

# NOZZLE & WRENCH

AN OFFICIAL PUBLICATION OF THE WASHINGTON DC, MARYLAND & DELAWARE SERVICE STATION & AUTOMOTIVE REPAIR ASSOCIATION



VOLUME 20/ISSUE 4  
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- >> Four Post-Pandemic Digital Trends Here to Stay
- >> Pricing Fuel Too High Can Backfire

## KIRK'S CORNER

# Legislation That Matters to You – Membership Meeting



By Kirk McCauley,  
Director Of Member  
Relations &  
Government Affairs

**After Maryland legislative session is over** WMDA will host a general membership meeting via zoom and an in depth legislative review of MD, DE, and DC. Look for Swapna's Email for details and most likely will be 14th of April.

Any questions you may have please send to Swapna at [ssripadabul@wmda.net](mailto:ssripadabul@wmda.net). We have a lot to talk about, legislative trends are accelerating involving carbon based fuels and not in a good way for our businesses.

We, as a group, can affect the timeline of change but we must put our heads together and function as a group. This year in legislation in all 3 areas we represent, there has been an assault on gasoline, diesel, natural gas, propane and how electricity is generated. This is how we make our living and members need to become proactive not reactive. Labor laws are cleaning out our pockets and I see no end in sight unless we all come together. I do not want this message to sound like a member

*Continues on page 4*



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**WMDA/CAR**  
1532 Pointer Ridge Place  
Suite F  
Bowie, MD 20716  
301.390.0900  
Fax: 301.390.3161  
www.wmda.net

**Swapna Sripada**  
Director of Operations  
301.390.0900, ext 115  
ssripadabu1@wmda.net



**Kirk McCauley**  
Director of Member  
Relations and  
Government Affairs  
301.390.0900, ext. 114  
kmccauley@wmda.net

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*The outcome of this lawsuit (Massachusetts Right to Repair) could very well set the course for legislation in other states and indeed the whole country.*

*Continued from page 1*

recruitment because it is a no brainer that every business that sells or works on vehicles burning motor fuel should be a member.

Send in those questions and comments and let me tell you what can make a difference. The half hour you spend at our online meeting will be an eye opener. I will make a promise that once we can all be together in same room, breakfast or lunch will be on WMDA/CAR.

I detest these online meeting, but it is what it is, and it is what we must work with.

### **Massachusetts Updated Right to Repair – What it means to Repair Facilities**

The outcome of this lawsuit could very well set the course for legislation in other states and indeed the whole country. I will update when we have more information.

Automotive Innovation, a group that lists numerous automakers in its membership including Ford, Honda, Fiat – Chrysler, GM, and Toyota have filed a suit against Massachusetts’ updated Right to Repair Law to include specifically Telematics transmitted wirelessly. Massachusetts Attorney General Maura Healey stipulated she would not enforce the state’s expanded “Right to Repair” law until a federal court reaches a verdict. U.S. District of Massachusetts Judge Douglas Woodlock has scheduled a nonjury trial for June 14, 2021,. Healey has agreed not to take any action until at least Aug. 1, 2021.

Official Massachusetts election results found 75 percent of voters backing the Right to Repair expansion, with only 25 percent opposed. The official tally was 2,599,182 in favor to 867,674 against.

The updated law would require manufactures to create an “inter-operable, standardized and open access platform across all of the manufacturer’s makes and models.”

“Commencing in model year 2022 and thereafter, a manufacturer of motor vehicles sold in the Commonwealth, including heavy duty vehicles having a gross vehicle weight rating of more than 14,000 pounds, that utilizes a telematics system, shall be required to equip such vehicles with an inter-operable, standardized and open access platform across all of the manufacturer’s makes and models.” The language added to state law by the question states. “Such platform shall be capable of securely communicating all mechanical data emanating directly from the motor vehicle via direct data connection to the platform. Such platform shall be directly accessible by the owner

of the vehicle through a mobile-based application, and, upon the authorization of the vehicle owner, all mechanical data shall be directly accessible by an independent repair facility or a class 1 dealer licensed pursuant to section 58 of chapter 140 limited to the time to complete the repair or for a period agreed to by the vehicle owner for the purposes of maintaining, diagnosing, and repairing the motor vehicle. Access shall include the ability to send commands to in-vehicle components if needed for purposes of maintenance, diagnostics and repair.”

Telematics is defined as “any system in a motor vehicle that collects information generated by the operation of the vehicle and transmits such information, in this chapter referred to as ‘telematics system data,’ utilizing wireless communications to a remote receiving point where it is stored.”

Mechanical data is defined as “any vehicle-specific data, including telematics system data, generated, stored in or transmitted by a motor vehicle used for or otherwise related to the diagnosis, repair or maintenance of the vehicle.”

The initiative also required that “motor vehicle owners’ and independent repair facilities’ access to vehicle on-board diagnostic systems shall be standardized and not require any authorization by the manufacturer, directly or indirectly, unless the authorization system for access to vehicle networks and their on-board diagnostic systems is standardized across all makes and models sold in the Commonwealth and is administered by an entity unaffiliated with a manufacturer.”

Will keep you update as information comes in.

### **Delaware**

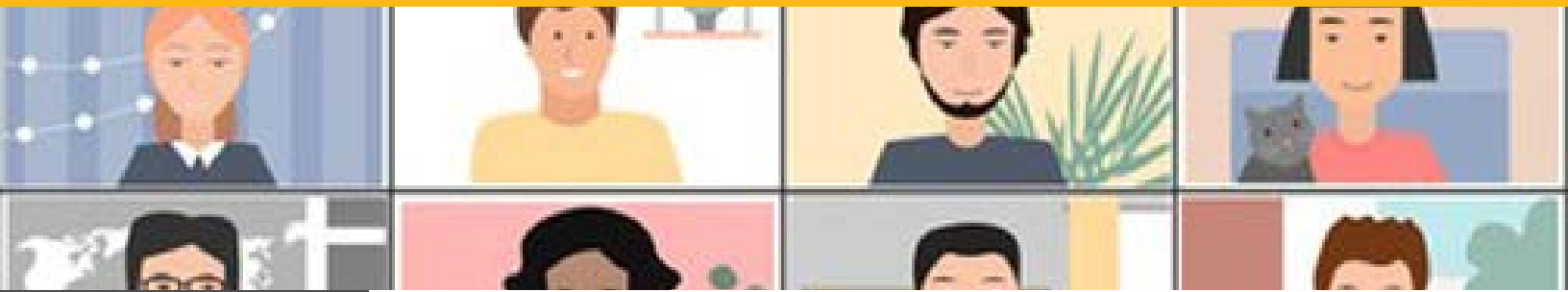
Delaware bill to increase Minimum wage will increase the minimum wage, presently \$9.25 according to the following schedule:

- Not less than \$10.50 per hour, effective January 1, 2022.
- Not less than \$11.75 per hour, effective January 1, 2023.
- Not less than \$13.25 per hour, effective January 1, 2024.
- Not less than \$15.00 per hour, effective January 1, 2025.

All indications are this bill will pass house and senate, in last election cycle progressive democrats took control of both chambers.

<https://legis.delaware.gov/BillDetail?LegislationId=48445>

We are also anticipating a flavor ban bill on



tobacco including menthol, at the same time there is a marijuana legalization bill in the offering – Flavor bad – dope good, one great object lesson on values.

In talks with legislators, we are also looking for a sick leave bill to be introduced. I will have more on Delaware legislation at Legislative update – General membership meeting on Wednesday April 14th 9am online get together. Delaware legislators are in session until June 30, 2021. This is a meeting you do not want to miss.

**Paycheck Protection Program (PPP) Extension – UPDATE - Bill SIGNED**

The U.S. senate passed an extension for PPP loans that will keep applications open until May 31, 2021. The house small business committee where Maryland Senator Ben Cardin is chair shepherded the bill through the house last week. Now the bill goes to president who is a sure bet to sign extension into law.

Maryland Senator Ben Cardin, said it is crucial the program be extended given recent eligibility changes and the large number of first-time applicants still seeking help, including the self-employed.

“This extension is desperately needed,” he said Tuesday. “This requires time to get these applications not only filed but processed. As a result, if we do not extend the program, there are going to be a lot of small businesses that are going to be left out.”

There are billions of dollars left in fund and all these loans are forgivable when used for payroll and most business expenses. This link has all information on PPP loans, how to turn loans into

grants and other requirements (which are few and very liberal) to qualify. [Paycheck Protection Program \(sba.gov\)](https://www.sba.gov)

**Governor Hogan Announces Replenishment of Maryland’s Unemployment Insurance Trust Fund**

Governor Larry Hogan along with leaders of house and senate announced a bipartisan agreement on how the state will allocate money from the Federal American Rescue Plan Act that was signed by President Biden. \$6.355 billion will come to Maryland. Our business coalition has advocated for a replenishment of the state unemployment insurance fund and \$1.1 billion will go to the fund to keep rates from skyrocketing from spending due to COVID19 unemployment payouts. This is welcome news especially for the small business community trying to recover from a year of crisis and challenges.

- \$1.1 billion will be spent to replenish Maryland’s Unemployment Insurance Trust Fund to maintain its solvency and stabilize rates over the next two calendar years.
- \$800 million will be added to existing Maryland Emergency Economic Relief Programs.
- \$600 million for the safe reopening of schools.
- \$300 million for a broadband technology initiative to expand access to high-speed internet.
- \$100 million for employment training and apprenticeship programs.
- \$100 million to support state employees providing essential services during the pandemic.
- \$500 million in infrastructure and transit improvements.

- \$300 million to provide a critical lifeline for struggling Marylanders including low income with utility programs, temporary disability payments, etc.

Counties will be receiving money from this plan and others that have yet to be decided.

**District of Columbia**

The details: Councilmembers Brianne Nadeau (Ward 1) and Mary Cheh (Ward 3) have introduced a bill that will impose a 1.5 cent-per-ounce excise tax on sweetened beverages sold in the District of Columbia.

Excise tax vs. sales tax: An excise tax is imposed directly on a retailer, which means DC store and restaurant owners will be required to pay this tax up front as opposed to having it paid at the register through a sales tax.

That would impose an additional burden on small businesses trying to recover from the COVID impact of the tax on consumers:

- Price of a carton of lemonade (59 oz) increases by up to 53%
- Price of an 8-pack of sports drinks (20 oz/bottle) increases by up to 34%
- Price of a 2-liter increases by up to 46%

We continue to ask you to encourage members to sign up at [www.afforddc.com](http://www.afforddc.com) and you can follow along and engage with us @AllianceforDC on Twitter & Facebook. We will continue to share the voices of our Alliance and new messaging that could be used in the coming days and weeks.

WMDA/CAR is a member of the Alliance and all convenience stores should also be members and participate. Free and Easy, send an email to council members all the tools you need are on above website or Twitter and Facebook. ■

*The U.S. senate passed an extension for PPP loans that will keep applications open until May 31, 2021... Now the bill goes to president who is a sure bet to sign extension into law.*



EARLY BIRD  
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# WMDA/CAR 3RD ANNUAL GOLF OUTING

*In Support of WMDA PAC*



## JUNE 8, 2021

Tuesday @ 9:00 a.m.

### Renditions Golf Course

1380 Central Ave., Davidsonville, MD

8:00 a.m. Registration and breakfast

9:00 a.m. Shotgun Start (4-Man Scramble Format)

1:00 p.m. Boxed lunch outdoors with contest prize distribution

**\$169 per Golfer/\$600 for Foursome/Early Bird \$150 by April 15**

\$169/Golfer includes Greens Fee, Cart fee, bag drop, Grab n Go Breakfast and Boxed Lunches. Each Golfer will get two Drink tickets redeemable for Alcoholic/Non-Alcoholic Beverages at the Beverage cart.

Refreshments will be available on the course. WMDA/CAR will assist in pairing individual registered golfers to make a foursome if requested.

#### REGISTRATION INFORMATION

Golfer #1:	<input type="text"/>	Email:	<input type="text"/>	Phone:	<input type="text"/>
Golfer #2:	<input type="text"/>	Email:	<input type="text"/>	Phone:	<input type="text"/>
Golfer #3:	<input type="text"/>	Email:	<input type="text"/>	Phone:	<input type="text"/>
Golfer #4:	<input type="text"/>	Email:	<input type="text"/>	Phone:	<input type="text"/>

Please assist in making a foursome if less than 4 golfers listed above.

Contact Person:  Company Name:

Mailing Address:  City:  State:  Zip:

#### REGISTRATION FEES

- Early Bird!** Golfers x \$150\* = \$   
*\*Sign up by April 15*
- Golfers x \$169 = \$   
*After April 15*
- Foursome \$600

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- Checking this box is my electronic signature

**REGISTER TODAY!** Email: [ssripadabu1@wmda.net](mailto:ssripadabu1@wmda.net) Call: 301.390.0900, ext. 115

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# Learning While Learning



By Sandi Weaver  
BA Auto Care, Inc.

**The WMDA/CAR training conference** in February was a time for learning. I, for one, learned more than I expected. While I picked up information from the classes I attended, I also learned from the whole process and those I visited at their booths. I'd like to share a few non class related items with you.

**Sponsors** – There would be no training offered anywhere without sponsors. Sponsors contribute funds to organizations and associations to gain exposure to possible new clients, get their name in front of more people and to build relationships. While not many attendees visited the

booths during the training conference, I took full advantage of the one on one time with the sponsors and trainers. The first booth I visited was Parts Authority.

**Part Authority** is a WMDA/CAR endorsed supplier. I know you've heard of endorsed suppliers but do you really understand what that means to you, as a business owner? I thought I understood what Parts Authority offered WMDA/CAR members but was a little confused so I dropped into their booth on Saturday. I didn't just get one on one time, I got to hear from 3 of their sales associates and learn more about their program. Yes, they offer good quality parts at an affordable price with great customer service. They also will work with you to develop cost savings that works best for your company whether that's a discount on parts, a rebate check when you reach a certain threshold or taking money off your monthly statement. If you didn't get a chance to stop by their booth during the training conference or aren't using them as your parts supplier, please reach out to your sales representative and discuss what they offer and how they can help you save time and money.

Although I didn't get a chance to visit The Wills Group at their booth, they were a great sponsor to have for the training conference. Hoping to engage with the gas stations and c-stores side of WMDA, The Wills Group jumped at the chance to attend and were giving out free car washes at their booth all weekend.

**Presenters** – Not all classes were automotive related but all were geared towards owners, managers, service advisor and/or technicians. We had 4 new presenters who offered classes on other important aspects of business.

**Carbo Coaching** – Mick was our keynote speaker and along with wife and business partner Tara, they taught the difference between a mentor, a manager and a leader. While they seem to be interchangeable terms, after attending Mick and Tara's class I now know they vary dramatically from each other. Why strive to be a manager when you can be a leader? Watch the recording to see for yourself.

**Crocus Coaching and Development** – While Suzanne lives across the pond in England, she brings years of experience and a calm, positive outlook to each session. Her wealth of knowledge and ability to guide clients to become excellent leaders is unique to each person she works with. To catch the replay of her class, head over the [wmda.tradewing.com](http://wmda.tradewing.com) or [crocuscoaching.co.uk](http://crocuscoaching.co.uk)

**Ameritrust CONNECT** – I'll be honest, I wasn't sure I needed to attend Brian Risen's class on Workman's Comp but I'm sure glad I did. After his class I went to



*The WMDA/CAR training conference in February was a time for learning. I, for one, learned more than I expected. While I picked up information from the classes I attended, I also learned from the whole process and those I visited at their booths.*



# WMDA/CAR Virtual Training Conference



his booth to see what else I could learn. It was a pleasure to get one on one time with Brian and hear just how forward thinking and accommodating Brian and Ameritrust are. We all know there is more to an insurance company than just a good rate. Customer service, education and coverage are among the top. Ameritrust has competitive pricing but brings a wealth of knowledge and personalized attention we all need when running a business.

Automotive trainers were outstanding!! Having so many top instructors from around the country attracted shops all the way from California. While speaking with Gary Smith, he said how hard this past year has been for trainers, especially those who mainly do "hands on" classes. While they were quick to adapt to online classes, their income took a hit by not being able to travel. Let's all help these amazing trainers and ask them to come teach our staff and get them back to doing what they love and want we all need.

I'd like to thank all of our instructors and sponsors for their time and knowledge. This was WMDA/CAR's first virtual learning conference and while there were a few issues that crept up, everyone involved took it in stride and offered their best to 100+ attendees. We look forward to next year's training conference. ■



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# TOP 10 WAYS TO CONTROL YOUR MOD

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## TOP 10 WAYS TO CONTROL YOUR MOD

Your experience modification factor, or mod, is an important component used in calculating your workers' compensation premium. If you can control your mod, you can lower your price — so we've gathered top tips to help you impact your bottom line.

1. Investigate accidents immediately and thoroughly; take corrective action to eliminate hazards, and be aware of fraud.
2. Report all claims to your carrier immediately. Alert the carrier to any serious, potentially serious or suspect claims. Frequently monitor the status of the claim, and communicate with the adjuster to resolve them as quickly as possible.
3. Take an aggressive approach to providing light duty to all injured employees upon their release from treatment. Supervise light duty employees to ensure their conformance with restrictions.
4. In serious cases that involve lost time, communicate with the claims adjuster to demonstrate your interest in returning the injured employee back to gainful employment.
5. Set safety performance goals for those with supervisory responsibility. Success in achieving safety goals should be used as one measure during performance appraisals.
6. Develop a written safety program, and train employees in their responsibilities for safety. Incorporate a disciplinary policy into the program that holds employees accountable for breaking rules or rewards them for correctly following safety procedures.
7. Frequently communicate with employees, both formally and informally, regarding the importance of safety.
8. Make safety a priority – senior management must be visible in the safety effort and must support improvement.
9. Evaluate accident history and near-misses at least monthly. Look for trends in experience, and take corrective action on the worst problems first.
10. Work with your team at AmeriTrust CONNECT.

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# Have You Become Shop Blind?

John Burkhauser, Director of Education, BOLT ON Technology

**Every morning you pull onto the parking lot** of your business and park your car. You unlock the door and start your day. Flipping switches turning on lights as you walk through the building, the office, and the shop. You pick up any night drop envelopes by the slot in the garage door while unlatching each door. On nice days you might even open the doors to let the fresh morning air in. Back in the office you put the night drops on the counter, wake up the computers and maybe start a fresh pot of coffee for the customers that will be showing up shortly. It is the beginning of another day of business.

Though it is obvious that to do every step you need to have your eyes open, you no longer “see” your surroundings or even your actions. You do all this in automation. You never really look. And it is all because you have become a human robot. You default to spending much of your day on auto pilot. Focused on getting through the day, putting out fires, fixing vehicles and trying to make a profit. You have probably become “Shop Blind”.

Mindfulness is a type of meditation that is practiced so that individuals can be more aware of their situation, feelings and more, all to the betterment of one’s life experience. Although mindfulness could make a meaningful impact on an individual’s experience in life, we are going to focus on one aspect of being mindful that can directly affect you and your business. That aspect is your shop’s appearance in your customers eyes. (Note: We can discuss other aspects of mindfulness for you, your employees, and your shop, if enough readers of this article request it.)

In my years of traveling for BOLT ON TECHNOLOGY I have visited hundreds of shops. And in most cases, I have found that you can judge a shop’s success by first impressions. This includes, but is not limited to, the condition of the parking lot and the outside of the building.

Realize that I am seeing your business basically the same way a possible customer sees your shop. The same customers that might be driving by looking to get their vehicle serviced or repaired. Their first impressions of your facility and parking lot determining whether they turn into your parking lot or drive past it onto the next shop. Worse yet, they might turn into your parking lot, but there is nowhere to park, so they drive off just because of that.

Because of Shop Blindness you no longer see your business as your possible new customers or returning customers do. You have become “blind” to the things you see every day. Your eyes are open, and yes, you see the customers and their vehicles, but you no longer see your shop’s appearance. Do not worry, you are not alone, there are probably thousands of shops across the country where this is occurring too.

It is a problem that many shops have but, in the hustle and bustle of everyday it gets lost. Never noticed. But hopefully for you, this changes today when reading this article. The best part of this realization is that this can be one of the least expensive fixes you will ever encounter in improving your shop and its success.



*Though it is obvious that to do every step you need to have your eyes open, you no longer “see” your surroundings or even your actions. You do all this in automation.*

*It is spring, a great time to end your "Shop Blindness" and do some seeing and possible spring cleaning making your shop give customers the first impressions that will have them coming in for all of their automotive needs.*

Drive by your shop with your now opened eyes. Park across the street and watch. Drive by after dark passing your shop from all directions possible. What do you see? Write notes about your findings on a tablet of paper or in your note app on your phone.

Start with your overall property, parking lot and then building. Look for things such as your signs being fully lit at night. Or even if they are going on at all. Is the parking lot clean and easy to access? Are there weeds growing through the asphalt and along the building wall where it meets the ground? Are there any vehicle's that have been sitting for a long time? Old parts or tires piled up out in the open? Is there a way to open up the parking lot more? Is the exterior of the building dirty or has paint peeling off?

Maybe it would be better for you to get someone else to look over the shop and property. A person who does not regularly come to your shop. Someone who will see your shop with "eyes wide open". Give them a pen and pad to list what they see, smell, and hear. Let them see your shop as a first-time customer.

I am pretty sure in many cases that the cleanliness of the shop and parking lot will be one of the things noted that needs to improve. This is where the fix can be very easy and inexpensive. First go from outside to inside and look at all the clutter and throw it out. Clutter includes everything from old engines, parts, and tools that are broke or no longer used. Vehicles that you have not touched in months or even years. Be honest with yourself during this process asking the question, "Do I really need to keep this?"

The next step is to clean and weed the complete property inside and out. I have seen this step have the greatest payback for the investment of time and money. Dark and dingy, cave like shops cleaned up and even though still needing some work such as wall repair and painting, still showing a much more professional side to any customer who looked into it.

It is spring, a great time to end your "Shop Blindness" and do some seeing and possible spring cleaning making your shop give customers the first impressions that will have them coming in for all of their automotive needs. ■

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# Four Post-Pandemic Digital Trends Here to Stay

**We live in a highly digital era** where the internet serves as a core piece of the modern customer's journey. The majority of consumers start the buying process by performing an online search through their computer, tablet, or phone, where they browse several websites before making a purchasing decision.

During the recent pandemic shutdown, consumers turned to the internet in droves to browse and shop when they could no longer visit their local stores. While at first the spike in online activity may have seemed like a one-off event that would reverse as soon as physical stores reopened, this has not been the case. Online search has developed into the cornerstone of consumerism's "new normal." In fact, many of the changes that took place over the course of last year have permanently altered the consumer landscape, especially in the case of eCommerce. The 2020 U.S. Ecommerce Market Report, released by Digital Commerce 360, revealed that our economy has undergone two decades worth of e-commerce growth since the end of 2019!

## The Digital Customer Journey Is the "New Normal"

Spending more time on social media, browsing search engines, and buying online are all products of 2020 that have now become habits for people. These activities will not dwindle as the economy returns to in-person shopping. As a result, we're witnessing an increased urgency for businesses to have a strong digital presence in order to connect with prospects.

Shoppers have developed an on-the-go approach to browsing and buying, which means they are accessing the internet to make a purchasing decision anytime and anywhere. To engage these mobile prospects, businesses need an active online presence that intersects with shoppers' purchasing journey at key decision-making moments.

While 2020 is behind us, many of the changes that occurred will stay with us well into the future. What trends can business owners expect to stick around in a post-COVID world?

## Need for High-Performing Responsive Website

With many people still working and shopping from home, websites have become a primary tool for research. Due to shutdowns and limited in-store capacities, websites now serve as virtual stores where shoppers can check out products and services prior to making a purchase.

Your website may be the first impression of your brand that online shoppers experience, and it could determine whether they decide to keep interacting with your business. A website that is built to rank highly online and is well-optimized for the user experience is a major asset to your online presence.



*...we're witnessing an increased urgency for businesses to have a strong digital presence in order to connect with prospects.*





The stronger your website, the more leads, and sales opportunities you can attract. Primary factors of a high-performing and well-optimized website include fresh and keyword-rich content, responsive website design, simple and intuitive site navigation, fast-loading webpages, and prominent calls to action.

### Value-Driven Messaging

In the beginning of 2020, we saw a strong shift toward empathetic, unity-based messaging from brands. Savvy businesses that swapped out their more direct sales pitches in favor of educational and community-oriented content saw a 48% higher customer conversion rate. This is because brands that delivered educational content retained a higher number of their customer base, as well as gained a new market of supporters. Consumer preference for value-driven messaging has not disappeared—shoppers want to see their favorite brands continue to demonstrate a strong commitment to community.

To enhance the value of your messaging, you can leverage multiple outlets, including:

- Creating a blog to share tips and insights
- Sending out a regular newsletter
- Posting consistently on social media
- Keeping your paid posts sympathetic and transparent

### Importance of Digital Marketing

Maintaining a strong digital presence is one of the most important steps businesses can take to remain relevant to their customers. As the use of online search continues to increase, businesses with a high brand visibility will fare better over businesses that continue to rely on in-store foot traffic.

Digital marketing tactics such as Search Engine Optimization (SEO) and Search Engine Marketing (SEM) work in tandem to elevate your online presence:

- Search Engine Optimization (SEO) organically builds your website's ranking in local online search. This is crucial to your online success, as 90% of online users only look at the first page of search results.
- Search Engine Marketing (SEM) turbocharges your brand awareness by featuring paid ads in prominent locations such as the top of search engines and in social media feeds.

### Central Role of Social Media

People who work from home are using social media more than ever. Instead of just checking Facebook and Instagram on lunch breaks, employees are now browsing their feeds throughout the workday, even during conference calls. Social media is used as a source of discovery, especially among younger generations, to learn about brands and products.

With social media becoming the new version of search engines,

businesses should maintain an active posting schedule and leverage a blend of organic and paid posts. Organic posting allows brands to show a more personal, “inside” look at their business and build consumer connections, while paid posts appear in the newsfeeds of promising leads who are not yet following that business on social media.

Along with the growth in social media comes an increased expectation for business owners to use social media as a form of customer service. Consumers aren't just using social media to browse – they are turning to direct messaging apps to communicate with the brands they're considering making a purchase from. As a result, direct messaging use is also on the rise – Facebook Messenger alone is predicted to reach 2.4 billion users by the end of this year.

We highly encourage businesses to invest in digital strategies in order to connect with the growing number of qualified leads who spend the bulk of their buying journey online. Businesses who don't adapt their marketing approach to match consumers' online shopping habits will miss innumerable sales opportunities. Instead of waiting for shopping habits to return to pre-pandemic procedures, we all must look ahead and embrace the digital change. ■

*This article was written by the team at Net Driven. Learn more about Net Driven's digital marketing solutions by visiting [www.netdriven.com](http://www.netdriven.com).*

# Pricing Fuel Too High Can Backfire

By James L. Parsons, Jr., Lynott, Lynott & Parsons, P.A.

**In the February 2021 issue** of the *Nozzle & Wrench*, I wrote about price gouging during the pandemic, and referenced laws passed by the State of Maryland and the District of Columbia to address this issue. While those laws may soon become ineffective when the declared COVID19 emergency is lifted, a dealer's decision to set its retail price for fuel at levels that greatly exceed others in the competitive market can have other consequences, as illustrated by a recent case out of Florida (*LLB Convenience & Gas, Inc. v. Southeast Petro Distributors, Inc.*; 476 F.Supp.3d 1225 (M.D.Fla. 2020)).

LLB Convenience & Gas, Inc. ("LLB") owns and operates a gas station in Orlando, Florida. Southeast Petro Distributors, Inc. ("Southeast") is a wholesale distributor of motor fuel. LLB entered into a dealer supply agreement ("DSA") with Southeast, whereby Southeast supplied LLB with Shell branded fuel. Southeast obtains its Shell branded fuel pursuant to a Wholesale Marketer Agreement ("WMA") with Motiva Enterprises, LLC ("Motiva"). Under the WMA, Motiva has the power to revoke its permission to display the Shell identifying trade dress at the dealer's location under certain conditions, including non-compliance with Motiva guidelines that require the dealer to operate in an "ethical and moral manner" and to "promptly and courteously respond to any customer complaints."

When it opened for business in 2008, LLB's owner increased the retail price for its gasoline from 30 to 80 cents over the rack price. LLB's high price for gasoline drew press coverage, and eventually Motiva began receiving numerous complaints from customers about the high gasoline prices at the station. In 2015, Motiva reported to Southeast that it had received 99 complaints in one year about price gouging at the station. When Southeast communicated this to LLB, the owner responded that he would provide a 50% refund to consumers who provided proof of purchase and contact information. The following year, Motiva reported that it had received an additional 309 complaints alleging price gouging at the station, and it notified Southeast that it was revoking its permission to use the Shell trade dress at the station. Despite that notice, Southeast continued to supply Shell fuel to LLB until 2018, when Motiva reported to Southeast that it had received over 400 complaints "over the past few months" about the station. Motiva stated that LLB's fuel pricing violated the "ethical and moral" requirements in the WMA, and that the complaints of price gouging violated the requirement to develop and actively promote the sale of fuel.

LLB's DSA with Southeast contained a minimum volume requirement, but Southeast had never enforced that requirement against LLB despite LLB's consistent failure to meet it. In response to Motiva "tightening the screws" on Southeast to debrand LLB's station, LLB undertook efforts to find an alternative brand for LLB, and eventually offered Citgo as a substitute brand. However, LLB's owner was reluctant to agree to a supply agreement with Citgo due to his concern that Citgo also had minimum volume requirements which he feared they would enforce, and eventually Citgo revoked its approval for the location. Based

*Most supply agreements allow the dealer to set its own retail prices for gasoline, and both Maryland and the District of Columbia have passed laws that prevent a distributor that supplies fuel to a dealer under a "marketing agreement" from setting the price.*





upon LLB's refusal to accept a new supply agreement that included a minimum volume requirement, Southeast was unable to find another supplier, and the franchise agreement was terminated. LLB then sued Southeast, alleging a wrongful termination of the franchise agreement under the PMPA, along with claims for anticipatory repudiation and breach of contract.

The court rejected all of LLB's claims, finding that Southeast did not terminate the franchise agreement. Instead, the court found that LLB made it impossible for Southeast to find a replacement supplier based upon its insistence that the suppliers waive their minimum gallonage requirement, combined with its desire to charge unreasonably high prices for fuel. The court also awarded Southeast attorney's fees pursuant to the DSA.

Most supply agreements allow the dealer to set its own retail prices for gasoline, and both Maryland and the District of Columbia have passed laws that prevent a distributor that supplies fuel to a dealer under a "marketing agreement" from setting the price. Of course, the customer is usually not aware of the price that the dealer is paying its supplier for the gasoline, which is often a determinative factor in the retail price. The dealer's pricing strategy in the *LLB* case resulted in the loss of the right to

use the Shell brand. The decision to revoke the brand was made by Motiva based the provisions in the WMA, and LLB was not a party to that contract. While it is not stated in the opinion, the fact that LLB owned its location may possibly have "saved" LLB from losing its entire business, because presumably it could have obtained

a fuel supply on the "spot" market, or sought out a long term supply contract on its own that did not include a minimum gallonage requirement. In any event, this case illustrates that when a dealer prices motor fuel at levels which generate numerous price gouging complaints, the supplier may revoke the right to use the brand. ■



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# Federal Government Affairs Update



By Roy Littlefield IV

**There has been a recent wrath** of government affairs activities impacting our industry. In March, Congress passed a COVID-19 relief package, and we continue to see the introduction of legislation that will have an impact on our members. WMDA/CAR being represented by SSDA-AT on the federal level recently took part in several coalition meetings and we have met with numerous members of Congress so far in 2021.

In March, the Death Tax Repeal Act of 2021 was reintroduced (S. 617 & H.R. 1712) by Congressmen Smith (R-MO) and Bishop (D-GA) in the House and Senate Minority Whip Thune in the Senate. WMDA/CAR strongly supports the legislation. SSDA-AT signed on to a letter supporting the legislation along with 154 organizations. While we don't expect repeal to pass under a Biden administration, this year we will be fighting against a death tax increase and our friends on the hill tell us that a strong offense helps them play defense on this issue. The House bill already has 121 cosponsors, and the Senate has 25. SSDA-AT has been working to gather cosponsors on the legislation. Last Congress, Senate Democrats proposed rolling back the doubled exemption to partly pay for their infrastructure package. WMDA/CAR took part in two coalition meetings in March on this issue.

With another reconciliation bill likely this year, SSDA-AT is on high alert for any changes to the estate tax, capital gains due at death, step up in basis changes, and technical changes to the estate tax like disallowing valuation discounts and disallowing the use of certain trusts that family businesses use to plan for succession.

During the month, SSDA-AT signed onto a letter to support the Main Street Tax Certainty Act of 2021, to make permanent the Section 199A 20-percent deduction for qualified business income. Led by Representatives Jason Smith (MO) and Henry Cuellar (TX) in the House, and Senator Steve Daines (MT) in the Senate, this bipartisan legislation will help ensure permanent tax parity for the millions of employers organized as S corporations, partnerships, and sole proprietorships. It will also provide certainty to the countless businesses who have been devastated by the coronavirus pandemic.

Individually- and family-owned businesses are the backbone of the American economy – they employ the majority of private-sector workers and represent 95 percent of all businesses. Despite the economic importance of the pass-through sector, however, Section 199A is scheduled to sunset at the end of 2025. The sooner Congress acts to make Section 199A permanent, the sooner Main Street employers – and the broader economy – will benefit.

Infrastructure funding continues to be a hot topic on Capitol Hill. SSDA-AT has been meeting with key committee staff on our policy priorities for the 117th Congress. We have met with House Committee on Transportation and Infrastructure (T & I) Majority and Minority staff and the Senate Committee



*With another reconciliation bill likely this year, SSDA-AT is on high alert for any changes to the estate tax, capital gains due at death, step up in basis changes, and technical changes to the estate tax...*

# GOVERNMENT AFFAIRS



on Environment and Public Works (EPW) Majority staff and Minority staff. President Biden has stressed that infrastructure will be a top priority as part of their COVID recovery effort. On March 3rd, SSDA-AT participated in a meet and greet with Charles Small, Deputy Assistant Secretary of intergovernmental Affairs at the U.S. DOT.

WMDA/CAR continues to oppose proposals to increase the federal minimum wage. Efforts to raise the wage to \$15 an hour in the latest COVID-19 relief failed but we expect this fight to continue as some Democrats continue to look for legislative vehicles to move this proposal. SSDA-AT is part of a coalition to oppose a minimum wage increase and during our March meeting we spoke with Senator Tim Scott (R-SC) who continues to be a champion for us on this issue.

On March 16th, SSDA-AT took part in the Small Business Legislative Council (SBLC) Annual Meeting. During the

meeting SSDA-AT spoke with the honored guest, Greg Pence (R-IN-06), brother of former Vice President Mike Pence. We discussed with Pence the pending highway bill, the recently passed COVID package, and the Estate Tax. Pence will be an advocate for us on these issues. The group also discussed what is ahead of 2021 in Washington.

In March, SSDA-AT participated in a Small Business Labor Safety (OSHA/MSHA) Roundtable. The possible OSHA Emergency Temporary Standard (ETS) on COVID-19 was the main issue discussed. The Office

of Advocacy takes its direction from small businesses and hosts roundtables to receive input on what issues are of greatest importance. SSDA-AT regularly takes part in these monthly meetings. SSDA-AT also reviewed in the meeting regulatory actions by OSHA and MSHA and discussed which issues are of key importance to small business.

We will continue to update you on a variety of issues impacting the industry as legislative activities are expected to ramp up on issues like infrastructure funding in the near future. ■

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# Death Tax Repeal Act Reintroduced



By Roy Littlefield III

Recently, the **Death Tax Repeal Act of 2021** was reintroduced (S. 617 & H.R. 1712) by Congressmen Smith (R-MO) and Bishop (D-GA) in the House and Senate Minority Whip Thune in the Senate.

SSDA-AT and WMDA/CAR strongly supports the legislation.

SSDA and WMDA/CAR signed on to a letter supporting the legislation along with 154 organizations.

While we don't expect repeal to pass under a Biden administration, this year we will be fighting against a death tax increase and our friends on the hill tell us that a strong offense helps them play defense on this issue.

The House bill already has 121 cosponsors, and the Senate has 25. WMDA-CAR has been working to gather cosponsors on the legislation.

Last Congress, Senate Democrats proposed rolling back the doubled exemption to partly pay for their infrastructure package.

With another reconciliation bill likely this year, SSDA-AT is on high alert for any changes to the estate tax, capital gains due at death, step up in basis changes, and technical changes to the estate tax like disallowing valuation discounts and disallowing the use of certain trusts that family businesses use to plan for succession.

## Estate Tax SSDA-AT Position Paper

SSDA-AT is a member of the Family Business Estate Tax Coalition (FBETC). This Coalition is dedicated to the full and permanent repeal of the estate tax. In working with Rep. Kevin Brady and the Coalition we were able to pass the Death Tax Repeal Act of 2015 (HR 1105) on a 240-179 vote.

We have supported efforts to fully repeal the Estate Tax in the 116th Congress by supporting the Death Tax Repeal Act (HR 218 and S 215).

At the end of 2017, Congress passed a tax reform package that doubles the estate tax exemption from now through the end of 2025. In 2026, the exemptions would revert back to their previous levels (\$5.6 million individual and \$11.2 per couple), indexed for inflation. The new tax affects estates of at least \$11.2 million, or \$22.4 million for couples.

SSDA-AT wanted full and permanent repeal of the estate tax which is what was in the House version of the bill.

We are thrilled the exemption was raised as this will help more SSDA-AT and WMDA-CAR members, but we have several other members who will still be negatively impacted by the estate tax and will find themselves over the exemption because of the value of their business.

SSDA-AT will support any efforts made in Congress to fully repeal the tax for the following reasons:



*...the Death Tax Repeal Act of 2021 was reintroduced (S. 617 & H.R. 1712) by Congressmen Smith (R-MO) and Bishop (D-GA) in the House and Senate Minority Whip Thune in the Senate.*

## Small Business letter to Capitol Hill

### Repealing the death tax would spur job creation and grow the economy.

Many studies have quantified the job losses caused by the death tax. Last year the Tax Foundation and Heritage Foundation both found that the US could create over 100,000 jobs by repealing the death tax. A 2012 study by the House Joint Economic Committee found that the death tax has destroyed over \$1.1 trillion of capital in the US economy – loss of small business capital means fewer jobs and lower wages. Lawrence Summers, former Secretary of the Treasury under President Clinton; Alicia Munell, member of President Clinton’s Council of Economic Advisors; Joseph Stiglitz, a Nobel laureate for economics; and Douglas Holtz-Eakin, former CBO Director have all published work on the death tax’s stifling effect on job growth and the economy as a whole.

### The death tax contributes a very small portion of federal revenues.

The death tax currently accounts for less than half of one percent of federal revenue. There is a good argument that not collecting the death tax would create more economic growth and lead to an increase in federal revenue from other taxes. A 2014 Tax Foundation analysis found repeal of the death tax would increase federal revenues by \$3.3 billion per year using a more realistic, “dynamic” economic analysis.

Dear Senator Thune and Congressmen Smith:

The undersigned organizations support your bill, the *Death Tax Repeal Act*.

We appreciate your work to lead the country towards a common sense tax code that does not impose a destructive double or triple tax at death. E support full and permanent repeal of the federal estate tax for the following reason:

**Repealing the death tax would spur job creation and grow the economy.** Many studies have quantified the potential job growth that would result from estate tax repeal. In 2017, the Tax Foundation found that the US could create over 150,000 jobs by repealing the estate tax. A 2012 Study by the House Joint Economic Committee found that the death tax has destroyed over \$1.1 trillion in capital in the US economy—loss of small business capital means fewer jobs and lower wages. Lawrence Summers, former Secretary of the Treasury under President Clinton; Alicia Munell, member of President Clinton’s Council of Economic Advisors; Joseph Stiglitz, a Nobel laureate for economics; and Doug Holtz-Eakin, former CBO Director have all published work on the death tax’s stifling effect on job growth and the economy as a whole.

**The death tax contributes a very small portion of federal revenue.** The estate tax currently accounts for approximately one half of one percent of federal revenue. A 2016 Tax Foundation analysis found repeal of the death tax would increase federal income tax by \$145 billion over 10 years using a more realistic, “dynamic” economic analysis. In addition, the death tax forces family businesses to waste money on expensive insurance policies and estate planning. These burdensome compliance costs make It even harder for business owners to expand their businesses and create more jobs.

**A super-majority of likely voters supports eliminating the death tax.** Poll after poll has indicated that a super-majority of likely voters supports repealing the estate tax. Typically, two-thirds of likely voters support full and permanent repeal of the death tax. People instinctively feel that the estate tax is not fair. A 2017 NPR/Ipsos Poll found that 65 percent of respondents favored repealing that estate tax, including 51 percent of self-identified Democrats polled.

**The death tax is unfair.** It makes no sense to require grieving families to pay a confiscatory tax on their loved one’s nest egg. Far too often this tax is paid by selling family assets like farms and businesses. Other times, employees of the family business must be laid off and payrolls slashed. No one should be punished for fulfilling the American Dream. The negative effects of the estate tax make permanent repeal the only solution for family businesses and farms. Your legislation will help America’s family businesses create jobs, expand operations, and grow the economy. We thank you for your leadership on this important issue.

Signed,  
SSDA-AT, WMDA-CAR, and 154 Small Business Association.

**A super-majority of likely voters support eliminating the death tax.**

Poll after poll has indicated

that a super-majority of likely voters support repealing the death tax. Typically, two thirds of likely voters support full and permanent



repeal of the death tax. People instinctively feel that the death tax is not fair.

**The death tax is unfair.**

It makes no sense to require grieving families to pay a confiscatory tax on their loved one's nest egg. Often this tax is paid by selling family assets like farms and businesses. Other times, employees of the family business must be laid off and payrolls slashed.

For many family-owned businesses to keep operation after the death of the owner, they must plan for the estate tax. Planning costs associated with the estate tax

are a drain on business resources, taking money away from the day-to-day operations and business investment. These additional costs make it more difficult for the business owner to expand and create new jobs. Protecting family business from the estate tax is important in order to keep these businesses operating for future generations.

SSDA-AT will continue to find co-sponsors for the Death Tax Repeal Act (HR 1712 and S 617) in the 117th Congress as we work towards advancing the legislation. ■



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# Having a Voice – Representing Our Members

## Our Industry is facing not only the overwhelming effects of COVID-19 but issues that affect the core of our business.

- Maryland, Delaware, and District of Columbia belong to the Transportation Climate Initiative (TCI) with a goal of reducing carbon fuel use up to 30% by 2030.
- New cars manufactured are installing telematics in vehicles that only send information to their dealerships – no option to the car buyer.
- Ban on menthol cigarettes (already a law in Massachusetts)
- California bans gas powered cars by 2035.
- Baltimore council member wants to ban new service stations in the city.

This sounds like a Steven Spielberg horror movie, but these are real issues that face our industry!

These issues will be or already are in the legislative process and will affect every business WMDA/CAR represents. Outside and inside sales, and car count in our shops. Legislators are looking to raising funds for their next election. They are also looking at supporters who provide those funds and support their efforts.

We are working hard to protect our members and associates and your contributions are essential to that process. The devastating effects of COVID -19 and combining that with real legislative issues that affect all our members is difficult to absorb but they are a real danger to our businesses.

### Now is the time to support the WMDA PAC and protect your business.

We suggest \$150 per location however, any amount is welcome. Please send contributions to:  
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You may direct any questions about legislation to Kirk McCauley at [kmccauley@wmda.net](mailto:kmccauley@wmda.net).

Your fellow business owners and PAC officers,  
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1. Maryland currently is in a 4-year election cycle which began January 1, 2019 through December 31, 2022.
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