

October 1, 2012

2012
ANNUAL REPORT
BOARD OF TOWING
AND RECOVERY
OPERATORS

COMMONWEALTH OF VIRGINIA



Colonel W. S. (Steve) Flaherty

Superintendent

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COMMONWEALTH OF VIRGINIA

DEPARTMENT OF STATE POLICE

P. O. Box 27472, Richmond, VA 23261-7472

Lt. Colonel Robert B. Northern
Deputy Superintendent

November 1, 2012

TO: The Honorable Robert F. McDonnell, Governor of Virginia

The Honorable Walter A. Stosch
Chairman of the Senate Finance Committee

The Honorable Lacey E. Putney
Chairman of the House Appropriations Committee

Pursuant to §46.2-2806 of the Code of Virginia, I am respectfully submitting herewith the *2012 Annual Report of the Board of Towing and Recovery Operators*.

Respectfully,

A handwritten signature in black ink that reads "W. S. Flaherty".

Superintendent

Enclosure

Mission & Objectives

The mission of the Board of Towing and Recovery Operators (BTRO) is to protect the public by setting standards of qualifications, training, and experience for those who seek to represent themselves to the public as towing and recovery experts and promoting high standards of professional performance for those engaged in the practice of towing and recovery.

The main objectives of BTRO are:

- To receive complaints concerning the conduct of persons and businesses licensed by BTRO and to take appropriate disciplinary action if warranted;
- To establish means and procedures by which BTRO may attempt to mediate and resolve, in an expedited manner, complaints filed against those licensed or otherwise regulated by BTRO;
- To establish the qualifications of applicants for licensure to ensure competency and integrity in towing operations;
- To examine the qualifications of each applicant for licensure;
- To license qualified applicants as Class A or Class B operators;
- To issue driver authorization documents to qualified tow truck drivers;
- To revoke, suspend, or fail to renew a license for violations of statute or regulations promulgated by BTRO.

All this is accomplished by a Board consisting largely of towing and recovery operators, which allows for industry self-regulation (See. Attachment A for a list of Board members and committees).

The Board and its Committees met frequently since 2010 to address imminent issues, and to provide a mechanism for participation by consumers, licensed operators and drivers, and interested parties.

Summary of Fiscal Affairs

On October 15, 2008, BTRO began collecting and processing operator license and driver authorization document applications along with their associated application fees. Prior to that date, BTRO's operations were funded with Treasury loans (See. Attachment B for overall budget information as of June 30, 2012). BTRO paid off its Treasury loan in the amount of \$439,600 on January 18, 2012.

Summary of Recent Activities

After successfully credentialing initial applications made prior to July 1, 2009 (the deadline for having licenses and driver authorization documents), BTRO continued to use a manual process to issue initial licenses and driver authorization documents, and renewals. During the 2010 initial renewal process, BTRO staggered expiration periods for previously issued licenses and driver authorization documents, helping to reduce the application-processing burden for future application processing.

As of October 1, 2012, BTRO has issued and expired the following credentials:

Type of Credential	Active Credentials	Expired
Class A Operator License	266	93
Class B Operator License	938	715
Driver Authorization Document	3,865	3,906
Tow Truck Class A Decals	1,194	251
Tow Truck Class B Decals	2,419	1,371
TOTAL	8,682	6,336

Of all applicants, 57 tow truck drivers have been denied. Of those denials, 17 were due to applicants not being qualified because of having to report to the Sex Offender Registry.

Counsel for BTRO advised the Board in August, 2011 that the Regulations, as adopted, conflicted with the Code of Virginia as to fingerprint processing through the Central Criminal Records Exchange. The Board worked to resolve this conflict to minimize the impact on those affected by sending out a notice to all licensed operators and drivers in September, 2011. Counsel informed BTRO that the statute made no distinction between initial and renewal applicants as to the fingerprint card requirement, and therefore, each driver applicant was required to submit a fingerprint card with the driver application.

As a result of this advice, staff has received 3,840 fingerprint cards for processing purposes since October 1, 2011, the effective date of the fingerprint card requirement.

Complaints

BTRO reviews complaints to determine whether it meets the jurisdictional requirements of the law, and if it does, attempts to work with the complainant and the tow operator to resolve the complaint. If the evidence supports a probable violation of a law or Board regulation, the complaint will be processed. If the evaluation does not show probable cause that a violation occurred, the complaint is closed. Staff may refer complaints to another agency that is more suited or has the authority to handle a particular consumer matter, and who may be better able to assist the consumer.

The Board has received an exceptional number of calls from consumers regarding the pricing of private property and public safety towing, repossessions, lien holder issues, and inquiries from law enforcement. This has resulted in a lower number of formal complaints, and has increased the knowledge and understanding of tow and recovery pricing strategies for consumers. BTRO will continue on its path in educating not only Virginia's consumers, but in working directly with tow and recovery operators in providing more detailed pricing structures to consumers to aid in their understanding and knowledge of tow and recovery pricing.

Staff receives on average 15-20 calls per week seeking guidance from consumers, tow operators, and law enforcement agencies on various matters, including, but not limited:

- Repossession of vehicles and the applicable charges - The charges related to the repossession and towing of repossessed vehicles are established under the consumer purchase agreement. A tow

operator merely conducts the repossession and plays no role in the establishment of repossession fees.

- Lien holders charged fees in excess of that allowed under the lien holder provision for storage charges - Despite the cap on storage charges, lien holders are still responsible for the towing and any other reasonable fees associated with the towing of the vehicle.
- Public Safety Tows – Individuals complaining that they were not allowed to utilize their own tow company for vehicle accidents. Law enforcement officers are required to clear an accident scene as soon as possible, and the selection of one’s own tow company does not necessary allow this to be accomplished in a timely manner.
- Private Property Towing – Many consumers question the right of private property owners to have vehicles removed from their property. The bulk of private property towing claims relate to trespass towing, or people parking in contradiction to the private property owner’s requirements, *i.e.*, not parking in designated spaces, not displaying the parking pass, parking over lines, and parking after hours. Private property towing also occurs with to vehicles that are not in compliance with State law including expired inspection stickers, expired tags, or inoperable vehicles. Certain localities in the Commonwealth will assess fines and/or penalties on private property owners whose maintain vehicles of this nature on their property.
- Public Safety Rotation Lists – Many tow operators take issue regarding the fairness associated with the creation of rotation lists by law enforcement agencies. BTRO has no oversight of public safety rotation lists, and it is a privilege to be included. Many factors are considered in the approval of tow operators for this purpose including their response time, equipment needs, staffing, etc..
- Law Enforcement Agencies – Calls and emails are received from localities throughout the Commonwealth to clarify the Board’s laws and regulations, and whether companies on the public safety rotation list of properly licensed by the Board.
- Damages to Towed Vehicle – Consumers complain as well that tow operators have caused damage to the towed vehicles. However, in instances where the tow operator denies damaging the vehicle, then complainants are encouraged to either contact their insurance company for possible subrogation of the claim, or to address the matter in civil court. In quite a few instances, photographic evidence of the vehicle prior to being towed is available that supports the tow operator’s contention that they did not damage the vehicle.

By providing advice and guidance over the telephone, this has reduced the number of actual complaints filed with the Board as these constituents are educated on the laws and regulations in advance of filing a complaint. The majority of these matters are resolved by expanding the consumers understanding of various pricing techniques and negotiating an agreement between the parties to resolve the complaint in a manner that is satisfactory to all parties. To date, these procedures have been effective in resolving towing pricing and other related disputes.

General Summary of All Complaints Received and the Procedures Used to Resolve Them

Total Complaints ¹	676
Open Complaints	6
Closed Complaints	670

¹ Through October 1, 2012.

Public Safety Tow Complaints	115
Private Property Tow Complaints	145
Repossession Issues	19
Other ²	397

BTRO is primarily responsible for the oversight of tow and recovery operators and tow drivers in the Commonwealth for (1) qualification and licensing purposes, (2) for consensual towing (requested by the owner), and (3) non-consensual towing (typically removal of an unauthorized vehicle from private property).

A large number of complaints received after July 1, 2009 were made by properly licensed towing and recovery operators against unlicensed towing and recovery operators and their drivers. Since credentialed towers and drivers have a stakeholder interest, they have effectively created a form of self-regulation that enhances BTRO's ability to carry out the statute and regulations. These issues have been addressed by BTRO staff by contacting the non-credentialed tower or driver, and providing guidance and instruction on the laws and regulations, providing applications, and assisting in the completion of the applications in order to obtain compliance with BTRO laws and regulations. BTRO also has communicated its findings, as applicable, with local police and the Virginia State Police for law enforcement purposes.

As a side note to BTRO's complaint processing, complaints are also received and processed by law enforcement agencies, the Department of Agriculture and Consumer Services, localities that meet the statutory requirements for tow Boards, and the Better Business Bureau.

BTRO continues to work with local jurisdictions and law enforcement to identify problem areas and develop useful approaches to resolving tower and consumer issues. Likewise, BTRO continues to pursue efforts to provide dependable enforcement of towing laws within the Commonwealth on the local level, and to ensure that all consumer and tower related matters are handled consistent with statutory and regulatory requirements.

There has also been a significant increase in BTRO providing support to licensed operators in the area of lien holder complaints, recordkeeping, obtaining reimbursement through localities for public safety towing related issues including the towing of stolen vehicles, expanding their understanding of storage liens to ensure that they are operating within established time frames, and providing support to licensed operators in the operation, management, and conduct of their businesses. These are significant in that it enhances the ability of tow and recovery operators to not only comply with tow and recovery laws, but also enhances their ability to provide quality services to consumers.

Administrative Hearings or Decisions

There have been eight Informal Fact Finding Conferences held to date addressing (1) failure to timely report convictions, (2) denial of driver authorization documents for recent criminal convictions or convictions related to specific statutory prohibitions set out in BTRO's regulations, and (3) the

² Includes complaints about unlicensed towers and drivers, certain repossessions, missing or expired decals, public safety rotation lists, conduct of tow operators and drivers.

imposition of civil penalties for the above referenced matters. To date, BTRO has collected \$250 from a licensed operator and \$250 from a licensed driver for failure to timely report convictions.

2012 Session of the Virginia General Assembly

The 2012 Session of the Virginia General Assembly resulted in legislative changes to the functionality of BTRO, and meaningful responsibilities of the Board will be absorbed by other State agencies effective January 1, 2013. (Virginia Acts of Assembly – Chapters 803 and 835 – 2012 Session). However, BTRO's laws and regulations will remain in full force and effect until January 1, 2013. On that date, oversight of both drivers and operators will statutorily be provided by the Virginia Department of Criminal Justice Services ("DCJS") and the Office of the Attorney General ("OAG").

Below is a summary of the legislative changes that will take place on January 1, 2013:

- A person licensed by the Board and holding a valid driver authorization document shall be considered licensed in the same manner by DCJS. On or after January 1, 2013, initial and renewal driver applicants will make application for a registration to drive a tow truck with DCJS.
- Towing related consumer complaint functions will be transferred to the OAG, and complaints will be handled by a newly created Division of Consumer Counsel that will legislatively be operational on January 1, 2013, and whose function shall be to serve as a central coordinating agency and clearinghouse for receiving and investigating complaints by the Commonwealth's consumers of illegal, fraudulent, deceptive or dangerous practices and referring appropriate complaints to the federal, state, and local departments or agencies charged with enforcement of consumer laws.
- Modifications to the criminal history review process for drivers have been made, which includes, but is not limited to, conviction of a violent crime as defined in subsection C of Section 17.1-805 of the Code of Virginia, or a conviction of any crime involving the driving of a tow truck, including drug or alcohol offenses, but not traffic infraction convictions. A person required to register as a sex offender will continue to not qualify for a registration. The statutory changes as to background check requirements will be impactful on the current driver authorization population. BTRO and DCJS have taken the statutory changes seriously, and have collaborated on possible legislative changes that could reduce the number of driver applicants who may not qualify for a driver authorization under the new laws effective January 1, 2013.
- The only exemption from registration as a driver will be for drivers driving a tow truck for a franchised motor vehicle dealer as defined by Section 46.2-1500 of the Code of Virginia using a tow truck owned by a dealer when transporting a vehicle to or from a repair facility owned by the dealer when the dealer does not receive compensation from the vehicle owner for towing of the vehicle or when transporting a vehicle in which the dealer has an ownership or security interest. All other persons driving a tow truck will be required to hold a registration with the DCJS.

BTRO has been working closely with DCJS in the transitioning of responsibilities, and other agencies for the transition of State services, including VITA for IT services including computers, telephones, and equipment; the Department of General Services for the building lease and BTRO assets; and the State Library for the archival of the BTRO records.

Emergency Regulations

BTRO will be statutorily abolished effective January 1, 2013, and the law requires tow and recovery operators to be licensed through that date. In order to modify tow and recovery operator license fees currently based upon a 12-month license, the Board developed emergency regulations to address modification of tow and recovery operator's licensing fees for the balance of the licensing term requirement. The regulations set forth the authority of the Board for modifications of tow and recovery operator license fees.

BTRO determined that the issuance of a tow and recovery operator license for less than a 12-month term would create a financial hardship on those tow and recovery operators applying for a license, and therefore, modification of the licensing fees would allow the tow and recovery operators to be refunded any sum over the prorated licensing fees due at application. Affected tow and recovery operators subject to a refund are required to follow the Board's statute, regulations, and disciplinary processes of BTRO during the period of license. The tow and recovery operator's supported modification of licensing fees.

This action was an emergency situation pursuant to § 2.2-4011 and §§ 46.2-2805.4. and 46.2-2809 of the Code of Virginia. BTRO has the authority to levy and collect fees for licensure and renewal that are sufficient to cover all expenses for the administration and operation of BTRO, and to promulgate regulations necessary for the effective administration of BTRO. Due to the requirements of the Administrative Process Act, a regulatory change outside of the emergency regulatory process would not timely produce the results necessary for a refund of operator licensing fees prior to the abolishment of the Board.

After submission and final approval by the Governor's Office on September 19, 2012, the emergency regulations are scheduled for publication on October 8, 2012.

Conclusion

Since BTRO began issuing licenses in 2009, it has worked closely with its licensees to establish and maintain a professional towing and recovery community in the Commonwealth, and to share with consumers the often overlooked hard work, long hours, and hazardous conditions that licensed operators and drivers work. It will continue to collaborate with its licensees and law enforcement to review and evaluate existing requirements and will continue seek improvements through December 31, 2012.

BTRO appreciates the input and support of the various towing associations in Virginia, and believes those relationships further enhanced its ability to provide quality statutory and regulatory services to its constituents.

Attachment A - Board Members and Committees as of October 1, 2012

At-Large Members

Captain Steven Chumley, Board Chairman
Department of State Police

At Large Members

Matt Lohr, Commissioner
Department of Agriculture and Consumer
Services

Richard Holcomb, Commissioner
Department of Motor Vehicles

Speaker of the House Appointees

Capt. Raymond W. Gill, IV
Spotsylvania, Virginia

Woody Herring
Chantilly, Virginia

Kenneth Mitchell
Stafford, Virginia
(Resigned 2012)

Mark Sawyers
Norfolk, Virginia

Randy Seibert
Richmond, Virginia

Scott Wyatt
Mechanicsville, Virginia

Gubernatorial Appointees

Charlie Brown
Salem, Virginia

Richard Metz
Concord, Virginia

Adan Rangel
Virginia Beach, Virginia

Senate Rules Committee Appointees

P. Dale Bennett
Richmond, Virginia

Roy Boswell
Stafford, Virginia

John J. Beall, Jr.
Midlothian, Virginia

Gary Teter
Harrisonburg, Virginia

Joseph A. Troilo, Jr.
Brandy Station, Virginia

Board Committee Assignments

Executive Advisory

Steve Chumley, Chairman
Charlie Brown
Woody Herring
Mark Sawyers
Randy Seibert
Gary Teter

Administrative Affairs

Woody Herring, Chairman
Andres Alvarez
Roy Boswell
Lynwood Butner
Richard Metz
Adan Rangel
Mark Sawyers

Compliance and Consumer Affairs

Charlie Brown, Chairman
Andres Alvarez
Roy Boswell
Lynwood Butner
Ken Mitchell
Mark Sawyers

Licensing and Regulatory Affairs

Gary Teter, Chairman
John J. Beall, Jr.
Roy Boswell
Ray Gill
Ken Mitchell
Tony Troilo

By Laws and Policy

Randy Seibert, Chairman
Dale Bennett
Ray Gill
Richard Metz
Adan Rangel
Tony Troilo
Scott Wyatt

Legislative Affairs Committee

Mark Sawyers, Chairman
John J. Beall, Jr.
Dale Bennett
Lynwood Butner
Ken Mitchell
Randy Seibert
Woody Herring

Application Work Group

Scott Wyatt, Chairman
John J. Beall, Jr.
Curtis Hardison

Committee Responsibilities

Administrative Affairs Committee - Considers matters related to personnel, finance, budget, and general administrative areas.

By Laws and Policy Committee - Considers matters related to BTRO bylaws and policies.

Compliance & Consumer Affairs Committee - Considers matters related to the BTRO website, newsletter, and compliance in general.

Executive Advisory Committee - Considers matters related to the general supervision of the affairs of BTRO between its regular meetings, having full power and authority except as follows:

- No action of the Executive Committee may conflict with any action taken by BTRO;
- The Executive Committee must carry out instructions given to it by BTRO; and
- BTRO may countermand any action of the Executive Committee

Legislative Affairs Committee – Considers matters of a legislative nature, including, but not limited to, recommendations from its constituents, associations, and consumers; and provides recommendations to the Board on legislative matters impacting the industry, licensees, and consumers.

Licensing & Regulatory Affairs Committee - Considers matters related to legislation and regulations.

Application Work Group - Considers matters related to the review and approval of operator license and driver authorization document applications. The Application Work Group meets approximately every three weeks to expedite the processing of applications that require additional resources for approval purposes.

All committees meet as necessary based on issues and assignments referred to them by the full Board, or other Committees based upon areas of responsibility.

Board Meetings

Board of Towing and Recovery Operators - Meets regularly once every quarter to discuss general business, or more frequently as required to carry out the Board's business. When deemed necessary by the Chairman or three members, the full Board also holds special meetings.

During the period July 1, 2011 through October 1, 2012, the Board held four meetings.

Attachment B - Overall BTRO Budget Information as of September 13, 2012

Beginning Appropriation - FY07	350,000.00	Beginning Cash - FY07	-
		1st Treasury Loan	350,000.00
Expenditures - FY07	102,490.72	Expenditures - FY07	102,490.72
Ending Appropriation - FY07	247,509.28	Ending Cash - FY07	247,509.28
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Beginning Appropriation - FY08	350,000.00	Beginning Cash - FY08	247,509.28
		2nd Treasury Loan	350,000.00
Expenditures - FY08	218,224.04	Expenditures - FY08	218,224.04
Ending Appropriation - FY08	131,775.96	Ending Cash - FY08	379,285.24
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Beginning Appropriation - FY09	353,761.00	Beginning Cash - FY09	379,285.24
Additional Appropriation - FY09	291,042.00	Revenue Collections - FY09	790,656.97
Expenditures - FY09	618,432.09	Expenditures - FY09	618,432.09
		Treasury Loan Payment - FY09	75,000.00
Ending Appropriation - FY09	26,370.91	Ending Cash - FY09	476,510.12
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Beginning Appropriation - FY10	403,761.00	Beginning Cash - FY10	476,510.12
Additional Appropriation - FY10	123,000.00	Revenue Collections - FY10	776,001.25
Expenditures - FY10	484,284.42	Expenditures - FY10	484,284.42
		1st Treasury Loan Payment - FY10	35,400.00
		2nd Treasury Loan Payment - FY10	75,000.00
		Cash Transfers - Appropriation Act	3,550.00
Ending Appropriation - FY10	42,476.58	Ending Cash - FY10	654,276.95
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Beginning Appropriation - FY11	506,967.00	Beginning Cash - FY11	654,276.95

		Revenue Collections - FY11	495,951.93
Expenditures - FY11	501,067.70	Expenditures - FY11	501,067.70
		3rd Treasury Loan Payment - FY11	75,000.00
		Cash Transfers - Appropriation Act	952.00
Ending Appropriation - FY11	5,899.30	Current Cash - FY11	573,209.18
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Beginning Appropriation - FY12	571,485.00	Beginning Cash - FY12	573,209.18
		Revenue Collections - FY12	865,816.47
Expenditures - FY12	484,287.30	Expenditures - FY12	484,287.30
		4th Treasury Loan Payment - FY12	441,879.00
		Cash Transfers - Appropriation Act	1,718.00
Ending Appropriation - FY12	87,197.70	Current Cash - FY12	511,141.35
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Beginning Appropriation - FY13	573,743.00	Beginning Cash - FY13	511,141.35
		Revenue Collections - FY13	252,507.00
Expenditures - FY13	89,107.73	Expenditures - FY13	89,107.73
		Cash Transfers - Appropriation Act	-
Ending Appropriation - FY13	484,635.27	Current Cash - FY13	674,540.62
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Treasury Loan Status

1st Treasury Loan - FY07	350,000.00
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2nd Treasury Loan - FY08	350,000.00
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Subtotal Loans	700,000.00
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Treasury Loan Payment - FY09	75,000.00
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1st Treasury Loan Payment - FY10	35,400.00
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2nd Treasury Loan Payment - FY10	75,000.00
3rd Treasury Loan Payment - FY11	75,000.00
4th Treasury Loan Payment - FY12	439,600.00
Subtotal Loan Payments	700,000.00
Balance Due to Treasury	-