible solution of the
2 Fusion Center as a conduit for information, but we have
3 not seen movement or willingness on behalf of the DMV to
4 provide information to law enforcement in a timely manner
5 that is necessary to reach the probable cause standard.
6 Law enforcement does not seem to have the same problem
7 with other state agencies.

8 I understand that this does not resolve the big
9 picture problem that we're facing, but it does help or
10 would help with officer safety, deterrents, and the
11 ability for law enforcement to do their job and take
12 suspects into custody when they do come across them on the
13 streets.

14 Thank you for your time and consideration in
15 this matter.

16 MR. DORAN: Thank you.

17 Members, are there questions for Ms. Szimanski?

18 MR. RICHARDS: Officer Doran?

19 MR. DORAN: Yes, David, you're recognized.

20 MR. RICHARDS: The particular subject matter
21 that Ms. Szimanski has raised is not part of this
22 agenda. It's an important issue, I give her that, so no
23 comments should be made on this one. We'll continue to
24 work with CLEAT --

25 MS. JOHNSON: Mr. Chairman, I cannot hear him.

1 MR. DORAN: David, this is Laird. Maybe you
2 could speak up just a little bit.

3 MR. RICHARDS: I'm sorry, malfunctions of
4 technology.

5 This particular subject matter that Ms.
6 Szimanski has brought forward is not part of this
7 particular agenda item so I would ask that we not have
8 discussions or comments regarding this; it's not part of
9 the agenda. I will say that it is an important issue.

10 We will continue our discussions with CLEAT and
11 other members of law enforcement ongoing, but as far as
12 questions and comments, it's not part of the agenda.
13 Thank you.

14 MR. DORAN: Okay. Members, if there's not
15 questions or it's not appropriate to ask questions on this
16 topic, I just want to thank the commenter for her time and
17 for coming forward today.

18 And David, it sounds like we should just
19 consider her comments as attributable to the general
20 comment section of the meeting instead?

21 MR. RICHARDS: Yes, that would be fine. It
22 will be recorded.

23 MR. DORAN: Okay, great. So we'll have it
24 reflected there. Thank you.

25 Okay. There being no further commenters on

1 this item then, we can resume discussion this agenda
2 item. And I think we advised Member Smith to essentially
3 table his consideration of a possible motion until we
4 discussed both C and D, in addition to B.

5 And so I would like for us to resume our
6 discussion on those items by asking staff relevant
7 questions that the members might have of those items.

8 MR. RIGBY: Michael Rigby. Permission to
9 speak?

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

11 MR. RIGBY: Thank you. I don't have an
12 additional question; I did want to follow up and summarize
13 some of the commenters. I believe both Jeff Martin and
14 Karen Phillips commented on limiting the number of tags,
15 and I think I'm in agreement with them. That seems to be
16 the most efficient way to deal with this problem.

17 Karen commented on the OCCC's criminal history
18 background check process, and we've had some other
19 testimony with respect to that. Just to clarify, there
20 are two different ways you can check somebody's criminal
21 history. One is the one that was discussed, which is a
22 name-based search, and it's limited or more limited. The
23 other one is a fingerprint-based search which is kind of
24 the gold standard.

25 Both of those have -- although you can run a

1 name-based search in fairly quick order, 30 seconds or
2 whatever, it does require staff time to do that. There
3 are limitations to it. I think we had another commenter
4 that said, well, that you could easily circumvent that by
5 hiring somebody without a criminal history and giving them
6 access to the temp tag, and I agree with that concern. I
7 think that's certainly something that is a risk to that
8 kind of system.

9 So given kind of the totality of comments that
10 I've heard, I would support focusing on B, limiting the
11 number of tags, and I agree that those should tie to all
12 tags, not kind of divided into different tags, and also D,
13 the increased monitoring, just seeing how the problem
14 shifts as you apply the solutions.

15 That's all the comments I have. Thank you.

16 MR. DORAN: Thank you.

17 This is Presiding Officer Doran. Is staff
18 prepared to speak to what their expectations or ideas
19 would be in terms of a reasonable limitation on tags?
20 Because so far during the course of our deliberation today
21 we've heard some extremely egregious examples of 50,000
22 tags or 10,000 tags. And certainly there's a way, I would
23 assume, the agency has in mind to come up with a
24 reasonable number of tags as a limitation, something
25 that's workable.

1 I think it would benefit the members as we
2 ultimately get a motion put to us on this issue, and I'm
3 sure there's a concern in some of the members' minds
4 about, well, am I agreeing to 30 tags a month or 500 tags
5 a month. I mean, we all can agree that 10,000 or 50,000
6 tags is completely inappropriate, but I know that there's
7 probably concern among some of our members about where is
8 that ceiling and how would DMV arrive at those thresholds.

9 MR. THOMPSON: Officer Doran, Clint Thompson,
10 chief of Title Services.

11 MR. DORAN: Clint, please proceed. Thank you.

12 MR. THOMPSON: Thank you.

13 Just first, I think it's important to point out
14 that, you know, this recommendation is to give the
15 department the authority to be able to do this. Obviously
16 we've heard 50,000 is too much or 15,000 is too much.
17 Great, we've got a ceiling; we can work down from there.

18 Obviously we are not trying to hinder
19 legitimate practices and the ability for folks to sell
20 vehicles, so there obviously needs to be some discussion
21 on what that volume looks like.

22 We do have several models that we can point to
23 already. We've got the internet-down tag formulas,
24 LaDonna spoke to the metal license plates, things of that
25 nature.

1 We have not specifically talked about formulas
2 for determining that but there are a variety of things
3 that we have available. Obviously if this is a dealer
4 that's in business already, we've got reports that are
5 available right now that reflect the number of vehicles
6 sold by the dealer resulting in title applications.

7 So we've got multiple resources available that
8 we can point to as a guide to try to start determining
9 what those limits are, based on whether it's a franchise
10 who are obviously going to have larger sales or an
11 independent motor vehicle dealer who is establishing a
12 business for the first time. I think there's different
13 limits that we would be agreeable to look at.

14 The important thing, though, in making these
15 limits, much like the internet-down tag that we have
16 today, is ensuring that we have a mechanism to get folks
17 who potentially exceed those limits additional tags
18 expediently. I've heard multiple folks speak to, dealers
19 sell vehicles after the TACs offices and the regional
20 service centers are closed and on the weekends. Obviously
21 that's a concern.

22 So the key would be to have a mechanism in
23 place that would allow that limit to be increased when it
24 is a legitimate business purpose. We've discussed an
25 alternative tag type, akin to the internet-down tag that

1 would be a supplemental, if you will, if somebody ran
2 against the limit for the buyer tag.

3 So there are a variety of options here for us
4 to establish limits and provide mechanisms for folks to be
5 able to get additional tags for legitimate purposes. But
6 the main thing is getting us the authority to be able to
7 restrict that to begin with, that way we can curtail the
8 abuse of the system that's occurring.

9 MR. RICHARDS: Officer Doran?

10 MR. DORAN: Yes, David, you're recognized.

11 MR. RICHARDS: Thank you. David Richards for
12 the record.

13 I just wanted to state for the record that
14 while we have received a lot of good information from Mr.
15 Thompson, we don't have to as a committee decide on how
16 we're going to proceed as to those particular options
17 today, but I do thank Clint for providing that
18 information. We just need a motion, and as Clint said,
19 the ability to restrict the issuance. So thank you.

20 MR. DORAN: Thank you.

21 MR. SMITH: Officer Doran, Member Smith.

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

23 MR. SMITH: It sounds you can tee me up now for
24 a motion.

25 MR. DORAN: It sounds like that as well, so you

1 are teed up for a motion, Member Smith. Please proceed.

2 MR. SMITH: I would move that we recommend a
3 legislative move to give the agency the authority to have
4 a legislative amendment to allow that the agency
5 reasonably limit the number of temporary tags that a GDN
6 licensee may print on an annual basis and allowing for
7 that GDN holder to petition or make a request to the DMV
8 to change the number subject to the decision of the
9 agency.

10 MR. DORAN: Members, you've heard the motion.
11 Is there a second?

12 MS. JOHNSON: Member Johnson. I'll second that
13 motion.

14 MR. DORAN: Okay, members. There's been a
15 motion made by Member Smith, a second by Member Johnson.
16 Is there any discussion on the motion itself?

17 MR. RIGBY: Michael Rigby. Permission to
18 speak?

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

20 MR. RIGBY: I generally agree with the motion,
21 but I'm a little concerned about measuring it only on an
22 annual basis. If there were a bad actor who got a license
23 and over the course of a year you might generally issue
24 whatever it is, 1,000, 2,000 temp tags, you could collect
25 those and then sell those without a vehicle sale that's

1 associated with it. So perhaps if you amended the annual
2 to annual and monthly, that might cure it.

3 I'm still concerned about how do you tie the
4 tag to the VIN number and make sure that they're actually
5 selling a vehicle out of their inventory, they're not just
6 selling the tag itself, but for the purposes of this
7 motion I think adding annual and monthly would help.
8 Thank you.

9 MS. JOHNSON: Member Johnson requests to be
10 recognized by the chair.

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

12 MS. JOHNSON: I'm amenable to amending it to no
13 less than annually if the maker of the motion -- which
14 will leave the door open for the department to determine
15 how often it needs to do that. I agree that monthly is
16 worthwhile, but we don't want to require them to do it
17 monthly if annually is fine for the vast number of people
18 who are doing it right.

19 MR. RICHARDS: Officer Doran?

20 MR. SMITH: Officer Doran, Member Smith.

21 MR. DORAN: Okay. I'll go to David first and
22 then come right back to Member Smith.

23 MR. RICHARDS: Thank you, Office Doran.

24 Members, we're just simply asking for
25 legislative authority to limit. The details of how it's

1 going to roll out, whether it's monthly or annual, would
2 be done by rulemaking, so this particular one is really
3 just to limit the number of eTAGs a dealer may issue is
4 what we're looking for at this time.

5 MR. SMITH: Officer Doran, Member Smith.

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

7 MR. SMITH: What if I just said at least
8 annually?

9 MR. RICHARDS: That would be fine. I will tell
10 you, to kind of echo what Michael Rigby was saying,
11 monthly is important as well, as far as from an
12 enforcement perspective, to get after the bad actors so
13 you might want to consider monthly as well as annually.
14 Thank you.

15 MR. SMITH: If I say at least annually, then
16 rulemaking will determine something less than that
17 possibly.

18 MR. RICHARDS: Yes, sir, we could do it that
19 way, absolutely.

20 MR. SMITH: Consider my motion amended.

21 MS. JOHNSON: And Member Johnson accepts that
22 amendment.

23 MR. RIGBY: Member Rigby accepts that
24 amendment.

25 MR. RICHARDS: Officer Doran?

1 MR. DORAN: I'm sorry, I was on mute. I
2 apologize. I was halfway into people's names.

3 Okay. So now that I'm off of mute, members, is
4 there any further discussion on the amended motion.

5 (No response.)

6 MR. DORAN: Not hearing any, I will call for
7 the vote. Members, when I call your name please state
8 your support for the motion by saying yes, I support the
9 motion, or no, if you do not support the motion.

10 Member Brook?

11 MS. BROOKS: Yes, I support the motion.

12 MR. DORAN: Member Cavender?

13 MR. CAVENDER: Yes, I support the motion.

14 MR. DORAN: Member Colvin?

15 (No response.)

16 MR. DORAN: Member Eshpeter?

17 (No response.)

18 MR. DORAN: Member French?

19 MR. FRENCH: Yes, I support the motion.

20 MR. DORAN: Member Gonzalez?

21 MR. GONZALEZ: Yes, I support the motion.

22 MR. DORAN: Member Johnson?

23 MS. JOHNSON: Yes, I support the motion.

24 MR. DORAN: Member Olah?

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

1 MR. DORAN: Member Rash?

2 (No response.)

3 MR. DORAN: Member Rigby?

4 MR. RIGBY: Yes, I support the motion.

5 It would be helpful if you read the amended
6 motion again. It would help us stay on the same page.
7 Thank you.

8 MR. DORAN: Thank you.

9 MR. SMITH: Officer Doran?

10 MR. DORAN: Sure. Member Smith, I was going to
11 call on either you or David Richards to read it back, but
12 since it's your motion and you're probably keeping tabs, I
13 would defer to you to recite the amended motion.

14 MR. SMITH: That we give the agency the
15 authority to have a legislative amendment to allow that
16 the agency reasonably limit the number of temporary tags
17 that a GDN licensee may print on at least an annual basis,
18 and allowing for a GDN licensee to petition or make a
19 request to the agency for additional temp tags, subject to
20 presentation of reasons.

21 MR. DORAN: Thank you, Member Smith. Member
22 Smith, I'm putting you down in support of the motion.

23 MR. SMITH: Yes.

24 MR. DORAN: And I, Laird Doran, also vote yes
25 on the amended motion, so that passes unanimously. Please

1 let the record reflect that it passed unanimously.

2 Members, are there any more motions that we
3 need to entertain on item B?

4 MR. RICHARDS: Officer Doran?

5 MR. DORAN: Yes, David.

6 MR. RICHARDS: I wanted to ask if the motion
7 applies to both franchise dealers and independent dealers.

8 MR. DORAN: Mr. Richards, let's clarify that
9 with Member Smith since it's his motion.

10 MR. SMITH: Yes.

11 MR. RICHARDS: I'm sorry. Did Member Smith say
12 yes?

13 MR. SMITH: Yes, Member Smith said yes.

14 MR. DORAN: Thank you, Member Smith. Thank
15 you, David.

16 And I'm getting a little bit of feedback or
17 noise from -- I think it might be Member Brooks. If you
18 wouldn't mind. Perfect. Thank you.

19 Okay. Members, are there any additional
20 motions that need to be taken up or entertained with
21 respect to item B?

22 MR. RICHARDS: Officer Doran?

23 MR. DORAN: Yes, David.

24 MR. RICHARDS: I hate to do this, but as a
25 matter of housekeeping and make sure that we have the

1 record reflect the correct motion, second and vote is to
2 ask Member Smith to either restate his motion to include
3 franchise dealers and independent dealers. If you don't
4 mind doing that for the record, that way the court
5 reporter will get an accurate reflection of what your
6 motion is, Member Smith, because it was left out.

7 MR. SMITH: Sure. Member Smith here. The
8 thing is I believe my motion when I said GDN licensees,
9 that is all dealers, but certainly you can add in the
10 franchise dealers, but I thought that because I said all
11 GDN dealers/licensees, it would include them. Would that
12 not work?

13 MR. RICHARDS: Actually, I'm being asked to
14 make sure that both are included. I think you're
15 technically correct that both have GDN licenses, but if
16 you could state for the record that your motion is
17 actually including both, just so we're perfectly clear on
18 your motion, I would appreciate it. Thank you.

19 MR. SMITH: Okay. My motion was intended to
20 include within the rule -- or the law that both franchise
21 dealers and independent dealers would be included.

22 MR. RICHARDS: Members, did y'all understand
23 that both franchise dealers and independent dealers were
24 included in the motion when you voted? If you didn't
25 understand that, please say so. Thank you.

1 MR. DORAN: Okay, members, not hearing any
2 further discussion on either the clarification or the
3 motion that we just passed and not hearing any other
4 motions with respect to item B, we will now proceed to
5 take up item C, which is the background checks of eTAG
6 system users.

7 Members, I'd like to invite any additional
8 discussion on item C, background checks for eTAG system
9 users, to determine whether we have any recommendations
10 that we would like to make a motion on.

11 MR. SMITH: Officer Doran, Member Smith again.

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

13 MR. SMITH: I think that maybe it was Member
14 Rigby, but I believe we talked about this briefly. But I
15 think what this does if we adopt this would add additional
16 burden on both the agency and on the licensees, and quite
17 frankly, I don't think it would gain anything for you.

18 So my thoughts are, we've got something good in
19 play in B. Certainly increased monitoring would always be
20 a good idea, I don't know that it needs any legislation,
21 but background checks aren't going to help us solve this
22 problem. I'd recommend we move on from that.

23 MR. DORAN: Members, is there any other
24 discussion on C?

25 (No response.)

1 MR. DORAN: Question for David. I assume if
2 we're not going to make a motion recommending anything
3 related to C, that no further action is necessary from the
4 CPAC on C, David?

5 MR. RICHARDS: Yes, that is correct. Thank
6 you.

7 MR. DORAN: Thank you.

8 All right. Members, not hearing any motions
9 related to C and not hearing any further discussion, we
10 will now move to D, which is increased monitoring, the
11 last recommendation that relates to this first issue of
12 curbing temporary tag abuse.

13 MS. JOHNSON: Member Johnson requests to be
14 recognized by the chair.

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

16 MS. JOHNSON: Barring the fact that I tend to
17 jump ahead and just move forward with a motion, I believe
18 this is a sound recommendation. The monthly monitoring
19 appears to be inadequate. If you need a motion, then
20 continue this, but increase the monitoring no less than
21 weekly if it's possible to obtain those reports from the
22 system.

23 MR. DORAN: Thank you, Member Johnson.

24 This is Presiding Officer Doran. As it relates
25 to item D, and we heard a presentation referring to what

1 the State of Florida is doing on monitoring and the
2 various reports, I didn't hear that there was any negative
3 or downside whatsoever to engaging in increased
4 monitoring, nor did we hear anything about any type of
5 cost or administrative burden associated with this
6 recommendation.

7 So unless staff has anything negative to say
8 about D, I would certainly entertain a motion on this.

9 MR. CAVENDER: Officer Doran, Member Cavender
10 to speak?

11 MR. DORAN: Member Cavender, you're recognized.

12 MR. CAVENDER: I would make the motion to
13 recommend that the department evaluate methods to increase
14 monitoring on a monthly basis of temporary tag issuance in
15 relationship to actual sales and review the number of
16 assigned users, removing inactive users, and developing
17 reporting to identify tag issuance outside of normal
18 operations.

19 MR. DORAN: Members, you've heard the motion by
20 Member Cavender. Is there a second?

21 MR. GONZALEZ: I second the motion.

22 MR. DORAN: Was that Member Gonzalez?

23 MR. RIGBY: Yes.

24 MR. DORAN: Okay. Member Gonzalez has seconded
25 the motion.

1 Members, any specific discussion on the motion
2 itself?

3 MS. JOHNSON: Member Johnson would like to be
4 recognized by the chairman.

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

6 MS. JOHNSON: Depending on the volume, and I
7 would have to hear from Ms. Thompson on these monitoring
8 them monthly because it sounded like they're already doing
9 that. So if we're asking them to increase it, I don't
10 think adding monthly that that's a change, and I need to
11 know if that's right or not.

12 Depending on the volume of these reports, is
13 monthly adequate? Thank you.

14 MR. THOMPSON: Officer Doran, this is Clint
15 Thompson, chief of Title Services.

16 MR. DORAN: Mr. Thompson, you're recognized.

17 MR. THOMPSON: I appreciate the comment. The
18 intent behind this is to automate these processes, the
19 monitoring and putting the checks in place. We have
20 various reports today, as Director Thompson spoke to
21 earlier.

22 But the goal here would be to programmatically
23 introduce these validations and these checks to, if you
24 will, create red flags in the application itself so that
25 folks were prompted to look at this at whatever interval,

1 whether it was daily, weekly, monthly, whatever the case
2 may be, so certainly would appreciate not restricting us
3 to only monthly. But other than that, yes, we would look
4 to automate these and reduce the manual intervention that
5 would be required.

6 MS. JOHNSON: May I respond to that, Mr.
7 Chairman?

8 MR. DORAN: Yes, you may.

9 MS. JOHNSON: And I appreciate that. I review
10 fraud reports; the system has just recently begun to
11 provide fraud reports and we review those monthly in our
12 office to see if we see any anomalies. And there might
13 even be something that you could add to the fraud report
14 system so county TACs offices, such as mine, could
15 continue to assist in the monitoring and report something
16 if we see it.

17 MR. THOMPSON: Officer Doran, Clint Thompson,
18 chief of Title Services.

19 MR. DORAN: Mr. Thompson, you're recognized.

20 MR. THOMPSON: Yes, ma'am, we appreciate
21 that. We're certainly glad -- if you have specific
22 feedback on any of the reports, we're glad to take a look
23 at those and see where we can enhance those.

24 What we're trying to do, to your point, is
25 leverage those existing reports and put those validations

1 within the system. That way it's prompting those alerts
2 for us, as opposed to the manual review that's going
3 on. So any opportunity we have, whether it's with the
4 application itself or those reports that are available to
5 y'all, if there's some automation we can look at,
6 certainly glad to get your feedback and work with you on
7 that.

8 MR. DORAN: Thank you, Mr. Thompson.

9 MR. CAVENDER: Officer Doran, Member Cavender.

10 MR. DORAN: Member Cavender, you're recognized.

11 MR. CAVENDER: I can amend my motion then to
12 delete the term monthly and just to present the motion as
13 it is written in item D, increased monitoring, in our
14 packet.

15 MR. GONZALEZ: Member Gonzalez. Permission to
16 speak?

17 MR. DORAN: Member Gonzalez, you're recognized.

18 MR. GONZALEZ: In light of the commentary from
19 Mr. Clint Thompson, I agree with his explanation and
20 Member Cavender to let it lie the way it's worded in item
21 D. Thank you.

22 MR. DORAN: Thank you.

23 Members, just to clarify, Member Cavender has
24 made a motion that essentially mirrors the language in D
25 from page 6 of our packet with the removal of the term

1 "monthly" and as I understand it, that amendment has been
2 seconded by Member Gonzalez.

3 Members, is there any further discussion on the
4 amended motion?

5 (No response.)

6 MR. DORAN: Not hearing any, we will move
7 forward with a vote. Please indicate whether you are in
8 support of the motion -- sorry -- one second.

9 Members, when I call your name please state
10 your support for the motion by saying yes, I support the
11 motion, or no, if you do not support the motion, and
12 again, we're talking about Mr. Cavender's amended motion
13 here.

14 Member Brooks?

15 MS. BROOKS: Yes, I support the amended motion.

16 MR. DORAN: Member Cavender?

17 MR. CAVENDER: Yes, I support the amended
18 motion.

19 MR. DORAN: Member Colvin?

20 (No response.)

21 MR. DORAN: Member Eshpeter?

22 (No response.)

23 MR. DORAN: Member French?

24 (No response.)

25 MR. DORAN: Member Gonzalez?

1 MR. GONZALEZ: I support the amended motion.

2 MR. DORAN: Member Johnson?

3 MS. JOHNSON: I support the amended motion.

4 MR. DORAN: Member Olah?

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

6 MR. DORAN: Member Rigby?

7 MR. RIGBY: Yes, I support the amended motion.

8 MR. DORAN: Member Smith?

9 MR. SMITH: Yes, I support.

10 MR. DORAN: And I, Member Doran, also support
11 the motion.

12 David, do we need to assess whether we have a
13 quorum? I've got one, two -- I've got eight voting on
14 that motion.

15 MR. RICHARDS: Yes, we have a quorum.

16 MR. DORAN: Okay. Nobody leave.

17 Okay. Well, with that, then the motion passes
18 unanimously.

19 This is Presiding Office Doran. David, since
20 we've addressed B, C and D, and as I understand it as it
21 relates to A, there was a recommendation that was made to
22 the board in December, do we need to do something further
23 with A?

24 Do we have to formally walk that back then as a
25 recommendation that was previously made, or how should we

1 proceed with addressing A? What do you need?

2 MR. RICHARDS: David Richards, for the record.

3 May I speak?

4 MR. DORAN: Yes, David, you're recognized.

5 MR. RICHARDS: Yes. Since that recommendation
6 was made previously, the department would like for you to
7 move that one or at least vote on that one, not
8 recommending that one to the board.

9 Well, you could either vote to push it forward
10 to the board or vote that you don't want to move that as a
11 recommendation. That way the board, when they take these
12 up again, will know that the original recommendation by
13 CPAC has been withdrawn.

14 MR. DORAN: So members, you've heard Mr.
15 Richards's explanation that the board would benefit from
16 having a succinct clarification here through a motion that
17 it is not our intent to recommend that any action be taken
18 with respect to A at this time.

19 MR. SMITH: Officer Doran, Member Smith.

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

21 MR. SMITH: I move that we do not advance
22 recommendation A to the board.

23 MR. DORAN: Members, you've heard the motion.
24 Is there a second?

25 MR. CAVENDER: Second from Member Cavender.

1 MR. DORAN: Member Cavender has seconded the
2 motion. Members, is there any discussion on the motion?

3 MS. JOHNSON: Member Johnson would like to be
4 recognized by the chairman, please.

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

6 MS. JOHNSON: When we work legislation, I think
7 that it would be wise for whoever is going to be
8 testifying on this with the legislature for item B,
9 because that is our legislative recommendation, that they
10 understand that this was the other option that was
11 considered in order to pass authorizing the department to
12 establish by rule the number of temporary tags.

13 Because sometimes the legislature needs to hear
14 that there was something that was much more probably
15 forceful that was considered and the other one deemed a
16 superior solution. So as an argument, it should definitely
17 let the board know that that really should be presented
18 why this was withdrawn in support of the other one.

19 MR. DORAN: Thank you, Member Johnson.

20 David, as part of the presentation of CPAC's
21 recommendation not to press forward with A, can we get
22 some confirmation that staff will provide that explanation
23 so that it is on the record with the DMV Board?

24 MR. RICHARDS: Yes, absolutely, we'll do that.
25 I'm sure through Caroline Love, the head of our GSC, she

1 can definitely make that comment in her remarks.

2 Thank you, Member Johnson, for that point,
3 appreciate it.

4 MR. DORAN: Members, you've heard the motion,
5 the motion has been seconded. Is there any additional
6 discussion on this motion?

7 (No response.)

8 MR. DORAN: Okay. Not hearing any, I will call
9 for the vote. Members, when I call your name please state
10 your support for the motion by saying yes, I support the
11 motion, or no, if you do not support the motion.

12 Member Brooks?

13 MS. BROOKS: Yes, I support the motion.

14 MR. DORAN: Member Cavender?

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

16 MR. DORAN: Member Colvin?

17 (No response.)

18 MR. DORAN: Member Eshpeter?

19 (No response.)

20 MR. DORAN: Member French?

21 (No response.)

22 MR. DORAN: Member Gonzalez?

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

24 MR. DORAN: Member Johnson?

25 MS. JOHNSON: Yes, I support the motion.

1 MR. DORAN: Member Olah?

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

3 MR. DORAN: Member Rigby?

4 MR. RIGBY: Yes, I support the motion.

5 MR. DORAN: Member Smith?

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

7 MR. DORAN: And I, Laird Doran, also support
8 the motion. The motion passes unanimously.

9 This is Presiding Office Doran. David, now
10 that we have gone through all of the items under 1 on page
11 6 of the materials that we have, might we take a short
12 break and then discuss how we should approach the next
13 item on the agenda?

14 MR. RICHARDS: Sounds like a great idea.

15 MR. DORAN: Okay. Members, I'm showing 11:58
16 right now. If we could reconvene at 12:05 p.m., that
17 would be wonderful. So we will recess and go off the
18 record and come back on at 12:05. Thank you.

19 (Whereupon, a brief recess was taken.)

20 MR. DORAN: Good afternoon, members. It is
21 12:05 is what I'm showing. We can proceed to the next
22 agenda item. Everybody is back from the break. We'll go
23 back on the record.

24 We will now move on to the second agenda item
25 under 2.A. This is consumer protection and financial

1 issues when a franchise or independent dealer goes out of
2 business, including independent and franchise dealer
3 bonds, dealer statutory duties, and consumer reporting and
4 credit issues.

5 The discussion today will be led by Associate
6 General Counsel David Richards, by Motor Vehicle Division
7 Attorney LaDonna Castanuela, and by Ms. Corrie Thompson,
8 director of the Enforcement Division.

9 I will now turn the meeting over to Mr.
10 Richards, Ms. Castanuela, and Ms. Thompson.

11 MR. RICHARDS: Thank you, Officer Doran and
12 Members. David Richards, for the record.

13 Just a reminder, a recap, we're bringing this
14 issue back to CPAC for reconsideration for this membership
15 to either recommend legislation or recommend that it not
16 be moved forward as legislation either in whole or part.
17 You'll recall your previous vote, I believe on motion of
18 Member Cavender, was to increase the surety bond amount
19 under Transportation Code, Section 503.033 to \$50,000 from
20 its current \$25,000, and also to provide consumers with
21 notice of the surety bond and its existence at the time or
22 at the point of sale.

23 We're just asking that you decide if you still
24 want to go forward with that or not go forward with it in
25 whole or part. And before you do that or entertain

1 discussion, we do have two presenters, Ms. Castanuela and
2 Ms. Thompson. And I believe Ms. Castanuela will go first,
3 and so I'll turn it over, Officer Doran, to LaDonna
4 Castanuela. Thank you.

5 MR. DORAN: Thank you.

6 MS. CASTANUELA: Good afternoon. LaDonna
7 Castanuela. I'm an attorney in the Motor Vehicle
8 Division, and good afternoon to everybody.

9 If you will note in your materials, on page 74,
10 that you'll see the same memorandum that I put in the CPAC
11 reading materials when you all met in August on the
12 21st. And I just want to, like David said, give a little
13 refresher on the bond requirement issue.

14 So on page 78 is the actual statute in the
15 Transportation Code right now, 503.033. It requires an
16 applicant for a new or renewal for a general
17 distinguishing number to provide to the department that
18 the applicant has purchased a \$25,000 dealer bond.

19 Subsection (d) of that same statute requires
20 the person who recovers against the dealer surety bond to
21 first obtain a judgment assessing damages and reasonable
22 attorney fees. Subsection (e) limits the liability
23 imposed on a dealer bond, and Subsection (g) specifically
24 exempts franchise dealers from the dealer bond
25 requirement.

1 Turning back to my memorandum, I'll just go
2 through it rather quickly. It addresses some questions
3 that I'd been asked to address back in the June CPAC
4 meeting, so I have pulled together some information of
5 letters that we get -- the Motor Vehicle Division gets
6 from surety bond companies when there is a claim made and
7 paid against a surety bond.

8 I looked at the first six months of the year
9 2020 and in those six months we received twelve letters.
10 There's a table on page 75 of the materials that shows you
11 some details about those bonds and the claims that were
12 made.

13 You'll note in the last column that when the
14 claims were made -- when the judgments were paid and the
15 claims were made, you'll see what the status is of that
16 dealer's GDN. I checked those that were pending that show
17 the bond case was referred to Enforcement in that last
18 column.

19 There's only two cases that show that they had
20 pending enforcement cases and one of them has since
21 closed. It was closed by agreed order. So all of the
22 GDNs represented in that table have been closed.

23 On the next page I did include some information
24 about these, I think it's eleven dealer GDNs -- yes, it's
25 eleven dealer GDNs on the table. I wanted to give you all

1 an idea of the universe of GDN dealers. So all of the
2 dealers on the table are used car GDN dealers and at the
3 time that I was pulling this information together there
4 were, in fact, 16,603 active GDNs for independent motor
5 vehicle dealers, so the eleven dealers represented in the
6 table represent less than one percent.

7 I also looked at -- I was asked to look into
8 why the proposed change during the legislative session in
9 2019 to increase the bond amount to \$50,000 was not
10 actually adopted, and if you'll remember, what I found was
11 that first it was a House bill, House Bill 4842. The
12 amendment proposing the increase was not added to the bill
13 until it became a floor amendment at the Senate during the
14 last week of the legislative session.

15 Two days later, the Conference Committee report
16 did not have the \$50,000 bond representing an increase in
17 the bond amount in it. And there was no record of bill
18 deliberations, so I wasn't able to report any information
19 on why that amendment was dropped late in the session.

20 So the very last section of my paper from
21 August talked about the requirement that a person who
22 wants to make a claim against a bond has to get a judgment
23 first and maybe some possible alternatives. After
24 speaking to industry representatives and the surety bond
25 industry, they told me that some other states require an

1 administrative order from that state's state agency and
2 that some states have no pre-recovery claim requirement at
3 all and that claim goes directly to the surety bond
4 company. The surety bond industry people did tell me that
5 the process was faster for a claim if the claimant already
6 had a judgment or an administrative order from the state
7 agency.

8 And the last thing I want to show you is a
9 table that I produced for you all, it's on page 79. It
10 shows the bond requirements by state. This information
11 was collected in 2019, in January 2019, so it's two years
12 old.

13 It may not be the latest information but it's
14 what I produced in August. So I want to just real quick
15 show you some of the highlights in that table, again,
16 starting on page 79. I looked at it -- I don't know if
17 this is helpful -- I looked it at in terms of our \$25,000
18 bond requirement that we have in Texas.

19 Four of the 50 states have bond requirements
20 that are less than \$25,000, including Delaware that had no
21 bond requirement. Fourteen had exactly the same \$25,000
22 bond requirement that we have, and then 24 states had a
23 bond requirement that is more than \$25,000. Of those 24
24 states, 16 states have a \$50,000 bond requirement, and the
25 remaining eight states have a varying bond requirement

1 depending on sales, the vehicle type, the vehicle type, or
2 the license type the dealer has, or some kind of
3 combination.

4 So that's my quick summary of the information
5 that had given you before. I don't know if we go now to
6 Ms. Thompson or back to Mr. Richards.

7 MR. RICHARDS: Officer Doran?

8 MR. DORAN: Yes, David, you're recognized.

9 MR. RICHARDS: David Richards, for the record.

10 Thank you.

11 Members, as I stated previously, the board
12 wanted this to come back for reconsideration to determine
13 whether or not to continue to go forward with the
14 legislative recommendation or to look at it in whole or
15 part and not go forward. Another consideration that was
16 discussed during the board meeting also involved -- I
17 believe LaDonna touched on it -- whether or not to extend
18 the bond requirement to franchise dealers as well as
19 independent dealers. CPAC's recommendation last time
20 combined both the increase in the surety bond amount and
21 the notice to consumers requirement.

22 If it's the favor of the CPAC to go forward
23 with what they recommended last time, I would ask that
24 there be separate motions for each, the increase in bond
25 requirement and a separate motion on the notice to

1 consumers. But I'd also like to hear discussion -- or the
2 department would, rather -- from the membership regarding
3 an extension to franchise dealers as well.

4 So I will mute my line and allow you to open it
5 up for discussion, Officer Doran. Thank you.

6 MR. DORAN: Thank you, David.

7 This is Presiding Officer Doran. David, you
8 mentioned what happened at the board meeting, but I think
9 for the members it would be helpful to know if sort of the
10 baby got thrown out with the bathwater here. Right?

11 There was some type of a concern, or staff had
12 made a recommendation that was outside of CPAC's
13 recommendations related to extending this to franchise
14 dealers, and I'm curious as to whether that was what
15 tipped the scale for the board to just decide to table all
16 of these or if there was any discussion during the board
17 meeting about some of the other facets of this
18 recommendation from CPAC which included, like you
19 mentioned, notice and increasing the bond amount on the
20 independent dealers as opposed to the franchise dealers.

21 Was it sort of a one and done in terms of
22 tabling it all, or was there discussion as to each
23 individual recommendation by the board?

24 MR. RICHARDS: Sorry. I was talking without
25 being unmuted. I'm sorry.

1 The whole item containing both the increased
2 bond amount and the notice to consumers was tabled by the
3 board and they wanted to send it back to CPAC and also
4 consult with our stakeholders as to whether or not there
5 might be other additional recommendations other than the
6 bond. At this time we're unsure and those are unknown as
7 to what they might be.

8 But they sent the surety bond vote back to CPAC
9 to look at again and to reconsider and just asked is this
10 how you want to go forward. And if you want to go forward
11 with increasing the amount, take a separate vote, if you
12 want to go forward with consumer notice of the bond's
13 existence, a separate vote, and if you want this to extend
14 to franchise dealers, that would be a separate vote as
15 well.

16 So that's basically what happened. They felt
17 like more discussions needed to be had on those three
18 issues.

19 MR. DORAN: Okay. Thank you, David.

20 Well, members, you've heard the presentation by
21 staff. We can begin to ask questions about each of these
22 and discuss them.

23 Members, are there any questions related to our
24 initial recommendation number one here, which was to
25 increase the amount of the financial security bond to

1 \$50,000?

2 MR. CAVENDER: Officer Doran, Member Cavender
3 to speak?

4 MR. DORAN: Member Cavender, you're recognized.

5 MR. CAVENDER: I would make that motion on the
6 first element we're discussing here, to move that from
7 \$25,000 to \$50,000 on the surety bond.

8 MS. JOHNSON: Member Johnson seconds that
9 motion.

10 MR. DORAN: Members, you have heard the motion.
11 There's been a second by Member Johnson. Is there any
12 discussion on the motion?

13 (No response.)

14 MR. DORAN: This is Presiding Officer Doran
15 again. I did have a question on this, and I think we
16 talked about this during the last time we took this issue
17 up. I had a question as to whether we could differentiate
18 among the different license holder classifications on this
19 bond amount.

20 I'm sorry, scratch that, that was not my
21 question. Never mind. I was looking at something else.
22 I apologize.

23 Okay. Members, there has been a motion, it's
24 been seconded. Any further discussion on the motion?

25 (No response.)

1 MR. DORAN: If not, we will proceed to vote on
2 the motion. Members, when I call your name please state
3 your support for the motion by saying yes, I support the
4 motion, or no, I do not support the motion.

5 Member Brooks?

6 MS. BROOKS: Yes, I support the motion.

7 MR. DORAN: Member Cavender?

8 MR. CAVENDER: Yes, I support the motion.

9 MR. DORAN: Member Colvin?

10 (No response.)

11 MR. DORAN: Member Eshpeter?

12 (No response.)

13 MR. DORAN: Member French?

14 (No response.)

15 MR. DORAN: Member Gonzalez?

16 MR. GONZALEZ: Yes, I support the motion.

17 MR. DORAN: Member Johnson?

18 MS. JOHNSON: Yes, I support the motion.

19 MR. DORAN: Member Olah?

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

21 MR. DORAN: Member Rigby?

22 MR. RIGBY: Yes, I support the motion.

23 MR. DORAN: Member Smith?

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

25 MR. DORAN: And I, Presiding Officer Doran,

1 also support the motion. It passes unanimously.

2 Okay, members, let's move on to item number 2
3 here, requiring notice of the surety bond or insurance
4 policy and a means of accessing surety, to be posted in
5 the office next to the dealer's license.

6 Members, is there discussion on item 2?

7 MS. BROOKS: Member Brooks has a question.

8 MR. DORAN: Member Brooks, you're recognized.

9 MS. BROOKS: Thank you.

10 In the earlier discussion I understand the
11 board tabled the recommendation for notice to the
12 consumer. I'm interested in knowing why the board would
13 table that.

14 MR. DORAN: Member Brooks, thank you. That's
15 actually the same question that I was inarticulately
16 trying to ask earlier, and it think David Richards tried
17 to address that.

18 So David, maybe you can revisit that again, but
19 it sounds like it was a thumbs-up or thumbs-down decision
20 by the board as opposed to really considering each of
21 these on an individual basis, which has led us to where we
22 are today.

23 MR. RICHARDS: That is correct, Officer
24 Doran. It was all tabled together.

25 Let me say I am remiss, there are some

1 commenters still on the line that want to comment, my
2 mistake. But it was the entire recommendation, including
3 the increased bond amount and the notice, it was all
4 tabled, and that's why we're taking these up separately.
5 We'll hold off on the motions for now and the vote on the
6 second one, if we may, until we can get our commenters.
7 My apologies, I didn't realize they were still on the
8 call.

9 So can we hold that motion a minute on the
10 second item and go to the commenters who want to comment,
11 please?

12 MR. DORAN: Yes, thank you, David. Sure, let's
13 bring up anybody who wanted to comment on these publicly.

14 MR. RICHARDS: Okay. Let me see here just a
15 minute. I need to find out who. The first commenter is
16 Mike Sullivan.

17 Mr. Sullivan, please state your name and who
18 you represent and your comment, please. Thank you.

19 MR. SULLIVAN: Yes. Thank you. I'm Mike
20 Sullivan, director of governmental affairs and corporate
21 partnerships for Group One Automotive. Good afternoon,
22 Presiding Officer Doran, CPAC members and TxDMV staff.

23 Group One Automotive is headquartered in
24 Houston, Texas. Group One is the largest franchise
25 automotive dealer in Texas, owning 55 dealerships in the

1 state. Nearly 8,000 Group One employees are proud to call
2 Texas home.

3 CPAC previously made a recommendation on this
4 item but did not include franchise dealers. TxDMV
5 apparently subsequently added language to add franchise
6 dealers in their presentation to the TxDMV Board, even
7 though CPAC did not recommend adding franchise dealers.
8 As you know, Transportation Code Section (g) of Section
9 503.033 specifically exempts franchise motor dealers from
10 the surety bond requirement.

11 I also note that of dealers shown in today's
12 backup material not a single franchise dealer is listed as
13 having a bond claim made against it. All of the dealers,
14 as noted, are listed as independent motor vehicle dealers.

15 I also want to point out that the franchise
16 dealer community was not, to the best of my knowledge,
17 asked for input on whether or not to include franchise
18 dealers. I only learned about this myself by monitoring
19 the last meeting of the TxDMV Board.

20 I respectfully request that CPAC, TxDMV staff
21 and TxDMV Board members to not include franchise dealers
22 in any requirements for surety bonds even though TxDMV
23 staff previously recommended this.

24 In closing, Group One Automotive acknowledges
25 and appreciates CPAC's hard work on behalf of consumers.

1 Thank you for your time and consideration. This concludes
2 my comments.

3 MR. DORAN: Thank you, Mr. Sullivan.

4 Members, are there any questions for Mr.
5 Sullivan?

6 MR. RIGBY: Michael Rigby. Permission to
7 speak?

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

9 MR. RIGBY: Thank you.

10 I just wondered what's the basis for not
11 including the franchise dealers under the bond rule. Is
12 there a reason for that historically or currently that
13 will help inform our decision? Thank you.

14 MR. SULLIVAN: Presiding Officer Doran, may I
15 respond?

16 MR. DORAN: Mr. Sullivan, you're recognized.

17 MR. SULLIVAN: Thank you, Presiding Officer
18 Doran. I appreciate that.

19 Members, it is historically franchise dealers
20 have not been included in this and efforts to include them
21 I think would not be well received. They have adequate
22 bonding on a number of issues through the department with
23 respect to liabilities, and as evidenced by the data
24 provided by TxDMV staff in today's backup materials, not a
25 single franchise dealer out of 13,000-plus franchise

1 dealers in the state of Texas -- not a single franchise
2 dealer was noted in the bond claim chart.

3 MR. RICHARDS: Officer Doran?

4 MR. DORAN: Yes, David, you're recognized.

5 MR. RICHARDS: David Richards, OGC, for the
6 record.

7 And I don't want to speak for LaDonna, but
8 LaDonna did research, I think taking her back to either
9 1995 or 1997 and there is absolutely no legislative
10 history that she found, Member Rigby, that would indicate
11 why the franchise dealers were excluded. It's just always
12 been the case.

13 So I mean, the DMV staff was unable to find any
14 answer to your question as to why franchise dealers were
15 excluded. It's just the fact of the matter. Thank you.

16 MR. CAVENDER: Member Cavender to speak, Office
17 Doran?

18 MR. DORAN: Member Cavender, you're recognized.

19 MR. CAVENDER: If I could add on to my friend
20 Mr. Sullivan's comment, there are actually 1,400 franchise
21 dealers in Texas with a \$6 billion payroll. We work sales
22 tax to our general revenue fund in Texas at \$55 million a
23 year, so 8.9 percent of total tax revenue in Texas is
24 franchise automobile dealers.

25 We have a large impact on the state and on its

1 economy and we're not the problem on the issue that is
2 being addressed here. And I agree with Mr. Sullivan that
3 it's just one more requirement that hinders our ability to
4 do business. And we have so many other regulations that
5 we need to follow, and bonding regulations, we already are
6 properly bonded as franchise automobile dealers.

7 I would hope that we could all still exempt the
8 franchise auto dealers. Thank you.

9 MR. DORAN: Thank you, Member Cavender.

10 This is Presiding Officer Doran. I guess this
11 question is more directed at staff, but what has changed
12 that makes the department potentially want to overturn the
13 will of the legislature? Because looking at the Code, if
14 (g) specifically exempts franchise dealers, then one would
15 assume that the legislature did that in their infinite
16 wisdom and that there was a reason behind it.

17 So I'm just curious, we're talking about
18 legislative history, but what's going on now or recently
19 that is driving the desire to make that recommendation,
20 particularly when it has not been the recommendation from
21 CPAC throughout the fall?

22 MS. THOMPSON: Corrie Thompson. Officer Doran,
23 if I may be recognized?

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

25 MS. THOMPSON: So this was posed by the

1 department in light of the past couple of years when we've
2 seen issues with a number of franchise dealers going out
3 of business, failing to transfer titles of consumers,
4 failing to forward payoffs for liens and trade-ins, things
5 of that nature, to the tune of hundreds of customers --
6 and again, I'm speaking on cases that have already
7 concluded -- and so we were just looking at all possible
8 avenues that we could increase consumer protection
9 elements.

10 And so some of those are through the sanction
11 authority with the department, the new authority granted
12 by Sunset wherein we're able to order refunds pursuant to
13 administrative cases as part of our authority now is one
14 protection, but then recommending an increase in the
15 bond. To the department, the reasoning for it going
16 across all dealers is just to be consistent, because it's
17 not that these consumers are harmed only by independent
18 dealers; they're harmed by franchise dealers as well.

19 And so Member Gillman did mention during the
20 open board meeting in December that, you know, she even
21 thought that the \$50,000 was not enough to protect all
22 people from all harm, but it was the amount that we had
23 posed through this group for the independent dealers and
24 so that's the amount that we posed to the franchise
25 dealers on that side as well, just for consistency's

1 sake. And again, that all goes back to just exploring all
2 possible avenues for consumer protection.

3 MR. DORAN: Thank you, Ms. Thompson. But just
4 to follow up, in case I missed it, we don't have any data
5 in our packet, though, that's directed to these
6 occurrences or offenses that we're talking about with
7 franchise dealers. Right?

8 MS. THOMPSON: Corrie Thompson again. I don't
9 believe that there is any case data that you're going to
10 see in the packet, no.

11 MR. DORAN: Okay. Thank you.

12 MR. RIGBY: Michael Rigby.

13 MR. SMITH: Member Smith.

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

15 MR. SMITH: Are we really into the discussion
16 of a motion now or are we still with Mr. Sullivan?

17 MR. DORAN: No. We're still with Mr.
18 Sullivan. I apologize. Go ahead, Mr. Smith.

19 MR. SMITH: Okay. I'll withhold my comments
20 till discussion.

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

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

24 MR. RIGBY: Thank you.

25 I'm just a little confused by the -- and maybe

1 I'm misunderstanding something, but Mr. Sullivan said that
2 no franchise dealership had ever made a claim against a
3 bond, but if franchise dealers don't have to get the bond,
4 then of course, there's never going to be a claim against
5 the bond because they don't have a bond. So that's a
6 little confusing for me, if you could help me understand
7 that.

8 And then I think the case examples we're
9 referring to with the franchise dealers are Reagor Dykes
10 and KamKad, and there's others out there having the harm
11 from them totaled in the millions of dollars, far
12 exceeding what we've seen from the independents. So if I
13 can get some clarity around -- it's kind of the same issue
14 but help me understand those details. Thank you.

15 MR. SULLIVAN: Presiding Officer Doran, is that
16 directed to me specifically, or is that for anyone on the
17 call?

18 MR. DORAN: Mr. Sullivan, I'll let you respond
19 to that.

20 MR. SULLIVAN: Thank you.

21 Mr. Rigby, as I said, traditionally and
22 historically, franchise dealers were not included in the
23 legislature requiring a surety bond. Recent history is
24 that the franchise dealer community has acted responsibly
25 for the benefit of all consumers, and this would be just

1 another unnecessary cost and burden for franchise dealers,
2 and we are strongly opposed to it, sir.

3 Thank you, Presiding Officer Doran.

4 MR. DORAN: Thank you, Mr. Sullivan.

5 Members, any further questions for Mr. Sullivan
6 before we let him go?

7 MR. SULLIVAN: Presiding Officer Doran, I think
8 I misquoted on the number of franchise dealers in the
9 state. I apologize for that, it was not intentional, and
10 I appreciate Mr. Cavender citing 1,400 and not 13,000.
11 Thirteen thousand is the number of franchise dealers
12 across the country. Thank you, Mr. Cavender, and once
13 again, my apologies for misstating that. It was not
14 intentional.

15 MR. DORAN: Thank you, Mr. Sullivan.

16 Members, any further questions for Mr.
17 Sullivan?

18 (No response.)

19 MR. DORAN: Okay. Thank you, Mike, appreciate
20 your time and your participation.

21 MR. SULLIVAN: Yes, sir.

22 MR. DORAN: This is Presiding Officer Doran.
23 David, do you want to move us to the next speaker in the
24 queue?

25 MR. RICHARDS: Yes, I will. The next

1 commenter, members, is Royce Poinsett.

2 Mr. Poinsett, if you would state your name for
3 the record, who you're affiliated with, and provide your
4 comment to the advisory committee. Thank you.

5 MR. DORAN: Mr. Poinsett, you're recognized.

6 This is Presiding Officer Doran. David, it
7 sounds like he's trying to get out of the dugout and into
8 the batter's box here.

9 MR. RICHARDS: That is correct, Officer
10 Doran. He at the present time is not in the queue, so let
11 me move on to Mr. Jeff Martin.

12 State your name for the record and who you're
13 affiliated with and provide your comment. Thank you.

14 MR. DORAN: Mr. Martin, please proceed.

15 MR. MARTIN: Thank you, Mr. Chairman and
16 committee members. For the record, my name is Jeff
17 Martin. I represent the Texas Independent Automobile
18 Dealers Association.

19 So let me ask, are we addressing all three of
20 the issues at this point, or are you asking me to address
21 one of the three issues?

22 MR. RICHARDS: Officer Doran, this is David
23 Richards.

24 MR. DORAN: Sure, David, go ahead.

25 MR. RICHARDS: I'm sorry.

1 We are asking you to address any of the three
2 is fine. We just want the comments made. Through my
3 mistake, we went ahead and voted on the first one,
4 however, we're asking all commenters to comment on either
5 1, 2 or 3. Thank you.

6 MR. MARTIN: Okay, very well. So I will first
7 comment on the issue that has already passed.

8 First let me tell you that I was pleased to
9 hear the committee request the information that's found on
10 the DMV memorandum referred to by Ms. Castanuela, however,
11 I was not surprised by the findings. Before I address
12 that information in the memo, I will tell you that TIADA
13 supports increasing the dealer surety bond to \$50,000.
14 Our association officially took that position in July of
15 2020 and we're currently working toward that initiative.

16 Another issue that has been discussed, or is
17 going to be discussed, is the idea of the consumer
18 notice. As stated earlier, if you look at the table that
19 is in the memo, the table that's in the information that
20 is provided, I believe all of those dealers are now out of
21 business.

22 I don't believe that posting a notice beside
23 the dealer license is going to accomplish the desired
24 outcome. I would suggest that the department or the board
25 might recommend that the notice be posted on the DMV

1 website in an effort to assist consumers who are looking
2 for that information.

3 And while I feel that the used car dealers are
4 being thrown under the bus here just a little bit, I would
5 like to end by addressing the memorandum. While I think
6 we can all agree six months is not enough time to draw any
7 scientific conclusion here, it does provide some anecdotal
8 information. And if I understand that correctly, it
9 appears that less than one percent of the used car dealers
10 had a claim against their bond in that six-month time
11 frame. That's a number that I think that the industry,
12 this committee, the agency, and the public should be
13 celebrating.

14 Thank you, and I'll be happy to answer any
15 questions that you might have.

16 MR. DORAN: Thank you, Mr. Martin.

17 Members, are there any questions for Mr.
18 Martin?

19 (No response.)

20 MR. DORAN: This is Presiding Officer Doran.
21 David, since we -- and I'm sure partially to blame for
22 this too, but since we jumped the gun on voting on that
23 first recommendation, after the conclusion of these
24 commenters, will we be at a point where we can potentially
25 entertain a motion to revisit any of those to make sure

1 that the group is reflective of all the input that we're
2 getting here today from the commenters?

3 MR. RICHARDS: Officer Doran, David Richards,
4 for the record.

5 Yes, you may revisit before you conclude the
6 meeting to determine whether or not the vote that was
7 taken is what the membership would like to do, so
8 absolutely.

9 MR. DORAN: Thank you. I think that would be
10 best. Okay. Thank you.

11 Members, any questions for Mr. Martin?

12 MR. SMITH: Officer Doran, Member Smith.

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

14 MR. SMITH: Mr. Martin raises a good point as
15 he points out that while twelve claims is maybe twelve too
16 much, but that's .066 percent of the licensed dealers, and
17 I think that was in our booklet. But I wonder if Mr.
18 Martin has taken -- another way to look at this is to look
19 at it versus the number of sales.

20 If we had twelve claims, and I don't know in
21 what period, but hundreds of thousands of transactions,
22 that percentage where there was a problem really becomes
23 very low, I think, and I don't know if Mr. Martin has
24 looked at it that way. But if we celebrate .066 as the
25 number of dealers, when you look at per transaction, it

1 really is amazing.

2 MR. DORAN: Thank you, Member Smith.

3 Mr. Martin, you're recognized if you'd like to
4 respond to Member Smith's comment.

5 MR. MARTIN: Absolutely, Member Smith, that's
6 certainly the way we look at it. I appreciate you
7 bringing up that point. I thought .066 was pretty
8 impressive, but I agree with you, if you look at the
9 number of transactions, again, I think it's one of these
10 opportunities where it's good that we're looking at this
11 issue, but I think it's an opportunity for us to all pat
12 ourselves on the back and say maybe we're doing a good
13 job.

14 MR. DORAN: Thank you, Mr. Martin.

15 Members, are there any additional questions for
16 Mr. Martin?

17 (No response.)

18 MR. DORAN: Okay. Not hearing any, Jeff, thank
19 you so much for your time today and your participation,
20 and this goes for all of our commenters, above all, thank
21 you for your patience. Appreciate you staying on the line
22 in order to testify today. Thank you.

23 MR. MARTIN: Thank you, Mr. Chairman.

24 MR. DORAN: Thank you, Mr. Martin, appreciate
25 it.

1 This is Presiding Officer Doran again. David,
2 if we're ready to take the next speaker or commenter.

3 MR. RICHARDS: Okay. Officer Doran, I show
4 Phil Elam as being the next in the lineup, however, I have
5 been advised by staff that we don't see him in the queue,
6 and so we will move on to what I believe is the last
7 commenter on this particular item, and that is Karen
8 Phillips.

9 Ms. Phillips.

10 MS. PHILLIPS: Good afternoon, everyone. Thank
11 you for giving me the opportunity to speak with respect to
12 the bond issue. My name is Karen Phillips with the Texas
13 Automobile Dealers Association.

14 And just to give some historical background,
15 the bond requirement was placed into the statute by the
16 legislature in 1995. And typically there's not a great
17 deal of legislative history that's available at this time,
18 but I was there at the time when this was being passed and
19 the focus was on making certain that titles were
20 transferred properly, and that bonds and checks were being
21 paid in a timely manner with respect to wholesale
22 transactions for the most part.

23 I would again reiterate that TADA is opposed to
24 expanding the bond to franchise dealers. We have floor
25 plan lenders that we deal with who do audits, we have

1 capitalization requirements from franchisors before we can
2 even obtain a franchise, we have investment requirements
3 that are placed on that dealer before he can become a
4 franchisee, we have monthly financials that are
5 submitted.

6 So we have a lot of checks and balances that
7 are already in place with respect to the franchise
8 dealers, separate and apart from what the bureaucratic
9 requirements are with respect to what we have to do with
10 the agencies.

11 As far as the bankruptcy concerns, everybody
12 gets hurt in a bankruptcy. I have had many dealers harmed
13 by bankruptcy because they've not been paid on their
14 wholesale transactions. I have one dealer just by himself
15 who was damaged in the amount of half a million dollars
16 with respect to the Reagor Dykes issue.

17 So dealerships, as well as individuals, as well
18 as government entities with sales tax, et cetera, are all
19 harmed when there is a bankruptcy issue. And that to me
20 begs the question as to responsibility that needs to be
21 directed back on the floor plan lenders as well as those
22 who are doing floor plan checks and looking at the monthly
23 financial statements.

24 I do think it bears discussion again that as
25 far as what Mr. Martin and Mr. Smith stated as far as

1 needing to look at the number of sale transactions and
2 claims that are being made against the independents with
3 respect to the bond versus simply the number of active
4 GDNs or independent dealers here.

5 I know that this is an issue that we seem to be
6 discussing, hopefully we'll be able to end it soon, but I
7 would again reiterate that we are not supportive of it
8 being linked to the franchise dealer.

9 Happy to answer any questions.

10 MR. DORAN: Thank you, Ms. Phillips.

11 Members, are there any questions for Ms.
12 Phillips?

13 (No response.)

14 MR. RICHARDS: Officer Doran?

15 MR. DORAN: David, you're recognized.

16 MR. RICHARDS: Yes. Thank you. David
17 Richards, for the record.

18 Before we move on to either reconsider the
19 first vote that was taken as well as the other two, I
20 wanted to give Mr. Elam an opportunity to raise his hand
21 to indicate if he's still on the call before we move on.

22 Mr. Elam, if you're still there, please raise
23 your hand and we will allow you to speak.

24 MR. DORAN: This is Presiding Officer Doran.
25 While he is hopefully raising his hand and we're making

1 efforts to bring him on to the call, I did want to make
2 sure that we close out with Ms. Phillips, making sure that
3 there aren't any other questions.

4 (No response.)

5 MR. DORAN: Not hearing any, Karen, thank you
6 again for your time and your input today. We appreciate
7 your participation.

8 MS. PHILLIPS: Thank you very much.

9 MR. DORAN: This is Presiding Officer Doran
10 again. I know you had Royce Poinsett as well that was
11 trying to get on. Are we working on both Mr. Elam and Mr.
12 Poinsett?

13 MR. RICHARDS: Mr. Poinsett, if you're still on
14 the call, please raise your hand as well.

15 (No response.)

16 MR. RICHARDS: Officer Doran?

17 MR. DORAN: Yes.

18 MR. RICHARDS: Neither gentleman is on the
19 queue at the present time, so I believe we can move
20 forward. We would welcome written comments and would
21 accept written comments should either one of them choose
22 to submit those to the department. Thank you.

23 MR. DORAN: Members, we took a vote on the
24 recommendation of increasing the bond amount, and I just
25 wanted to make sure that as a group, based on the input

1 we've heard so far, if there was any desire to revisit
2 that vote or to reassess that issue.

3 (No response.)

4 MR. DORAN: Okay. Not hearing any desire to do
5 so. I think we were into our discussion on item number 2
6 when we decided to entertain comments from our commenters,
7 so we will resume then with our discussion item number 2
8 which we were discussing the notice being posted near the
9 dealer's license regarding the surety bond and the policy
10 and the processes that the customer would need to follow
11 in order to make a claim on the bond.

12 MR. RICHARDS: Officer Doran?

13 MR. DORAN: Yes, David, please proceed.

14 MR. RICHARDS: We would ask also, and I think
15 you see that, and members will see that in number 2, that
16 whatever vote is taken requiring this notice to be given
17 to a consumer at the time of sale, as Mr. Cavender
18 originally moved, also be maintained on the department's
19 website, if that's the favor of CPAC to include the DMV
20 website as well so consumers can -- oh, I'm sorry.

21 Wait a minute, I'm being told no. I'm looking
22 at the recommendation and I'm told no, we don't want
23 that. So let me scratch that. Sorry.

24 MR. DORAN: Okay. This is Presiding Officer
25 Doran. I did have a question related and wanted to open

1 this up for a little bit of discussion. So one of the
2 commenters -- I believe it was Mr. Martin -- was talking
3 about the burden on dealers with respect to having to post
4 that notice.

5 I'm curious if that burden would be decreased
6 but yet the effectiveness would remain the same if the
7 requirement was not to post it next the dealer's license
8 but rather to include a copy, some type of disclaimer or
9 information piece in the deal jacket itself, basically
10 informing the consumer of their rights at the time of the
11 transaction as part of the full body of documents that
12 have to be signed between dealer and customer. I know
13 there's a series of acknowledgements typically in the
14 transaction that make their way into the deal file.

15 So that's more of a question and probably a
16 question to our dealer members.

17 MR. CAVENDER: Officer Doran, Member Cavender
18 to speak?

19 MR. DORAN: You are recognized, Member
20 Cavender.

21 MR. CAVENDER: I recall from the last time I
22 presented this motion that I did say we'd like to have
23 notice given to the customer during the financing
24 transaction or during the completion of paperwork, so we
25 would agree that that notice be given to the customer with

1 a sign-off that does show that they do have access to a
2 surety bond issue, and I think I made that in that motion
3 the last time we visited.

4 MR. DORAN: Thank you, Member Cavender.

5 Presiding Officer Doran again. So David,
6 question. If we decide to entertain a motion, then it
7 would be to potentially modify number 2 as written to
8 reflect what Member Cavender was saying about the method
9 by which that notice would be provided to the customer?

10 MR. RICHARDS: Yes, that would be okay for CPAC
11 to modify that as a recommendation to the board,
12 absolutely.

13 MR. DORAN: Members, is there further
14 discussion on number 2?

15 (No response.)

16 MR. DORAN: Members, would anyone like to make
17 a motion that is reflective of what Member Cavender just
18 described?

19 MR. CAVENDER: Member Cavender can make that
20 motion, Officer Doran.

21 MR. DORAN: Great. Thank you, Member Cavender.

22 MR. CAVENDER: Thank you.

23 MR. DORAN: And this is Presiding Officer Doran
24 again. Member Cavender, just so we're clear for the
25 record and everything, can you just describe how we would

1 modify the language in number 2?

2 MR. CAVENDER: Notice to be given to the
3 customer. I'm sorry, I can't access number 2. I'm not
4 sure where you're referencing. Notice to be given to
5 customer on how to file a claim on a surety bond at the
6 time of signing for the vehicle.

7 MR. DORAN: Members, you've heard the motion.
8 Is there a second?

9 MR. RIGBY: Michael Rigby. I'll second.

10 MR. DORAN: Okay. Members, there's been a
11 motion by Member Cavender, seconded by Member Rigby. Is
12 there any discussion on the motion itself?

13 (No response.)

14 MR. DORAN: Okay. Not hearing any, I will call
15 for the vote. Members, when I call your name please state
16 your support for the motion by saying yes, I support the
17 motion, or no, if you do not support the motion.

18 Member Brooks?

19 MS. BROOKS: Yes, I support the motion.

20 MR. DORAN: Member Cavender?

21 MR. CAVENDER: Yes, I support the motion.

22 MR. DORAN: Member Colvin?

23 (No response.)

24 MR. DORAN: Member Eshpeter?

25 (No response.)

1 MR. DORAN: Member French?

2 (No response.)

3 MR. DORAN: Member Gonzalez?

4 MR. GONZALEZ: Yes, I support the motion.

5 MR. DORAN: Member Johnson?

6 MS. JOHNSON: Yes, I support the motion.

7 MR. DORAN: Member Olah?

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

9 MR. DORAN: Member Rash?

10 (No response.)

11 MR. DORAN: Member Rigby?

12 MR. RIGBY: Yes, I support the motion.

13 MR. DORAN: Member Smith?

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

15 MR. DORAN: Member McCullah?

16 (No response.)

17 MR. DORAN: Member Solis?

18 (No response.)

19 MR. DORAN: And I, Presiding Officer Doran,
20 also vote yes on the motion and it passes unanimously.

21 Okay. Members, we can now turn to item 3.

22 This is on page 7 of the materials that we've been
23 provided. It seems to be the item that there's been the
24 most discussion about, and that is the extension of the
25 financial requirement to dealers.

1 Members, is there discussion on this item?

2 MR. SMITH: Officer Doran?

3 MR. DORAN: Yes. Go ahead, Member Smith.

4 Please proceed.

5 MR. SMITH: I think the important thing is
6 oftentimes many of us say, well, it applies to one, it
7 should apply to the other, and I certainly understand
8 that. But I think the important thing here is to talk
9 about the fact that there really are significant
10 differences between independent dealers and franchise
11 dealers.

12 Ms. Phillips did a good job talking about that,
13 but let me give you just from a dealer's perspective some
14 of the things that she talked about. I mean, when we
15 first go into business, and throughout my 44 years now of
16 existence as a dealer, every quarter at least, or when
17 there's more options, we are evaluated in terms of our
18 capital versus the capital standard.

19 General Motors, in my case, has a capital
20 standard. If I don't meet that standard -- because they
21 look at my financial reports on a monthly basis -- I don't
22 meet the standards, they're in my office wanting to know
23 what I'm going to do to bring it up to standard. So they
24 monitor very closely.

25 As a franchise dealer we often, most of the

1 time, have very large inventories of new vehicles and we
2 floor plan those with large lenders, many times it's a
3 captive close to the manufacturer. In those cases, again,
4 certainly monthly financial statements but audits where
5 they come into the dealership, they check our inventory.

6 They check it against the notes that they have,
7 and they're very serious, you have a vehicle that's out of
8 trust, is what they call it if you haven't paid it off.
9 So we're monitored really carefully, and I think that
10 we've just got to recognize there really is a big
11 difference.

12 I know that many of us have relationships with
13 our county TAC offices -- I do in Harris County -- where
14 we have to have a bond that protects against the county
15 tax assessor's interests. So the differences make the
16 difference. That's the reason why the bond is not an
17 applicable thing for a franchise dealer.

18 As Ms. Phillips said, and we always talk about
19 Reagor Dykes and the people that got hurt, lots of people
20 got hurt, a bond would never have changed that
21 bankruptcy. It wouldn't have been any protection for
22 anybody.

23 My back-of-the-napkin math, when I look at this
24 bond, is it's somewhere between \$2-1/2- and \$3 million is
25 what it would cost the franchise dealer community to add

1 these bonds in. Certainly if it was great protection for
2 somebody it might be a great idea, but it's not. So it's
3 2-1/2 or so million dollars that will in some way be
4 passed along to the consumers while affording them no
5 protection.

6 So including the franchise dealers is a bad
7 idea. Certainly my vote is no.

8 MR. DORAN: Thank you, Member Smith.

9 This is Presiding Officer Doran. I just want
10 to echo what you're saying because I, too, remember the
11 discussion very well. I think this was back a couple of
12 months ago when Member Cavender made the motion and it was
13 not the recommendation of CPAC to include the franchise
14 dealers, so I'm of the belief that it was the
15 legislature's intent not to include franchise dealers.
16 I'd ask the question as to what has changed.

17 I've heard from staff that, well, there's
18 Reagor Dykes and there's one other case, neither of which
19 is discussed in the material. Reagor Dykes was a Lubbock
20 dealer that the allegations are it was \$120 million
21 financial fraud scheme against Ford Credit for check
22 kiting in millions of dollars a day by individuals at that
23 dealership.

24 And to Mr. Smith's point, a \$50,000 bond would
25 not have alleviated that situation or avoided it by any

1 means. You've got a bunch of people that have gone to
2 jail over that.

3 And so I just haven't heard a good enough case
4 for why we would expand this to franchise dealers, and I
5 completely concur with what Member Smith said about there
6 are a series of checks and balances that are inherent in
7 the franchise relationship between the distributor or
8 manufacturer and the franchise dealers.

9 And again, not to pick on the independents, but
10 it doesn't seem like you're going to get much juice out of
11 the squeeze here if we forced our franchise dealers to
12 have to obtain these bonds, these surety bonds. So I will
13 also be voting against any recommendation that extends
14 this requirement to franchise dealers.

15 MR. RIGBY: Michael Rigby. Permission to
16 speak?

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

18 MR. RIGBY: Thank you.

19 So a few questions. One is like the cost. It
20 was just asserted that maybe that would cost the franchise
21 dealers like \$2- or \$3 million a year. I did a quick
22 Google search before the meeting, it looks like it's about
23 \$125 a year for a bond, and I think there's like 5,000
24 franchise dealers, so if that's true, you're in the
25 \$600,000 range, which is still a lot of money for an

1 industry. But to a franchise dealer 125 bucks is nothing,
2 for a mom-and-pop corner store selling used cars it might
3 be more significant.

4 But I don't see a persuasive argument why the
5 franchise dealers shouldn't be held to the same level of
6 accountability as the mom-and-pop corner store. If
7 anything, the franchise dealer should have a greater level
8 of accountability, a higher bond amount.

9 And I happen to agree with the assertion that,
10 well, a \$25- or \$50,000 bond probably is not going to help
11 any consumer in the middle of a multi-million dollar fraud
12 case. I think you're right. I think we probably need to
13 look at other means of protecting consumers, and although
14 a lot of the franchise dealers are not going to agree with
15 my criticisms that I just laid out.

16 But I would encourage kind of everybody,
17 whether that's, you know, Jeff Martin or Karen Phillips
18 and the franchise dealers to kind of get together and
19 brainstorm different ways to do this. The bond itself
20 seems to me to be a really antiquated system that doesn't
21 really protect consumers and it has a huge, outsized cost
22 to the industry.

23 I think you could probably do this in a much
24 more efficient and effective way by creating a guarantee
25 fund and having each licensee pay in an extra whatever it

1 is, 50 or 100 bucks, to go into a guarantee fund and you'd
2 pay claims out of that guarantee fund. I think that would
3 afford much greater protection for consumers. It would be
4 easier for DMV to administer, it would be easier for the
5 dealers, whether they're independent or franchise, to
6 comply with because they don't have to go out and buy a
7 bond -- find a bond dealer, buy the bond, make sure
8 they've got it all situated, send it in to DMV.

9 All you've got to do is pay the total renewal
10 fees, including the extra \$50 or \$100. You could roll
11 over the guarantee fund so that you're not exhausting the
12 guarantee fund each year. If there's extra money left
13 over, you've got extra to pay out claims in bad years.

14 So I'd really encourage everybody to work
15 together toward taking a fresh look at the whole system. I
16 just don't think it's functional, I think it's antiquated
17 and dysfunctional. Thank you.

18 MR. DORAN: Thank you, Member Rigby.

19 MR. SMITH: Officer Doran?

20 MR. DORAN: Yes, Member Smith, you're
21 recognized.

22 MR. SMITH: I just want to answer to Member
23 Rigby. I wish I knew where that \$100 bond was. The bond
24 that I have for Harris County is where I got the number,
25 and I don't even know, we may have to go to a particular

1 bonding company as required by the tax assessor, I'm not
2 sure of that, but at any rate, the bond that I have,
3 that's how I came up with the number. I just multiplied
4 my bond times 1,400 franchise dealers.

5 MR. DORAN: This is Presiding Officer Doran.
6 Question for staff. The recommendation by Member Rigby
7 about the concept of creating a guarantee fund to provide
8 greater relief as opposed to the bond or in addition to
9 the bond, is that something that would have to be done
10 legislatively or does the agency have the authority
11 currently to put something like that into place?

12 MR. RICHARDS: Officer Doran, David Richards,
13 for the record.

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

15 MR. RICHARDS: Your question is in order to
16 extend it to franchise dealers the current requirement
17 under 503.033? Was that your question?

18 MR. DORAN: No, David. My question was if we
19 take out the part of Mr. Rigby's comment about extending
20 it to the franchise dealers and instead focus on the
21 portion of his comment saying essentially that, hey, the
22 bond is a very antiquated way to provide a consumer with
23 redress, with recovery, and he outlined the concept of
24 creating some type of a guarantee fund, and it was a high
25 level mention of this concept.

1 But my question is based on his description.
2 Is that the type of thing that the agency would need to go
3 to the legislature to begin to implement, or might you
4 have the authority as an agency to explore that further
5 through rulemaking?

6 MR. RICHARDS: We would explore through
7 consulting with our stakeholders and internally, but I
8 believe we'd have to go to the legislature to do what Mr.
9 Rigby is stating right now.

10 MR. DORAN: Okay. Thank you.

11 Members, is there additional discussion on
12 number 3?

13 MR. RIGBY: Michael Rigby. If I could just
14 follow up?

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

16 MR. RIGBY: Thank you.

17 I have no doubt that you'll have to go to the
18 legislature to do this and I think the rest of the
19 recommendations require legislative action. And although
20 I will be voting in favor of extending it to the franchise
21 dealers, I'm concerned that that will prevent the other --
22 the increase to \$50,000 being accepted by the legislature.

23 I think, you know, I've heard enough opposition
24 to that that the whole bill might get killed just because
25 you're trying to include the franchise dealers. So

1 however that comes out, I would encourage everybody, the
2 stakeholders, all the dealers, the trade associations and
3 DMV, to work together towards reforming the system so that
4 you can extend consumer protection, reduce the regulatory
5 burden on the dealers, and increase the efficiency and the
6 burden on DMV. Thank you.

7 MR. DORAN: Well, members, this is Presiding
8 Officer Doran.

9 David, should we be asking for a motion that
10 essentially makes it clear that we do not want this to
11 extend to franchise dealers and then offering that motion
12 up after we've voted on it, or are we confined to just
13 having to have someone on this call make a motion,
14 potentially Mr. Rigby, to extend it and then we take the
15 vote on that? Does it matter?

16 MR. RICHARDS: It doesn't matter, either way.

17 MR. DORAN: All right. We'll stand by and see
18 who rushes to make the first motion here.

19 MR. SMITH: Officer Doran, Member Smith wants
20 to rush in.

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

23 MR. SMITH: I move that we not include
24 franchise dealers necessary to have a bond.

25 MR. DORAN: Members, you've heard the motion by

1 Member Smith. Is there a second?

2 MR. FRENCH: Member French seconds it.

3 MR. DORAN: Okay. Member French seconds the
4 motion.

5 Members, is there discussion on the motion?

6 (No response.)

7 MR. DORAN: Okay. Hearing none, I will call
8 for a vote. And again, this is a motion not to extend the
9 bond financial requirement to franchise dealers.

10 Member Brooks?

11 MS. BROOKS: I vote in favor.

12 MR. DORAN: Member Cavender?

13 MR. CAVENDER: I support the motion.

14 MR. DORAN: Member Colvin?

15 (No response.)

16 MR. DORAN: Member Eshpeter?

17 (No response.)

18 MR. DORAN: Member French?

19 MR. FRENCH: I support the motion.

20 MR. DORAN: Member Gonzalez?

21 MR. GONZALEZ: I support the motion.

22 MR. DORAN: Member Johnson?

23 MS. JOHNSON: I support the motion.

24 MR. DORAN: Member McCullah?

25 (No response.)

1 MR. DORAN: Member Olah?

2 MR. OLAH: I support the motion.

3 MR. DORAN: Member Olah, can you give us your
4 response again?

5 MR. OLAH: Yes. I support the motion

6 MR. DORAN: Thank you.

7 Member Rash?

8 (No response.)

9 MR. DORAN: Member Rigby?

10 MR. RIGBY: I do not support the motion.

11 MR. DORAN: Member Smith?

12 MR. SMITH: I support the motion.

13 MR. DORAN: And I, Laird Doran, also support
14 the motion. I believe that vote is seven to one, seven
15 being for the motion, one being against. Okay. With a
16 seven to one vote, the motion passes.

17 Members, are there any additional motions?

18 (No response.)

19 MR. DORAN: Okay. Not hearing any, David, we
20 would probably like to move to this would be the next
21 agenda item, which I assume is public comment.

22 MR. RICHARDS: Right, number 3.

23 Before we do, Officer Doran, let me just say on
24 behalf of the department we welcome continued dialogue
25 with all stakeholders involved through this CPAC advisory

1 committee to find ways to better protect consumers. And
2 we know that some of those roadblocks that we face may be
3 that the laws are of a federal nature and we don't have
4 any ability to change -- the credit reporting, for
5 example. We do run into the roadblock of a dealer, such
6 as Reagor Dykes, filing bankruptcy, however, if we keep
7 working through our colleagues over at the Attorney
8 General's Office, we can at least reach out to the AG's
9 Office to seek what they're doing in Reagor Dykes.

10 And I've mentioned this before, at a prior
11 meeting or meetings, that an ombudsman has been appointed
12 by the Bankruptcy Court judge. There is a pool of money
13 initially, an injection of over \$100,000 into this
14 consumer pool with the possibility of an additional
15 several hundred thousand dollars to be provided to
16 consumers. A consumer ombudsman, as I said, has been
17 appointed and is working with, I think, the 100 or so
18 consumers that are still reeling from Reagor Dykes's
19 bankruptcy.

20 So I just wanted to let you and the membership
21 know that this discussion continues on ways that we can
22 help consumers, how we might collaborate with agencies,
23 such as OCCC, how we might try to collaborate and at least
24 correspond or create a dialogue with federal counterparts
25 so that these consumers that essentially, in the Reagor

1 Dykes case, have two car loans. The original note holder
2 is reporting negatively to the credit report, and it's no
3 fault of the consumer because Reagor Dykes didn't pay off
4 the trade-in.

5 So let's all make a pledge to continue the
6 discussion, particularly on the consumer financial issues,
7 going forward. I think CPAC is the best forum for this.
8 We have a wide range of folks and expertise. And so I
9 just wanted to throw that out there before we move into
10 agenda item 3, and you're perfectly okay to do that,
11 Officer Doran, announce the public agenda item. Thank
12 you.

13 MR. DORAN: Thank you, David.

14 So before we move to agenda item number 3 --
15 yes, somebody wanted to be recognized?

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

18 MR. DORAN: Member Olah, you're recognized.

19 MR. OLAH: Before we move on from the surety
20 bond section, I'd like to raise an issue that wasn't
21 listed on the agenda, but it was one that I raised back in
22 our June 18, 2020, and that concerns the requirement of a
23 judgment in order for a claimant to access the surety
24 bond. I strongly believe that that is overly burdensome
25 to a claimant, and I suggested at that time -- and

1 actually, Ms. Castanuela referenced this in her memo
2 attached to the agenda today -- that an administrative
3 order also suffice as a way to perfect a claim on a surety
4 bond.

5 I don't know if it's appropriate, since it was
6 not an agenda item, to make a motion today, but I think
7 it's something that we do need to discuss at some point,
8 and perhaps in a future meeting.

9 MR. RICHARDS: David Richards, for the record.

10 MR. DORAN: Mr. Richards, you're recognized.

11 MR. RICHARDS: Yes, we will definitely put it
12 on a future meeting for discussion and hopefully have some
13 sort of way we can lay out how that might happen, who
14 within the agency might be issuing that order and the
15 mechanics of all that, so I would recommend that we take
16 that up at a future meeting. Thank you.

17 MR. DORAN: Thank you, David, and thank you,
18 Member Olah.

19 Presiding Officer Doran. Before we close this
20 out and move on to agenda 3, I did have a question for
21 David and staff. You mentioned some of the good things
22 that the agency is doing to deal with these very difficult
23 consumer issues related to Reagor Dykes and some of the
24 other situations that have come up, and you mentioned the
25 consumer ombudsman and the ability to provide consumers

1 with relief when the dealer is going out of business or
2 there's a bankruptcy.

3 The question I have for you all is if there
4 anything that we can do as a committee to endorse and
5 support those efforts, whether it's making a
6 recommendation that DMV has the appropriate resources, be
7 they financial or personnel, to continue with those
8 efforts with the consumer ombudsman and possibly scale or
9 expand those efforts if it is necessary to deal with these
10 situations as they come up in the future. So that's just
11 a question I have for staff, and if there is a way as a
12 group that we can signal our support for those efforts and
13 then that can be heard by the legislature, then please let
14 us know.

15 MR. DORAN: Officer Doran, thank you.
16 Obviously we'd always welcome such recommendations. I'm
17 sorry I didn't hear all of your comment because I got
18 another connectivity to the network error message on my
19 monitor. You know, clearly if we're dealing with at some
20 point, and if it's a recommendation of the board that
21 embraces more frequent monitoring, we might need more
22 staff in that sort of respect.

23 As far as the Reagor Dykes situation, I'm
24 monitoring that right now. There are others within the
25 department that are monitoring that we interface with each

1 other frequently once something is asked of us. And so I
2 think we're good for now, but I do appreciate the offer.

3 MR. DORAN: Thank you, David.

4 Okay. Presiding Officer Doran here. Members,
5 we will now move on or take up agenda item number 3,
6 public comment.

7 David, are there any comments from the public?

8 MR. RICHARDS: Officer Doran, David Richards,
9 for the record. Yes, we do have one public commenter, Ms.
10 Gay McAlister is listed as a public commenter. I believe
11 she's still on the phone.

12 MR. DORAN: Great. This is Presiding Officer
13 Doran. We will now hopefully hear from Ms. McAlister. You
14 will need to unmute your line to comment, and please be
15 mindful about limiting background noise. Also, please
16 state your name for the record and if you're representing
17 anyone.

18 MS. McALISTER: This is Gay McAlister. Are you
19 able to hear me?

20 MR. DORAN: Yes, I can hear you loud and clear.
21 Thank you.

22 MS. McALISTER: Excellent. Thank you very
23 much. I've been here this morning and I want to express
24 my thanks to you and the board for the work that you do to
25 ensure the public safety and welfare. It's important work

1 that you do and critical for Texans.

2 I'd also like to thank you for a previous
3 hearing that I had and assistance that I received through
4 DMV with a moving and storage company back in October. It
5 took me four months to resolve a charge for overbilling,
6 which they admitted but could not address.

7 What I would like to offer today is a
8 suggestion that we might open dialogue, beginning with the
9 DMV and ultimately resulting in a change in statute that
10 has been in place since the 1930s. This has to do with
11 the amount of compensation for damage due to hauling and
12 storage.

13 Moving companies currently have no incentive to
14 take care of consumer goods when the compensation is
15 limited to 60 cents per pound. I have a box full of
16 broken Waterford crystal that's worth no more than a few
17 dollars because of this limit. And so I'd hope that there
18 could be some discussion, and since we are in legislative
19 session, perhaps we can begin to look at this and see if
20 something more near fair market value can be put in place
21 since this has been unchanged since the 1930s.

22 MR. DORAN: Thank you, Ms. McAlister, for your
23 comments. We appreciate your time and your participation
24 today.

25 David, are there any other comments?

1 MR. RICHARDS: No, sir, there are no further
2 comments.

3 MR. DORAN: Okay. Hearing none, we will now
4 move on to agenda item 4, adjournment. Moving on to
5 agenda item 4, unless there's any further business, I
6 would like to entertain a motion to adjourn. Do I have a
7 motion from anyone to adjourn the meeting?

8 MS. JOHNSON: Member Johnson so moves.

9 MR. DORAN: Okay. We have a motion from Member
10 Johnson. Is there a second?

11 MR. CAVENDER: Second from Member Cavender.

12 MR. DORAN: Okay. Before we proceed with this
13 motion, I neglected to bring up one issue and that was --
14 David, I apologize, I didn't see anything about our future
15 scheduling.

16 MR. RICHARDS: No, sir. My comment to you was
17 that we might want to consider taking up as the CPAC the
18 item that Ms. McAlister just laid out.

19 MR. DORAN: Yes. Thank you. I would hope that
20 we could take that up at a future meeting and that staff
21 would take that issue back and come back to us with some
22 analysis on it. Do we need a motion for that?

23 MR. RICHARDS: No, you do not. Staff will work
24 with CPAC to arrange for that. Thank you.

25 MR. DORAN: Okay. Thank you.

1 Presiding Officer Doran again. We have a
2 motion from Member Johnson and a second from -- I can't
3 recall, Member Cavender, is that right?

4 MR. CAVENDER: Cavender.

5 MR. DORAN: Okay. Second from Member Cavender.
6 The motion has been made and seconded to adjourn this
7 meeting. Members, when I call your name please state your
8 vote for the record.

9 Member Brooks?

10 MS. BROOKS: I support the motion.

11 MR. DORAN: Member Cavender?

12 MR. CAVENDER: I support the motion.

13 MR. DORAN: Member Colvin?

14 (No response.)

15 MR. DORAN: Member Eshpeter?

16 (No response.)

17 MR. DORAN: Member French?

18 MR. FRENCH: I support the motion.

19 MR. DORAN: Member Gonzalez?

20 MR. GONZALEZ: I support the motion.

21 MR. DORAN: Member Johnson?

22 MS. JOHNSON: I support the motion. Thank you.

23 MR. DORAN: Member Olah?

24 MR. OLAH: I support the motion.

25 MR. DORAN: Member Rash?

1 (No response.)

2 MR. DORAN: Member Rigby?

3 MR. RIGBY: I support the motion.

4 MR. DORAN: Member Smith?

5 (No response.)

6 MR. DORAN: Member Solis?

7 (No response.)

8 MR. DORAN: And I, Laird Doran, also support
9 the motion. Let the record reflect that the vote is
10 unanimous.

11 Thank you everyone for your time today. It is
12 now 1:23 p.m. This meeting is adjourned.

13 (Whereupon, at 1:23 p.m., the meeting was
14 adjourned.)

C E R T I F I C A T E

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2
3 MEETING OF: TxDMV Consumer Protection Advisory
4 Committee
5 LOCATION: Austin, Texas
6 DATE: January 15, 2021

7 I do hereby certify that the foregoing pages,
8 numbers 1 through 175, inclusive, are the true, accurate,
9 and complete transcript prepared from the verbal recording
10 made by electronic recording by Nancy H. King before the
11 Texas Department of Motor Vehicles.

12 DATE: January 25, 2021
13
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17

18 /s/ Nancy H. King
19 (Transcriber)
20

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