

2008

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 2008

The Honorable Timothy M. Kaine
Governor, Commonwealth of Virginia
State Capitol
Richmond, Virginia 23219

Dear Governor Kaine:

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 twelve 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 and setting criteria for attorney fees; enforcement of Advertising Regulations and by assisting consumers when they are having a dealer related problem.

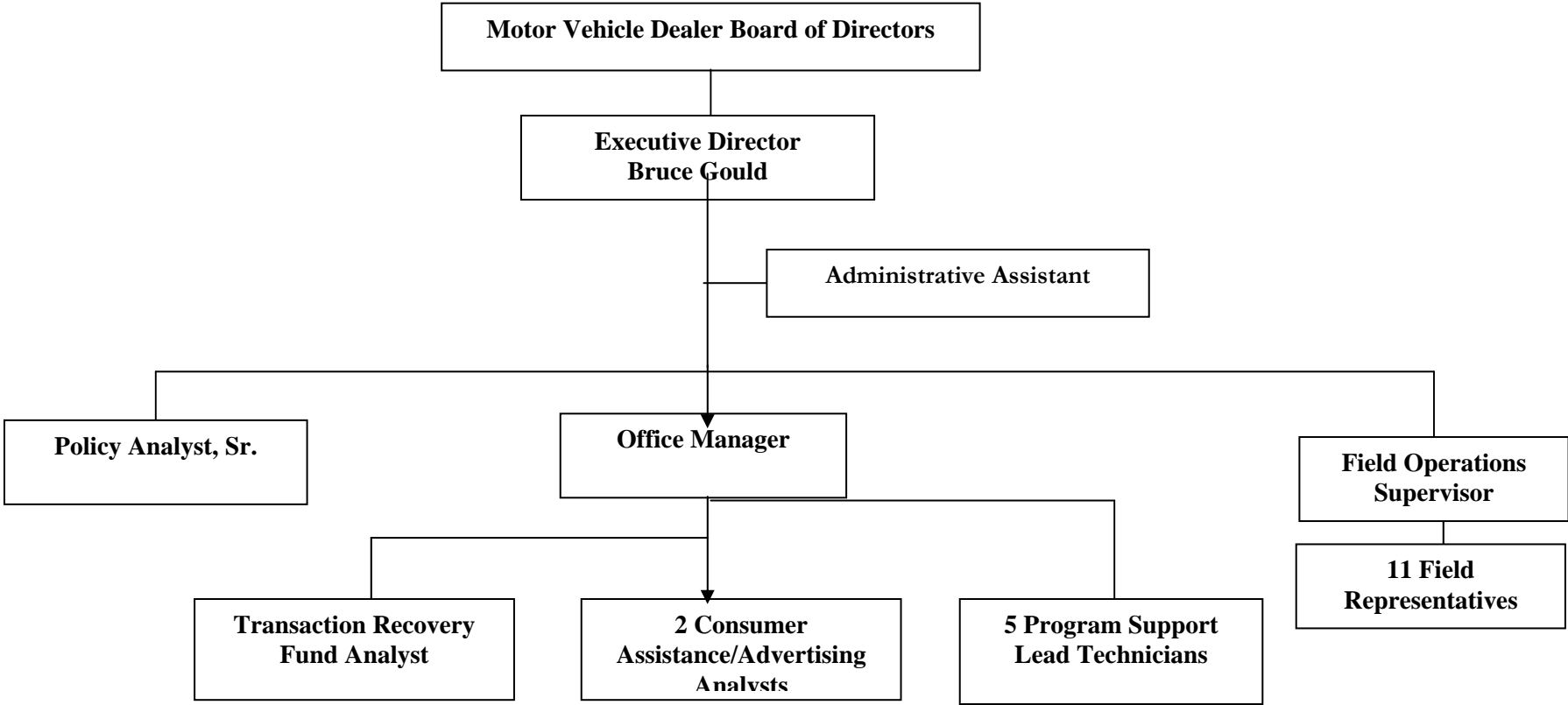
Upon reviewing the report, I'm sure you will agree that the Board is making a positive impact upon the dealer community and the motor vehicle consumer. We thank you for your support as we continue our efforts to minimize regulations and enhance consumer protection.

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

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, about 23,000 salesperson license transactions and issue over 75,000 dealer tags.

Over 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.

Most consumers call us on our toll-free telephone number. However, of the over 400 consumer contacts made to our office each month, on average, about 30 are done via an email. Consumers contact Board staff via an email address and an easy to complete form established on the MVDB website. Once received, Board staff review the email and respond accordingly. The MVDB has established a performance measure to ensure that email correspondence is replied to in a timely fashion. This measure, respond to 99% of all website email within four (4) business days, reported 87% 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 the current reporting period, the Board assessed \$3,500 in advertising related civil penalties as a result of enforcement efforts. In keeping with the Board's philosophy of "education first", during the reporting period, Board staff made 375 educational telephone calls to dealers and wrote 365 educational letters for a grand total of 740 educational contacts.

Also, the Motor Vehicle Dealer Board has aided consumers defrauded by dealers by awarding a total of \$192,357 during this report period from the Motor Vehicle Transaction Recovery Fund (MVTRF), which is funded through assessments paid by all dealers the first three years they are in business. The Board also initiated legislation to clarify when and how consumers who file claims against the Fund can be reimbursed from the Fund for attorney fees.

When it comes to enforcing the laws, rules and regulations, the MVDB's philosophy is "education first". If educational efforts do not produce the desired outcomes, then we must use our enforcement authority. One enforcement tool available to the Board is to assess a civil penalty. In this reporting period, the MVDB assessed civil penalties totaling over \$121,000 and collected nearly \$90,000 in civil penalties from dealers. These penalties are deposited into the Transportation Trust Fund. Any civil penalties not collected, are reported to the Department of Taxation's Debt Set-Off Program for eventual collection.

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

Lynn Hooper, *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

Kevin Reilly, *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

Chip Lindsay, *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

Larry Shelor, *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

Hugh McCreight, *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

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. During the FY 07 and 08 reporting period, the field representatives were outfitted with tablet computers and “air cards.” These technologies have allowed the field representatives to become more mobile and independent. The tablets will allow us to take advantage of “touch-screen” technology and the “air cards” allow them to more easily complete reports wherever they are and to access data and up-to-date information on our constituents.

Also during this reporting period, the Motor Vehicle Dealer Board had a smooth transition to VITA/NG as our information technology providers. As noted above, the field staff’s laptop computers were upgraded to new tablets and at the same time, all desktop computers in headquarters were replaced.

In our last Biennial report we reported that we had initiated a document warehousing project that involved scanning paper documents. During this reporting period we completed scanning all of our “dealer jackets and we continue to scan documents as they arrive or are generated internally.

All scanned documents are organized by dealer number and can be accessed by all headquarters staff from their desktop computers. We have begun the next phase of this multi-year project. In this next phase, documents produced in-house will be stored electronically in the virtual dealer jackets thereby eliminating the need to scan these documents. In addition, field reports that are currently generated by our field representatives and stored electronically, will be blended into the virtual dealer jacket and will then be accessible via the same application that houses the scanned and other electronic records. In this way we will have a comprehensive electronic file for each dealer.

The Motor Vehicle Dealer Board anticipates numerous agency and customer benefits such as increased customer service delivery and staff productivity, decreased processing time, greater performance tracking and heightened traceability, and of course, operational cost savings.

DEALER LICENSING

Licensing Activities

The primary focus of the Board is to license and the over 3,800-combined franchise (new) automobile dealers and independent (used) automobile. (There are about 620 franchise dealer and 3,200 independent dealers.) These dealers have a combined total of approximately 22,500 licensed salespersons.

The following chart displays statistical data for Fiscal Years 2007 and 2008, showing the Board's processing activity as it relates to licensing dealers and salespersons: (Note: About 20% of the nearly 3,800 dealerships have a two year license and about 16% of the 22,500 salespersons have a two year license.)

	Dealer Licenses		Salespersons Licenses	
	FY 07	FY 08	FY 07	FY 08
July	224	258	1345	1589
August	278	322	1801	1698
September	236	242	1681	1797
October	282	311	1784	1883
November	272	240	2111	2090
December	237	267	1987	2010
January	258	267	2029	1938
February	244	256	1931	1971
March	343	304	2863	2528
April	276	209	2074	1616
May	273	300	2110	1981
June	332	253	1786	1337
TOTAL	3255	3229	23502	22438

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.

DEALER LICENSE PLATES

The Department of Motor Vehicles is responsible for allocating and distributing license plates, including dealer's license plates. In order to create a "one-stop shopping" experience for dealers, the Board and DMV maintain a Memorandum of Understanding that authorizes the Board to distribute dealer license plates. The following table displays the number of dealer plate transactions handled during the reporting period by Board staff:

Dealer License Plates	
FY 07	FY 08
47,773	27,698

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. During the reporting period, we averaged more than 400 consumer contacts per month.

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	"Paper"	Email	TOTAL
2007	2,777	427	364	3,568
2008	5,281	596	328	6,205
Total	8,058	1,023	692*	9,773

* Because of technical difficulties including transitioning systems, there was some missing data. Averages were used to estimate the email numbers.

DEALER EDUCATION

Legislation initiated by the Board and adopted by the 2005 General Assembly requires, beginning in January of 2006, all applicants for an original independent dealer certificate of qualification to successfully complete a course of study before they can take the certificate of qualification test. Working with the Virginia Independent Automobile Dealers Association and the Virginia Community College System, a two day class was instituted. During the two year reporting period, forty-four classes have been held, with nearly 1,000 students attending. Many of those attending are doing so voluntarily as many of the attendees were not applicants for an original dealer-operator certificate of qualification.

In early 2007, the Motor Vehicle Dealer Board decided that all independent dealer-operators should be required to participate in on-going continuing education. Towards that end, the Board has completed the "Notice of Intended Regulatory Action" phase of the regulatory process in order to adopt Continuing Education Regulations.

OTHER SIGNIFICANT AGENCY ACTIVITIES DURING THIS REPORT PERIOD INCLUDE:

Service Delivery/Consumer Protection

- In order to receive a salesperson's license, an applicant must first take a test. In addition, a criminal background check is completed on each applicant. Established criteria are used to evaluate an applicant's background in staff deciding if an applicant should be approved.

During this reporting period, the Board switched to a faster, more comprehensive and less expensive criminal history check provider. The new source (ScreeningOne) performs a nation-wide criminal history check; OFAC and checks every states' sex offender list. Results are generally available within two days. Our previous provider only checked the

applicants Virginia criminal history and charged \$10 more.

SIGNIFICANT AGENCY ACTIVITIES (continued)

- Redesigned the agency's WEB site.
- Transformed information technology to VITA/NG.
- Initiated legislation to assist consumers who file claims against the Transaction Recovery Fund.
- Initiated legislation to address illegal motor vehicle sales.
- Successfully negotiated a new lease.
- Completed scanning of all "dealer jackets" and established an on-going scanning process.
- Taking advantage of new and affordable technologies, field representatives have access to data, information and reports from their portable computers via an air card. This allows them to have up-to-date information to provide to dealers while they are in the field, etc.

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.

Efficiencies expanded the original projection. The initial fee structure provided an adequate revenue base that supported the Board until the fees were adjusted in December of 2007.

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 2007 and 2008 are shown below:

<i>Fiscal Year Ending June 30, 2007</i>		
<i>Revenues</i>	<i>Expenses/Transfers</i>	<i>Cash Balance</i>
1,772,586	1,023,474	308,392

<i>Fiscal Year Ending June 30, 2008</i>		
<i>Revenues</i>	<i>Expenses/Transfers</i>	<i>Cash Balance</i>
2,088,721	1,889,154	507,959

The dealer laws set the maximum fees the Board may levy on dealers. The actual fee schedule is set in APA regulations. The Board successfully completed the APA Regulatory process in the fall of 2007 to adjust fees. The new fees were effective December 1, 2007 – nearly twelve years after the initial fees were put in place.

The new fee structure is designed to produce balances in the first few years to support expenditures that will exceed revenues in the out years. When the new fee structure was developed, it was projected that the new structure would provide an adequate revenue stream for six years. The current economic situation was resulted in a lower than projected revenue stream. The Bard has made spending adjustments and will continue to closely monitor revenue and expenditures.