

F & I EMPLOYEES AND SALES MANAGERS MUST BE LICENSED

Last summer, the Board developed a legislative proposal that was later endorsed by the Governor and adopted by the 2006 General Assembly that will change the definition of a salesperson as of July 1, 2006.

House Bill 967 broadens the definition of a motor vehicle salesperson to include those functions performed by the sales manager and dealer employees who are in the "F&I" side of the automobile sales industry. Currently, F&I employees and the sales manager are not required to be licensed. The bill also clarifies the fact that salespersons cannot be independent contractors and that dealers must ensure that all of their salespersons are licensed.

The primary objective of the bill is "consumer protection." Since the employees in a dealer's F&I department have access to sensitive, personal information and they are an integral part of the sales process, the board believes they should be subject to the same scrutiny and qualification test as the salesperson. On July 1, 2005, the following definition of a salesperson will take the place of the current definition:

Section 46.2-150, Definitions. "Motor vehicle salesperson" or "salesperson" means (i) any person who is hired as an employee by a motor vehicle dealer to sell or exchange motor vehicles and who receives or expects to receive a commission, fee, or any other consideration from the dealer; (ii) any person who supervises salespersons employed by a motor vehicle dealer, whether compensated by salary or by commission; (iii) any person, compensated by salary or commission by a motor vehicle dealer, who negotiates with or induces a customer to enter into a security agreement on behalf of a dealer; or (iv) any person who is licensed as a motor vehicle dealer and who sells or exchanges motor vehicles. For purposes of this section, any person who is an independent contractor as defined by the United States internal revenue code shall be deemed not to be a motor vehicle salesperson.

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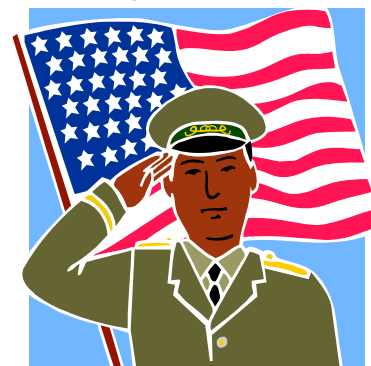
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HOLIDAY HOURS

In observance of the upcoming holidays, all state agencies, including the Dealer Board, will be closed on the following date:

Monday
May 29, 2006



MEMORIAL DAY!

BOARD ACTIONS

Unlicensed Salesperson: As a result of a random inspection, field representative Garrett discovered that a South Hill area dealer was employing an unlicensed salesperson and that the unlicensed individual had received commissions from the sale of 22 vehicles. The dealer was given the option of paying a \$2,200 civil penalty and accepting a written warning or requesting an informal fact-finding conference. The dealer decided to request the conference. The hearing officer recommended that a \$2,200 civil penalty be assessed and the Board decided that \$500 civil penalty should be levied.

Unlicensed Salesperson: The Board received a letter alleging that a salesperson for a Northern Virginia area dealer was not properly licensed. A review of the dealer's records by a field representative revealed that the unlicensed salesperson had received compensation for the sale of 268 vehicles over a three year period. An informal fact-finding conference was conducted to address the alleged violations and the hearing officer recommended that a \$2,680 civil penalty be assessed. The Board agreed with this recommendation.

Dealer Practices: A field representative visited a Tidewater area dealership to investigate a consumer complaint. As a result of this investigation, an informal fact-finding conference was convened alleging that the dealer had compensated an unlicensed salesperson; improperly completed a Buyer's Order; failed to submit to DMV within 30 days of the sale, an application for title, copy of the buyer's order, all required fees; having made a material misstatement or omission on an application; defrauding a retail purchaser and having used deceptive acts or practices. The hearing officer recommended that the Board assess civil penalties totaling \$8,200. The Board determined that a \$1,000 civil penalty should be levied.

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DEALER TALK

A Bi-monthly newsletter of The Virginia Motor Vehicle Dealer Board
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NOTE: We make every effort to ensure information in *Dealer Talk* is accurate, but it is not a substitute for legal advice.

Calendar of Events

**All Meetings held at DMV Headquarters
2300 W. Broad Street, Room 702
Richmond, VA**

Monday, May 8, 2006
Time: 8:30 a.m.
Dealer Practices Committee Meeting

Monday, May 8, 2006
Time: Immediately following Dealer Practices
Licensing Committee Meeting

Monday, May 8, 2006
Time: 9:30 a.m.
Advertising Committee Meeting

Monday, May 8, 2006
Time: Immediately following Advertising
Transaction Recovery Fund Committee Meeting

Monday, May 8, 2006
Time: 10:00 a.m.
Full Board Meeting

NOTE: Meetings may begin later, but not earlier than scheduled. Meeting end times are approximate.

BOARD ACTIONS

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Motor Vehicle Transaction Recovery Fund:

At the March Board meeting, the Transaction Recovery Fund Committee and the Board considered and approved the following two claims:

- A consumer filed a claim against Premier Auto, a dealership that was owned and operated by Mr. Eddie Mayo in Virginia Beach. The dealership is no longer in business. The consumer had been awarded judgment in court for fraud in connection with the sale of a motor vehicle. The Board approved payment from the Fund in the amount of \$16,182.

A consumer filed a claim against Al's Cars of Norfolk, a dealership owned and operated by Mr. William Cairns. The consumer had been awarded judgment in court for Breach of Contract. The Board approved payment from the Fund in the amount of \$20,000.



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Also, Section 46.2-1537. Prohibited solicitation and compensation. It shall be unlawful for any motor vehicle dealer or salesperson licensed under this chapter, directly or indirectly, to solicit the sale of a motor vehicle through a pecuniarily interested person, or to pay, or cause to be paid, any commission or compensation in any form whatsoever to any person in connection with the sale of a motor vehicle, unless the person is duly licensed as a salesperson employed by the dealer. *It shall also be unlawful for any motor vehicle dealer to compensate, in any form whatsoever, any person acting in the capacity of a salesperson as defined in §46.2-1500 unless that person is licensed as required by this chapter.*

It is important for you to study this definition. All employees of your dealership that meet any of the criteria as noted in the definition will need a salesperson's license. In addition, this is a good time to ensure that none of your salespersons are "independent contractors" (IRS Form "1099").

If any of your employees meet any of the criteria noted in the new definition, we recommend that you work with that employee as soon as possible to apply for their sales license. If you wait until the end of June, we might not be able to complete the licensing process by July 1.

By coincidence, the general assembly adopted another bill related to "independent contractors". House Bill 168 will make it unlawful for an employer to falsely claim the employment status of an individual employed by him for the purpose of evading the withholding or payment of individual income tax. "Employment status" has the same meaning as defined by the United States internal revenue code. The penalty for violation is a class 1 misdemeanor.

A copy of the IRS brochure concerning the definition of an "independent contractor" can be found by going to the board's web site (www.mvdb.virginia.gov) and click on "links".

OTHER BILLS OF INTEREST to dealers that are effective July 1, 2006 unless otherwise noted:

Senate Bill 89 will require manufacturers of new motor vehicles (beginning with the 2008 model year) equipped with a data recording device and sold or leased in the Commonwealth to disclose that fact in the owner's manual for that vehicle.

Senate Bill 134 and House Bill 1258 establish a "Towing Operator's Board" modeled after the MVDB. Once fully implemented, in 2008, the towing business will be more tightly regulated.

Senate Bill 194 and House Bill 250 allow for temporary registration of a motor vehicle without temporary ownership. Today, when a consumer is issued "temp tags" and a temporary registration, that customer is also given "temporary" ownership of the vehicle. This new law will allow temporary registration without temporary ownership. The consumer must still have insurance.

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Senate Bill 306 increases the bond requirement for new dealers to \$50,000.

Dealers in their 2nd and 3rd year of the bond will continue to be required to carry a \$25,000 bond.

Senate Bill 454 and House Bill 1248. Senate Bill 454 and House Bill 1248. Currently, vehicles displaying clean special fuel plates are allowed to use the HOV lanes, even if the vehicle has only one occupant. These bills require that beginning July 1, 2006, a different style of clean special fuel license plate be issued to all qualifying, newly registered vehicles. **After July 1, 2006, the exemption for using HOV lanes serving the I95/395 corridor in Northern Virginia will be limited to those who have the "old" style clean special fuel license plates.** In effect, the bill "grandfathers"

those who applied for a vehicle registration prior to July 1, 2006. These "grandfathered" vehicles will not be exempt from the occupant requirements after July 1, 2007. The bills state the DMV with the MVDB must ensure that potential purchasers are aware of these changes and the advantages/disadvantages of purchasing such a vehicle. A public relations campaign will be implemented. One possibility is to develop a "form" for customers to sign at the point/time of sale stating that they understand the changes, etc.

House Bill 259 Manual Transaction Fee. Allows a dealer to complete 20 transactions per month before the \$15 per transaction fee is applied.

House Bill 793 will enable DMV to convert to a "print on demand" 30 day tag system. The bill "grandfathers" dealers in existence prior to implementation to allow them to continue to have the option of purchasing and issuing temp tags as is now done.

House Bill 827 strengthens the law that prohibits obscuring a license plate. If you put a license plate holder on your customer's cars – be sure the holder does not obscure anything on that plate.

House Bill 22 increases the maximum fee allowed for vehicle safety inspection by \$1, of which \$.50 is to be transmitted to the Department of State Police to support the Department's costs in administering the motor vehicle safety inspection program. The bill also requires written notice by the Superintendent of State Police prior to his revocation of the designation of any safety inspection station.

House Bill 436 provides that any vehicle valuation service regularly used and recognized in the automobile industry may be used as evidence of a vehicle's value and not just the national automobile dealers' association "black" or "yellow" book.

Senate Bill 8 raises the penalty for using a false name or address in any application for the registration of any vehicle, for a certificate of title, or for any renewal or duplicate certificate, or knowingly making a false statement of material fact or concealing a material fact or committing a fraud in any registration application from a traffic infraction to a Class 1 misdemeanor.

NOTE: The bill creating three tax free days in August for the purchase of school supplies does NOT apply to the titling tax.



DO YOU MISS DEALER TALK?

We produce six issues of Dealer Talk each year and we trust that you find the information included in this newsletter to be helpful. If you rely on receiving Dealer Talk by mail – you are missing out on most of the issues as we only mail one or two issues per year. The other issues are distributed by email. In order to receive your copy by email, you must sign-up for e-mail notification. To do this, simply, go to our WEB site at www.mvdb.virginia.gov and from the Home page under "What's New" and then "click" on "Subscribe to Our E-Mail List". Back issues of Dealer Talk can also be found on our WEB site under "Dealer and Salesperson" link. Please note that we do not share your email addresses with anyone else. There is no limit as to how many individuals in your dealership can sign-up and you may sign-up from your dealership or from home. Don't hesitate – sign-up now and you will not miss out on a single issue of Dealer Talk.

If you have any suggestions for improving Dealer Talk or if there is a topic you would like for us to cover, call me at 804-367-1100; ext. 3002 or send me an email: bruce.gould@mvdb.virginia.gov

DEALER-OPERATOR COURSE

Beginning January 1, 2006, the dealer-operator of any new independent motor vehicle dealership will be required to successfully complete a course of study before they will be allowed to take the dealer-operator qualification test at any DMV Customer Service Center.

This course can be beneficial to others who work in a dealership. We encourage dealers – both independent and franchise - to consider attending this class. You may also consider sending your dealer-operator, title clerk and sales staff.

The Virginia Community College System and the Virginia Independent Automobile Dealers Association (VIADA) have teamed up to present a two-day course each month at one of the many College campuses throughout the state.

COURSE SCHEDULE

May 9 & 10 - Blue Ridge Community College, Weyers Cave (Near Harrisonburg)

Contact: Jane Fuller; 540-453-2216; www.brcc.edu

May 23 & 24 – Northern Virginia Community College, Loudoun

Contact: Esther Perantoni; 703-450-2648;
www.nv.cc.va.us/loudoun/

June 13 & 14 Virginia Highlands Community College, Abingdon

Contact: Beth Duffield; 276-739-2430;
www.vhcc.edu

July 18 & 19 Lord Fairfax Community College, Middletown Campus

Contact: Bill Pence; 540-868-7061; www.lfcc.edu

August 22 & 23 Central Virginia Community College, Lynchburg

Contact: Twila DeMaster; 434-832-7607;
www.cvcc.vccs.edu

September 13 & 14 Paul D. Camp Community College

Contact: Randy Betz; 757-569-6064 or Renee Brown; 757-569-6050; www.pc.cc.va.us/

October 10 & 11 Piedmont Community College, Charlottesville

Contact: Valerie Palamountain; 434-961-5333;
www.pv.vccs.edu

November 15 & 16 Tidewater Community College, Norfolk

Contact: Becky Yingling; 757-822-1402;
www.tcc.edu

December 6 & 7 Community College Workforce Alliance at J. Sargeant Reynolds Community College, North Run Campus, Henrico, County

Contact: Kristine Martin; 804-706-5252;
www.ccwa.vccs.edu

Registration materials and information are available from each of the Community Colleges' WEB site or by calling the individual college.

The cost is \$300 and must be submitted by check or credit card, payable to the college, and submitted with the registration.



SIGN-UP FOR E-TRANSACTIONS

The Motor Vehicle Dealer Board (MVDB) and the Department of Motor Vehicles (DMV) have partnered to provide FREE on-line dealer licensing and temp tag authorization transactions.

As of June 2, 2005, only individuals that you, the dealer, authorize are allowed to purchase temp tags at DMV Customer Service Centers and the MVDB office. If you sign-up for E-Transactions you can add or delete names to the list in real time from the comfort of your office. (If you are **not** a subscriber, in order to add or delete a name to/from the list you will be required to complete a form and FAX or mail it to DMV Headquarters. This may take several days.)

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SIGN-UP FOR E-TRANSACTIONS

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This service also provides motor vehicle dealers the opportunity to renew their dealer certificate, salespersons licenses, and license plates via the web for FREE and in REAL-TIME without having to visit our office or mail-in renewal applications. Once you submit your applications over the WEB, your renewal items will be mailed to you within seven business days of the date of your on-line renewal transaction.

Your renewal information goes directly into your DMV record upon your paid (on-line) licensing renewal fee submission. The DMV on-line renewal system accepts Visa, MasterCard, and Discover.

To get started, simply complete and sign an Extranet Transaction Access Application, and return to DMV. Within a matter of days, DMV will send you a memorandum of understanding (MOU) for signature. After DMV has received your signed MOU, you will be sent a user manual and a security device "fob" (free of charge) to immediately begin accessing your records over the DMV Extranet site.

Dealers who sign-up for this FREE service can also submit a salesperson application ("DSD 7") to the Board via the online system. It will be the quickest and easiest way to submit an original ("new") salesperson's application or transfer application. You will be able to submit your Application for Dealer/Drive-Away/Office Trailer Plates ("DSD 9") using this same system.

So don't wait! Go to the MVDB website at www.mvdb.virginia.gov and click on "On-Line Services" to access an application or contact the Dealer Board Office toll free at (877) 270-0203 X3004 and we'll send you a E-transaction package.

REMINDER: Both transfer and brand new salespersons must have their licenses issued in the name of your dealership before they can begin sales activities. If you wish to double check the license status of your salespersons, go to www.mvdb.virginia.gov and "click" on "Dealer Database Search". Type in our dealer number and a list of your licensed salespersons will be displayed.