March Newsletter

WEST VIRGINIA AUTOMOBILE DEALERS ASSOCIATION

March | 2021

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2021 Annual Dealer Convention

Legislative Update

LEGISLATIVE UPDATE

We are entering the last two weeks of the 2021 Legislative Session, and what a session it has been! "Crossover Day" is this Wednesday, March 31st, and this is the last day to consider bills on third reading in their house of origin in order to be eligible for continued consideration. This does not include budget or supplementary appropriation bills.

First and foremost, there have NOT been any bills introduced this session regarding direct sales (Tesla, Rivian, etc..) nor have any bills been introduced that affect YOUR franchise Act.

Bills Still in Play

S.B. 626 – Updating Regulation for Purchase of Automobile Catalytic Converters (Passed Senate – pending House Gov. Org. Committee)
This is the last bill that we are working to get across the finish line.

This bill has passed out of the Senate and is currently pending the House Government Organization

Committee. WVADA is working this bill in conjunction with the WV Sheriffs Association. Catalytic converter thefts are becoming more and more prevalent throughout WV. This bill requires a scrap metal dealer to obtain a valid driver's license or ID card, a thumbprint, and written documentation that reflects that the seller is authorized to possess and sell a catalytic converter.

This bill adds a new section that makes it a misdemeanor for any person possessing a catalytic converter, which had previously been installed on a motor vehicle, without proof of ownership. If convicted, that person would be guilty of a misdemeanor, confined in jail for up to 12 months, and would be fined up to $1,000 for each catalytic convertor in their possession.

Also, a scrap dealer is required to pay for stand-alone converter(s) via a check and are not allowed to pay cash. A scrap dealer must hold the catalytic converter for 14 days after it is acquired. Provided, that the 14-day retention requirement may be reduced to 5 days if, within the 5-day period, the scrap dealer provides all documentation to the local detachment of the State Police and the chief of police of the municipality or the sheriff of the county in which he or she is transacting business. No scrap metal dealer may process, sell, or remove a catalytic converter from its premises for at least 14 days after its acquisition. Also, a scrap dealer CANNOT purchase or take possession of catalytic converter if the identifying information on it has been manually altered.

A special thank you to Richard Stephens and Bill Cole for taking the time to testify before the Senate Judiciary Committee. Richard and Bill did an exceptional job and WVADA greatly appreciates their time and willingness to address this issue on behalf of all WV dealers who have been affected by this ongoing theft.

H.B. 3175 – Relating to Removing Certain Felonies that can Prohibit Vehicle Salespersons from Receiving a License (passed the House – pending Senate Judiciary Com.)

This bill has passed the House of Delegates and is now on its way to the Senate. This bill allows an individual to get a vehicle salesperson license if they haven't been convicted of a felony in the last ten years.

This bill is scheduled to run in the Senate Judiciary committee this week.

S.B. 695 – Providing for Procedures for Decreasing or Increasing Corporate Limits by Annexation

Originally when this bill was introduced it was very worrisome. This bill allows municipalities to make minor boundary adjustments. However, if this bill passes, and a municipality can adjust boundary lines to annex private businesses, those businesses affected will have to sign an affidavit stating that they want to be annexed. If any business does NOT want to be annexed, then the municipality will not be allowed to adjust their boundary lines without the consent of the business owner.

H.B. 3300 – Relating to Personal Income Tax (PIT)

This is House of Delegates version of reducing/eliminating PIT. This bill is much different than the Governor's PIT bills: S.B. 600/HB 2027.

HB 3300 was originated in the House Finance Committee and the bill passed on Monday, March 29, on straight party lines 77 to 23. The bill is now on its way to the Senate.

This bill is a much shorter version (11 pages) than the Governor's 75-page version (Governor's version is laid out below). This bill slowly reduces PIT based on gross income. It creates an Income Tax Reduction (ITR) Fund to accelerate its pursuit of a full personal income tax elimination. The ITR will also serve as an additional reserve of funds to safeguard against downturns in the economy. Revenues will build up in the ITR through various means/sources that can be found in detail in the bills full abstract. **Click here** to view the bills abstract.

S.B. 600/H.B. 2027 – Relating to Personal Income Tax Reduction (Governor's Bill)

This is Governor Justice's bill that will begin the elimination of personal income tax (PIT). At this point, there is little appetite in the House for the current version of the bill. The Governor believes that the time to do this is NOW.

From 1950 to 2016, the total population of the United States doubled. In that same time frame 49 out of 50 states saw their population increase, except West Virginia. Between 2010 and 2020, WV's population decreased by 3.8%, the steepest rate of population decline in the country.

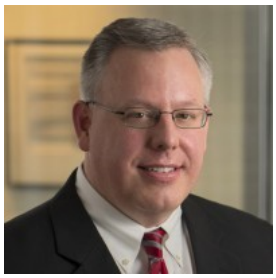
Click here to continue reading...

JACKSONKELLY PLLC BLOG

West Virginia Employment Law Worker Classification Act Heads to the Governor for Signature

By: Mark H. Dellinger, Danielle M. Waltz, and Blair Wessels

On March 11, 2021, the West Virginia Legislature completed legislative action on Senate Bill 272, the West Virginia Employment Law Worker Classification Act. The Employment Law Worker Classification Act (the "Act") establishes a single, statewide standard to evaluate whether an individual providing services to a business is an independent contractor or a bona fide employee. The Act will now head to Governor Jim Justice, who is expected to sign the Act into law. ***Read More >***



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VACCINATIONS NOW AVAILABLE TO ALL WEST VIRGINIANS AGE 16 AND OLDER

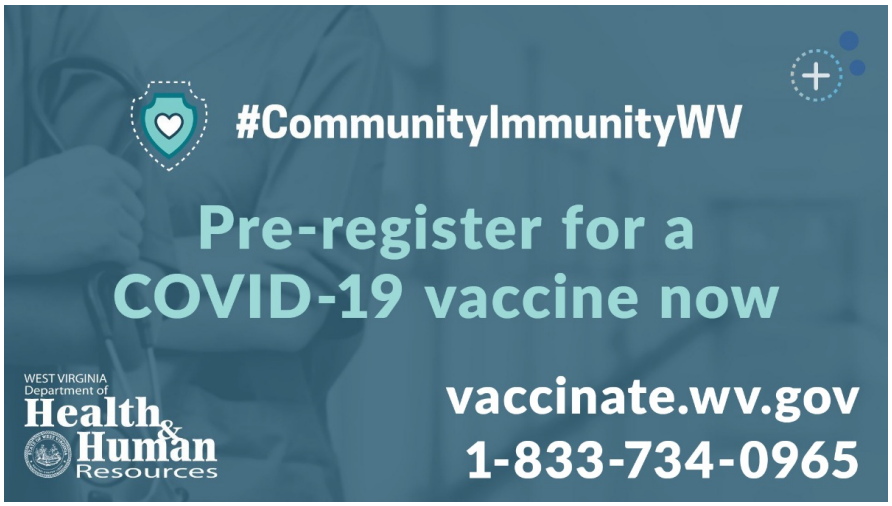
During Monday's briefing, Gov. Justice announced that West Virginia will start offering COVID-19 vaccines to all state residents age 16 and older, beginning immediately.

"As we continue to lead the nation with our vaccine distribution, we do not want to let our foot off the gas," Gov. Justice said. "I encourage all West Virginians to take advantage of this opportunity and get vaccinated."

West Virginians who are age 65 and older will continue to be prioritized first until all state residents in that age range who desire to receive the vaccine have been vaccinated.

"At the same time, we have got to get more and more West Virginians vaccinated, and now is our time," Gov. Justice said. "Let's go, West Virginia. Let's get everyone in the state vaccinated. That's our goal."

Gov. Justice went on to encourage all West Virginians age 16 and older wishing to be vaccinated to pre-register at **vaccinate.wv.gov** or by calling the COVID-19 Vaccine Info Line at 1-833-734-0965.



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ATTENTION MEMBERS: NONDEDUCTIBLE DUES FOR 2020

The nondeductible portion of the regular member dues to WVADA for 2020 is 47.79%.

The nondeductible portion only applies to regular member dues – associate and subscriber dues are fully deductible.

LAWSUIT FILED — FIGHT TO PRESERVE FRANCHISED DEALER SYSTEM

RIVIAN

The Illinois Automobile Dealers Association, Chicago Automobile Trade Association, Peoria Metro New Car Dealers Association, Illinois Motorcycle Dealers Association and over 200 franchised dealers have filed suit to protect the franchised motor vehicle system. **Click here to read the press release**. Rivian Automotive and Lucid Motors are already building vehicle showrooms and taking customer deposits on new vehicles with no intention of contracting with franchised dealers as required under Illinois law.

The unified group seeks a court order to require the Secretary of State to enforce dealer licensing laws and require Rivian, Lucid, and other manufacturers sell their vehicles through franchised dealers.

The IADA Legal Defense Fund, IADA, CATA, and the PMNCDA are paying the legal fees and costs related to this lawsuit.

A copy of the lawsuit can be found here: **LINK TO LAWSUIT**.

If you receive a media inquiry based on the lawsuit, kindly refer the media to our public relations team, Colleen Dudgeon at Serafin, 773-805-0353, **colleen@serafin.com** and notify Meghan Davlin at IADA, **mdavlin@illinoisdealers.com**.

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American Rescue Plan Act Contains New Business Items

On March 11, 2021 President Biden signed into law the American Rescue Plan Act (ARPA), which expands and extends many of the economic aid programs enacted in 2020. Note: the following summaries are not intended to be exhaustive and only focus on key business issues addressed in the ARPA.

Families First Coronavirus Response Act (FFCRA)

The emergency paid leave mandate established by the FFCRA expired on December 31, 2020. Thus, covered employers no longer have an obligation to provide emergency paid sick or family and medical leave. Importantly, the Economic Aid Act (EAA) of December 2020 extended the fully refundable credit against payroll taxes for employers who voluntarily provide such paid leave through March 31, 2021.

The ARPA re-extends the tax credit for voluntarily provided emergency leave through September 30, 2021. In addition to all pre-existing FFCRA leave justifications, the ARPA states that the refundable tax credits are available for emergency leave voluntarily provided for (1) employees obtaining COVID-19 immunization (vaccination); (2) employees recovering from any injury, disability, illness or condition related to such vaccination; or (3) employees seeking or awaiting the results of a diagnostic test or medical diagnosis for COVID-19 (or their employer has requested such a test or diagnosis).

The ARPA also increased the wages covered by the leave credit from $10,000 to $12,000 per worker and increased the value of the credits to match an employer's share of contributions to defined benefit plans and registered apprenticeship programs. New non-discrimination rules make the tax credit unavailable to employers that, in determining the availability of paid leave, discriminate in favor of highly compensated employees, full-time employees or employees based on tenure. Lastly, on April 1, 2021, the 80-hour limit for emergency paid sick leave and 10-week limit for the emergency paid family leave will re-set, enabling employers to voluntarily provide an additional emergency leave to employees who reached those limits prior to that date.

Paycheck Protection Program (PPP)

The ARPA increased PPP lending authority to $813.7 billion and expanded the scope of PPP loan forgiveness to include payments for COBRA premiums for individuals who qualify for health insurance continuation coverage, but only for loan forgiveness applications received following enactment.

Disaster Loans

The ARPA provides $15 billion for additional advance payments to eligible entities under the Small Business Administration's Economic Injury Disaster Loan (EIDL) program. Of that, $10 billion is for covered entities that did not receive full eligible advance payments under the EAA. Those entities include...***continue reading here***.

CORRECTED: SBA Issues Updated PPP Loan FAQs

The Small Business Administration has updated its Paycheck Protection Program (PPP)**FAQs** to address changes made in December 2020 by the Economic Aid Act. Among other things, the Act extended until March 31, 2021, the date by which new PPP loan applications may be filed, including from certain existing PPP borrowers seeking a second-draw PPP loan. Note that until March 10, 2021, new PPP loan applications may only be filed by certain borrowers with fewer than 20 employees.

SBA's revised FAQ #46 offers new clarity for borrowers seeking second-draw loans. To be eligible for a second-draw PPP loan, applicants must have had a 25% drop in gross revenues between a comparable calendar quarter in 2019 and 2020. As a matter of law, a second-draw loan applicant also must certify in good faith that "[c]urrent economic uncertainty makes this loan request necessary to support the ongoing operations of the Applicant." According to FAQ #46, if a second-draw PPP loan applicant can show the required 25% drop in gross revenues, it will be deemed to have made the statutory "necessity certification" in good faith. Simply put, while necessity certifications are required of second-draw loan applicants, SBA apparently does not intend to review or audit certifications made by applicants that show the required gross revenue drop in their loan applications.

FAQ #46 also states that SBA will not combine first- and second- draw loan amounts for purposes of the $2 million loan threshold that triggers the need for a Form 3509 certification questionnaire when filing for loan forgiveness.

Reminder: all dealers, including those who took out PPP loans, should discuss with their financial advisors their eligibility to claim Employee Retention Tax Credits (ERTC). The Economic Aid Act retroactively allows PPP loan borrowers to claim the ERTC for qualified wages not paid for with PPP loan proceeds. It also extended ERTC eligibility through June 30, 2021. To claim the ERTC, a dealership must have had to experience either 1) a full or partial shutdown due to a government order related to the coronavirus pandemic or 2) a significant decline in revenue in a calendar quarter. Regarding the latter, gross receipts must have fallen by at least 50% for the same calendar quarter from 2019 to 2020, or at least 20% for the same calendar quarter from 2019 to 2021. The IRS recently issued **updated guidance** on this matter.

As always, dealers should discuss the foregoing issues with their financial and legal advisors. Dealers can access more information through the **SBA PPP website** and **NADA's Coronavirus Hub**.

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Mitigating the Impact of the Microsoft Exchange Email Service Hack

It's Our Business to Protect Yours
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As you may have heard in the news, global cyber criminals have exploited the Microsoft Exchange Server service. The breach is believed to have targeted hundreds of thousands of users around the world, including approximately 30,000 customers in the United States. The vulnerability allows attackers access to data such as emails and address books, as well as a pathway to sending disguised emails and installing additional malware on the victims' systems.

Microsoft has released emergency security updates to help mitigate the impact of the breach and is urging customers to

immediately update their systems with these software updates. At Federated Insurance[â], we strongly recommend policyholders who utilize the Microsoft Exchange Server at their business to follow this advice.

Below is additional information to help you take the necessary steps to better protect your business from this vulnerability and the potential resulting cyber claims.

LEARN MORE	MICROSOFT UPDATES	MICROSOFT INFORMATION
Click here to learn more about this incident, including: - Targets - Goals - Breach response	Click here for Microsoft Exchange Server Security Updates.	Click here to access Frequently Asked Questions about the breach, information on Microsoft updates, and how to determine if you have had an exposure.

Thank you for taking these important steps to protect your business. If you think you have experienced a cyber claim, please report it through the **mySHIELD®** client portal or by calling 1-888-333-4949, and our claims representatives will be ready to respond.

This article is for general information only and should not be considered legal or other expert advice. The recommendations herein may help reduce, but are not guaranteed to eliminate any or all risk of loss. The information herein may be subject to, and is not a substitute for, any laws or regulations that may apply. Coverage for claims will be determined by the facts of the claim and the terms of your policy, if approved for issue. Qualified counsel should be sought with questions specific to your circumstances. © 2021 Federated Mutual Insurance Company.

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JUNE 13 - 16

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WVADA 87TH ANNUAL FAMILY CONVENTION

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SAVE THE DATE
June 13 - 16

SUNDAY: WELCOME RECEPTION & POKER/BLACKJACK NIGHT
MONDAY: DAY - GOLF SCRAMBLE
EVENING - BLOCK PARTY
TUESDAY: DAY - SPORTING CLAY TOURNAMENT OR WINE &DESIGN
EVENING - CHAIRMAN DINNER/RECEPTION

Forms for WVADA 2021 Convention

- WVADA Registration Form
- Greenbrier Room Reservation Form
- Sponsorship Form

- [Exhibitor Registration Form]