



Montana Automobile Dealers Association

MAY 2019 NEWS BULLETIN

PRESIDENT'S MESSAGE:

New Training Partnership

While overall employment at U.S. franchised new-car and -truck dealerships continues to rise, dealers say they are still having a hard time finding and hiring service technicians. This also rings true close to home, so The MTADA has teamed up with the MT Department of Labor and Helena College of Technology (HCT) to begin building careers for technicians in Montana. HCT will begin a new structured program this fall, and with the help of local dealers, over 9 students will be on their way to a career path in the auto industry!

The new HCT program will start in the fall and see students work as interns and apprentices at dealerships in the area. Students will come to classes in the morning and go to their industry partner job in the afternoon. By the end of the two-year program, students will have completed an associate's degree in applied science, eight automotive service excellence exams and 1,000 hours of work-based experience. The aim is to give students a big leg up in a field that could take up to 10 years' experience to reach master mechanic status. Currently, in Helena, we have Helena Motors, Lithia Chrysler, Lithia Chevrolet, Placer Subaru, and Robert Allen Nissan. A big shout out and thank you to the dealerships for being a part of this program!

This doesn't have to just stay in Helena. The Apprenticeship program can be picked up by any dealer in any town. The Department of Labor has a certified Apprenticeship program that gives tax breaks to the dealers and also helps technicians become certified in desired areas. There are multiple schools throughout Montana and industry wide that will qualify for these apprenticeship programs. Lithia Toyota in Billings is also part of the Department of Labor Apprenticeship program.

There is also help from a national level as well. Then NADA see the need to fill the gaps in the industry. About 39,000 new service techs graduate from U.S. career technical colleges and training programs each year. Yet the industry needs to replace nearly 76,000 techs each year to keep up with retirements and new job demand. That's leaves an annual shortfall of about 37,000 trained techs, NADA estimates.

To spark interest in service technician careers at automotive and commercial-truck dealerships, the NADA Foundation in January 2019 rolled out a new multi-faceted Workforce Initiative, which includes a new website, nadafoundation.org, and videos featuring technicians highlighting what they like about their careers.

An immediate goal of the initiative – which is gaining financial support from across the entire industry – is to fill OEM technician training programs to capacity. To help accomplish that, the NADA Foundation website includes the first and only interactive

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James Johnson
MTADA President

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	<i>and more!</i>



105TH ANNUAL FAMILY CONVENTION Mexico Vacation Package Giveaway!

All expense paid vacation to Mexico (valued up to \$6000)

Prize to be given away on Saturday evening
during the President's Banquet at Convention

Must be Present to Win!



8 Chances to be Entered into the Drawing:

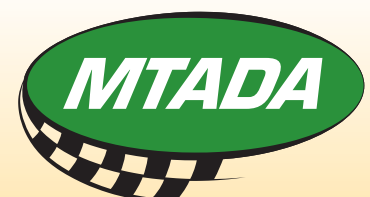
1. One entry for early registration –
register for Convention by April 1st
2. Attendance at the All Member Meeting
3. Attendance on the Far West Boat Cruise
Friday night
4. Attendance at the Poker Tournament
5. Attendance at the Speaker Session
Saturday morning
6. Participation in the Vendor Drawing's
7. Participation at the golf scramble
8. Attendance at the president's banquet

**There will be a sign-up at each of these locations.
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- You must be a full time employee,
or a spouse of a full time
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**Montana Automobile
Dealers Association**

DIRECTOR'S MESSAGE:

Save the Date: NADA Show Returns to Las Vegas Feb. 14-17

The Automotive Industry Event of the Year is back in Las Vegas, Friday to Monday, February 14-17. Don't miss NADA's signature annual Show as we take over Valentine's Day weekend in the city we love. Get ready for more: more Expo, more education, more networking—more to love!

NADA continues to lead the industry, educating our members on dealer operations, marketing and digital strategy, personnel management, and the latest automotive regulations and legislation. Our show's attendees get the most up-to-date information on data management, EVs and OEM relations directly from NADA's own Academy instructors and industry experts.

Plus, NADA Show 2020 will offer more opportunities than ever for networking, with franchise meetings and direct connections to industry leaders.

Don't forget, this year our Show dates have changed, covering the holiday weekend from Friday to Monday. With more than 22,000 annual attendees, the best hotel selections always fill up quickly. So, be sure to mark your calendars: attendee registration and housing will open on July 22, 2019.

We love Vegas and we'd love to see you there!

Learn more at nadashow.org. ■



Don Kaltschmidt
NADA Director



HAVE YOU HEARD?
NADA Show dates changed to
FRIDAY-MONDAY February 14-17

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Montana Automobile
Dealers Association

105th Annual Family Convention

AUGUST 9-11, 2019
Hilton Garden Inn | Kalispell, Montana

JOIN US this year for the 105th Annual Family Convention near Glacier National Park

Join us for the **105th Annual Family Convention** in Kalispell to meet, learn and develop connections with your fellow industry leaders, members and vendors. In addition, there are great opportunities to learn from a fantastic group of industry speakers and discuss industry needs with Montana's key political leaders. As always, we feature great daily activities for the enjoyment of attendees and their families.

ACTIVITIES INCLUDE:

- Far West Boat Cruise on Flathead Lake
- Annual President's Banquet
- Texas Hold'Em Poker Night
- 9-Hole Shotgun Style Golf Scramble
- Shopping in Whitefish
- Relaxing at Whitefish City Beach

We encourage all of you to bring your families!
Childcare will be offered at certain times of the day.

Please Register Online at MTADA.Com



CHAIRMAN'S MESSAGE:

NADA Launches Voluntary Protection Products Policy

Voluntary protection products are offered to consumers to protect their investment in vehicles which they purchase or lease—this includes GAP Waiver and extended service contracts. On April 2, NADA released our optional Model Dealership Voluntary Protection Products Policy to all NADA car and light-duty truck 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). This 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 dealer's 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 lifecycle of VPPs. This begins with product selection and then moves through a process for product pricing, advertisement, presentation, sale, cancellation and, should they arise, customer complaints.

I want to emphasize that this policy is a template which 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 respective state dealer association and



Charlie Gilchrist
2019 NADA Chairman

Continued on **PAGE 8**

Manage Costs by Maximizing Your Tax Savings.



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SB-25306-0312

LEGAL UPDATE

Revisions To Montana Dealer Law By 2019 Legislature

You are all likely aware of MTADA's success in effecting the modification of several sections of the Montana code dealing with the regulation of the relationship between motor vehicle dealers and manufacturers. Each of the proposed changes was designed to remedy problems where one manufacturer or another or a DMS provider or third-party vendor aligned with the manufacturers exerted their economic power and employed their heavy handed, coercive bureaucracy to take unfair advantage. The subjects addressed by the amendments include:

DATA PROTECTION: The new statutory language recognizes that dealers collect information from their customers and store that information in electronic data management systems. For the first time, it regulates the manner in which DMS providers and third parties can access and use the DMS data. As the electronic age has matured, more and more customer related functions and data are included in the DMS and the demand for access to this customer data by manufacturers, vendors and others has multiplied exponentially. At the same time the DMS providers have made access to the dealer data by the dealer himself and other vendors who do business with the dealer inconvenient, onerous, burdensome and expensive, to such an extent that dealer groups have filed class action suits against DMS providers and the National Automobile Dealers Association formed a group to study the problem and recommend legislative solutions that protect the information of the consumer shared with the dealer. Following NADA guidance, the new data protection language:

- establishes the privacy of the data;
- prohibits unauthorized disclosure or use by DMS providers;
- prohibits DMS providers from imposing onerous, expensive requirements for dealers to access their data.

TERMINATION/CANCELLATION OBLIGATIONS:

For some time, Montana law has imposed repurchase obligations on manufacturers to repurchase inventory, parts, special tools and signs. The manufacturers uncovered some loopholes in those statutory provisions which they exploited at the expense of affected dealers. One case involved a dealer who sold and was cancelling his franchise. A single \$4,000+ piece of special equipment arrived from the manufacturer even though the manufacturer knew (because it had the Asset Purchase Agreement in hand) that he would have no use for it because he was cancelling. The manufacturer would not

take it back or buy any other special tools because the dealer resigned.


That same dealer was required to pay a \$14,000.00 "termination fee" when the sign lease he had for the manufacturer's brand signs was cancelled (by the manufacturer's subsidiary sign company) when he resigned his franchise.

- The revised statutory language now clearly requires the manufacturer to repurchase special tools, equipment and signs, owned or leased, that the manufacturer requires the dealer to purchase or lease, to the list of items (which includes inventory and parts) the manufacturer is required to repurchase even if the dealer just resigns the franchise.
- The new language also adds some timelines within which the manufacturer must make the required repurchase from the cancelling dealer, pay for the



R. J. "Jim" Sewell, Jr.
MTADA General Counsel

Continued on **PAGE 9**



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Mobile Apps Enhance the Customer Experience

In this digital era, people want the immediate satisfaction of information at their fingertips. They want access to data instantly, whether it's to check their calendars, check an email, bank accounts or check facts. EBMS is launching their miBenefits portal mobile app for just this reason. Customers can connect to their benefits anytime and anywhere to see real-time claims processing, deductible balance or request a new card. That is just a small part of what members can do with their benefit plan at their fingertips.

Consumers also show preferences for accessing data through specialized mobile apps rather than through mobile web browsers. A 2017 report by the consulting firm Capgemini highlighted as an insurance industry trend the increasing use of digital and mobile technologies to improve the customer experience. There are several reasons why health insurance customers might find a mobile app appealing, to help them navigate coverage and benefits and EBMS has tapped into this leading trend to the benefit of their customers.

Personalized experiences

An app can offer tailored communications about a benefit plan and give instant information and this is EBMS' mission, to let the customer have information pertaining to them anytime, anywhere.

Instant notifications

Apps can provide effective messaging. For example, let's say an action is required from a plan member. A push notification can alert users of that fact and direct them to open the app for complete information. EBMS' miBenefits app provides notifications updating the customer on claims, deductible and stop loss, so the customer feels updated and a participant in their health care, rather than left in the dark.

Efficiency and ease of use


A dedicated app can provide a better user experience. A well-designed app is easy to navigate, with streamlined menus and minimal clicks required. EBMS knows members want their own or their family's data fast and in real-time. They want knowledge and want to be able to access information not only quickly, but efficiently with little effort and confusion in the process. EBMS' mobile app has been designed with that in mind; in fact, it's one of their key pillars in their mission.

In keeping with this methodology, EBMS has developed a mobile strategy that allows busy consumers to better manage a benefit plan while on the go in the way that our culture has become accustomed to.


"We've focused our resources on developing a mobile product that aligns with our identity and goals," says EBMS Chief Executive Officer James Vertino. "That includes our emphasis on simplifying the benefits journey for all stakeholders. So we've essentially taken all the functionality of the miBenefits online portal and translated it into a format that works well on the smaller screen. It's all about delivering plan information in the format people prefer to use."

Be sure to download the app once it goes live on May 1st! ■






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Chairman's Message CONTINUED FROM PAGE 5

to consult with legal counsel in deciding whether—and how—to adopt the policy template.

I'm proud that NADA is, as always, committed to proactively helping our members remain compliant with today's federal regulations. We're happy to once again collaborate with our industry allies, and we're proud that this guide was strengthened by input from many experts including dealers, dealership managers and attorneys, state and metro dealer associations, VPP providers and finance sources, finance trainers and many others.

I have implemented the policy in one of my dealerships and it works very well. I'm in the process of using it in all my dealerships, so I hope you find it to be a valuable resource and that it serves to enhance your ability to meet the needs of your customers too! ■

Charlie Gilchrist is president of Gilchrist Automotive in the greater Dallas-Fort Worth.

President's Message CONTINUED FROM PAGE 1

U.S. map of training and scholarship opportunities available to aspiring technicians.

This can be a great career path that does not require a four-year college degree. It's important to realize that in most cases upon completion of a reputable training program, potential employers will be ready to hire them immediately.

If you would like to learn more about the Automotive Industry Technician Apprenticeship Program, please attend the All Member Meeting at the MTADA Family Convention August 9th at 1:00pm. ■

James Johnson is the Dealer Principle at High Plans Motors, Inc. in Wolf Point, Montana

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**Montana Automobile
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Legal Update CONTINUED FROM PAGE 6

repurchase and imposes financial penalties in the event the manufacturer does not comply with its obligations. Two separate incidents provided the inducement for these changes. In one case, a resigning dealer had 30+ new vehicles on his lot. The OEM was dragging its feet on repurchase of the inventory and floor plan interest was adding up at approximately \$200+ per day for over 6 months. When the bill was introduced in the legislature, the OEM had still not paid the dealer for the vehicles even though it picked them up from his sales lot over 60 days prior. In another case, a small-town dealer began the process to resign his franchise because he was under constant pressure to sell more and more in a market where he could not meet the price pressure from larger dealers in nearby communities who were getting significantly more manufacturer subsidy than he was. [Which is a sore spot and a point for another day]. Again, he had a long wait between the time he resigned and the OEM completed the repurchase of his inventory of new vehicles. He also incurred excessive additional floor plan interest. At the time bill was introduced he was still trying to get the manufacturer to pay him for parts inventory not an insignificant problem for a small dealer with 10's of \$1,000's worth of repair parts involved.

DEALER SUCCESSOR: The statutory revisions adds retirement of the dealer to the circumstances where a manufacturer is required to honor the designation of a family member as successor dealer;

- under prior law a dealer could appoint a family member to take over the dealership only if the dealer was dead or under the care of a guardian. Planned retirement has now been added. The appointed family member must still meet the manufacturer's reasonable, uniformly applied criteria for appointment as a dealer. In other words, the dealer candidate must possess good character, be qualified to operate a dealership (or hire someone as a general manager who is qualified) and have adequate capital to fund the dealership operation;
- the amendment also provides a procedure for a dealer whose family member is denied the right of succession an opportunity for a hearing before the Montana DOJ. The hearing process is important because denial of the right of succession ultimately has the same effect as termination of the dealership for cause, resulting in the loss of a dealer's lifetime efforts at building his business.

ADD POINT: The new statute revises the procedures allowing a manufacturer to add an additional point in a community where it has an existing dealer. The revised

language is designed to remedy a problem a Montana dealer recently experienced where a manufacturer used the add point process as a lever to coerce the dealer into moving his place of business to a location that the manufacturer asserted would result in more vehicle sales. The amendment:

- limits the frequency of add point proceedings in a community to one every three calendar years. This is important to discourage manufacturers from using an add point as a lever to coerce an existing dealer into some action the dealer does not believe is appropriate or warranted - like relocating his business;
- requires the name of the new dealer and the location of the new facility be described in the add point notice. This is the practice that manufacturers have recently followed and is important to the existing dealer's ability to prepare his objections;
- requires a separate proceeding if the new dealer or new location are to be changed. This is important because the affected dealer was subjected to serial substitute dealers and locations as the manufacturer lost their candidates once the candidates figured out that the manufacturer's proposal didn't make economic sense;
- allows a dealer who successfully objects to an add point in his community to recover his costs and fees - again to discourage the manufacturers from using an add point as a lever to coerce the existing dealer.

WARRANTY REIMBURSEMENT. The new warranty reimbursement language creates an entirely new method to establish the reimbursement rate paid to dealers for warranty parts and labor required by the manufacturer's vehicle warranty and vehicle recalls issued by the manufacturer or the U.S. Government. It follows language developed and suggested by Armatus Dealer Uplift, an MTADA endorsed partner, providing parts and labor warranty rate adjustment services nationwide. The Armatus language has been adopted or is under consideration in other jurisdictions including Delaware, New Hampshire, Pennsylvania, Maryland, Ohio, Indiana, Colorado, California and Georgia. You may have already participated in the Armatus webinar offered recently by MTADA.

The prior law required that the manufacturer reimburse the dealer for labor, parts, and other expenses incurred to rectify the manufacturer's product or warranty defect or for delivery and preparation obligations at the same rate and time the dealer charges to its retail customers for non-warranty work of a like kind, based upon a published, nationally recognized, retail flat-rate labor time guide manual. [61-4-204(4)]. A manufacturer is barred from using chargebacks to recover its costs for paying the dealer "retail" for warranty work. [61-4-204(7)]. Dealers are also shielded

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Legal Update CONTINUED FROM PAGE 9

from products liability and warranty breach lawsuits under this section. The statute had been on the books for 20+ years. During that time the manufacturers have employed all manner of leverage on dealers to avoid paying the same that non warranty customers pay.

From time to time, dealers are pulled into product liability lawsuits by consumers who allege that the product is defective and has caused them injury. The suit papers contain some vague description of conduct by the dealer so that the dealer can be made a party to the suit. Plaintiff's lawyers do this, not because they have a substantive claim against the dealer, but because the dealer, being a resident of the same state as the plaintiff thus keeps the case in state court where only two-thirds of the jurors is required for a favorable decision as opposed to federal court where the jury verdict must be unanimous, so the case is harder to win. The dealer tenders the suit to the manufacturer for defense and payment of any settlement, but the manufacturers routinely reject the tender of defense based on the flimsy allegations of the complaint without looking into the facts first. The new language requires the manufacturers to conduct a fair investigation of the facts before they can deny the dealer's request for defense and indemnity. This is the same obligation that insurers have before they can deny a claim.

A detailed analysis of the principal provisions of the new statute is not possible here and is well covered in the Armatus webinar. In summary, the new statute:

- requires that the manufacture pay the dealer for labor, parts and supplies furnished for warranty work at retail just as the current law provides;
- limits rate changes to once in a 12-month period;
- prohibits the manufacturer from imposing deductions on or refusing to pay for warranty work performed on a vehicle that the manufacturer ultimately purchases back from a consumer (ie, as part of a lemon law claim);
- describes the manner in which the retail labor rate and the retail parts mark-up is determined using qualified repair orders;
- defines "Qualified Repair Order" as one that would have been a warranty claim but is not because the warranty on the subject vehicle has expired. Certain repairs are excluded including routine maintenance, tires, alignments, volume discounted repairs for fleets, insurers, commercial operators, dealer or employee repairs, installation of accessories, repairs caused by collision, emissions inspections and repairs on other line makes or using after-market parts;
- dealer submits 100 sequential repair orders for qualified repairs;

- all qualified repairs must have occurred within 180 days of the submission;
- all qualified repair orders were completed within 90 consecutive days;
- dealer calculates the labor rate by dividing the total labor charges for the qualified repair orders by the total number of hours;
- parts mark-up is determined in the same manner. It may be combined with the labor rate determination, but may also be submitted separately;
- the dealer then notifies the manufacturer in writing of the calculation;
- the rate established by the dealer goes into effect 30 days after receipt of notice by the manufacturer unless the dealer receives written notice of objection from the manufacturer within the 30-day period that the declared rate or mark-up is materially inaccurate;
- the objection must provide a full explanation of any and all reasons that the declared rate is materially inaccurate, evidence substantiating each stated reason, a copy of all calculations used by it demonstrating the material inaccuracy, and a proposed adjusted retail labor rate or retail parts rate, as applicable, based upon the qualified repair orders submitted by the motor vehicle franchisee;
- the amendments contain a list of prohibited practices that are designed to address conduct by manufacturers that has occurred in other states where a similar statute has been enacted;
- among others, prohibits denial of claims for failure to follow some administrative procedure that does not bring into question the validity of the claim in current Montana law;
- requires that warranty claims be paid in 30 days;
- allows manufacturer audits, chargebacks for fraud, etc., similar to existing law.

The new statute became effective on the day it was signed into law by the Governor, May 5, 2019 and so it applies to any conduct that occurs beginning on or after May 6, 2019. At this point it is known as Chapter 283, Laws of 2019. We do not know the code section numbers for the law at this time, because they will be assigned by the Legislative Codifiers later in the summer. A complete copy of Chapter 283 is available on the MTADA website and can be downloaded as a .pdf. I would also be happy to provide a copy upon request as well. I look forward to a more in-depth discussion of the new law's provisions and an opportunity to respond to your questions during the upcoming Annual MTADA Convention in Kalispell, August 9 – 11. ■

IT Security Tip: Government Agency Loses \$500,000 in a Payroll Attack

Hackers stole approximately \$500,000 from the City of Tallahassee, Florida by diverting city employees' paychecks, according to USA Today. The attackers hacked a third-party vendor that provides the city's payroll services and then redirected direct deposit payments to attacker-controlled accounts.

Tallahassee officials only learned of the attack after they were contacted by the city's bank. The incident is still under investigation, but city spokeswoman Alison Faris said the attack is suspected to have originated outside of the US.

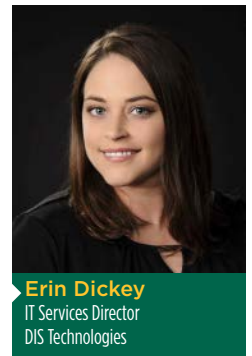
City officials said attackers try to compromise the city's defenses every day and last month a malicious Dropbox link was sent out from the email account of the city manager. Officials don't believe this attack was related to the payroll theft, although IT experts noted that this type of phishing attack is often a precursor to more advanced attacks.

"Usually the way they get in is through email," Blake Dowling, CEO of Aegis Business Technologies, told USA Today. "Those happen all the time. If you're not trained to be on the lookout for something, about how that may look or feel or the implications, it can bring your city to a crawl."

Even secure networks are vulnerable to employees making a simple mistake and accidentally opening the door to an attacker. New-school security awareness training can help your employees defend themselves against phishing attacks.

DIS is now providing Dark Web monitoring and security awareness training. Our service is designed to help both public and private sector organizations detect and mitigate cyber threats that leverage stolen email addresses and passwords. We can also provide the end user training to your staff to prevent the above scenarios from ever occurring in the first place.

If you would like to know more about our Dark Web monitoring and training services, email us at info@dismt.com or call 866-293-9359 and ask for Garrett Johnson, our IT manager. ■



Erin Dickey
IT Services Director
DIS Technologies



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