

## NO INDEPENDENT CONTRACTORS

All persons licensed by the MVD Board as *salespersons* must be employed by the dealer/dealership and cannot be an *independent contractor* (IRS form 1099), as defined in the United States Department of Treasury, Internal Revenue Service (IRS) [Publication 1779](#). (Go to our Website at [mvd.vipnet.org](http://mvd.vipnet.org) and click on the "Special Reports" button to see IRS Publication 1779). Failure to comply will result in a written warning; and subsequent occurrences may result in civil penalties, suspension, or revocation of your dealer license.

By June 30, 2003, all original and renewal dealer and salesperson license applicants will be required to certify on the licensing applications that they are in compliance. Falsified certifications will be considered a material misstatements under § 46.2-1575.1 and could result in a \$1,000.00 civil penalty being levied, your license being suspended, or ultimately revoked.



## DO YOU MISS DEALER TALK?

In adjusting for necessary budget reductions this past fall, the Board reluctantly reduced the number of issues of Dealer Talk that will be printed and mailed to you. We have continued to produce six issues per year and all six issues will be posted on our WEB site. We encourage you to sign-up for an e-mail notification. If you sign-up for e-mail notification, we will send you an e-mail when new issues of Dealer Talk are posted on our WEB site. To sign-up for e-mail notification, go to our WEB site at [www.mvdb.vipnet.org](http://www.mvdb.vipnet.org) and "click" on the "Subscribe to Our E-Mail List" button. Please note that we do not share your e-mail 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. To view past issues of Dealer Talk, go to our website and click on the "Dealer/Salesperson Info" button.

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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:

Friday  
July 4, 2003



**4<sup>th</sup> of JULY!**

# BOARD ACTIONS

**Dealer Practices:** The Dealer Board assessed a \$750 civil penalty on a Fredericksburg area dealer for displaying and offering to sell vehicles from a location other than his licensed location. Another Fredericksburg area dealer was assessed a \$300 civil penalty for having been convicted of a criminal act involving the business of selling motor vehicles.

Both a Portsmouth area dealer and a Newport News area dealer were assessed \$250 civil penalties for not maintaining their established business hours. Each dealer had received a least one warning that they must be opened during their established/posted business hours.

A Haymarket area dealer was assessed civil penalties totaling \$5,250 for a number of violations related to record keeping. The dealer had failed to comply even after receiving numerous warning and educational efforts from and by the Board.

The Board voted to suspend all licenses and certificates issued to Star Motors of Haymarket (Mr. Mohammad R. Sohrabian, owner) for one year and also levied a civil penalty totaling \$8,250 for ongoing record keeping problems even after receiving numerous warnings and educational efforts from and by the Board.

All dealer licenses and certificates issued to Mr. Lawrence E. Coffey (Small Time Auto Sales) of Lynchburg were revoked for failing to comply with a warning from the Board and willful disregard for the Dealer Laws; for knowingly advertising something that was false or misleading; and for misusing dealer tags.

**Dealer Licensing:** An Alexandria dealer was assessed civil penalties totaling \$8,100 for paying sales commissions to unlicensed salespersons. The dealer had failed to secure salespersons licenses for six of its sales staff.

The dealer-operator and a salesperson for a Fredericksburg area dealer had their licenses revoked for having been convicted of a criminal act involving the business of selling automobiles.

**Dealer Advertising:** A dealer in Amherst was assessed a \$500 civil penalty for repeated violation of the Truth in Lending regulations.

## 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, July 14, 2003

Time: 8:30 a.m.

Dealer Practices Committee Meeting

Monday, July 14, 2003

Time: Immediately following Dealer Practices  
Licensing Committee Meeting

Monday, July 14, 2003

Time: 9:30 a.m.

Advertising Committee Meeting

Monday, July 14, 2003

Time: Immediately following Advertising  
Transaction Recovery Fund Committee Meeting

Monday, July 14, 2003

Time: 10:30 a.m.

Full Board Meeting

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

## SUMMARY

### Motor Vehicle Dealer Related Legislation 2003 General Assembly

Below is a list and brief summary of legislation of interest to motor vehicle dealers and adopted by the 2003 General Assembly. All are effective July 1, 2003 unless noted otherwise.

If you are interested in reading the full text of any of the bills listed below, you can find that information on the Internet as follows:

- Go to the Home Page of the Virginia General Assembly: <http://legis.state.va.us/>
- Under the heading "Bills and Resolutions", enter the bill number as noted below (Example: SB1276) and click on "Go"
- This will take you to a summary of the bill's history. Under the heading "Full text" click on the last item listed and this will bring you to the most up-to-date version of the bill.

If you are reading this "on-line". Just "click" on the bill number and you will be "hot-linked" to the PDF version of the bill.

**HB 1440** (Charles W. Carrico, Sr.) Requires applicants for vehicle registrations to supply DMV with the street address of their residence.

**HB 1443** (Vincent F. Callahan) Under current law, a manufacturer does not have the right of first refusal on the proposed sale or transfer of a dealership if that sale or transfer is to a member(s) of the family of one or more dealer owners, or to a qualified manager or a partnership or corporation controlled by such persons. This legislation adds a "limited liability company" or "other entity" controlled by such persons to this list. This is, in effect, a technical amendment that affords limited liability companies and other entities the same treatment as similarly situated partnerships and corporations.

## SUMMARY

### Motor Vehicle Dealer Related Legislation 2003 General Assembly

*(continued)*

**HB 1521** (Clarke N. Hogan) Requires that the titles of both repaired and rebuilt vehicles be permanently branded to show that they are salvage vehicles. The bill also defines "repaired vehicle" as "any salvage vehicle that has had repairs less than the amount necessary to make it a rebuilt vehicle." The effect of this bill would be that the titles of late model vehicles that sustain damage less than 76% of its actual pre-crash value and are acquired by an insurance company and subsequently repaired for use on the road, would be permanently branded "REPAIRED VEHICLE". Vehicles that sustain damage less than 76% of its actual pre-crash value and are repaired by the owner (Never acquired by an insurance company.) will not be branded.

**HB 2174** (Clarence E. Phillips) Allows display of safety approval stickers on plates securely fastened to motorcycles for that purpose.

**HB 2266** (Frank D. Hargrove, Sr.) Prohibits any person selling, installing or replacing motor vehicle glass from advertising, promising to provide, or offering any coupon, credit or rebate to pay all or part of an insurance deductible under a motor vehicle insurance policy unless the person charges no more than the prevailing market rate for such services.

**HB 2502** (H. Morgan Griffith) Authorizes licensed Virginia dealers, to act as agents of the Department of Motor Vehicles. The dealer would be required to enter into an agreement with DMV and the dealer would collect a commission the same as other license agents.

**HB 2537** (Allen L. Louderback) Allows DMV, in the case of a casual sale (no dealer involved) of a motor vehicle, to collect the motor vehicle sales and use tax on the basis of the total sales price as established by evidence required by the Commissioner.

*(continued on page 4)*

**HB 2537 (continued)** However, if the motor vehicle is no more than five years old and is listed in a recognized pricing guide, then the total sale price used to calculate the motor vehicle sales and use tax shall not be less than the trade-in value listed in such guide (less an allowance of \$1,500), unless the purchaser executes an affidavit stating a lesser total sale price and declaring such sale or use to be a bona fide transaction for full value

**HB 2604** (L. Preston Bryant, Jr.) Gives motor vehicle dealers and their salespersons the option to be bonded instead of participating in the Motor Vehicle Transaction Recovery Fund. Dealers may choose to obtain a \$100,000 bond that will cover the dealer and his salespeople or a dealer can choose to be covered through membership to a nonprofit organization under 26 U.S.C. § 501(c)(6) (For example, both VADA and VIADA are "501(c)(6)" organizations.) that carries a \$1 million "umbrella" bond that covers its members. The new bond options will only be available to dealers who have been in business more than three years and have not been the subject of a claim against the bond or the fund for three consecutive years.

**HB 2681** (Watkins M. Abbitt, Jr.) Deems all-terrain vehicles (ATVs) and off-road motorcycles to be motorcycles for the purpose of the motorcycle dealers laws and will *potentially subject certain entities* who sell, manufacturer or distribute ATVs and off road motorcycles to motorcycle dealer requirements and franchise protections.

**HB 2720** (John A. Rollison, III) Requires "on-line" dealers to collect from the purchaser, the "purchaser's on-line systems filing fee", (the fee the dealer must pay to the vendor (example, CVR, TriVin) who provides the link to DMV for processing the purchaser's title and registration transaction). In addition, dealers must list this fee separately on the buyer's order and identify this fee as "on-line systems filing fee." You are reminded that anytime you change your buyer's order, you must send a copy to the Dealer Board for their files. This provision of the legislation becomes effective July 1, 2003 and will require amendment to the on-line dealer contracts between dealers and DMV.

Further, dealers who choose not to become an "on-line" dealer must pay a manual transaction fee of \$15 to DMV for every manual transaction completed at a DMV customer service center in excess of 10 transactions per month. The provision of the bill imposing manual transaction fees does not become effective until December 31, 2003. Thus, effective December 31, 2003, dealers who elect not to become on-line dealers and who bring more than 10 pieces of work to a DMV office in a month, must pay a fee of \$15 for each transaction in excess of 10 conducted in that month. Dealers are prohibited from passing this \$15 fee along to the purchaser.

Note: The manual transaction fee will not apply to any pilot program established under the provisions of SB 1276.

**SB 809** (Kenneth W. Stolle) Provides an exemption from the motor vehicle sales and use tax for vehicles titled in the name of a deceased person and transferred to the spouse or heir, or under the will, of such deceased person.

**SB 965** (John C. Watkins) Strengthens the ability of the Department of Environmental Quality (DEQ) to clean up the 339 remaining tire piles throughout the state. It authorizes the establishment of tire convenience centers as temporary collection points for tire storage. DMV-licensed salvage yards that are holding fewer than 300 waste tires and convenience centers having up to 1,500 tires are exempt from having to obtain a permit from DEQ. The bill includes a three-year increase in the tire recycling fee added to new tire costs (from \$0.50 per new tire sold to \$1.00), to be used to fund the removal of tire piles. The fee will revert to \$0.50 on 7/1/06.

**SB 1276** (Frank W. Wagner) Establishes a pilot project whereby a private business can perform certain vehicle related transactions (titles, registrations, etc) with DMV on behalf of other businesses such as motor vehicle dealers. The business conducting the pilot could perform transactions on-line or in person at a DMV CSC and would be paid a commission by DMV.

## Helpful Tips and Reminders

**Written Correspondence:** All written correspondence, forms and applications should be mailed to the Board's headquarters office at 2201 West Broad Street, Suite 104, Richmond, Virginia 23220. Please do not send these materials to the field representatives unless you are specifically asked to do so.

**Compensation:** Please remember that Virginia law does not allow Virginia dealers to compensate anyone, other than a salesperson licensed in the name of the dealership, in the connection with the sale of an automobile. This includes third parties such as internet and special promotion companies. You should not pay fees to these third parties if those fees are tied to the sale of motor vehicles. Specifically, § 46.2-1537 states:

**"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."**

Virginia dealers who violate this law could be assessed a civil penalty of up to \$1,000 per occurrence.

**Advertising.** If you advertise on radio and television, please remember that the Virginia Motor Vehicle Advertising regulations state that when terms, conditions or disclaimers are used, they must be clearly announced (and or conspicuously displayed in the case of television) during the advertisement. Further, the terms, conditions or disclaimers must be at an understandable speed and volume level. It is advised that disclaimers NOT be given at the beginning of the advertisement as the listener may have difficulties connecting the disclaimer to the advertisement.

Virginia Code Section 46.2-1575 (6) authorizes the Motor Vehicle Dealer Board to suspend or revoke the licenses of any dealer for "having used deceptive acts or practices." Advertisements that "deceive" the listener, viewer or reader are subject to this [Code](#) section. For example, terms, conditions or disclaimers that are read at a speed and volume that are not easily understood or are read at the beginning of an advertisement in such a way that the listener cannot easily connect the terms conditions or disclaimer to the rest of the advertisement, may be considered "deceptive".

## AUTOMOTIVE INDUSTRY EXPANDING IN VIRGINIA

You might be surprised to learn that automotive and automotive parts manufacturing facilities in Virginia employ more than 25,000 Virginians. There have been 117 new facilities or expansions of existing Virginia facilities in the automotive industry announced during the past 10 years. Since 1992, Virginia has announced \$2.1 billion of automotive investments, creating more than 10,300 jobs.

Recently, Governor Mark W. Warner and Jim McCrone, President of Carbone Kirkwood LLC, announced that Carbone Kirkwood LLC will expand its existing operations in Prince Edward County. Through a \$2.7 million investment, the company will create 65 new jobs at its facility on Industrial Park Road. Carbone Kirkwood LLC, a newly established joint venture involving the carbon product divisions of Kirkwood Industries and Carbone of America, is the country's largest supplier of carbon brushes for automobile motors. Carbone Kirkwood supplies brush products for major motor manufacturers in the USA, Canada and Mexico.

Also, Governor Warner and Dr. Wolfgang Ziebart, deputy chairman of the Executive Board for Continental AG recently announced that Continental Teves, Inc., one of the world's largest automotive suppliers, will expand its Culpeper County facility. The expansion will create 29 new jobs through a \$3 million investment, and is part of a two-year \$14.7 million investment program that will allow the Culpeper plant to service recently awarded new business contracts.

"Investing in our Culpeper plant will allow us to add new equipment and upgrade the facility so that it can continue producing vehicle safety technologies that help save lives," Ziebart said. "These investments were necessary in order for Culpeper to manufacture the next generation anti-lock brake system (ABS), offering automakers improved performance in a lighter, more cost-efficient unit, as well as the Electronic Stability Program (ESP) that significantly enhances vehicle stability, and anti-rollover protection technologies."

The 29 new jobs in Culpeper will support Electronic Air Suspension production destined for sport utility vehicles built in North America.

Continental Teves, headquartered in Frankfurt/Main Germany, is a unit of Continental AG, Hanover, Germany. With 2002 sales of approximately \$12 billion (US), the Continental Corporation is a major supplier of brake systems, chassis components, vehicle electronics, tires and technical rubber products. (Source: Recent Press Releases from the Office of Governor Mark W. Warner.)