May Newsletter

WVADA
WEST VIRGINIA AUTOMOBILE DEALERS ASSOCIATION

May | 2021

In This Issue:

- Face Covering Requirement Lifted for Fully Vaccinated West Virginians
- 2021 - 2022 WVADA Executive Committee and Board of Directors
- Motion Picture Licensing Corp
- NADA
    - Fair Credit & Voluntary Protection Products Programs & Training
    - Treasury, IRS Clarify Paid Leave for COVD VACCINE
    - FCC Imposes New Requirements on Nonmarketing Prerecorded Calls to Residential Lines
- NADA: EEO-1 Data Collection Has Begun - Deadline July 19, 2021
- NADA: Managing Pricing Discretion in Credit Transactions: A Path Forward
- Federated Insurance:
    - Claim of the Month
    - Educational Articles - Risk Management Corner & It's Your Life
- DOL Independent Contractor Rule
- In the Community
- Convention Registration: Registration Open Until June 1st!

Upcoming Events

2021 Annual Dealer Convention - **Registration Open Until June 1!**

MASK MANDATE: FACE COVERING REQUIREMENT LIFTED FOR FULLY VACCINATED WEST VIRGINIANS ONLY

During last Friday's briefing, Gov. Justice outlined the **CDC's recent announcement** that anyone who is fully vaccinated can participate in indoor and outdoor activities without wearing a mask or physically distancing, regardless of crowd size.

The Governor went on to announce that he would be signing an **executive order** to immediately modify West Virginia's face covering requirement to follow the updated CDC guidance for fully vaccinated West Virginians.

"Our face covering requirement no longer applies to you if you are fully vaccinated," Gov. Justice said.

VACCINATE.WV.GOV

The Governor emphasized that the lifting of the face covering requirement only applies to those who have been fully vaccinated; meaning that at least two weeks have elapsed since the administration of a second dose of the Pfizer or Moderna vaccines, or that at least two weeks have elapsed since the administration of a first dose of the Johnson & Johnson vaccine.

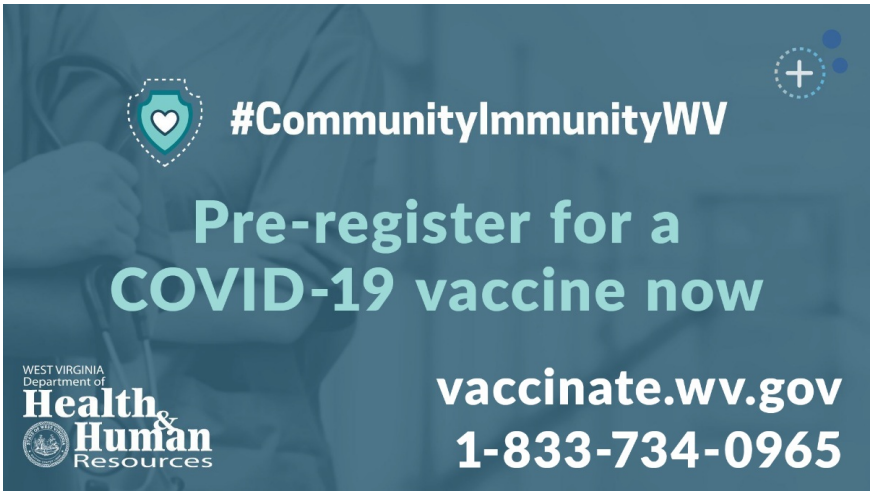
The **Statewide Indoor Face Covering Requirement** is still in effect for all West Virginians who are not yet fully vaccinated, and will remain in effect for these individuals until June 20, 2021.

Additionally, any private business or school system can still require individuals to wear a mask, regardless of the CDC's new guidelines.

"It's a great day, from the standpoint of us that are fully vaccinated, to be able to walk around and not worry about this crazy mask stuff, even though they have saved so many lives," Gov. Justice said. "I don't know if there's a motivator out there that could possibly be any better than those for those that have not been vaccinated. For crying out loud, if you don't like the masks, go get vaccinated as quickly as you can so you can share in this enjoyment.

"We have got to continue to work toward getting more and more folks vaccinated," Gov. Justice said. "We're going to continue to do that, and we're on a pathway to have a whale of a celebration on June the 20th."

As part of the Governor's recently announced "Call to Arms" vaccine initiative, State COVID-19 pandemic response leaders have set goals of vaccinating 65% of all eligible West Virginians, 75% of West Virginians age 50 and older, and 85% of West Virginians age 65 and older with at least one dose by West Virginia's 158th birthday on June 20, 2021; the same day that the Governor plans to lift the Statewide Indoor Face Covering Requirement.



WVADA EXECUTIVE COMMITTEE & BOARD OF DIRECTORS JULY 1, 2021 - JUNE 30, 2022

I would like to start by thanking everyone who has volunteered to serve on the WVADA Board. We have several new Board Members this year and they are denoted below in yellow.

Your Association functions with strong leadership from the Board of Directors. Serving on the Board for your Association is very important to the franchise system and your ability to conduct business, both relating to the manufacturers and government. As a member of the board, the voice of WV dealers is developed and carried out.

Again, thank you to everyone who has stepped up and joined the Board.

Executive Committee

Roberta Olejasz, Chair
Charles Rashid, Vice Chair
JR Toothman, Sec-Tres
T.R. Hathaway, Immediate Past Chair
Richard Stephens, NADA Director

Tim Matheny, Exclusive Truck Dealer
Wally Thornhill, NADA PAC Chair
Bill Cole, WVCAR PAC Chair
Mike Matheny, Emeritus

District 1:
Mike Ferns Jr. - 2024
Ginger Fato - 2022

District 2:
Nick Green - 2024
Jason Minsker - 2024

District 3:
Fred Timbrook - 2022
Austen Weimer - 2023

District 4:
Lou Thomas - 2024
Don Warner - 2022

District 5:
Suzanne Persinger - 2024
Keith Powell - 2023

District 6:
Dennis Sheets - 2024
Steve Talbott - 2023

At-Large Directors

Rodney LeRose - 2022

Jonathan LeRose - 2023

Lee-Anne Cole Greene - 2024

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MOTION PICTURE LICENSING CORP

WVADA has been contacted by several dealers who have received notices from the Motion Picture Licensing Corporation (MPLC) offering an "Umbrella License" to play movies and television programming in public areas such as showrooms, waiting areas and break rooms.

MPLC represents large groups of copyright holders to offer streamlines licensing. U.S. copyright law generally does require a "public performance" license to be able to play copyrighted content, such as movies, television programming, and music, in public areas. Copyright infringement can lead to significant liability so it is prudent to ensure that proper licensing is in place. If you receive a cease and desist letter, it may include a demand for a hefty settlement and threats of litigation.

Letters are generally a solicitation or invitation to purchase a license. **Dealerships may already have a license included in their cable or satellite package for certain television programming.** Cable and satellite companies have licenses to broadcast this programming, the question is whether or not the commercial package that a dealership contracts for contains those licenses.

Dealerships should check with their cable or satellite providers to ensure proper licensing is in place. Dealerships may also want to lock certain channels so that televisions can only show content that is properly licensed. If the dealership is using a streaming service, such as Netflix or Hulu for televisions in public areas, it is less likely that public performance rights are included in your package.

Dealerships should NOT play movies on any DVDs that have been personally purchased, as that would be a copyright violation.

If you are displaying programming, WVADA's counsel has suggested that dealerships best bet is to put all TVs on a news station, and leave it there.

Fair Credit and Voluntary Protection Products Programs and Training

NADA has produced a custom training video created to assist you with your ongoing efforts to help dealers adopt **fair credit and voluntary protection products programs and training** . The video will complement the resources already available, including the recent NADA article, **Managing Pricing Discretion in Credit Transactions: A Path Forward**, the optional **NADA/NAMAD/AIADA Fair Credit Compliance Policy & Program** and the optional **NADA/NAMAD/AIADA Model Dealership Voluntary Protection Products Policy**. The video can be used directly with your dealers and also with the compliance professionals who support them, such as third party trainers and service providers (a "train the trainer"). The 45-minute program features NADA's Paul Metrey, our very own **Vicki Giles Fabré (WA)**, and Gary Gilchrist, the NADA director

for Washington state.

TREASURY, IRS CLARIFY PAID LEAVE FOR COVID VACCINE

The Treasury Department and Internal Revenue Service yesterday clarified that the paid leave provided for in the American Rescue Plan Act (ARPA) applies to employees seeking time off to obtain or to recover from a COVID-19 vaccine. ARPA allows businesses with fewer than 500 employees to voluntarily offer federally funded sick and family leave if related to coronavirus illness, exposure or child care. A dealership that offers such leave may take a credit against its share of employee payroll taxes through September 30, 2021. Federally funded coronavirus-related leave is limited to 80 hours for the second and third quarters of 2021 and is capped at $511/day ($5,110 total) per employee for sick leave and $200/day ($2,000 total) per employee for family leave.

For more information, see Treasury's **fact sheet** and visit **NADA's Coronavirus Hub**. As always, dealers should discuss these issues with their attorneys and financial advisors.

FCC IMPOSES NEW REQUIREMENTS ON NONMARKETING PRERECORDED CALLS TO RESIDENTIAL LINES

On December 30, 2019, the TRACED (Telephone Robocall Abuse Criminal Enforcement and Deterrence) Act became law. It contains a series of requirements, primarily on telecommunication service providers, but also several that apply more broadly, including a mandate that within one year, the Federal Communications Commission ("FCC") reevaluate certain exemptions it had previously granted regarding the consent requirements for prerecorded calls under the Telephone Consumer Protection Act ("TCPA"). As a result of this mandate, on December 30, 2020, the FCC released a **Report and Order** ("Order") that imposed certain new restrictions on nonmarketing prerecorded calls to residential lines.

The effective date of these changes is delayed for six months (which will commence only after the Office of Management and Budget has approved the rule changes), so as a practical matter these changes are not likely to become effective for several more months. That said, dealers are encouraged to implement any necessary process changes now to accommodate these updated rules.
Previously, prerecorded calls to residential lines that were either noncommercial in nature or did not contain marketing (e.g., a vehicle was ready for pick up in the service department, appointment reminders, etc.) were exempt from TCPA consent requirements. In relevant part, the Order changes these exemptions by:

1. requiring consent to send more than three such prerecorded calls per 30-day period to a residential line, and
2. requiring callers to permit call recipients to opt out of such calls through an automated opt out mechanism.

The Order does not change existing exemptions for calls to wireless numbers, finding that these exemptions already satisfy the TRACED Act's requirements. Nevertheless, the order codifies these exemptions, which previously were set forth only in FCC declaratory rulings.
As a practical matter, dealers should consider taking steps (if they do not already) to obtain consent from the consumer for such calls. The Order does not define what "consent" means in this context. Because these are nonmarketing calls by definition, it stands to reason that consent means "prior express consent," as that term has been construed by the FCC. And while written consent is not required, dealers should consider obtaining it, as it makes proof of such consent much more straightforward if needed. Dealers could obtain such consent on the R.O. or other document when a customer brings their vehicle in for service, for example.

Again, dealers should take steps now to determine whether they send such prerecorded messages, and if so, to put processes in place to ensure that either consent is provided, or that they do not exceed the 30-day call limit is not exceeded, and that such calls contain the required opt out mechanism. Questions can be directed to NADA Regulatory Affairs at **regulatoryaffairs@nada.org**.

DISCLAIMER: This is not legal advice, dealers should consult with their attorney about compliance with all federal or state telemarketing duties or any other related legal or regulatory obligations.

NADA

EEO - 1 DATA COLLECTION BEGINS - DEADLINE JULY 19TH

The U.S. Equal Employment Opportunity Commission (EEOC) will start to collect annual EEO-1 reports April 26. The EEOC requires dealerships with more than 100 employees to file annually an Employer Information Report (**EEO-1 Report**). The EEO-1 Report asks for the number of employees sorted by job category, race, ethnicity and gender. Dealerships must also display an "EEO is the Law" **poster**.

2019 EEO-1 Component 1 data collection was delayed due to the COVID-19 public health emergency; the EEOC announced that 2019 and 2020 EEO-1 Component 1 data collection will open Monday, April 26, 2021; employers will have until Monday, July 19, 2021, to submit two years of EEO-1 data.

Beginning March 29, the EEOC began to formally notify EEO-1 filers via email. Filers should prepare to submit data in anticipation of the April 26 opening of the data collection period. When the collection opens, resources to assist filers with submissions will be available online at **https://EEOCdata.org**. An EEOC Filer Support Team will also be available to respond to filer inquiries and to provide additional filing assistance. Questions can also be directed to NADA Regulatory Affairs at **regulatoryaffairs@nada.org**.

NADA

MANAGING PRICING DISCRETION IN CREDIT TRANSACTIONS: A PATH FORWARD

One of the most attractive benefits to consumers in any industry is the ability to purchase products and services at a discounted price. Discounting saves customers money, allows companies to earn their business and disciplines the prices competitors offer for the same items. In a normally functioning market, it is a win-win for both consumers and businesses.

At the same time, discounting involves pricing discretion, and pricing discretion that is not carefully exercised by a business can give rise to concerns about arbitrary pricing and, worse, pricing that discriminates against protected groups of consumers. It is this concern that has driven the efforts of many consumer advocates and government officials over the years to eliminate dealer pricing discretion. In the context of dealer financing, this would be attempted by eliminating the dealer participation that dealers earn for originating credit contracts and replacing it with a non-discountable, flat fee...

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Johnnie Brown, Responsible Attorney

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Claim of the Month
Could it happen to you?

A customer tripped on an uneven crack in the parking lot while looking at vehicles to purchase. The ground had raised an inch and a half from one side of the crack to the other. The customer suffered a fractured arm and dislocated shoulder requiring hospitalization and surgery.

CLAIM AMOUNT: $375,000

At an auto dealership, a customer rarely focuses on the ground in front of them. Their eyes are usually trained on the vehicles for sale. While that is good for business, it can create the opportunity for trips, slips, and falls. To help mitigate this risk and avoid potentially dangerous situations, keep your property well maintained. Consider:

- Inspecting your lot for cracks and potholes. Make this task a regular task and document it.
- Moving your vehicles periodically. Hazardous conditions can be obscured by vehicles.
- Drawing attention to known hazards with a traffic cone or sign to help customers avoid it. Then, remedy it as soon as possible.
- Inspecting your property frequently and with extra vigilance if you reside in cold-weather states where the ground freezes and thaws regularly, and pavement damage and shifting can happen quickly.

Even the strongest pavement is no match for Mother Nature or the wear and tear that occurs over time, so examine your lot often to help keep everyone on their feet.

Federated Mutual Insurance Company is recommended by 19 state and national auto dealer associations for

customized insurance programs and value-added risk management services, such as mySHIELD®, the Risk Management Resource Center, and the Federated Employment Practices Network®. Visit **federatedinsurance.com** or **contact your local marketing representative** for resources you can use to create or enhance your own risk management program.

This article is for general information and recommendations for risk prevention 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. Coverage will be determined based on the facts of the claim and the terms of your policy, if approved for issue. All products and services not available in all states. Qualified counsel should be sought with questions specific to your circumstances and applicable laws. © 2021 Federated Mutual Insurance Company.

EDUCATIONAL ARTICLES : Risk Management Corner and It's Your Life

Click on the links below to access educational articles provided by Federated Insurance.

- **It's Your Life: Catch a Break with Disability Income Insurance**
- **Risk Management Corner: In-Cab Technology: The Future of Fleet Safety**
- **HR Questions: Back to Normal...or Not? A Year Into the Pandemic - What's the Path Forward?**

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DOL INDEPENDENT CONTRACTOR RULE

The Department of Labor (DOL) has **withdrawn** its January 7, 2021, **independent contractor rule**, effective immediately. That rule set out a simple test that stressed two key factors for employers to use when determining whether to classify workers as "employees" or "independent contractors" for purposes of Fair Labor Standards Act (FLSA) compliance. The FLSA governs when employees must be paid minimum wage and overtime, among other things.

After reviewing prior case law and guidance on worker classification, the DOL is stating that businesses, including dealerships, should apply the old "economic reality" test when classifying workers. The test typically involves six factors; the first two relate to whether workers are economically dependent on another's business or are in business for themselves:

- the nature and degree of control over the work; and
- the worker's opportunity for profit or loss based on initiative and/or investment.

Four other factors typically are considered, particularly when the two factors above do not point to the same classification:

- the amount of skill required for the work;
- the degree of permanence of the working relationship between the worker and the dealership;
- the amount of the worker's investment in facilities and equipment; and
- the extent to which the worker's services are an integral part of the dealership's business.

As always, actual worker and dealership practices are more relevant than what may be contractually or theoretically possible. Dealerships are urged to contact labor counsel when worker classification issues arise. And, as you know, state wage and hour laws may treat this issue differently. Questions about DOL's withdrawal of the independent contractor rule can be directed to **regulatoryaffairs@nada.org**.

IN THE COMMUNITY

Hometown Subaru - Share the Love

Today, we are happy to have been able to meet with our Hometown local recipients for **#SubaruShareTheLove** campaign and present them with donations from this year's event! This year we worked with both the Humane Society Of Raleigh County and the Safehaven Campaign to help money go to worthy causes in our area. We are happy to have donated $10,000 to each of the two charities to help our community!

We wouldn't have been able to do this without purchases and routine maintenance from our customers which resulted in the donation money, so we want to thank everyone who came into our store from November 19 until January 4th for helping to make this happen. We look forward to continuing to support the local area through the **#ShareTheLove** campaign and other volunteer activities in our community!
#HometownSubaru #BeckleyWV

Louis Thomas Subaru - Celebrating 50 years!

We are excited to announce that today is our 50th anniversary here at Louis Thomas Subaru! We opened on April 23rd 1971. We are one of the oldest Subaru dealers in the country! We have been blessed to be here for 50 years, and we hope to be here for another 50 more!!

Jack Garrett Retirement

The staff at Jack Garrett Ford, Spencer Tire and Mounting and East Coast Truck Bodies would like to wish Jack Garrett a very happy retirement! Jack has spent nearly 44 years in the car business here in Spencer and has decided it's time to focus on other future adventures. We would like to thank him for the opportunity he's offered so many of us and the guidance he's provided along the way. We look forward to new owner Quinton Keaton taking the reigns and picking up where Jack left off. From all of us here, we would like to say thank you Jack, and best of luck Quinton!

Cole Subaru Donates Flowers to Athens Elementary

Subaru and Cole Subaru believe in making a positive impact on the communities in which we live and work. We uphold that belief through our Love Promise Community Commitment.

Cole Subaru donated flowers and mulch to the Athens Elementary School in Athens, WV. There were 27 bags of red mulch to replace what was still left from last year as well as countless plants and hanging baskets donated for them to place around the school.

WVADA REGISTRATION FEES
REGISTRATION RECEIVED AFTER MAY 19 WILL INCUR AN ADDITIONAL 15% CHARGE
REGISTRATION CUT-OFF DATE IS JUNE 1, 2021

Primary Contact _____

Guest Name _____

Additional Guest _____

Additional Guest _____

Child's Name & Age _____

Child's Name & Age _____

Dealership/Company _____

Phone _____

Address _____

City, State, Zip _____

Email _____

**Disclaimer - There will be a 3% charge when paying by credit card

Payment Method: Credit Card ☐ Check ☐

Attendees	Fees	Guest	# of Guests
Dealer	$250	+$175	_____
Sponsor	$350	+$250	_____
Non Sponsoring Associate	$625	+$300	_____
Children (13 - 17)	$175		_____
Children (3-12)	$125		_____

***In the event that a person should need to cancel—cancellation must be received by WVADA 14 days prior to convention for refund of fees

Select Agenda

WVADA Sponsored Events

(Fees are per person & must be registered to participate in sponsored events)

****IN ADDITION TO THE WVADA REGISTRATION FEES, ATTENDEES WILL BE RESPONSIBLE FOR GREENBRIER FEES ASSOCIATED WITH GOLF AND THE SPORTING CLAY**

Sunday

Convention Registration
11:00pm - 5:00pm

Welcome Reception - No Charge; 5:15 - 6:30 ☐
List Attendees

_____

_____

Poker & Blackjack Tournament (Pending due to COVID) - 9:00pm ☐
Poker ($250):
***This money will be entered into the pot and will be the cash prize for the winners.**
List Players

_____

_____

OR

Blackjack (No Charge): ☐
List Players

_____

_____

Monday

Golf Scramble - Price: $150; 12:30pm ☐
Description: The 2021 WVADA Classic Golf Tournament will be played on the historic Old White TPC, the first 18-hole golf course at the Greenbrier.
List Players & Handicap

_____

_____

Block Party - No Charge; 6:00pm - 9:00pm ☐
List all attendees

_____

_____

We look forward to having you there!!

Tuesday

Sporting Clay - Price; $50 1:00pm ☐
Description: WVADA Sporting Clays tournament will be a 50-round tournament located at the Greenbrier Gun Club. Trophies will go to the top shooters! All shooters 18 and above must sign a Liability Release Waiver before using The Greenbrier's Gun Club facilities.
List all participants

_____

_____

Wine & Design - $65.00; 2:00pm ☐
Description: Enjoy wine and champagne while painting a special scene on a canvas. Guest must be 21 years of age to participate in alcohol consumption.
List all participants

_____

_____

Chairman Dinner & Reception (No Charge) ☐
6 -10
List all attendees

_____

_____

Once your form has been submitted an invoice will be sent via email. Please provide an email_____

_____

****Disclaimer - if you are paying by credit card there will be a 3% charge added to your total.**

Check ☐ **Credit Card** ☐

As many of you know, WVADA's 87 th Annual Dealer Family Convention will take place at The Greenbrier Resort June 13-16. We are looking forward to getting back to some normalcy and meeting in-person! WVADA blocked off 243 nights with the Greenbrier this year for our event. Currently, we are over 350 room nights. We are expecting a record turn out and we are thrilled that so many of you will be attending this year. Consequently, because of the increased number of nights that we have had to add to our block, Saturday and Sunday, June 12th and 13th, rates will be higher than our traditional block rate. However, for those of you that

reserved a room early on your rate will not change.

For those of you booking rooms this week and the weeks leading up to our Convention, Saturday's and Sunday's rate will be higher, but Monday and Tuesday will remain the same.

My apologies for any inconvenience this may cause. Please reach out to us if you have any questions or concerns.

The Greenbrier
White Sulphur Springs
West Virginia 24986

RESERVATION FORM

We are delighted your group has selected The Greenbrier and look forward to welcoming you. Many times, rooms become available prior to and following the official dates listed below. If you would like to enjoy a longer stay, please indicate below.

WV Automobile and Truck Dealers Assn

June 13th - June 16th

Please print or type the following and mail form with deposit check to: Reservations Department, The Greenbrier, 101 Main Street, White Sulphur Springs, West Virginia 24986. FAX: 304-536-7818 E-Mail: cynthia_glover@greenbrier.com Phone: 1-877-291-5381

Name(s) _____

Firm Name _____ Phone Number _____

Address _____

City/State/Zip _____

E-Mail Address _____

Arrival Date _____ Departure Date _____ Transportation: ____ Auto ____ Plane ____Train

Accommodations shared with _____ Arrival Date _____ Departure Date _____

Please indicate preference of ___ king bed or ___ two beds. Guest room assignments are based on availability and will be honored in the order in which the registration form is received. All rates are based on the European Plan; meals are billed a la carte. All Greenbrier accommodations are non-smoking.

HOTEL GUEST ROOMS

Run of House – $399.00

Best available room type assigned at time of check-in. Room type, location and bedding type may be requested but cannot be guaranteed. Rooms may be assigned within the main hotel, a cottage or a Villa Bedroom (single bedroom of a Copeland Hill Cottage with a separate outside entrance and private bath, no access to the parlor or kitchen areas

********* Call 1-877-291-5381 for upgrade accommodations. *********

Third person occupancy rate available upon request.
Please inquire about hotel suites and guest houses.
NOTE: Rates are available based on contracted block. After block if filled: additional rooms will be subject to availability at the prevailing rate.

DEPOSIT POLICY: A deposit in the amount of first nights stay and tax is required. The Greenbrier will accept deposits by check or major credit card. Rooms will be available only to those requests secured by deposits. Please indicate method of payment: Charge my deposit in the amount of $_____ to ❑AmEx ❑Visa ❑M/C ❑Discover Card ❑Diner's Card. Card # _____ exp. date _____. Check for deposit enclosed. Amount $_____. Your deposit is applicable to the fulfillment of your designated length of stay. When requesting reservations, please note arrival and departure dates carefully. LATE ARRIVAL or EARLY DEPARTURE causes forfeiture of deposit, unless cancellation or changes are made 14 days in advance of your scheduled arrival date. Please make checks payable to The Greenbrier. Reservations will be filled in the order in which they are received and must be received by May 7, 2020.

RESORT FEE: A resort fee of $20.00 per room, per day is added to your account for service provided under the European Plan. This includes local and toll-free phone calls, wireless internet access, daily newspaper delivery Monday through Saturday, on property ground transportation, use of the swimming pool, fitness center, historical tours and slide presentations. Bellmen, doormen and others who render intermittent personal services are not included in the service charge.

Subject to 6% West Virginia state sales and 3% county occupancy tax and HPF tax of 6.5 %

VALET PARKING: $20.00 per day; complimentary self-parking is available.

CHECK-IN TIME BEGINS AT: 4:00 PM CHECK-OUT TIME: 11:00 NOON

Forms for WVADA 2021 Convention

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