

2004

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*  
D.B. Smit  
Commissioner  
Department of Motor Vehicles

*Executive Director*  
Bruce Gould  
Executive Director  
Motor Vehicle Dealer Board



November 2004

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.

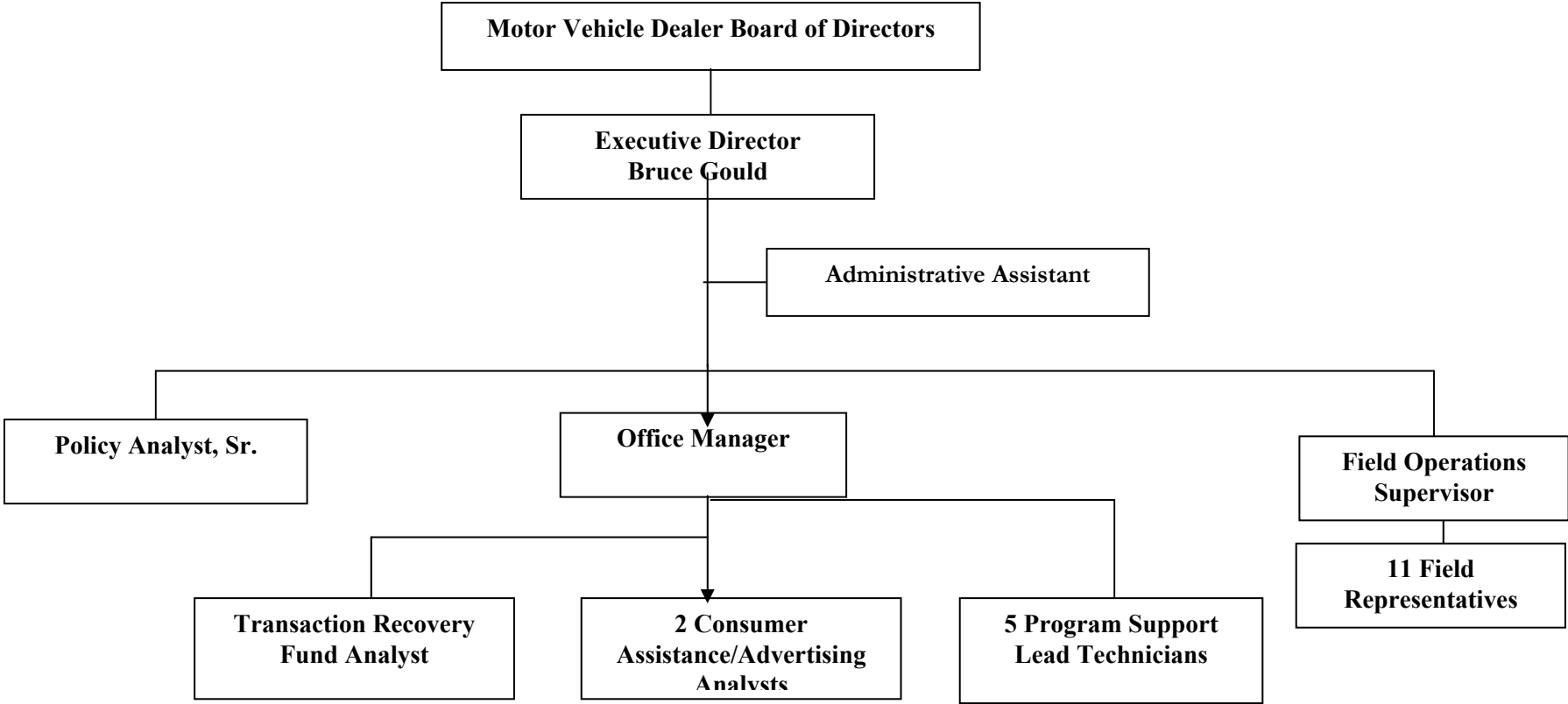
Upon reviewing the report, I'm sure you will agree that the Board is making a positive impact upon the dealer community and the motor vehicle consumer. We thank you for your support as we continue our efforts to minimize regulations and enhance consumer protection.

Sincerely,

A handwritten signature in black ink that reads "Bruce Gould". The signature is written in a cursive, slightly slanted style.

Bruce Gould  
Executive Director

*Motor Vehicle Dealer Board  
Organizational and Operational Chart*



# INTRODUCTION

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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 eleven 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 over 3,200 dealer-related license transactions, over 20,500 salesperson license transactions and issue over 36,000 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.

Of the nearly 400 contacts made to our office per month, on average, 75 consumer emails are included in the monthly total. This is a 47% increase over last biennial report period. These emails range from request for information to assistance in solving issues with dealers. Consumers contact Board staff via an email address established 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 94.3% of all emails during this report period are being responded to within the three day timeframe.

The Board has been very aggressive in monitoring dealer advertising as well as other dealer practices. During this report period, the Board has assessed \$5,500 in advertising-related civil penalties as a result of enforcement efforts. This is a 56% decrease in the amount assessed during the last report period. This decline can be directly attributed to the educational efforts made by the MVDB Board and staff during this report period. 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 \$262,588 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. This illustrates a 37% increase from last report period. It was during this report period that a court decision determined that a consumer's legal fees could be paid as part of the award recovered from the 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

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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**

Rick Hunt, *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.
- Meets on an “as needed” basis and not every other month as does other committees.

## **LICENSING COMMITTEE**

Bobby Joe Dotson, *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**

Steve Farmer, *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**

Todd Hyman, *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

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## Information Technology

The Motor Vehicle Dealer Board employs eleven “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 reporting 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.

The automation activity during this report period was broadened to include migrating data from an MS Access to a SQL server environment. And, web-enabling the field representative portion of the process. This “transfer” of data into a new environment increased 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.

This increased data retention and reporting has expanded the types of available administrative data collecting possibilities. The MVDB now tracks and measures four additional performance measures previously unavailable due to lack of, or difficulty retrieving, supporting data. These measures are:

- 85% of all dealer employees (selling cars) are salespersons and not independent contractors. During this report period 94% are in compliance.
- 90% of dealership opening (original) inspections are completed within 30 days of internal IS12 submission. Although the code allows for 60 days, the MVDB is aggressively attempting to reduce this process time. 51% of original inspections are completed within 30 days of an IS12 request for inspection submission.

Often times, MVDB staff are prepared to conduct an opening inspection within 30 days, however, the dealer is not and often requests that the inspection be delayed.

- 53% of all IS 12 request are completed with a 30 day timeframe.



## DEALER LICENSING

### Licensing Activities

The primary focus of the Board is to license and regulate the over 3,900-combined franchise (new) automobile dealers and independent (used) automobile dealers and 23 "other" dealers (fire, ambulance and funeral equipment dealers). These dealers have a combined total of approximately 23,000 licensed salespersons.

The following chart displays statistical data for Fiscal Years 2003 and 2004, 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 03	FY 04	FY 03	FY 04	FY 03	FY 04
July	242	348	1301	1559	1729	2276
August	269	315	1328	1470	2100	2223
September	257	296	1406	1568	1923	2342
October	315	406	1485	1729	2450	3402
November	251	254	1853	1834	3365	3038
December	287	275	1782	1990	3638	3841
January	280	265	1980	1920	7898	3363
February	255	274	2439	2068	5154	3767
March	300	316	2281	2447	4221	4597
April	243	263	1309	1492	2384	2343
May	273	294	2045	1724	2862	3022
June	<u>259</u>	<u>262</u>	<u>1322</u>	<u>1269</u>	<u>1959</u>	<u>1815</u>
<b>TOTAL</b>	<b>3231</b>	<b>3568</b>	<b>20531</b>	<b>21070</b>	<b>39683</b>	<b>36029</b>

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.

### Consumer Assistance

The MVDB employs two full-time staffers whose primary responsibilities are responding to consumer concerns and initiating internal investigation into possible dealer misdealing on the consumer's behalf. However, it is not the intent of staff to act as legal counsel to the consumer.

The Motor Vehicle Dealer Board provides several methods for which a consumer can contact our office and request assistance. All methods have been successful during this report period.

Period	Telephone			
	e	Walk In	Letter	Email
<b>2003</b>	2995	59	407	749
<b>2004</b>	3015	78	359	1062

<b>Total</b>	<b>6010</b>	<b>137</b>	<b>766</b>	<b>1811</b>
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## **Other Additional Significant Agency Activities During This Report Period Include:**

### **Successful Performance Measures**

- 95% of all dealership employees classified as motor vehicle dealer salespersons are employed by the dealership as salespersons (W-2) and not as independent contractors (1099). **MVDB stood at 97% at the end of Q4 2004**
- Within 60 days of appointment, complete a comprehensive orientation for newly appointed Board member. **MVDB stood at 100% at the end of Q4 2004**

### **Executive Agreements**

Completed all Executive Agreements as specified:

- Developed and implemented an electronic consumer complaint form available from agency website.
- Developed and implemented an electronic tracking of new dealer satisfaction survey available from agency website.
- Transferred the MVDB E-commerce transaction system from the costly VIPNet to a cost-free DMV-hosted environment.
- Awarded budget for the development and completion of a comprehensive automated dealer inquiry system (historical dealer database) based on submitted proposal and justification package, cost estimate, and proposed budget amendment.

### **MBDV Internal Initiatives**

- **Successfully transitioned under VITA:** The Motor Vehicle Dealer Board was the second agency in the Commonwealth to meet all of the requirements to transition IT responsibility to VITA.
- **Developed and Implemented Automated Dealer Look-up:** Added cost-effective (\$1,500.00) feature to agency website that allows general public to determine the license expiration date, the full name of the dealership and the owner's name by entering the name of a motor vehicle dealership or a partial name of the dealership or the owner's name, or the dealer number.

This feature is particularly useful to dealer auctions, attorneys, insurance companies, and local government. The look-up feature has decreased the amount of time staff spends in assisting requestors of this type of information. Since its implementation in May 2004, the site has experience over 6475 hits to date; averaging approximately 1300 hits a month.

Plans are for this feature to be a building block to add other types of information such as a list of licensed salespersons for employment verification purposes.

- **Seat Management Technology Refresh:** First agency in the Commonwealth to plan (and ultimately implement in Q1 2005) seat management technology refresh methodology under state contract.

# FISCAL AFFAIRS SUMMARY

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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.

Efficiencies have expanded projections. The existing fee structure will provide a revenue base capable of supporting the agency throughout FY06

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 2003 and 2004 are shown below:

<i>Fiscal Year Ending June 30, 2003</i>		
<i>Revenues</i>	<i>Expenses/Transfers</i>	<i>Cash Balance</i>
1,800,000	1,621,154	1,241,089

<i>Fiscal Year Ending June 30, 2004</i>		
<i>Revenues</i>	<i>Expenses/Transfers</i>	<i>Cash Balance</i>
1,835,930	1,621,750	893,652

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.