

2010

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*  
Richard D. Holcomb  
Commissioner  
Department of Motor Vehicles

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



November 2010

The Honorable Robert F. McDonnell  
Governor, Commonwealth of Virginia  
State Capitol  
Richmond, Virginia 23219

Dear Governor McDonnell:

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 nearly fourteen 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; enforcement of Advertising Regulations and by assisting consumers when they are having a dealer related problem.

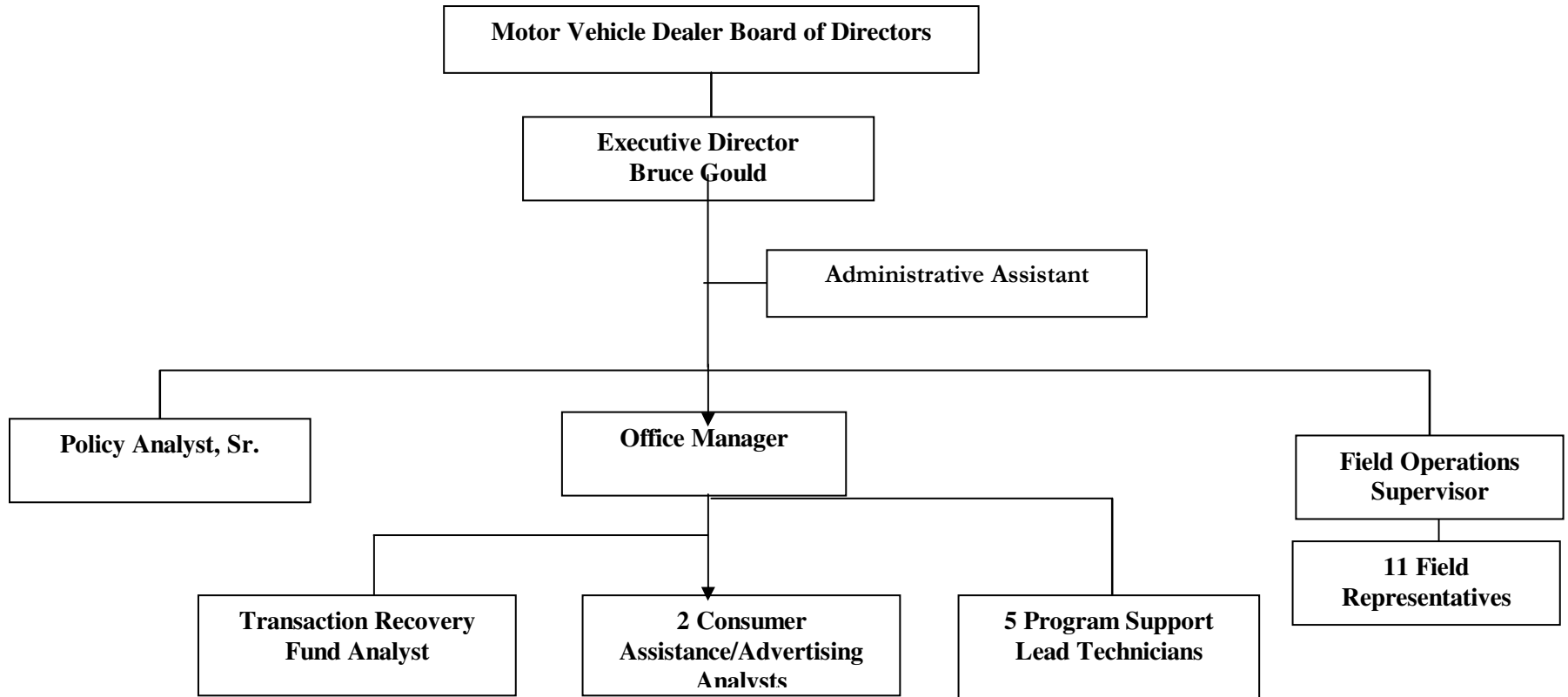
Upon reviewing the report, I'm sure you will agree that the Board is making a positive impact upon the dealer community and the motor vehicle consumer. We thank you for your support as we continue our efforts to minimize regulations and enhance consumer protection.

Sincerely,

A handwritten signature in cursive script that reads "Bruce Gould".

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 about 3,000 dealer-related license transactions 18,000 salesperson license transactions and issue nearly 64,000 dealer tags.

Nearly 500 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. The most common questions and complaints received from consumers are related to:

- Dealer has gone out-of-business
- Title/Registration not obtained by the dealer for the consumer
- Contract/Pricing questions and disputes
- Motor vehicle is in need of repair shortly after the purchase

Most consumers contact us by telephone. However, of the over 500 consumer contacts made to our office each month, on average, about 45 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 98% of all website email within three (3) business days, reported 98.5% 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 \$20,000 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 455 educational telephone calls to dealers and wrote 188 educational letters for a grand total of 643 educational contacts.

Also, the Motor Vehicle Dealer Board has aided consumers defrauded by dealers by awarding a total of \$259,335 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. In FY 10, \$700,000 was transferred from the MVTRF to the General Fund, leaving a balance of \$250,601 in the Fund. As the law states that a \$250,000 minimum must be maintained in the Fund, the Board may be forced to apply a special assessment on dealers in order to maintain the \$250,000 minimum and continue to make payments to consumers who have been defrauded by motor vehicle dealers.

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 \$117,750 and collected \$92,800 in civil penalties from dealers. (Includes advertising civil penalties as noted above.) 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

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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 May 10, 2010 MVDB meeting was the first Commonwealth of Virginia Board or Commission meeting to be broadcast live over the WEB. All bi-monthly meetings are now broadcast live and are available to the public to view until the next meeting.

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**

Jimmy Whitten, *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**

Kevin Reilly, *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

- Completed transformation activities as required through the VITA/NG Partnership.
- During the two-year reporting period, the agency made significant progress towards completion of a system integration of our current legacy systems which will allow users a comprehensive 360 profile of a motor vehicle dealership in the Commonwealth. This system, *OnBoard*, will allow for field and headquarters operations to view general licensing data for dealers and salespersons and assist staff with processing license material, field inspections, and provide customer service activities. *On Board* will capture data points from licensing forms and dealership records via scanned documents or direct data entry. *OnBoard* will also eventually service data to our current web applications to allow online dealer access for dealers, consumers, and business partners.

The foundation of *OnBoard* has been completed and users are able to use *OnBoard* as a query and research tool. In addition the following functionalities have been added to *OnBoard* that are either not in the current mainframe dealer system or have been enhanced from is on the mainframe system.

- Salesperson license tracking system.
- Capture of business hours to include accommodations for split business hours.
- Capture of inspection results.
- More complete salesperson license history.
- Comprehensive tie between owners and all dealerships owned.
- Longer retention of historical records.

A WEB application has been built to allow field personnel to view and enter data on *OnBoard*. Implementation will be accomplished once the VITA/NG partnership installs a new server.

- In our last Biennial report we reported that we completed scanning all of our “dealer jackets” and we continue to scan documents as they arrive or are generated internally. During this reporting period, we have initiated an effort that will result in further and enhanced forms recognition.



## **DEALER LICENSING**

### **Licensing Activities**

The primary focus of the Board is to license and the over 3,500-combined franchise (new) and independent (used) automobile dealers in the Commonwealth. (There are about 556 franchise dealers and 2,970 independent dealers.) These dealers have a combined total of approximately 17,000 licensed salespersons.

The following chart displays statistical data for Fiscal Years 2009 and 2010, showing the Board's processing activity as it relates to licensing dealers and salespersons: (Note: About 21% of the over 3,500 dealerships have a two year license and about 17% of the nearly 17,000 salespersons have a two year license.)

	<b>Dealer Licenses</b>		<b>Salespersons Licenses</b>	
	<b>FY 09</b>	<b>FY 10</b>	<b>FY 09</b>	<b>FY 10</b>
July	266	295	1522	1438
August	256	267	1384	1160
September	220	249	1349	1453
October	274	264	1583	1340
November	206	256	1509	1615
December	224	236	1597	1589
January	248	226	1614	1482
February	256	167	1684	1256
March	315	335	2175	2334
April	248	230	1329	1433
May	252	221	1473	1498
June	288	247	1346	1253
<b>TOTAL</b>	<b>3053</b>	<b>2993</b>	<b>18565</b>	<b>17851</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. 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:

<b>Dealer License Plates</b>	
<b>FY 09</b>	<b>FY 10</b>
22,046	41,777

## **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 about 500 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.

<b>Period</b>	<b>Telephone</b>	<b>Letters</b>	<b>Email</b>	<b>TOTAL</b>
<b>FY09</b>	5,543	512	635	<b>6,690</b>
<b>FY10</b>	5,019	275	478	<b>5,772</b>
<b>Total</b>	<b>10,562</b>	<b>787</b>	<b>1,113</b>	<b>12,462</b>

## **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-seven classes were held, with nearly 1,900 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.

Regulations were adopted during the reporting period that will require all independent dealer-operators to become re-certified every three years. The regulations are effective as of January 1, 2011. To re-certify, dealer-operators will have the choice of either completing an on-line course, a classroom course or taking a test at any DMV Customer Service Center.

Every other month, the MVDB publishes a newsletter called Dealer Talk. The focus of the newsletter is on dealer education on common problems; changes in laws and regulations; updates and reminders of existing law; and actions taken by the Board against dealers

**OTHER SIGNIFICANT AGENCY ACTIVITIES DURING THIS REPORT PERIOD INCLUDE:**

- The MVDB Board became the first Commonwealth of Virginia Board or Commission to broadcast its meetings live over the WEB. It is believed that the VA MVDB was the first motor vehicle dealer licensing authority in the world to broadcast meetings live over the internet. All bi-monthly meetings are now broadcast live and are available to the public to view until the next meeting.
- 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 the last reporting period, the Board switched to a faster, more comprehensive and less expensive criminal history check provider. The vendor performs a nation-wide criminal history check; OFAC and checks every states' sex offender list. Results are generally available within two days. During this reporting period, the MVDB was able negotiate an agreement that allows dealerships to run their own background checks, thereby allowing a quicker turn-around time to process license applications.

- Updated the agency's WEB site.
- Designed and implemented a new "Consumer Contact" form on the agency's WEB Site.
- Completed staff adjustments in response to a shrinking dealer population.
- Worked closely with the Department of Motor Vehicles in implementing a Print-on-Demand (PoD) 30-day tag system. The system allows dealers to print 30-day tags. The system has many advantages for dealers, law enforcement and for DMV and the MVDB. It is anticipated that by May 2011 the "cardboard" 30-day tags will have been completely phased-out with all dealers using PoD.
- Conducted eighty-seven Administrative Hearings.

# 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 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 2009 and 2010 are shown below:

<i>Fiscal Year Ending June 30, 2009</i>		
<i>Revenues</i>	<i>Expenses/Transfers</i>	<i>Cash Balance</i>
2,075,905	1,918,684	665,180

<i>Fiscal Year Ending June 30, 2010</i>		
<i>Revenues</i>	<i>Expenses/Transfers</i>	<i>Cash Balance</i>
2,031,297	1,989,316	707,160

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. In addition, in FY10 nearly \$85,000 was transferred from the MVDB Operating Fund to the Commonwealth's General Fund. The Board has made spending adjustments and will continue to closely monitor revenue and expenditures.