

# THE WANADA BULLETIN

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

WANADA Bulletin # 38-13

October 4, 2013

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## Dealers face-off with Tesla at motor vehicle law conference Regulators in Baltimore last week tee-up Tesla's quest to retail its cars

The National Association of Motor Vehicle Boards and Commissions (NAMVBC) convened its annual conference in Baltimore last week to compare notes among the 35 or so separate state agencies that comprise its membership on matters relative to regulating auto sales across the U.S.

Included in the two-day conference agenda was the issue of Tesla Motors' quest as a manufacturer to sell its niche, high end, electric vehicles, at retail, *directly* to consumers, without having to comply with state dealer licensing laws. In a face-off format, Tesla representatives paneled up with an opposing team of auto dealer association representatives, to vet for regulator conferees the question of Tesla utilizing its retail model of selling its new, six figure, all-electric sports cars through abbreviated, shopping mall-style store fronts without a franchised dealer network.

The crux of this ongoing dealer group/OEM disagreement that has played out in state legislatures and motor vehicle agencies across the country over the past year is this:



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Should California-based Tesla with its well-received \$100,000 *plus* EV sports car series be allowed to utilize its Dell-computer sales model to retail its vehicles online? Or from Tesla's perspective, shouldn't they be allowed to retail their vehicles through urban-centered, salon sized "showrooms," supported by off-site service centers that may be in other states?

Acknowledging a significant departure from the standard new car retail model, Tesla insists its EV products represent cutting-edge advanced technology, which are best sold *without* dealers or through standard dealership facilities. And for state regulators, driven by franchised dealer associations, to thwart or outright deny the OEM licensure to retail its vehicles stifles "innovation," Tesla says, in the all-important alternative fuels effort in the industry.

Taking exception to Tesla, franchised dealer representatives argued to regulators that dealer licensing laws protect consumers by: 1) requiring proper dealer facilities; 2) providing a litany of indispensable car purchase services (e.g., financing, vehicle registration, new car delivery); and 3) furnishing a host of after-the-sale services (e.g., warranty administration, safety inspections, vehicle maintenance and repairs).

Representing the dealers were Bill Wolters of the Texas Auto Dealers Association, and dealer lawyer Mike Charapp; for Tesla was Diarmuid O'Connell its vice president of business development; James Chen, its general counsel; and John Weistart, professor of law, Duke University.

A lively panel debate, aptly entitled "Is it time to carve-out a limited exception to the franchise laws to accommodate start-up alternative fueled vehicles?" effectively chronicled the well-publicized franchise dealer disputes with Tesla's retail sales licensing efforts over the past year. It did little, however, to signal how Tesla's quest to sell its vehicles in its own way will be settled with regulators and dealers anytime soon.

Other NAMVBC panel discussions included an analysis of the rocky roll out of the Consumer Financial Protection Bureau, pursuant to the Dodd-Frank Finance Reform Act, and the newly established agency's attempts to pull franchised dealer credit arrangers "back onto the tracks," which U.S. dealers succeeded in hopping off, when Dodd-Frank was enacted year before last.

There was a related analysis of *enhanced* Federal Trade Commission enforcement of federal consumer protection laws against dealers, pursuant to Dodd-Frank, which included an update of FTC inspired "consent agreements" with dealers around the country for "unfair and deceptive" trade practices.

As a sponsor of the Baltimore NAMVBC's Conference, NADA had its president Peter Welch, open the program which was attended by sister dealer association CEOs, including Peter Kitzmiller of MADA and Gerard Murphy of WANADA.

WANADA *commends* Bill Wolters of TADA and Mike Charapp of Charapp & Weiss, for a *job well done* on the aforementioned Tesla panel.



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## Jack Fitzgerald, Fitzgerald Auto Malls, sponsors estate tax panel on Capitol Hill

WANADA past chairman, Jack Fitzgerald, Fitzgerald Auto Malls, was among inside-the-Beltway notables this week on Capitol Hill who formed up a congressional panel presentation on the Estate Tax. Taking part in the panel entitled, “is the estate tax issue dead in comprehensive tax reform?” panelists included former Utah Republican senator Bob Bennett; Chuck Marr of the Center for Budget and Tax Priorities; and Grover Norquist, the famed Republican strategist who founded the Americans for Tax Reform. Fitzgerald is founder of Americans for Simplification of the Estate Tax (ASSET) which sponsored this weeks panel briefing for members of Congress and their staffs. The panel was moderated by Scott Hodge, president of The Tax Foundation.



From top left Chuck Marr, Center for Budget and Policy Priorities; Jack Fitzgerald (standing); former senator Bob Bennett of Utah; Scott Hodge, Tax Foundation and Grover Norquist, Americans for Tax Reform.

Part of the conversation covered the ASSET Plan such that an optional income tax surcharge of 1% of AGI may be *elected* by tax payers in lieu of an estate tax levy against the taxpayer’s estate at the time of death. (The 1% AGI surcharge election must be made at least seven years before death which would continue through the earning life of the taxpayer.)

“The ASSET Plan gives small businesses like automobile dealers the ability to opt out of devastatingly high estate taxes that could force heirs to sell the business to pay the taxes and throw employees of the business out of work,” said Fitzgerald.

The ASSET Plan was modified after being vetted with congressional leaders to include the *optional* feature to make it more palatable to lawmakers who might otherwise have been leary of a one-size-fits-all approach that would eliminate the Estate Tax.

The optional approach of the ASSET Plan was done, additionally, in recognition of the fact that the Estate Tax isn’t apt to ever be repealed by Congress, even though it only represents a small portion of the overall taxes collected by the U.S. government each year from American citizens.

Getting Democrats and Republicans to agree on *anything* in Washington today would be an extraordinary feat given the current political climate. But Jack Fitzgerald and the ASSET coalition remain committed to a reasonable alternative to the downsides of the current Estate Tax law to include the real threat it poses to many small businesses.

If this week’s panel briefing to members of Congress on the ASSET Plan is any indication, it offers a workable alternative to the Estate Tax for small businesses which could voluntarily determine for themselves if opting out improves their tax circumstances.

For more information on the ASSET Plan, go on [www.simplifyestatetax.org](http://www.simplifyestatetax.org) or contact Jack Fitzgerald at (301) 881-4000 or 1-877-829-8162.

## Hand-held phone use while driving now a primary offense in Md.

Starting October 1, drivers texting or using a hand-held cell phone while driving may be pulled over and ticketed solely for that violation. It was previously a secondary offense, meaning the police had to pull over the driver for another violation and then could also ticket him or her

for cell phone use. Drivers younger than 18 may not use any type of cell phone, even hands-free. Fines are \$75, \$125 and \$175 for the first, second and third offense.

Also effective October 1, all of a vehicle's occupants age 16 or older, including those in the rear seat, must wear a seat belt. Although violation of this law is a secondary offense, the driver can be fined up to \$50 per unbelted occupant.

## Advocates of backup cameras sue DOT to stop rule's delay

Advocates of mandatory backup cameras on all vehicles have sued the U.S. Department of Transportation to force it to implement the long-delayed rule. The suit was filed in New York by Consumers Union (parent company of *Consumer Reports*), Advocates for Highway and Auto Safety, Kids And Cars, Inc., and two parents who backed over and killed their toddlers.

The rule, required by Congress in 2008, has been mired in controversy over cost and delayed by automaker opposition. Backup cameras are now offered as an option on 80 percent of vehicles, according to automakers, and included on about half of vehicles sold.

NHTSA has estimated the regulation would cost the industry \$1.9 billion to \$2.7 billion a year. The agency has said that from a cost-benefit analysis, the rule doesn't pay, but further say that safety considerations justify it. The Alliance of Automobile Manufacturers frames it as an issue of consumer choice, not government mandate. Before any new rule is implemented, automakers get an 18-month lead time.

NHTSA says about 100 children under age 5 die every year in backup accidents.



The backup camera rule has been delayed since 2008.



Sen. Rockefeller isn't optimistic that Congress can fund needed funds for infrastructure. Photo by Alexander Rabb.

## Looking for money to fund road repairs and replacements

The chairman of the Senate transportation committee said at a hearing last week that he doesn't foresee Congress finding money to plug the gap in spending for roads and other infrastructure, reports *The Hill*.

The problem is that the gas tax just doesn't raise enough money, said Sen. Jay Rockefeller (D-W.Va.), chairman of the Senate Commerce, Science and Transportation Committee. "Federal funding programs, like the Highway Trust Fund, are supported by *pay-fors*, such as the federal gas tax, which, due to decreasing miles driven

and increasing fuel efficiency, annually fall far short of funding needs," he said, according to *The Hill*.

The last bill for transportation projects was passed in 2012 and expires in September 2014. It was \$20 billion short, and the money was made up by raiding other funds. Rockefeller suggested looking at sources such as pension funds and equity funds.

“Sadly, we have [become] accustomed to an ad hoc, piecemeal approach to funding the nation’s infrastructure, spending the bare minimum in order to keep our transportation network functioning,” Rockefeller said.

Sen. Barbara Boxer, chair of the Senate Environment and Public Works Committee, has a funding idea: Replace the gas tax with a fee paid by oil wholesalers, as she said Maryland and Virginia have done.

## One standard needed for driverless cars, experts say

A single standard is needed for autonomous or driverless vehicles instead of each automaker coming up with its own design, said speakers on a panel at the Michigan Automotive Summit in Detroit, reports *Automotive News*.

“Even if it means picking winners, we need to find one idea and line up behind it to move this industry forward,” said John Rakolta, Jr., CEO of Walbridge, which develops manufacturing plants for the auto industry.

Infrastructure for autonomous vehicles is progressing nicely, but software and connectivity need more development, panelists said.

The subject is clearly on the minds of those who study the auto industry. The House Transportation and Infrastructure Committee plans to hold a hearing on autonomous vehicles October 9. Panelists will focus on two topics: the ways the technology could affect the transportation network, and federal policy that could be needed to integrate the vehicles into the infrastructure, according to *The Hill*.

## Gas prices falling, likely to keep falling, says AAA

Last week’s *Bulletin* reported on the American Automobile Association’s finding that gas prices had been above \$3.00 a gallon for 1,000 consecutive days. Now AAA offers good news on prices, though it’s more short-term: Gas prices have fallen from a year ago and are expected to continue their drop.

The national average price at the pump has fallen for 22 straight days, the longest streak this year. As of September 23, the average price for regular unleaded was \$3.47 a gallon. That’s a nickel less than a week earlier, seven cents less than a month earlier and 35 cents less than a year ago.

Drivers in every state and DC are paying less for gasoline than a year ago. And in 10 lucky states, including Virginia, prices are 40 cents or more below what they were a year ago.

Barring a hurricane or other unexpected disruption to gasoline production and distribution, AAA expects that retail prices will continue lower in the coming months, thanks to sufficient supplies, flat demand and cheaper winter-blend gasoline.



In Virginia, gas prices fell more than 40 cents in the past year.

## Source to help Maryland dealers lessen their 'rain tax' bill

Jim Soltesz of Soltesz Engineering is available to help dealers in Maryland mitigate their stormwater fees, in effect as of July 1, and reported in a previous [Bulletin](#). In some cases, the fees can equal 100% of the dealer's property tax. Each of the counties coming under the law calculates the fee differently.

Soltesz is not a Kindred-line member of WANADA, and the WANADA Board has not endorsed this company. Mr. Soltesz and his company do come enthusiastically recommended by dealerships that utilize their services and are, accordingly, available to area dealers with concerns about storm water runoff fees.

Soltesz Engineering is in Rockville, Maryland and can be reached at (301) 948-2750.

## Drivers willing to pay more for cars that capture carbon emissions

Drivers who believe that human activity contributes to global warming are willing to pay more for vehicles with technologies that reduce carbon emissions, a recent study from the University of Michigan finds.

Overall, those surveyed indicated they were willing to pay about \$100 for a 20 percent reduction in carbon dioxide emissions and \$250 for an 80 percent reduction. They also would be willing to trade off fuel economy for lower emissions. Drivers said they would accept 5 percent lower fuel economy for 20 percent less carbon dioxide emissions or 10 percent lower fuel economy for an 80 percent reduction. And consumers were willing to give up trunk space: 10 percent less trunk for a 20 percent emissions reduction or 16 percent less trunk for an 80 percent reduction.

*Carbon capture* is still largely in the experimental stage, as a storage mechanism of captured carbon. It's now being stored underground or beneath the ocean, neither of which offers a practical long-term solution.

## One-third of children killed in crashes aren't properly restrained



Many parents – especially affluent ones – say it's OK to drive with their kids unrestrained if they're not driving far.

More than one in three children under age 13 who died in passenger vehicle crashes in 2011 were not in car seats or wearing seat belts, according to the National Highway Traffic Safety Administration.

Almost two children are killed every day while riding in cars and 338 are injured. The percentage of children who died in auto accidents was much higher in larger vehicles: SUVs (55 percent), pickups (43 percent), and vans (40 percent); sedans, correspondingly, are 24 percent.

In a survey by Safe Kids Worldwide, one in four parents say they have driven with their children unrestrained. One in three affluent parents (with a household income above \$100,000) say it's acceptable to leave their child unrestrained if they aren't driving far. But 60 percent of crashes involving children occur 10 minutes or less from home. Nearly one-fourth of parents younger than 29 said it would be acceptable to ride with a child unrestrained when traveling overnight. But that is when children are most likely to be injured in a crash. Parents with graduate degrees

are twice as likely to say it is acceptable to drive without buckling up their children, particularly if they are in a rush.

## Top foods people eat while they drive

Everyone knows eating while driving is just one more form of distracted driving. But a lot of us do it anyway. So what's on the menu?

The top scorer in a survey by Insure.com on "the best foods to eat while driving" is a candy bar. It has all the right attributes: It can be eaten with one hand, it doesn't drip, and it's tasty. As an added bonus, it doesn't leave a smell in the car. French fries are second, and would have been No. 1 if it weren't for their lingering smell.

Other top choices: potato chips, chicken nuggets and doughnuts. Trailing behind them all was fresh fruit. Clearly good health is not a consideration in this situation.

Ranking at the bottom were "any food that can gush its components," as editorial director Amy Danise delicately put it, "like sandwiches or tacos."

Pass the hot sauce. Or rather, the Hershey bar.

### Thought for the Week...

This is embarrassing. Albania works better than this.

--Bill O'Reilly, host of *The O'Reilly Factor* (Fox)

faulting both Congress and the president on the gov't shutdown