

NEW YORK STATE ASSOCIATION OF SERVICE STATIONS & REPAIR SHOPS, INC.

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EPA Approves Petition to End Use of 134a as a Refrigerant on New Cars

The U.S. Environmental Protection Agency (EPA) has approved a petition by the Natural Resources Defense Council (NRDC) to prohibit the use of HFC-134a as a refrigerant in new motor vehicles. Currently, 134a is a refrigerant used in nearly all motor vehicles. However, environmental groups are now targeting its use based on its high global warming potential (GWP). While there are not many good low-GWP refrigerants that have been approved by EPA for use on motor vehicles, the agency will soon issue a final rule that will permit the use of 1234yf as a substitute refrigerant on new vehicles. Considered the most promising of the substitute refrigerants, 1234yf has a GWP of 4, while 134a has a GWP of 1400.

The approval of the petition means that EPA will initiate a proposed rulemaking, which would delist 134a as an acceptable substitute refrigerant under the agency's Significant New Alternatives Program (SNAP). Among the issues that will need to be determined during the rulemaking process is the time frame for when alternative refrigerants will be available and the amount of lead time car companies will need to incorporate those new alternatives. The rulemaking will not include any proposal to restrict the use of 134a in servicing vehicles that currently contain the refrigerant, nor require retrofitting of legacy vehicles with a new refrigerant.

The approval of the NRDC petition represents a partial victory for the environmental group, which had asked for a prohibition on use of 134a in multiple areas including aerosols and commercial refrigeration units. However, the agency believes that the petition did not provide sufficient information to extend the prohibition beyond new vehicles at this

time. NRDC has vowed to continue pressuring EPA to phase out 134a for other uses.

Recreational Vehicle Groups Petition EPA for Continued Availability of E10

A group of recreational vehicle associations have filed a petition with the U.S. Environmental Protection Agency (EPA) to request a regulation that would ensure the continued sale of gasoline with no more than 10 percent ethanol (E10) content. EPA had issued rules last year that permit the sale of 15 percent ethanol (E15) for cars and light trucks 2001 and newer. However, the recreational vehicle groups contend that the higher ethanol blends could create engine problems for boats, motorcycles and off-road vehicles. The groups are concerned that gasoline marketers will phase out E10 as older vehicles are retired due to the high cost of maintaining tanks and pumping facilities for different ethanol blends.

Groups filing the petition included the American Motorcyclist Association, the Association of Global Automakers, Association of Marina Industries, BoatUS, International Snowmobile Manufacturers Association, Motorcycle Industry Council, National Boating Federation, National Marine Manufacturers Association, Outdoor Power Equipment Institute, Personal Watercraft Industry Association, Recreational Off-Highway Vehicle Association and the Specialty Vehicle Institute of America.

Rep. Frank Throws Support to Swipe Fee Delay

Rep. Barney Frank (D-MA) announced his intention to back a bill that delays

implementation of debit-card fee reform, The Hill reports. Frank, ranking member of the House Financial Services Committee, was instrumental in passing the Dodd-Frank financial reform legislation.

Recently, Federal Reserve Chairman Ben Bernanke said that the Fed would not meet the April 21 deadline to finalize the rules. Frank said in a statement that swipe fee limits needed to be looked at again in light of the Fed's missing of the deadline.

"The Federal Reserve's announcement that they cannot meet the deadline on interchange fees confirms my view that this is the only part of the financial reform bill that needs to be amended," said Frank. "For this reason, I support legislative action to postpone the deadline so that we can revisit it."

Earlier, Frank had indicated he would not be opposed to rewriting the Durbin amendment, which has strict limits on fees that banks can charge merchants for processing debit card transactions.

However, Sen. Dick Durbin (D-IL) said any delay would be a "serious mistake." The Fed now has until July 21 to finalize rules.

"I think that they can strike a balance and make certain these banks receive what's reasonable and proportional, but not the overcharge that they currently have," said Durbin.

Both the Senate and the House have proposals that would push back swipe fee limits for two years at least. NACS urges members to contact their lawmakers and make their voices heard on this important issue.

President Obama Signs 1099 Tax Reform Repeal Into Law

President Obama signed legislation on April 14 to repeal Form 1099 reporting requirements originating from his comprehensive health care law. The legislation, H.R. 4, eliminates the requirement that businesses must file a Form 1099 for any payment to corporations for goods and services more than \$600 each year for each vender involved. The passing of this legislation marks the first successful attempt by the U.S. Congress to modify President Obama's health care law. The \$24.7 billion price tag of the Form 1099 repeal is paid for through changes to the amounts required for repayment of advance premium assistance tax credits for health insurance.

After signing the bill into law, the president stated, "Small business owners are the engine of our economy and because Democrats and Republicans worked together, we can ensure they spend their time and resources creating jobs and growing their business, not filling out more paperwork. I look forward to continuing to work with Congress to improve the tax credit policy in this legislation and I am eager to work with anyone with ideas about how we can make health care better or more affordable."

Congress Considers Creating Nexus for State Taxing of Business Activity

Representatives from state government and small businesses faced off at an April 13 hearing held by the Subcommittee on Courts, Commercial and Administrative Law of the House Judiciary Committee over legislation (H.R. 1439) that would prohibit states from imposing taxes on business activity unless a business has a minimum in-

state physical presence of 15 days per year.

"Introduced by Rep. Bob Goodlatte, R-Va., the Business Activity Tax Simplification Act, the bill is strongly opposed by state governments based on the significant lost tax revenue that they believe would result. While estimates vary, R. Bruce Johnson, Utah State Tax Commissioner, contended that the states would lose about \$6.6 billion if the legislation were enacted. Johnson conceded that the current nexus rules are confusing, but he contended that the issue should be resolved by states working with business interests and not the federal government.

Supporters of H.R. 1439 believe that creating a nexus for when states could impose taxes would simplify tax reporting obligations for small companies, reducing confusion, uncertainty and administrative costs. According to Rep. Goodlatte, small businesses "are often the hardest hit when aggressive states and localities impose excessive tax burdens on out-of-state companies."

Safety Inspection, Health Care Reform and Right to Repair to Top Agenda for Aftermarket Legislative Summit

Right to Repair, health care reform and the need for vehicle safety inspection are three of the issues that individuals attending the 2011 Aftermarket Legislative Summit will talk to their elected officials about when they visit Capitol Hill, June 20-21.

Right to Repair legislation (H.R. 1449) was re-introduced in Congress on April 8 by Reps. Edolphus Towns, D-N.Y. and Todd Platts, R-Pa. This pro-consumer, pro-small business bill requires car companies to make available, at a reasonable cost, the same information, tools and software that they

make available to their franchised dealers. While the threat of legislation has pushed car companies to make more information and tools available to independents – absent legislation, the increasing use of computers on vehicles will mean that the industry's competitive future will be controlled more and more by the vehicle manufacturers and their franchised dealers. This is why enactment of Right to Repair legislation continues to be a priority for AAIA and for this year's Legislative Summit.

While Congress passed health care reform legislation in the last session, the bill will do little to reduce the cost of health insurance for many of the small- and medium-sized businesses – and in fact, many businesses will face greater costs and difficulties in providing health insurance for their employees. Unfortunately, attempts by some legislators to roll back or repeal requirements put in place as part of President Obama's Patient Protection and Affordable Care Act, have been unsuccessful. Clearly, businesses will need to make their voices heard by both Democrats and Republicans in order for any changes to the health care reforms to become a reality.

Finally, last but certainly not least, is the need for car owners to get serious about vehicle safety. Studies performed in Missouri and Pennsylvania continues to find that mandatory safety inspection plays a significant role in reducing fatal crashes. The need for safety inspection is made even more urgent due to the aging of the vehicle fleet and the fact that the studies have found that older vehicles tend to have a greater incidence of component failure versus newer vehicles. Notwithstanding the public safety benefits from safety inspections, there are only 18 states and the District of Columbia that still require safety inspection and many of those are constantly under attack by state legislators. Congress needs to take a more

active role in this issue by pressing states to retain or institute vehicle safety inspection and by requiring the Department of Transportation to actively promote vehicle maintenance as part of its responsibility to maintain safety on American highways.

The summit simply will not be a success unless you are here. This event provides an important opportunity for the aftermarket to show its economic and political strength by coming to Washington, D.C. during the summit meeting with legislators and educating them on our key issues and on the importance of the industry to the economy and the motoring public. There is no fee to attend – attendees just have to make their travel arrangements. To find out how you can participate in the 2011 Legislative Summit, visit www.aftermarket.org.

AAIA Defends Independents' Need for Diagnostic Codes

The Automotive Aftermarket Industry Association (AAIA) testified in support of Proposed Bill No. 160, introduced by Senator Martin Looney in Connecticut, which would require car companies to share diagnostic codes with independent repair technicians. Aaron Lowe, AAIA vice president, government affairs, urged the Joint Committee on General Law to approve the bill in order to ensure that independent shops have the ability to repair today's highly sophisticated computer-driven vehicle systems.

“Today, nearly every vehicle system, from air bags to tires, is controlled or monitored by onboard computers,” Lowe said. “While these computers provide important benefits in terms of safety, fuel efficiency and convenience, they also have provided the vehicle manufacturer with the ability to control who perform repairs.”

Lowe stated that Right to Repair legislation that is now under consideration in many states and Congress would require car companies to make available, at a fair and reasonable cost, the same tools and information that they make available to their franchised dealers, thus ensuring that consumers can have a choice on where they bring their vehicle.

“The basic concept behind Right to Repair is that a car owner who spends an enormous percentage of their household savings to purchase a new or used car, should have the ability to determine who repairs their vehicle, whether it's the new dealer or the independent shop. In the current scenario, the company has all of the power to make that determination,” Lowe said.

Lowe took issue with allegations made by the car companies and their dealers that testified that Right to Repair would require car companies to expose trade secrets.

“Right to Repair legislation provides extensive protection for car company trade secrets and the car companies have never been able to point to a provision in any of the current bills that has the potential to violate their intellectual property rights,” said Lowe.

Lowe also disputed claims by the Automotive Service Association (ASA) and the car companies that all of the information is available. Lowe told the committee that independent shops continue to be frustrated by the fact that, despite their extensive investments in information, tools and training, they continue to run into roadblocks when attempting to complete repairs on many vehicles and are forced to either tell the customer they need to return to the dealer or they take the car to the dealer for the customer, so as to not jeopardize the car owner's trust in that shop.

The National Automotive Service Task Force (NASTF) also testified at the hearing regarding the need for the legislation.

“NASTF is a one-person operation aimed at resolving a big problem,” Lowe said. “It often takes weeks or months to obtain a resolution from the manufacturer and often that resolution is a response that the information is not available or we are working to resolve that issue. A shop that has a car in one of its service bays needs to have that car repaired the same day, or at worst, the next, or will lose that business permanently. That is why the organization is rarely used by independent service facilities.”

In addition to Connecticut, Right to Repair bills have been introduced in Massachusetts, New York and Oregon as well as the U.S. House of Representatives.

EPA Finally Moves to Abandon Stage II Refueling Rule

Officials at the Environmental Protection Agency may be close to allowing marketers to remove clunky Stage II vapor recovery equipment from their pumps, Oil Express has learned.

Under the Clean Air Act amendments of 1990, EPA was empowered to abandon Stage II once it had determined that onboard vapor recovery canisters on vehicles were in such “widespread use” that Stage II was no longer needed.

However, getting EPA to the point of defining “widespread use” has taken more than 10 years. The agency has been consulting with industry groups and others for years about whether “widespread use” should refer to the number of cars equipped or the number of vehicle miles traveled,

among other definitions.

“Onboard vapor recovery systems are more efficient than Stage II but EPA has dragged its feet because it didn’t want to upset environmentalists,” says one source.

The cost of equipping a station with Stage II recovery and conducting maintenance, testing and the payment of license and other fees can cost a marketer in excess of \$100,000 per site.

EPA has now sent a proposal to the Office of Management and Budget that would define what the agency considers to be “widespread use.” OMB typically has 30 days to review the proposal before sending it back to EPA for publication or revision.

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Association Comment

NYS Dept of Environmental Conservation is in the process of developing draft regulations of eliminating Stage II requirements but in the same draft are upgrades to the Stage I system.

If DEC is successful, Stage I will require an upgrade that can cost up to \$20,000. It includes, constant monitoring of the system and for station that pump 1.2 million gallons or more to install pressure monitoring.

EPA current rules only requires testing every three years. We are in discussions with DEC. Stay Tuned.

Cigarette Smuggling Increases

Cigarette smuggling is becoming big business for drug traffickers and violent criminal gangs, law enforcement officials and court records show, USA Today reports.

Contributing to the increase has been the

boost in state tobacco taxes across the country. The Mackinac Center for public policy found that 27 states have hiked cigarette taxes during 2007 to 2010. The center said that illegal tobacco is an “unintended consequence of high cigarette taxes.”

“Everybody out there (involved in illegal trafficking operations) is tapping into tobacco,” said Larry Penninger, acting director of the tobacco diversion unit of the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF).

Penninger said that some drug and weapon traffickers are actively participating in tobacco smuggling to increase profits. The U.S. government estimates that states and the federal government loses around \$5 billion to cigarette smuggling.

Even with federal law enforcement focused mainly on terrorism, tobacco smuggling has begun to garner more attention. In 2010, the ATF had more than 350 open cases related to tobacco smuggling, way more than the handful of 10 years prior.

Last year, the U.S. Department of Justice reported that it has prosecuted 71 new tobacco smuggling cases, an increase of 39 percent from 2009.

EEOC wins \$451,000 verdict based on gender stereotyping

A federal district court in New Orleans has awarded a male employee of a construction company \$451,000 in damages in a sex discrimination and sexual harassment lawsuit brought by the Equal Employment

Opportunity Commission. The plaintiff was an ironworker who alleged that his male supervisor taunted and harassed him because he perceived him as feminine. The EEOC contended that this was gender stereotyping prohibited under Title VII.

The jury agreed, awarding \$1000 in actual damages, and \$450,000 in punitive and emotional distress damages. The EEOC contended that male on male sexual harassment violates Title VII, even when there is no evidence of sexual interest on the part of the harasser. It is enough for the harassment to occur due to stereotypes about acceptable gender behavior in the workplace.

This gender stereotyping theory has been attempted by a number of plaintiffs in areas of the U.S. that do not prohibit workplace discrimination based on sexual orientation. Federal courts have split on the ability to use Title VII for these claims. This decision demonstrates that the EEOC will aggressively prosecute gender stereotype cases. Employer anti-harassment policies and training should include prohibitions against teasing or other behavior that is based on perceptions over how members of one gender are supposed to act.

Memorandum In Support Bill Number: A1803

Sponsor: Assemblymen Dinowitz

The following bill has been reported to way and means.

The subject bill amends the New York State Administrative Code of the City of New York, in relation to authorizing the payment of rewards in connection with the enforcement of the cigarette tax. It authorizes the Commissioner of Finance to approve suitable rewards for information that leads to the detection of violations of

the tax on cigarettes authorized by the Law. The rewards are to be paid from money collected by the Department of Finance in connection with enforcement of the Law. The rewards will not exceed fifteen percent of amounts collected based on the information provided.

This bill will help the New York City Department of Finance's to enforce the City's cigarette tax. The recent increase in the New York State and New York City cigarette taxes have led to increased efforts by individuals to avoid paying of the City's cigarette tax. The non-payment of taxes on cigarettes hurts honest businesses because they cannot compete with the lower prices of tobacco sales less tax.

For the above reasons the New York State Association of Service Stations and Repair Shops, Inc., its affiliates and members support this bill and urge it be passed into law.

Memorandum In Opposition

Bill Number: A1970 – S603

**Sponsor: Assemblymen Jeffries (MSs)
Senator Peralta**

The following bill has been advanced to the third calendar reading.

The subject bill amends the New York State General Business Law, in relation to prohibiting more than one increase in the price of gasoline in any twenty-four hour period. The purpose of this bill is to prohibit gasoline prices from being adjusted at the pump multiple times daily on the same lot of gasoline, which was purchased wholesale at a fixed price.

This legislation it will make it unlawful for anyone engaged in the sale of motor fuel, or anyone who produces and stores or

exchanges motor fuel at a terminal or facility and who sells or transfers motor fuel through the loading rack at such terminal facility, or an affiliate of such, to increase the price of any grade or quality of motor fuel sold at a retail outlet more than once in a twenty-four hour period. Any violation may result in a civil fine of not more than five hundred dollars to be collected by the corporation counsel for any city or by the appropriate attorney of any political subdivision as shall be designated by the governing body of such political subdivision.

The legislation indicates that as gas prices soar, price gouging follows. Typically the motor fuel industry is lumped to together and suppliers and retailer are the focus of enforcement. Unfortunately the State does not have the muscle to go after suppliers and settles on going after the people least able to defend themselves, the retailers.

For the above reason the New York State Association of Service Stations and Repair Shops, Inc., its affiliates and members oppose this bill and ask it be defeated.

Memorandum In Opposition Bill, A4332

Sponsor - Assemblywoman Millman

The following bill has been advanced to the third calendar reading.

The subject bill amends the New York State General Business Law, in relation to the sale of engine coolant and antifreeze. It provides that any engine coolant or antifreeze that contains 10% or more of ethylene glycol shall only be sold containing 30 PPM of the additive denatonium benzoate.

According to the sponsor engine coolant or antifreeze sold in New York State containing more than 10% or more of

ethylene glycol, a sweet tasting ingredient, must be diluted with 30 PPM of denatonium benzoate, a strong bitter agent. This additive is expected to reduce the risk of accidental poisoning. The bill does not remove the liability of a manufacturer, distributor, recyclers or seller for any personal injury, death, or property damage caused by or that results from the inclusion of denatonium benzoate.

While there may be some merit for this type of legislation, New York will once again be out front with restrictions on a product that force manufacturers to provide a boutique product. This will increase the price of the product as compared to other states. It will send motorists to bordering state for cheaper product, increase the cost to repair shops driving motorist to other states without this restriction. New York must learn that by being first in changing products will increase the cost of that product. This will hurt New York State businesses and eventually reduce tax income to the State.

For the above reasons the New York State Association of Service Stations and Repair Shop, Inc. its affiliates and 3500 members oppose this bill.

Obama Says New Task Force Will Examine Gas Prices

AP – President Barack Obama gesture during a town hall meeting to discuss reducing the national debt,

RENO, Nev. – President Barack Obama announced Thursday that the Justice Department is assembling a team to "root out any cases of fraud or manipulation" in oil markets that might be contributing to \$4 a gallon-plus gasoline prices. "We are going to make sure that no one is taking advantage of the American people for

their own short-term gain," Obama said at a town-hall style meeting at a renewable energy plant in Reno.

The national average price for a gallon of regular gasoline was \$3.84 on Thursday, about 30 cents higher than a month ago and almost a dollar higher than a year ago.

Obama, decrying such levels as yet another hardship "at a time when things were already pretty tough," said Attorney General Eric Holder was forming the Financial Fraud Enforcement Working Group.

It will focus some of its investigation on "the role of traders and speculators," Obama said. The group will include several Cabinet department officials, federal regulators and the National Association of Attorneys General.

In a statement in Washington, Holder promised to "be vigilant in monitoring the oil and gas markets for any wrongdoing so that consumers can be confident they are not paying higher prices as a result of illegal activity. If illegal conduct is responsible for increasing gas prices, state and federal authorities should take swift action."

However, in a Justice Department memo accompanying his statement, Holder suggested no evidence had turned up yet of unlawful price manipulation.

"Based upon our work and research to date, it is evident that there are regional differences in gasoline prices, as well as differences in the statutory and other legal tools at the government's disposal. It is also clear that there are lawful reasons for increases in gas prices, given supply and demand," the memo said.

"Nonetheless, where consumers are harmed by unlawful conduct that has the effect of increasing gas prices, state and federal

authorities will take swift action," Holder said.

There's not much Obama can do to affect the price of gasoline in short term. Gas prices have risen steadily as a result of tensions in the Middle East and northern Africa and rising demand from China and other emerging economies.

Obama is on a three-day West Coast swing that's mixing presidential business with re-election campaigning.

Earlier, he told supporters in San Francisco he is pressing ahead with his agenda in a difficult political environment and that "change turned out to be a lot tougher than expected"

Obama addressed about 200 people who paid up to \$35,800 apiece for the fundraiser at San Francisco's St. Regis Hotel, the first of four fundraisers of the day. The other three were scheduled in Los Angeles.

Between his California events, Obama went to Reno and spoke at the Electra Therm Co. He spoke in front of a machine that produces renewable energy from low-temperature heat waste.

Even though he's running for re-election from the White House, Obama said he still wants to mount a grass-roots campaign. "We need you now more than ever," he said. "Your engagement, your involvement, your commitments are going to be critically important."

Political tensions have increased lately, with a near government shutdown earlier this month, a showdown looming on raising the nation's borrowing powers and the ongoing debate over long-term deficit reduction.

Obama has called on Republicans and Democrats to work together. But Republicans, egged on by tea party activists, are demanding more spending cuts than

Obama has proposed and are resisting his call for raising taxes on the wealthy. And, as Obama eases into his 2012-re-election campaign, many of his liberal backers are pressing the president against making further concessions to the GOP on spending cuts and taxes.

Obama's West Coast visit — his most extensive travel since announcing his re-election bid — offered a glimpse of how he will seek to re-energize the independents and first-time voters who carried him to victory in 2008. Obama argues that more work must be done to make the vision of America he promised a reality, and that he is the only one who can see those hopes through.

The Jacksonville Spill and the PMPA

By Peter H. Gunst

SSDA-AT General Counsel

In February 2006, Exxon dealer Storto Enterprises discovered that approximately 26,000 gallons of gasoline had leaked from the Jacksonville, Maryland station's underground storage tanks.

The results were catastrophic.

By September 2008, ExxonMobil had agreed to pay a four million dollar environmental penalty to the state. In March 2009, a state court jury returned verdicts against ExxonMobil totaling about one hundred fifty million dollars in favor of hundreds of impacted Jacksonville residents. Other claims remain to be tried.

Compared to these developments, the ensuing litigation between the dealer and ExxonMobil would appear to be small potatoes. But that lawsuit raised some significant legal issues.

In May 2010, the dealer sued Exxon-Mobil in state court. Its complaint, which ExxonMobil removed to federal court, contained some interesting allegations. According to the dealer, when it first discovered the leakage, it went to ExxonMobil, which promised to buyout its franchise in exchange for the dealer's agreement to maintain confidentiality regarding the leak, to cooperate with ExxonMobil's cleanup efforts and to abandon the property. According to the dealer, ExxonMobil also concealed from it the fact that the line leak detector installed by ExxonMobil was defective.

Subsequently, ExxonMobil repudiated its buy-out agreement and simply terminated the franchise relationship. The dealer claimed damages for breach of contract, fraud and misrepresentation in connection with ExxonMobil's refusal to pay any buy-out compensation, and for fraudulent concealment with respect to the defective condition of the line leak detector.

In a recent decision, *Storto Enterprises, Inc. v. ExxonMobil Oil Corp.*, 2011 WL 231877 (D. Md. 2011), the federal court ruled on ExxonMobil's motion to dismiss the dealer's claims. ExxonMobil's argument to dismiss the dealer's claims with regard to its failure to honor its alleged buy-out promise was fairly ingenious. ExxonMobil argued that because the dealer was complaining about the conditions surrounding the termination of its franchise, its exclusive remedy was to sue under the Petroleum Marketing Practices Act. Any claim under the PMPA, however, would be barred by the Act's one-year limitation period for filing suit.

The federal judge agreed, and dismissed all of the dealer's claims for buy-out compensation. That result is questionable at best. As the Supreme Court recognized last year in the

Mac's Shell case, the PMPA does not regulate "every aspect of the petroleum franchise relationship," and only preempts inconsistent state law pertaining to the termination and non-renewal of petroleum franchises.

Arguably, what the dealer was complaining about was ExxonMobil's earlier failure to honor its compensation promise and not its ultimate termination of the dealer's franchise.

Were the shoe on the other foot, and had the dealer filed a timely PMPA claim, it is very likely that ExxonMobil would have argued that its earlier compensation promise was not the proper measure of damages for its ultimate franchise termination. It probably would have argued that there were no damages at the time of termination because the franchise was by then worthless as a result of the massive fuel spill.

Look at it a different way. Suppose Exxon-Mobil just backed out of its buy-out commitment after the dealer had performed its part of the bargain, but didn't bother to terminate, figuring that the dealer would ultimately hand in the keys in any event. Would the dealer still be precluded from suing on ExxonMobil's breached buy-out commitment?

It's hard to see why.

At least the dealer managed to keep alive its fraudulent concealment claim with respect to ExxonMobil's alleged failure to disclose the defective condition of the line leak detector. The court concluded that that claim was sufficiently removed from the dealer's franchise termination to escape preemption by the PMPA.

ExxonMobil argued in the alternative that the dealer's claim should be barred by a separate contractual provision in the

franchise agreement that limited to one year the period in which the dealer – but not Exxon-Mobil – might assert a claim.

Rejecting ExxonMobil’s argument, the court found that ExxonMobil had provided no reasonable justification for the discriminatory treatment of claims contained in its form franchise agreement. Absent any such “valid justification,” the court concluded, enforcement of the one-sided limitations period “would be inappropriate.”

This element of the court’s ruling appears to be quite significant. Franchise agreements often contain one-sided provisions, such as attorney fee provisions that only obligate the dealer to pay the supplier’s attorneys fees if the dealer is unsuccessful in litigation against the franchisor. Such provisions, it may be argued, are analogous to the one-sided limitations provision that the court refused to enforce.

Minimum Age For Cashiers Who Sell Alcoholic Beverages

1. Clerks and cashiers who handle and receive payment for alcoholic beverages in drug stores, grocery stores and convenience stores must be at least 16 years old and supervised by someone who is at least 18 years old.
2. Clerks and cashiers in liquor and/or wine stores must be at least 18 years old.

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We Have Changed Our Web Address

The Association is pleased to announce a new web site. The old website has been completely revamped to provide you with easier faster access to the information you need. The new address is

www.nysassrs.com

Our e-mail address has changed to:

state@nysassrs.com

In addition to being able to read back issues of newsletters, and providing you with links to important sites we have added a bulletin board to keep you better informed as stories break.

WARNING

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**PERFORMING AN INSPECTION
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RSGDAofWNY

Repair Shop and Gasoline Dealers Association of Western New York

Member Legal Services Plan

Administered by
KENNEY SHELTON LIPTAK & NOWAK, LLP

Dues paying members in good standing with the Association are entitled to participate in our group legal services plan that provides the following services:

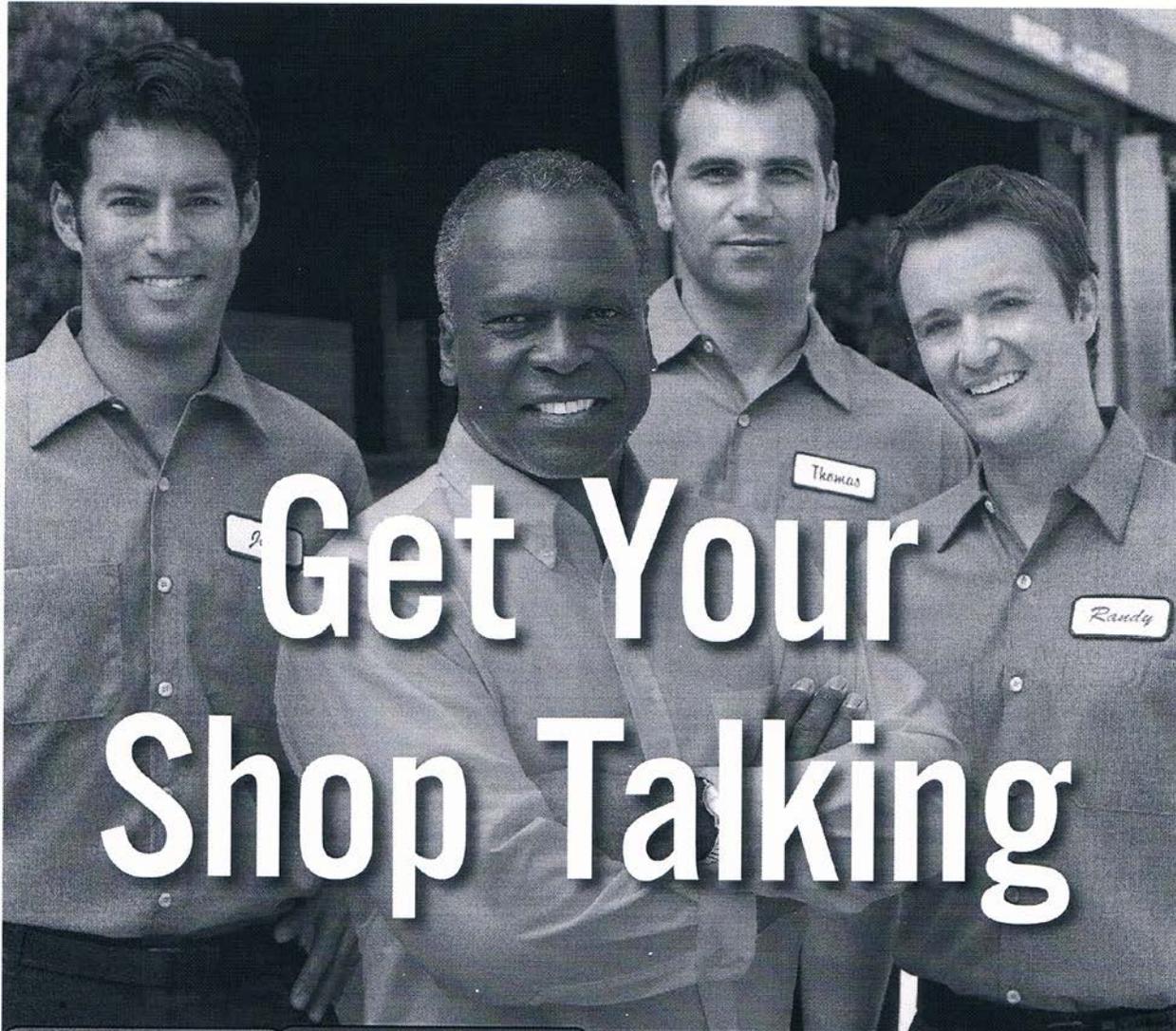
- Five billable hours of legal services for representation and defense at Department of Motor Vehicles or any other New York state Administrative Proceeding or Hearing for repair-shop related issues, and in Small Claims Court, if your business is sued. The Plan does not include representation in any court other than Small Claims or in any matter where the member is charged with a misdemeanor or felony.
- Additional legal services for covered services as listed above, and representation in business-related matters brought in any court other than Small Claims, will be provided at the law firms standard hourly rate (\$200) less 25% member discounted rate (\$150).
- One hour of free consultation per year for business-related transactions, including leases, supply contracts, and franchise agreements.
- Real estate (residential) purchase or sale at a flat fee rate:
Sale \$400
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- Estate planning at a flat fee rate:
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In order to participate in the plan, you must be a dues paying member, in good standing, and must have been a member for at least ninety days prior to the need for legal services.

If you are in need of this service, you must first call the association office at (585) 423-9924 or (716) 656-1035. The association will then contact the law firm to relay your information. You will be contacted by the law firm, personally, to schedule an interview.

The law firm of Kenney Shelton Liptak and Nowak, LLP was chosen to administer the RSGDAofWNY legal plan based on their knowledge and familiarity with the needs of our industry.

**To become a dues paying member of RSGDAofWNY
and be eligible for legal services, call (716) 656-1035**



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Mitchell1[®] eCRM[™]

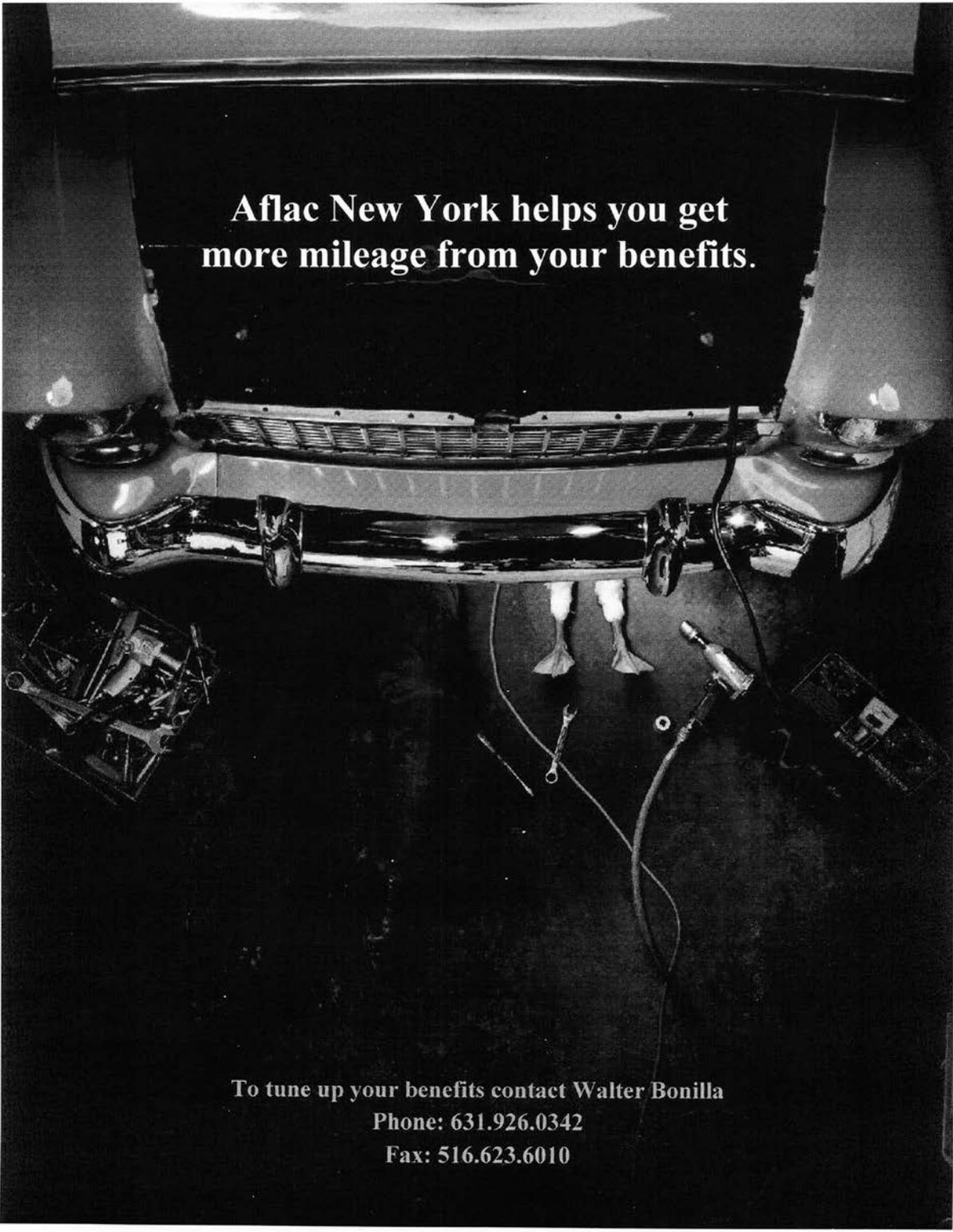
Now you can turn customers into loyal, profitable repeat customers easily. Mitchell 1 CRM integrates seamlessly with your shop management system to track your customers' vehicle history and send timely scheduled service reminder postcards and e-mails automatically. You choose the postcards and customize with your logo and message – finally, a way to communicate your message to your customers that they'll be glad to receive.

- Service Reminder E-mails & Postcards
- Consumer Vehicle History Website
- Service Recommendations
- Custom Promotions
- Dedicated Marketing Support Center
- Return on Investment Reporting



800.410.0529
mitchell1.com/eCRM

Mitchell1[®]
Business Performance Services



**Aflac New York helps you get
more mileage from your benefits.**

To tune up your benefits contact Walter Bonilla
Phone: 631.926.0342
Fax: 516.623.6010



HERE'S HOW AFLAC NEW YORK CAN HELP:

Many industries-like specialized auto repair and customization-require highly skilled talent that is not easy to find and retain. Great benefits are a top priority for these talented professionals when considering where to work. With Aflac New York, you can provide a wide range of benefits that gives them coverage in the areas they need most, and with a brand they know and want. You can attract and retain new talent by providing the kind of benefits they'd expect from a bigger company, helping your business stand out from the crowd.

THE BEST PART ABOUT AFLAC!

NO DIRECT COST TO YOUR COMPANY

Aflac New York's insurance policies are paid entirely by your employees; therefore, adding value to your employee benefits plan without incurring direct costs.

OFFERS A WIDE RANGE OF POLICIES

Aflac New York offers a wide range of policies that can help cover health events from accidents to hospitalization. You choose the ones that are best for you, your employees, and your business.

POTENTIAL TAX SAVINGS

Aflac New York's tax-advantaged plan allows employees to use pre-tax dollars to pay for certain benefit costs, through a Section 125 cafeteria Plan. This plan may also reduce your FICA taxes, helping you counterbalance the challenges you face in today's economic environment.

ATTRACTIVE TO YOUR EMPLOYEES

Aflac New York insurance complements your major medical insurance to help you create a more attractive employee benefits package. Our wide range of policies is designed to provide cash benefits to your employees if they become injured or sick. With Aflac New York policies, there are no deductibles, copayments, doctor networks, or pre-authorization requirements.

Join the 16,500 companies* that Already include Aflac New York as an essential part of their benefits package. Find out more:

Walter Bonilla 1.631.926.0342 walter_bonilla@us.aflac.com

American Family Life Assurance Company of New York (Aflac New York)



The NAPA Major Account Program

*** **FREE MONEY GIVEAWAY** ***



Want to put more money in your pocket
and do nothing more than you do now?



You already buy parts and supplies for your business so why not buy from NAPA and earn 2% rebate!

The Association and NAPA developed a complete, competitive supply program designed to boost your backroom profits and meet your customer needs. Here's what it includes:

BENEFITS TO ASSOCIATION RETAILER

<u>Quality</u> Products that meet or exceed OEM specifications	<u>Consistent</u> Nationwide Parts Warranty
<u>Customized</u> Pricing -Reduced Parts Costs	<u>Availability</u> -Up to 342,000 Part Numbers
<u>Improved</u> Inventory Turnover	<u>Broader</u> Inventory Coverage
<u>Less</u> Downtime -Higher Gross Profitability	<u>Obsolescence</u> Protection
<u>Increased</u> Field Contacts -700 Factory Representatives	<u>Tailored</u> Local Inventories
<u>Consistent</u> Manufacturers Throughout Our System	<u>Recognized</u> Consumer Brand
<u>More</u> Effective Shop Inventory -Reduced Investment and Higher Productivity	
<u>Prolink</u> Internet based catalog, 24/7 parts availability and pricing	

PROFIT PLAN

Very competitive pricing on NAPA Premium and Value Line products
Special quarterly stocking incentives
Quarterly product discounts to enhance competitive pricing during key selling seasons
Discount on electronically ordered parts from participating stores
Prompt payment discount terms (2% 10, Net 20)

A BRIEF LOOK AT NAPA

Since 1925, NAPA (**National Automotive Parts Association**) has helped businesses expand their parts coverage and maximize turnover and ROI. They offer an unparalleled package for people, products and programs to increase your productivity:

More than 5,800 **NAPA AUTO PARTS** Stores Nationwide

- Strategically located Distribution Centers servicing all 50 states
- Computerized inventory control linked to your station
- Highly trained Factory Reps.
- Training for you and your employees

(O V E R)

Now...what do you have to do to participate in the NAPA Program? It's easy. You just have to:

- Register in **NAPA** Major Account Program with the Association
- Stock a minimum of four product lines
- Designate **NAPA** as first call supplier, and
- Purchase a minimum of \$7,500 per quarter (Average \$2,500 per month)

It couldn't be easier so why not join today. **No risk**...if you don't meet the quota you just don't receive the rebate, nothing lost...but additional profit could be gained!

Name of Your Business:		
Business Address Street:		
City:	State:	Zip:
Phone:	Fax:	E-mail:
Name of NAPA Dealer:		
NAPA Street Address:		
City:	State:	Zip:
Phone:	Fax:	
Additional NAPA Dealer(s) you do business with:		
Name of NAPA Dealer:		
NAPA Street Address:		
City:	State:	Zip:
Phone:	Fax:	
Name of NAPA Dealer:		
NAPA Street Address:		
City:	State:	Zip:
Phone:	Fax:	

FAX this form back to:
518 452-1955

Lawley

New York State Association of Service Stations & Repair Shops, Inc.

Declares Dividend

Workers Compensation Safety Group #536
Pays dividend for the 19th consecutive year.

35%

(Applies to Policy Term 5/1/09 - 5/1/10)

**Dividend checks will be mailed
direct to your address
by The State Insurance Fund**

Recent Dividend History

35%	08-09
35%	07-08
30%	06-07
30%	05-06

Lawley – Group Manager
Workers Compensation State
Fund Safety Group #536

Jim Propis
716 849 8235
jpropis@lawleyinsurance.com
lawleyinsurance.com

INSURANCE | EMPLOYEE BENEFITS | RISK MANAGEMENT | BONDS

FOR LEASE

**GAS STATION AND C-STORE
611 SOUTH ST., UTICA, NY**

C-Store only 2 years old

**Gasoline Sales:
Estimated 600,000 gals**

**CStore: \$40,000 per month
not including lottery**

**Lottery: Approximately
\$25,000 per month.**

**FOR FURTHER INFO
CALL JOE
315-794-4656**