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April 2019

Attorneys Corner
DMV Undercover Inspections
By Larry Culley

We have word that the D.M.V. is lately sending out a lot of undercover Inspectors to see if inspections are being done properly. We urge you to do the inspections the right way. If you are caught skipping any part of the inspection process it could cost you big bucks in fines and penalties In addition, you could lose a valuable license which you may not get back for years.... or maybe never! A word to the wise is sufficient.

It's the time of the year to check all of your permits, licenses and certificates, both for expiration dates and also to ensure you are in compliance. Again, failure to confirm that they are still valid and that you are in compliance could result in big fines. We've seen it happen. Take a look. It only costs a few minutes to be safe.

If you offer a written warranty to a customer, whether for repairs or retail vehicle sales, which can be prudent so that there is no question of what's being covered, be sure to have the customer sign the warranty and then keep a copy of that executed document. That way the customer can never say that they were never warned of the limitations which were set forth in the warranty.

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

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Visa, Mastercard Eye Fee Increases
Even as Lawsuit Settlement Advances

Even as they wait for a judge to give final approval to a $6.2 billion settlement over credit card swipe fees, it appears Visa and Mastercard are preparing to raise the charges merchants must pay.

The move has angered representatives of fuel industry groups that represent retailers, who say they aren't surprised by the move.

"It's very unfortunate that they continue to punish small businesses across the country," said Rob Underwood, president of the Petroleum Marketers Association of America. "(It) looks to me that they're attempting to make up for the $6.25 billion settlement by raising interchange fees."

While declining to discuss the increase, Visa put out a statement defending the plan.

"Visa's network fees are paid by our financial institution clients and used to enhance the safety, efficiency, and innovation of our platform, and are set based on market conditions and to reflect the value we deliver. The changes represent the first time Visa has adjusted these fees in three years or more, and are competitive with the market."

Mastercard did not respond to requests for comment.

According to Wall Street Journal reports, the nation's two largest card networks are preparing for an April hike in fees, including the fees merchants pay to banks and the fees the card companies charge banks for processing payments.

Doug Kantor, a Washington attorney who represents several trade groups, said he didn't think the move to raise fees would impact the lawsuit settlement from going forward.

"This is just par for the course for how they treat merchants," he said. "It's what they do. It's what they have always done."

The settlement stems from a 2005 lawsuit filed by merchants and trade groups against Visa and Mastercard, who they alleged conspired with banks to violate antitrust laws and charge merchants unreasonably high swipe fees.

The settlement will address monetary claims against the companies, but doesn't resolve parts of the lawsuit seeking modifications to swipe fee rules. The settlement does allow plaintiffs to continue pursuing legal action on those concerns.

The settlement also gives plaintiffs the option of settling or opting out and pursuing their own legal action.

A federal judge gave preliminary approval to the agreement earlier this year. A hearing to grant final approval has been scheduled for Nov. 7, giving time for the numerous plaintiffs in the case to be contacted and voice any concerns they
might have, Kantor said.

--Steve Cronin, scronin@opisnet.com

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In Win For Employers, NY Labor Department Won't Finalize "Call-In" Scheduling Rules

More than a year after Gov. Andrew Cuomo announced the proposal to adopt "call-in" scheduling regulations, the State Department of Labor confirmed Thursday that it will let the rulemaking process lapse without new mandates for employers.

The initial proposal would have required 14 day advance notice for work schedules and employees would receive two hours additional pay for last-minute shifts. On-call employees would receive at least four hours pay if they were called into work.

The rules wouldn't cover new employees or workers who volunteer to cover shifts.

But there was opposition to the proposal from businesses who felt that the one-size-fits-all approach wasn't appropriate for every industry, a State Department of Labor spokesperson said. The agency released revised rules in December.

The revisions led to praise from opponents of the original proposal and criticism from supporters of on-call scheduling guidelines. The proposed changes would exempt certain workers, such as those whose jobs are weather dependent, from receiving call-in pay.

The Department of Labor's decision to abandon the rule-making process for call-in scheduling was praised by pro-business groups.

Former Lt. Gov. Robert Duffy, who leads the Greater Rochester Chamber of Commerce, called itt a "great decision for business" in a tweet Wednesday night.

Michael Kracker, executive director of Unshackle Upstate, lauded the Department of Labor for listening to concerns from employers. "This one-size-fits-all approach would have hurt business – especially small businesses – that are already struggling to survive in New York's harsh business climate," Kracker said.

The pursuit of call-in scheduling regulations may not be over. Jill Aurora, the Department of Labor's communications director, explained the agency would "re-evaluate in the future" and could work with some lawmakers on proposed rules.

The State Legislature, Aurora said, 'would have broader authority and better legal standing than Department of Labor regulations alone to balance the various needs of workers, businesses and industries.

U.S. Labor Department Releases Proposed Overtime Rule

On March 7, the U.S. Department of Labor (DOL) released its proposed update to the "white collar" exemption, also known as the overtime rule.

In 2016, the Obama Administration proposed and finalized dramatic changes to the overtime rule, which doubled the salary threshold under which all salaried employees must be paid overtime. That rule was ultimately invalidated by a federal court in Texas prior to implementation, necessitating this move by the current DOL.

The new proposal seeks to move the salary threshold from $455 per week ($23,660 annualized) to $679 per week ($35,308 annualized). This amount is slightly above adjusting the current salary threshold for inflation, roughly $33,000 annualized.

The new proposal is also dramatically lower than the Obama Administration's 2016 final rule, which was $913 per week ($47,476 annualized). The salary threshold is also in line with the average salary of store managers in the convenience retailing industry, per NACS State of the Industry data. The DOL expects the new rule to take effect in January 2020.

Overall, the new DOL proposal is similar to comments NACS filed on behalf of the industry in 2016, and in 2017 in response to the department's request for information. NACS argued that the department should use the same methodology when the rule was updated in 2004, that it should be reviewed and updated no more than every three years, and that updates should be subjected to standard notice and comment rulemaking. Under the new proposal, the DOL has reverted to the 2004 methodology with reviews subject to the formal notice and comment process.

The department is not proposing any changes to the so-called "duties tests," which review an employee's job responsibilities to determine if he/she is eligible for one of the four main exemptions under the rule. NACS also previously argued that those tests should remain as is.

NACS staff and counsel are reviewing the full proposal and will file new comments with the DOL in response to this proposal and can assist NACS members that would like to file their own comments. Comments will be due 60 days after the proposal is formally published in the Federal Register, which is expected to occur promptly.

New York Assembly Approves Tobacco 21 Measure

The New York Assembly passed a bill that would raise the legal tobacco buying age to 21, The Buffalo News reports. The measure, which includes all tobacco and electronic cigarette products, now goes before the state Senate, which is likely to pass it. Gov. Andrew Cuomo has indicated his support of the measure.

"The key to reducing the number of smokers in New York is to stop them before they start," according to a memo that accompanied the bill. However, the bill does not tackle the sticky issue of enforcing the new 21 purchase age in Native American retailers on tribal lands.

In additional to various health groups, some tobacco companies expressed support of the bill. "We agree that the current trends in underage e-vapor use must be addressed. Tobacco harm reduction for adults cannot succeed without effective measures to reduce underage use of all tobacco products," said Altria Group Inc.

Cuomo expressed his approval of the bill's passage. "The lifelong health effects and human misery caused by tobacco use cannot be understated and New York needs to do everything in its power to keep tobacco products out of the hands of our young people," he said.

New York already has close to 24 cities and counties with a tobacco purchase age of 21, including New York City and Chautauqua and Cattaraugus counties. Virginia recently passed a similar measure. Six other states and the District of Columbia have restricted the sale of tobacco to those 21 and older.

California Resurrects Bloomberg-Like Soda Ban

The California Legislature might have approved a ban that prohibits cities from approving new taxes on soda, but that doesn't mean lawmakers are done limiting soda consumption, the San Francisco Chronicle reports.

Lawmakers have introduced bills that would prohibit large soda and sugary drink displays, as well as require warning labels on soft drinks. "We have an incredible public health crisis. Obesity and diabetes are at alarming rates, driven by the deception of Big Soda," said Assemblyman David Chiu.

One bill would limit the size of sugar-sweetened drinks sold in unsealed containers—fountain drinks—to 16 ounces in retail locations, including restaurants. This measure is very similar to one backed by former New York City Mayor Michael Bloomberg, which New York courts ultimately ruled as unconstitutional in June 2014.

Another bill would require sugary beverages to have a warning label about the health risk of consuming it. San Francisco had enacted a similar ordinance, which is currently being reviewed by the courts. A third measure would ban sugary drink displays near the cashier in retail stores, including grocery stores and convenience stores.

A fourth bill would prohibit soda makers from running promos that reduce the cost of sugary beverages in stores, while a fifth proposal would place a tax on sugar-sweetened drinks to fund health programs.

"These kinds of regressive taxes are not supported by the people of California because they place an unfair burden on working families and neighborhood businesses already struggling with the state's high cost of living," the American Beverage Association said in a statement. "We are committed to working with the Legislature on effective ways to address its budgetary and public health concerns and to ensure that food and beverages remain affordable for all Californians."

Connecticut Governor Pushes Sugar Tax

Connecticut Gov. Ned Lamont has unveiled his new budget agenda this week, and included in the proposal is a 1.5 cents per ounce tax for sugar-sweetened beverages, Politico reports. Such a tax would translate into an additional 18 cents for a 12-ounce soft drink can.

Other proposed taxes include a quarter deposit on wine and liquor bottle purchases, plus a 10-cent charge for plastic bags. The governor isn't trying to only generate income—he's attempting to change consumer behavior, according to Ryan Drajewicz, the governor's chief of staff. The governor's office estimated that these new taxes could bring in around $35 million annually.

"Similar taxes on sugary drinks in Philadelphia, Boulder and Seattle have failed to raise significant revenue and have hurt local business," Chris Taylor, a Connecticut resident and COO of New York City-based Boylan Bottling Co., which makes craft sodas, told The Hill. "It's troubling that our governor and the Democrats in Hartford are willing to target one specific line of business rather than focusing on renegotiating bad deals with in-state unions."

Last year, the California Legislature passed a ban that prohibits cities from approving new taxes on soda. Meanwhile, the California Medical Association and the California Dental Association are working on gathering enough support for a 2020 ballot initiative for the state to add a tax on sugared drinks.

Philadelphia Bans Cashless Stores

The City of Brotherly Love has become the first major U.S. municipality to ban cashless stores, according to the Wall Street Journal.

Starting in July, Philadelphia's new law will require most retail operators to accept cash for purchases. Other cities and states also have concerns about "no cash" retailers. A similar law is being pushed in New York City, and New Jersey's legislature recently passed a bill prohibiting cashless stores statewide, but it has not yet been signed into law by the governor. Currently, Massachusetts is the only state that requires retailers to accept cash.

The measures seek to stop a "no-cash" trend that could accelerate thanks to Amazon's highly publicized testing of cashless retail technology and rollout of Amazon Go stores. Retailers that have gone cashless say the system is more efficient for employees, who don't have to make change,

count cash at closing or worry about making large bank deposits.

As reported previously in NACS Daily, opponents say the system puts low-income and “unbanked” consumers at a disadvantage. They are concerned about consumers without credit or debit cards and add that some shoppers prefer to use cash for personal and privacy reasons.

“Most of the people who don’t have credit tend to be lower income, minority, immigrants,” said William Greenlee, a Philadelphia city council member. “It just seemed to me, if not intentional, at least a form of discrimination.”

Sylvie Gallier Howard, an official with the Philadelphia Commerce Department, hopes the ban proves to be temporary. “Modernization is going to happen with or without Philadelphia, and we want to be part of it,” she said.

Data from the Federal Reserve Bank of San Francisco indicates that the average consumer uses cash for about 30% of all transactions, down from 33% in 2015, although low-income households rely on cash for nearly half of their payments. In general, most people still prefer using cash when making small purchases.

Recently, the Mercedes-Benz Stadium in Atlanta became the first NFL stadium to go cashless, a system that management predicts will speed up transactions and reduce lines. For fans who prefer to use cash or don’t have a credit or debit card, 10 kiosks around the arena will convert cash to a prepaid debit card with no transaction fee.

Shell Fuel Rewards Program Gains New Partnership

Direct Energy—a retail provider of electricity, natural gas, and home and business energy-related services—is teaming up with the Fuel Rewards program to offer existing and new members additional fuel savings opportunities when they sign up as a Direct Energy customer.

The Fuel Rewards® program is a national loyalty program that connects with millions of consumers who earn cents-per-gallon savings at the pump; there are more than 18 million members in the Fuel Rewards program. Customers rank fuel savings as their most preferred type of reward, even when fuel prices are low.

According to a press release, fuel discounts are redeemable at more than 13,000 participating Shell stations across the United States. Customers who enroll with Direct Energy home energy program will earn $0.50 per gallon in fuel savings on purchases of up to 20 gallons of fuel per month for one year.

"We are dedicated to bringing consumers choice, convenience, and ways to save money on their energy costs—and we're glad to have identified a partner that can deliver that," said Bill Sweeney, VP of Sales, Marketing, and Customer Experience at Direct Energy. "Offering Fuel Rewards members additional discounts for paying their electric bill fits perfectly with our philosophy of providing everyday value."

FDA Commissioner Scott Gottlieb Steps Down in Surprising Move

Changes are coming to the Food and Drug Administration (FDA) following the resignation of Commissioner Scott Gottlieb.

Health and Human Services (HSS) Secretary Alex Azar announced the surprise resignation, which came nearly two years after Gottlieb's appointment to the post, on March 5. His resignation is effective in one month.

"All of us at HHS are proud of the remarkable work Commissioner Gottlieb has done at the FDA. He has been an exemplary public health leader, aggressive advocate American patients, and passionate promotor of innovation," he said.

"Scott's leadership inspired historic results from the FDA team, which delivered record approvals of both innovative treatments and affordable generic drugs, while advancing important policies to confront opioid addiction, tobacco and youth e-cigarette use, chronic disease, and more. The public health of our country is better off for the work Scott and the entire FDA team have done over the last two years," Azar added.

In a tweet, President Donald Trump said Gottlieb did "an absolutely terrific job" and said his talents would be missed.

In response to a twitter posts from Azar and Trump, Gottlieb tweeted, "I'm immensely grateful for the opportunity to help lead this wonderful agency, for the support of my colleagues, for the public health goals we advanced together, and the strong support of @SecAzar and @realDonaldTrump - This has been a wonderful journey and parting is very hard."

In relation to the overall convenience channel, Geoff Freeman, president and CEO of the Grocery Manufacturers Association, said the consumer packaged goods industry believes in smart, uniform regulation and explained a strong FDA is a critical partner in building consumer trust in products.

"Under the leadership of Commissioner Scott Gottlieb, the Food and Drug Administration was a strong and effective champion of public health. His candor, transparency and willingness to work together was a welcomed approach in the regulatory environment," Freeman said.

THE COMMISSIONER & TOBACCO

Since taking the top position at the FDA, Gottlieb has been focused on reshaping tobacco policy at the federal level.

In June 2017, the agency unveiled a comprehensive plan for tobacco and nicotine regulation to serve "as a multi-year road map to better protect kids and significantly reduce tobacco-related disease and death," as Convenience Store News previously reported.

The Comprehensive Plan for Tobacco and Nicotine Regulation placed nicotine, and the issue of addiction, at the center of the agency's tobacco regulation efforts.

In April 2018, FDA announced several new actions and efforts as part of its new Youth Tobacco Prevention Plan.

The actions centered on the increase rise of electronic cigarette use by underage consumers.

Youth access to e-cigarette and vapor products became a key focal point for Gottlieb and the FDA over the past 11 months leading to several developments, including:

- A "nationwide, undercover blitz" of retail stores and online sites over the summer that resulted in more than 1,300 warning letters and fines to retailers who illegally sold e-cigarette and vapor products to minors.
- A proposal to only allow the sale of flavored tobacco products in age-restricted, in-person locations and, if sold online, under heightened practices for age verification — effectively removing the products from convenience stores.
- A Notice of Proposed Rulemaking that would seek to ban menthol in combustible tobacco products, including cigarettes and cigars.

However, Gottlieb's resignation could hit the pause button on several tobacco proposals, if not add a question mark to them.

"While we share the surprise by the announced resignation of FDA Commissioner Gottlieb … we think this major development will be broadly viewed as a positive for the tobacco industry, although this introduces some uncertainty," said Bonnie Herzog, managing director of tobacco, beverage and convenience store research at Wells Fargo Securities LLC.

"We believe his resignation calls into question whether or not the FDA will in fact enforce harsher regulations around youth e-cigarette usage/access, cigarette nicotine limits and a cigarette menthol ban given he was the champion behind these initiatives," she said

In addition to uncertainty around tobacco regulations, a change in leadership at the agency could affect the future of products trying to come to market, Herzog noted.

"We also believe his resignation could have implications (positive, we hope) for the FDA's approvals of the premarket and modified risk applications for iQOS — long overdue, in our view (and with no clear explanation from the FDA)," according to Herzog.

With is final day still a month away, Gottlieb still has time to move some of his proposals forwarded, including a plan to remove flavored e-cigarette sales from c-stores — which he reportedly presented to the White House in the past few days, according to NACS, the Association for Convenience & Fuel Retailing.

"At this time, we believe there is no reason to believe that the FDA will back off the as yet, unseen proposal they presented to the White House," said Lyle Beckwith, senior vice president, government relations at NACS. "If anything, we expect the commissioner to spend his final month pushing even harder for it as his legacy achievement."

FDA to Hold Cannabis Meeting

The U.S. Food and Drug Administration will hold a public meeting next month on regulatory issues surrounding cannabidiol (CBD) products, Politico reports. FDA Commissioner Scott Gottlieb indicated that he would like to see a balance between the food and supplement channels and pharmaceutical industry research incentives.

With the last year's farm bill legalizing industrial hemp, CBD products are beginning to blossom across the United States. "I understand Congress wants there to be a pathway for CBD to be available," said Gottlieb during a congressional hearing.

Currently, CBD can't be legally sold across state lines in supplements or food. The FDA is considering developing a framework for CBD in the food and supplement market, with the April hearing as part of that process.

In addition, the U.S. Department of Agriculture is working to develop regulations for crop insurance coverage and hemp production for hemp farmers, among other provisions in the farm bill. Gottlieb discussed one possible way the FDA might approach CBD regulations: Concentrated, pure forms of CBD would stay in the drug category while lower amounts could fall under food and supplement use.

Gottlieb also pointed out that legally, CBD issues are "not straightforward. … If we get comments back and find that this is sufficiently complicated for the agency, we will come back and have a discussion with Congress about how we might be able to work together on this."

Trump Wants E-Cigarette Companies to Pay User Fees

The Trump administration wants the e-cigarette industry to pay $100 million a year in user fees to underwrite regulatory oversight by the Food and Drug Administration, the Washington Post reports.

While several other types of tobacco products, including cigarettes, cigars and snuff, are subject to similar fees, e-cigarettes are not. This fiscal year, the agency is expected to collect an estimated $712 million in user fees, with cigarettes providing more than 86% of the total.

According to administration insiders, the user-fee proposal for the e-cigarette industry would ensure that the FDA has the resources to address the rise in underage e-cigarette use, in addition to any new public health threats that may come along. Opponents of the fees argue that the a "user fee" is actually a tax.

Tobacco user fees provide all funding for the FDA's Center for Tobacco Products. New fees imposed on e-cigarette manufacturers and importers of vaping devices and e-liquids would generate more resources as the agency tries to combat youth vaping.

Departing FDA Commissioner Scott Gottlieb has acknowledged that e-cigarettes may be a useful tool for adult smokers who want to wean themselves off regular cigarettes, but he believes young people should not use them since researchers are still investigating their long-term effects.

The FDA's concerns about underage vaping increased after federal data showed that e-cigarette use among high school students rose 78% between 2017 and 2018. Officials say they want to prevent a new generation from becoming addicted to nicotine.

FDA Takes "Forceful New Actions" Around Youth Tobacco Use

The Food and Drug Administration (FDA) is zeroing in on retailers as the agency works toward ending underage tobacco use.

Action comes one month after the FDA filed complaints seeking No-Tobacco-Sale Orders (NTSO) against select locations of Circle K Stores Inc. and Walgreens for selling tobacco products to underage consumers, as Convenience Store News previously reported.

On March 4, the agency sent a letter to the corporate management of Walgreen Co. to request a meeting to discuss whether there is a corporate-wide issue related to their stores' track record of violating the law by illegally selling tobacco products to underage consumers, FDA Commissioner Scott Gottlieb said.

According to the agency, Walgreens is currently the top violator among pharmacies that sell tobacco products, with 22 percent of its 6,350 stores inspected having illegally sold tobacco products to minors.

"Both the rate of violations and sheer volume of violative inspections of Walgreens stores are disturbing, particularly since the company positions itself as a health-and-wellness-minded business," Gottlieb said. "This cannot possibly come as a surprise to corporate leadership, which is why I want to sit down with them to discuss the important role they play, as a nationwide retailer, in curbing this epidemic."

In addition to Walgreens, the FDA identified 15 national retail chains, either corporate-owned or franchised, whose violation rates exceed 15 percent of their total inspected stores since the start of the agency's retailer compliance check inspection program in 2010:

- Retail chains with violation rates of 35-44 percent of all inspected stores: Marathon, Exxon, Sunoco, BP, CITGO and Mobil
- Retail chains with violation rates of 25-34 percent of all inspected stores: Shell, Chevron, Casey's General Stores and 7-Eleven
- Retail chains with violation rates of 15-24 percent of all inspected stores: Family Dollar, Kroger, Walgreens, Circle K and Walmart

"We plan to similarly hold them accountable. We will ask them to share with us what policies they have in place and what more they can commit to do to prevent youth tobacco sales," the commissioner said. "Companies should be on notice that the FDA is considering additional enforcement avenues to address high rates of violations."

While "retailers are on the front lines," according to Gottlieb, tobacco manufacturers are not escaping the agency's actions. The FDA also sent letters to more than 40 companies seeking information about more than 50 products — including a variety of flavored electronic cigarettes and vapor products — and if they are being illegally marketed and outside the agency's current compliance policy.

"Some of these companies may be attempting to capitalize on the troubling popularity of products like Juul among kids by illegally selling similar products and outside of the compliance policy. We also need to determine if any of these products may be counterfeit knockoffs," Gottlieb explained. "If tobacco products are being unlawfully marketed and sold outside the FDA's compliance policy, we'll take action. We simply cannot tolerate this behavior and will take additional action as needed."

Several companies also received warning letters for, among other things, selling electronic nicotine delivery system products and a waterpipe tobacco product with labeling and/or advertising that failed to include the required nicotine warning statement.

This past fall, the FDA marked a total of 1 million tobacco retailer inspections since the program began in 2010. The inspections have resulted in more than 81,570 warning letters to retailers for violating the law, as well as the issuance of more than 19,800 civil money penalties and about 145 no-tobacco-sale orders for repeated violations.

"We'll continue vigorous enforcement activities with a sustained campaign to monitor, penalize and help prevent e-cigarette sales to minors in retail locations, including manufacturers' Internet storefronts, as well as take additional steps to tackle other concerns related to the youth access and appeal of these products," Gottlieb said. "The FDA is also exploring additional enforcement avenues to target violative sales and marketing practices by manufacturers and retailers."

FDA Releases Draft Rules Restricting E-Cigarette Sales

The Food and Drug Administration (FDA) is moving closer to removing certain flavored electronic cigarettes and vapor products from the market.

On March 13, FDA Commissioner Scott Gottlieb announced that the agency is proposing to end current compliance policy as it applies to flavored electronic nicotine delivery system (ENDS) products such as electronic cigarettes, and prioritize enforcement of their sale to shut down youth access. The proposal does not include tobacco, mint and menthol flavors.

In addition, the FDA expects manufacturers of all flavored ENDS products — other than tobacco-, mint- and menthol-flavored — that remain on the market under these new conditions to submit premarket applications to the agency by Aug. 8, 2021. This moves up the deadline by one year.

"When we first announced our comprehensive plan for tobacco and nicotine regulation in July 2017, we outlined a framework to better protect kids and to significantly reduce tobacco-related disease and death. We are continuing to implement that framework today. It remains the blueprint for the agency’s tobacco-related policymaking," Gottlieb said.

According to the commissioner, the plan's ultimate goal is "a world where combustible cigarettes no longer create or sustain addiction — making it harder for future generations to become addicted in the first place and allowing more currently addicted smokers to quit or transition to potentially less harmful products."

However, the rise of electronic cigarette use by underage users "is threatening the progress we've made in reducing youth tobacco use," Gottlieb said.

The increased use led him to direct the FDA's Center for Tobacco Products to revisit the agency's regulatory policy of e-cigarettes and vapor products in November, as Convenience Store News previously reported.

According to the commissioner, the agency expects several things to happen as a result in policy shift, including:

Some flavored e-cigarette products will no longer be sold; Other flavored e-cigarette products that continue to be sold will be sold only in a manner that prevents youth access, while premarket authorization for these products is sought from the FDA by 2021; and Some flavored cigars will no longer be sold.

The stricter compliance policy would effectively remove the flavored tobacco products from convenience stores, allowing sales only in adult-only, age-restricted outlets like tobacco shops.

FDA Presents Flavored E-Cig Ban to White House

According to Axios sources, Food and Drug Administration Commissioner Scott Gottlieb handed White House officials a plan to ban the sale of flavored e-cigarettes in c-stores. Gottlieb has described the surge in teen vaping as an “epidemic” and an important public health crisis.

The agency's plan would limit the sale of flavored e-cigarettes (other than mint/menthol and tobacco flavors) to adult only stores or stores with an adult-only section, essentially banning the sale of these products in most convenience stores. The agency would still allow these products to still be sold in vape stores (or other adult-only stores) and the Internet. Under the new FDA enforcement policy, a store that sells flavored e-cigarettes must ask customers for ID cards before they enter the store. To make this happen, the c-store or gas station would need to build a separate room and ask people for their IDs before they enter the room.

The FDA announced these plans in November 2018, but this is the first time the agency presented plans to the White House. The guidelines have already been cleared by the Department of Health and Human Services.

Court Directs FDA to Issue Final Graphic Cigarette Warning Rule by March 2020

A federal judge gave the Food and Drug Administration (FDA) 12 months to release its final rule graphic warning for cigarette packs and advertising.

On March 5, Judge Indira Talwani in the U.S. District Court for the District of Massachusetts ordered the FDA to comply by March 15, 2020. The ruling also requires the agency to finish its study on the labels by April 15 and submit its proposed rule by Aug. 15, according to the Winston-Salem Journal.

The issue of graphic warnings dates back several years. The 2009 Family Smoking Prevention and Tobacco Control Act specified that cigarette packages and advertisements have larger and more visible graphic health warnings.

In June 2011, the FDA issued its final nine health warnings, which were set to appear on every cigarette pack and ad by September 2012.

However, the graphic warnings were struck down in 2012 after a challenge by several tobacco companies, including Lorillard Inc., R.J. Reynolds Tobacco Co., Commonwealth Brands Inc. and Liggett Group LLC. In a 2-to-1 decision, the U.S. Court of Appeals in Washington, D.C., affirmed a lower court ruling that the requirement violated the First Amendment's free speech protections, as Convenience Store News previously reported.

In October 2016 the case moved to Boston when eight public health and medical groups, and several individual pediatricians, filed a lawsuit in the U.S. District Court for the District of Massachusetts to force the agency to issue a final rule requiring the warnings on cigarette packs and advertising, as mandated by the Tobacco Control Act.

The FDA, in responding to the lawsuit, set November 2021 for the final rule.

On Sept. 5, 2018, Talwani ordered the FDA to provide the court with an expedited schedule for publication of the new proposed warnings. The agency came back with a May 2021 publication date; however, the judge rejected that date last week.

"The court finds no reason for further delay," Talwani wrote. "Defendant shall take all steps necessary ... and shall complete the study by April 15."

EPA Releases Proposal on RIN Market Reform

The U.S. Environmental Protection Agency released its proposed rulemaking today to extend a one-pound (psi) Reid vapor pressure (RVP) waiver for higher ethanol blends such as E15 and to reform the Renewable Identification Number (RIN) market.

The Agency is proposing to change the RIN market by:

1. Prohibiting parties other than obligated parties from purchasing RINs
2. Limiting the amount of time a non-obligated party (i.e., fuel retailer) can hold RINs

Convenience retailers sell approximately 80% of the fuels sold in the United States. NACS supports the ability of its members to meet consumer demand and bring higher ethanol fuel blends like E15 to market; however, EPA’s proposed RIN market reforms would undercut the benefits of the RVP waiver.

“NACS is concerned that the proposed rulemaking would generate more problems than solutions,” said Paige Anderson, NACS director of government relations. “We believe that EPA’s proposal would create chaos in the RIN market and reduce retailers’ incentives to blend renewable fuel into the fuel supply.”

Currently, fuel refiners, importers and exporters of renewable fuels, known as obligated parties, are required to comply with Renewable Volume Obligations (RVOs) as part of the Renewable Fuel Standard (RFS). The obligated parties

must retire RINs representing a renewable fuel for an annual compliance period. This system was designed with an open trading market to ensure a robust market for RINs.

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 585-398-7260.

MVAC Training

Any person who repairs or services a motor vehicle air conditioning (MVAC) system for consideration (payment or bartering) must be properly trained and certified under section 609 of the Clean Air Act by an EPA-approved program. All technicians servicing MVAC-like appliances must be certified.

This means that in order to purchase refrigerant, you must be certified for EPA section 609. To get that training, go to nyssasrs-training.com and follow the links.

This restriction does not apply to do-it yourselfers.

Sexual Harassment Compliance Date -- 10/09/18

The deadline for sexual harassment training and other compliance is October 9, 2018. The association has developed a program with sample questions and answers targeted for the Service station/Repair shop industry. See News and Announcement column at www.nysassrs,com .

UST Complaince Materials

The association has gathered information on the new EPA testing requirements for UST's. See the News and Announcement column at www.nysassrs.com for two valuable resources.

Selling Your Inspection License

If you are thinking of retiring or selling your business and have a New York State DMV Inspection license, your license may be valuable depending on the county where your shop is located.

If you have questions on the sale and/or transfer of an inspection license call the association office at 518-452-4367.

Attention Inspection Stations

The Association has received a flurry of requests for legal representation for violations of the DMV commissioner regulations known as "clean scanning." that is when a vehicle other that the one to be inspected is substitute for the OBD-II part of the test. We have no defense for these violations. DMV has the ability to trace the OBD-II inspection to the vehicle used for the inspection.

If you cannot pass a vehicle for any reason, get help. That help could come from DMV. This violation almost always results in revocation.

All Petroleum Bulk Storage Facilities

YOU WERE REQUIRED TO DESIGNATE A CLASS A AND/OR B AUTHORIZED OPERATOR TO NYS DEC NO LATER THAT OCTOBER 11, 2016

THIS WAS MORE THAN TWO YEARS AGO

If you have not done this you are now subject to a $500 penalty from NYS DEC. This may now be unavoidable

If you have not reported this information to NYS DEC as of yet do so immediately. Communicate this information to DEC at operatortraining@dec.ny.gov

Or call the association office

SERVICE STATIONS
REPAIR SHOPS
USED CAR DEALER
ATTENTION

Do you have problems

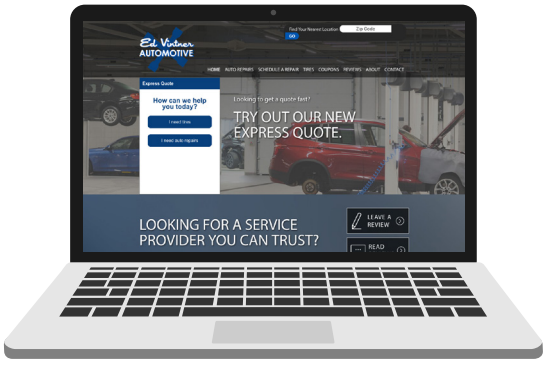
1. Getting into business - going out of business?
2. With government, Federal, State and Local?
3. Are you trying to settle a violation?
4. Need an attorney?
5. Have a small claims case?
6. Need a license, renew a license?
7. Learn and understand the laws that regulate your business?

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

Just call us 518-452-4367

ALL-IN-ONE DIGITAL SOLUTIONS FOR YOUR AUTOMOTIVE BUSINESS

Close the gaps in your online marketing strategy with full-service solutions from Df Auto. Everything you need to build a powerful online presence, all under one roof.

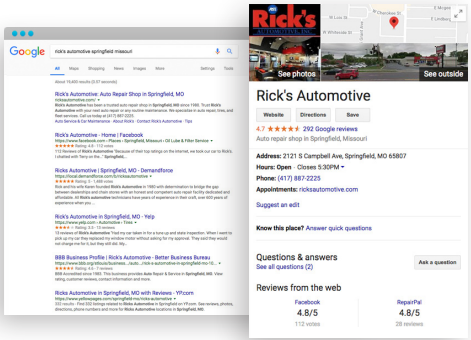


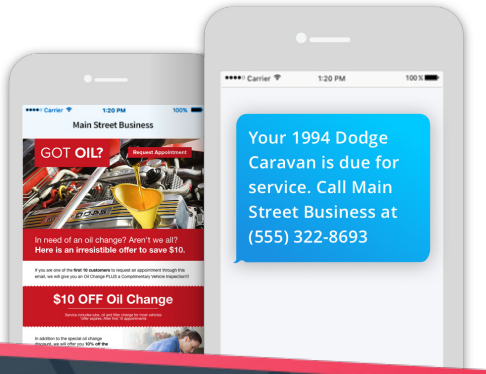
WEBSITE SOLUTION

Stand out from the crowd with a unique automotive design that's branded to your business and guide visitors seamlessly through their journey with intuitive and interactive features. Provide the most user-friendly experience on any device and convert visitors into leads with clear calls-to-action, simple quoting tools, and automatic email replies. Simple searches, fewer clicks, more sales.

ONLINE REPUTATION MANAGEMENT

Build and protect your online reputation with full-coverage from beginning to end. Generate reviews with simple prompting tools to showcase positive feedback about your shop. Stay informed with review monitoring services and notifications sent right to your email. No time to respond to all of these reviews? No problem! We respond promptly and professionally. We also integrate your reviews with your website to show off your rockstar status and help build trust with potential new customers.





COMMUNICATION & MARKETING

Keep customers coming back with email and text reminders about upcoming appointments, promotions, even recommended services by vehicle type and service history. Send marketing emails in a flash with automatic one-click templates, prompt positive reviews after each appointment with a simple text, and send text message status updates. 2-way texting capabilities get the conversation going, and it will be one they're sure to tell their friends about.

NET Driven | Df//AUTO

Call us at **877.860.2005** to schedule a demo, or visit **netdriven.com/all-in-one-digital-solutions**

PRODUCT BUNDLES TO ACCELERATE YOUR BUSINESS

	Ignition	Throttle	Drive	Overdrive
WEBSITE **World-Class Website Design** Branded to your business and designed with mobile-first in mind. Free domains, free SSL, custom content, and the most user-friendly designs in the industry to guide your website visitors from their device to your shop.	✓	✓	✓	✓
INTERACTIVE WEBSITE FEATURES **Educational and Easy-To-Use** Everything you need to educate your customers and make it easy for them to do business with your shop. Vehicle diagnostic tool, comprehensive tire & service catalogs, simple quoting tools, even a recommended vehicle maintenance lookup tool and video content.			✓	✓
CUSTOMER COMMUNICATION & REMINDERS **Manage and Automate Communications** 2-way texting, appointment reminders, shop recommendations, email marketing campaigns, and text message marketing, and customer satisfaction surveys.		✓	✓	✓
REPUTATION MANAGEMENT **Review Notification, Responses, and Prompting Tools** Tools to generate and manage your online reviews and reputation from start to finish. Review generating text messages, review monitoring and notifications, even review responses. Website integration included.		✓	✓	✓
REPBOOST **Automated Review Management** Competitive intelligence, business listing tracker, automated review outreach, quick text reviews, and management.	✓		✓	✓
TURBO LISTINGS- POWERED BY YEXT **Directory Listing Management System** Directory listing management system, technology, real-time and scheduled updates, duplicate suppression, analytics, GoogleMap integration. Easily scan your online health and update 50+ business listings.	**Add-On**	**Add-On**	**Add-On**	**Add-On**

NEW YORK STATE
ASSOCIATION OF SERVICE STATIONS AND REPAIR SHOPS

Web Training for:

DMV INSPECTOR TRAINING

(Instructions on how to sign in and take the training)

1. Enter our nysassrs.com website either by cell phone or computer.

2. Find the training tab on the top of the screen (if in full screen view). If smaller there is a menu tab on the left of the screen. Click that and you will find the training tab there. It will bring you to an intro page to our training.

3. Inside the blue column SITE MAP you will see Inspector Training Material.

   (Make sure you have an updated form of adobe flash player, if not you can access the abobe website from this page.)

4. Click on whichever inspector training you would like to download. We have:

   a) Light/medium duty, and
   b) Heavy duty inspection training available.
   c) Motorcycle,

   Note it may take a few minutes to download depending on your internet speed.

5. When download is complete you may access our full audio presentation.

6. You may also choose to access the DMV's version of the training which we provide the link for if you like. There is no audio or PowerPoint but DMV's presentation may differ a little to give you variety in training.

7. Besides training, our presentation takes you step by step to register for the testing for inspector certification.

8. If you have any questions contact the association office at 518 452-4367.

REGULATIONS ON USED CAR BONDS

Surety Bond

To get a surety bond, you must contact a surety insurance company. Make sure that the business name and mailing address on the bond exactly match the business name and mailing address on your DMV facility license, Make sure that you write your Facility Number on the bond.

Bond amount required from a dealer

The bond amount depends on the number of vehicles that the dealer sold in the previous calendar year, or if the dealer is licensed as a franchised new dealer. Refer to the chart below.

Number of vehicles sold in Previous calendar year	**Bond amount**
50 or fewer	$20,000
More than 50	$100,000
Franchise dealers selling cars, SUVs, light trucks, etc. Dealers selling only trailers motorcycles. Vehicles over 10,000 pounds, ATV's,boats and snowmobiles are exempt from the bond requirements.	$50,000

Need help getting a bond?

Call the association office.

Lawley & NYSASSRS

New York State Association of Service Stations & Repair Shops

Together we have returned $48,127,294 to policy holders since 1991

NYS Worker's Compensation Program Highlights

- Up to a 25% upfront discount offered
- Over 30% Average Annual Dividend (25 Years)
- Save up to 55% off your current premium*
- Last year's dividend was 30% ($2,701,765)
- Dividend checks as high as $65,433 have been issued to our policy holders
- Easy quoting process
- Program available to all members

**Based on 25% up-front discount + declared dividends*

Bill Adams

716.849.8641 | badams@lawleyinsurance.com

lawleyinsurance.com | 361 Delaware Ave, Buffalo, New York

Lawley

You owe it to yourself to make sure you are getting the best deal.

NYSASSRS now offering "PAY AS YOU GO" billing

We are pleased to announce our newest Member Benefit Partner, Heartland Payroll Solutions. Through this partnership, any safety group participant can take advantage of their integrated billing solution with the NYSASSRS Safety Group.

Benefits of Pay As You Go:

- **You pay premiums each pay period based on current payroll information.**
- **Improved cash flow management by sending accurate workers' comp premium to the carrier based on actual payroll**
- **Premium payments are automatically deducted by the NYS Insurance Fund**
- **Reduces the risk of year-end audit payments**
- **Better option than "direct bill policies" or "self-reported policies" that require periodic, larger premium payments**

About Heartland:

- **NYSASSRS members get an exclusive discount on payroll processing with Heartland**
- **Pay As You Go billing is FREE**
- **Processes payroll for more than 36,000 customers**
- **Cloud-based, feature-rich solution**
- **Three-year price lock on processing fees**
- **Dedicated Single Point Of Contact**

For more information contact:

Chandler James
518-452-4367
chandler@nysassrs.com

Mobil Service Station, Auto Repair and Towing Business
For Sale

6 FUELING POSITIONS
2 DOUBLE GAS PUMPSWITH CREDIT CARD READERS
1 DIESEL & 1 KEROSENE PUMP

2 CONNECTED BUILDINGS WITH 4 BAYS
BUILDING 1: 28X48
BUILDING 2: 30X48

BUILT IN TIRE RACKS FOR 300 TIRES
3 HOISTS
12,000 LB JOHN BEAM ALIGNMENT RACK
HUNTER ALIGNMENT MACHINE
HUNTER TIRE BALANCE
HUNTER MACHINE
TOO MUCH TO LIST

SUCCESSFUL TOWING BUSINESS
POLICE AND AAA CONTRACTS
2 MEDIUM DUTY ROLLBACKS
10 TON WRECKER

GREAT LOCATION:
THINK POSSIBLE CONVENIENCE STORE

BUSINESS HAS GROSSED $3,000,000

CALL (607) 382-0948
FOR DETAILS ABOUT THIS EXCITING OPPORTUNITY

FREE MONEY

BE A MEMBER OF OUR ASSOCIATION OR AFFILIATES
FILL OUT THIS FORM AND FAX BACK TO US
BUY $7500 IN PARTS IN ONE QUARTER FROM YOUR **NAPA DEALER**
RECEIVE A REBATE CHECK FOR 2% OF YOUR PURCHASES (MINIMUM OF $150 REBATE)
PUT THE MONEY IN YOUR POCKET
NOTE: YOU CAN NOT BE A MEMBER OF THIS AND ANOTHER NATIONAL NAPA PROGRAM

FREE MONEY

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

ARE YOU AN OWNER OR EMPLOYEE IN NEED OF TRAINING?

DO YOU WANT TO PROTECT YOUR BUSINESS FROM EXCESSIVE FINES
OR
THE POSSIBLE LOSS OF YOUR:
TOBACCO LICENSE
LOTTO LICENSE
ALCOHOL LICENSE?

DO YOU WANT TO BE CERTIFIED IN SECTION 609 MOTOR VEHICLE AIR CONDITIONING (MVAC)?

THE NEW YORK STATE ASSOCIATION OF SERVICE STATIONS & REPAIR SHOPS
OFFERS ON-LINE COURSES THAT NOT ONLY PROVIDE TRAINING AT YOUR CONVENIENCE, BUT AT VERY COMPETITIVE PRICES FOR BOTH MEMBERS AND NON-MEMBERS OF OUR AFFILIATES

ALL INFORMATION AND MATERIALS ARE PROVIDED THROUGH OUR WEBSITE AT:
NYSASSRS.COM

QUESTIONS CAN BE DIRECTED TO (518) 452-4367. WE ARE AVAILABLE TO PROVIDE PERSONAL ASSISTANCE.

Garage Insurance Survey

Name of Business:			
Street Address:			
City:	State:	Zip:	
Phone #	Fax #	E-Mail:	
Contact Person:		Phone # (if different from above)	
Are you happy with the cost and service provided by your carrier/agent?		Yes	No
If yes STOP here… If NO or NOT SURE you may want to look at the following			
Is your coverage insufficient?		Yes	No
Is the service poor to non-existent?		Yes	No
Is the cost too high?		Yes	No
Are you satisfied with your current coverage?		Yes	No
Are you interested in a quote from another insurer?		Yes	No
Is so please check each that apply:			
		Property & Casualty	
		Workers Comp	
		Disability	
		Health	
If you checked one or more of the above please provide the following information:			
Name of Current Insurer:			
Type of Insurance:			
Renewal Date:			
When/How is the best time to contact you?			

If you are interested in learning how you may save on insurance costs
Please fill out and fax to your local association at 518-452-1955

NEW YORK STATE OF OPPORTUNITY. | Department of Motor Vehicles

APPLICATION FOR CERTIFICATION AS A MOTOR VEHICLE INSPECTOR

FOR OFFICE USE ONLY	
CIA CIO CIC CIS CIG CID	
Certificate Number	County
CIRCLE ONE: OE ADD Note: Check or money order must be attached to enter OE or ADD	
Group(s) 1 2 3 A A A A Y N ☐ Address Change	
TEST RESULTS Group(s) 1 2 3 P P P P F F F F N N N N W W W W Y N N Y	

- **FOR ORIGINAL APPLICATIONS:** Answer **ALL** questions on **Page 1 and Page 2** that apply to you, and **SIGN** the application on **PAGE 2** or it will be returned to you for completion. You **MUST** be at least 17 years old and have **AT LEAST ONE YEAR OF MOTOR VEHICLE REPAIR EXPERIENCE** in the last 5 years immediately preceding this application, in the area in which you apply to be certified, or you must provide a copy of an acceptable school diploma in vocational motor vehicle trades. When your application is approved, DMV will notify you by mail of the date, time and location of the inspector training class. You **MUST** present photo ID at the class as proof of identity. If you have difficulty reading or understanding written material, please contact the office identified at the bottom of page 2 of this form.
- **FOR AMENDMENT AND DUPLICATE APPLICATIONS:** Answer questions 1-21 and **SIGN** in #25.
- **REQUIRED FEES**
  Non-refundable application fee ($10) and three-year certification fee ($15).
  Make check or money order for $25 payable to the Commissioner of Motor Vehicles. You MUST send your check with this application. Starter checks are not accepted.

1 Check type of application: ☐ ORIGINAL ☐ AMENDMENT (**No Fee**) ☐ DUPLICATE (**No Fee**)

2 Have you ever applied for or taken a test to become a Certified Motor Vehicle Inspector? ☐ Yes ☐ No

3 Have you ever been a Certified Motor Vehicle Inspector and/or Body Damage Estimator?
☐ Yes ☐ No If "Yes," please write your Certification No. _____

4 Check all certification groups for which you are applying.
- ☐ **Group 1** (Allows an individual to conduct safety, diesel emissions, OBDII emissions, and low enhanced emissions inspections of motor vehicles that have a seating capacity under fifteen passengers, and motor vehicles and trailers that have a MGW under 18,001 pounds, except motorcycles and semi-trailers)
- ☐ **Group 2** (Allows an individual to conduct safety and diesel emissions inspections of motor vehicles that have a seating capacity over fourteen passengers, motor vehicles and trailers that have a MGW over 18,000 pounds, and semi-trailers, except motorcycles)
- ☐ **Group 3** (Allows an individual to conduct safety inspections of motorcycles)

*Please **print** or **type** in the open spaces next to the arrows.*

5 LAST NAME FIRST M.I.

6 DATE OF BIRTH Month / Day / Year

7 SEX Male ☐ Female ☐

8 **MAILING ADDRESS** (Include Street No., Rural Delivery and/or Box No.)

9 HEIGHT Feet Inches

10 EYE COLOR

11 STREET NAME **APT. NO.**

12 HOME TELEPHONE (Include Area Code) ( )

13 CITY OR TOWN STATE ZIP CODE

14 COUNTY

15 HOME ADDRESS (If Different From Mailing Address)
NUMBER AND STREET (Include Street No., Rural Delivery and/or Box No.) APARTMENT NO. CITY STATE ZIP CODE

16 Has your address changed since your last certification was issued? ☐ Yes ☐ No

17 CLIENT IDENTIFICATION NUMBER (From New York State driver license or non-driver ID)
NOTE: Failure to provide a valid Client ID number will prevent issuance of a Certified Inspector card.

☐ Check this box if you do not currently have a New York State driver license or non-driver ID. A form (ID-5 VSCI) will be mailed to you with instructions on how to obtain a Client ID number.

PLEASE CONTINUE, AND SIGN ON PAGE 2.

CLIENT IDENTIFICATION NUMBER (From New York State driver license or non-driver ID)

NOTE: Failure to provide a valid Client ID number will prevent issuance of a Certified Inspector card.

18 PRESENT EMPLOYER	19 FACILITY NUMBER	20 BUSINESS TELEPHONE NUMBER ( )

21 BUSINESS ADDRESS (NUMBER AND STREET)	CITY	STATE	ZIP CODE

22 **FOR ORIGINAL APPLICATIONS ONLY**

Have you ever been convicted of any felony, misdemeanor or improper motor vehicle inspection?

☐ Yes ☐ No If "YES," give details below: *(Applicants will not necessarily be rejected because of a conviction record. Such applications will be reviewed on an individual basis.)*

Date of Violation	Nature of Violation	Date of Conviction	Disposition & Fine	Court Location

23 **FOR ORIGINAL APPLICATIONS ONLY**

By month and year, list the dates of all your motor vehicle repair experience. You must have at least one year of motor vehicle repair experience in the last five years **immediately preceding** the date of this application. Attach additional sheets if necessary.

Dates (From - To)	Employer's Name and Address	Describe Type of Repairs Performed *(be specific)*

24 **FOR ORIGINAL APPLICATIONS ONLY**

List any trade school, vocational school, or other motor vehicle repair courses taken. Only approved schools are acceptable. You must provide a ***COPY*** *of your diploma if you have less than one year of work experience.*

Dates Attended	School Name and Address	Type of Course	Degree, Diploma or Certificate

Section 304(a) of the Vehicle & Traffic Law provides for the certification of motor vehicle inspection personnel. A Certified Inspector agrees to comply with the rules and regulations promulgated by the Commissioner of Motor Vehicles. Failure to comply with these rules and regulations may result in the revocation of this certification.

FALSE STATEMENTS MADE ON THIS APPLICATION ARE PUNISHABLE UNDER THE PENAL LAW.

25 **NAME** (PLEASE PRINT) _____

SIGNATURE _____ Date _____

(Sign Name in Full - DO NOT PRINT - No Nicknames)

- **SEND APPLICATION AND CHECK TO:**

BUREAU OF CONSUMER AND FACILITY SERVICES
Attn: Certification Unit
PO Box 2700
Albany NY 12220-0700
Telephone (518) 474-7998

NOTE: Notify this office of any change in your address.

reset/clear