



THE WANADA[®] BULLETIN

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

WANADA Bulletin # 9 -19

May 8, 2019

WANADA's Maryland, Virginia 2019 legislative review
Proposed rule on overtime exemption issued by Labor Dept.
Maryland AG cracks down on alleged predatory lending
NADA launches Voluntary Protection Products Policy
Better restraint systems needed in vehicle back seats for safety
China's Zotye T600 coming to U.S. in 2020; Maryland dealer signed
Dealership in Loudoun County seeks experienced comptroller
Staying Ahead...

WANADA's Maryland, Virginia 2019 legislative review

Lawmakers in Maryland and Virginia passed bills this winter that are poised to have important impacts in the way franchise auto dealers run their businesses.

Virginia enacted a major modification to a dealer's "right of first refusal," which attorney Michael Charapp of Charapp & Weiss LLP said will help protect multi-franchise dealership groups by making it more difficult for manufacturers to destroy a deal for sale of a multi-franchise group as long as the buyer is a licensed dealer.

"This was our top priority in Virginia this cycle," Charapp told a group of WANADA members in late April. "The ROFR modifications protect the value of what dealers spend their lives building."

The Commonwealth also passed legislation protecting auto dealers if their manufacturer ceases building and distributing a line make. If the successor manufacturer does not honor dealer agreements, dealers have the right to payment for franchise assets, franchise goodwill value, and real estate assistance.

In Maryland, the General Assembly enacted a measure to raise the state's minimum wage on a graded scale, with annual increases up to \$15 by 2025. The state also doubled the value of a property tax credit that dealerships can use against their county and municipal bills. The new regulations would allow cities and counties to allow dealerships to now fully write off the portion of their real estate value that is reflected in the vehicles on their lot.

Beginning on October 1, Maryland auto dealers and repair facilities will no longer be able to use a buyer's age as the sole basis for refusing to rent or loan a vehicle to a consumer, or to charge a higher fee for a rental vehicle. The state also expanded the plug-in electric vehicle excise tax credit, raising it to \$3,000 beginning on July 1. The Democratic-led Assembly also pre-emptively prevented Governor Larry Hogan (R) from being able to unilaterally withdraw Maryland from regional greenhouse gas emissions programs, like the Regional Greenhouse Gas Initiative, without the authorization of the legislature.

On May 1, the Maryland House of Delegates selected Del. Adrienne Jones of Randallstown to be the new Speaker, replacing the late Michael Busch, who passed away on April 7. Prior to Del. Jones' selection, attorney Michael Johansen of Rifkin Weiner Livingston LLC told WANADA dealers that Jones would likely be the most centrist of the three possible choices – the others being Del. Maggie McIntosh of Baltimore and Del. Dereck Davis of Mitchellville – and indeed Jones wound up being a compromise candidate of sorts, after the Democratic caucus was largely split between McIntosh and Davis.

“She is likely the most centrist of the options that we could hope for,” Johansen said of Jones. “But of course, any speaker will have to be responsive to their caucus.”

Looking towards 2020, Charapp expects Virginia's assembly to debate a number of progressive bills, including a hike in their minimum wage that was defeated this year, given the strong possibility that both chambers of the General Assembly will flip to Democratic control following the upcoming election in November 2019. Republicans currently have a 51-49 advantage in the House of Delegates and hold a 21-19 majority in the Senate, but all 140 Assembly seats will be up for grabs this fall. If the election results play out as is widely expected, Virginia Democrats will enter 2020 with control of the General Assembly and all five statewide offices.

In Maryland, Democrats will once again have super-majority control of both chambers of the General Assembly in 2020, their 98th consecutive year with that level of veto-proof power. Maryland legislators in both the House and the Senate are elected to four-year terms, and they will not face the state's voters again until November 2022.

Proposed rule on overtime exemption issued by Labor Dept.

The U.S. Department of Labor has issued its rule on overtime exemption and, not surprisingly, it's more business-friendly than the Obama administration proposal in 2016. The Obama rule – halted by a federal district court judge before it took effect – would have made 4.1 million salaried workers newly eligible for overtime. The Labor Department predicts the newly proposed rule would make 1.3 million more workers eligible for overtime.

The newly proposed rule would raise the salary level threshold – the amount above which employees generally aren't paid overtime – to \$679 per week, or \$35,308 per year. For workers who make more than that, overtime eligibility will depend on whether they primarily perform executive, administrative or professional duties.

There's a separate salary level threshold for highly compensated employees, \$147,414 annually. Bonuses and commissions can satisfy up to 10 percent of the standard salary level test for them. Highly compensated employees must also make at least \$679 per week exclusive of bonuses or commissions.

The Trump administration proposal does not have the automatic adjustments to the salary thresholds every three years that the Obama proposal had.

The proposed rule is open for public comment. The Labor Department said it expects the final rule to take effect January 1, 2020.

Thanks to Richard Morris at Councilor Buchanan Mitchell for this information.

Maryland AG cracks down on alleged predatory lending

On April 11, 2019, Maryland Attorney General Brian E. Frosh (D) announced that the Consumer Protection Division of the Office of the Attorney General filed charges against Cash-N-Go, Inc. (“Cash-N-Go”), Cash-N-Go’s owner, Brent M. Jackson, and related entities for allegedly making “unlicensed and usurious consumer loans” in the form of “title loans.” The Office of the Attorney General claims that these types of loans are predatory and put Maryland consumers at risk of losing their vehicles in violation of Maryland’s Consumer Protection Act, Maryland Consumer Loan Law, the Maryland Interest and Usury Law, and the Installment Loans–Licensing Provisions of the Maryland Code.

Specifically, Cash-N-Go was allegedly issuing title loans to vulnerable Maryland consumers at upwards of a 30 percent monthly interest rate, or an annual interest rate of 360 percent, which is 10 times the state’s legal limit. According to the Complaint, each of the title loans were secured by an interest in the consumer’s motor vehicle, whereby in order to obtain a loan, the consumer was required to provide Cash-N-Go with a free and clear title to his or her vehicle, a blank bill of sale, proof of income, references, and a spare key. Cash-N-Go would directly repossess consumers’ vehicles if they failed to make a scheduled payment, and Cash-N-Go did not send written notices to consumers prior to, or after repossession and sale of the vehicles. The complaint seeks injunctive relief, restitution, economic damages, civil penalties, and costs.

While dealers are not necessarily directly affected, dealers and financial institutions should be aware of the latest action by Maryland’s Attorney General to crack-down on alleged predatory lending practices that are at least tangentially related to the automobile industry.

Note: This article was written by Matthew D. Berkowitz, Esq. and Samantha N. Lewis, Esq., of WANADA Kindred-Line member Carr Maloney P.C.

NADA launches Voluntary Protection Products Policy

By Charlie Gilchrist, 2019 NADA Chairman

Last month NADA released our optional *Model Dealership Voluntary Protection Products Policy* to all NADA dealer members. The model policy aims to assist auto dealerships in developing and maintaining a compliant, consumer-friendly process for marketing and selling voluntary protection products. VPPs, such as GAP Waiver and extended service contracts, are offered to consumers to protect their investment in vehicles that they buy or lease. The policy is especially important in today’s environment as challenges to VPPs have arisen in different quarters.

Just like NADA’s 2014 Fair Credit Compliance Policy and Program, the VPP policy was rolled out with our friends at NAMAD (the National Association of Minority Automobile Dealers) and AIADA (the American International Automobile Dealers Association). It offers critical guidance on how dealerships can successfully navigate the VPP terrain by:

- Affirming the dealers’ unequivocal commitment to a transparent and professional VPP process;

- Stating how the dealership will implement and maintain the policy, and;
- Identifying tasks the dealership will perform throughout the life cycle of VPPs. This begins with product selection and then moves through a process for product pricing, advertisement, presentation, sale, cancellation and any customer complaints.

I want to emphasize that this policy is a template that is *not mandated by federal law*, and its adoption is *completely optional*. A dealership may decide not to adopt it or to adopt some — but not all — aspects of the policy. In addition, it also does not address specific state requirements that may apply, so it's important to review any communications on this topic from your state or local dealer association and to consult with legal counsel in deciding whether — and how — to adopt the policy template.

China's Zotye T600 coming to U.S. in 2020; Md. dealer signed

China's Zotye recently announced that its T600 compact SUV would arrive at U.S. showrooms by the end of 2020 or beginning of 2021. The company announced at the NADA Show earlier this year that it was coming to the U.S. and had signed 19 dealers, including WANADA Board member George Doetsch, a Ford-Lincoln dealer who plans three stores in Maryland.

Like the Koreans when they first sold vehicles here, lower pricing will be a key part of Zotye's strategy. The company plans to have 300 dealers when the T600 arrives, and 325 eventually. Dealers will not be required to build the expensive stores that automakers increasingly are insisting on.

Zotye aims to appeal to younger buyers by making the buying process simpler, executives told *The Detroit Bureau*. Online sales with no-haggle pricing will be part of it, along with fewer vehicle options and trim levels, and lots of tech features like advanced driver assistance systems.

One potential obstacle is the threat of a trade war with China. That's the reason the T600 introduction was delayed to at least late 2020.

Better restraint systems needed in vehicle back seats for safety

A new study by the Insurance Institute for Highway Safety shows that better restraint systems are needed in vehicle back seats. The study involved front crashes where belted rear-seat passengers were killed or seriously injured.

In the rear seat, side airbags protect passengers in a side crash. But there are no front airbags for rear-seat passengers, and the seat belts don't have crash tensioners or force limiters. A force limiter is a small metal rod built into the seat belt retractor that allows the seat belt to unspool a little during a crash and prevent chest injuries.

Another solution is an inflatable seat belt that inflates in a crash to distribute the force more evenly across the torso and chest. Ford and Mercedes-Benz have developed such belts.

Dealership in Loudoun County seeks experienced comptroller

A dealership in the Dulles region is seeking an experienced comptroller. For more information, please contact Joe Koch at jk@wanada.org.

Staying Ahead...

Do you want to know who you are? Don't ask. Act! Action will delineate and define you.

--Thomas Jefferson

