

NOZZLE & WRENCH

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

INSIDE THIS ISSUE:

- >> Rent Increases and the PMPA
- >> Protect the IP For Your Self-Driving Cars
- >> SSDA-AT Works to Prevent a Regulatory Trainwreck

Maryland legislative session will not start until January 12th, and we are already seeing proposed bills that would profoundly affect our members.

KIRK'S CORNER

January 1, Changes Wage Increases



By Kirk McCauley, Director Of Member Relations & Government Affairs

Maryland – Minimum Wage will be \$15.00. This is a minimum wage for all counties, depending on number of employees minimum wage could be higher (Howard & MOCO) Check posters.

[Maryland Minimum Wage and Overtime Law - Employment Standards Service \(ESS\) – Division of Labor and Industry \(state.md.us\)](#)

Delaware – Minimum wage \$13.25

[Minimum Wage – Delaware Department of Labor](#)

D.C. – Minimum Wage \$17.00

[2023 Living Wage Poster](#)

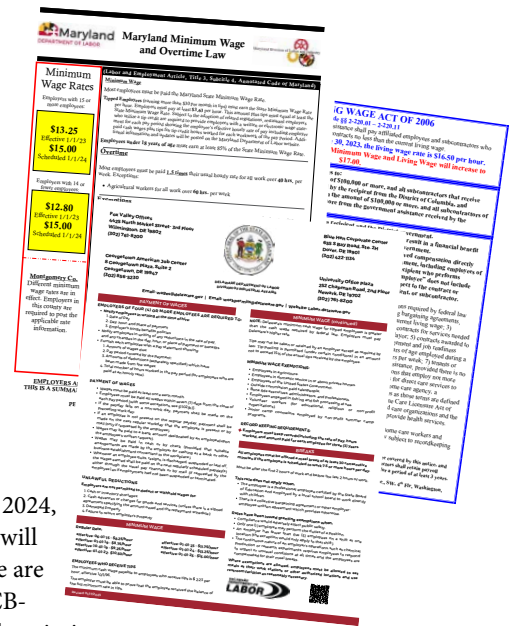
Wage posters are required to be posted.

P G Bag Bill Effective January 1,2024

Prince Georges County will have a bag bill as of January 1, 2024, our locations will no longer be able to use plastic bags and will be required by law to charge 10 cents for a paper bag. There are exceptions, but I do not think any apply to our locations. CB-032 has been tagged the Better Bag Bill, click [here](#) for the description.

Prince Georges Senator Watson Proposed Bill - Retail Service Stations Dealers - Fuel Service

Maryland legislative session will not start until January 12th, and we are already seeing proposed bills that would profoundly affect our members. Maryland State Senator Ron Watson (D Prince George's) announced he would introduce a bill that would require gas attendants to be on site in P.G. to pump customers' gas between the hours of 6am to midnight as a deterrent to crime. His proposed bill according to the Fox 5 news article will also require gas stations in P.G. to have cameras facing the pumps to help police with future investigations. WMDA/Car has seen bill language that does not have camera



Continues on page 4

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10



12

TABLE OF CONTENTS

KIRK'S KORNER

January 1, Changes Cover

CAR TALK

What Effect Will EV's Have in the Future? 6

NEWS FROM WASHINGTON

SSDA-AT Advocates for Right to Repair: Positive News in Maine and Congress12

SSDA-AT Works to Prevent a Regulatory Trainwreck14

ALSO IN THIS ISSUE

Rent increases and the PMPA 8

When Cars Run On Software: Protect the IP For Your Self-Driving Cars!10

WMDA/CAR Endorsed Membership Benefits & Service Providers15

ADVERTISERS' INDEX

Carroll Motor Fuels 13

CMR Insurance Agency LLC/Erie Insurance11

Parts Authority Inside front cover

Petroleum Marketing Group7

Spigler Petroleum Equipment, LLC5

The Wills Group..... Back cover

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Squeaky Wheel Gets the Oil – make that call or email now. Kill the bill before it goes to Annapolis or at least without P.G. legislative committees backing.

Continued from cover

mentioned? Senator Watson is responding to increased carjackings and crime in the P.G. Fox 5 did a [story on proposed bill](#).

We understand about the crime in P.G. County, member locations deal with it every day but what this bill proposes could not only put dealers out of business but increase crime. As written now, the bill would cost a location over \$2,200 a week in payroll and taxes, not counting any benefits at \$15.00 minimum wage. Finding employees LOL.

This is early and Senator Watson could be gaging the reaction to his proposal and final version could be different. I think [this bill](#) could change substantially and not in a good way.

The ramification of this proposed bill is such that we need to react and contact P.G. senators and delegate. We do not want this to get approved at PG delegation level which would make it harder to stop at house and senate level. P.G. businesses should contact delegates and senators from their district now. To find yours, click [here for link](#) then click on lookup, put your address in and contacts for state delegates and senators that represent you will come up.

Talking points, but using your own words, nobody tells your story better than you do.

Figure out what your cost would be. 18 hours per day x 7 – 126 Hrs. a week @\$15.00. You might have enough help

at certain times you might not need to hire for all the hours but only you know.

Businesses that now operate in secure areas, such as through window tray or enclosure would see crime increase as doors would have to open to let attendants out. We value customers and employee's health and wellbeing; this bill would force an employee into harm's way, and possibly set the store up for robbery.

Where would these employees come from? You cannot find any now and Maryland has the lowest unemployment rate in America. The bottom line is a bill like this could put some locations out of business, raise prices to cover cost, loss of volume because of cost. Prince Georges is not an island, and all roads would lead to cheaper gas in other locations. Squeaky Wheel Gets the Oil – make that call or email now. Kill the bill before it goes to Annapolis or at least without P.G. legislative committees backing.

Delaware Finalizes Clean CAR II Regulations

Delaware Department of Natural Resources and Environmental Control (DNREC) put finalized regulations in place that would require new car dealers to sell 82% ZEV by 2032. Regulations would expire in 2033. A short synopsis below from finalized regulations and a link if you want more in depth.

The regulations require

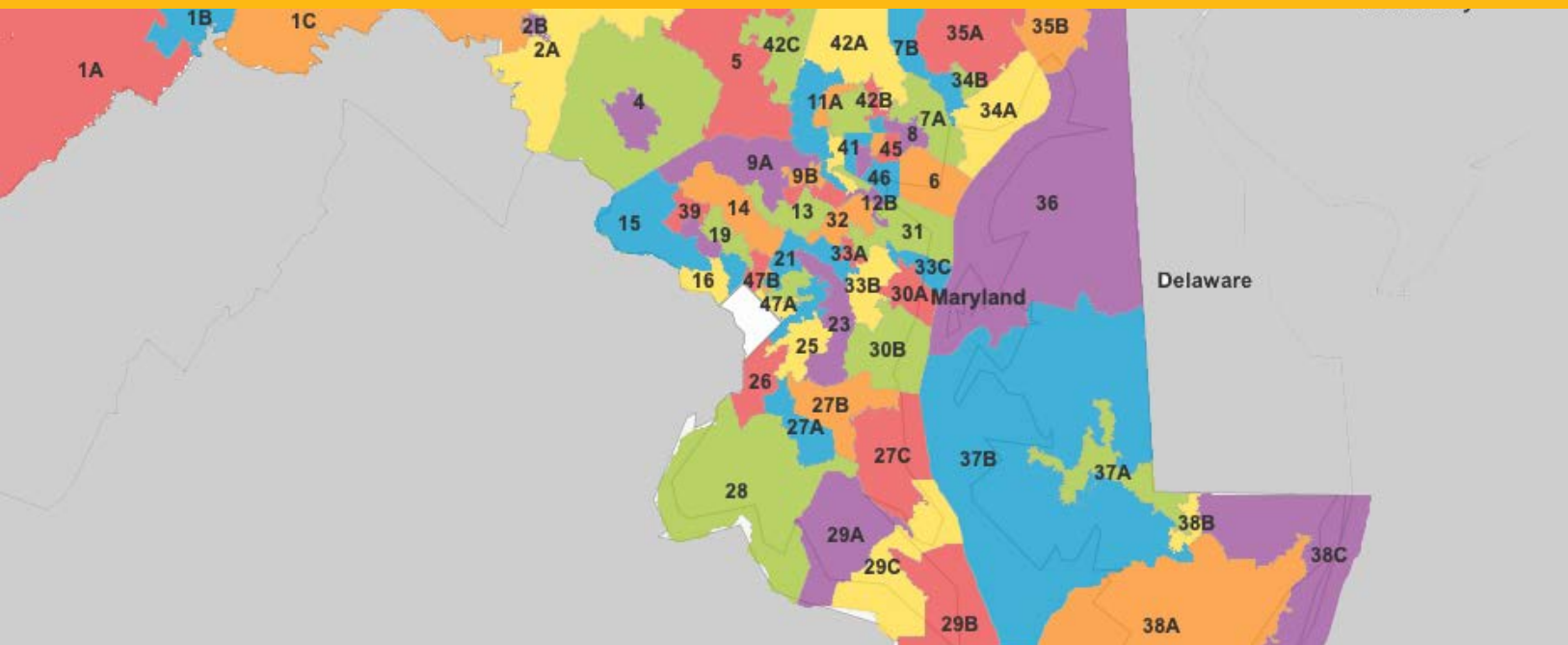
automakers to deliver an increasing number of zero-emission vehicles (ZEVs) for sale in Delaware. Zero-emission options, including battery-electric, plug-in hybrid electric, and fuel cell electric vehicles, will be more accessible across the state. Under the [finalized regulation](#), starting with model year 2027, 43% of new cars and trucks sent to Delaware for sale will be ZEVs. The percentage will increase to 82% in 2032. The regulations will expire in model year 2033. This is similar to regulations in some other states. The changes will be phased in over the five-year period and the regulations do not prohibit the sale or use of internal combustion engine vehicles.

District of Columbia UST

We continue discussions with D.C. DOEE on UST regulations pertaining to the tank age. We sent a letter with a proposal that would protect the environment while giving relief to 30 year replacement regulations. This has been a lengthy process but open discussion on both sides has been good. I will keep you updated.

Flavored Tobacco

The below alert went out last month on flavored tobacco products. If you have not responded it is not too late. I thought it was worth repeating for those that missed it. The decision could be made shortly so do not delay.



Action Alert for Tobacco Retailers

Food and Drug Administration (FDA) Sends White House Office of Management and Budget (OBM) Regulations for Flavor Ban on Cigarettes & Cigars, Including Menthol.

The rule is a tobacco product standard to prohibit the use of menthol as a characterizing flavor in cigarettes and flavor in all cigars. We have not seen a copy of the regutorie rules that were sent for consideration to OBM, but FDA has confirmed 2 sets of regulations have been sent to OBM.

OBM has 90 days to review regulations and President Biden to approve, and regulations would take affect 1 year latter. They could also be approved next week! So now is not the time to procrastinate. I have lifted a form (with permission) from MAPDA alert that was put together by Energy Marketers of America, it makes sending comments a breeze. Click on [action alert](#)

For those that would like to send an email or text to express in their own words, you can use contacts below. Email gives you an area to print your message, do it with respect but to the point.

White House contact information:

- Text the White House: (302) 404-0880
- [Email the White House](#)

Message Type – Select the President

Banning flavored tobacco products will create a crime wave that will be never ending, punishing manufacturers, wholesalers, and retailers, while at the same time no punishment to users, which will create a huge demand. Age verification, content of product and safety of purchasers will nonexistent. ■

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What Effect Will EV's Have in the Future?



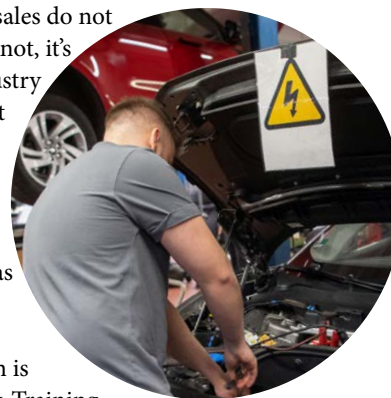
Ken Quasney
Owner, Auto Sense

I think about this quite often. I don't think I have a clear mindset on EV's. I thought I would offer some statistics from the internet. To date (January to end of September) in the USA, 893,000 EV's have been sold. Tesla still has 50% of those sales. Here's, my fear about EV's. Will it ruin the repair industry? How much will it affect the aftermarket independent shops? Will clients assume only the dealer has technology to repair them? What areas are predominantly selling them? How will gasoline stations be affected? Is there

enough infrastructure to support EV's in my area? I have a million questions on the subject. What I do know is, I don't see a lot of them in my shop. Why? Is it because of the chip shortage and we're just not seeing them yet? We typically don't see cars for three years (on average) after someone buys a new car or unless the free oil changes at the dealer expire. Of course, this depends on the area you service.

What I do know. EV's sales for this year to date are 893,000. I will at some point see more of these vehicles in my shop and sales do not appear to be slowing down. Am I ready? No, I'm not, it's that simple. The shift and technology in this industry is hard to keep up with. At what point do we start aggressively start training and buying equipment for the changes? I have limited resources and have limited funds to train our staff and buy equipment. What do I do? This is the question I ponder over. We are primarily still working on gas engine vehicles. If I send my staff to EV training. How much will they retain until we start seeing enough EV's to make a difference? My conclusion is that we need to start now. Slowly but consistently. Training must be my primary focus. Of course, equipment to follow. Training my staff will be first because I need to know what equipment to buy. I don't want to be caught off guard for sure and I don't want to depend on a tool salesman for my options to buy equipment. I've been there.

We better get started now. Yes, we do hybrids, but I believe EV's are going to be different. So, I'm going to get started without losing focus on my primary clients. Washington D.C. is pushing EV's heavily. It's coming whether I want it too or not. Slow and steady for now and ramp up as we go. I'm still not completely convinced where the transportation industry is



Here's, my fear about EV's. Will it ruin the repair industry? How much will it affect the aftermarket independent shops



going. I do know that soon I will have to deal with EV's. I'm sure you're a shop owner and reading this you have similar questions. My opinion is that we need to use our collective resources to deal with the changes. Using CAR (Council of Automotive Repair) may be our best option. If you have thoughts on this subject. I would recommend calling WMDA/CAR to express your feelings. We're all in this together and it would help if we banded together. I'm trying hard not to make this a sales pitch about WMDA/CAR. But I don't want to rely on some corporate program that suits them rather than us. One thing I have learned over the years is we are not each other's enemies. We can learn a lot from each other. This is a problem in the aftermarket. We don't have a ton of resources on a local level to pull us together. Enough. Remember, keep your eye on the ball and live the good life. ■

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Petroleum Marketing Practices Act (PMPA) does provide some protection to dealers against rent increases under certain circumstances.

Rent Increases and the PMPA

Brought to you by James L. Parsons, Jr., [Lynott, Lynott & Parsons, P.A.](#)

In my Article in the December 2020 *Nozzle & Wrench*, I wrote about the options available to a dealer when its franchisor imposes a rent increase that the dealer's business cannot afford to pay. That article referenced two recent decisions addressing the rent issue (Hopkinton Friendly Service, Inc. v. Global Companies LLC, 2020 WL 5821915 (D. Mass., Sept. 29, 2020); and Four S Shell Limited Liability Company v. PMG Limited Liability Company, 2020 WL 5642190 (D. N.J., Memorandum signed Sept. 22, 2020)). Those cases illustrate how a substantial rent increase can put dealers in the unenviable position of choosing between attempting to survive with higher rent, or dealing with the expense and uncertainty of litigation. Despite the unfavorable outcomes to the dealers in those cases, the Petroleum Marketing Practices Act (PMPA) does provide some protection to dealers against rent increases under certain circumstances.

A rent increase imposed by a franchisor may violate the PMPA if it is not the "result of determinations made by the franchisor in good faith and in the normal course of business." PMPA§2802(b)(3)(A)(i). In addition, if the purpose of the rent increase proposed by the franchisor is to convert the leased marketing premises to operation by employees or agents of the franchisor (i.e., conversion by the franchisor to a company operated or commissioned agent store), then such rent increase would be in violation of PMPA§2802(b)(3)(A)(ii). Two examples of rent increase cases alleging violations of the PMPA where courts found that the evidence was sufficient to grant a motion for preliminary injunction in favor of the dealers are referenced below.

First, in the case of *Tiller v. Amerada Hess Corp.*, 540 F.Supp. 160 (D.S.C. 1981), several Hess dealers sought a preliminary injunction challenging a new lease proposed by Hess that contained a substantial rent increase and other restrictions on the use of their premises. The dealers contended that the increased rent and additional restrictions were not done in good faith and in the normal course of business, in violation of the PMPA. In that case, Hess had applied the rent increases uniformly to all of its franchisees, but the court found that Hess had made a policy decision to phase out dealer operated stations. The court concluded that Hess acted in bad faith in attempting to force the dealers out of business





contrary to the intent and purpose of the PMPA, so the court granted the dealers' motion for preliminary injunction.

Second, in the case of *GTO Investments, Inc. v. Buchanan Energy*, 2012 WL 714802 (N.D. Ill. 2012) the dealer (GTO) refused to sign a new lease with its franchisor (Buchanan) due to the new rent, gasoline pricing, and other terms in the new lease. As a result, Buchanan issued a notice of nonrenewal, and GTO sought a preliminary injunction. The new lease in question contained unspecified rent amounts for the second and third years which a representative of Buchanan stated could be \$20,000, \$30,000, or \$40,000, as determined by Buchanan. The proposed rent was presented on a "take it or leave it" basis. And as in the *Tiller* case, the new lease was applied uniformly to Buchanan's franchisees. However, GTO submitted affidavits from other Buchanan dealers suggesting that, even though the terms were uniform, they may have had the effect of "squeezing out" several of Buchanan's dealers from the market.

GTO also alleged that Buchanan was charging discriminatory and uncompetitive prices for fuel, and specifically,

that Buchanan was charging GTO more for gas than it charged its own customers for gas at its company owned station located less than one-quarter of a mile from GTO's station. The court found that it was unlikely that GTO could effectively compete under those circumstances and that Buchanan's fuel pricing practices corroborated GTO's claim that Buchanan was attempting to force it out of business. The court concluded that GTO had produced sufficient evidence to suggest that it had a reasonable chance of prevailing on the merits of its PMPA claim, so the court granted GTO's request for a preliminary injunction.

While each dealer's situation is unique, the *Tiller* and *GTO* cases illustrate that the PMPA can afford some protection to dealers who are faced with rent increases and fuel pricing practices that make it impossible to make a profit. The PMPA claim will be strengthened if there is independent evidence that the franchisor is trying to force the dealer out of business. Dealers faced with this situation should consult with an attorney experienced in pursuing claims under the PMPA. ■

When Cars Run On Software: Protect the IP For Your Self-Driving Cars!

Brought to you by Garcia-Zamor Intellectual Property Law, LLC



Ruy Garcia-Zamor, Attorney at Law

When Henry Ford's company designed the first Model-T, they probably never considered the idea that one day car manufacturing would be a matter of digital software as much as the physical manufacturing of the car's parts. In fact, even twenty or thirty years ago the idea of self-driving cars seemed to be a thing of the distant future, a plot idea for science fiction.

Today, however, that possibility is in the process of becoming a reality. There are as many as 250 car manufacturers working on self-driving cars. Volkswagen has partnered with Microsoft to create their cloud-based automated driving platform. Tesla, Ford, General Motors, and many others are all working towards the goal of releasing fully autonomous vehicles. Uber has even worked self-driving vehicles into their rideshare services.

All of these self-driving cars need software in order to run efficiently, safely, or... well, at all. Without a human driving the car, the control is left to the computer system as well as a series of sensors. Because self-driving cars are such a big goal right now, innovation is highly competitive. It's important to protect your software with the right patents and copyright registration.

Patenting Software For Autonomous Vehicles

The USPTO will grant manufacturers a patent on autonomous vehicle software based on two contingencies:

- That the software is not anticipated or obvious based on past art
- That the subject matter is not a "judicial exception" (such as something too abstract) or that it adds additional limitations amounting to "significantly more" than the judicial exception

You may register a utility patent or a software patent. A utility patent protects the machine learning software itself, as it provides the utility of driving the car. A design patent protects a unique design or packaging, such as the interface of the software or a console design. Utility patents will protect your software for 20 years and a design patent will last for 15 years.

Copyright Registration For Autonomous Vehicles

Software is built with code, and code is protected under copyright law. Copyright registration can protect your software code for as long as 70 years. However, under



Without a human driving the car, the control is left to the computer system as well as a series of sensors.



current law, copyrighted works must be created by a human author. If the code was created by AI, it may not be eligible for copyright, although the machine learning system itself can be copyrighted.

As the push for self-driving cars increases, more and more manufacturers are outsourcing software development to companies that specialize in this. Software models can be trained on gathered data through machine learning, but these software models are unable to be copyrighted as they lack a human author. They are effectively authored by the data that trains them.

Examples of Recent Autonomous Vehicle Software Patents

So what are some examples of this happening in real life? One recent instance is Doordash's patent for automated vehicles for autonomous last-mile deliveries. The patent includes a sensor module that helps to navigate the vehicle, as well as an onboard computer system to process data as the vehicle drives along roadways and pedestrian routes.

With this software, Doordash can employ self-driving cars to deliver food and perishable goods to customers in real time. The patent, pictured below, was granted in June of last year.

IMAGE FROM PAT2PDF
Ford also patented a "vehicle

anomalous-condition response during autonomous driving." The patent proposes a self-driving car driven by AI that can learn different ways of reacting to certain unexpected scenarios. The car can essentially "think" its way out of a situation in the event that the driver can't react soon enough.

IMAGE FROM PAT2PDF

Toyota took driver preferences into account with their self-driving cars. Their patent, "systems and methods for generating autonomous navigation routes to match user preferences," allows drivers to set their own preferences such as avoiding tolls or highways, or even choosing to take the most scenic route. You can add stops on the way to make your drive more enjoyable overall.

IMAGE FROM PAT2PDF

How Garcia-Zamor Can Help You Protect Your Autonomous Vehicle Software

As innovation races forward for self-driving cars, many

manufacturers are staking their claims with patents and registered copyrights. Garcia-Zamor can help you do the same. If you have a great idea for a self-driving vehicle, we can draft up the patent application and copyright registration to protect your creations as soon as possible.

Even with a pending patent, your inventions are still protected until the USPTO makes the final decision. We can also keep you updated on the status of your application and recommend other ways to protect your work. If you want to stay on the cutting edge when it comes to automotive innovation, intellectual property protection is essential. Garcia-Zamor has you covered, whatever your IP law needs might be.

Contact Garcia-Zamor today to learn more about our services and experience in the practice of IP law, or to set up your first appointment. ■



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LEGISLATIVE UPDATE

SSDA-AT Advocates for Right to Repair: Positive News in Maine and Congress

The battle for the right to repair has gained significant momentum, with the support of organizations like SSDA-AT.



By Roy Littlefield IV

Right to repair remains a top priority for WMDA/CAR being represented by SSDA-AT on the state and federal levels.

The battle for the right to repair has gained significant momentum, with the support of organizations like SSDA-AT. As this movement reaches the legislative arenas of Maine and Congress, the SSDA-AT emerges as a crucial player advocating for the empowerment of consumers and independent repair professionals.

Right to Repair Passed By Congressional Subcommittee- Huge Step in SSDA's Efforts

The REPAIR Act, which would give vehicle owners the right to repair their cars where and how they like, was unanimously approved by the House Energy and Commerce Subcommittee on Innovation, Data, and Commerce on Thursday, November 2nd.

SSDA is a strong supporter of the legislation and we continue to work on adding co-sponsors to the bill.

The REPAIR Act now has 47 bi-partisan co-sponsors and we are awaiting a full committee vote.

Maine Voters Overwhelmingly Approve SSDA-AT Supported Right to Repair

Maine has been at the forefront of the right to repair movement, passing a voter referendum aimed at breaking the monopoly held by manufacturers over repair procedures and diagnostic information. SSDA-AT has actively supported the Right to Repair Act in Maine, which mandates that manufacturers provide essential information and tools to independent repair shops and car owners.

Maine voters decided “yes” to Question 4, allowing local repair shops and mechanics access to the same data as dealerships.

The ballot read: Do you want to require vehicle manufacturers to standardize on-board diagnostic systems and provide remote access to those systems and mechanical data to owners and independent repair facilities?



GOVERNMENT AFFAIRS

A “yes” vote allows all mechanical information about a vehicle to be made available beyond dealerships regarding things like being able to diagnose and repair vehicles along with regular maintenance issues.

The Maine initiative was spurred by a group of independent auto repair shop owners and other right to repair proponents through a citizens’ petition of over 70,000 signatures presented to the Maine Secretary of State’s Office.

Opposition to Question 4 primarily came from the Alliance for Automotive Innovation, a trade group representing car manufacturers like General Motors, Ford, Subaru, and Toyota.

Locally, Question 4 was also opposed by the Maine Automobile Dealers Association, a group representing franchised new car and truck dealers.

Over 84% of voters supported the measure.

SSDA supported the efforts and will work towards enacting the new law.

SSDA-AT’s active involvement in advocating for the right to repair in Maine and Congress reflects a growing movement that seeks to empower consumers and independent repair professionals. The push for comprehensive

legislation not only promotes economic competition but also aligns with environmental and sustainability goals. As the right to repair gains traction across the

nation, the role of organizations like SSDA-AT becomes increasingly pivotal in shaping a fair and open repair market. ■



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SSDA-AT Works to Prevent a Regulatory Trainwreck



By Roy Littlefield III

With about a month to go before the Corporate Transparency Act's reporting requirements take effect, it's abundantly clear – not to mention extremely worrying – that federal regulators simply do not have their act together when it comes to implementing the new law.

Recognizing this, SSDA-AT as part of the Main Street business community called on lawmakers to delay the Corporate Transparency Act's reporting requirements by one year, which would give the Treasury Department's Financial Crimes Enforcement Network (FinCEN) enough time to

finish its work on the regulatory and education fronts.

The letter points out two key items of unfinished business:

Of the three primary rules necessary to implement the new law, only one has been completed, the second is still at the “proposed” stage and needs to be finalized, while the third has yet to be released even as a proposed rule. FinCEN's leadership has assured Congress they are ready to go starting next year but that is clearly not the case.

Meanwhile, FinCEN is woefully behind when it comes to educating stakeholders of their new obligations. A National Federation of Independent Business survey found that 90 percent of respondents were entirely unfamiliar with the reporting requirements. The CTA includes civil and criminal penalties of up to \$10,000 and two years of jail time for failing to comply, so this lack of awareness is alarming and needs to be addressed before the law is implemented.

Starting next year nearly every small business in America will be required to report – and continuously update – a litany of personal information regarding their beneficial owners. The scope of the mandatory reporting is well beyond anything we've seen outside of the Tax Code, yet FinCEN doesn't have all the rules in place to govern how this sensitive information will be used.

To add insult to injury, the AICPA recently pointed out that FinCEN has significantly underestimated the cost burdens associated with the new reporting regime, it has relied on vague and arbitrary standards in laying out the criminal and civil penalties under the statute, and it has implemented filing deadlines for newly-formed entities which, in some cases, are impossible to meet.

We've seen Treasury delay a major reporting regime before. Just last year, the IRS was unprepared to implement the lower 1099-K reporting thresholds and announced a one-year pause. FinCEN faces a nearly identical scenario with the CTA yet appears determined to plow forward regardless.

SSDA's preferred approach to the CTA is to repeal it altogether and we continue to support the NSBA's constitutional challenge which would put this harmful law to rest. But with an effective date fast approaching, Congress and federal regulators need to accept that the CTA is just not ready for prime time. ■



Of the three primary rules necessary to implement the new law, only one has been completed, the second is still at the “proposed” stage and needs to be finalized, while the third has yet to be released even as a proposed rule.

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- All Self Service & Flexible Growth benefits
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