

# WVADA *News*

WEST VIRGINIA AUTOMOBILE DEALERS ASSOCIATION



## inside:

10

AT LAST A VACCINE!  
WHAT DOES IT MEAN  
FOR EMPLOYERS?

14

PLANNING, PREPARING  
AND PIVOTING



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# CONTENTS

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## Features

6

President's Message

10

At Last, a Vaccine! What Does It Mean for Employers?

14

Planning, Preparing and Pivoting

18

Getting to Know Time Dealer of the Year James Toothman

21

Government Stimulus and Your Dealership

22

Counselors Corner

24

11 Steps to Create a Marketing Plan For Your Business

30

Driving West Virginia's Economy

33

WVADA 87th Annual Family Convention

34

WVADA 87th Annual Family Convention Registration

35

WVADA 87th Annual Family Convention Agenda

36

WVADA 87th Annual Family Convention Sponsorship

38

WVADA 87th Annual Family Convention Exhibitor Registration

39

WVADA 87th Annual Family Convention Reservation Form

**WVADA**News

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## President's Message

By Jared Wyrick

*Secretary Mitch Carmichael enjoying a test drive in the 2021 Mach-E during a WVADA reception.*

# LEGISLATIVE UPDATE

## Driving Out of Session

**A**s we conclude the 2021 Regular Legislative Session, it is safe to say that this has been a session unlike any other. Due to the ongoing COVID pandemic, the Capitol Police implemented several new safety protocols that made it more difficult to get inside the Capitol and conduct face-to-face meetings with the elected officials.

In an effort to meet with Senators, Delegates and the Governor's Office, WVADA hosted weekly receptions at the Association office. These receptions were a huge hit and we had an overwhelming turnout each week. A special thank you to Bill Cole Auto Mall, Miller Auto Group, Moses Auto Group, Stephens Auto Center, Thornhill Auto Group, and Yes Chevrolet/Yes Ford for sponsoring our receptions.

First and foremost, there were NO bills introduced in this session regarding direct sales (Tesla, Rivian, etc.), nor were there any other bills introduced this year that affected YOUR current franchise law. WVADA stepped up in a big way this past election in contributing to dealer-friendly candidates. Elections matter, and elected representatives are the ones that ultimately vote on laws that affect how you operate your business. WVADA is committed to representing our dealer members, and we ask that you continue/develop relationships with elected members from your area.

Being involved and contributing to WVCAR and NADA PAC are two important ways you can help support our industry's advocacy. I appreciate everyone that has participated and look forward to more involvement as we move forward.

Below are summaries of bills that WVADA worked on this session:

**S.B. 5 Relating to claims arising out of the WV Consumer Credit Protection Act** (completed legislative action – signed by the Governor)

This bill was WVADA's version of "loser pay" and served as a major priority for us this session. This bill passed the Senate, 23 -9 (2 absent), and passed the House of Delegates, 77-22 (1 absent). The Governor signed the bill on March 29, and this bill will become effective for all suits filed on or after June 16, 2021.

This bill does the following:

1. Clarified the basis on which the plaintiff's attorney can recover attorney fees and included a requirement that the Court look at the amount involved and the plaintiff's recovery.
2. Increased from 20 days to 45 days the dealer's ability to respond to a settlement demand letter from a consumer prior to the consumer being able to file suit.
3. In addition to the requirement of the cure offer, we created a brand-new section on Offers of Settlement, which will allow a dealer to make up to three offers of settlement, even after a suit is filed.
4. The cure offer language remains the same and cuts off attorney fees from the date of the cure offer if the consumer's recovery does not exceed the cure offer at trial.
5. The offers of settlement are important because if a fair offer of settlement is made, and the consumer recovers less than 75% of that offer, the plaintiff's attorney fees and costs are cut off from the date of the offer of settlement. Importantly, if this occurs, the dealer also has the chance to recover its attorney fees and costs from the date of the offer of settlement under certain circumstances.
6. The new offer of settlement provision also gives prevailing parties (both consumers and dealers) the right to seek fees and costs for frivolous claims that are asserted.



Delegate Johnnie Wamsley, (R-Mason, 14) & Delegate Zack Maynard (R-Lincoln, 22) take a test drive in a 2019 Shelby F-150 during the weekly WVADA reception.

**S.B. 277 – Creating COVID-19 Jobs Protection Act**  
(completed legislative action – signed by Governor)

This bill will prohibit civil actions for any loss, damages, personal injury or death arising from COVID-19 against any individual or entity.

However, the bill does not preclude an employee from filing a claim for workers’ compensation benefits, nor does it preclude a product liability claim wherein it is shown there was actual malice, actual knowledge of a defect or conscious, reckless, and outrageous indifference to a substantial and unnecessary risk that the product would cause serious injury to others. It also expressly does not affect rights or obligations under a contract.

**S.B. 533 – Relating to Allowable Limits of Business and Occupation Taxes Imposed on Sale of Automobiles** (died in Senate Finance Committee)

The Senate Finance Committee considered this bill. There are 17 members on the Senate Finance Committee, 11 Republicans and six Democrats. All Democrats voted against the bill, and four Republicans crossed over and joined the Dems.

While we lost the bill in committee this year, I truly believe that we are making progress on this issue. A bill was drafted, introduced by the Senate Finance Chairman, and the bill made an agenda where a positive discussion took place. This issue is now being turned into a study resolution that will take place throughout the upcoming months. I have spoken to several dealers about this issue, and we will continue to pursue relief for those dealers affected by B&O taxes. Once the session is finished, I plan to create a B&O task force made up of dealers and mayors to work together on this issue.

A special thank you to Joey Holland, Joe Holland Chevrolet and Imports, for taking the time to testify before the Senate Caucus and the Senate Finance Committee. Joey did an exceptional job, and WVADA greatly appreciates his time and willingness to address this issue on behalf of all WV dealers who face this unfair, regressive tax.

**A special thank you to Joey Holland, Joe Holland Chevrolet and Imports, for taking the time to testify before the Senate Caucus and the Senate Finance Committee.**

Roll Call for S.B. 533

IN FAVOR OF THE BILL	OPPOSED THE BILL
Senator Boley R	Senator Baldwin D
Senator Clements R	Senator Ihlenfeld D
Senator Hamilton R	Senator Jeffries D
Senator Martin R	Senator Maroney R
Senator Swope R	Senator Nelson R
Senator Sypolt - Vice Chair R	Senator Plymale D
Senator Tarr – Chair R	Senator Roberts R
	Senator Stollings D
	Senator Takubo R
	Senator Unger D

**S.B. 626 – Updating Regulation for Purchase of Automobile Catalytic Converters** (Completed Legislative action – pending Governor’s signature)

WVADA worked 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 reflecting 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

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Delegate Matt Rohrback (R-Cabell, 17) in the passenger seat and Delegate Erikka Storch (R-Ohio, 3) back seat, enjoy a test drive in the 2021 Ford Mustang Mach-E.

in their possession. This bill also makes it illegal for individuals to post and sell catalytic converters on an internet-based platform.

Also, a scrap dealer must pay for a stand-alone converter(s) via 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 five days if, within the five days, 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. Also, a scrap dealer CANNOT purchase or take possession of a 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. 2001 – Creating the WV Jumpstart Program** (completed legislative action – signed by Governor)

WV is the first state in the nation to implement this innovative program that will truly help build up our blue-collar workforce. The Jumpstart Program will allow individuals who wish to pursue a vocation or trade to make up to \$25,000 in annual tax-free contributions to a savings and investment account that can then be used to help cover the business startup costs, equipment, tools, certifications and licenses needed for their occupation.

This is a great program for our industry, considering the shortage of auto mechanics in WV and nationwide. I believe that WVADA has a great opportunity to support this program through potential scholarships to incentivize and direct more individuals toward the automotive industry.

#### **H.B. 3175 – Relating to Removing Certain Felonies that can Prohibit Vehicle Salespersons from Receiving a License** (Completed Legislative Action – pending Governor signature)

The WVADA Board overwhelmingly voted to eliminate this requirement. As many of you know, vehicle salesperson

licensure was established in 2006. The intent of licensing individuals to sell automobiles has not been effective. Currently, if an individual has a past felony, they are automatically denied a license. However, according to the DMV, over 95% of individuals denied licensure receive a license via the appeal process.

In addition, the test has become outdated and applicants must make an appointment, some of which are unable to get an appointment for several months. The DMV was supportive of eliminating this requirement and they do not believe that it is their place to regulate employees of dealerships.

### **Reduction/Elimination of Personal Income Tax**

“We may never have an opportunity like this ever again,” Governor Justice said. 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.

“We have all the building blocks in our state and an economy that’s truly on the launchpad. The last piece of this puzzle is the elimination of our personal income tax. That’s why I am proposing a plan to make this dream a reality starting with a 60% reduction in state income tax for year one,” said Justice.

The majority of this session was dedicated to discussions revolving around the Governor’s reduction/elimination of Personal Income Tax (PIT). While the Governor, Senate and House of Delegates support the eventual elimination of PIT, they all three have very different approaches as to the appropriate avenue to backfill the \$2 billion deficit this elimination would incur. As of now, there does not seem to be an agreed-to approach, and more than likely, this issue will take the form of a special session in the upcoming months.

#### **Governor’s Version**

#### **S.B. 600 – Relating to Personal Income Tax Reduction**

**This bill will reduce State income tax brackets as follows:**

**Total Tax Reduction: \$1,087,650,000**

- Tax rates for all filers reduced by 60%
- Will reduce PIT by 60% (\$1,035,650,000) on income earned from:
  - Wages and salaries
  - Pensions, annuities, IRAs, Social Security and Unemployment
- The reduction excludes income earned from the following:
  - Schedule C Business Profits
  - Schedule E Rents, Royalties, and Pass through entity profits



**WV is the first state in the nation to implement this innovative program that will truly help build up our blue-collar workforce.**



*Delegate Jordan Bridges (R-Logan, 24) giving a thumbs up after taking a test drive in the 2019 Ford Shelby F-150.*

- Schedule D Capital Gains
- Schedule F Farm income
- Supplemental Gains and Losses
- Taxable Interest Income
- Dividend Income
- Miscellaneous Income

**This bill will increase taxes as follows:**

**Total Tax Increase: 902,600,000**

- Increase consumer sales tax from 6%-7.9% (excludes automobiles)
- Will begin taxing professional services
- Create a luxury items tax for certain specified items (excludes automobiles)
- Change natural gas severance tax from 5% to a tiered rate system
- Increases wet gas severance tax from 5% to 6.5%
- Increases the coal thin seam severance tax rates from 1% or 2% to a new tiered structure
- Increases the coal severance tax from 3% on steam and 5% on met and other coal to a tiered rate structure
- Changes oil severance tax from 5% to a tiered rate structure
- Increases the cigarette tax to \$2.25 per pack
- Increases taxes on alcohol and e-cigarettes
- Increases soft drink taxes on fluids, syrup and dry mixture

### **House of Delegates Version**

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

This bill is much different from the Governor's PIT bill, S.B. 600.

HB 3300 was originated in the House Finance Committee and the bill passed on straight party lines 77 to 23.

This bill is a much shorter version (11 pages) than the Governor's 75-page version. This bill does not increase any taxes, and it slowly reduces PIT based on gross income over a 10-12-year period. This bill 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.

### **Senate's Version**

The Senate has amended and passed H.B. 3300. The House would have to concur with the Senate's amendment; however, the Governor has already stated that he will not accept this version of the bill.

**The Senate's amendment has a number of revenue generating measures: (Total tax increases: \$932,050,000) (\$1,047,000,000 estimated shortfall)**

- Increase in consumer sales tax from 6% to 8.5%
- Removes certain exemptions from sales and service tax
- Implements a 3% tax on certain professional services
- Increases a tax on tobacco and tobacco products
- Adds a hotel occupancy fee and tax
- Reinstates a food tax at 2.5%
- Creates 8.5% sales tax for prepared foods
- Modifies the soft drink tax
- Creates a dedicated lottery scratch-off game
- Legalizes recreational cannabis that would be subject to the sales and use tax
  - Cannabis would also be subject to a special excise tax of 10% per ounce of the wholesale price

Lastly, I want to remind everyone of our upcoming Dealer Family Convention, June 13-16 this year at the Greenbrier. We are all excited and looking forward to getting together this year. We have a great agenda planned and encourage each of you to attend. You can find more information on our website, or feel free to contact me. Hope to see you soon! ◀

# At Last, a Vaccine!

## What Does It Mean for Employers?



**W**ith the FDA’s issuance of an Emergency Use Authorization (EUA) for multiple COVID-19 vaccines and vaccines becoming more widely available, many U.S. employers, eager to safely transition employees back to work or transition workplaces back to normal, are considering implementing vaccine recommendations or mandates in the workplace. The fluidity of the pandemic has yielded yet another decision point for employers — can employees be required to obtain a COVID-19 vaccine as a condition of employment?

At this point, the answer is generally yes — although there are a number of caveats, open questions, and policy decisions to keep in mind as vaccines become more widely available and federal, state, and local agencies and corresponding legal issues continue to morph and take shape. Here is a look at some of the employment-related considerations with mandating a COVID-19 vaccine in the workplace.

### 1. Equal Employment Opportunity Commission (EEOC)

On Dec. 16, 2020, the U.S. EEOC issued a revised version of its ongoing COVID-19 guidance publication, “What You Should Know About COVID-19 and the ADA, the Rehabilitation Act, and Other EEO Laws,” addressing questions related to the administration of COVID-19 vaccinations in an employment context. The new information, outlined in Section K of the publication, clarifies that employers may require, as a condition of employment, that employees receive the COVID-19 vaccine. However, there are many open questions and significant legal issues for employers to consider under the EEOC’s guidance. Some key takeaways for employers from the updated EEOC guidance include:

#### (a) The COVID-19 Vaccine is NOT a medical exam under the Americans with Disabilities Act (ADA)

First, the EEOC’s guidance clarifies that the vaccine itself is NOT a medical exam. Under the ADA, “medical exams”

which are a condition of employment must be job related and consistent with business necessity or be necessitated by a direct threat in the workplace. The EEOC stated that by simply administering a COVID-19 vaccine, employers would not be seeking medical information from the employee, and thus this would not rise to the level of a “medical exam” under the ADA.

#### (b) Prescreening Vaccination Questions MAY Implicate the ADA

For employers who choose to implement a mandatory vaccine requirement, the EEOC guidance provides some additional cautions related to prescreening questions (which are recommended by the CDC prior to administering a COVID-19 vaccine).

In order to pass muster under the ADA, the prescreening questions must be “job-related and consistent with business necessity,” and to meet this standard, employers will need to have a “reasonable belief, based on objective evidence, that an employee who does not answer the questions and, therefore, does not receive a vaccination, will pose a direct threat to the health or safety of her or himself or others.”

In assessing whether there is a “direct threat,” the EEOC advises employers to conduct an individualized assessment in taking into consideration the following four factors: (1) the duration of the risk; (2) the nature and severity of the potential harm; (3) the likelihood that the potential harm will occur; and (4) the imminence of the potential harm.

The EEOC makes clear that the concerns about the prescreening questions will not implicate the ADA where (1) an employer has offered a vaccine on a voluntary basis (i.e., employees choose whether to be vaccinated), which would mean that an employee’s refusal to answer the questions would only mean the employer could refuse to administer the vaccine; or (2) an employee receives an employer-required vaccine from a third party that does not

have a contract with the employer (i.e., a pharmacy, broker or other health care provider), the ADA would not apply to prescreening questions.

### **(c) Confidentiality Issues**

The EEOC also makes clear that the prescreening questions (whether voluntary or mandatory) and the responses to those questions should be maintained as confidential information, in a separate file (i.e., not the personnel file), in accordance with the provisions of the ADA. Those employers who administer vaccines themselves, or contract with a third-party provider to administer vaccines, should also be wary of their obligations under the Health Insurance Portability and Accountability Act (HIPAA) as to employee-provided information and vaccination records.

### **(d) Employee Proof of a COVID-19 Vaccine**

Employers may request and require employees to show proof of receipt of a COVID-19 vaccination. Such a question does not amount to a disability-related inquiry in and of itself. The EEOC cautions employers who ask “why” an employee has not or cannot receive a vaccine. These follow-up questions may elicit information about a disability and would need to be “job-related and consistent with business necessity” in accordance with the ADA. Employers who do wish to require that employees furnish proof of vaccination should instruct employees not to provide any medical information in connection with the vaccination record in order to avoid implicating the ADA.

### **(e) Disability-Related Exemptions to a Mandatory Vaccine Requirement**

The new EEOC guidance also provides some direction to employers for responding to employees who indicate they are unable to receive a vaccine due to a disability. The EEOC reiterates that employers can require that employees “not pose a direct threat to the health or safety of individuals in the workplace.” However, if a mandatory vaccine requirement has the effect of screening out individuals with disabilities, the “employer must show that an unvaccinated employee would pose a direct threat due to a ‘significant risk of substantial harm to the health or safety of the individual or others that cannot be eliminated or reduced by reasonable accommodation.’”

The EEOC instructs employers to conduct an individualized assessment of four different factors to determine whether a “direct threat” exists. These include considering: (1) the duration of the risk; (2) the nature and severity of the potential harm; (3) the likelihood that the potential harm will occur; and (4) the imminence of the potential harm.”

If an employer concludes there is a direct threat, the EEOC indicates that the employer may “exclude” the employee from the workplace, but cautions employers against terminating the worker without first considering whether there may be an accommodation available. The EEOC advises that employers should engage employees “in a flexible,

## **Employers may request and require employees to show proof of receipt of a COVID-19 vaccination.**

interactive process to identify workplace accommodation options” and also notes that one factor that warrants consideration may be the prevalence of employees in the workplace who have already received the vaccine.

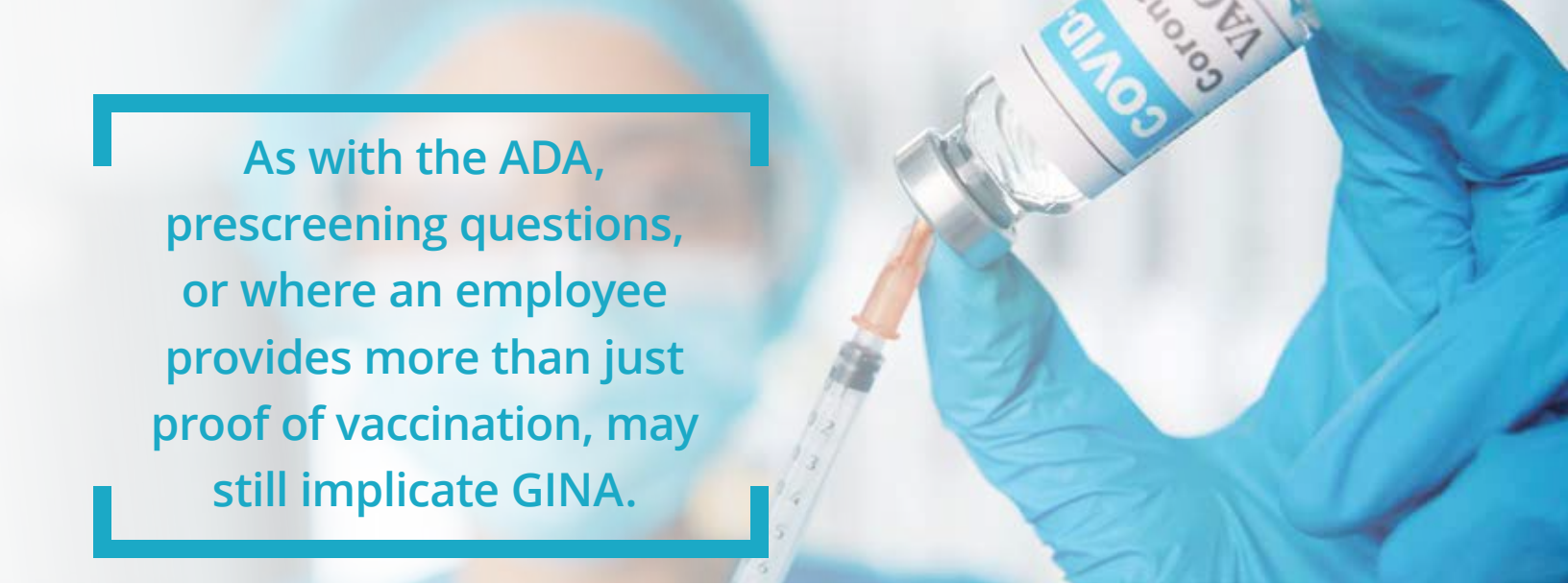
Practically speaking, it seems this analysis will still hinge on individual circumstances related to things like the nature of the employee’s disability, the work conditions, and the ability to mitigate potential hazards through job modifications such as increased social distancing, PPE, telework, etc.

Employees working in high-risk environments or with high-risk populations (i.e., food service and food processing, health care, nursing homes, and schools) may have fewer options for accommodating vaccine exemptions, especially given the risk surrounding the efficacy of PPE measures in industries requiring constant exposure and close face-to-face contact. But again, the EEOC guidance makes clear that the number of employees vaccinated will have a bearing on this analysis.

### **(f) Religious Exemptions to a Mandatory Vaccine Requirement**

Similar to the disability-related exemptions, the EEOC guidance reiterates that employers who plan to require a vaccine also provide an exemption where the employee maintains a “sincerely held religious belief” or observance which prevents them from taking the vaccine. This standard is fairly broad and encompasses more than traditional organized religions, but the protection would not extend to employees who seek an exemption due to political beliefs, personal objections to vaccinations, or safety-related concerns with the vaccine. The EEOC notes that as in the case of the ADA, Title VII also allows employers to deny an employee’s request for an exemption to a mandatory vaccination if the employer can show an “undue hardship” by allowing the employee to forgo the vaccine. Again, the EEOC makes clear this would hinge on the individual circumstances applicable to each case but would largely depend on the employer’s ability to provide alternative protections for the employee, the rest of its workforce and, where necessary, members of the general public.

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As with the ADA, prescreening questions, or where an employee provides more than just proof of vaccination, may still implicate GINA.

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### **(g) Genetic Information Nondiscrimination Act (GINA) Implications**

Lastly, the EEOC makes clear that simply administering the COVID-19 vaccine to employees or requiring employees to provide proof that they received the COVID-19 vaccine does not implicate Title II of GINA because it does not involve genetic information as defined by the law. Under Title II of GINA, employers may not use, acquire or disclose an employee's genetic information in connection with their employment, subject to six narrow exceptions.

As with the ADA, prescreening questions, or where an employee provides more than just proof of vaccination, may still implicate GINA. Accordingly, the EEOC advises that employers should avoid prescreening questions which implicate genetic information (which should be fairly easy to do) or require employees to obtain the vaccine through their own means and simply provide proof of the same to their employer, without any extraneous medical information.

While the updated EEOC guidance provides certain clarification for employers contemplating workplace vaccination strategies, the exceptions and exemptions under the ADA and Title VII are fact-intensive and will vary widely. Employers who do intend to adopt mandatory vaccination programs are advised to review potential reasonable accommodations for disabilities and sincerely held religious beliefs and strategize how they will respond to such requests in order to minimize legal exposure under Title VII and the ADA.

### **2. Occupational Safety and Health Administration (OSHA)**

While OSHA has also not yet provided specific COVID-19 vaccination guidance, its longstanding position regarding the flu and other vaccines indicates support for employer mandates so long as employees are "properly informed of the benefits of vaccinations." The agency has caveated this by clarifying that an employee who refuses a vaccine due to a medical condition that the employee reasonably believes would cause serious illness or death may still be protected by Section 11(c) of the OSH Act, which governs whistleblower claims based on workplace health and safety.

Furthermore, it is worth noting that in its interim guidance issued in May of 2020, OSHA had encouraged its own investigators to obtain the COVID-19 vaccination as soon as it becomes available. There is likewise widespread speculation that OSHA may look to apply the General Duty Clause, OSHA's general citation standard, to issue citations to employers who fail to offer the COVID-19 vaccination to its workforce as an enhanced safety measure. As with the EEOC, additional guidance is expected to shed light on the direction of OSHA's enforcement position on this topic.

### **3. Workers' Compensation**

On a similar note, what happens if an employer recommends or requires a COVID-19 vaccine for its employees and the employee is injured due to the vaccine?

Most likely, state workers' compensation coverage would come into play to cover any physical injury, whether due to a vaccine side effect or other physical injury to the employee caused by the vaccine. This would generally be true in the case where an employer recommends, requires, pays for, or administers the COVID-19 vaccine at its worksite. On the flipside, workers' compensation coverage would likely not apply in a scenario where an employee obtains a COVID-19 vaccine without the recommendation, mandate or sponsorship from the employer.

Typically, subject to some state-specific exceptions, workers' compensation serves as the exclusive remedy for employees who sustain physical injuries within the course and scope of employment. In other words, an employee would be limited to pursuing workers' compensation benefits and cannot pursue tort claims against the employer absent a showing of willful or more serious conduct. While workers' compensation laws may apply to shield employers from tort claims (i.e., personal-injury type claims) brought by employees who sustain physical injuries as a result of an employer-sponsored COVID-19 vaccine, these same laws may not preclude tort claims against third party entities, such as the vaccine manufacturer.

#### 4. National Labor Relations Board (NLRB)

Finally, there are labor considerations for both union and nonunion employers in mandating a COVID-19 vaccine. For union employers, requiring a COVID-19 vaccine may be considered a mandatory subject of bargaining, triggering an employer's duty to bargain prior to implementing such a requirement. Employers should review any existing labor agreements for language which precludes or permits such a mandatory vaccination scheme. Second, nonunion employers must also be mindful of how implementing a vaccine requirement could implicate Section 7 of the National Labor Relations Act (NLRA), which provides employees the right to engage in "concerted activities" for the purpose of "mutual aid and protection." Practically speaking, employees who join together to speak out for or against a mandatory vaccine requirement, who collectively create outside social media postings or other organized interoffice communications regarding the requirement, or simply discuss the employer-imposed requirement would be protected by federal labor law and, generally, cannot be subject to discipline or termination as a result of this conduct. Notwithstanding, even if employees band together in concerted activity under the NLRA and cannot be disciplined for that concerted activity, they could still be disciplined for refusing to take the vaccine or even be permanently replaced if they choose to go out on a work stoppage.

While the current legal landscape suggests employers, especially those in certain high-essential industries, may be able to require employees to obtain a COVID-19 vaccine, the legal landscape changes almost daily, and there are many open questions, potential public relations pitfalls, and employee morale issues with doing so. Until there is more guidance from the federal, state, and local level on this topic, and more widespread use and availability of the vaccine beyond the healthcare industry, employers may want to consider promoting rather than requiring a vaccine as a condition of employment just as they would a flu vaccine. ◀



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# Planning, Preparing and Pivoting



**A**s the first quarter of 2021 ends, the end of the pandemic is beginning to look like it might be closer than anyone thought as recently as January. A new president is in the White House, three vaccines have been approved for use, and medical professionals throughout the nation are getting those vaccines into people at an accelerating rate. The country is moving closer to herd immunity every day. As a result, analysts and industry executives expect strong demand as the economy stabilizes. Early forecasts predict vehicle sales between 15.6 million and 16 million.

One of the most surprising aspects of the last year is that profits have been high, strong and consistent. When the country stopped in March, including the automotive industry, no one saw that coming.

What is the best way to plan, prepare and pivot? The answer will depend on your specific circumstances, so the first step is assessing your current situation. To start, answer a few basic questions:

- How has your year been for your dealership?
- Is it better, worse or the way you thought it would be?
- What does the data tell you?
- What should you do next?

According to attendees at a recent NADA webinar about planning, preparing and pivoting for 2021, 78% of the

dealerships were having a better year, 13% were having the kind of year they expected, and 9% were struggling more than expected.

As you look toward 2021, ask yourself the following questions:

- Where are your best opportunities?
- What changes in customer buying behaviors have taken place?
- How can you adapt to meet customer's evolving expectations more effectively?

Members of the industry obviously want the numbers to continue to go up. For that to happen, though, now is the time to work smarter and put the necessary processes into place.

In the spring of 2020, before the pandemic, dealers had plenty of inventory on their lots and a great deal of sales activity. It was hard to find a place to park on some dealership lots because so many cars were already parked there, ready to purchase. That ended during the late spring and summer when factories had been shut down. According to IHS Markit, factory output decreased by 2.538 million units. The percent growth, year over year, dropped by 16.4% from the forecasts. Suddenly, there weren't as many new vehicles on the lot. Inventories were lowest in June, especially on the truck side of the market.

The vehicle forecast for 2021 is promising. Although the numbers are down, they aren't terrible, either. IHS Markit has stated that percent growth year over year is expected to be up by 8.8%, although the number of vehicles being built will still have dropped by 1.043 million units from the pre-pandemic estimate. The year 2021 will be a critical time for continued recovery. However, overall, the recovery seems to be going faster than anyone anticipated, and dealers have shown you can still make money by selling cars. Although it may take four years to bounce back to the same sales levels as those in 2019, optimism is reasonable if you focus on profit instead of volume.

How big was the production drop for manufacturers? U.S. dealerships sell substantially more trucks than cars, so production numbers match that sales expectation. According to Motor Intelligence:

- In January and February, truck production fell 6%, and car production fell 26%.
- By June, car sales were about the same (with a drop of approximately 26%), but truck sales had fallen 34%.
- In October, the production drop for cars was 22%; it was 26% for trucks.

## Dealers prosper when manufacturers prosper; it has always been a synergistic relationship. But going into 2021, you can't sell a commodity you can't get. Since dealers have an inventory gap for new vehicles, that reality means this is a great time to pivot toward preowned ones and focus on vehicle acquisition.

The inventory gap will continue going into 2021. No one knows yet whether the gap will continue or disappear. If matters continue to improve, the production gap may be gone by the end of the year. But you will want to come up with new processes to minimize the inventory gaps we know for sure we will have and maximize selling inventory as effectively as possible.

Dealers prosper when manufacturers prosper; it has always been a synergistic relationship. But going into 2021, you can't sell a commodity you can't get. Since dealers have an inventory gap for new vehicles, that reality means this is a great time to pivot toward preowned ones and focus on vehicle acquisition. This particular pivot is not surprising. According to Tanja Linken of IH Markt and Pete Margaros of automotive Mastermind during a recent NADA webinar, the used market typically increases and the new market decreases during an industry crisis.

Increased demand for used vehicles has already driven up auction prices. How can you combat that? Many vehicles currently on the road were purchased during the record sales years that preceded the pandemic. The vehicles sold by your dealership form a portfolio you can now manage as buyers tilt toward used cars instead of new ones. Doing so will be cheaper than using auctions.

According to IHS Markit, dealers are currently selling approximately three used cars for every new one. To close the deal, though, you will need to finance the sale 90% of the time. Be competitive. OEMs responded to the pandemic by offering incredible financing offers in the new car market, and most financing companies did leasing extensions. For example, some OEM programs offered 0% for 84 months, effectively taking many potential customers out of the market for seven years. However, the leases that were extended are coming due now.

Approximately 72% of all deals made have longer terms, so each sale matters because it will be a while before you will have another opportunity. Afterward, your customers are off the market and on a relationship journey with your dealership. What you do during that time may determine

whether they buy their next vehicle from you, too, but they are also giving you the chance to make money before the next sale.

The ideal sales strategy focuses on solving a customer's problem, not persuading them to buy something they don't need or want. Having information about a customer gives you that chance to solve instead of sell.

Portfolio management means paying attention to matters such as:

- The date a customer's factory warranty expires
- When their loan or lease expires
- Whether you can save them money on gas
- Their equity position

Customer loyalty can be defined in three ways: loyalty to the manufacturer, the brand and the model. Loyalty drops when customers look for a new car, so much so that many sales can be classified as one and done. What are the supporting numbers? IHS offers the following numbers in July of 2018, 2019 and 2020:

Loyalty Rate and RTM Count	July 2018	July 2019	July 2020
Manufacturer	59.2%	60.7%	59.1%
Brand	52.3%	54.0%	52.5%
Model	25.9%	27.1%	26.0%
RTM Count	747,220	776,841	728,656

The loyalty drop works to your advantage with new customers, but do what you can to minimize losing existing customers. Having a data-driven strategy in place is an excellent way to keep customers loyal by knowing what

*continued on the next page*

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matters to them and speaking up at the right time with the right offer. To reach customers at the right time, monitor channels such as social media, your website, and customers who walk in the door; that includes customers in the service department. Reach out to customers with a call to action.

As you focus on the service department, you may want to rethink compensation. Employees on the service side should be compensated as generously as employees on the sales side when contributing to the dealership's success. Reward their help if they are involved in a sale.

When reaching out to a customer, how do you know what you should offer them? People generally have two goals when they are making a big purchase. They want financial help to make the purchase possible, and they want to mitigate the risks inherent in spending a large sum of money. Customers are also interested in saving money. Look for ways customers can find money to spend at your dealership, and set up deals that make sense for them to agree to.

Of course, it isn't enough to sell to existing customers. You also have to look for new customers. Customers have changed their buying habits, and the pandemic has accelerated the change. Some customers still only buy in person because they understand that process. But customers also like buying online, and some customers use a combination of the two (such as researching online and communicating by email). According to IHS Markit, U.S. customers buying at the first major pandemic peak could be classified as follows:

- Dealership purchases: 38%
- Combined purchases (dealership and online): 27%
- Online purchases: 34%

How you handle online leads will make a difference in whether you make sales. More people are shopping online and seeing posts than are walking through the door of the dealership. Assuming they don't make the entire purchase on your website, they may eventually step into the building ready to buy. That readiness is useful information for you to have. Your goal should be to make the process seamless and frictionless. You also have an opportunity to streamline.

One way to analyze your existing processes is by looking at how many employees a customer interacts with during a purchase. IHS Markit researched this question at dealerships in the U.S. and other countries:

Sale Type	U.S.	World
At the dealership	4.7	3.8
Partially online, partially at the dealership	5.7	3.0
Online	3.8	2.1

The table shows a couple of missed opportunities.

- In the U.S., 5.7 employees interact with a customer when the sale is conducted online and in the dealership. That's more than at the dealership or online.
- Outside the U.S., customers deal with fewer employees, period.

Let's explore the missed opportunities:

- The handoff between being online and going to the dealership is not seamless. When online customers walk into dealerships, they start the process at the beginning again instead of resuming where they left off. That shouldn't happen.
- U.S. dealerships are less efficient than dealerships outside the U.S. Online customers at U.S. dealerships are generally directed to a receptionist. Outside the U.S., dealerships send online customers directly to a product expert. The expert focuses on solving problems for the customer.

What is going to change after the pandemic ends? Less than you think. It's a no-brainer to improve your website service, of course, but time-tested sales strategies will also continue to work. Manage inventory intelligently, strategize every sales channel and let data help you focus on customer service:

- Good relationships continue to be the real foundation of any business. People like to buy from friends they trust. That hasn't changed, and it isn't going to change.
- People are social. They will still want to come to the dealership. They will appreciate having the option of picking up their vehicle from the dealership or having it delivered to their home.
- Look at your sales processes, and adjust them to make them work better. The first contact with a customer should be with a member of the sales staff, or someone who specializes in, or is a product expert about, whatever the customer is likely to buy. Have this employee gently guide the customer through the process by focusing on whatever problem the customer has. Be solution-centric, not sales-centric, and emphasize professional expertise, not selling. You can upsell later.
- You will do your best on the internet if you put high-quality people online to interact with potential customers.
- Study Amazon's example when it comes to your website. Amazon provides a tailored, quality experience. When Amazon makes suggestions, the suggestions increase its revenue by 40%.
- Online and hybrid options are convenient. Customers like them, so they are here to stay. Anything that makes buying effortless and uncomplicated is good. ◀



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# Getting to Know Time Dealer of the Year

## James "JR" Toothman

### How did you become a car dealer?

In 1994, I graduated from the University of Miami, Florida, and came home to help my parents for a couple of years with the family business, Toothman Ford. Now here I am, almost 27 years later, with an amazing team!

### Did you always aspire to be part of the automotive industry?

No, I really had no intention of entering the automotive business. I'm not an avid car junkie; I am just more appreciative of the business and the interactions with employees and customers.

### Do you currently have family members in the auto industry?

My mother and father started Toothman Ford in 1967. They owned and operated the business hands-on for many years and are partially retired at this point (if anyone ever retires from the car business!!)

### Describe your educational background. What did you study?

I received my degree in Business Management/ Entrepreneurship, but probably the most valuable part of my education was being 1,000 miles from home and learning a degree of self-reliance and the ability to adapt to adverse situations.

### Are there any specific individuals who had a major impact on your career? For example, who were your mentors, and what did each mentor teach you?

As I get older, I find myself continually trying to learn from people in my profession and successful people in general.

- Quite honestly, my father was a tremendous mentor. He allowed me to make mistakes without the "I told you so" mantra. His patience and courage have always stuck with me.
- Dan McCollough was also an early influence as our sales manager. He helped to modernize our operations and look outside the box.

- Frank Sowers, my partner at one of the stores, has a much different operations methodology than my own, but I learn from him and respect his years of wisdom and experience.

### What is the most rewarding part of your career?

We have been fortunate enough to be able to pay it forward with our charitable efforts with WVU Medicine Children's Hospital, which is more rewarding than words can describe. Also, it is very rewarding that at Toothman Ford, we can provide many good-paying jobs within our community.

### What do you think will be some of the auto industry's dominant trends in the next 5-10 years?

Adapt or die. Electric vehicles are coming fast, autonomous driving cars are on the horizon, and digital is fully entrenched and will continue to evolve.

### What is the biggest impact of being a WVADA member? What makes it beneficial?

WVADA goes to bat for the interest of the automotive sector for the state of West Virginia, which employs so many people. Many communities and families rely on this industry to keep food on the table and a roof overhead. WVADA allows dealers in the industry to have a voice.

### Are you involved in any civic or charitable organizations?

I am on the Leadership Council at WVU Medicine Children's Hospital. It has been super rewarding to witness the construction of an all-new Children's Hospital that will serve ALL West Virginia children!

### If you look back at your career and life, please list three things you have learned and would like to pass on as a mentor to others within the auto industry?

1. Be Humble: We can always learn and evolve.
2. Adapt: Always be willing to adapt and overcome adverse markets or conditions.
3. Pay It Forward: If you are fortunate enough to attain some success, pay it forward to others and refresh them.



**What are some professional moments that make you the proudest?**

Several years ago, we had a hail storm at our dealership with about \$3,000,000 worth of damage. Our team came together and made lemonade out of lemons by selling 83 vehicles in one day!

**What does the TIME Dealer of the Year nominee mean for you?**

It is an honor, especially since there are so many deserving people in our industry. It is nice to be recognized by my peers in such a light.

**If you could describe the best day in this business, what would it look like?**

Employees are happy, customers are happy, we are selling a bunch of vehicles and getting everyone fixed fast and efficiently!

**Was there an “aha” moment in your career that defined you?**

My career is kind of like an overnight success that took 25 years. The scars and failures define us more than our successes, and that is definitely true of me.

**Describe your all-time favorite vehicle (it can be one you’ve owned or something on your wish list). What are you currently driving?**

My all-time favorite is a 1966 Ford Mustang convertible, but I drive a Ford Escape most of the time.

**What is your favorite way to spend your free time? Do you have any unusual hobbies?**

I like to play guitar and fish. I love watching sports and spending time with family.

**Tell us about your family.**

I have been blessed with the two most amazing parents that one could ask for, as well as two older and wiser sisters. I have two children, Jarrett and Bailey; Jarrett is a junior at Virginia Tech, and Bailey is a freshman at Point Park University in Pittsburgh. I am biased, obviously, but they are phenomenal children with amazing hearts, a great code of values, and a giving nature that was molded into them when they were younger by their incredible mother. ◀



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# Government Stimulus and Your Dealership

By Leon M. Rogers  
Tetrick & Bartlett, PLLC



**W**ith the first quarter of 2021 in the rearview mirror, there remain opportunities for auto dealers to participate in the remaining stimulus packages passed by congress.

The Paycheck Protection Program was extended at the end of 2020 and at the date of this article, those dealerships qualifying for the second phase of the program have until March 31 to apply. The House and Senate have passed the PPP Extension Act of 2021, which extends the PPP2 deadline through May 31. It will be law when signed by the president.

To qualify for PPP2, businesses must show a 25% decline in sales in any quarter of 2020 compared to the same quarter in 2019 and must have less than 300 employees. In demonstrating the decline in revenues, I would include other income items (doc fees and other below-the-line revenues) in the calculation.

The final caveat is the representation certifying that the funds are needed due to uncertain economic conditions impacting the dealership's ability to continue operating and keep people employed. The SBA issued FAQ 46 concerning the certification. I quote, "Because Second Draw PPP Loan borrowers must demonstrate that they have had a 25% reduction in gross revenues, all Second Draw PPP Loan borrowers will be deemed to have made the required certification concerning the necessity of the loan in good faith."

The other opportunity for dealerships is the Employee Retention Credit (ERC). The credit has been extended to the first two quarters of 2021 and is a maximum of \$7,000 per employee per quarter. Employers are eligible if, during the first two quarters of 2021, they experience either:

1. A full or partial suspension of the operation of their trade or business during this period because of governmental orders limiting commerce, travel, or group meetings due to COVID-19, or
2. A decline in gross receipts in a calendar quarter in 2021 where the gross receipts of that calendar quarter are less than 80% of the gross receipts in the same calendar quarter in 2019 (to be eligible based on a decline in gross receipts in 2020, the gross receipts were required to be less than 50%).

In addition to the gross receipts test, the franchise indicator codes do not apply and dealers with multiple businesses must use aggregation rules the IRS uses for other consolidating purposes in determining the number of employees limit of 500.

The deductible wages for 2021 must be reduced by the amount of employee retention credit received and, if you qualify for the Second Draw PPP loan, the same wages cannot be used for the ERC and PPP loan forgiveness.

Each dealership's tax situation is unique. You should consult with your tax adviser to ensure you are taking advantage of all opportunities available to you. ◀

*Leon M. (Lonnie) Rogers, CPA/ABV/CFF, is the managing member of Tetrick & Bartlett, PLLC and has been providing accounting, tax, valuation, and consulting services to automobile dealers since 1977. Tetrick & Bartlett, PLLC currently serves over 50 dealers in West Virginia, Virginia, Ohio, and Pennsylvania and is a member of the AutoCPA Group, a nationwide organization made up of 25 CPA firms specializing in services to automobile dealers. Lonnie can be reached at [lrogers@tetrickbartlett.com](mailto:lrogers@tetrickbartlett.com) or 304-624-5564.*

# COUNSELOR'S CORNER

By Johnnie E. Brown, Esq., Pullin, Fowler, Flanagan,  
Brown and Poe, PLLC



**H**appy belated 2021. Spring has arrived and warmer temperatures are on the way, which puts us all in a better mood. Also, we have some great news to report from the West Virginia Legislature. Senate Bill 5 was passed March 18, 2021, and becomes effective June 19, 2021. The new piece of legislation offers long-sought-after protections for automobile dealers. The following provides a summary of this new section of laws.

## 1. Clarification of the calculation of attorney's fees.

In consumer cases, the West Virginia Legislature clarified and expanded the factors that are considered when determining the amount of attorney's fees and expenses that a consumer may be awarded. As you are aware, we have always faced the reality that the greatest exposure in our consumer cases lies from attorney's fees and costs and not the amount of alleged consumer damages. Under common law, any success on settlement or judgment by a consumer could expose our dealers to significant and unrelated amounts of attorney fees and costs. There have been many times where we have faced a claim of a few thousand dollars but have attorneys seeking recovery in the tens of thousands of dollars. This type of exposure made it very difficult to defend and take to trial cases that had little merit or were highly questionable.

In setting forth a new statutory 12-factor test to consider under West Virginia Code § 46A-5-104, one of the most important additions is that the Court is now required to consider the "amount involved and the amount of the judgment."

Consequently, moving forward, we will be able to now argue that the amount of the dispute or a small recovery shall be considered by the Court in determining the amount of fees and costs to award, if any, to a consumer attorney. There can now be substantive arguments of how much more an attorney should be allowed to receive than his client.

## 2. Expansion of the Right of Cure.

One of the significant changes in Senate Bill 5 was to allow an automobile dealer more time to gather information and respond to a settlement demand from the plaintiff before suit can be filed. Instead of having only 20 days under the existing law, we have been able to increase a motor vehicle dealer's optional response time to 45 days. This statutory change to 45 days makes cure offers consistent for all retailers. Our previous statutes had only allowed 20 days for automobile dealers and 45 days for other creditors, debt collectors and lenders. We now find ourselves on equal ground with these other potential defendants.

As before, the statute of limitations is tolled during this 45 day period in order to give the parties a chance to resolve their disagreement. If any subsequent verdict is not greater than what was offered, then the consumer's attorney fees and court costs are stopped as of the date of delivery of your cure offer. With this expanded time, more considered evaluation can occur, and a strategy developed with a cure offer.

## 3. Offers of Settlement have been given significant legal weight and importance.

Under Senate Bill 5, a brand-new section of West Virginia Code was created, which allows a dealer to make up to three offers of settlement up to 30 days before trial. This offer of settlement can then limit the recovery of attorney's fees and expenses. In other words, these offers of settlement can work like our prior cure offer section. This is a significant change from prior law in which an offer of settlement had no impact on limiting attorney fees and costs and certainly no leverage as set forth below.

Under this new statutory section, the dealer must meet certain requirements with the settlement offer. The offer of settlement must be in writing, and state that it is being made pursuant to the applicable code section, identify the party or parties making the proposals and the party or parties to whom the proposal is made, identify the specific claim the proposal applies to, state whether or not attorney's fees and expenses are being offered at the time and any other relevant conditions to the offer. It must be served with a certificate of service and by certified mail, postage prepaid or by overnight delivery. Remember these requirements when making these important offers of settlement.

The strength of this new offer of settlement section is that the plaintiff is not entitled to then recover attorney's fees and expenses from the date of the offer if the final judgment is one of no liability or if the final judgment attained by the plaintiff is less than 75% of your offer.

These three offers of settlement can be made at any time after 30 days of the service of the Summons and Complaint up to 30 days before trial.

The importance of this offer of settlement is that it gives the dealer the opportunity to do some investigation or formal discovery even after a lawsuit is filed and then attempt to

reasonably resolve the case. Pressure is then placed on the plaintiff's counsel since they may not be able to recover fees and costs past that date. It will make both sides evaluate their cases more reasonably and accurately.

**4. Defense Counsel now has the opportunity to recover attorney fees.**

Perhaps the most significant addition of Senate Bill 5 was to allow for fee-shifting to occur in favor of an auto vehicle dealer. Specifically, if a judgment is obtained for less than 75% of a motor vehicle dealer's offer of settlement, the defendant may petition the Court for reasonable fees and expenses incurred from the day of offer of settlement to the entry of judgment. The Court can award these reasonable fees and expenses if it finds the plaintiff acted without "substantial justification" or "without good faith" in rejecting the motor vehicle dealer's offer. The language does not allow a consumer's attorney to just rely upon some justification, but they must have substantial justification in order to

prevent this award. Consequently, when a dealer has been reasonable and is able to prove that through the result at trial, they are now going to have the ability to seek recovery of the fees and costs incurred after the date of the offer of settlement.

Consequently, it certainly makes strategic sense that dealers should evaluate their claims as soon as possible, and if a cure offer is not made, to make an offer of settlement as soon as the 30 days after the service of the Summons and Complaint. This time frame would be around your Answer due date.

**5. This law does not apply to manufacturers and lemon law cases.**

These amendments and changes to West Virginia Code do not apply to the West Virginia lemon law statute, which is set forth at West Virginia Code §46A-6A-1 et seq. These limitations and new defense tools for the dealer are not available to the manufacturer. Consequently, there is more pressure

upon manufacturers to resolve these lemon law claims, and perhaps more important, consumer attorneys will be encouraged to follow the lemon law statute and sue manufacturers only, without adding the dealer, the lender, the finance manager and the salesperson. Previously, the lemon law was clear and been interpreted by case law that it does not apply against the dealer but only against manufacturers. Unfortunately, dealers frequently get named in lemon law cases unnecessarily, along with lenders and other individuals. Hopefully, these changes will encourage these types of lawsuits to lessen against dealers, but only time will tell.

It has been great to start off the first Counselor's Corner of 2021 with such good news on behalf of the automobile dealer industry. As you move forward, I hope you find these new statutory tools useful in defending questionable and frivolous claims. Should you have any questions, the Association and I stand ready to answer and to assist in these matters. ◀

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# 11 Steps to Create a Marketing Plan For Your Business



## Focus on Growth

Many entrepreneurs know they need to create a marketing plan, but they are either intimidated by the thought of it, or they don't put the time into it soon enough.

You can hear the voices of protest (and excuses) now...

"But I'm not going to be doing any advertising anyway."

"I just want to grow through word-of-mouth."

"I've got to get my business up-and-running first and then I'll figure out the marketing."

"I'm not a marketing person!"

If you've secretly thought of any of these things, you're not alone.

But the reality is that writing a good new business marketing plan is extremely important and not very difficult.

It's just outlining decisions about what your business is, who your customers will be, and how you will reach them — and committing those ideas to paper in an orderly format.

A good marketing plan answers questions like "Who are our target buyers?" and "Where will we spend money to attract them?" With these kinds of questions resolved, you'll be setting your business up for success right from the start.

So stop procrastinating and learn how to make a marketing plan.

Where to begin?

Well, let's start at the beginning.

## What is a marketing plan?

A marketing plan is a document that outlines a brand's plan to attract and retain customers and promote its brand, products, and services.

It includes research, information, and past marketing performance history, and it outlines a plan for creating future marketing and advertising strategies.

Marketing plans are often a section of a larger business plan. But they can also stand on their own.

## Why do you need a marketing plan?

A marketing plan helps you put all of your research, ideas and plans in

one place. When you go through the process, you can:

- Define your core messaging and positioning to create a cohesive brand voice, vision, and style.
- Set a budget that matches your goals and agenda.
- Deliver a stronger return on investment as you will create tracking processes to measure and optimize campaigns.
- Develop better future plans as you can clearly see what's working and what's not.
- Organize and centralize your marketing plans so your entire team is on the same page.

Without an official marketing plan, it's likely that your business will have a lot of ideas, opinions and plans floating around without much cohesion.

A marketing plan helps you get focused and organized so you can be more coordinated, productive and successful.

## When's the best time to make a marketing plan?

There's no bad time to create a marketing plan. But the best time to make a marketing plan is:

- At the beginning/end of the year so you can plan out plans for the year ahead.
- When launching a new business so you have a new business marketing plan to help you grow and scale your business.
- When launching a new product, service or category in your business so you know how to capture a new market.
- The moment you realize you don't have one because it's never too late to start to reap



Without an official marketing plan, it's likely that your business will have a lot of ideas, opinions and plans floating around without much cohesion.

the benefits of having an existing or new business marketing plan.

If your business fits into any of these scenarios, it's time to create a marketing plan.

### Before you begin

If you have an established business, but this is the first time you're creating a marketing plan, start by reviewing your history.

You've probably had marketing plans in the past even if they weren't laid out in a formal document. Reflect back on those campaigns and strategies to help create your new plan.

Open up a spreadsheet to start recording an inventory of everything you've tried so far to market your business. Note any action you've taken (cost, time investment, dates, duration), and categorize everything.

Think about each of these efforts.

### Be honest about what did and didn't work, and what is and isn't working.

List it all out so you can use it to inform and guide your future marketing plans.

Now, let's get into how to make a marketing plan for your new or existing business.

### How to create a marketing plan in 11 steps

It can be easy to feel overwhelmed as you start to think about creating your marketing plan. But, all you really need to do is follow a simple

outline and go through the following marketing plan steps.

1. Define your offerings.
2. Define your brand mission.
3. Define your target audience.
4. Conduct a market analysis.
5. Conduct a competitor analysis.
6. Define your brand positioning.
7. Outline your goals.
8. Outline your marketing strategy.
9. Set a budget.
10. Outline offers and marketing tactics.
11. Define metrics and KPIs.

Let's walk through each step.

#### 1. Define your offerings

Before you can create a marketing plan, you need to be clear about what it is that you're selling.

Create a list of your products and services and outline:

- The features of each offer/product
- How each feature benefits customers
- What makes each offering different from other similar offerings
- The price for each offering

#### 2. Define your brand mission

Now that you know exactly what you're selling, it's time to explain why you're selling it.

Outline your brand mission by answering questions like:

- What is it that you would like your brand to accomplish?
- Why do you want to help your customers?
- Why are your products or services important?
- Why should customers look to do business with you instead of your competitors?

#### 3. Define your target audience

Once you know what you're selling and why you're selling it, it's time to outline who you will sell to.

Define your target audience by creating buyer personas that describe your ideal customers and audiences. Outline their:

- Demographics (age, gender, income, education, location, etc.)
- Professional details (industry, job title, company, etc.)
- Psychographics (personality traits, beliefs, attitudes, etc.)
- Goals (what they want to achieve)
- Challenges (pain points, what they're afraid of or in need of, etc.)
- Influences (favorite media outlets, thought leaders, etc.)

#### 4. Conduct a market analysis

A market analysis describes the total marketing environment in which your company competes.

When you create a marketing plan, this analysis is an essential section as it answers questions that help you navigate your competitive market's landscape.

- How many businesses offer similar offerings?

*continued on the next page*



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- How many businesses will your brand be in direct competition with?
- How large is the market?
- What are the trends in the market (growing, decreasing, etc.)?
- How much are customers already paying for similar offerings?
- How much are customers willing to pay for similar offerings?
- What does the sales cycle in your market look like?

## 5. Conduct a competitor analysis

The market analysis should help you come up with the names of a few of your direct competitors.

Now, look closely at those competitors to see how you can differentiate your brand and drive customers to choose you over others.

- Who are your competitors?
- What is their market share?
- What are their strengths, weaknesses and unique selling propositions?
- How can you differentiate your brand from competitors?

## 6. Define your brand positioning

By this step in the process to create a marketing plan, you've done a lot of research, and you've outlined what you know about your brand, market, and competitors.

Use this information to decide how you will position your brand in the market.

- Outline your unique selling propositions.

- Define what market differentiators you will highlight.
- Specify what market segment you will target.
- Define your brand voice and tone.

## 7. Outline your goals

The goals section is just that — defining your short- and long-term goals. Think about where you're starting from, and where you want the business to be in three, five and 10 years.

Some examples of marketing goals might be to:

- Attract customers
- Retain customers
- Increase website traffic
- Increase social media following
- Increase online sales
- Increase in-store sales
- Generate more leads
- Improve online conversions

## 8. Outline your marketing strategy

Your marketing strategy should then outline your approach to reaching your goals.

Look at your goals and figure out what type of marketing tactics will help you get closer to your target objectives.

They might include (but aren't limited to) the following.

- **Online advertising.** Pay-per-click advertising, banner ads, text ads on partner sites.
- **Email marketing.** Sending electronic newsletters, adding

subscription tools to your site to grow your email list.

- **Print advertising.** Newspaper or magazine ads, business cards, direct mail postcards, brochures or flyers.
- **Social networking.** Maintaining your business profile and engaging with customers and prospects on platforms like Facebook, Twitter and Pinterest.
- **Blogging.** Writing your own blog, responding to or submitting articles or features to other people's blogs, RSS feeds, etc.
- **Online directories.** Your business listing on both global (i.e. Google, Yelp and YP.com) and local (i.e. Chamber of Commerce) listings sites.
- **Live networking.** Handing out business cards, professional memberships, public speaking.
- **Search engine optimization (SEO).** Tweaking website content to attract organic traffic.
- **Trade shows.** Sending your team to attend or present at industry conferences and events.
- **Public relations.** Getting mentions and features about your brand in the news.

## 9. Set a budget

There are a lot of factors that go into setting a marketing budget. But at this point, you should have some good information to help direct your budgeting.

Ask yourself:

- What is your current revenue?
- What percent of your revenue have you allocated for marketing?
- What set marketing costs do you have (for software, team members, etc.)?
- How much money will you need to reach your goals?
- What are your competitors spending on their marketing?

Once you start running strategic and goal-focused marketing campaigns, it will become easier to set marketing budgets. You will be able to use past campaigns to measure costs and your return on investment (ROI) — such as cost per lead, cost per customer, etc.

But, in the beginning, you will need to try a few campaigns to see what works and delivers the best ROI.

## 10. Outline offers and marketing campaigns

Now, it's time to turn your ideas into concrete marketing promotions and campaigns.

Decide what type of offers you can make. What can you offer as a special or deal? A free consultation? Special pricing for new customers or for referrals? Rewards? Samples?

Whatever you do, be consistent with your goals.

It doesn't make sense to offer early bird specials if your target audience is college students grabbing late-night burgers.



Then, consider your marketing strategy, goals, offers and budget to lay out a few concrete campaigns. Outline the cost, time and tactics for each campaign.

### Examples of marketing campaigns

#### Increase awareness with business cards

- Cost: Less than \$20 to print custom business cards with a service like Vistaprint
- Time: 10 minutes to two hours per week

- Tactic: Carry business cards with you at all times. Share them with anyone you meet who shows an interest in your business, whether you're at a client meeting, your Rotary Club, or a party where the topic of what you do for a living comes up in conversation. Give each person multiple cards, one for them and another one or two to share with someone they know who might also be interested in your services.

*continued on the next page*

**it's time to shift your dealership into high gear.**

For all things auto, you deserve an ally who understands the ins and outs of the industry. With a dedicated underwriter and Account Executive team, comprehensive training courses, social media marketing tools, and customized F&I solutions, Ally provides you with the tools and resources you need to help you be more productive.

Contact your local Account Executive today.

**ally** do it right.

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### Drive traffic to your website with a banner ad

- Cost: About \$200/month (costs will vary from \$0 to thousands, depending on where you choose to place your ad)
- Time: 3 hours
- Tactic: Banner ads are those rectangular ads you see in the margins of just about every website. When someone clicks on a banner ad, they're typically taken to the advertiser's website, where they can redeem the offer or shop for whatever is advertised in the banner.

### Promote your business with email

- Cost: Starting at about \$10/month for an online email marketing tool
- Time: One to five hours per month
- Tactic: This assumes you have a list of email addresses to start with. If so, subscribe to an email builder and customize one of the email templates. Start by sending one information-filled email every 10 days to two weeks ("Check out our latest offerings." "SAVE 10% now through Thursday!", etc.). Track customer responses. Resend emails that work and stop sending those that don't.

### 11. Define metrics and KPIs

The final step as you create a marketing plan is to decide what metrics you will use to evaluate your campaigns.

Better-known measurement options like surveys can be useful, but you'll also want to understand things like the cost of customer acquisition (for every new customer you get, how many marketing dollars do you have to spend?) or market share (out of the universe of your potential customers, what percentage do you have, and is that growing?).

Look at your marketing campaigns and decide what metrics will be best for showing results tied to your goals.

As mentioned earlier, having the right set of metrics will allow you to make more informed decisions about your budget as well as make adjustments to strategies as you go.

Check your new business marketing plan, iterate and improve.

Now, you know how to make a marketing plan, but your work doesn't stop here.

Use the framework to go through the marketing plan steps and start writing your plan. Then, review your finished marketing plan with fresh eyes and make plans to continue to update and improve your outline.

1. Ask questions of others to check your thinking.

It's easy to get in your own head and substitute your judgment for your customers' because you're passionate about your business.

You might think "I'd prefer receiving a coupon rather than a sample; a coupon would make me more likely to buy." Run that by some people who fit the profile of your target market before you decide which way to go. You might be surprised.

2. Don't try to think of everything yourself.

Look at your competitors and learn from what they do well. But don't forget to look at other industries, too.

There's no reason you can't steal a trick from a different kind of company facing the same issue. It will save you time, in the long run, to test tried-and-true methods in addition to your own brilliant, unique ideas.

3. Stick to the plan — and keep changing it.

I know this sounds contradictory but do both. Being true to the decisions you've made in your marketing plan is key to remaining focused.

If your business is growing faster than expected, if your customers give you feedback you didn't have before, if your competition changes, then these are all good reasons to make adjustments.

Don't be afraid to tweak your marketing plan or even make substantial revisions.

Remember, you're never really finished writing a marketing plan.

The document should evolve along with your business. Don't just put your marketing plan in a filing cabinet never to see the light of day. Use it. Share it with your team.

A marketing plan, like any tool, is good only if it's used. And when it is, it's a powerful guide for running and growing your business, from startup to wherever you're headed.

### Bring your marketing plan to life

You now know what a marketing plan is, why you need one and how to create a marketing plan in 11 simple steps. You're ready to start outlining the path you will take to launch, market and grow your business.

Go through the marketing plan steps outlined in this post and then, make it easy to execute your plan with GoDaddy's Websites + Marketing service. It supports your plan by helping you build a professional website and market your business everywhere online. ◀

*This article includes content originally published on the GoDaddy blog by the following authors: Andrea Rowland and Jennifer Friedman.*



Raubi Marie Perilli

Raubi Perilli is a website strategist, content creator, and founder of Simply Stated Media. She loves helping freelancers, small businesses and start-ups use their website to drive more interest, leads and sales.

Learn more about Raubi by following her on Instagram, or improve your website today by grabbing her FREE 50-point website audit.

# Making business easier for auto dealers. Especially now.

Running a dealership comes with its share of uncertain terrain. But one thing is certain. Our Dealer Financial Services team is dedicated to being by your side with the resources, solutions and vision to see you through.

Chuck Massa  
chuck.massa@bofa.com  
513.316.4287

[bofaml.com/dealer](https://bofaml.com/dealer)

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# Driving West Virginia's Economy

Annual Contribution of West Virginia's New Car and Heavy Duty Truck Dealers



Numbers reflect annual economic activity during 2019.



**151**

## Dealerships

134 (new car)  
16 (new truck)



**13,638**

## Total Jobs

7,543 direct jobs  
6,095 indirect jobs



**50**

## Employees

(average per dealership)



**\$5.7B**

## Total Sales

(all dealerships)



**\$376M**

## Payroll

**\$49,556**

Average Annual  
Earnings - WV New  
Cars (2019)

**\$674M**

State and  
Federal Income  
Taxes Paid - WV  
New Car



**\$346.6M**

## State Sales Tax Paid

**\$70,621**

Average annual earnings - US New Truck  
(2018)

Sources: Center for Automotive  
Research, IHS Markit, NADA,  
Taxfoundation.org, U.S. Bureau of  
Labor Statistics



West Virginia Automobile Dealers Association

1618 Kanawha Blvd East, Charleston WV 25311 | PO Box 2028, Charleston, WV 25311

304-343-4158 | [www.wvcar.com](http://www.wvcar.com) |



# Driving West Virginia's Economy

Annual Contribution of West Virginia's Class 4 - 8 New - Truck Dealers  
Numbers reflect annual economic activity during 2019.



Class 4

14,001 to 16,000 lbs.



Class 5

16,001 to 19,500 lbs.



Class 6

19,501 to 26,000 lbs.



Class 7

26,001 to 33,000 lbs.



Class 8

33,001+ lbs.

# 16

## Total New-Truck Dealerships



Dealership Employees

# 1,061



**\$778M**  
Total Sales



**\$55M**  
Payroll



**1,852**  
Annual Registrations  
(Class 4-8 new trucks)



**46.6M**  
State Sales Tax Paid



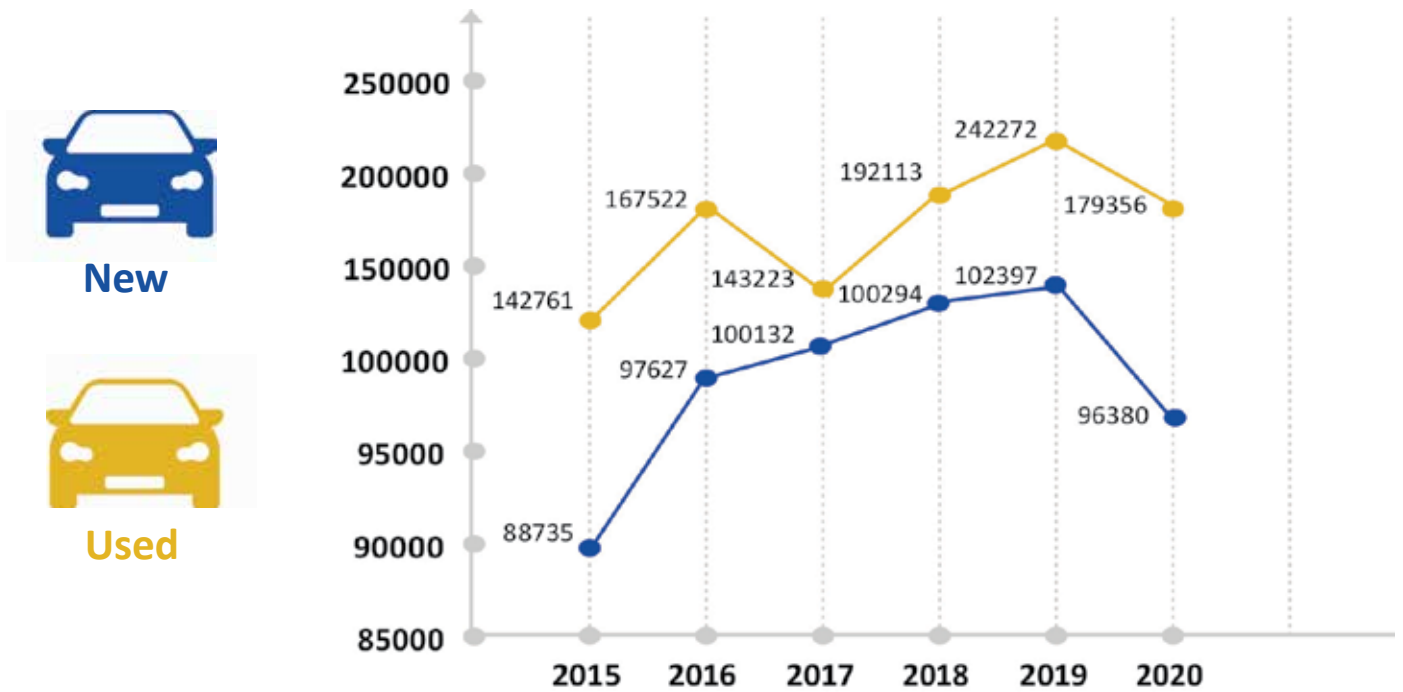
West Virginia Automobile Dealers Association

1618 Kanawha Blvd East, Charleston WV 25311 | PO Box 2028, Charleston, WV 25311

304-343-4158 | [www.wvcar.com](http://www.wvcar.com) |



# 2015-2020 Annual Trend WV Registrations



## New Vehicle Market Summary 2019-2020



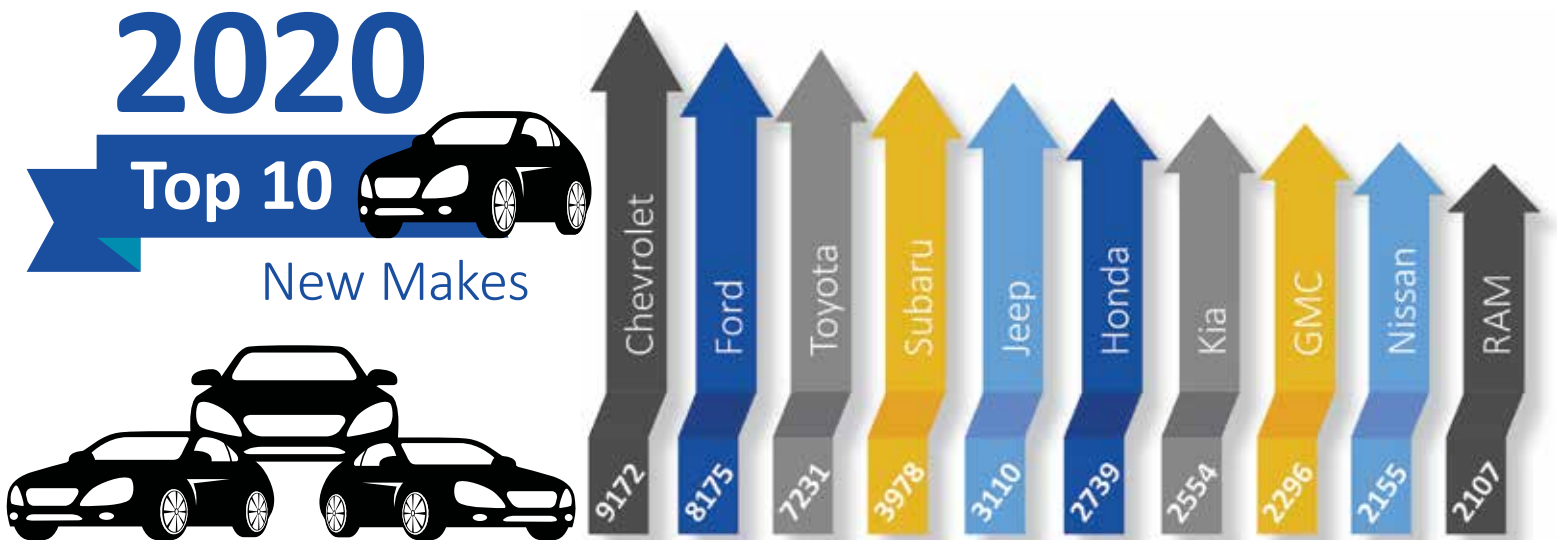
## 2020 Quarterly Registrations New and Used

	New	Used
Q1	25,735	44,768
Q2	19,426	26,754
Q3	26,576	30,038
Q4	24,643	18,874

# 2020

## Top 10

### New Makes





# SAVE THE DATE



## JUNE 13 - 16

OPEN REGISTRATION NOW - JUNE 1, 2021  
REGISTER BY APRIL 30TH TO RECEIVE A 10% DISCOUNT

## WVADA 87TH ANNUAL FAMILY CONVENTION

The Greenbrier Resort  
101 W Main St,  
White Sulphur Springs, WV 24986

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

**WVADA REGISTRATION FEES**  
**REGISTER BEFORE APRIL 30 TO RECEIVE A 10% DISCOUNT**  
**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

<b>Attendees</b>	<b>Fees</b>	<b>Guest</b>	<b># of Guests</b>	<b>10% Discount</b>
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** 

11:00am - 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

## Sponsorship Levels

### **PRESENTING (\$10,000)**

Includes 4 event registrations,  
3 golf registrations, exhibit space

### **HEADLINE (\$7,500+)**

Sponsor of a premier event  
Includes 3 event registrations,  
2 golf registrations, exhibit space

### **PLATINUM (\$5,000 - \$6,500)**

Includes 2 event registrations,  
1 golf registration

#### ***Co-sponsor a premier event:***

Chairman Dinner, golf outing,  
welcome reception, etc

### **GOLD (\$3,500 - \$4,500)**

Includes 1 Event Registration

#### ***Co-sponsor an event:***

Welcome gift, board meeting, clay  
tournament, entertainment, etc

### **SILVER (\$2,000 - \$3,000)**

#### ***Co-sponsor an event:***

Event speaker, event  
transportation, entertainment,  
business meeting, etc

### **BRONZE (\$1,000 - \$1,500)**

To sponsor or co-sponsor such as:  
Speaker gifts, business meeting  
cash drawings, boxed lunches,  
party favors, etc

## **WVADA CONVENTION SPONSORSHIP JUNE 13 - 16, 2021**

**All sponsors will receive  
proper recognition through  
our program events:**

- **Brochure & Agenda**
- **WVADA**
- **Newsletter**
- **WVADA News Magazine**
- **Social Media**
- **Website & Signage**
- **Identifying your company  
placed at the entrance to  
the event**



# 87th Annual Family Convention

## June 13th - 16th

### Sign Up

#### Choose Your Sponsorship

- Presenting (\$10,000)
- Headline (\$7,500)
- Platinum (\$5,000 - \$6,500)
- Gold (\$3,500 - \$4,500)
- Silver (\$2,000 - \$3,000)
- Bronze (\$1,000 - \$1,500)

*Send completed forms  
to Haley Justice*

**Address:**  
**PO Box 2028**  
**Charleston, WV 25327**

**Email:**  
**hjustice@wvcar.com**

**Phone: 304 - 343 - 4158**

**FOR MORE INFORMATION VISIT:**  
**WWW.WVCAR.COM**

### Your Contact Information:

Name: \_\_\_\_\_

Company: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

City, State, Zip: \_\_\_\_\_

Phone: \_\_\_\_\_

Email: \_\_\_\_\_

**After registration form is submitted an invoice will be sent via email. Please provide an email:** \_\_\_\_\_

**\*\*DISCLAIMER: There will be a 3% charge when paying by credit card.**

Payment Method: Credit Card  Check

# Exhibitor Registration

WV AUTOMOBILE DEALERS ASSOCIATION

87TH ANNUAL FAMILY CONVENTION

June 13 - 16, 2021

Company \_\_\_\_\_

Contact Name \_\_\_\_\_

Exhibitor Name(s) \_\_\_\_\_

Address \_\_\_\_\_

City, State, Zip \_\_\_\_\_

Phone \_\_\_\_\_

Contact's Cell Phone at Convention \_\_\_\_\_

- Exhibit cost: \$1,000 with a minimum \$2,000 sponsorship
- Must be a sponsor to exhibit at the WVADA Convention
- Exhibit table measurement - 6ft x 30 inches
- Table will be skirted
- Each exhibit space will have 2 chairs
- Signage and easel at each exhibit provided
- Electric is available (charged to the exhibitor) DO YOU NEED ELECTRIC: Yes          No

Sponsorship Amount Included \$ \_\_\_\_\_ Exhibit Fees Include \$1,000.00  
Minimum \$2,000

Name \_\_\_\_\_ Title \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Cost of any special booth equipment or set-up will be the responsibility of the vendor.  
Exhibitors must dispose of all materials/handouts when booths are broken down at the end of Tuesday Business Meeting

**\*\*Disclaimer - there will be a 3% charge when paying by credit card.**

Payment Method: Credit Card  Check

Exhibit hours: Monday and Tuesday 8:00- 12noon  
(during Business Meetings)

*Spaces are limited and will be on a first registered, first served bases.*

Exhibitor/Support restrictions:

WVADA maintains endorsement agreement(s) and or business relationship that may limit the promotion of certain products/services. WVADA reserves the right to restrict any exhibitors from promoting certain products/services.

We agree to accept the space assigned to us by WVADA. We understand that until WVADA receives this contract properly executed, no definite reservation will be made. We understand that signing the contract binds us to payment for the booth. Should there be a cancellation, payment is still due.

*Thank you for your participation!*

After registration form is submitted an invoice will be sent via email.

Please provide an email \_\_\_\_\_



### 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 13<sup>th</sup> – 16<sup>th</sup> (Block Room Dates)  
June 13<sup>th</sup> – 16<sup>th</sup> (Convention Dates)

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](mailto: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

Traditional Guest Rooms	\$265.00 per room, per night
Superior Guest Rooms	\$285.00 per room, per night
Deluxe Guest Rooms	\$305.00 per room, per night
Draper Suites	\$335.00 per room, per night
Spring/Paradise Row Cottage	\$385.00 per room, per night
One-Bedroom Suites	\$460.00 per room, per night
Multi-Bedroom Guest Cottages	\$285.00 per bedroom, per night*
Deluxe Suites and Estate Houses	\$460.00 per bedroom, per night*

\*Based on all bedrooms occupied

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 16, 2021.**

**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 %

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### What parts are covered?

- ▶ Engine
- ▶ Turbocharger
- ▶ Transfer Case
- ▶ Transmission
- ▶ Drive System



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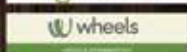
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