

## LEGAL PRESENCE

With passage of legal presence legislation in the 2003 General Assembly, Virginia residents applying for a driver's license or identification card on or after January 1, 2004, must prove that they are legally present in the United States. HB 1954 (Albo) and SB 1058 (O'Brien) become effective on January 1, 2004. Beginning on that date, DMV will not issue an original driver's license or ID card unless the applicant can prove he or she is either a citizen, a lawful permanent resident alien or a conditional resident alien of the United States.

In practical terms, this means that DMV customers will need to prove legal presence if applying for a first learner's permit or driver's license; a photo ID card; or reinstating driving privileges because the driver's license expired or was suspended, revoked, or cancelled. Customers who hold a valid driver's license will not be required to show proof when the license is renewed (unless it has been allowed to expire).

DMV is seeking your assistance in helping to inform Virginia residents – native-born, immigrants, and non-immigrants alike – of these new licensing requirements. As a motor vehicle dealer, you are an important connection to the public, as you talk to thousands of people each week. We would like for you to know about legal presence and be able to remind your customers that it will affect them. We will be happy to provide you with flyers, handouts and even a banner ad for your website, if you would be willing to display them. For further information, please contact Anne Kelley at (804) 367-6614 or via e-mail at [dmvagk@dmv.state.va.us](mailto:dmvagk@dmv.state.va.us). You can also find out more about this legislation at DMV's website at [http://www.dmv.state.va.us/webdoc/citizen/legal\\_pres.asp](http://www.dmv.state.va.us/webdoc/citizen/legal_pres.asp).

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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 dates:



#### CHRISTMAS

**December 25 & 26, 2003**  
(closing at noon on December 24)

#### NEW YEARS

**January 1 & 2, 2004**

#### LEE-JACKSON DAY

**January 16, 2004**

#### MARTIN LUTHER KING DAY

**January 19, 2004**

# BOARD ACTIONS

**Dealer Practices:** An informal fact finding conference was convened for a Hampton Roads area dealer as a result of several unsatisfactory inspections by Dealer Board field representatives. It was alleged that the dealership had numerous, on-going violations of record keeping requirements and failed to comply with a written warning and that the on-going problems were willful. In addition, it was alleged that the dealer compensated an unlicensed individual in connection with the sale of five motor vehicles. Based on the hearing officers report and the evidence, the Board voted to assess a \$3,000 civil penalty on the dealer.

**Dealer Licensing:** A Virginia Beach Dealer was convicted of a local zoning ordinance: *Failing to obtain a Conditional Use Permit*. It was also alleged that the dealer was selling motor vehicles from an unlicensed location. Based on this information, an informal fact finding conference was convened. Based on the hearing officer's report and the evidence, the Board voted to assess a \$1,000 civil penalty on the dealer.

**Dealer Advertising:** In May of 2001, a Richmond area dealer paid a \$2,000 civil penalty for several Truth in Lending violations committed between January 23, 2001 and March 18, 2001. Similar violations were observed in May and July of 2002 and a \$500 civil penalty was levied and paid. After another Truth in Lending violation was detected in November of 2002, an informal Fact Finding Conference was scheduled for alleged violations of the Truth in Lending regulations and for failing to comply with a written warning/willful failure to comply. Based on the hearing officer's report and the evidence, the Board voted to assess a \$1,000 civil penalty on the dealer.

Advertisements placed in newspapers in Lynchburg and Danville by a local dealer stated that cars were priced from \$999 to \$1,999 and that 100 cars would be sold for \$5. Upon investigation it was learned that in order to purchase a car for \$5, the consumer must first purchase another car. As this appeared to be a misleading advertisement, an informal fact finding conference was convened alleging that the advertisement violated the requirement that when the price of a vehicle is stated in an advertisement, the make, model and year must be disclosed; that the dealer had employed a deceptive act or practice and that the dealer had knowingly used deceptive advertising. The hearing officer concluded that the violations were not willful. Based on the hearing officer's report and the evidence, the Board voted to direct the executive director to issue a detailed warning letter to the dealer.

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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, January 12, 2004  
Time: 8:30 a.m.  
Dealer Practices Committee Meeting

Monday, January 12, 2004  
Time: Immediately following Dealer Practices  
Licensing Committee Meeting

Monday, January 12, 2004  
Time: 9:30 a.m.  
Advertising Committee Meeting

Monday, January 12, 2004  
Time: Immediately following Advertising  
Transaction Recovery Fund Committee Meeting

Monday, January 12, 2004  
Time: 10:00 a.m.  
Full Board Meeting

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

# BOARD ACTIONS

*(continued from page 2)*

A Hampton Roads area dealer implemented a "Consumer Cash Rewards" program. In this program, the dealer purchases "cash-back" certificates that are given to purchasers. The purchaser must follow specific steps to receive a cash reward from a third party 39 months after purchasing a motor vehicle. An informal fact finding conference was convened to determine if this program was deceptive or misleading and did it constitute a "dealer rebate" which is prohibited. Based on the hearing officer's report and the evidence, the Board voted to direct the executive director to issue a detailed warning letter that the program as presented at the conference was misleading, deceptive and unfair. However, the Board determined that the reward did not constitute a dealer rebate.

The informal fact finding conference for the Hampton Roads Dealer also considered an advertisement where the dealer advertised that he would pay \$10,000 to any consumer if that consumer found a better deal at any "local" dealership selling his line-make. The Board received a consumer complaint that the dealer refused to pay her the \$10,000 when she obtained a better deal from another. The dealer stated that to be considered a "local" dealer, the dealer making the better offer must be in the same MSA (A Census Bureau Designation) and the consumer's offer was from a dealer in another MSA. Given there were no other dealers of that line-make in the dealer's MSA, the Motor Vehicle Dealer Board staff alleged that the offer was therefore deceptive. The hearing officer agreed and recommended that the dealer be issued a written warning. The Board agreed with the hearing officer's recommendation.

**Transaction Recovery Fund:** At the November Dealer Board meeting, the Transaction Recovery Fund Committee and the Board considered one claim filed against Automax, formally located in Virginia Beach. In this case, the car purchased by the consumer had many defects. The Complaint filed against Automax in the US District Court listed 10 Counts: Truth in Lending Act, Equal Credit Reporting Act, Fair Credit Reporting Act, Virginia Consumer Protection Act, Virginia Usury Act, Fraud/Constructive Fraud, Breach of Express Warranty, Breach of Implied Warranty, Breach of Magnuson-Moss Act and Emotional Distress. After, carefully reviewing the hearing officer's recommendation and the evidence, the Committee and the Board approved the claim in the amount of \$16,667.29, which is for actual damages in the amount of \$1,168.25 and \$15,499.04 for attorney fees and costs.

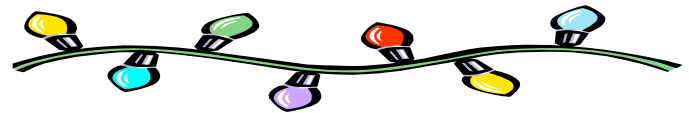
# ADVERTISING TIPS AND REMINDERS

**Rebates:** When advertising the price of a vehicle, and that price includes all rebates and incentives, the disclaimer cannot simply state something like "prices include all rebates and incentives". Each rebate or incentive must be listed either in the body of the advertisement or in the disclaimer in such a way that the reader (consumer) can determine which rebates/incentives they are eligible to receive.

**Balloon Payments:** Advertisements that state a monthly payment that is based on a "balloon" payment must state in the body of the advertisement (near the payment statement) that there is a balloon payment.

**Guarantee to Beat Competitors' Prices:** Guarantees or statements that you will beat or match the price of other dealers must include either in the body of the advertisement or as a disclaimer, the specific conditions under which the guarantee will be honored.

**Guaranteed Trade-In Allowance:** Dealers may not advertise a guaranteed trade allowance. This includes statements such as "We will pay you \$500 over book value for your trade-in." The statement implies that the minimum trade-in will be \$500.



## DAVID LACY APPOINTED TO THE BOARD

On November 7, 2003, Governor Warner announced the appointment of David Lacy to the Motor Vehicle Dealer Board. Mr. Lacy is co-owner of Lacy Auto Parts in Charles City, VA. He is a lifetime resident of Virginia and a product of Chesterfield County schools. He has a B.S. in mechanical engineering from Virginia Tech. We welcome Mr. Lacy to the Board.

# DEALER BOARD MEMBERSHIP

The statute authorizing the Board states that the Board shall have 19 members as follows: Nine members are licensed franchised ("new") motor vehicle dealers who have been licensed as such for at least two years prior to being appointed and seven members are licensed independent ("used") motor vehicle dealers who (i) have been licensed as such for at least two years prior to being appointed by the Governor and (ii) are not also franchised motor vehicle dealers. One of the independent dealers appointed to the Board is a licensed motor vehicle dealer primarily engaged in the business of renting vehicles, and one is a licensed independent dealer primarily engaged in the motor vehicle salvage business. One member is an individual who has no direct or indirect interest, other than as a consumer, to the motor vehicle industry. The Commissioner of the Department of Motor Vehicles and the Commissioner of Agriculture and Consumer Services are ex officio voting members of the Board. The DMV Commissioner serves as the Board chair.

At the November Board meeting, there was a discussion on the composition of the Board as described above. At the conclusion of the discussion, the Board voted in favor of keeping the composition of the Board as it is now spelled out in the Code of Virginia.

# EBAY MOTORS

At the November Board meeting, Mr. Joseph Sullivan, Sr., Counsel, Trust and Safety for eBay gave a presentation and answered questions concerning eBay motors' in general and specifically about their fee schedule. Mr. Sullivan appeared before the Board to explain how eBay motors works and to share information with the group.

Questions had arisen concerning eBay's fee structure as it relates to Virginia's anti "bird dogging" law. The Board decided to table additional discussion until its January 12 meeting. The discussion will continue at 8:30 a.m. in the morning on January 12, 2003 at the Dealer Practices Committee meeting to be held in DMV's Headquarters Building, at 2300 West Broad Street in Richmond. The meeting is open to the public.

