



THE WANADA BULLETIN

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

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Staying Ahead...

Maryland Joins Virginia in passing fair recall legislation

As all were made aware from here and elsewhere, the Maryland General Assembly last week passed a comprehensive bill on motor vehicle recalls that will be helpful to consumers, dealers and automakers, but most especially the motoring public. Maryland lawmakers enacted the legislation in closing hours of the 2016 General Assembly, ensuring that automaker recalls will be fairly administered and understood by dealers carrying them out and vehicle owners benefitting by them.

The Maryland measure, on its way to the governor for signature into law, is similar to recall legislation passed earlier this year by the Virginia General Assembly, which concluded its legislative session ahead of Maryland. What the legislation does is enable dealers to more fully partner with their OEMs in identifying vehicle malfunctions rising to the level of recalls when car owners are in for service. It also establishes fair and clear compensation pathways from OEMs to their dealers when vehicles in dealer inventory are red flagged for recall repairs before parts are available requiring grounding of vehicles.

Recall legislation in the public interest, like the bills passed in Virginia and Maryland, are critically important to the public and car owners given the unprecedented wave of vehicle recalls that have occurred with various OEM brands in recent times.

WANADA salutes its sister dealer associations, VADA and MADA, for seeing these measures through into law and was pleased to have played the supporting roll we did in the success!

The WANADA Bulletin will have more to report on the General Assembly session in Maryland and Virginia after the WANADA Board Meeting later this week.

Stay tuned!

85 million Takata air bags could still be recalled



Democrats on a House committee say the voluntary agreement between automakers and the DOT is ineffective.

NHTSA has said that 85 million Takata air bags may still need to be recalled, according to media reports. So far, 28.8 million air bag inflators have been recalled.

NHTSA Administrator Mark Rosekind was called before the House Energy and Commerce Committee as part of its effort to review federal oversight of the agency. Committee Chairman Fred Upton (R-Mich.) expressed concern about “low recall recompletion rates, Takata recalls, and cybersecurity issues,” according to the *Detroit News*.

Democrats on the committee criticized the voluntary agreement reached last year between DOT, the Alliance of Automobile Manufacturers

and the Association of Global Automakers. Mitch Bainwol, president of the Alliance, who testified at the committee hearing, outlined the four major safety principles in the agreement:

- Enhance and facilitate proactive safety
- Enhance analysis and examination of early warning data
- Maximize safety recall participation rates
- Enhance automotive cybersecurity

During the hearing, Rosekind called the agreement “historic,” but Democrat lawmakers complained it didn’t have strong enforcement provisions.

Michael Charapp, partner in Charapp & Weiss, LLP, and WANADA Kindred-line member, points out several flaws in the agreement: The goals are only aspirational. There are no penalties for noncompliance. The agreement lacks provisions to assure rapid remediation of defects. And nothing in the agreement ensures that manufacturers will be fully responsible for the costs of remedying defects in the vehicles they provided.

The automaker groups have written a letter to major insurance companies -- including Geico, Progressive, Nationwide and State Farm -- asking them to remind drivers of any open safety recalls when they renew their auto insurance. The letter asks insurers to “urge that owners have recall work performed as soon as possible,” reported Reuters.

NADA, which supports a 100 percent recall completion rate, has opposed proposals to ground all rental and used cars under open recalls, pointing out that doing so would also ground vehicles recalled for minor compliance matters, such as a wrong phone number in the owner's manual. NADA President Peter Welch said in testimony before the same congressional committee last fall that back-ordered repair parts and recall notices that are disregarded by consumers are the two main reasons why completion rates lag.

How can dealers avoid problems with recalls?

Attorney Michael Charapp of Charapp & Weiss, LLP, says dealers should be proactive on recalls. His recommendations:

- Dealers should ground new cars with an open recall.
- On used vehicles, dealers should repair any open recalls they can. If the car is not of the dealer's brand, or if a repair or part is not available, that should be disclosed to the customer.



The 2013 Honda Fit EV is one of many models affected by the Takata recall.

Dealers should not assume that the disclosure of an open recall to a used vehicle customer protects the dealership from legal action by the franchisor if it imposes a *stop sale* on used cars of the dealership's brand with open recalls. Some manufacturers have advised dealers to stop the sale of some used vehicles with certain open recalls. The manufacturers threaten to shift the liability for damages for any accident allegedly caused by the unremedied defect to the dealership which sold the vehicle, despite the *stop sale* pronouncement.

While significant questions remain about whether a manufacturer can shift that liability, a dealer who disregards the *stop sale* direction of a manufacturer runs the risk of legal action in the event of a lawsuit allegedly arising from a consumer injury claim because of the unremedied recall. A disclosure to the customer will have no effect whatsoever on the litigation over rights between the manufacturer and dealer in that circumstance.

The dealership's policy and practice in response to a *stop sale* directive on used vehicles by the franchisor is a business and legal decision each dealership must make on its own with input from appropriate advisors. Dealers should not assume that disclosure of open recall status to a buyer insulates the dealership from possible legal action by the franchisor if the dealer sells a used vehicle with an open recall contrary to the franchisor's *stop sale* directive.

This information should not be considered legal advice. Dealers should consult with their own lawyer about their circumstances.

Kudos to VADA in answering The Washington Post on Tesla's bid to breach its agreement with Virginia

In expressing their opinion on the editorial page the week before last, Washington Post editors took Tesla's side in the electric car maker's quest to set aside its agreement with the Virginia Department of Motor Vehicles on selling its cars in the Commonwealth, direct to consumers without dealer retailers. Though contrary to Virginian law on retailing new cars, DMV, with VADA's support, made an exception to the law for Tesla in view of its unusual, high

dollar, exotic electric sports car product. The Tesla exception amounted to limiting Tesla to one sales outlet in Northern Virginia so it could, in effect, pilot its retail model in the Commonwealth for a fixed period of time. When Tesla wanted to breach this arrangement with DMV -- which it expressly agreed to -- by expanding its outlets to other areas in the Commonwealth, Post editors took their side, editorializing in the newspaper on April 7 with an article entitled “Tesla versus dealers: let buyers decide.”

Don Hall of VADA, in taking exception to the Post editorial, published a letter to the editor that appeared last week captioned “In Virginia, Tesla is going back on its word.”

WANADA salutes Don for challenging The Washington Post -- and through them Tesla itself -- in support of the DMV accord with the exotic electric automaker and was pleased to have collaborated with VADA and NADA in framing the letter.

CFPB director defends regulation by enforcement

Consumer Financial Protection Bureau director Richard Cordray defended his agency’s regulation by enforcement, instead of by rulemaking, in an appearance before the Senate Committee on Banking, Housing and Urban Affairs.

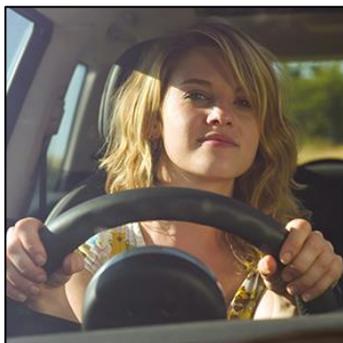
After issuing its controversial bulletin on auto lending three years ago, the CFPB has taken enforcement actions against several lenders, including Ally Financial, American Honda Financial Corp. and Toyota Financial Services.

Some Committee members expressed doubts about the CFPB’s enforcements, according to *Automotive News*. “What concerns me is that the rulemaking is an entire process that requires a level of transparency and gets input,” said Sen. Pat Toomey (R-RI). “There’s a cost-benefit analysis.” Those parts are missing in enforcement actions, he said.

Auto financing will increase this year, say lenders

More than half of auto lenders polled at the recent Auto Vehicle Finance Conference expect auto financing to increase this year, *WardsAuto* reported. Fourteen percent of those surveyed at the conference, organized by the American Financial Services Association, expect a decline in auto financing.

As for their customers’ top priority, 36 percent said it was speed of the transaction, 26 percent said pricing and convenience, and much smaller numbers said financing, dealership inventory and staff product knowledge.



Millennials could be the next big group in the car market.

Millennials most likely group to buy car in next year

Every week, it seems, there’s a new study showing that millennials either are or are not interested in buying a car.

The latest one, from Bankrate.com, is on the good news side for the auto industry. Nearly one-fourth of millennials plan to buy a car in the next year – a much higher percentage than other age groups, the survey found.

Twenty percent of those between 30 and 49 plan to buy a car in the next year, and just 10 percent of those age 50 to 64 do.

Assistant attorney general warns of auto hacking danger

At the Society of Automotive Engineers World Congress in Detroit, the Justice Department's assistant attorney general John Carlin warned of the dangers of car hacking.

He cited an estimate that by 2020, three-quarters of new cars will have Internet connectivity, and by 2020, "driverless cars will be able to navigate crowded city streets."

Referring to hackers' successful effort last year to take control of a Jeep Cherokee remotely and drive it into a ditch, Carlin said, "It doesn't take much imagination to see how similar vulnerabilities could be used against us by our adversaries to bring about horrific results."

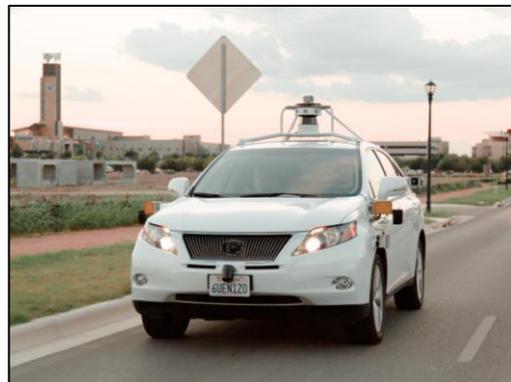
Carlin encouraged engineers to design cars with security in mind. And he said cooperation between government and the private sector will become increasingly important in the nation's ability to prevent and investigate cyber-attacks.

Other methods besides test drives needed to test driverless cars

Autonomous vehicles would have to be driven hundreds of millions of miles and, under some scenarios, hundreds of *billions* of miles to clearly demonstrate their safety, according to a new Rand report.

That doesn't mean the cars will never be shown to be safe. It just means that other testing methods must be developed to supplement on-the-road drive tests. Some alternative methods might include accelerated testing, virtual testing and simulators, mathematical modeling, scenario testing and pilot studies.

Researchers caution that it may not be possible to establish with certainty the reliability of autonomous vehicles before making them available for public use. Along with creating new testing methods, they said, it is critical to develop regulations and policies that can evolve with the technology.



The many miles of test driving by the Lexus RX450 are just a tiny part of what would be needed to clearly demonstrate the autonomous vehicle's safety.

Toyota to launch research base to study driverless cars

Toyota has announced that it will partner with the University of Michigan Transportation Research Institute (UMTRI) at its Ann Arbor campus to study autonomous vehicles.

Toyota said it has four goals for the Ann Arbor project. First, it will work toward its ultimate goal of creating a car that is incapable of causing a crash, regardless of the skill or condition of the driver. Second, it will work to increase access to cars for those who otherwise cannot drive, including seniors and those with special needs. Third, it will create products for indoor mobility, moving people and goods across the country, across town or across the room. And fourth, it will apply techniques from artificial intelligence and machine learning to lower costs and improve performance of future mobility systems.

"Where we need autonomy to help the most is when the driving is difficult," said Dr. Gill Pratt, CEO of the Toyota Research Institute. "Toyota's goal is safer mobility for all, at any time, in any place, and the tremendous improvements in quality of life that such universal mobility can bring."

Ford F-150 SuperCab is only pickup to win good safety rating

The Ford F-150 SuperCab is the only pickup to earn a good rating in the Insurance Institute for Highway Safety (IIHS)'s small overlap front crash test. The test replicates what happens when a vehicle runs off the road and hits a tree or pole or clips another vehicle that has crossed the center line.

The rating for the Ford truck was an improvement from the 2015 model's marginal rating. It joins the F-150 SuperCrew in earning the IIHS 2016 Top Safety Pick award when equipped with Ford's optional basic-rated forward collision warning system.

The Chevrolet Silverado 1500 Double Cab and Toyota Tundra Double Cab both earn an acceptable rating for occupant protection in a small overlap crash.

Maryland gained more jobs in past year than any other state

Maryland saw the biggest job growth of any state in the year ending March 31, 2016 according to new government data. The state added more than 30,000 jobs in the past year, and the Washington region added 86,000, for annual regional job growth of 2.8 percent, compared with 2 percent nationally.

Both Maryland and Virginia saw strong job growth in March, no doubt helped by the warmer weather that brings added construction activity. Virginia added 42,400 jobs in March, causing its unemployment rate to drop slightly to 4 percent.

Staying Ahead...

Don't be too timid and squeamish about your actions. All life is an experiment. The more experiments you make, the better.

--Ralph Waldo Emerson