



THE WANADA BULLETIN

NEWS AND INFORMATION FOR AND ABOUT FRANCHISED NEW CAR DEALERS IN THE WASHINGTON AREA

WANADA Bulletin # 8-03

February 24, 2003

STATE LEGISLATIVE ROUNDUP:

VA Dealers Fair Well, MD Legislature Grinds On

At the close of the 45-day Virginia General Assembly session last Saturday, dealers garnered several valuable legislative successes, including salvage title protection, sales and use tax relief, dealer bond assistance, and assistance for dealership transactions online.

In Maryland, where the General Assembly is consumed with budget and slot machine issues, dealers are pushing hard for legislation to raise doc fees.

Virginia

Despite the contentious wrangling over the budget, both the House and Senate passed the following bills, advocated by VADA and WANADA, which will now go to Governor Mark Warner for his signature:

- **HB 1521, Salvage Vehicles; Branded Titles.** Requires that the title to any vehicle rendered a total loss by an insurance company be permanently branded to alert future

purchasers, both consumers and dealers, of the vehicle's prior damage and its "salvage" character.

- **HB 1630, Refund of Taxes Erroneously Collected.** Makes it clear that when sales and use tax is paid in error a refund is due. It also enumerates what constitutes sufficient proof of an error in some common situations by providing an affidavit that (1) the VIN provided on the ap-

plication for title and registration, the certificate of origin, manufacturer's statement of origin, or title was incorrect, or (2) the transaction was exempt from taxation.

- **HB2537 Motor Vehicle Sales and Use Tax; Casual Sales.** Closes the loophole that allows the underreporting of the value of vehicles in

(Continued on page 2)

VA MVDB REMINDER:

Salespersons Must Be W-2 Employees

On January 13, 2003, the Virginia Motor Vehicle Dealer Board (MVDB) adopted a salesperson license resolution which requires all persons licensed by the MVDB as salespersons be employed by a dealership as a wage employee (IRS form W-2), and not as an independent contractor (IRS form 1099), as defined in the Internal Revenue Service Publication 1779.

Effective April 1, 2003, all salespersons employed by a dealer must be classified as wage employees, and issued an IRS form W-2 as proof of employment status. Failure to comply will result in a written warning; and subsequent occurrences may result in civil penalties, suspension, or revocation of a dealer's license.

(Continued on page 3)

Inside...

FTC Clarifies 50/50

Warranty Issue.....

...p.3

Auto Affordability Gains.....p.4

Median Age of Cars & Trucks

Notice: Auto Tech Competition Reset for Wed. Feb. 26

Due to last week's blizzard, the annual Washington Area Automotive Technology Competition scheduled for Feb 19 at Montgomery College's Homer S. Gudelsky Institute for Technical Education has been rescheduled for **Wednesday, Feb. 26, at 2:30 p.m.** Dealers are invited to attend and see the next generation of techs in action. For more information and directions, call Nick Champeau at WANADA, (202) 237-7200.

Legislation *(Continued from page 1)*

casual sales to ensure the appropriate tax revenue is collected on these non-dealer transactions. The legislation puts in place a more standard procedure at DMV for determining the value of vehicles. However, if the auto is no more than five years old and is listed in a recognized pricing guide, then the trade-in value listed in such guide less \$1,500 will be used unless the purchaser executes an affidavit stating a lesser value.

- **HB 2604, Motor Vehicle Transaction Recovery Fund.** Allows motor vehicle dealers and salespersons to be bonded instead of participating in the Motor Vehicle Transaction Recovery Fund. Three alternatives would be available to a dealer as a condition of getting or maintaining a license: the Transaction Recovery Fund, a dealer bond and a bond obtained by a 501(c)(6) association to cover its members.

- **HB 2720, Vehicle Dealers; On-Line System Filing Fees; Manual Transaction Fees.** This legislation restructures the current fee arrangements for dealers processing work electronically and will allow a dealer to pass through a charge on the Buyer's Order to cover the actual costs of the electronic processing.

Maryland

In a Feb. 14 Special Bulletin, WANADA asked all sub-

urban Maryland dealer members for their immediate support and response to **SB 438/ HB 454, Dealer Processing Fee** legislation now before the Maryland General Assembly. Introduced by MNCTDA with WANADA's full support, this legislation calls for a much needed increase in the maximum amount a dealer can charge for processing fees from the current level of \$25 to \$100.

Hearings on this legislation were held before the Maryland Senate Judicial Proceedings Committee on Feb. 13 and is slated to come before House Environmental Matters this Friday. As Geoff Pohanka and others have testified to legislators, the rationale is clear:

- The \$25 fee simply isn't adequate for the handling of all the paperwork dealers must process in the sale of a vehicle.
- It has been ten years since the \$25 limit was established, over which time there has been a significant increase in government-mandated paperwork, to include, most recently, the USA Patriot Act and the federal privacy act.
- The MVA reduced the amount paid dealers for collecting excise tax by 50% with a move afoot to eliminate it all together.
- States bordering Maryland have higher processing fee limits.

The strong support of indi-

vidual dealers is critical to moving this legislation through the assigned committees so it can be brought before the entire General Assembly. A list of the state senators on the Judicial Proceedings Committee (with their jurisdictions, phone numbers and e-mail addresses) is enclosed with this WANADA Bulletin. Dealers are urged to contact *all* of them, putting the talking points in your own words, mentioning your jurisdictional affiliation if your business or residence is in the senator's bailiwick.

For more information on the legislation, go to www.mnctda.org under the "members" section using mnctda as the password.

Other bills important to Maryland dealers are: **HB 62, Labeling and Disposal of Products that Contain Mercury; HB 71, Exempting Manufacturers' Rebates from Motor Vehicle Excise Tax; and SB 90, Certificate of Title Issuance to a Rebuilt Salvaged Vehicle.**

WANADA will report on further Maryland legislative developments as the session moves forward.

FTC Clarifies Dealers' 50/50 Warranty Issue

OK To Direct Customers Where to Go For Repairs

In response to an inquiry by the National Independent Automobile Dealers Association, the Federal Trade Commission recently issued an opinion on whether certain limited warranty terms violate the "tying" provisions of the Magnuson-Moss Warranty Act; specifically, whether the act prohibits dealers who offer "50/50" warranties from requiring that warranty repairs be performed at a repair facility designated by the dealer.

The FTC said that neither the act nor its interpretations prohibit such warranty terms. The opinion also stated that the same reasoning would apply to a warranty with a significant deductible.

Commenting on the concern expressed by plaintiffs' lawyers that dealers inflate the cost of warranted repairs as a method of imposing all or most of the repair costs on the purchaser, the FTC noted that this practice would constitute a deceptive practice under federal and state law.

WANADA Counsel Allen Jones reminds dealer members that "50/50" used car warranties are prohibited in DC and Maryland where implied warranties cannot be limited. The "50/50", therefore, is only available for use by Virginia dealers in the metropolitan area. While FTC's action is a positive development for dealers who can offer the "50/50," attorney Michael Charapp believes it's a good time to re-

view the company's policy on used car warranties. The federal Magnuson-Moss Warranty Act requires an actual warranty document when a dealer is offering a warranty. Simply filling out the FTC Buyer's Guide window label isn't sufficient where a warranty is offered. Here again, the warranty document must be given, containing things like what items are covered and what's not; the period of coverage; how the consumer can obtain warranty repairs; and statements to the effect that state law may provide additional rights, as is the case in DC and Maryland, and that information on the Buyer's Guide window label overrides any contrary provisions in the sales contract. The dealer can offer no warranty with the *as-is* transaction in Virginia or *implied warranties only* in DC and Maryland. The Buyer's Guide window labels have these options depending upon the state level jurisdiction. The dealer can similarly note on the Buyer's Guide in the warranty option section that the manufacturer's warranty still applies and the consumer should consult the manufacturer's warranty book; no additional dealer warranty need accompany this.

WANADA has Buyer's Guide used car window labels available to members along with limited warranty forms for used cars (i.e., 30 day, 100% for DC and Maryland

and 30 day, "50/50" for Virginia dealers. To order supplies of these forms, contact Joyce Roberts in the WANADA office at (202) 237-7200. The FTC Commissioner's opinion can be found on their website at <http://www.ftc.gov/os/2003/01.htm>.

Salespersons

(Continued from page 1)

By June 30, 2003, all original and renewal dealer and salesperson license applicants will be required to certify on the licensing applications that they are in compliance with this resolution. Inaccurate certifications may be considered material misstatements under § 46.2-1575.1 that could result in a \$1,000.00 civil penalty being levied, the license being suspended, or ultimately revoked.

A full copy of this resolution may be found on the MVDB's website at www.mvdb.vipnet.org.

The MVDB urges all dealers to take time to fully review the resolution and a copy of the Internal Revenue Service (IRS) Publication 1779 (under the Special Reports button) which is also available on its website.

Should dealers have questions in general concerning this resolution, they can call the MVDB at (804) 367-

FOOTNOTES:**Auto Affordability Gained One Full Week in 2002**

The purchase of an average-priced new vehicle during the fourth quarter of 2002 took 20.0 weeks of median family income, before taxes, according to the Auto Affordability Index compiled by Detroit-based Comerica Bank. This is 0.1 week less affordable than the third quarter's 24-year record 19.9 weeks, but is one-half week more affordable than a year earlier.

"For 2002, the average-priced new vehicle absorbed 20.4 weeks of income, versus 21.4 weeks in 2001," according to David L. Littmann, chief economist at Comerica Bank. "The fractional slippage in auto affordability at year-end 2002 reflects the more modest incentives offered in early fall. From third to fourth quarter 2002, incomes gained 1.0%, versus a 1.6% increase in average vehicle cost." Average expenditure per vehicle in the fourth quarter, after rebates, was \$21,745 and the average financing rate was 4.4%.

Median Age Of U.S. Cars And Light Trucks Increases

For the first time since 1996, automotive registration data reveal that Americans are keeping older vehicles on the road for longer periods, according to R. L. Polk & Co. Light trucks increased 8 percent in median age, the largest single year increase since Polk's light truck report started in 1993. Similarly, the median age for cars increased more than 4 percent, marking the largest percentage increase since 1993 and the fourth largest single year increase in the last 33 years.

According to Polk, the trend of declining median age was reversed this year due to a 6 percent overall decrease in the number of vehicles scrapped in 2002 and only a 1 percent increase in new vehicles registered during the report year (July through June). The median age for light trucks is still significantly lower than cars due to the recent boom in new truck registrations over the last few years.

"Advances in vehicle quality and engine technology have allowed American car owners to keep their vehicles on the road longer," said Eric Papacek, an analytic consultant at Polk. But he pointed out, "This represents a double-edged sword for auto manufacturers in that better cars allow consumers to stay out of the market for longer periods, especially in response to a soft economy."

Median Age U.S. Vehicles

Year	Cars	Trucks
1993	7.3	7.1
1994	7.5	7.2
1995	7.7	7.4
1996	7.9	7.5
1997	8.1	7.3
1998	8.3	7.1
1999	8.3	6.9
2000	8.3	6.7
2001	8.1	6.1

An Historical Perspective...

I like pigs. Dogs look up to us. Cats look down on us. Pigs treat us as equals.

—Sir Winston Churchill

Enclosures:

Special Bulletin on Maryland Dealer Processing Fee