

F & I EMPLOYEES AND SALES MANAGERS MUST BE LICENSED

Legislation adopted by the 2006 General Assembly 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 legislation is "consumer protection." Since the employees in a dealer's F&I department have access to sensitive, personnel information and they are an integral part of the sales process, the Governor the General Assembly and the Board believe they should be subject to the same scrutiny and qualification test as the salesperson. Beginning July 1, 2006, anyone who performs functions as described in the following definition must have a salesperson's license. Regardless of the working title an individual has, if they fit the definition, they must have a salesperson's license.

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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**HOLIDAY HOURS**

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

**Tuesday
July 4, 2006**



Independence Day

BOARD ACTIONS

Unlicensed Salesperson: The Board staff received an anonymous "tip" that a Northern Virginia dealership was compensating an individual for selling cars and that this individual was not a licensed salesperson. An investigation by the Board indicated that the "tip" was accurate and that the individual was compensated for the sale of 22 vehicles. The Board voted to assess a \$500 civil penalty.

Location Requirements: A Blacksburg area dealer had been cited by a Board field representative for various problems related to maintaining business hours and requirements for a dealership office/signage. Educational letters and "warnings" did not yield results, so an informal fact finding conference was convened. As a result of this conference, the Board decided to levy a \$1,000 civil penalty and to require that the dealer-operator (Owner) of this dealership successfully complete the dealer-operator course.

Selling From an Unlicensed Location; Record Keeping; and Misuse of Dealer Tags. Information received from a DMV investigator and information gathered by a Board field representative, suggested that a Norfolk area dealer was selling from an unlicensed location; had made a material misstatement on an application (The Dealer's renewal application indicated that all salespersons were employees and not independent contractors. Evidence revealed that three licensed salespersons were paid on a "1099" and were not employees); and that the dealer was "renting" dealer tags. As a result an informal fact finding conference was convened. Based on the hearing officer's report, the Board voted to levy a \$2,500 civil penalty and to require that the dealer-operator (Owner) of this dealership successfully complete the dealer-operator course.

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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, July 10, 2006
Time: 8:30 a.m.
Dealer Practices Committee Meeting

Monday, July 10, 2006
Time: Immediately following Dealer Practices
Licensing Committee Meeting

Monday, July 10, 2006
Time: 9:30 a.m.
Advertising Committee Meeting

Monday, July 10, 2006
Time: Immediately following Advertising
Transaction Recovery Fund Committee Meeting

Monday, July 10, 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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Record Keeping and Misuse of Dealer Tags:

Due to previous deficient inspections, a Board field representative conducted a follow-up inspection of a Richmond area dealership. The follow-up inspection revealed continued deficiencies in the dealer's record keeping and the misuse of dealer tags. Given the on-going nature of these problems, an informal fact finding conference was convened. After careful review of the facts surrounding this situation, the Board voted to levy a \$2,000 civil penalty and to require that the dealer-operator (Owner) of this dealership successfully complete the dealer-operator course.

Motor Vehicle Transaction Recovery Fund:

At the May Board meeting, the Transaction Recovery Fund Committee and the Board considered and approved the following three claims:

A consumer filed a claim against Field Auto City, a dealership that was owned and operated by Michael Lee Field in Alexandria. The dealership is no longer in business. Following a recommendation as a result of an arbitration hearing, the consumer had been awarded judgment against the dealer in circuit court. The Board approved payment from the Fund in the amount of \$20,000. (Maximum allowed by law.)

A consumer filed a claim against Diamond Kar Kare of Newport News, a dealership owned and operated by John Vincent Ducote. The dealership is no longer in business. The consumer had been awarded judgment in court for Conversion, Fraud, Violation of the Consumer Protection Act (VCPA) and Breach of Contract. The Board approved payment from the Fund in the amount of \$13,047.

A consumer filed a claim against Auto Provider of Dumfries, a dealership owned and operated by Mr. William Cairns. The dealership is no longer in business. The consumer had been awarded judgment in court for a number of violations including Fraud, Breach of Contract, and the VCPA. The Board approved payment from the Fund in the amount of \$20,000. (Maximum allowed by law.)

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It is important for you to study this definition as all employees of your dealership that meets any of the criteria as noted in the definition will need a salesperson's license. There is no "grandfather" provision. 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".