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# SSRA

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### **Cyberattacks Hit Nearly Half Of Businesses**

Almost half (45 per cent) of Canadian small businesses experienced a random cyberattack, according to a survey from the Canadian Federation of Independent Business. Another one-in-three (27 per cent) experienced a targeted attack.

“Cyberattacks are a growing threat to small businesses but enhancing cybersecurity can be intimidating and accessing cybersecurity support can be costly for small businesses,” said Mandy D’Autremont, vice president of marketing partnerships at CFIB.

The survey also found that: 11 per cent of businesses had experienced a whaling attempt (a phishing attack that targets or impersonates a CEO or business leader) in the past year; Businesses in the professional services (57 per cent random, 28 per cent targeted) and wholesale (58 per cent random, 38 per cent targeted) sectors were most likely to report experiencing cyberattacks in the past year; and only 11 per cent of businesses had offered mandatory cybersecurity training to their employees in the past year. Eight per cent had provided optional training.

The CFIB announced the launch of a new Cybersecurity Academy, an online education program to train business owners and their employees on how to improve cybersecurity in their businesses. The training was developed in partnership with Mastercard and its cybersecurity specialists. Topics include preventing ransomware and cyberattacks, recognizing fraud and identifying and preventing social engineering.

In the fall, Insurance Bureau of Canada noted that businesses needed to do more to prevent cyberattacks, noting that educating staff on risks needed to be a priority. A survey of small and medium-sized businesses in Canada found that only a third of employees (34 per cent) said their company provided mandatory cyber security awareness training. Meanwhile, one in five (21 per cent) of employees believed that most cyber breaches are minor and easy to resolve. “The reality is that these breaches can have a devastating financial impact,” IBC said.

### **REPAIR Act Re-Introduced in House of Representatives**

The Auto Care Association announced in an email yesterday that federal legislation regarding the Right to Repair has been reintroduced in Washington, D.C., by four U.S. congressional representatives.

Neal Dunn (R-FL-02), Brendan Boyle (D-PA-02), Warren Davidson (R-OH-08), and Marie Gluesenkamp Perez (D-WA-03) introduced the “Right to Equitable and Professional Auto Industry Repair (REPAIR) Act” in the House of Representatives on Thursday due to advocacy from MEMA Aftermarket, The Auto Care Association, CAR Coalition, SEMA—and additional of automotive aftermarket industry support.

According to the ACA memo, the “bill ensures affordability, accessibility, and a strong supply chain by safeguarding a free and competitive repair market for the nation’s 292 million registered passenger vehicles and millions of commercial vehicles.”

### **Summary of The Right to Equitable and Professional Auto Industry Repair (REPAIR) Act**

The REPAIR Act (the Act) would preserve consumer access to high quality and affordable vehicle repair by ensuring that as vehicles continue to modernize, vehicle owners and their repairer of choice have equal access to repair and maintenance tools and data. As vehicles continue to become more technologically advanced, effectively repairing and maintaining them requires access to data, software, compatible replacement components, training, and sophisticated diagnostic tools. Current law is inadequate to address growing competitive concerns created by new technology, and the Act would seek to resolve current and future issues that prevent consumers and independent repair shops from being able to fully maintain and repair modern vehicles, while ensuring cybersecurity for critical vehicle systems.

#### *Preserving Consumer Choice*

The bill would ensure that as vehicles modernize, vehicle owners will continue to have choice when it comes to repair and maintenance: they can either do the work themselves, which is a necessity for many low-income households, or they can have their vehicle repaired for them by a franchised dealer or independent repair shop. The legislation would prohibit impeding the vehicle owner or a repair shop from obtaining service information, tools, or parts, including the ability for a vehicle owner to choose aftermarket parts needed to fully maintain and repair a vehicle. The bill would similarly prohibit certain actions recognized as unfair and anticompetitive practices in the repair industry and provide a fair process for identifying other emerging unfair practices in the future.

#### *Providing Access to Critical Repair Tools and Information*

The bill would ensure:

- That all tools, equipment, and critical repair information needed to repair a vehicle be made available to the independent repair industry at a fair, reasonable, and non-discriminatory price;
- That motor vehicle manufacturers utilizing wireless technology for the transmission of repair and diagnostic data, provide consumers and their designees (with permission of the vehicle owner) direct access to repair,

service, diagnostic, and prognostic-specific vehicle-generated data, and

- That vehicle manufacturers are prohibited from restricting vehicle owners and their designees access to on-board diagnostic and telematic systems unless the authorization process is standardized across all makes and models across the industry. The Federal Trade Commission (FTC), in consultation with the National Highway Traffic Safety Administration (NHTSA), would designate an independent entity responsible for the authorization process necessary for owners to share the data directly with third parties through standardized access platforms.

#### *Ensuring Cybersecurity and Transparency*

Effective cybersecurity and consumer transparency are the foundations of the Act:

- *Cybersecurity* – The bill would expressly ensure that vehicle manufacturers may maintain effective cybersecurity measures. Motor vehicle manufacturers would develop standardized access platforms for the motor vehicles they manufacture. These platforms shall be interoperable and permit the secure communication of data directly from a vehicle to an owner or a third party that is authorized by the owner to receive the repair and diagnostic data. The bill would also require the National Highway Traffic Safety Administration (NHTSA), in consultation with the FTC, to undertake a rulemaking ensuring that access to vehicle generated data via standardized access platforms meets appropriate industry standards for cybersecurity, data communication, and data management.
- *Transparency* – The legislation would provide a mechanism for informing vehicle owners that they can direct repair data from their vehicles to third parties, and whether data generated by their vehicles are being shared with such third parties (as directed by the vehicle owners) and/or the vehicle manufacturer.

#### *Enforcement*

The bill would provide an enforcement process whereby consumers and independent repairers can file complaints with the FTC regarding an alleged violation of the Act. If remedial action is not taken within a reasonable time specified by the FTC, the bill would direct the FTC to investigate the claim and issue an order within five months of the claim.

#### *Ensuring Industry and Consumer Engagement*

The bill would require the FTC to establish a Fair Competition After Vehicles Are Sold Advisory Committee comprised of impacted stakeholders including consumer advocates, motor vehicle manufacturers, trucking companies, independent repairers, dealership service centers, motor vehicle parts manufacturers, retailers and distributors, aftermarket parts and tools manufacturers, auto insurers, and others. The Advisory Committee would advise the FTC on implementation of the Act and identify newly emerging issues impacting the competitiveness of the vehicle repair industry and consumers’ control over their vehicle-generated data, including whether consumers should be able to share

access to additional types of vehicle-generated data through the bill's framework.

#### *Report to Congress*

The bill would require the FTC to submit a biennial report to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Energy & Commerce of the House of Representatives providing a summary of investigations conducted and orders issued; actions being taken by the FTC to adopt to changes and advances in motor vehicle technology in order to maintain competition in the motor vehicle aftermarket, recommendations for legislation that would improve the ability of the FTC and other agencies to protect consumers from unfair limits on competition in vehicle repair and a description of recommendations from the Advisory Committee that were not included in rulemakings and why the recommendations were not adopted.

#### *Maintaining Consumer Choice in the Future*

The bill would mandate that the FTC consider whether to update the Act's consumer protections every three years based on advances in vehicle technology.

### **How DIFM Has Surged In The U.S.**

After being hit hard during the pandemic, do-it-for-me services in the U.S. saw a big-time rebound at levels never seen before, according to new research.

Lang Marketing reported that the parts and labor volume of the DIFM light vehicle market jumped by US\$30 billion in 2021 and 2022. That marks the biggest surge ever recorded by this market in the U.S.

"It reflects the strength of the DIFM market and the pent-up demand for aftermarket parts and labor following the onslaught of COVID-19, which blasted a double-digit decline across the 2020 DIFM market," the group noted in a recent Aftermarket iReport.

But the good news wasn't spread evenly throughout the aftermarket. There were winners and losers, Lang pointed out. Four outlet groups made up more than 85 per cent of the volume surge: repair specialists, vehicle dealers, service stations and garages and foreign specialists.

The biggest chunk (29 per cent) was taken by repair specialists, those focused on a limited array of vehicle repairs. "Most of this gain was the result of repair specialists expanding their repair scope, coupled with their growing foreign nameplate repair," Lang reported.

Dealers were just behind, raking in a quarter of the pot. Specifically, however, foreign nameplate dealers were the ones that generated most of the repair growth in this group.

Service stations and garages, despite diminishing population, took in 17 per cent of the growth and foreign repair specialists got 16 per cent of the increase.

Tire stores (8 per cent) discount stores/mass merchandisers (5 per cent) made comparatively modest gains. However, auto parts stores saw DIFM sales remain flat over the last two years.

When broken down by parts and labour, light truck and car parts made up about 47 per cent of the \$30 billion volume increase, leaving 53 per cent of that number to be made up by labour.

### **Why You Shouldn't Cut Your Labor Rate For This Reason**

#### *Auto Service World*

If the shop next door decides to take \$10 an hour off their labor rate, should you follow suit? No, says a shop coach

Some customers will choose the shop they take their vehicle to based on price. There could be many reasons for this, ranging from poor marketing by the shop to the customer just wanting to pay as little as possible. But that doesn't mean you should cut your labor rate in an effort to attract them.

You have to remember that not every shop owner is as informed as you are, said Bryan Stasch, vice president of product and content development at the Automotive Training Institute.

"And you got to remember the fact that no matter what industry, what business, there's always somebody in your market willing to go out of business faster than you," he said at NAPA Expo 2022.

Many shop owners have had to deal with a competitor who thinks they can make up a lower labor rate with increased volume of customers. But it's a wrong way to think.

"Guess what? That only works selling canned goods. That does not work when you have time and materials, that you need to hold margin every single time you need to sell a product," he told shop owners during his session, Finding Money by Understanding your Financial Numbers.

Your rate should reflect the actual costs of your business. So shops need to figure out their actual costs per hour, get their effective labor rate and calculate what they should be charging at the door, Stasch said.

He also noted that shops need to look at the average cost of parts sold to ensure the proper amount of margin is being collected.

"Is your markup multiplier at your sweet spot of average cost of parts sold," Stasch asked.

This should be part of a parts pricing matrix, explained Cecil Bullard, chief executive officer of the Institute for Automotive Business Excellence and RLO Training.

"For those of you that may or may not know what a parts matrix is, a parts matrix is just a scheme for marking up your parts," he said during his session, What are the Most Important Numbers for Financial Success? also at NAPA Expo 2022.

What that means is, you have a guide that shows if you buy a part at \$1, you'll sell it at, for example, \$4; a \$50 part for \$125.

"it's just a different markup on top of whatever I pay for that part, depending on the price of the part," Bullard explained.

You do that because unilaterally deciding to charge the customer double what you paid eventually becomes unrealistic. If a part costs thousands of dollars, you'll never get the sale if you double that cost on the customer's bill.

"Adjust those multipliers," Stasch said.

### **EVs to Make Up Half of Global Auto Sales by 2035: Goldman Sachs**

Electric vehicles will make up half of new global auto sales by 2035, making up over 80% of sales in many developed countries by 2040, researchers at Goldman Sachs said in a forecast Friday.

The analysis concedes that EV adoption faces headwinds that include rising costs for battery components and electric power, but analysts expect "technology innovation to supersede these forces in the coming years."

One key in spurring adoption is a relatively short "payback period," when the cost of owning and operating an EV to break even with similar costs for vehicles with internal combustion engines. Based on what has been seen with hybrid vehicles, the Goldman analysts say EVs need to reach this price parity within about three years -- something they expect to happen in 2027.

The analysis notes that EVs currently have less of a price advantage over ICE cars as oil prices remain in the \$80/bbl range while electricity costs are rising.

Global EV sales totaled about 2 million in 2020, making up about 2% of car sales. That number is expected to rise to about 73 million annually in 2040.

The analysis notes the impact of government policy in driving EV adoption, particularly the Inflation Reduction Act in the U.S., which has also prompted efforts in Europe.

The analysis forecasts "a major transformation" for the auto industry in the current decade due to increased acceptance of EVs and the adoption of autonomous driving.

"There will be no let-up in the EV industry's expansion as environmental rules tighten and electrification technologies become more sophisticated," the analysis predicts.

The European Union is expected to lead the world in EV uptake in the coming decades, as the number of such vehicles sold rises rapidly when compared to a steady increase for China and the United States.

The analysis notes that the rise in EV sales will have an impact on how automakers and their suppliers make money. Goldman expects the global car industry's profits to rise from \$315 billion in 2020 to \$418 billion in 2040. Much of that profit will come from EV sales, with the pool of profits from EVs expected to jump from \$1 billion to \$110 billion.

Much of the cost of EVs -- about 40% -- goes toward producing their batteries. Automakers currently control 40% of global battery market share, but these "finished vehicle assemblers" are "rushing to develop vertically integrated

production and joint-venture plants," according to the analysis.

Battery production currently relies on components from China, the analysts say that the Inflation Reduction Act -- which includes incentives to increase U.S. battery production -- "will give a relative advantage to manufacturers that are pushing ahead with local production in the U.S. of EVs, battery-related products, and EV components."

--Reporting by Steve Cronin

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### **National Gas Prices Rise as Demand Grows**

As drivers in milder areas across the country take advantage of the weather by fueling up and hitting the road, the rise in gas demand and slightly more expensive oil are pushing the price of gas upward.

The national average for a gallon of gas increased by 12 cents since the week of Jan. 16 to reach \$3.42 on Jan. 23. This week's national average is 33 cents more than a month ago and 10 cents more than a year ago, reported AAA.

"The recent rising temperatures led to rising pump prices," said Andrew Gross, AAA spokesperson. "And with the cost of oil hitting \$80 a barrel, there is a lot of upward pressure on gas prices at the moment."

According to data from the Energy Information Administration, gas demand rose from 7.56 million to 8.05 million barrels per day last week as total domestic gasoline stocks increased by 3.5 million barrels to 230.3 million barrels. If demand remains robust, drivers will likely see pump prices rise through the week, according to AAA.

The nation's top 10 largest weekly increases are Colorado (31 cents), Delaware (28 cents), West Virginia (22 cents), Ohio (22 cents), Maryland (19 cents), Missouri (19 cents), Georgia (18 cents), Virginia (18 cents), Tennessee (18 cents) and Louisiana (18 cents).

The nation's top 10 most expensive markets include Hawaii (\$4.94), California (\$4.44), Washington (\$4.06), Nevada (\$3.95), Alaska (\$3.72), Oregon (\$3.71), Pennsylvania (\$3.70), Colorado (\$3.65), Washington, D.C. (\$3.62) and Illinois (\$3.56).

At the close of the formal trading session on Jan. 20, West Texas Intermediate increased by 98 cents to settle at \$81.31. Crude prices rose at the end of last week due to increased market optimism that crude demand may be more robust than expected this year. Particularly, the re-opening of China's economy, despite high coronavirus infection rates, will help to bolster global crude demand, while supporting elevated prices. For this week, crude prices could continue to climb if ongoing market optimism persists, AAA reported.

## **Higher US Gas Prices Contribute to Rise in Overall Inflation**

After two months of declines, the federal government's gasoline price index increased 2.4% month to month in January, contributing to a 0.5% month-to-month rise in the Consumer Price Index.

Overall, the CPI for all items increased 6.4% year to year in January, the smallest 12-month increase since the period ended October 2021, the U.S. Bureau of Labor Statistics reported Tuesday.

The energy index rose 2% in January, partly driven by the 2.4% boost in the gasoline index, the BLS said. The index for natural gas rose 6.7% month to month, and the index for electricity increased 0.5%. Fuel oil prices declined 1.2% in January.

In the past 12 months, the energy index rose 8.7%, and the gasoline index increased 1.5% year to year -- up from already elevated prices a year ago January. The fuel oil index rose 27.7% over the last 12 months, while the index for electricity rose 11.9%, and the index for natural gas increased 26.7% year to year.

The index for shelter, up 0.7% month to month, was "by far the largest contributor" to inflation, representing about half of the monthly all-items increase, the bureau said. Food prices also were a major factor, rising 0.5% in January, including a 0.4% increase in the food-at-home index.

Convenience store food service is also seeing prices rise. The food-away-from-home index increased 0.6% in January, after rising 0.4% in December. The index for limited-service meals rose 0.7% and the index for full-service meals increased 0.5%, the BLS said.

--Reporting by Donna Harris

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## **U.S. Gas Station Monthly Dollar Sales Flat in January**

Monthly dollar sales at U.S. gas stations were flat in January, underperforming the 3% month-to-month increase in sales reported for overall retail trade and food services, according to the U.S. Census Bureau's latest statistics.

Gas station sales in January were \$59.585 billion, up less than a tenth of a percentage point sequentially from \$59.564 billion in December 2022, but 5.7% higher year to year from the \$56.370 billion in sales reported in January 2022. It's also the second time since last March that gas station sales dipped below \$60 billion, the bureau's records show.

However, inflation is contributing to the still-elevated dollar figures, which exceeded \$50 billion for the first time in September 2021, according to U.S. Census figures dating back to 1992. Monthly gas station sales reached a record high of \$68.805 billion in June when retail fuel prices also hit record highs. The sales figures are adjusted for seasonal variation and holiday and trading day differences but not for price changes.

Advance estimates of U.S. retail and food services sales for January 2023 were \$697.0 billion, up 3% from December, and up 6.4% year to year.

Gas station sales also underperformed overall sales for the retail trade, which were up 2.3% from December 2022 and 3.9 % year to year, as well as sales at food service and drinking places, which were up 7.2% from December and 25.2% year to year.

In January, grocery store sales were also flat month to month, but up 6.6% year to year, the bureau's figures show.

--Reporting by Donna Harris

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## **Nebraska Bill Would Require Many Gas Stations to Sell E15**

Nebraska legislation would require gasoline stations across the state to sell E15 from at least 50% of their fuel dispensers by Jan. 1, 2024, with few exceptions, according to a copy of the bill.

Station operators who have not installed new tank systems or replaced their incompatible tank systems by that deadline would have until Jan. 1, 2027, to upgrade their equipment and sell E15 from at least one fuel dispenser, according to the measure.

The Nebraska E15 Access Standard Act (LB 562) is like an E15 mandate enacted in Iowa last year and went into effect at many stations in January.

The Nebraska bill is designed "to increase consumer access to E15 gasoline through the establishment of an access standard."

Under the legislation, the state governor could temporarily suspend the requirement if E15 is in short supply. The governor also could suspend the mandate if the market price of the 15% ethanol blend could "cause consumers to suffer economic hardship."

The director of the Nebraska Department of Agriculture can issue an administrative order waiving the requirement for a retailer based on E15 availability, but retailers must provide "credible evidence" they can't obtain the blend.

The bill would allow station operators that have incompatible, older dispensers and tank systems and "small" gas stations to apply for a waiver of the requirements. Under the legislation, a gas station is considered small if it only has one qualifying motor fuel dispenser or if the site's average annual gasoline volume was 300,000 gal or less for the three-year period beginning Jan. 1, 2021.

A fuel retailer would need to document that the equipment is incompatible with E15 and have a certified installer determine "the cost to replace the motor fuel storage and dispensing infrastructure would exceed \$100,000."

The Nebraska legislation was introduced Jan 17 and referred to the Agriculture Committee Jan. 19, according to the Nebraska Legislature's online record.

Iowa's 2022 Biofuel Access Bill, signed by the governor last May, requires the state's fuel retailers to offer E15 on at

least one pump by 2026. Beginning in January 2023, new stations or stations replacing tanks must comply immediately. The remaining stations must comply with the mandate by Jan. 1, 2026, with few exceptions, according to an Iowa lobbyist.

--Reporting by Donna Harris

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### **ExxonMobil to Raise Minimum Score for US Station Inspections**

ExxonMobil Corp. is raising the minimum passing grade for the quarterly inspections it uses to ensure Exxon and Mobil stations meet retail brand standards, according to a letter a large supplier sent to retailers Tuesday.

The minimum Total Site Experience score for the Site Experience Program will be 80% each quarter beginning July 1, up from the current 70% minimum score, the letter said.

Like other major brands, ExxonMobil uses mystery shopper inspections and evaluations to enforce brand requirements, such as keeping stations clean and well-maintained. Repeat failures carry penalties, while in some cases wholesalers and retailers can be rewarded for high scores.

Under ExxonMobil's Site Experience Compliance Program, the branded wholesaler gets a warning the first time a station it supplies flunks the evaluation. The wholesaler is fined \$500 for the second failure, \$1,000 for the third failure, and \$2,500 for the fourth failure. After the third and fourth failures, a station also can lose its brand at ExxonMobil's sole discretion, the letter said.

Branded wholesalers can pass through the fines to the retailer and can treat a de-brand as a contractual default.

--Reporting by Donna Harris

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### **Marathon Debuts Retailer Incentives for High Mystery Shop Scores**

Marathon Petroleum Corp. has unveiled rewards for Arco and Marathon retailers that get high marks on its new Marathon Insight gas station inspections, the company said in a bulletin to wholesalers and retailers on Thursday. The Marathon Insight program launched Jan. 3.

Like other major oil brands, Marathon uses quarterly mystery shopper surveys to enforce brand standards. The programs penalize stations for repeat failures, but in some cases, they also reward sites for high scores. "Marathon and Arco station owners, operators and employees are the frontline for our brands. Those who go above and beyond to create the ultimate consumer experience deserve recognition and appreciation," the company said in an email to its brand network. "The Insight Dealer Incentives support this effort

and are intended to motivate and promote dealer excellence."

The incentives are awarded quarterly to stations with scores of 94%-100%. The rewards are Amazon gift cards in the first quarter, Marathon or Arco swag in Q2, Marathon gift cards in Q3 and a "brand programs package" in Q4. No further details on the incentives were available, such as the gift card values and what is included in the brand programs package.

In addition to those rewards, stores with scores of 100% are entered into quarterly drawings to be featured on Marathon Fuel social platforms and in the Marathon brand e-newsletter, Mile Marker, the literature said.

Stations that earn a perfect score of 100% across all four quarters in a calendar year will receive a plaque and recognition in the Mile Marker e-newsletter, as well as submission in a drawing for a Disney ticket and hotel package.

--Reporting by Donna Harris

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### **Consumer Pressures Continue to Weigh on Cigarette Volumes**

The adult tobacco consumer is feeling squeezed and it is beginning to show on the backbar.

According to Bonnie Herzog, managing director at Goldman Sachs, the health of the tobacco consumer appears weaker as broad-based inflationary pressures, lower discretionary income and tightening regulation continue to drive lower usage and downtrading.

Based on feedback from its retailer and wholesaler contacts in its fourth quarter 2022 Nicotine Nuggets survey, Goldman Sachs remains cautious on the U.S. tobacco and nicotine industry in the near term, she added.

The contacts in the survey represent approximately 104,000 convenience store locations across the United States, or roughly 70 percent of the channel.

The survey found that cigarette volume declines accelerated in the fourth quarter, reflecting ongoing pressure on the consumer from broader inflation and frequent manufacturer price hikes. Those pressures are driving reduced tobacco purchase frequency, downtrading to affordable non-combustible options, a shift to single packs vs. cartons/multipacks, and fewer store trips and lower spending per store trip on tobacco/nicotine products.

Herzog pointed out that downtrading pressure remained elevated and approximately 55 percent of the survey respondents noted that despite easing gas prices, fourth-tier and discount brands are increasing their market share.

Additionally, 64 percent of respondents said manufacturer pricing power is lower today vs. last year. Many respondents, according to Herzog, highlighted that price increases are starting to have a significant impact on cigarette volumes and drive accelerated downtrading.

Other key Nicotine Nuggets takeaways include:

- Smokeless nicotine offerings remain strong, led by modern oral nicotine brands ZYN and on!, supported by increased promotional activity.
- Electronic cigarette volumes decelerated, primarily reflecting weakness in Juul following confusion created by the Food and Drug Administration's marketing denial orders in June, partially offset by strength in Vuse Alto which continues to capture market share from Juul.
- The promotional environment remained broadly unchanged for most nicotine categories; however, promotion levels were lower for premium cigarettes, while oral nicotine pouch promotions were higher sequentially.

#### *Price Increases*

Most recently, British American Tobacco (BAT) took a cigarette list price increase of 15 cents per pack on Newport (menthol), Camel and Pall Mall Box; 25 cents per pack on Newport (non-menthol); and 38 cents per pack on Pall Mall Non-Filter and Pall Mall Vintage Gold.

Separately, BAT also announced several list price increases on oral tobacco, including 9 cents to 13 cents per tin increases on Camel Snus and Grizzly Snus, and three other oral brands, as well as a 10-cents per pouch increase and 40 cents per tin increase on Natural American Spirit RYO.

Winston-Salem-based Reynolds American Inc. is a U.S. subsidiary of BAT. The increases are effective with orders and deliveries on or after Jan. 2, as Convenience Store News previously reported.

Richmond, Va.-based Altria Group Inc. followed suit and implemented a cigarette list price hike of 15 cents per pack, or 2 percent to 3 percent increase, on Marlboro, Basic, Chesterfield, L&M and L&M Simple Tobacco. The manufacturer also increased the list price of Benson & Hedges, Merit, Nat's, Parliament and Virginia Slims by 20 cents per pack, according to Herzog.

Altria's increases went into effect on Jan. 22.

#### **FDA Appeals Decision to Block Graphic Cigarette Warnings**

The Food and Drug Administration (FDA) wants its graphic cigarette health warning regulations back in play.

Earlier this month, the agency filed a notice of appeal with the U.S. Court of Appeals for the Fifth Circuit to appeal the decision by the U.S. District Court for the Eastern District of Texas to invalidate the FDA's graphic warnings, according to the National Association of Tobacco Outlets.

On Dec. 7, 2022, the U.S. District Court for the Eastern District of Texas blocked the agency's regulations citing free speech protections under the First Amendment to the U.S. Constitution. By vacating the regulations, the graphic cigarette health warnings are nullified and devoid of any legal effect, as Convenience Store News previously reported.

The decision by U.S. District Judge J. Campbell Barker came in a lawsuit filed by R.J. Reynolds Tobacco Co., Santa

Fe Natural Tobacco Co., ITG Brands LLC, Liggett Group LLC and several other companies.

In that decision, the court determined that the set of graphic cigarette health warnings would have compelled manufacturers and retailers to speak by displaying cigarette packages on store shelves and advertising cigarettes when, if given the choice, manufacturers and retailers would choose not to do so.

The court also found that the graphic cigarette health warnings were not purely factual, but rather open to interpretation by consumers. In addition, the warnings were not narrowly tailored, but rather more extensive than necessary.

The issue dates back to 2011 when the FDA issued its first rule requiring nine text and graphic picture health warnings on the top half of the main front and back panels of cigarette packages, and 20 percent of the top of cigarette advertisements made or produced by manufacturers or retailers.

The rule came against several legal challenges and implementation was postponed multiple times after several tobacco companies asked for the date to be moved back. That initial rule came two years after the Family Smoking Prevention and Tobacco Control Act granted the agency regulatory authority over tobacco.

#### **RAI Services Co. Urges FDA to Step Up Action Against Illegal Vapor Products**

RAI Services Co. is calling on the Food and Drug Administration (FDA) to adopt a new enforcement policy directed at illegally marketed disposable electronic nicotine delivery system (ENDS) products.

"As the agency well knows, use of ENDS products in the United States has shifted to disposable products. And a new enforcement policy, one that is specifically directed at these disposables that are on the market illegally, is needed to better protect public health," RAI wrote in petition to Xavier Becerra, secretary, Department of Health & Human Services; Robert Califf, commissioner of the FDA; and the Divisions of Dockets Management Food and Drug Division.

The manufacturer requests that the FDA endorse an enforcement policy targeting illegally marketed disposable ENDS products. The policy would close an existing loophole in the FDA's current tobacco enforcement efforts, especially when it comes to youth, according to RAI.

- RAI requests that the FDA prioritize enforcement for:
- Any flavored disposable ENDS, except for tobacco- or menthol-flavored products;
- Any disposable ENDS containing nicotine derived from any source other than tobacco that lacks premarket authorization;
- Any disposable ENDS containing nicotine derived from tobacco that was not on the market as of Aug. 8, 2016, or for which the manufacturer either failed to submit an application by Sept. 9, 2020, or submitted a premarket tobacco application (PMTA) to FDA by that deadline,

but received a negative action that is not being challenged in court;

- Any disposable ENDS for which the manufacturer has failed to take, or is failing to take, adequate measures to prevent minors' access; and
- Any disposable ENDS targeted to, or whose marketing is likely to promote use by, minors.

"The action requested will better protect the public health and ensure a level playing field by discouraging illicit products and maintaining the availability of legally marketed, potentially less harmful options for current and former adult smokers who have transitioned or wish to transition from combustible cigarettes," RAI wrote. "Enforcement action should occur at both retail establishments and ports of entry."

Under the Tobacco Control Act, Congress granted the FDA the authority to regulate the manufacturing, marketing and distribution of cigarettes, cigarette tobacco, roll-your-own tobacco and smokeless tobacco products to protect the public health and reduce the use of tobacco products by minors. The act also gave the FDA authority to issue regulations deeming other products that meet the statutory definition of a tobacco product to be subject to FDA authority.

On May 5, 2016, the FDA finalized its deeming rule, extending its regulatory authority to additional tobacco products, including ENDS. After the rule's effective date, newly deemed tobacco products (those not commercially marketed in the United States as of Feb. 15, 2007) were required to obtain marketing authorization.

Pursuant to its enforcement discretion, FDA provided that any such products that were already on the market as of Aug. 8, 2016, could remain on the market for designated periods provided they met the agency's deadline for submission of a request for marketing authorization. After repeated adjustments of the deadlines for PMTAs for ENDS products and ensuing litigation, FDA gave manufacturers of ENDS products until Sept. 9, 2020, to file applications.

#### **Your Inspection License May be Worth Money**

Depending on where you are located, it may be possible to sell your license. Before merely turning it in, contact the association for further information.

#### **Age Requirements for Sellers of Alcohol and Tobacco**

A minor (person under the age of 18) can be employed by a grocery store or drug store licensee (1) to handle and deliver alcoholic beverages, and (2) as a cashier when in the presence and direct supervision of a person of the age of 18 or older, or (3) in a position requiring the handling of empty containers in the direct supervision of a person of the age of 21 or older.

There are no such restrictions for sale of tobacco.

#### **DMV Record Retrieval**

DMV record retrieval is available to association members and affiliates at a cost of \$12 per record. Additionally, you may order DMV certified paper abstracts of driver's license, vehicle registration, and vehicle title records for an additional fee of \$2 per abstract. Please call 607-723-1849.

### **SERVICE STATIONS REPAIR SHOPS USED CAR DEALER ATTENTION**

Do you have problems

1. Getting into business - going out of business?
2. With government, Federal, State and Local?
3. Are you trying to settle a violation?
4. Need an attorney?
5. Have a small claims case?
6. Need a license, renew a license?
7. Learn and understand the laws that regulate your business?

We can help with almost any problem, legal environmental or regulatory.

Just call us 518-452-4367

### **YOU NEED TRAINING WE HAVE TRAINING**

Just go to our website

<http://www.nysassrs.com/>

Click on the TRAINING link in the black bar

This will bring you to our training website

Where you will find such topics as:

Alcohol Training Awareness Program (ATAP)

Tobacco Clerk Training Program (TCTP)

Motor Vehicle Air Conditioning (MVAC)

As well as

Inspector Training Material

Class "C" Operator Training Manual

and a

Sexual Harassment Handbook

*This training is brought to you by*

*The New York State Association*

*Of Service Stations and Repair Shops*

**Your Association Is A Member**



***WE'RE PUTTING OUR YEARLY REMINDER LIST OUT THERE AGAIN FOR 2023,  
BECAUSE YOU NEED TO GET TO IT AND DO IT!***

## ATTORNEY'S CORNER

*By Larry Culley*

*THE HOLIDAYS ARE OVER AND IT'S TIME TO BUCKLE DOWN AND FLY RIGHT IN 2023!*

*ARE YOU READY FOR FREDDIE IN 2023? HERE'S HOW!*

ARE ALL YOUR PERMITS AND LICENSES (INCLUDING YOUR OWN AND YOUR EMPLOYEE'S DRIVER'S LINCENSES) VALID?

ARE YOU PAYING YOUR EMPLOYEES UNDER THE NEW MINIMUM WAGE LAW

ARE YOU PERFORMING INSPECTIONS WITH A TWO-PIECE WINDOW TINT METER IN ACCORDANCE WITH THE RECENT INSPECTION REGULATIONS REGARDING TINTED GLASS?

ARE YOU DISPLAYING SIGNS MANDATED BY D.M.V. AND OTHER GOVERNMENT AGENCIES INCLUDING THE POSTING OF LICENSED INSPECTORS AT INSPECTION STATIONS?

ARE YOU COMPLETING AND FILING THE IMMIGRATION FORMS FOR ALL NEW EMPLOYEES, "I-9"? ARE YOU COMPLETING AND FILING THE N.Y.S. "NEWLY HIRED EMPLOYEES" FORM?

ARE YOU CHECKING YOUR VAPOR RECOVERY EQUIPMENT & COMPLYING WITH THE NEEDED 5 YEAR TEST (THIS IS BEING PHASED OUT BUT IS STILL ENFORCEABLE AT THIS TIME)?

ARE YOU FILING YOUR YEAR END TAXES?

ARE YOU PREPARED TO MAINTAIN DAILY, ACCURATE, GASOLINE INVENTORY RECORDS AS REQUIRED BY LAW (DIP BOOKS ARE AVAILABLE FROM YOUR ASSOCIATION)?

ARE YOU MAINTAINING THE PROPER COLOR CODE ON YOUR GASOLINE FILL LINES? HAVE ALL YOUR TANKS WHICH ARE REQUIRED TO BE REGISTERED ACTUALLY REGISTERED?

ARE YOU DISPLAYING THE OIL SIGN: "WE ACCEPT WASTE OIL FOR RECYCLING"? ARE YOU HANDLING USED OIL FILTERS PROPERLY?

ARE YOU DISPLAYING THE SIGN: "WE MUST ACCEPT VEHICLE BATTERIES FOR RECYCLING"?

ARE YOU MAINTAINING THE FILE OF MATERIAL SAFETY DATA SHEETS (MSDS)?

ARE YOU AND YOUR EMPLOYEES AWARE OF THE POSSIBLE HEALTH HAZARDS ASSOCIATED WITH THE VARIOUS CHEMICALS AND THE PRECAUTIONS THAT SHOULD BE TAKEN?

HAVE YOU FILED YOUR "COMMUNITY RIGHT TO KNOW" FORM ON STORED SUBSTANCES IN N.Y.C.? **THE DEADLINE IS MARCH 1ST.**

ARE YOU MAINTAINING A SAFE WORKING ENVIRONMENT? ARE ALL YOUR FIRE EXTINGUISHERS AND SUPPRESSION SYSTEMS PROPERLY CHARGED AND WORKING? ***SAFETY IS FREE! USE IT GENEROUSLY.***

ARE YOU USING APPROVED REPAIR ORDER FORMS? ARE YOU PROVIDING ALL INFORMATION REQUIRED ON THE ORDER FORM BY D.M.V.?

ARE YOU A MEMBER OF YOUR ASSOCIATION SPONSORED WORKER'S COMPENSATION GROUP? THOSE WHO ARE RECEIVED DIVIDENDS FOR OVER 25 YEARS. ARE YOU ALSO PROVIDING DISABILITY INSURANCE FOR YOUR EMPLOYEES AS REQUIRED BY N.Y.S.?

ARE YOU PROVIDING QUALITY REPAIRS? ARE YOU USING QUALITY PARTS? DON'T CREATE FUTURE PROBLEMS WITH A FALSE ECONOMY?

ARE YOU AND YOUR TECHNICIANS MAKING TIME FOR EDUCATION (WORK SMARTER NOT HARDER)?

ARE YOU MAINTAINING A CLEAN, ATTRACTIVE LOCATION? LOOK AROUND, YOU MAY BE SURPRISED. ARE YOU MAINTAINING A SENSIBLE PROFIT MARGIN? YOU CANNOT SURVIVE WITHOUT IT. ARE YOU PREPARED TO SIT DOWN WITH YOUR ACCOUNTANT AND REVIEW YOUR OPERATIONS?

ARE YOU PERFORMING INSPECTIONS PROPERLY? DO IT RIGHT OR DON'T DO IT AT ALL! ARE YOU GIVING WRITTEN INSPECTION APPOINTMENTS? WRITTEN APPOINTMENTS MUST BE ON YOUR LETTERHEAD.

DO YOU CARD FOR CIGARETTES AND ALCOHOLIC BEVERAGES? DO YOU HAVE SOFTWARE AT YOUR P.O.S. PREVENTING SALES OF THESE PRODUCTS WITHOUT AN I.D. BEING SUBMITTED?

IF YOU HAVE DUAL ISLANDS WITH SELF SERVE - FULL SERVE, IS THE "HANDICAP" SIGN POSTED?

ARE YOUR CLERKS TRAINED AND CERTIFIED UNDER THE TOBACCO LAW AND ALCOHOL LAW?

DOES THE OWNER, MANAGER AND CLERKS HAVE AN "A", "B" OR "C" CERTIFICATION UNDER THE UNDERGROUND STORAGE TANK REGULATIONS?

HAVE YOU COMPLETED SEXUAL HARASSMENT TRAINING WITH YOUR EMPLOYEES AND RECEIVED VERIFICATION OF TRAINING FROM THEM THIS YEAR.

ARE YOU READY? ONLY YOU KNOW THE ANSWER. IF YOU'RE UNSURE, CALL YOUR AREA REPRESENTATIVE.

*The contents of this column are not intended as legal advice. I give no legal advice without an appointment and interview with a client.*

## **New Catalytic Converter Law in Effect**

On October 17<sup>th</sup>• 2022 Governor Hochul signed into law NYS Senate Bill 5.9428. The new law has an effect on record keeping requirements for our industry and a wave of enforcement efforts are expected to enforce the new law. Please reference the following bullet points in order to stay compliant with the new law:

- Applies to vehicle dismantlers, junk yards, mobile car crushers, itinerant vehicle collectors and salvagers (repair facilities please reference note below)
- Catalytic converters are now considered a major component part (like airbags/inflatable restraints) and are subject to the same record keeping requirements
- In addition to the inspection of records upon request, above referenced facility types are required every 60 days to furnish to the Commissioner "all records regarding the number of catalytic converters they took in within such 60 day period subject to the record keeping requirements"
- Civil penalties and/or business license implications will apply to any facilities who fail to abide by the new law

### **NOTE FROM EXECUTIVE DIRECTOR:**

It is my suggestion that all repair shops who are in the process of replacing a catalytic converter be extremely diligent in retention of purchase receipt from the supplier (whoever that may be) and also receipts from the disposition of all used/spent catalytic converters and cores. In short, cover all of your bases. Do not give the Authorities any chance to question your business practices. If you have any questions, please don't hesitate to contact your Association's office.

If you have any questions about this new law or anything else, feel free to **reach out!**

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**STATE OF NEW YORK**

9428

IN SENATE  
May 26, 2022

Introduced by Sen. SAVINO -- read twice and ordered printed, and when printed to be committed to the Committee on Transportation

AN ACT to amend the vehicle and traffic law, in relation to the maintenance of records of catalytic converters

**The People Of the state Of New Ygrk. represented in Senate and Assem- bly. dg enact as fllgws:**

1. Section 1. Paragraph (a) of subdivision 5 of section 415-a of the
2. vehicle and traffic law, as amended by chapter 180 of the laws of 2006,
3. is amended and a new paragraph (c) is added to read as follows:
4. (a) Any records required by this section shall apply only to vehicles
5. or parts of vehicles for which a certificate of title has been issued by
6. the commissioner or which would be eligible to have such a certificate
7. of title issued. Every person required to be registered pursuant to this
8. section shall maintain a record of all motor vehicles, trailers, and
9. major component parts thereof, coming into his **or her** possession togeth-
10. er with a record of the disposition of any such motor vehicle, trailer
11. or part thereof and the date such motor vehicle, trailer or part thereof
12. is received and shall maintain proof of ownership for any motor vehicle,
13. trailer or major component part thereof while in his **or her** possession.
14. For the purposes of this article an inflatable restraint system shall be
15. a major component part **and a catalytic cgnverter shall be a major**
16. **compo-**
17. **nent part.** Such records shall be maintained in a manner and form
18. prescribed by the commissioner. The commissioner may, by regulation,
19. exempt vehicles or major component parts of vehicles from all or a
20. portion of the record keeping requirements based upon the age of the
21. vehicle if the commissioner deems that such record keeping requirements
22. would not further the purposes of the motor vehicle theft prevention
23. program established by section two hundred twenty-three of this chapter.
24. Upon request of an agent of the commissioner or of any police officer
25. and during his **or her** regular and usual business hours, a vehicle
26. dismantler shall produce such records and permit said agent or police
27. officer to examine them and any vehicles or parts of vehicles which are
28. subject to the record keeping requirements of this section and which are
29. on the premises. **In addition. the commissioner shall require every vehi-**
30. **cle dismantler to produce. every sixty days. all records regarding the**
31. **number of catalytic converters they took in within such sixty-day period**
32. **subject to the record keeping requirements of this section.** Upon request
33. of any agent of the commissioner and during his **or her** regular and usual
34. business hours, a salvage pool, mobile car crusher or itinerant vehicle

6. collector shall produce such records and permit said agent or police  
7. officer to examine them and any vehicles or parts of vehicles which are  
8. subject to the record keeping requirements of this section and which are  
9. on the premises. The failure to produce such records or to permit such  
10. inspection on the part of any person required to be registered pursuant  
11. to this section as required by this paragraph shall be a class A misde  
12. meanor. If a vehicle dismantler has gained money or property by failing  
13. to produce records of the number of catalytic converters they take in as  
14. required by the commissioner pursuant to this paragraph. the court may  
15. order such defendant to pay an amount. fixed by the court. not to exceed  
16. double the amount of such defendant's gain from the commission of such  
17. offense.  
18. For the purposes of this article, the term "catalytic converter"  
19. shall mean a device installed in the exhaust system of an internal  
20. hydrocarbon  
21. combustion engine that utilizes catalytic action to oxidize  
22. and carbon monoxide emissions to carbon dioxide and water.  
23. § 2. Section 415 of the vehicle and traffic law is amended by adding a  
24. new subdivision 21 to read as follows:  
25. 21. New motor vehicle etching kits. Every new motor vehicle dealer and  
26. every qualified dealer shall be required to stock etching kits that are  
27. capable of etching a traceable serial number onto the catalytic convert  
28. er of a new motor vehicle that can be clearly seen and quickly linked  
29. back to the vehicle. such etching kits shall be offered by every new  
30. motor vehicle dealer and qualified dealer to any person purchasing a new  
31. motor vehicle. at no more than the cost of such etching kit to such  
32. dealer.  
33. § 3. This act shall take effect on the one hundred eightieth day after  
34. it shall have become a law. Effective immediately, the addition, amend  
35. ment and/or repeal of any rule or regulation necessary for the implemen  
36. tation of this act on its effective date are authorized to be made and  
completed on or before such effective date.



## **New Employment Laws from the Omnibus Spending Bill**

With the text of the final bill clocking in at over 1,600 pages, it is no wonder that some items that made their way into the 2023 Consolidated Appropriations Act (aka the omnibus spending bill) that was signed into law at the end of 2022 have gotten less attention than others.

In particular, small businesses should be aware of two important employment law changes that were included as part of the spending bill and which will go into effect this year.

### *Pregnant Workers Fairness Act –*

The provisions will go into effect on June 27, 2023 and apply to all private employers with 15 or more employees. In sum, the new law requires covered employers to provide reasonable accommodations for pregnancy, childbirth or related medical conditions the same way that they would for other disabilities.

Up to this point, federal law has only gone so far as expressly prohibiting discrimination against employees because of their pregnancy or pregnancy related conditions. In 2015, the Supreme Court ruled that it would be discriminatory for an employer to provide an accommodation to an employee with a non-pregnancy related short-term disability but refuse a similar accommodation to an employee with a pregnancy related condition. But where there is no comparable employee with a non-pregnancy related disability, an employee's rights to seek an accommodation for a pregnancy-related disability became blurry.

Because of the lack of clarity and protections at the federal level, more than half of the states have already enacted some type of pregnancy accommodation law. Accordingly, the extent to which the Pregnant Workers Fairness Act will change an employer's legal obligations will largely depend upon where the employer is located. To the extent that the employer is located in a state that imposes obligations that go above and beyond the Pregnant Workers Fairness Act, the employer will still need to comply with the more rigorous state law. To the extent that the employer is located in a state with no pregnancy accommodation law, the employer will need to make sure that they are complying with the Pregnant Workers Fairness Act by June of this year.

The specific requirements of the Pregnant Workers Fairness Act are as follows:

-Covered employers are prohibited from refusing to provide reasonable accommodations for "known limitations" arising from an employee's pregnancy, child birth or related medical condition. Employers will only be excused from providing a reasonable accommodation if it can show that the accommodation would impose an undue hardship on the operation of the business. What constitutes a "reasonable accommodation" or an "undue hardship" for the purposes of the Pregnant Workers Fairness Act will be the same as under the Americans with Disabilities Act (ADA) and there has been extensive rulemaking, guidance and case law fleshing these concepts out in the context of the ADA.

-When it comes to making an accommodation, employers will be further prohibited from forcing employees to accept an accommodation selected by the employer without going through the interactive process with the employee. The interactive process is also a concept defined in the ADA which is incorporated into the

Pregnant Workers Fairness Act. Additionally, employers may not force employees to take leave (paid or unpaid) if another form of reasonable accommodation is available that would allow the employee to perform the essential functions of their job.

-The new law further prohibits employers from denying employment opportunities to otherwise qualified employees or applicants based on the fact that they will need an accommodation due to limitations from pregnancy, childbirth or a related medical condition.

-Finally, the law prohibits employers from taking adverse action against an employee for requesting or taking advantage of a reasonable accommodation for limitations related to pregnancy, child birth or a related medical condition.

Like the ADA and other federal employment non-discrimination laws, the Equal Employment Opportunity Commission (EEOC) will be primarily responsible for enforcing the new law.

#### *Pump for Nursing Mothers Act –*

The other notable employment law change that was passed as part of the omnibus spending bill is the Pump for Nursing Mothers Act. The Pump for Nursing Mothers Act expands employers' obligation to provide employees with time and space for lactation. The major provisions of the new law went into effect at the time the legislation was signed into law.

In 2010 Congress amended the Fair Labor Standards Act (FLSA) to require employers to provide non-exempt employees with breaks and a private place to express breast milk for a year after the birth of their child. The Pump for Nursing Mothers Act expands the requirement so that it applies to all employees, exempt and non-exempt. The newly expanded law requires that employers provide employees with reasonable lactation breaks for up to a year after their child's birth and that the employer designate a private place that is not a bathroom where that the employee may use to take these breaks free from intrusion from their coworkers or others. The law does not require that employees be paid for these breaks unless they are not completely relieved of their work duties while taking the breaks (for example if they are working at the same time as they are pumping).

There are a few exceptions to these requirements. First, businesses with less than fifty employees do not have to comply with the break requirements if they can establish that the obligations would "impose an undue hardship causing the employer significant difficulty or expense, when considered in relation to the size, financial resources, nature or structure of the employer's business." Small businesses that plan to rely on this exception are well advised to seek legal counsel to ensure that they can satisfy the high standard that they will be required to meet to establish an undue hardship.

There are also industry specific exemptions (which were negotiated at the last minute and drew some ire) for air carriers, rail carriers and motor coach operators.

Before initiating an action against an employer for failing to comply with the Pump for Nursing Mothers Act, employees will be required to notify the employer of their non-compliance and provide the employer with ten days to come into compliance. Accordingly, businesses should take their obligations under the law, and any complaints of non-compliance by employees very seriously.

Employers should also check whether there are any state or local laws that apply to them which relate to lactation breaks. As is the case when it comes to any federal employment law, if the employer is located in a jurisdiction that has a state or local law that is more rigorous than the federal law, the employer will need to comply with the more restrictive requirements.