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Staying ahead...

At “day-after-session” signing ceremony, O'Malley signs healthcare bill, EV charging credit, and more

With national Healthcare Reform as the impetus, Maryland governor Martin O'Malley signed legislation this week to create the state's health insurance exchange, a marketplace designed to “make healthcare more affordable for people and small businesses that have trouble finding coverage.”

National Healthcare Reform requires states to have an exchange certified by 2013 and running by 2014, or be compelled to participate in the federal exchange. The governor hopes to make Maryland a model for implementing the federal law. He also signed a bill that aligns Maryland law with federal consumer protections, including provisions that bar exclusions from insurance because of pre-existing conditions.

O'Malley signed the healthcare measure at the traditional “day-after-session” bill signing ceremony where he also penned his signature to a bill related to building a statewide infrastructure for rapidly charging electric vehicles, including a \$400 tax credit for home chargers. This new EV credit capstones a number of Maryland EV credits already on the books.

Another bill to become law the day-after-session, which ended Monday, April 11, was a measure banning employers from using credit history in hiring decisions. Under the credit history use measure, employers will now only be able to check credit histories when hiring for a position in which credit histories are substantially job-related.

Later this spring, the governor is expected to sign legislation that includes a measure that will boost the processing fees dealers can charge for handling vehicle sales paperwork from \$100 to \$200 (see The WANADA Bulletin for April 8, 2011). Another measure headed for the governor's desk in the automotive realm requires all vehicle lease advertisements to include any

dealer processing fees or freight charges in the base lease payments advertised. Additionally, capitalized cost reduction to a lessee must be figured in, unless the capitalized cost reduction is offered to all potential lessees.

FTC begins auto lending rules hearings in Detroit

The Federal Trade Commission (FTC) held the first of its hearings on the state of auto lending in Detroit this week as the agency considers whether to use new authority to impose additional rules.

David Vladeck, director of the FTC's Bureau of Consumer Protection, described the daylong hearing at Wayne State University Law School as a "learning, listening tour" to determine whether auto dealers that arrange vehicle financing need more regulation.

"We want to hear from everybody and then we'll sit down and decide if there are areas that need more enforcement, more consumer education or regulation," Vladeck said.

Under the new Finance Reform law, the FTC was given authority over auto dealer lending practices beyond bringing enforcement actions against dealers for improper conduct. This includes writing new rules impacting the automobile business.

NADA was a major presence at the hearing in Detroit, testifying that the industry is already heavily regulated when it comes to arranging vehicle financing. Andrew Koblenz, general counsel for the National Automobile Dealers Association, noted that the average new car buyer spends more than \$517,000 over a lifetime at dealerships. "Dealers have an intense desire to have a long-term relationship with their customers," he said, noting that transparency in arranging financing and all other services is the key to building those relationships.

Among the topics, the FTC is investigating is what they call "yo-yo" financing practices, like spot deliveries. Additionally, FTC is scrutinizing the financing of add-ons, such as extended warranties, service contracts and anti-theft devices.

The FTC will hold at least two more hearings, including one in Washington and one near a military base, where it has been alleged that servicemen and women are being subjected to unfair treatment by some auto dealers.

Service writers *no longer* exempt from overtime pay

Department of Labor changes its mind

The U.S. Department of Labor (DOL) has reversed itself on a position it has held since 1978, ruling that service writers at dealerships are no longer exempt from overtime pay requirements.

The DOL had previously held that service writers were salespeople who are exempt from overtime pay rules, but it changed its mind earlier this month when it decided that “selling” activities are limited to selling vehicles and technician activities are limited to “turning wrenches,” and since service advisors do neither, they will not be considered exempt.

Dealer attorney Michael Charapp notes “this is an edgy position for the DOL to take since it has not withdrawn its original opinion letter on the subject and the rule is contrary to three federal court of appeals decisions on the wage and hour statute.” But Charapp cautions that dealers will still have to be concerned about DOL audits.

He also notes that service writers can still be exempted from the overtime pay rules under another provision of the wage and hour law, known as the 7(i) exemption, for employees paid commissions by retail establishments. There are three conditions that must be met for an employee to fit under the 7(i) exemption. These are:

1. The employee must be employed by a retail or service establishment, and
2. The employee’s regular rate of pay must exceed one and one-half times the applicable minimum wage for every hour worked in a workweek in which overtime hours are worked, and
3. More than half the employee’s total earnings in a representative period must consist of commissions.

The Department of Labor has the position that unless all three conditions are met, workers must be paid overtime for all hours worked over 40 in a workweek.

Charapp advises dealers to review service writer pay plans with the aforementioned developments in mind.

Fed requirement to disclose cost of healthcare benefits per employee is coming

WANADA members should know that as early as next year some will need to disclose to each employee how much they are spending on them to provide healthcare benefits. The requirement is part of Healthcare Reform and is intended to test the hypothesis that “employees would be more careful in using their healthcare benefits if they really knew how much it cost the employer to provide the coverage.”

Businesses with 250 or more employees will be required to indicate the cost on the employee’s W-2 form for calendar year 2012 (that is, the forms required for the calendar year 2012 that employers generally are required to furnish to employees in January 2013 and then file with the

Social Security Administration). Those with fewer employees have until calendar year 2013 to comply.

Dealers should know the reporting requirement does NOT result in any excludable employer provided healthcare coverage becoming taxable. The IRS statement on this requirement is **Notice 2011-28** and can be found at <http://www.irs.gov/pub/irs-drop/n-11-28.pdf>

Employers who fail to include the information, however, are subject to the regular penalties for failing to file a correct W-2. The penalties include:

*\$30 per Form W-2 if correctly filed within 30 days (by March 30 if the due date is February 28); maximum penalty \$250,000 per year (\$75,000 for small businesses, defined below).

*\$60 per Form W-2 if correctly filed more than 30 days after the due date but by August 1; maximum penalty \$500,000 per year (\$200,000 for small businesses).

*\$100 per Form W-2 if filed after August, or if Forms W-2 aren't filed; the maximum penalty is \$1,500,000 per year (\$500,000 for small businesses).

A small business is defined as having average annual gross receipts for the three most recent tax years of \$5 million or less.

The WANADA Automobile Business Seminar Series

How to Survive a Factory Warranty Audit – April 21

Can your dealership stand the close examination of a factory warranty auditor? If it's been a few years since you've had one, you should have doubts. And that's why this workshop with warranty audit guru, Rob Campbell, is for you.

Campbell, who has decades of experience with dealers and is a highly rated NADA Convention workshop speaker, will provide a checklist of issues and documentation problems that every dealership should heed, regardless of when they last had a warranty audit.



“It's not hard to prepare for an audit, provided you know what to look for,” he says.

Join Rob on Thursday, April 21, 2011 at WANADA headquarters to learn the secrets of preparing for and passing a factory warranty audit before it's too late!

Presenter: Rob Campbell, Dealership Analyst at Mironov, Sloan & Parziale, LLC
Date: Thursday, April 21, 2011
Time: 9:30 am
Location: WANADA Headquarters
Fee: \$99

To register go to www.wanada.org and complete the registration form, or contact Kristina Henry at (202) 237-7200, ext 18 or kh@wanada.org

The Street likes car sharing

Zipcar IPO a big hit

Zipcar Inc., the car-sharing company that rents vehicles by the hour, has raised \$174.3 million in its initial public offering, 31 percent more than it had been hoping to raise.

The company, based in Cambridge, Massachusetts, sold 9.7 million shares at \$18 each, according to data compiled by Bloomberg. It had offered 8.3 million shares at \$14 to \$16 apiece, according to a filing with the U.S. Securities and Exchange Commission. Proceeds will be used to reduce debt and expand internationally, the filing showed.

The shares will be listed on the Nasdaq Stock Market under the symbol ZIP.

Zipcar operates in 14 metropolitan areas, including Washington, DC, and has more than 8,000 cars. It plans to expand in the U.S. and international markets including Europe, according to the filing. The company's net loss in 2010 widened to \$14.1 million from \$4.67 million a year earlier, while revenue increased 42 percent to \$186.1 million in the same period.

2011 WANADA OPEN – May 16

Lakewood Country Club

WANADA member golfers and friends who enjoy a good time are reminded it is *only four weeks until the 2011 WANADA Open* will be played at Lakewood Country Club, Rockville, MD. There will be several new competitions this year that recognize different skill sets of players. Additionally, golfers will be allowed to drive carts directly to their golf balls rather than having to stay on the paths, as was the case last year.



The registration fee for the 2011 WANADA Open is \$235 per golfer and \$100 for those coming only for cocktails and dinner.

Register early by calling or e-mailing Kristina Henry, WANADA's director of events at (202) 237-7200, ext. 18 or kh@wanada.org. The registration form can also be downloaded at www.wanada.org

Staying ahead...

It is incumbent on every generation to pay its debts as it goes, a principle that if acted upon could keep most wars from coming about.

--Thomas Jefferson
Born 268 years ago, April 13