

2002

BIENNIAL REPORT

VIRGINIA

MOTOR VEHICLE DEALER BOARD

Mission Statement

The Motor Vehicle Dealer Board will administer sections of the Commonwealth's Motor Vehicle Dealer Laws and regulations as charged; promote the best interests of both the automotive consumer and dealer body; and process all motor vehicle related complaints promptly and professionally; while providing a high level of customer service.

Chairman
Ab Quillian
Commissioner
Department of Motor Vehicles

Executive Director
Bruce Gould





COMMONWEALTH of VIRGINIA
Motor Vehicle Dealer Board

November 2002

The Honorable Mark R. Warner
Governor, Commonwealth of Virginia
State Capitol
Richmond, Virginia 23219

Dear Governor Warner:

I am pleased to provide to you the Motor Vehicle Dealer Board's Biennial Report as required by Va. Code §46.2-1503.5. The Motor Vehicle Dealer Board (Board), whose management is responsible for the integrity and objectivity of the information presented herein, has prepared this report.

The Board has been in place for just over seven years. In that time, we have made every effort to educate the dealer community on the laws and regulations governing their industry. The approach of the Board and its staff is to education dealers so that they will have the necessary knowledge and tools to further the professionalism of the automobile dealer industry. In addition, the Board has taken a pro-consumer stand in its administration of the Transaction Recovery Fund by (through legislation) increasing the available amount per claim; enforcement of Advertising Regulations and by assisting consumers when they are having a dealer related problem.

Upon reviewing the report, I'm sure you will agree that the Board is making a positive impact upon the dealer community and the motor vehicle consumer. We thank you for your support as we continue our efforts to minimize regulations and enhance consumer protection.

Sincerely,

A handwritten signature in black ink, appearing to read "Bruce Gould".

Bruce Gould
Executive Director

In accordance with Va. Code § 2.2-1127, this report is being distributed to the following:

The Honorable Mark R. Warner
Governor, Commonwealth of Virginia

The Honorable John H. Chichester
President of the Senate

The Honorable Lacey E. Putney
Speaker of the House

The Honorable Whittington W. Clement
Secretary of Transportation

The Honorable Susan Clarke Schaar
Clerk of the Senate

The Honorable Bruce F. Jamerson
Clerk of the House of Delegates

E.M. Miller, Jr.
Director, Virginia Division of Legislative Services

Mr. Nolan T. Yelich
State Librarian

Law Library
University of Virginia

INTRODUCTION

The 1995 General Assembly overwhelmingly adopted legislation to shift the regulation and oversight of the new and used motor vehicle dealer industry from the Department of Motor Vehicles, to a professional board as described below. Oversight and regulation of motorcycle, trailer and recreational dealers continues to be performed by DMV.

The Board consists of nineteen members for which the Governor, subject to confirmation by the General Assembly, appoints seventeen. In order to stagger appointments and ensure continuity, initially, eight members were appointed to two-year terms and nine were appointed to four-year terms.

The statute creating the Board stipulates that nine members shall be licensed franchise ("new") motor vehicle dealers, and seven members shall be independent ("used") dealers. Further, the statute requires that of the seven independent dealers, one shall be primarily engaged in vehicle rental, and one in the motor vehicle salvage business. The other three members include a consumer with no connection to the motor vehicle dealer industry; the Commissioner of the Virginia Department of Agriculture and Consumer Services and the Commissioner of the Department of Motor Vehicles, who serves as the Board's chairman.

Members of the Board represent all areas of the Commonwealth. In addition, they represent all levels of ownership. Board members include those that own several dealerships ("mega dealers") to those with small operations and just a few employees. This cross section ensures that all perspectives of the industry have a voice on the Board.

The primary focus of the Motor Vehicle Dealer Board, as mandated by Virginia statute (Chapter 15 of Title 46.2), is to regulate new and used car dealers including certifying and licensing dealers and salespersons. Additionally, the MVDB administers the Motor Vehicle Transaction Recovery Fund (MVTRF), handles consumer complaints regarding motor vehicle dealers, monitors dealer advertising, and schedules hearings.

Organizationally, the Board staff is divided into two functional areas: Field Operations and Headquarters Operations. The field operations consist of a supervisor and twelve field representatives who work out of their "home-offices" located throughout the Commonwealth. Educating dealers, salespersons and consumers is the primary focus of the field representatives. Enforcement becomes necessary only after continued, blatant disregard for laws.

The number one priority of the Dealer Board Headquarters Operations is to process initial and renewal applications of our licensees (dealers and salespersons). This work constitutes the highest volume and work effort of the Headquarters staff. As part of the licensing process, the Board issues dealer license plates and renewal decals as directed by DMV. In a typical year, the agency will process about 3,000 dealer-related license transactions, about 20,000 salesperson license transactions and issue over 71,000 dealer tags.

About 400 consumers, most by telephone, contact the Board staff each month to request mediation or assistance solving a problem concerning a dealership. This has proven to be a very successful program as most situations can be resolved with the introduction of mediation and a clear understanding of the problem by all parties involved.

Board staff also receives approximately 40 consumer emails a month. These emails range from request for information to assistance in solving issues with dealers. Consumers contact Board staff via an email address establish on the MVDB website. Once received, Board staff review the email and respond accordingly.

The MVDB has also established a modified executive agreement (performance measure) to ensure correspondence is replied to in a timely fashion. This measure, respond to 98% of all website email within three (3) business days, reported 100% of all emails during the first quarter of FY03 are being responded to within the three day timeframe. Prior to the modification, the measure read "respond to 98% of all website email within three (5) business days," and response time was tracked during this biennial period. For FY01, overall performance was rated at 94.3%. However, overall performance peaked to 99.7% during FY02.

The Board has been very aggressive in monitoring dealer advertising as well as other dealer practices. During this report period, the Board has assessed \$12,500 in civil penalties as a result of enforcement efforts. Penalties collected were deposited into the Transportation Trust Fund.

Also, the Motor Vehicle Dealer Board has aided consumers defrauded by dealers by awarding a total of \$166,505 during this report period from the Motor Vehicle Transaction Recovery Fund (MVTRF), which is funded through assessments paid by all dealers and salespeople at the time their license is initially issued and as well as when it is renewed. It was during this report period that the General Assembly voted to increase award amount to the consumer from \$15,000 to \$20,000 from the Recovery Fund.

Lastly, the Motor Vehicle Dealer Board is self-sufficient and is funded by fees paid by dealers. These fees cover all of the expenses of the Board.

COMMITTEES

Five statutorily mandated committees act as an extension of the Board: Advertising, Licensing, Franchise Law, Transaction Recovery Fund and Dealer Practices. At any given time there may be one or more other functioning committees who have a specific assignment. Once these assignments are completed, the committee is disbanded.

These committees are schedule to meet on the second Monday of every other month in Room 702 at the Department of Motor Vehicles Headquarters Building, 2300 West Broad Street, Richmond, Virginia. The full Board meeting is scheduled following the last committee meeting on the same day.

The responsibilities of each of these committees are outlined below:

ADVERTISING COMMITTEE

Vince Sheehy, *Chairperson*

Committee Functions

- To advise the Board and the Board staff on matters related to motor vehicle dealer advertising. The committee is to receive and identify advertising issues. The committee will discuss, and as needed, direct a study or investigate issues in order to make policy and procedural recommendations to the Board.
- Review staff reports on advertising complaints and violations. Present a summary report to the Board.
- Direct the advertising staff on how they monitor and identify advertising violations and consumer complaints concerning advertising.

FRANCHISE REVIEW AND ADVISORY COMMITTEE

Tom Barton, *Chairperson*

Committee Functions

- Advise the DMV Commissioner, through the Board, of any violations of Article 7 (Franchises) of the Motor Vehicle Dealer Act. (See § 46.2-1573.C.)
- Assist the Commissioner in assembling panels, made up of three Board members, as described in § 46.2-1573.D.8.

LICENSING COMMITTEE

Bruce Farrell, *Chairperson*

Committee Functions

- To advise the Board and the Board staff on matters related to the licensing of dealers, dealer-operators and salespersons. The committee is to receive and identify dealer-licensing issues. The committee will discuss, and as needed, direct a study or investigate issues in order to make policy and procedural recommendations to the Board.
- Review, and then make recommendations to the Board on individual licensing actions proposed by the Executive Director and which are required to come before the Board.

TRANSACTION RECOVERY FUND COMMITTEE

Joel Lyles, *Chairperson*

Committee Functions

- Monitor the activities and solvency of the TRF and report findings to the Board.
- Review staff reports and recommendations concerning actions against the fund. Make recommendations to the Board on claims against the fund.

DEALER PRACTICES COMMITTEE

Steve Farmer, *Chairperson*

Committee Functions

- To advise the Board and the Board staff on issues related to the conduct of business. The committee will receive and identify dealer practice issues. The committee will discuss, and as needed, direct a study or investigate issues in order to make policy and procedural recommendations to the Board.

SIGNIFICANT ACTIVITIES

EDUCATION

The Motor Vehicle Dealer Board employs twelve “field representatives” who travel throughout the Commonwealth, making visits to dealerships. The primary focus of these visits is to educate the dealers on the laws and regulations related to their business, as well as to provide guidance. The field representatives also conduct investigations and participate in enforcement activities as warranted.

During the FY 00 biennial report period, the field representatives were outfitted with laptop computers to aid in completing their inspections. The primary field representatives’ reporting forms were automated, and an MS Access database constructed to “warehouse” historical information. This facilitated immediate communications between the dealership community, field representatives, and internal office staff while automating the inspection process, and creating ease of retention.

In FY 01 the field representatives conducted over 5,680 “inspections” and for FY 02 the total number of inspections was nearly 6,425. Totaling approximately 12,100 inspections for the FY02 reporting period. This is a 12% increase over the FY00 biennial report period that can be directly contributed to the automation of this activity.

Types of inspections conducted included:

- Periodic liaison visit to the dealerships
- Opening and closing dealerships
- Investigating consumer complaints and other issues
- Enforcing and educating individuals whom are selling or are facilitating the sale of vehicles without first being licensed.

During this biennial report period, plans to migrate the MS Access database and its associated data into a SQL server environment got underway. This “transfer” of data into a new environment will increase the systems ability to retain historical information over a greater period of time, decrease system cycle and wait times, and provide greater relational possibilities with other internal databases housing separate but relatable information.

DEALER LICENSING

Licensing Activities

The primary focus of the Board is to license and regulate the over 4,000-combined franchise (new) automobile dealers and independent (used) automobile dealers and about 25 "other" dealers (fire, ambulance and funeral equipment dealers). These dealers have a combined total of approximately 24,000 licensed salespersons.

Also, during the last report period, a new dealer type was created to assist any non profit organization exempt from taxation under § 501 (c) (3) of the Internal Revenue Code desiring to consign donated vehicles to licensed Virginia motor vehicle dealers for resale. Certified non-profit organizations are exempt from other licenses, requirements, and fees stipulated under § 46.2, Motor Vehicle Dealer Laws, Code of Virginia. During this biennial report period, 21 "nonprofit" dealer type licenses have been issued.

The following chart displays statistical data for Fiscal Years 2001 and 2002, showing the Board's processing activity as it relates to licensing dealers, salespersons, and issuance of dealer plates:

	Dealer Licenses		Salespersons Licenses		Dealer License Plates	
	FY 01	FY 02	FY 01	FY 02	FY 01	FY 02
July	273	305	1247	1343	3118	3782
August	281	341	1316	1486	3808	4479
September	252	296	1243	1374	3849	4404
October	290	362	1370	1656	4635	2807
November	270	268	1917	1988	7062	3238
December	235	264	1608	1970	6869	3609
January	306	276	1913	1818	7732	3119
February	264	281	1925	2230	7519	4155
March	373	317	2724	2444	11317	4600
April	270	253	1518	1427	5128	2241
May	283	283	1729	1750	6313	2979
June	237	285	1678	1371	3946	1800
TOTAL	3334	3531	20188	20857	71296	41213

A criminal history background check is conducted on each and every initial application for a dealer or salesperson's license submitted to the Board. In addition, a background check is run on a sample of renewal applications. If an applicant has a criminal history, Board staff, using established criteria, determines if the applicant should be granted a license. During the two-year reporting period, the Board denied the applications of a total of 117 applicants, which equates to a 32% increase over the last biennial report period.

Administrative Hearings

Applicants who are denied a license have an opportunity to request a hearing according to the Administrative Process Act. During the two-year reporting period, the Board conducted 68 informal fact finding conferences-a 24% increase over the last biennial period, and 4 formal hearings at the request of applicants who had been denied a license.

During the two-year reporting period, the Board imposed sanctions against a number of dealers for alleged violations of the Motor Vehicle Dealer Act. Violations included:

- Employing an unlicensed salesperson
- Selling vehicles from an unauthorized location
- Allowing or renting dealer tags to an individual not authorized to use such tags
- Not maintaining an established place of business/not maintaining hours of business
- Having made a material misstatement on an application
- Failure to comply with a warning issued by the Board or DMV
- Having defrauded a retail buyer
- Having used deceptive acts or practices
- Failure to submit taxes and Fees to DMV within 30 days from the date of the sale

Sanctions levied by the Board included license suspension, assessment of civil penalties, and license assessment of civil penalties revocation.

Unlicensed Dealers

Individuals who sell vehicles for a profit without first obtaining a dealer license are known as “curbstoners.” Curbstoners pose a threat to the car buying public as they usually represent the car as being their own when in fact they have purchased it for the sole purpose of resale. Oftentimes these vehicles are not in good working order or they may be stolen. Consumers who buy vehicles from curbstoners have no recourse if something goes wrong. In addition, curbstoners, usually do not pay state and local taxes and fees that licensed dealers pay.

The 1997 General Assembly recognized the seriousness of curbstoning and amended the statute to make this practice a misdemeanor rather than be subject to a civil penalty. In response to this change in law, the MVDB Field Representatives in conjunction with Department of Motor Vehicle (DMV) Special Agents have began issuing “curbstoning warning notices” in March 1999 to cars illegally parked for sale and displaying a contact phone number. These notices are used to gather pertinent available information concerning the car and the contact, and then all tickets are submitted to the MVDB Office.

Once in the Office, information appearing on the tickets is transferred into a “curbstoning database. The database was developed internally and constructed with a relational tie between contact phone numbers appearing on curbstoner notices. The database system retains the phone number and associates any additional tickets written to the same number on electronic file. After repeated occurrences, the file is submitted to DMV for further investigation and enforcement.

Unlicensed Dealers

During this report period, a total of 2315 curbstoning tickets have been issued. (1920 initial tickets and 395 associated –repeat offenders.) This equates to a 37% increase over the last biennial report period.

MOTOR VEHICLE TRANSACTION RECOVERY FUND

Another area the Board is responsible for is administering the Motor Vehicle Transaction Recovery Fund (MVTRF). The MVTRF was established in 1989 (Code of Virginia, §46.2-1527.1-8) and is designed to reimburse persons who have suffered a loss or damage in connection with the purchase of a motor vehicle due to illegal actions of licensed motor vehicle dealers, salespersons or foreign registrants (out-of-state dealers registered in Virginia are restricted to wholesale vehicles at auctions).

The MVTRF is funded through assessments paid by all dealers and salespeople at the time their license is initially issued and as well as when it is renewed, or at a time of reassessment necessary to maintain appropriate fund balances as stipulated by the Code of Virginia.

Effective January 1, 1998 and continued through this report period, the Board suspended the requirement for payment of renewal assessment fees into the Transaction Recovery Fund. Fee payments from original licensees, however, continue. The Board took this action based on current balances in the Fund.

Administrative Decisions

In FY 01, the Board approved for processing 5 claims against the fund totaling \$46,953. An additional 11 claims were approved for processing during FY 02 totaling \$119,552 for a grand total of \$166,505 being paid out from the fund during this report period, which equates to a 9% increase over last report period.

It should also be noted that it was during this report period that a MVDB sponsored bill was adopted by the General Assembly to increase the maximum award amount to the consumer from \$15,000 to \$20,000 from the Recovery Fund.

DEALER ADVERTISING

In 1989 the General Assembly passed the Motor Vehicle Dealer Advertising Laws as Article 9 of the Motor Vehicle Dealer Act. The purpose was to ensure honest, fair and clear advertising of retail sales of motor vehicles. The Board has taken a proactive approach, through education of dealers, advertising media and advertising agents concerning advertising laws and regulations.

The Board continues its educational approach with its enforcement efforts. During a prior biennial period, the decision was made that the first time a dealer was found in violation of a particular advertising law or regulation, the dealer would receive an educational phone call. An MVDB staff member would place a call to that dealer to personally explain the violation and to answer any questions the dealer may have. An additional violation results in a letter explaining the nature of the violation, and also serves as a “warning” that future violations could result in the assessment of a civil penalty.

Administrative Decisions

During this biennial period, Board staff placed a total of 537 educational calls, 82 first-violation letters, and 16 second-violation letters. Topics addressed in the violation letters included: Incomplete Truth in Lending/Truth in Leasing; failing to include a "Sale End Date" when advertising a "sale"; failure to disclose vehicle as being used; failing to disclose the Processing Fee or Freight amount; Processing Fee and/or Freight charges not in legible typeface; disclosure not clear and conspicuous; advertising a "Free Item" when a purchase is necessary to receive the "free" item; guarantee trade amount; and omitting Year, Make, Model of the vehicle when a sale price is advertised.

Second violation letters also notified the dealer that a civil penalty has been levied; and that they have the option of paying the penalty or requesting a hearing. For this biennial period, \$12,500 was collected in civil penalties and deposited in the Transportation Trust Fund. A total of 11 advertising-related hearings were held.

CONSUMER COMPLAINTS

Consumer complaints are an area that the Board gives a considerable amount of attention. Realizing that the purchase of a motor vehicle is the second largest investment that a consumer will make heightens the Board's sensitivity and understanding in handling an individual's complaint.

In most cases, bringing all parties together and communicating with each other can resolve the complaint. The Dealer Board has a staff position whose primary function is to assist consumers with dealer related situations.

Assistance provided to the consumer includes contacting the dealer in an attempt to resolve the situation, advising the consumer as to their rights and initiating an investigation. This program has been very successful in resolving problems. On average, staff receives about 400 consumer inquiries per month.

During this biennial report period, Dealer Board staff assisted approximately 6,660 consumers via telephone, walk in, or letter receipt. This total does not include the nearly 960 emails received electronically via the MVDB website. Overall, MVDB staff assisted approximately 318 consumers a month during this report period.

There are some cases that require a judicial review and can only be resolved through the courts. In these instances, if the dispute is less than \$15,000, the consumer may be directed to the Office of Consumer Affairs, who publishes a brochure educating individuals on how to represent themselves in court, without the aid of an attorney. The Board may also direct consumers to the Better Business Bureau, for mediation assistance.

Some of the most common complaints received from consumers involving the purchase of a vehicle include: did not receive title or tags within 30 days of the purchase; repair and warranty issues; business conduct and mileage/odometer problems.

FISCAL AFFAIRS SUMMARY

In FY 96, the Board adjusted licensing fees that dealers pay to the Board. These fees cover all of the expenses of the Board. When these fees were adjusted, it was done with a five year planning horizon. The plan was for the Board to collect sufficient yearly revenues to accumulate a fund balance that would meet operational needs throughout that five-year period. Along with the efficiencies experienced in operating activities during the three years of Board oversight, current projections show that the existing fee structure will provide a revenue base that can cover the Board's operating expenses for as long as seven to eight years.

The Board's financial accounting and reporting functions are provided by DMV. As a result of this joint effort, the Board has been able to conduct its statutory responsibilities and its financial management functions in a most cost-effective manner. The Board's operating revenue, expenditures/transfers and year-end balance for Fiscal Years 2001 and 2002 are shown below:

<i>Fiscal Year Ending June 30, 2001</i>		
<i>Revenues</i>	<i>Expenses/Transfers</i>	<i>Cash Balance</i>
\$1,885,649.00	\$1,743,774.00	\$1,554,044.00

<i>Fiscal Year Ending June 30, 2002</i>		
<i>Revenues</i>	<i>Expenses/Transfers</i>	<i>Cash Balance</i>
\$1,974,969.00	\$1,895,867.00	\$1,486,243.00

The Motor Vehicle Dealer Board is on firm financial ground. As noted above, when the original fee schedule was adopted, it was projected that a fee increase would be needed in five years time. Current projections show that the current fee structure will cover the Board's expenses for seven to eight years.