

**STATE OF WEST VIRGINIA**

**SPECIAL REPORT**

**OF**

**ALCOHOL BEVERAGE CONTROL ADMINISTRATION  
SPECIAL REPORT ON THE OVERSIGHT OF  
STATE-OWNED AUTOMOBILE ACCIDENTS**

**FOR THE PERIOD OF**

**JULY 1, 2004 – MARCH 31, 2009**



**OFFICE OF THE LEGISLATIVE AUDITOR**

**CAPITOL BUILDING**

**CHARLESTON, WEST VIRGINIA 25305-0610**

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**WEST VIRGINIA LEGISLATURE**  
*Joint Committee on Government and Finance*

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May 14, 2009

The Joint Committee on Government and Finance:

The objectives of this special report were (1) to determine if the Alcohol Beverage Control Administration (ABCA), or any other oversight agencies of the State, have developed and implemented procedures for reviewing vehicle accidents involving State-owned vehicles leased by the ABCA from the Division of Purchasing Fleet Management Office (Fleet Management); and (2) to determine if the ABCA, or any other oversight agencies of the State, have developed and implemented disciplinary measures for situations where employees exhibit poor driving performance or demonstrate unsafe or careless behavior while operating a State-owned vehicle as a means to limit the number of accidents and, as a consequence, maintain relatively lower costs for insurance rates and vehicle repairs.

In order to achieve the objectives noted above, we performed the following:

- a. Reviewed applicable sections of the West Virginia Code, Legislative Rules, as well as other rules and regulations, policies and procedures related to the leasing, the use and the oversight responsibilities of State-owned vehicles;
- b. Conducted interviews with ABCA, Fleet Management and the Board of Risk and Insurance Management (BRIM) personnel to determine how ABCA leased vehicle accidents were monitored;
- c. Reviewed police crash reports, BRIM loss reports and ABCA files documenting ABCA vehicle accidents that occurred during the period of July 1, 2004 through March 31, 2009.

Our report period is July 1, 2004 through March 31, 2009. We conducted our review with auditing standards generally accepted in the United States. Our review disclosed a lack of internal controls over ABCA State-owned vehicle accidents. The ABCA's responses to the report findings are included in the report.



Respectfully submitted,

A handwritten signature in cursive script that reads "Stacy L. Sneed".

Stacy L. Sneed, CPA, CICA, Director  
Legislative Post Audit Division

**ALCOHOL BEVERAGE CONTROL ADMINISTRATION**

**SPECIAL REPORT ON THE OVERSIGHT OF  
STATE-OWNED AUTOMOBILE ACCIDENTS**

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# ALCOHOL BEVERAGE CONTROL ADMINISTRATION

## SPECIAL REPORT ON THE OVERSIGHT OF STATE-OWNED AUTOMOBILE ACCIDENTS

### EXECUTIVE SUMMARY

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**Finding 1**                      **Alcohol Beverage Control Administration: Oversight of Accidents Involving State-Owned Vehicles**

- The Alcohol Beverage Control Administration (ABCA) does not have a procedure for reviewing vehicle accidents involving ABCA State-owned vehicles and for imposing discipline upon employees that exhibit poor driving performance or demonstrate unsafe or careless behavior while operating a State-owned vehicle. We reviewed vehicle accidents occurring during a 57 month period beginning July 1, 2004 and concluding March 31, 2009 and noted 23 ABCA State-owned vehicle driving accidents during this period that resulted in either an insurance claim or an ABCA insurance deductible cost. The Board of Risk and Insurance Management (BRIM) paid \$495,442.65 in claims and the ABCA paid an additional \$18,760.97 in insurance deductible costs for these accidents. The ABCA's BRIM insurance premiums are high relative to other State agencies due to its high insurance rating factor—which is determined by the number and severity of claims incurred during a five-year "rating period."

#### **Auditor's Recommendation**

We recommend the Fleet Management Office, the Division of Personnel, the Board of Risk and Insurance Management and the Division of Highways work with the ABCA and other State agencies in drafting uniform procedures for monitoring employee driving records in State-owned vehicles and provide for disciplinary action to be taken for those employees that exhibit poor driving performance or demonstrate unsafe or careless behavior while operating a State-owned vehicle. Once finalized, we recommend the drafted procedures be submitted to Legislative Rule Making Committee for their consideration as a Legislative Rule.

#### **Spending Unit's Response**

*See pages 18 and 19.*

**Finding 2**                      **Fleet Management Office: Establishment of an Accidents and Violations Review Committee to Review State-Owned Vehicle Accidents**

- The Department of Administration's Fleet Management Office promulgated Legislative Rule Title 148, Series 3 which outlines various procedures designed to provide for the "use" and "safe operation" of State-owned vehicles. The rule provides for the establishment of an Accidents & Violations Review Committee (AVRC) whose purpose is to review State-owned vehicle accidents and administer discipline. The Legislative Rule includes a disciplinary chart outlining administrative action to be taken in accordance with the Committee's findings. However, those provisions of the Rule related to the establishment of a review committee, reviewing accidents

and administering disciplinary action were never enacted. Had these provisions of the Rule been implemented, the \$495,442.65 in BRIM insurance claim payments and the \$18,760.97 in ABCA deductible costs for car crashes involving ABCA State-owned vehicles occurring during our report period may have been less.

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**Auditor's Recommendation**

**We recommend the Fleet Management Office comply with Legislative Rule Title 148, Series 3, Section 8.6 until such time an alternative Rule can be developed and implemented. Further, we recommend the Fleet Management Office, the Division of Personnel, the Board of Risk and Insurance Management and the Division of Highways work with the ABCA and other State agencies in drafting uniform procedures for monitoring employee driving records in State-owned vehicles and provide for disciplinary action to be taken for those employees that exhibit poor driving performance or demonstrate unsafe or careless behavior while operating a State-owned vehicle. Once finalized, we recommend the drafted procedures be submitted to Legislative Rule Making Committee for their consideration as a Legislative Rule.**

**Spending Unit's Response**

*The Fleet Management Office agreed to comply with the audit recommendation until such time the Legislative Rule may be modified. (See page 16.)*

# **ALCOHOL BEVERAGE CONTROL ADMINISTRATION**

## **SPECIAL REPORT ON THE OVERSIGHT OF STATE-OWNED AUTOMOBILE ACCIDENTS**

### **INTRODUCTION**

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#### **POST AUDIT AUTHORITY**

This is the special report on the oversight procedures of vehicle accidents involving State-owned vehicles leased by the Alcohol Beverage Control Administration (ABCA) from the Division of Personnel's Fleet Management Office (Fleet Management). The report was conducted pursuant to Chapter 4, Article 2 of the West Virginia Code, which requires the Legislative Auditor to "make post audits of the revenues and expenditures of the spending units of the state government, at least once every two years, if practicable, to report any misapplication of state funds or erroneous, extravagant or unlawful expenditures by any spending unit, to ascertain facts and to make recommendations to the Legislature concerning post audit findings, the revenues and expenditures of the state and of the organization and functions of the state and its spending units."

#### **BACKGROUND**

Chapter 9 of the Acts of the 1990 Legislature established Article 3A, Chapter 60 of the West Virginia Code to be known as the "State Retail Liquor License Act." This act declares that the sale of liquor at retail should no longer be by the State, but rather by retail licensees; that there is a need for the State to control the wholesale sales of liquor; that the health and welfare of the citizens of the State will be adequately protected by the licensing and control of such retail licensees; that the sale of liquor through retail licensees will satisfy reasonable consumer concerns of availability and price; and, that the operation and efficiency of State government will be improved by removing the State from the retail sale of liquor.

The purpose of this act is to continue revenue to the State from the wholesale sale of liquor; provide a system of controls, through limitations on the number of retail outlets and application of the police power of the State, to discourage the intemperate use of liquor; and, obtain for the State financial gain from the issuance of retail licenses.

Chapter 267 of the Acts of the 2000 Legislature established Article 9, Chapter 60 of the West Virginia Code. The passage of this article gave the West Virginia Alcohol Beverage Control Administration the authority to conduct unannounced inspections at establishments where tobacco products are sold or distributed to ensure compliance with federal and State laws governing the sale and distribution of tobacco products to underage minors.

The administrative office of the West Virginia Alcohol Beverage Control Administration is located at 322 70<sup>th</sup> Street, Charleston, West Virginia. The warehouse is located at HUB, Nitro, West Virginia.

**ALCOHOL BEVERAGE CONTROL ADMINISTRATION**

**SPECIAL REPORT ON THE OVERSIGHT OF  
STATE-OWNED AUTOMOBILE ACCIDENTS**

**STAFF  
JUNE 30, 2008**

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ALCOHOL BEVERAGE CONTROL ADMINISTRATION

**Administration**

Dallas S. Staples..... Commissioner

A. Keith Wagner ..... Deputy Commissioner

Thomas Mullins..... Comptroller

DIVISION OF PURCHASING/FLEET MANAGEMENT OFFICE

David R. Tincher ..... Director

Ken Frye. ....Assistant Director of Program Services Section

Janice Hartman. .... Manager, Fleet Management

BOARD OF RISK AND INSURANCE MANAGEMENT

Charles E. Jones, Jr. .... Executive Director

Robert A. Fisher ..... Deputy Director/Claim Manager



# **ALCOHOL BEVERAGE CONTROL ADMINISTRATION**

## **SPECIAL REPORT ON THE OVERSIGHT OF STATE-OWNED AUTOMOBILE ACCIDENTS**

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### **SCOPE**

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The scope of this special report on the Alcohol Beverage Control Administration (ABCA) is limited to reporting on the extent and effectiveness of accident review and driver disciplinary procedures over the ABCA State-owned vehicle driving accidents during the July 1, 2004 through March 31, 2009.

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### **OBJECTIVES and METHODOLOGIES**

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The objectives of this special report were to (1) to determine if the Alcohol Beverage Control Administration (ABCA), or any other service or oversight agencies of the State, have developed and implemented procedures for reviewing the circumstances related to vehicle accidents involving State-owned vehicles leased by the ABCA from the Division of Purchasing Fleet Management Office (Fleet Management); and (2) to determine if the ABCA, or any other service agencies of the State, has developed and implemented disciplinary measures for situations where operators of these State-owned vehicles are involved in “preventable” or “at-fault” vehicle accidents as a means to limit the number of accidents.

In order to achieve the objectives noted above, we reviewed applicable sections of the West Virginia Code, Legislative Rules, as well as other rules and regulations, policies and procedures, conducted interviews with ABCA, Fleet Management and Board of Risk and Insurance Management (BRIM) employees and reviewed various documents related to ABCA State-owned vehicle accidents.

Our reports are designed to assist the Post Audit Subcommittee in exercising its legislative oversight function and to provide constructive recommendations for improving State operations. As a result, our reports generally do not address activities we reviewed that are functioning properly.

This report is intended for the information and use of the Post Audit Subcommittee, the members of the WV Legislature, management of the spending unit and others within the spending unit. However, once released by the Post Audit Subcommittee, this report is a matter of public record and its distribution is not limited.

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## CONCLUSIONS

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After completing our review work, our general conclusion is the ABCA does not have procedures for investigating vehicle accidents involving ABCA State-owned vehicles. In accordance with Chapter 5A, Article 3, Section 48 of the West Virginia Code, as amended, the Fleet Management Office promulgated Legislative Rule Title 148, Series 3, which provided for the “use” and “safe operation” of State-owned vehicles leased by State agencies (excluding those agencies statutorily exempt). However, many of the provisions provided for in the Rule—including those that provide for the establishment of an “Accidents & Violations Review Committee” and for the implementation of specific disciplinary directives outlined in an “administrative action chart” to be administered by the committee—were never enacted by the Office.

It is therefore the conclusion of this report that ABCA has no policies or procedures related to establishing a level of ABCA driver responsibility for car crashes involving ABCA State-owned vehicles. Further, the provisions related to determining the level of driver responsibility for State-owned vehicle accidents and providing disciplinary action, as stipulated in the Fleet Management Office’s Administrative Rule, were never enacted by the Fleet Management Office. Such a lack of oversight may result in the ABCA, and the State as a whole, incurring considerable additional costs for insurance and for maintaining a viable fleet of vehicles.

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## EXIT CONFERENCE

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We discussed this report with management of Alcohol Beverage Control Administration (ABCA) and the Fleet Management Office on May 15, 2009. All findings and recommendations were reviewed and discussed. Responses from ABCA and Fleet Management have been included at the end of each respective finding in the report.

**ALCOHOL BEVERAGE CONTROL ADMINISTRATION**

**SPECIAL REPORT ON THE OVERSIGHT OF  
STATE-OWNED AUTOMOBILE ACCIDENTS**

**MARCH 31, 2009**

**FUND LISTING**

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We have completed a special report on the State's oversight procedures of vehicle accidents involving State-owned vehicles leased by the Alcohol Beverage Control Administration (ABCA) from the Division of Personnel's Fleet Management Office (Fleet Management). The examination covers the period July 1, 2004 through March 31, 2009.

**SPECIAL REVENUE FUND**

Lease payments for cars leased by ABCA from Fleet management, as well as insurance premiums paid by the ABCA to the Board of Risk and Insurance Management (BRIM), were paid from the following special revenue fund:

<b><u>Fund Number</u></b>	<b><u>Name</u></b>	<b><u>Description</u></b>
7352.....	General Administrative Fund.....	Receipts from liquor sales for operation and administration of the ABCA

**ALCOHOL BEVERAGE CONTROL ADMINISTRATION LEASED VEHICLES**

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According to the Fleet Management records, as of April 27, 2009, the ABCA had 37 vehicles leased from Fleet Management. During the 57 month period covered by this special report, we noted there were 23 moving vehicle accidents involving ABCA's leased vehicles which resulted in either BRIM paying an insurance claim and/or the ABCA incurring an insurance deductible cost. Since the ABCA experienced (1) a rate of approximately five such vehicle accidents each year during our review period; and (2) as of the date of this report, BRIM has paid out \$495,442.65 for twelve of these claims while the ABCA has incurred \$18,760.97 for deductible costs, we determined these accidents warranted further review and a special report on the conclusions reached.

*Alcohol Beverage Control Administration (ABCA)*

After interviewing ABCA personnel, we determined the ABCA does not procedures for monitoring vehicle accidents involving ABCA State-owned vehicles and for imposing discipline upon employees that exhibit poor driving performance or demonstrate unsafe or careless behavior while operating a State-owned vehicle. As of the date of this report, ABCA only reports vehicle accidents to BRIM for insurance claims. ABCA reports all accidents involving State owned vehicles to the Fleet Management Office.

Division of Personnel Fleet Management Office (Fleet Management)

According to a Fleet Management representative, the management of State-owned vehicles, as well as the related maintenance of and fuel purchases for these vehicles, is largely decentralized. Accordingly, there are no policies and procedures enforced by Fleet Management where the Office reviews documents and conducts interviews in order to establish the level of responsibility upon the driver of the State-owned vehicle involved in an accident and to administer discipline in accordance with the Office's findings. The representative added that the development and implementation of any such policies, if any, is the responsibility of the agency leasing the vehicles and it is the agency's choice if they continue to allow a particular employee to drive after he or she has been involved in multiple accidents.

Chapter 5A, Article 3, Section 48 of the West Virginia Code, as amended, requires the Secretary of the Department of Administration to "...promulgate rules relating to the ownership, purchase, use, storage, maintenance and repair of all motor vehicles..." except for those vehicles owned or leased by agencies or divisions of agencies specifically exempted by this Section from the requirements imposed by this Section and Sections 49 through 53 of the same Article. To comply with Section 48 quoted above, the Department promulgated Legislative Rule Title 148, Series 3, which became effective December 6, 1992. Except those agencies and divisions statutorily exempted, the rule generally requires that state-owned vehicles be leased by State agencies from the Department of Administration.

The Department of Administration administers its vehicle fleet through its Fleet Management Office organized as part of the Program Services Section of the Department's Purchasing Division. The Assistant Purchasing Director heads up the Program Services Section which, in addition to the Fleet Management Office, consists of the Surplus Property Program, the State Travel Management Unit, Capitol Parking and the Fixed Assets/Inventory Unit. Currently, Fleet Management is staffed by two employees: (1) the Fleet Manager; and, (2) the Fleet Assistant. As of April 27, 2009, Fleet Management has a total of 1,648 vehicles leased to 57 State agency divisions.

Board of Risk and Insurance Management (BRIM)

We were told by the Claims Manager for the Board of Risk Insurance Management (BRIM) that it is the insured agency's responsibility to report accidents to BRIM. BRIM does not monitor nor discipline any drivers of state owned vehicles. He added that he knew of no policies and/or procedures requiring BRIM, or any agency insuring vehicles through BRIM, to monitor employees' driving accident records. Further, BRIM would only be notified of those accidents resulting in some type of insurance claim held against BRIM.

The BRIM Claims Manger stated there is a positive correlation between an agency's history of overall insurance claims and the monthly premium BRIM charges the agency. However, individual driving or accident records of the operators of BRIM insured vehicles are not a factor in computing premiums.

## FINDINGS

**Finding 1                      Alcohol Beverage Control Administration: Oversight of Accidents Involving State-Owned Vehicles**

Condition:                      The Alcohol Beverage Control Administration (ABCA) does not have procedures for monitoring vehicle accidents involving ABCA State-owned vehicles and for imposing discipline upon employees that exhibit poor driving performance or demonstrate unsafe or careless behavior while operating a State-owned vehicle. As illustrated in the following schedule, some ABCA drivers have been involved in multiple vehicle accidents during our report period, which covered 57 months from July 1, 2004 through March 31, 2009. Employee 12 had three driving accidents while Employee 2 and Employee 16 had two accidents each. Only driving accidents resulting in either a Board of Risk and Insurance Management (BRIM) insurance claim and/or a deductible cost to ABCA were included:

ABCA Employee	Date of Accident	BRIM Claim Payment	ABCA Deductible	Total Cost
Employee 1	5/11/2005	\$ 0.00	\$ 690.00	\$ 690.00
Employee 2	8/25/2008	0.00	941.57	941.57
Employee 2	11/19/2008	1,932.00	1,000.00	2,932.00
Employee 3	3/31/2005	3,680.00	1,000.00	4,680.00
Employee 4	11/04/2005	8,886.00	1,000.00	9,886.00
Employee 5	11/28/2004	3,791.00	1,000.00	4,791.00
Employee 6	10/2/2008	0.00	886.66	886.66
Employee 7	11/9/2005	2,443.00	1,000.00	3,443.00
Employee 8	12/15/2005	3,136.00	1,000.00	4,136.00
Employee 9	8/23/2004	59.65	1,000.00	1,059.65
Employee 10	5/2/2008	4,721.00	1,000.00	5,721.00
Employee 11	11/10/2008	0.00	119.83	119.83
Employee 12	11/19/2004	365,334.00	1,000.00	366,334.00
Employee 12	11/1/2005	0.00	743.87	743.87
Employee 12	6/1/2007	97,047.00	914.10	97,961.10
Employee 13	7/9/2005	0.00	448.00	448.00
Employee 14	11/19/2005	0.00	719.60	719.60
Employee 15	2/23/2008	0.00	751.20	751.20
Employee 16	1/18/2005	663.00	1,000.00	1,663.00
Employee 16	2/2/2005	2,477.00	1,000.00	3,477.00
Employee 17	3/28/2008	0.00	481.19	481.19
Employee 18	9/18/2008	1,273.00	1,000.00	2,273.00
Employee 19	11/10/2005	0.00	64.95	64.95
<b>TOTALS</b>		<b><u>\$495,442.65</u></b>	<b><u>\$18,760.97</u></b>	<b><u>\$514,203.62</u></b>

Criteria: Section B, Subsection 6 of the ABCA's Policy Number E-113 states in part:

"Employees are to operate State issued vehicles in a safe responsible way. Employees are subject to all laws, ordinances and rules governing the operation of a motor vehicle. Operating a vehicle contrary to the laws, ordinances, and rules may result in the suspension of the use of the state vehicle...."

Cause: ABCA personnel told us that the Fleet Management Office is responsible for oversight and imposing discipline on drivers in accordance with Fleet Management's Legislative Rule.

Effect: We ask the Executive Director of the Board of Risk and Insurance Management to comment on ABCA automobile claims in relation to the norm. His response is quoted below:

"BRIM calculates a "rating factor" for all agencies which is influenced by the number of claims incurred by the agency and the severity of those claims. Severity equates to how much money is paid out to the agency, or to others on behalf of the agency in order to resolve the reported claims. The "rating factor" norm is "1" or less. **A rating factor greater than "1" indicates a greater number of claims have occurred, or more severe claims have occurred over the rating period, which is usually the last five years. The rating factor for the ABCA is "1.4."** Most agencies' rating factor is "1" or less. Over the last five fiscal years, FY 2005-2009, the ABCA has incurred 17 auto related claims and one property claim with a total incurred (paid and pending) of approximately \$498,451. Two of the auto claims account for \$462,382 or 93% of the total incurred. Seventeen auto claims during the rating period, in addition to the severity of two of those auto claims greatly influences the "rating factor." Thus, **a 1.4 "rating factor" will cause an increase in premium as it does identify a trend of automobile accident frequency and likelihood that one or more of the accidents will be severe.**" (Emphasis Added)

The BRIM Executive Director stated ABCA has insurance claims paid and pending of approximately \$498,451.00 during the last five fiscal years. In addition, ABCA paid \$18,760.97 in insurance deductible costs for State-owned automobile accidents during the period of July 1, 2004 through March 31, 2009. Finally, due to a higher than normal "rating factor" of "1.4," ABCA has experienced relatively high BRIM premium costs when compared to other State agencies.

Recommendation: We recommend the Fleet Management Office, the Division of Personnel, the Board of Risk and Insurance Management and the Division of Highways work with the ABCA and other State agencies in drafting uniform procedures for monitoring employee driving records in State-owned vehicles and provide for disciplinary action to be taken for those employees that exhibit poor driving performance or demonstrate unsafe or careless behavior while operating a State-owned vehicle. Once finalized, we recommend the drafted procedures be

submitted to Legislative Rule Making Committee for their consideration as a Legislative Rule.

Spending Unit's  
Response:

See pages 18 and 19.

## **Finding 2**

### **Fleet Management Office: Establishment of an Accidents and Violations Review Committee to Review State-Owned Vehicle Accidents**

#### **Condition:**

In accordance with Chapter 5A, Article 3, Section 48 of the West Virginia Code, as amended, the Department of Administration's Fleet Management Office promulgated Legislative Rule Title 148, Series 3. The Rule outlines various procedures designed to provide for the "use" and "safe operation" of State-owned vehicles. However, many of the provisions provided for in the Rule were never enacted by the Department of Administration or by any of its Divisions, Sections or Offices. Those provisions in the Rule that were never enacted include the following:

- (1) The establishment of an Accidents & Violations Review Committee (AVRC).
- (2) Investigation of driving records with the Department of Motor Vehicles of each operator of a State-owned vehicle involved in a vehicle accident.
- (3) The use of an "Administrative Action Chart" by the AVRC that outlines progressive discipline to be administered for drivers involved in "Preventable" or "At-Fault" accidents.

According to the Administrative Action Chart included as Exhibit A of Title 148, Series 3, "Preventable Accidents" are those that the AVRC determine to be within the control of the operator or those that the operator contributed or appeared to contribute to the circumstances that led to the accident. "At-Fault" Accidents are those where the vehicle operator is cited by a law enforcement agency official.

We reviewed police and insurance reports for all ABCA State-owned vehicle crashes for 57 months from July 1, 2004 through March 31, 2009. Based on our judgment and the definitions provided in Exhibit A of the Fleet Management Office's Rule, we assessed whether or not each driver of the State-owned vehicle contributed to the accident and, based on the above definitions, the crash would be appropriately classified as either a "Preventable" or an "At-Fault" accident. The following schedule, which is presented in the same order as the vehicle accident schedule in the preceding finding, shows the results of our analysis:



ABCA Employee	Date of Accident	Preventable or At-Fault Accident	Cost: Insurance Payment and Deductible
Employee 1	5/11/2005	Preventable	\$ 690.00
Employee 2	8/25/2008	Preventable	941.57
Employee 2	11/19/2008	Unable to determine	2,932.00
Employee 3	3/31/2005	Preventable	4,680.00
Employee 4	11/04/2005	At-Fault	9,886.00
Employee 5	11/28/2004	Unable to Determine	4,791.00
Employee 6	10/2/2008	Unable to Determine	886.66
Employee 7	11/9/2005	Unable to Determine	3,443.00
Employee 8	12/15/2005	Unable to Determine	4,136.00
Employee 9	8/23/2004	Preventable	1,059.65
Employee 10	5/2/2008	Preventable	5,721.00
Employee 11	11/10/2008	Preventable	119.83
Employee 12	11/19/2004	Preventable	366,334.00
Employee 12	11/1/2005	Unable to Determine	743.87
Employee 12	6/1/2007	Preventable	97,961.10
Employee 13	7/9/2005	Preventable	448.00
Employee 14	11/19/2005	Unable to Determine	719.60
Employee 15	2/23/2008	Preventable	751.20
Employee 16	1/18/2005	Preventable	1,663.00
Employee 16	2/2/2005	Preventable	3,477.00
Employee 17	3/28/2008	Preventable	481.19
Employee 18	9/18/2008	Unable to Determine	2,273.00
Employee 19	11/10/2005	Preventable	64.95
<b>TOTAL</b>			<b><u>\$514,203.62</u></b>

Based on our interpretation of the Fleet Management Office’s Legislative Rule, 14 of the accidents should have been characterized as “Preventable” and one accident as “at-Fault” by the AVRC. The total insurance claim payments plus deductible costs for these 15 accidents was \$494,278.49, or 96.12% of the total insurance claim payments and deductible costs for all 23 accidents. If the Fleet Management Office would have complied with the directives of Section 8.6 of its Legislative Rule, disciplinary action should have been imposed for these 15 accidents, ranging in severity from written reprimands to a three months suspension of State-owned vehicle driving privileges.

Criteria:

Title 148, Section 8.6 of the Fleet Management Office’s Legislative Rule states in part:

“8.6 Reviewing Driving Records of Operators.

In the event of an accident, property damage of any kind, or any damage to any State Owned vehicle, the **Travel Management Office will review the involved operator’s driving record** with the Division of Motor Vehicles....

The Accidents & Violations Review Committee will be comprised of a representative of the Travel Management Office, one representative of the Division of Personnel, one representative of the Secretary of Administration’s office, and two representatives of the operator’s department – one representative selected by the vehicle operator. **Decisions by the committee will be based on the administration action chart attached hereto as Exhibit A.” (Emphasis Added)**

Exhibit A (Administrative Action for State Owned Vehicle Operators) of Title 148, Series 3 of the Fleet Management Office’s Legislative Rule states in part:

“...ACCIDENTS	ACTION
...1 Not-At-Fault or Non-Preventable	Verbal Counseling by the AVRC
...2 Not-At-Fault or Non-Preventable or 1 At-Fault or Preventable	Written Reprimand and Defensive Driving Course
...3 Not-At-Fault or Non-Preventable	Written Reprimand and suspension for a Maximum 03 Months
...2 At-Fault or Preventable	Suspension for a Minimum 03 Months to a Maximum 12 Months...”

Cause: The Fleet Management Office is under the direction of the Department of Administration’s Assistant Purchasing Director. The Assistant Purchasing Director stated it is left to the agency’s discretion whether or not to monitor State-owned vehicle accidents and, accordingly, it is their choice if they continue to allow an employee to drive after he or she has been involved in multiple accidents.

Effect: A total of \$495,442.65 was paid to ABCA by the Board of Risk and Insurance Management (BRIM) from July 1, 2004 through March 21, 2009, for car crashes involving State-owned vehicles leased by the ABCA. In addition, the ABCA incurred \$18,760.97 in insurance deductible costs during this same period.

Recommendation: We recommend the Fleet Management Office comply with Legislative Rule Title 148, Series 3, Section 8.6 until such time an alternative Rule can be developed

and implemented. For this Rule, we recommend the Fleet Management Office, the Division of Personnel, the Board of Risk and Insurance Management and the Division of Highways work with the ABCA and other State agencies in drafting uniform procedures for monitoring employee driving records in State-owned vehicles and provide for disciplinary action to be taken for those employees that exhibit poor driving performance or demonstrate unsafe or careless behavior while operating a State-owned vehicle. Once finalized, we recommend the drafted procedures be submitted to Legislative Rule Making Committee for their consideration as a Legislative Rule.

Spending Unit's  
Response:

*In regard to **Finding 2**, the Legislative Rule, Title 148, Series 3, which you referenced in your report was written nearly twenty years ago and, relating to this specific section, never fully implemented. In regard to the Accidents & Violations Review Committee, it was decided that the Fleet Management Office should not be in the position of imposing discipline on employees of other agencies, but rather the individual agencies directly handling any discipline matters related to their employees.*

*Although we feel that state agencies should be responsible for the actions of their own employees, we do agree to comply with the audit recommendation until the Legislative Rule may be modified. We will work with our department's legislative liaison to discuss possible changes to the rule to better address situations surrounding accidents and violations of state employees when utilizing a state-owned automobile.*

**STATE OF WEST VIRGINIA**

**OFFICE OF THE LEGISLATIVE AUDITOR, TO WIT:**

I, Stacy L. Sneed, CPA, CICA, Director of the Legislative Post Audit Division, do hereby certify that the report appended hereto was made under my direction and supervision, under the provisions of the West Virginia Code, Chapter 4, Article 2, as amended, and that the same is a true and correct copy of said report.

Given under my hand this 26th day of May 2009.



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Stacy L. Sneed, CPA, CICA, Director  
Legislative Post Audit Division

Copy forwarded to the Secretary of the Department of Administration to be filed as a public record. Copies forwarded to the Alcohol Beverage Control Administration; Governor; Attorney General; State Auditor.



STATE OF WEST VIRGINIA  
DEPARTMENT OF REVENUE  
ALCOHOL BEVERAGE CONTROL ADMINISTRATION

322 70<sup>th</sup> Street, SE  
Charleston, West Virginia 25304-2900

JOE MANCHIN III  
GOVERNOR

DALLAS S. STAPLES  
COMMISSIONER

VIRGIL T. HELTON  
CABINET SECRETARY

May 26, 2009

**VIA FAX AT 304-647-4889**

Stacy L. Sneed, CPA, Director  
Legislature Post Audit Division  
Building 1, Room W-329  
1900 Kanawha Blvd., E.  
Charleston, WV 25034

Re: Response to Oversight of State-Owned Automobile Accidents  
for the period of July 1, 2004, through March 31, 2009

Dear Ms. Sneed:

The first issue with your oversight report is that a few of the accidents occurred under Acting Commissioner Ronald Moats during 2004 and further the WVABCA was audited by your office for the period of July 1, 2003, through June 30, 2005, and this issue was not raised in that previous audit report. It is not clear why State-Owned Automobile Accidents from 2004/2005 are an issue in this audit report?

Second, the scope of the audit was originally from July 1, 2005, through December 31, 2007. It is not clear why the scope has changed to encompass up to March 31, 2009?

Third in response to the first recommendation, the WVABCA agrees and has been working with Fleet Management, WV DOP and BRIM to monitor employee driving records pursuant to the West Virginia Code, Legislative Rules and established policies. The WVABCA has and is following its policy E-113. The WVABCA orders and leases State-Owned vehicles for its employees from Fleet Management, and further Fleet Management in its code and rules (W.Va. Code §5A-3-48 and Legislative Rule 148 CSR 3) sets the requirements for operating State-Owned vehicles, such as the use of seat belts, no smoking in the vehicles, and how to fuel the State-Owned vehicle. Fleet Management through its code and rules is tasked with the responsibility over the ownership, purchasing, usage, storage, maintenance and repair of all motor vehicles owned by the State of West Virginia.

Further, the WVABCA as required by its policy E-113 has notified Fleet Management when accidents have occurred and the WVABCA was told that Fleet Management does not enforce its rule which requires an Accidents and Violations Review Committee to review operators' driving

Stacy L. Sneed, CPA, Director  
Legislature Post Audit Division  
May 11, 2009  
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performance and record, and take action when appropriate per W.Va. Code §5A-3-48 and Legislative Rule 148 CSR 3 §8.6. Each WVABCA employee is entitled to due process under the law and part of this process as required under current law requires an Accidents and Violations Review Committee comprised of a representative from the Travel Management Office, a representative from Division Personnel, a representative from the Secretary of Administration's office and two representatives from the operator's department (one chosen by the operator) to review the operator's driving performance and record, and then recommend administrative action pursuant to 148 CSR 3. Without a recommendation from the Accidents and Violations Review Committee, the WVABCA would be acting contrary to the law by imposing any disciplinary action against an employee, and this would deny an employee his or her due process rights as provided by Fleet Management's rules for operating State-Owned vehicles (See 148 CSR 3).

Additionally, your original recommendation stated that the WVABCA should implement procedures to investigate State-Owned vehicle accidents, the WVABCA does not have anyone trained to investigate accidents and the financial cost and years of training to have the ability to properly investigate accidents would be prohibitive to the WVABCA.

Furthermore, the WVABCA disputes certain vehicle accidents that your auditors have determined were "Preventable Accidents". The Accidents and Violations Review Committee is the only entity authorized under the rules to determine whether an accident was preventable. The details about certain accidents would question your auditors' determination of a "Preventable Accident". Also, was the WVABCA's total mileage driven factored into any determinations?

Nevertheless, the WVABCA could change its policy E-113 to reflect Fleet Management's operator investigative procedures and operator disciplinary charts but the WVABCA could still only take action subsequent to Fleet Management performing its required duties. Note, the WVABCA has not been provided any statutory or rule authority to discipline employees whose job descriptions do not require them to use a State-Owned vehicle and are only required to have a valid driver's license. All WVABCA employees involved in the listed accidents have never been cited by police and have valid drivers' licenses.

In regards to your second recommendation, the WVABCA agrees that Fleet Management should comply with 148 CSR 3, and the WVABCA is willing to work with them, as we have been since before 2004 and to present, to monitor vehicle accidents and administer disciplinary action.

Lastly, I would like to add from our discussions that the Legislative Auditor has never looked at this issue in any previous audit of any state agency. While the WVABCA is the first agency to be reviewed, I feel that some weight should be given to the fact that many other agencies likely face this same issue of how to discipline employees whether or not they must use Fleet Management for their State-owned vehicles.

If you have any questions, please call me at the above telephone number.

Sincerely,



Dallas S. Staples,  
WVABCA Commissioner