

2014

BIENNIAL REPORT

VIRGINIA

MOTOR VEHICLE DEALER BOARD



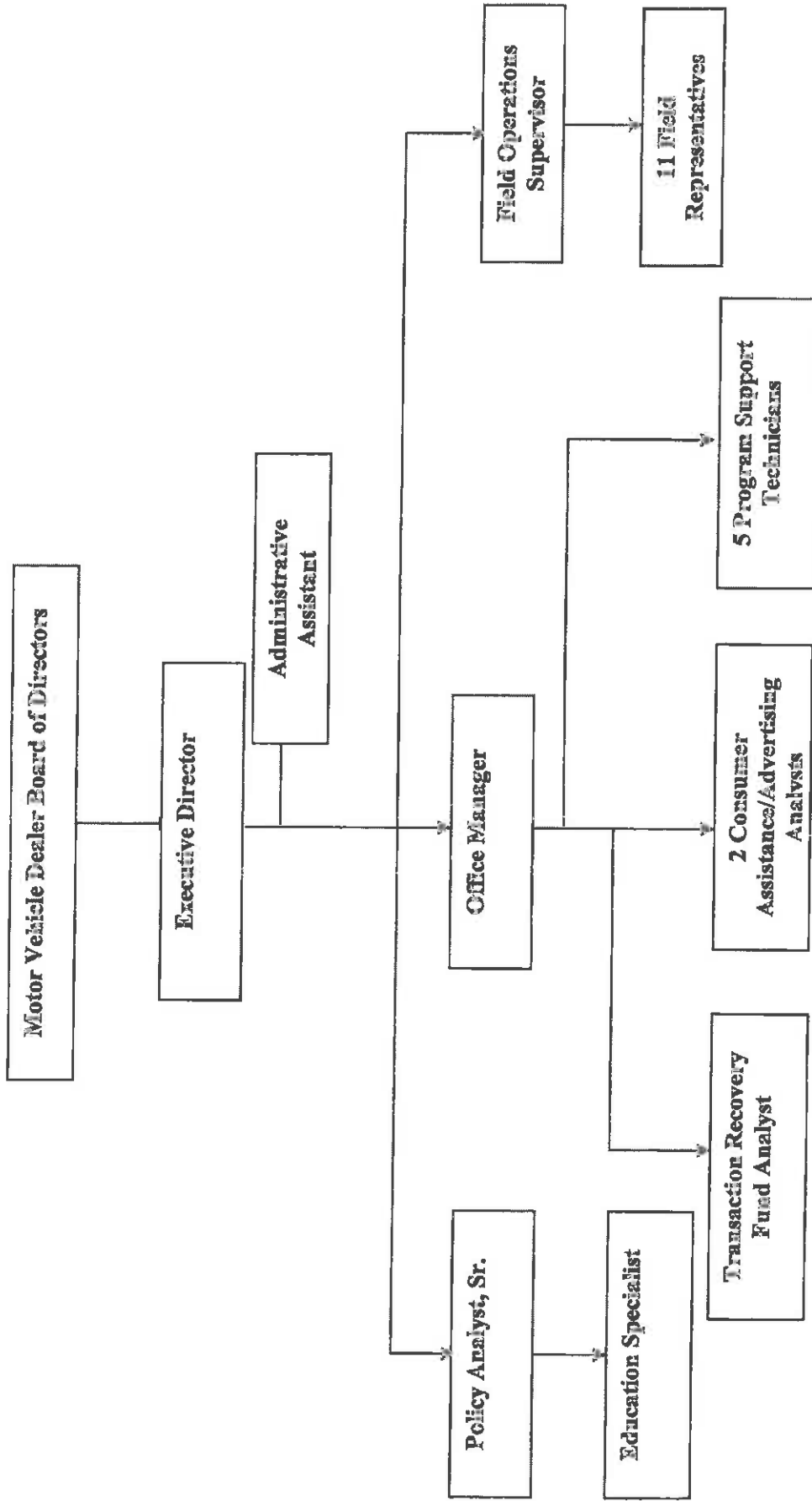
Mission Statement

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

Motor Vehicle Dealer Board Organizational and Operational Chart



(Rev: 01/12)

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 eighteen. 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 be engaged in vehicle rental, and one in the motor vehicle salvage business. The other three members include two consumers with no connection to the motor vehicle dealer industry 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 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.

About 480 consumers, 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:

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

Most consumers contact us by telephone or email with some visiting our office or sending a letter. 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 nearly 100% 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 \$26,250 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 completed a total of 568 educational telephone calls, emails and letters to dealers .

Also, the Motor Vehicle Dealer Board has aided consumers defrauded by dealers by awarding a total of \$250,478 to eighteen consumers 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. At the close of this Biennial period, the Fund balance was \$207,265. During the reporting period the Fund balance reached a low of under \$153,000. Legislation initiated by the MVDB for the 2014 General Assembly, adjusted from \$250 per year to \$350 per year, the fee that dealers pay into the Fund during their first three years in operation. This adjustment was the first in nearly 30 years. The adjustment will ensure the Fund remains solvent and consumers will be protected.

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 \$411,000 and collected \$157,700 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 collection.

Lastly, the Motor Vehicle Dealer Board is self-sufficient and is funded strictly by fees paid by dealers. These fees cover all of the expenses of the Board. No general fund dollars are appropriated to the MVDB.

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 May 10, 2010 Motor Vehicle Dealer Board 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

Chip Lindsay, *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

George Pelton, *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

Joe Tate, *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

Ted Bailey, *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

Ron Kody, *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.

ADMINISTRATIVE HEARINGS

Board staff conducted 134 administrative hearings during the two year reporting period. The Board's education specialist prepares and presents the majority of the cases to a hearing officer. Some cases are presented by the Board's Office Manager or Field Representative Supervisor. Both Informal Fact Finding Conferences and Formal Hearings are conducted at the Board's headquarters in Richmond. While Board staff encourages the individuals who are the subject of hearings to appear in person, they may also participate by telephone.

Hearing officers submit their reports/recommendations to the Board's executive director. The Board has given the executive director the authority to make decisions on certain types of cases that have been adjudicated through Informal Fact Finding Conferences. The majority of decisions are made by the nineteen member Board at their regularly scheduled meetings. The subjects of hearings that are decided by the Board are encouraged to attend the Board meetings. The Board provides time for the subjects of the cases to address the Board and respond to questions posed by the Board.

In advance of their meetings, Board members are provided with the hearing officer's report /recommendations as well as all evidence presented at the hearing and any comments/exceptions to the report as submitted by the subjects of the hearings. The Board discusses each case in order to make the best decision in the interest of consumers and the motor vehicle dealer Community.

In this reporting period the Board has levied civil penalties, suspended and revoked certificates and licenses and mandated the dealership owners take and pass the two-day dealer-operator course. Oftentimes the Board will mandate that a dealer must have a satisfactory inspection or face a suspension or an additional civil penalty. Also during the reporting period, we increased the number of instances where dealers were offered the choice to pay civil penalties and waive their right to a conference.

DEALER LICENSING

Licensing Activities

The primary focus of the Board is to license the nearly 3,500-combined franchise (new) and independent (used) automobile dealers in the Commonwealth. (There are about 550 franchise dealers and 2,900 independent dealers.) These dealers have a combined total of approximately 17,750 licensed salespersons.

In Fiscal Year 2013 Board staff processed 3,105 dealer certificates and 20,844 salespersons licenses. In Fiscal Year 2014 the figures were 2,993 and 21,744 respectively. It should be noted that about 20% of the 3,500 dealers and 15% of the licensed salespersons choose to have a two year license. In order to secure a dealer-operator license or a salesperson license, one must first pass a test. In FY 13, 6,418 tests were administered and in FY 14, 4,283 tests were administered. Through an agreement with DMV, tests may be taken at any DMV Customer Service Center.

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:

Dealer License Plates	
FY 13	FY 14
33,401	34,417

CONSUMER ASSISTANCE

The MVDB employs two full-time employees whose primary responsibilities are responding to consumer concerns and initiating investigations 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 480 consumer contacts per month. [The table below does not include the approximate 100 consumer contacts we receive by email each month.]

The Motor Vehicle Dealer Board provides several methods for which a consumer can contact our office and request assistance.

CONSUMER REQUESTS FY13				CONSUMER COMPLAINTS FY13			
	Total	Written	Phone Calls		Total	Written	Phone Calls
July 2010				July 2011	408	21	387
August	441	22	419	August	456	20	436
September	418	22	396	September	418	30	388
October	381	27	354	October	345	12	333
November	301	12	289	November	278	14	264
December	345	12	333	December	349	7	342
January 2011	343	11	332	January 2012	374	28	346
February	367	18	349	February	376	20	356
March	393	14	379	March	349	11	338
April	510	24	486	April	444	16	428
May	455	19	436	May	421	13	408
June	329	22	307	June	464	27	437
TOTAL	4,283	203	4,080	TOTAL	4,682	219	4,463

DEALER EDUCATION

Legislation initiated by the Board and adopted by the 2005 General Assembly requires all applicants for an original independent dealer-operator 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, a total of forty-four classes were held, with over 1,050 students attending. Many of those attending are doing so voluntarily and some as mandated by the Board.

Previously, regulations were adopted that require all independent dealer-operators to become re-certified every three years. Re-certification is a form of continuing education. To re-certify, dealer-operators have the choice of either completing an on-line course, a classroom course or taking a test at any DMV Customer Service Center. During the reporting period, 1,202 dealer operators re-certified.

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. The newsletter is emailed to nearly 4,000 individuals and is posted on our WEB site.

Dealers and others may subscribe to our email list in order to receive periodic messages concerning items of interest. In addition, we work closely with the trade associations to use their communication tools to educate dealers. The Board's executive director gives presentations at association meetings.

SELECTED AGENCY INITIATIVES:

- **Completed redesign of the Motor Vehicle Dealer Board's WEB site.** Our WEB site received a major "overhaul" during this reporting period. As a result, it is easier to navigate and find what you are looking for. As part of the overhaul we improved many of the functions including the "consumer complaint" form and the "Search Active Dealers" function. Visitors to our WEB site may view and download past issues of our Dealer Talk Newsletter.

The WEB site is compliant with all VITA and related mandates. We also secured the services of a VITA approved vendor to host our WEB site.

- **Updated our imaging software and procedures.** In 2006 the Motor Vehicle Dealer Board became an earlier adopter of converting files from paper to electronic images. During this reporting period we completed a major initiative to replace an aging system and software with a modern system and software. Nearly one half-million imaged documents were migrated to a new and more powerful document management and imaging system. The new software provides easier retrieval and imaging as well as integration with other business systems.

In conjunction with this migration/conversion, we worked with the Library of Virginia in developing a records retention schedule and paper document destruction procedure. Paper documents are scanned and recycled. Other documents are distributed electronically and filed without ever being printed.

- **Virtual Servers.** Working closely with VITA/NG we now utilize virtual servers located in the VITA/NG's safe and secure location. Back-up is provided by VITA.
- **Dealer Talk Newsletter.** We have been producing a newsletter for our constituents since 1998. During this reporting period, we redesigned our *Dealer Talk* newsletter. Our email distribution list for *Dealer Talk* is nearly 4,000 email addresses. The newsletter includes helpful hints, summaries of adjudicated cases and news of interest to dealers to include Governor's press releases concerning industries related to motor vehicles.
- **Co-hosted the 2013 Governor's Transportation Conference.** Worked cooperatively with the Department of Aviation and the Department of Rail and Public Transportation in organizing the 2013 Governor's Transportation Conference held at the Richmond Convention Center.

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 2013 and 2014 are shown below:

<i>Fiscal Year Ending June 30, 2013</i>		
<i>Revenues</i>	<i>Expenses/Transfers</i>	<i>Cash Balance</i>
2,095,931	2,204,499	714,301

<i>Fiscal Year Ending June 30, 2014</i>		
<i>Revenues</i>	<i>Expenses/Transfers</i>	<i>Cash Balance</i>
2,107,052	2,288,857	532,495

The dealer laws set the maximum fees the Board may levy on dealers. Legislation adopted in 2014 allows the Board to adjust fees. Previously, the fee schedule was 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 2007 fee structure was 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. With the economic downturn, the Board has made adjustments. Despite the downturn we have exceeded the time frame of our original six year financial plan. We do not anticipate requiring any adjustment in the current fiscal year. It should be noted that in FY10 nearly \$85,000 was transferred from the MVDB Operating Fund to the Commonwealth's General Fund. The Board will continue to closely monitor revenue and expenditures.