

2006

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 2006

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 ten 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.

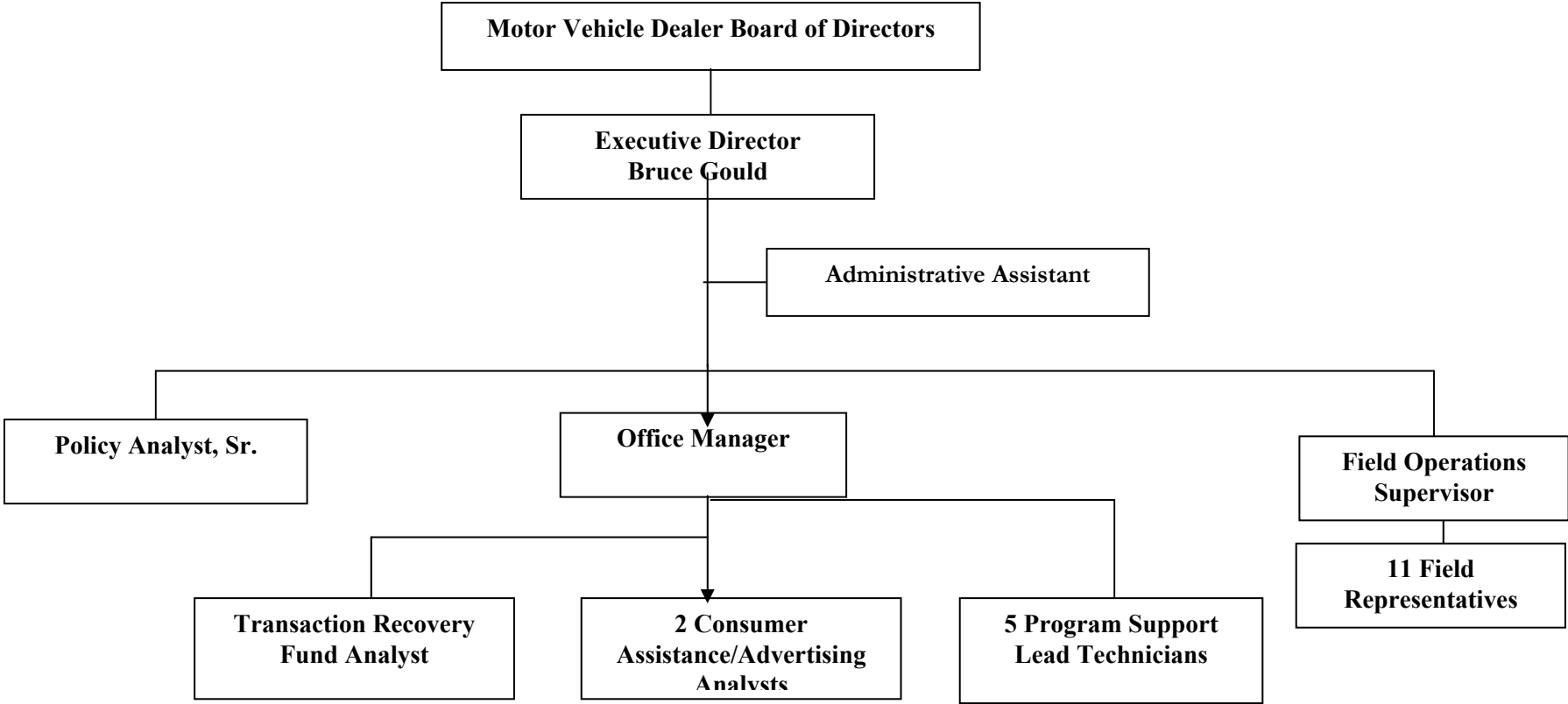
Upon reviewing the report, I'm sure you will agree that the Board is making a positive impact upon the dealer community and the motor vehicle consumer. We thank you for your support as we continue our efforts to minimize regulations and enhance consumer protection.

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

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 3,400 dealer-related license transactions, nearly 23,000 salesperson license transactions and issue over 37,000 dealer tags.

Over 650 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 over 650 contacts made to our office per month, on average, 93 consumer emails are included in the monthly total. This is a 24% increase over the 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 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 94.4% 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. The MVDB's last biennial report documented a 56% decrease in the amount of civil penalties assessed for advertising. During the current reporting period, the Board assessed \$1,500 in advertising-related civil penalties as a result of enforcement efforts. This is a 72% decrease in the amount assessed during the last report period. This continuing decline can be directly attributed to the educational efforts made by the MVDB Board and staff

Also, the Motor Vehicle Dealer Board has aided consumers defrauded by dealers by awarding a total of \$235,577 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 10% decrease from the last reporting period

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 collected nearly \$87,000 in civil penalties from dealers. These penalties are deposited into the Transportation Trust Fund. In addition, the Board suspended one dealer's licenses and revoked another.

Beginning in January of 2006, the Board implemented a two day class at Virginia Community Colleges that applicants for an original independent dealer certificate of qualification must successfully complete before they can take the certificate of qualification test. In the last six months of the reporting period, the Board issued mandates to four existing ("grandfathered") dealer-operators to complete the course or face license suspension.

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

Frank Pohanka, *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

Robert Woodall, *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

Todd Hyman, *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

David Lacy, *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

Pat Patrick, *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. 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 the last reporting 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 reporting period, we have continued to enhance our automated systems when we implemented an automation and reengineering activity that will "overhaul" all existing core business functions within the Consumer Assistance and Motor Vehicle Dealer and Salesperson Regulation service areas. As part of this activity, the Dealer Board intends to establish an automated, historical dealer-database "warehouse" (SQL application-specific) where all records pertaining to dealers licensed by the Board will be available to staff, on-line, from their desktop versus several independent paper file and internal database application locations as they are now.

The Dealer Board began this activity in the last quarter of FY05 by procuring the necessary hardware (a mid-range production scanner), "intelligent" imaging software, and the needed programming services under the agency seat management contract. Currently, the software has been programmed to capture a portion of existing historical records, and staff is nearing the completing of scanning dealer “jackets.” All internal, independent databases will eventually be incorporated into the historical database. However, this is not the activity in it’s’ entirety.

Running concurrently with the scanning of historical records and incorporation of internal applications, Motor Vehicle Dealer Board staff has begun reengineering core business function processes. This reengineering action will be performed in stages, by "module", and each business process will be implemented in succession. Process mapping of the first module has been completed. This mapping exercise fully automates the function to include increased service delivery improvements achieved by use of newly procured "intelligent" software. Automated workflow enhancements, decreased processing cycle time, increased tracking and reporting mechanisms, and automatic dealer-specific record archival and retrieval have been incorporated into the process function.

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 regulate nearly 3,900-combined franchise (new) automobile dealers and independent (used) automobile. (There are about 625 franchise dealer and 3,250 independent dealers.) These dealers have a combined total of approximately 22,000 licensed salespersons.

The following chart displays statistical data for Fiscal Years 2005 and 2006, showing the Board's processing activity as it relates to licensing dealers and salespersons, and issuance of dealer plates:

| | Dealer Licenses | | Salespersons Licenses | |
|--------------|------------------------|--------------|------------------------------|---------------|
| | FY 05 | FY 06 | FY 05 | FY 06 |
| July | 238 | 270 | 1,293 | 1,428 |
| August | 263 | 272 | 1,505 | 1,583 |
| September | 266 | 342 | 1,623 | 1,938 |
| October | 294 | 338 | 1,742 | 2,008 |
| November | 252 | 247 | 1,901 | 1,718 |
| December | 275 | 288 | 2,326 | 2,176 |
| January | 292 | 283 | 2,139 | 2,158 |
| February | 239 | 225 | 1,906 | 1,844 |
| March | 369 | 333 | 3,019 | 2,671 |
| April | 282 | 254 | 1,746 | 1,793 |
| May | 309 | 236 | 2,090 | 1,722 |
| June | 322 | 308 | 1,669 | 1,801 |
| TOTAL | 3401 | 3396 | 22,959 | 22,840 |

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 05 | FY 06 |
| 37,329 | 37,384 |

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 | Walk In | Letter | Email | TOTAL |
|---------------|------------------|----------------|---------------|--------------|--------------|
| 2005 | 4,032 | 81 | 393 | | |
| 2006 | 4,332 | 75 | 365 | 1,117 | 7,895 |
| Total | 8,364 | 156 | 758 | | |

OTHER SIGNIFICANT AGENCY ACTIVITIES DURING THIS REPORT PERIOD INCLUDE:

Course Requirement for New Dealer-Operators

The Motor Vehicle Dealer Board initiated legislation that was adopted by the 2005 General Assembly to require new dealer-operators of independent (used) motor vehicle dealers to complete a course of study before being eligible to earn their dealer-operator certificate of qualification. Each motor vehicle dealership is required to have a dealer-operator. This individual is responsible for and in charge of day-to-day operations of the dealership.

Working in partnership with the Virginia Independent Automobile Dealers Association and the Virginia Community Colleges, the first course was offered in December of 2005. From January through June of 2006, seven courses have been completed at seven different community colleges.

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.

Over the years, the "F&I" (Finance and Insurance) department of motor vehicle dealerships has become enmeshed with the sales transactions to the point where they are now part of the sales process. In fact, the sales manager and the F&I employee has just as much if not more opportunity to do harm to a consumer as they have access to customers' sensitive and personnel information. Recognizing this change in the industry and the fact that F & I employees were not required to be licensed, the Board initiated legislation to expand the definition of a salespersons to include the functions of F & I employees. The General Assembly agreed, and as of July 1, 2006, F & I employees must have a salespersons license and be subject to the same scrutiny as a salesperson.

Webb Site Redesign/Compliance

In the fall of 2005, the Motor Vehicle Dealer Board contracted with *Virginia Interactive* to redesign, update and bring into compliance, agency's WEB site. This project was completed in early 2006. The Motor Vehicle Dealer Board's WEB site is in full compliance with all stat and federal accessibility requirements.

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 have expanded projections. The existing fee structure will provide a revenue base capable of supporting the agency throughout FY07

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 2005 and 2006 are shown below:

| <i>Fiscal Year Ending June 30, 2005</i> | | |
|---|---------------------------|---------------------|
| <i>Revenues</i> | <i>Expenses/Transfers</i> | <i>Cash Balance</i> |
| 1,717,595 | 1,843,094 | 768,153 |

| <i>Fiscal Year Ending June 30, 2006</i> | | |
|---|---------------------------|---------------------|
| <i>Revenues</i> | <i>Expenses/Transfers</i> | <i>Cash Balance</i> |
| 1,757,780 | 2,071,926 | 454,007 |

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 eleven years.

The dealer laws set the maximum fees the Board may levy on dealers. The actual fee schedule is set in APA regulations. The Board has initiated action to adjust the fee schedule. It is anticipated that the new schedule will be in place on January 1, 2008.