

# THE WANADA BULLETIN

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

WANADA Celebrating 100 Years of Service (1917-2017)

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## Headlines...

Supreme Court to rehear case on overtime exemption for service advisors

Senate bill on self-driving cars includes dealer protections

FTC issues FAQs on revised Used Car Rule and Buyers Guide

Trump's tax plan – What it means for dealers

Buy tickets for WANADA Annual Meeting and Luncheon with Bret Baier

Traffic delays in Washington region to cost drivers \$26 billion by 2026

How Maryland, Virginia, DC compare in car insurance costs

Thought for the Week...

## Supreme Court to rehear case on overtime exemption for service advisors



NADA will file a “friend of the court” brief on behalf of dealers in the overtime case.

The U.S. Supreme Court has said it will again hold hearings on a case involving overtime pay for dealer service advisors. NADA will work with the state dealer associations to file a “friend of the court” brief on behalf of the dealers.

For nearly 35 years, auto dealers have relied on the Department of Labor’s position that service advisors were exempt from overtime. In 2011, the DOL issued regulations saying that the exemption did not apply to sales personnel unless they sell *vehicles*. That meant that, according to the DOL, service advisors suddenly were eligible for overtime pay.

In light of that DOL interpretation, service advisors at Encino (CA) Motorcars, sued the Mercedes-Benz dealership, demanding overtime pay under the Fair Labor Standards Act (FLSA). The dealer won in federal district court, but that decision was overturned in appeals court. The Supreme Court held hearings and sent the case back for retrial.

The Ninth Circuit court in California concluded that when Congress wrote the FLSA, it did not intend for service advisors to be exempt from overtime. The act exempts “salesmen, partsmen, or mechanics primarily engaged in selling or servicing automobiles.” The question was whether service advisors were covered by that definition. So dealers in California and other Western states that are covered by the Ninth Circuit lost the exemptions.

Meanwhile, the Fourth Circuit, which covers Maryland, Virginia, West Virginia and North and South Carolina, reached the opposite conclusion in a similar case. The court here determined that

at least half of the service advisor's "specific job responsibilities" were "service and sales related functions." So service advisors are exempt from overtime.

The Supreme Court will resolve the difference between the Circuit Court decisions. As in the past, NADA is providing support to the dealers who are litigating the California case. The association anticipates that the Supreme Court will rule in favor of the dealer defendants and all the dealers who for decades have applied the overtime exemption to service advisors.

Briefing in the case will begin later this year, with oral arguments scheduled for some time in 2018.

*Thanks to NADA and Shawe/Rosenthal, an employers' management law firm, for providing information for this article.*

## Senate bill on self-driving cars includes dealer protections



Self-driving Toyota Prius modified by Google.

Thanks to lobbying by members of WANADA and other state and metro dealer associations, the self-driving car bill introduced by two Senators last week includes clear franchise protections for dealers. The AV [automated vehicles] START Act, S. 1885, has clear language to ensure that state vehicle license and franchise laws as applied to AVs are not preempted by federal law.

WANADA Board member Robert Forgarty Jr. and CEO John O'Donnell were on

Capitol Hill recently, lobbying Rep. Steny Hoyer (D-MD) to make sure the OEM's could not go around franchise protection laws with the AV bill. They were among other dealers and dealer association executives who explained to their members of Congress that the federal preemption in the draft AV bill was too broad. These efforts combated a serious threat to state franchise laws and resulted in bill language that ensures that the state laws are preserved.

The bill was introduced by Senate Commerce Committee Chairman John Thune (R-SD) and Sen. Gary Peters (D-MI).

"This legislation proposes common sense changes in law to keep pace with advances in self-driving technology," said Senator Thune. "By playing a constructive role in the development of self-driving transportation systems, our government can help save lives, improve mobility for all American – including those with disabilities – and create new jobs by making us leaders in this important technology."

The bill requires manufacturers to submit safety evaluation reports to the Secretary of Transportation with information addressing safety, crashworthiness and cybersecurity through documented testing, validation and assessment. Manufacturers could release up to 100,000 AVs per company three years after the bill's enactment.

The Alliance of Automobile Manufacturers praised the bill. “The Alliance will continue working with members of the Senate Commerce Committee to pass legislation to address existing barriers to safety technologies,” the group said in a statement. “These technologies will save lives and increase mobility for millions of Americans.”

The Senate Commerce Committee will consider S. 1885 on Oct. 4. A similar bill passed the House unanimously.

## FTC issues FAQs on revised Used Car Rule and Buyers Guide

The Federal Trade Commission has issued a document answering [frequently asked questions](#) about the revised Used Car Rule and revised Buyers Guide that dealers must use.

NADA approached the FTC about issuing this guidance because of the number of questions raised by dealers about compliance with the new rule and Buyers Guide. NADA encourages dealers to consult the FAQs and to review NADA’s [Dealer Guide to the Used Car Rule](#).

## Trump’s tax plan – what it means for dealers

A few points in President Trump’s tax plan are of special interest to dealers, particularly that it would eliminate the estate tax and would change the way pass-throughs are treated. Both changes were discussed during the last NADA Washington Conference.

Dealers have sought to end the estate tax for many years. Now that there’s a Republican president and Congress sympathetic to the idea, repeal might have a better chance. The biggest argument against repeal is that the tax raises a great deal of federal revenue and is paid by only a small number of people.

The pass-through proposal should interest all small businesses. The Trump plan would set a new maximum pass-through rate of 25 percent for small business owners who file as sole proprietorships or partnerships, which represent about 95 percent of businesses in the U.S. Those businesses are now taxed at the individual rates of their owners, which for many is the top rate of 39.6 percent. (Trump’s original proposal had a pass-through rate of 15 percent.)

Both the National Federation of Independent Business and the National Association of Manufacturers praised the Trump plan for the way it would help small businesses. The proportion of federal revenue that comes from pass-through taxes currently is far greater than from the estate tax, and the loss of that revenue could potentially be a problem as the issue is debated in Congress.

One of the biggest challenges for the Trump tax plan is that it is vague about how the large amount of tax cuts would be financed. Proponents of the tax cuts say that they would cause



It’s unknown what Congress will do with Trump’s tax plan, which is short on details in its current form.  
Photo by Bjoervedt.

businesses to increase their investments and hire more workers, but many economists question those claims, based on past experience.

Another challenge is all the publicity about how the Trump plan would benefit the rich enormously and the middle class only modestly. An analysis by the nonpartisan Tax Policy Center found that most of the benefits would go to the top 1 percent of earners. Such reports could make some moderates – or those in a tight election race next year – reluctant to vote for the plan.

Republican leadership in Congress plans to pass a tax plan through reconciliation, meaning that it would need only 51 votes (including a potential tie-breaking vote by Vice President Pence) in the Senate instead of the usual majority of 60. Majority Leader Mitch McConnell and others will work hard to pass tax reform to show at least one major legislative accomplishment this year.

## Buy tickets for WANADA Annual Meeting and Luncheon with Bret Baier



Bret Baier, Fox News

All WANADA members are encouraged to attend the 2017 Annual Meeting and Luncheon on Friday, Nov. 17, at the Ritz-Carlton Tysons Corner in McLean, VA. With all that's going on in the political arena, the speech by Fox News Channel's Chief Political Anchor Bret Baier should be provocative and timely.

Baier is also anchor of "Special Report with Bret Baier," the top-rated cable news program in its time slot and consistently one of the top five shows in cable news. For the 2012 and 2016 political season, Baier served as co-anchor with Megan Kelly of Fox News' America's Election Headquarters. He also moderated Fox News' five Republican presidential primary debates and has written several *New York Times* best sellers.

The Annual Meeting will include a state of the industry and regional automobile business report from WANADA's leadership. Members will also elect WANADA's 2017-2018 Board of Directors.

New this year is a "Fireside Chat" with Bret Baier. Subsequent to his lunch remarks, Baier will conduct the *chat* in a room in the Ritz-Carlton with members who choose to pay an extra \$50 to attend this exclusive session. Only 40 tickets will be offered on a *first come, first served* basis. Registration will be emailed to luncheon registrants starting Nov. 1.

The Annual Meeting and Luncheon are sponsored by Armatus, BG, CBM and SunTrust. The Fireside Chat is sponsored by WellNet Healthcare.

Please click [here](#) to pay by credit card or check (invoice).

## Traffic delays in Washington region to cost drivers \$29 billion by 2026

Everyone complains about the traffic in the Washington area, and national traffic studies consistently rate the area as one of the most congested in the country. Now a study from Inrix Research puts a dollar figure on traffic congestion.

The Washington area was found to be the third most congested in the nation after Los Angeles and New York. The DC area has more than 6,000 traffic hotspots, areas of reoccurring traffic jams. Traffic jams will cost drivers a staggering \$29.2 billion in the next 10 years, the study found. Calculations were based on an earlier Inrix study that found that congestion costs U.S. drivers an average of \$1,400 per driver per year, based on time lost, fuel used and extra money paid for goods.

## How Maryland, Virginia, DC compare in car insurance costs

A recent study of car insurance rates by states (plus DC) put DC as the sixth most expensive, Maryland at 21<sup>st</sup> and Virginia at 44<sup>th</sup>. This is one contest that's good to lose.

The study compared average annual premiums in each state. In DC it's \$1,696, which is 29% above the average national rate of \$1,318. Of course, DC is the only "state" on the list that's all city, where rates tend to be higher.

The average premium in Maryland is \$1,327, just 1 percent above the national average and down a full 21 percent from 2016. And Virginia, which has more rural areas, is toward the bottom of the list, at \$1,040. That's a full 21 percent below the national average and up 2 percent from 2016.

### Thought for the Week...

When I was a boy and would see scary things in the news, my mother would say to me, "Look for the helpers—you will always find people who are helping."

-- Fred Rogers  
a.k.a. Mr. Rogers

Reflecting on the scores of people assisting those who fell victim to rifle fire in the Las Vegas massacre, Oct. 1, 2017

