

GUIDANCE MEMORANDUM TO ALL VIRGINIA MOTOR VEHICLE DEALERS MARCH 15, 2012

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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.

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; while providing a high level of customer service for the automotive consumer and dealer community.

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[**NOTE:** This Memorandum was sent by email to all who have signed-up to receive email notifications from the Motor Vehicle Dealer Board and it is also posted on our WEB site. If you would like to receive email notifications from the MVDB, go to www.mvdb.virginia.gov and click on [Subscribe to Our Email List](#) in the "What's Hot" area of our Home page.]

At its January 9, 2012 meeting, the Virginia Motor Vehicle Dealer Board determined that dealers paying fees to TrueCar based on TrueCar's pricing model in effect at that time, are in violation of Virginia Law. The MVDB January 11, 2012 Memorandum to All Virginia Motor Vehicle Dealers stated:

At the January 9, 2012 Board Meeting, TrueCar indicated that it would reassess its dealer pricing/fee model utilized in Virginia in an attempt to come into compliance with Virginia law. Please note that the next opportunity for the Board to review formally an alternative pricing/fee model would be at the Board's next meeting scheduled for March 12, 2012

At its March 12, 2012 Meeting, the Board discussed and analyzed TrueCar's current model. (Put into effect after the January 9, 2012 meeting.) Based on that discussion and testimony from TrueCar representatives present at the meeting, the Board adopted the following resolution:

The Motor Vehicle Dealer Board believes that TrueCar's current pricing model is not consistent with Virginia Law as the model is adjusted quarterly based on seasonality and other value factors and that dealers paying fees to TrueCar could be in violation of Virginia Code Section 46.2-1537.

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Calendar of Events

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

Monday, March 12, 2012

Time: 9:00 a.m.

Dealer Practices Committee Meeting

Monday, May 14, 2012

Time: Immediately following Dealer Practices

Licensing Committee Meeting

Monday, May 14, 2012

Time: Immediately following Licensing
Advertising Committee Meeting

Monday, May 14, 2012

Time: Immediately following Advertising

**Transaction Recovery Fund
Committee Meeting**

Monday, May 14, 2012

Time: 10:00 a.m.

Full Board Meeting

NOTE: Meetings may begin later,
but not earlier than
scheduled.

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The Board did determine that enforcement action on Virginia dealers will be based on usage of this pricing/fee model going forward -- i.e., from the date of this memorandum, and not based on actions prior to that date.

Please be reminded that it is the motor vehicle dealer's responsibility to scrutinize its agreements with unlicensed third party entities, as it is the motor vehicle dealer that is held responsible for compliance with Virginia law. Dealers may not pay a third party on a per sale or per lead basis including any variation where a "flat fee" is adjusted periodically and that adjustment is based on past performance.

Dealers are also reminded that you are responsible for all advertisements for your motor vehicles including all internet advertising. Internet advertisements including videos and YouTube postings must adhere to the same advertising guidelines as print or television. We urge all dealers that advertise on the internet to review these advertisements very carefully as we are finding many that are not in keeping with Virginia law and regulations.

Lastly - employees who quote prices, discuss features and otherwise engage in the solicitation of a motor vehicle with a potential customer must have a salesperson's license. This includes internet "team" members. If your "internet" employees are quoting prices to consumers who have submitted an inquiry over the internet - that employee must be licensed. If the employee is merely "greeting" the potential customer and offering to set-up an appointment or forward the customer's information to a licensed salesperson, that "greeter" is not require to be licensed.

HOLIDAY HOURS

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

Monday
MAY 28, 2012
MEMORIAL DAY!



WATCH US ON THE WEB

The next Motor Vehicle Dealer Board meeting, which is scheduled for May 14 at 9:00 am, will broadcast live on the WEB once again. A hot link will be posted on the MVDB Home Page (www.mvdb.virginia.gov) for a quick and easy connection to the broadcast. Mark your calendars now!

Time to Recertify?

Dealer-Operators of independent dealerships must recertify every three years by either taking a class on-line or in a classroom or by passing a test. Click [HERE](#) for more information and [HERE](#) to determine if you must recertify between now and October 31.

GENERAL ASSEMBLY UPDATE

Transaction Recovery Fund

Senate Bill 421 was adopted by the Virginia General Assembly without a single negative vote and was signed into law by Governor McDonnell and is effective as of July 1, 2012. This bill which makes a number of changes related to the **Transaction Recovery Fund (TRF)** was the product of a work group that included the Motor Vehicle Dealer Board (MVDB), the Department of Motor Vehicles (DMV); the Virginia Trial Lawyers Association (VTLA); the Virginia Independent Automobile Dealers Association (VIADA); and the Virginia Automobile Dealers Association (VADA). The new law:

- Allows consumers to recover attorney fees against the dealer's bond. Under current law a consumer who was reimbursed by the dealer's bond for their loss, had to file a claim against the TRF to recover attorney fees.
- Permits the TRF to drop below the currently mandated \$250,000 balance requirement. This change will help avoid or delay a special assessment being imposed on all dealers to re-fund the Fund.
- Increases from \$20,000 to \$25,000, the maximum claim that can be paid to a single claimant and provides a mechanism to automatically adjust future maximum claim amounts to keep pace with inflation.
- Provides a new mechanism whereby a person who purchases a vehicle in good faith from a dealer who subsequently goes out of business and the title of the vehicle is being held by another entity (floor planner), to obtain the title to the vehicle they purchased.
- Allows DMV to issue a temporary registration to a person who purchases a vehicle from a dealer who has gone out of business and the title is being held by another.

(HB 171 which was also adopted by the General Assembly and signed by the Governor included the first two points as noted above. The two bills are compatible.)

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ADVERTISING

Pay Per Click (PPC) advertising is employed by Google and others whereby a dealer pays a fee each time an individual “clicks” on a dealer’s name within a list of dealership names on a WEB site after having conducted a “search”. If clicking on a particular dealer’s name takes the individual to the dealer’s WEB site, there is no violation of the Dealer Licensing Laws as no information about the individual is passed to the dealer. In a typical PPC model, the third party does not quote a price or provide any price guarantees – it merely sends the person conducting the search to the dealer’s WEB site.

FTC Advertising Ruling: Five car dealers from around the country have agreed to Federal Trade Commission settlement orders that require them to stop running ads in which they promise to pay off a consumer's trade-in no matter what the consumer owes on the vehicle. The FTC charged that the ads deceived consumers into thinking they would no longer be responsible for paying off the loan balance on their trade-in, even if it exceeded the trade-in's value (i.e., the trade-in had "negative equity"). The dealers rolled the negative equity into the consumer's new vehicle loan.

We strongly advise that if you use a similar advertisement that you discontinue this line of advertising immediately. Continued use could lead to the assessment of civil penalties and or the suspension or revocation of your dealer license.

GENERAL ASSEMBLY UPDATE

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Temporary Supplemental (off-site) Sales License

Dealers who wish to conduct a sale away from their licensed location must first obtain a Temporary Supplemental License from the MVDB. HB 235 was adopted by the General Assembly and signed by the Governor and is effective as of July, 1, 2012 and does the following:

- Limits car/truck, motorcycle and recreational vehicle dealers to conducting no more than eight off-site sales in a year and no more than one sale consecutively in the same jurisdiction. Under current law there are no limitations as to the number of these types of sales a dealer may conduct.
- Currently, when a dealer conducts a sale outside their jurisdiction or in an adjacent jurisdiction, the dealer must notify all dealers in the jurisdiction in which the sale is to take place. This bill requires that the notification be made by certified mail and that the regulating agency (MVDB or DMV) receive a list of the dealers notified.

Reminder: Legislation adopted by the 2011 General Assembly will require all dealers to have an internet connection and email address by July 1, 2013.

PUBLIC MEETING

During the March 12, 2012 Board meeting, the Board heard a presentation requesting the Board authorize an additional vendor to present the 2-day traditional classroom course for initial dealer-operators. This presentation proposal also included a request for the Board to allow an online web based Initial Dealer-Operator Educational Course. After the presentation, the Board created an ad-hoc group of Board members and MVDB staff for further exploration and discussion of these two proposed items.

The first meeting of this group, which is open to all, will take place on April 16, 2012 at 1:00 p.m. at the Department of Motor Vehicles Headquarters Building at 2300 West Broad Street; Room # 133 (Williamsburg Room) Richmond, VA 23269. For more information go to the MVDB’s WEB site and see the link under “What’s Hot”.

PRINT-ON-DEMAND TEMP TAG UPDATE

Thanks to dealer feedback, DMV is upgrading print-on-demand 30-day temporary tags with a durable paper that will no longer require plastic sleeves to affix to vehicles. Dealers will begin using the new weather resistant tags July 1, 2012. You are encouraged to deplete any unused stock of red cardboard tags. At some point in the near future they will no longer be allowed. As a result of legislation this year, the fee for a set of temp tags will increase from \$2 to \$3 per set. Dealers will order the paper stock from DMV which will ship it directly to your location free of charge. Also July 1, fees for cardboard temporary transport tags will increase to \$1.50 per plate. Later this year, you will be able to print on demand temporary transport tags using the same sturdy paper stock as 30-day tags. Be on the lookout for future updates regarding these programs.

DO YOU MISS DEALER TALK?

We produce six issues of *Dealer Talk* each year. 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 e-mail. In order to receive your copy by e-mail, 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 Hot”, click on “Subscribe to Our E-Mail List”. Back issues of Dealer Talk can also be found on our WEB site under the heading “Dealer and Salesperson”.

BOARD ACTIONS

Amera-USA, Inc. and Christian H. Crawford. It was discovered that this Salem dealer would oftentimes state a lower selling price on a buyer’s order in order to decrease the amount of sales tax the purchaser would need to pay and decrease the amount of income tax the dealer would need to pay. A DMV investigator had evidence that this deception was carried-out at least 23 times. The Commonwealth’s attorney agreed to drop all charges against Mr. Crawford in exchange for him paying the difference in titling tax collected verses what was actually paid. The MVDB convened an informal fact-finding conference to address the alleged violations of VA Code Section(s) 46.2-1575(1) (having made a material misstatement on an application) and 46.2-1575(6) (having used deceptive acts and practices). Based on the information provided at the conference and the hearing officer’s report, the Board voted to assesses a \$5,750 civil penalty against Mr. Crawford

Ray’s Auto Recovery Sales Rental LLC and Raymond A. Wilborne. In December of 2008, Mr. Wilborne was convicted of five felonies related to the business of selling vehicles. In July of 2011, he was convicted of another misdemeanor related to the business of selling motor vehicles. Upon learning of these convictions, Board staff discovered that on the dealer renewal packages for 2010 and 2011, Mr. Wilborne answered “no” to the question on the forms asking if any owner or officer had ever been convicted of a criminal act connected to the business of selling motor vehicles. An informal fact-finding conference was conducted for this Danville area dealer to address the alleged violations of VA Code Section(s) 46.2-1575(1) (having made a material misstatement on an application) and 46.2-1575(9) (having been convicted of any criminal act involving the business of selling vehicles). Based on the information provided at the conference and the hearing officer’s report, the Board assessed a \$1,000 civil penalty. Mr. Wilborne voluntarily completed the dealer-operator two-day class.

Marlin Motors, Inc. and Jeffrey H. Fox. As a result of receiving a number of consumer complaints involving titling issues; misuse of temporary tags and failing to safety inspect vehicles, on January 23, 2012, an informal fact-finding conference was conducted to address the alleged violations by this Virginia Beach dealer of VA Code Section(s) 46.2-1539 (inspections of vehicles required), 46.2-1542(B) (Temporary Registration), 46.2-1544 (Assignment of Title), 46.2-1550 (1) (Use of Dealer Plates), 46.2-1575 (2) (Failure to comply with a written warning) and 46.2-1575(6) (having used deceptive acts and practices). Based on the information provided at the conference and the hearing officer’s report, the Board voted to assess a civil penalty of \$3,500 and require that Mr. Fox attend the dealer-operator course.

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BOARD ACTIONS

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Cars Unlimited and Scotty M. Laughlin. Working with the Virginia State Police, an investigation revealed that this Abingdon dealer purchased eight inspection stickers from an inspection station and affixed them to motor vehicles in his inventory. In the course of the investigation, the field representative noted several other alleged violations including misuse of dealer tags and sales by an unlicensed salesperson. On July 28, 2011, an informal fact-finding conference was conducted to address alleged violations of the Dealer Laws. At the September 12, 2011 Board meeting, the Board passed a resolution assessing a civil penalty of \$2,000 and suspended for 2 years, [the same amount of time the State Police suspended the service station's safety inspection license] all licenses and certificates issued by the Board to Mr. Laughlin and mandated Mr. Laughlin successfully complete the dealer-operator course. Mr. Laughlin appealed this decision and requested a formal hearing.

A formal hearing was conducted and the report from this hearing was reviewed by the Board at its February meeting where the Board voted to assess a \$2,000 civil penalty and suspend for two years Mr. Laughlin's salesperson license and dealer-operator and salesperson certificates of qualification.

Joseph T. Byrum, Salesperson. Mr. Byrum is the former owner of Heritage Chrysler Plymouth in South Hill and is currently a licensed salesperson at A-1 Four Wheel Deals, Inc in South Hill. In August of 2011, the Transaction Recovery Fund made a payment to a consumer who had filed a claim against Heritage. As the owner of Heritage at the time of the sale that lead to the TRF claim, an informal fact-finding conference was conducted to address the alleged violations of VA Code Section(s) 46.2-1574, (acts of officers, directors and salespersons) and 46.2-1575(4) (Defrauding any retail buyer, to the buyer's damage, or any other person in the conduct o the licensee's or registrant's business). Based on the hearing officer's recommendation, the Board determined that Mr. Byrum should be allowed to retain his salesperson's license.

Michael Crutchfield, Salesperson. Mr. Crutchfield operated his own dealership from June 2003 – March 2010. Previous to opening the dealership he had been convicted of two misdemeanors related to the motor vehicle dealer business. In applying for his dealer license Mr. Crutchfield disclosed his convictions and continued to do so on subsequent applications. In April of 2010 Mr. Crutchfield was issued a salesperson license for his current employer, East End Auto Sales in Richmond. In January of this year, it came to the attention of the Board that Mr. Crutchfield had been convicted of two additional misdemeanors (Attempt to Fraudulently Obtain a Title and Forgery of a Public document) related to a June 2010 incident. On January 25, 2012, an informal fact-finding conference was conducted to address what action if any the Board should take as a result of the latest convictions. Based on the information provided at the conference and the hearing officer's report, the Board voted to assess a \$1,000 civil penalty against Michael Crutchfield.

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BOARD ACTIONS

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Robert Hillmer, Salesperson. In November of 2011 Mr. Hillmer completed an application for a salesperson license and the MVDB criminal check form. On both of these forms Mr. Hillmer answered “NO” to the question have you ever been convicted of a felony. The criminal background check revealed that Mr. Hillmer had been convicted of five felonies. On January 18, 2012, an informal fact-finding conference was conducted to address the alleged violations of VA Code Section(s) 46.2-1575(1) (Having made a material misstatement on a renewal application) and 46.2-1575 (13) (Having been convicted of a felony). Based on the information provided at the conference and the hearing officer’s report, the Board voted to deny Mr. Hillmer’s application for a motor vehicle salesperson’s license.

Hamid R. Mahjor and HRM Auto, LLC. In July of 2011, an MVDB field representative and a DMV agent visited Mr. Mahjor’s dealership in Stafford in response to a consumer complaint. During the visit, 10 open titles were found and DMV agent Weatherford issued four misdemeanor summons for open titles. On October 21, 2011, Mr. Mahjor was convicted on one count of possession of an open title. On November 28, 2011, Mr. Mahjor submitted a renewal application to MVDB where he answered “NO” to the question asking if any partner, owner has ever been convicted of any criminal act involving the business of selling motor vehicles. On February 14, 2012, an informal fact-finding conference was conducted to address the alleged violations of VA Code Section(s) 46.2-1575(1) (Having made a material misstatement on a renewal application) and 46.2-1575 (9) (Having been convicted of any criminal act involving the business of selling vehicles). Based on the information provided at the conference and the hearing officer’s report, the Board voted to assess a \$2,000 civil penalty and revoke all licenses and certificates issued to Mr. Mahjor. [Previous to the Board meeting, Mr. Major’s dealer licenses had been suspended for not having a bond. As of the date this article was written, this suspension was still in place.]

Charles Barker Infiniti. Janice Parker was the Vice President for Showcase Auto Sales. This dealership was the subject of a highly publicized investigation by DMV and subsequent, payments from the Transaction Recovery Fund. Showcase closed in February of 2011 and Ms Parker was hired as a salesperson at Barker about three weeks later. In the course of conducting his investigation, DMV agent Stone discovered that Ms. Parker was advertising vehicles for sale under the name of “Virginia Beach Highlines”. The address listed on these advertisements was the address of Charles Barker Infiniti and it appeared that the vehicles advertised were in fact in the inventory of Charles Barker. Agent Stone visited the dealership and spoke to the General Manager, Mr. Thornton, who stated that he was aware of these advertisements. The MVDB levied a \$1,000 civil penalty on the dealership for a number of advertising and other violations. The dealership appealed this decision and an informal fact-finding conference was convened. At its February meeting, the Board determined that no further action should be taken at this time.

IMPORTANT NOTICE TO ALL PROSPECTIVE DEALERS

The dealer-operator of any new independent motor vehicle dealership is required to successfully complete a course of study before they will be allowed to take the independent dealer-operator qualification test at any DMV Customer Service Center. "Grandfathered" dealer-operators, title clerks, and salespersons are encouraged to take the course as well. The Virginia Community College System and the VIADA have teamed up to present a two-day Dealer-Operator course. The following is a list of up-coming classes:

May 1 & 2 - Thomas Nelson Community College, Hampton

Contact: Registration; 757-825-2937; www.tncc.edu

May 15 & 16 - Blue Ridge Community College, Weyers Cave

Contact: Registration; 540-453-2215; www.brcc.edu

June 5 & 6 - Germanna Community College, Fredericksburg

Contact: Susan Brown; 540-891-3012; www.germannna.edu/workforce

June 19 & 20 - Danville Community College, Danville

Contact: Donna Agee; 434-797-6437; www.dcc.vccs.edu/workforce

July 10 & 11 - Northern Virginia Community College, Reston

Contact: Claire Wynn; 703-450-2551; www.nvcc.edu/loudoun/continuing

August 7 & 8 - Virginia Western Community College, Daleville

Contact: Registration; 540-966-3984; www.virginiawestern.edu

August 21 & 22 - Piedmont Community College, Charlottesville

Contact: Maggie Myers; 434-961-5495 or mmyers@pvcc.edu

Registration materials and information are available from each of the Community Colleges' WEB site or by calling the individual college. The cost is \$325 if you register at least two weeks prior to the date of the course and \$375 if you register within two weeks of the first day of the course.