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# GRANY

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August 2016

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## Attorney's Corner

Many of your Associations provide legal plans to assist you in responding to summonses, violation notices, and certain types of lawsuits. Often, some appearances by your Association attorney are free of charge, and others are offered at a reduced rate from the attorney's regular billing rate. In addition, with Association attorneys you have the benefit of working with lawyers who are very familiar with issues affecting your industry, such as environmental regulations, franchise laws on the state or federal level, Department of Motor Vehicle regulations, and the like. However - and this is a big BUT - it frequently happens that your Association attorney is handicapped from giving you all the help he or she can offer by a Dealer's failure to pass along to the attorney summonses, violations and lawsuits when they first come in. You'd be amazed at how many Dealers just throw these documents on the desk and leave them to be buried under a pile of paper. But I've got news for them - they're NOT going away! Several months later, when a default judgment comes in or a repair or inspection license is suspended and a fine pending, your Association attorney is already behind the 8 ball when it comes to bailing you out of trouble. In addition, the extra work that needs to be done to restore the status quo, if that can be done - is usually not covered by your legal plan, so you will be paying extra for the work needed. So please, any time such notices are received by you, please forward them to your Association attorney immediately! We Association attorneys draw a great deal of satisfaction from helping our members out from the often inadvertent difficulties they get into. Help us help you, and give us the earliest notice that trouble is brewing.

An important reminder about the sale to minors of alcoholic beverages from a c-store: If you and your staff take the Alcohol Training Awareness Program ("ATAP") before you receive your first violation, then the fine is reduced to no more than \$1,000.00. If you take it after your first violation then the fine is only reduced to 25% off the \$3,000.00 fine that's given then. It therefore makes a lot of sense to have your staff take the training before a first violation is received. With the Tobacco Clerk Training Program ("TCTP") regarding tobacco sales to minors, only if you take the training before a first violation can you receive a one (1) point reduction in the penalty. Please check if there are ATAP and TCTP training classes in your areas. If not, training is available on-line at [www.nysassrs.com](http://www.nysassrs.com).

*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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## **New York State Inspection Program**

In the final hours of the 2015-16 New York State Legislative session a bill was passed, A4106-S6034, which requires inspection stations to check for the transmittance of light through the driver and passenger windows on a vehicle to verify that the restricted light is less than 70%.

In the past this kind of violation was issued by the police departments in New York State.

The bill now goes to the governor's office to be vetoed or signed into law. This legislation is identical to Bill S2542 in the 2012 legislative session. The governor vetoed this identical bill in Veto Message #180 and the rationale remains compelling. This bill, as the prior bill, places an additional burden on inspection operators without an increase in the inspection fee. The signing into law of this bill, as was pointed out by the governor in 2012 veto message, would create an unfunded mandate. Nothing has occurred to change the governor's rationale from the 2012 veto. The inspection station operators in New York State feel there are more effective options available to achieve the results sought in this legislation instead of using the safety inspection as an additional enforcement mechanism.

An inspection station currently is permitted to retain eight dollars of the ten dollar safety inspection fee with the remaining two dollars representing the fee for the inspection certificate. The maximum fee of eight dollars bears no relationship to the amount of time expended in performing the safety inspection. The safety inspection fee has not been increased since 1985. However with the increase in inspection items to be checked and the impact of inflation, the fee has remained stagnant.

To again add another requirement to the inspection without increasing the inspection fee is unfair to the 10,000 inspection stations located throughout the state.

In order to perform the inspection of light transmission for the windows required in this bill a tint meter is required. The device measures the total amount of light that passes through a window. This bill effectively mandates the cost to purchase this equipment, which, together with the labor involved, is clearly not recoverable under a fee structure that is already inadequate.

Should this bill pass into law it would not only create a financial burden on the inspection station but would put their licenses in jeopardy. It would be easily noted that a vehicle with a new inspection sticker and tinted windows that did not transmit 70% of the light, had the inspection performed without the attention paid to failing the vehicle for the tinted windows. This puts the license of the inspection station in jeopardy.

We are also concerned with strong and undue influence placed on the inspection station by customers and officials to provide a sticker without the vehicle having illegal tint removed from the windows. The inspection license is an integral part of the repair shops operation and financial stability. The jeopardy that the license is being placed in is unfounded and unconscionable.

We are going to work diligently to have the governor veto this bill. The association will need some assistance. At

first you may wish to contact the sponsors who introduced this bill and had it passed. Assemblyman Michael G. DenDekker, telephone number (518) 455-4545 or (718) 457-0384, Senator John A. DeFrancisco, telephone numbers (518) 455-3511 or (315) 428-7632.

These two legislators have the misguided intent to protect police officers approaching a vehicle with tinted windows. The police officers would not be afforded the opportunity to see if there are any weapons in the car.

I remind you that law enforcement has the power and the authority, which they already use, to enforce this law without putting this burden on the inspection stations.

We will provide additional information as it surfaces.

The association office.

## **Tax On Tobacco Notice**

*Department of Taxation and Finance Tax*

*Law Section 1111 Annual Adjustment*

Calculation on the Base Retail Price on Cigarettes Pursuant to the provisions of section 1111(j)(2) of the Tax Law, the Commissioner of Taxation and Finance is required to give public notice of the base retail price adjustment calculation and the resulting base retail price of cigarettes for purposes of establishing the prepaid sales tax on cigarettes imposed by section 1103 of the Tax Law. Section 1111(j) of the Tax Law provides that the base retail price of cigarettes shall be adjusted each year by a factor based upon the manufacturers' list price for a carton of standard brand cigarettes.

The base retail price adjustment factor for the period September 1, 2016, through August 31, 2017, is 1.018. The base retail price adjustment calculation results in a base retail price of cigarettes effective September 1, 2016, as follows:

Package of twenty (20) cigarettes:  $\$10.219 \times 1.018 = \$10.403$

For each additional five (5) cigarettes:  $\$2.552 \times 1.018 = \$2.598$

The base retail price is adjusted annually, to take effect the first day of September.

For further information, including rates for previous periods, contact: Ann V. Fiorello, Taxpayer Guidance Division, Department of Taxation and Finance, W.A. Harriman Campus, Albany, NY 12227, (518) 530-4157

## **Convenience Store Sales Remain Strong For First Half Of 2016**

Convenience store sales surged over the first half of the year as lower gas prices fueled more driving and Americans embraced the continued addition of fresh and healthy food options, according to a NACS survey.

More than two in three convenience retailers (70%) say that in-store sales in the first half of 2016 were higher than the same period last year. A majority (54%) also say that fuel sales were higher compared to the first half of 2015.

Only 8% of retailers say that in-store sales were lower in the first half of 2016 compared to a year ago.

Retailers continue to add fresh items to their product mix: 43% say that they have added more fresh fruit or vegetables this year; 39% have added more packaged salads; and 30% have added more cut fruit and vegetables. Overall, 85% of retailers say they sell fresh fruit or vegetables, an 8-point increase over last year.

Retailers also are selling more prepared foods and see foodservice as a growth opportunity: 64% say that they are confident in their ability to compete with quick-service restaurants for customers.

Golden Pantry Food Stores (Watkinsville, Ga.) and Flash's C-Store (Sheridan, Wyo.) are among the many companies that say they are adding more prepared foods and fresh fruit and salads. Meanwhile, SpartanNash (Grand Rapids, Mich.), which operates Quick Stop convenience stores, is expanding its nuts and seeds, jerky and protein bar selections. Overall, 94% of retailers surveyed say they sell health bars and 92% sell nuts and trail mix.

"It's not a matter of 'if' we are going to evolve; it's a requirement," said Dennis McCartney with Landhope Farms Corp. (Kennett Square, Pa.), which is investing in new foodservice equipment to add new items to its menu.

Meanwhile, bottled water sales continue to grow at convenience stores. Nearly half of all retailers (48%) say they have expanded their bottled water offerings, and even more (59%) say they increased their nutraceuticals and enhanced water selections. Convenience stores sell an estimated 50% of all single-serve bottled water purchases in the United States.

As a result of strong sales and continued success selling new items, more than two in three convenience retailers (68%) say they are optimistic about their own business prospects, and 63% are optimistic about the industry's prospects. Sales this summer are expected to be strong because of "dry, hot weather and tourist traffic," noted Rich Spresser with Pester Marketing (Denver, Colo.).

However, there are areas of concern. Retailer optimism over their own business prospects, while still strong, has dropped 20 points from the 83% who said they were optimistic a year ago.

The drop in optimism is led by bigger concerns about the economy. A minority of retailers (47%) now say they are optimistic about the overall U.S. economy, down from 61% a year ago. Retailers say they are apprehensive about regulations, especially those targeting wages, which could lead to higher direct store operating expenses.

Why the downward trend in overall optimism? The most common reason is summed up by Robin Gabriel with Shell Food Mart (Hinsdale, Ill.): "The election" and the overall negative political climate

### **Proposed Snap Rule Will Harm Convenience Stores**

The association cautions that prohibiting convenience stores from accepting SNAP benefits will negatively affect not only retailers but their customers and communities.

The U.S. Department of Agriculture (USDA) wants retailers who accept food stamps to stock more food choices, a move that could harm tens of thousands of smaller stores, like convenience stores, currently in the program, Washington Free Beacon reports. Earlier this year, the USDA unveiled a proposed rule change to the Supplemental Nutrition Assistance Program (SNAP) that would mandate authorized retailers to have seven varieties of foods in four staple food groups on a regular basis, with at least six units per variety on the shelves.

For small retailers there is limited space on shelves and coolers, and the proposed regulation would mandate that we have 168 single ingredient staple foods on display on shelves at all times.

USDA changed the underlying definition of staple foods to exclude foods that have multiple ingredients so that a mixed fruit cup or can of chicken noodle soup could no longer be counted towards a retailer's stocking requirements. This is extremely onerous for small format retailers with limited storage space and it would be very costly to change supply and delivery, or even remodel a store, to comply with this.

The rule would also change the definition of a retail food store to accept SNAP. "A store would no longer be considered a retail food store if 15% or more of your total food sales are of foods that are heated or cooked on site. That provision alone pushes out 47,000 convenience stores immediately of the 106,531 convenience stores that participate in SNAP.

We agree that there should be more healthful options for beneficiaries, but she also pointed out that it's also important to ensure that convenience stores and other small format retailers are eligible to stay in the program. Convenience stores play a fundamental role in SNAP because often times we are the most convenient place—in terms of both locations and hours of operation—for a beneficiary to easily access food for their family. If a majority of convenience stores are pushed out of SNAP, which our data indicates would be the case if the proposed rule goes into effect, this will ultimately hurt the beneficiaries who rely on us."

However, the USDA said that the rule change is about helping lower-income residents. "This rule has always been about increasing access and choices of healthier food for low-income Americans," said a USDA spokesperson. "It is disappointing to see some take a position against increasing healthier food options for our low-income Americans."

The comment period for the proposed rule closed in May. Now the agency is analyzing those comments as it prepares to finalize the rule.

### **Nearly 1 In 3 Consumers Victimized By Card Fraud**

Thirty percent of consumers globally have experienced card fraud in the past five years, according to recent data from ACI Worldwide and Aite Group.

The global fraud study of more than 6,000 consumers across 20 countries revealed that, compared to ACI's 2014

benchmark study, card fraud rates—unauthorized activity on three types of payment cards (debit, credit and prepaid)—is on the rise worldwide.

Mexico leads as the top country experiencing the most card fraud at 56%, followed by Brazil at 49% and the U.S. at 47%. In 2014, the U.A.E, China, India and the U.S. topped the list.

The U.S. is the only country to remain within the top three both years, due in part to being a laggard in the roll-out of EMV chip cards, with skimming and data breaches continuing to be security challenges. European countries experience less card fraud than countries in the Americas, due to earlier adoption of EMV (chip and PIN) and other security advancements.

“Card fraud rates are on the rise in the majority of countries included in the survey,” said Ben Knieff, senior research analyst, Aite Group. “The data shows that consumer education and customer service remain a challenge for financial institutions globally, as risky behavior has a direct correlation to experiencing fraud.”

With 2,260 confirmed data breaches in 2015, security remains top-of-mind within the financial services industry and among consumers. Despite the adoption of fraud analytics solutions by financial institutions and merchants—along with EMV in most countries, including in the U.S.—card fraud rates are on the rise in many parts of the world.

“It’s no surprise that there is a direct correlation between fraud and lower consumer trust and card loyalty,” said Andreas Suma, vice president and global lead, fraud and data, ACI Worldwide. “And as this data illustrates, it’s more critical than ever for financial institutions to implement and actively maintain effective fraud prevention solutions that address fraud, security and customer experience needs.”

### **Major Limits Losses In Bumpy Transition To Chip Cards**

ExxonMobil has put in place a cap on the fraud charges it will absorb for branded stations as they phase in chip card technology at point-of-sale terminals inside their stores, the company told branded wholesalers earlier this week.

Effective July 1, a gas station will be responsible for its own chargebacks due to indoor fraudulent card transactions if the cumulative charges exceed \$2,000 since Oct. 1, 2015. When a retailer hits that threshold, those fraud chargebacks will be deducted from the site's credit card payments like any other indoor chargeback, the major said.

On Oct. 1, 2015, credit card companies shifted liability for chip card-related fraud to retailers that failed to comply with Europay MasterCard Visa (EMV) technology standards for chip cards inside their store. The liability shift at the pump island is set to occur Oct. 1, 2017.

The chargeback cap is designed to limit ExxonMobil's losses from chip card fraud at its branded gas station network, which the company estimates could exceed \$5 million. The company estimated the fraud limit will affect less than 2% of Exxon and Mobil stations.

Like other majors, ExxonMobil said it would indemnify branded stations against chip card fraud for a grace period to give equipment vendors time to develop, certify and bring to market the required hardware and software. EMV-certified payment systems that support chip card processing have only recently become commercially available.

The announcement of the cap was part of a reminder that ExxonMobil's one-year grace period for covering these fraud-related chargebacks would end Oct. 1.

"Retailers are responsible for indoor counterfeit fraud chargebacks posted after Sept. 30, 2016," wrote Grant Doescher, U.S. branded wholesale manager in a June 21 letter. "Accordingly, retailers should expect to see chargebacks for fraudulent indoor transactions that occurred prior to Oct. 1, 2016, given the typical 30-90 days lag time from when a consumer disputes a transaction and when the issuer charges the transaction back to the retailer following their investigation."

On a monthly basis, ExxonMobil publishes an EMV report on its branded wholesaler portal that provides store-level fraud details. The EMV report includes a list of stations posting the sites with the highest fraud at the top. The report summarizes fraud monthly and cumulatively.

--Donna Harris, dharris@opisnet.com

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### **Chargeback Changes Coming To Convenience Stores**

Since the October 2015 EMV liability shift, many retailers are experiencing an outrageous increase in chargebacks, mostly erroneous. Mike Lindberg, payment solutions manager at CHS Inc., commented at the 2016 Conexus Annual Meeting in May that some smaller retailers have reported a \$10,000 to \$15,000 increase in chargebacks per week, while larger retailers are experiencing \$1 million in chargebacks per week.

"I can't imagine what will happen at the pump come October 2017," said Lindberg, adding that the No. 1 chargeback reason code since October 2015 is "merchandise not received." Some retailers are even seeing multiple chargebacks on the same credit card. Lindberg said CHS has ramped up its chargeback processes since so many are questionable, noting that retailers can also implement other processes, like transaction risk scoring and zip code entry, that allow them to combat this type of fraud.

Recognizing the growing problem with chargebacks, Visa Inc. also announced last week modifications to EMV certification and chargeback regulations. Visa is allowing all acquirers to self-certify their EMV solutions, which removes the need for acquirers to submit test results to the brands and provides acquirers with flexibility to modify their testing plans as needed.

Visa updated its chargeback policies:

- **Minimum Chargeback Amount:** Effective July 22, 2016, through April 2018, a \$25 minimum limit will be required for allowable counterfeit chargebacks on U.S. domestic card present transactions.

- **Maximum Chargebacks per Account:** Effective with the October 2016 Visa Business Enhancements Release through April 2018, a maximum of 10 counterfeit fraud chargebacks will be allowed per account in a 120-day period for U.S. domestic card present transactions.
- Visa estimates that these two changes will remove more than 40% of all U.S. counterfeit fraud chargeback transactions from the Visa network. And effective June 17, 2016, Visa will begin blocking counterfeit fraud chargebacks for Merchant Category Codes (MCCs) that are not eligible for the EMV liability shift, including automated fuel dispensers (AFDs) and ATMs.

Last week Visa also reported results of its Visa Transaction Advisor (VTA) service used by more than 35,000 gas stations in the United States. On average, VTA users have experienced a 54% decline in counterfeit fraud rates and a 51% decline in lost and stolen fraud chargeback rates.

As more retailers adopt EMV, fuel retailers are working to upgrade or replace their dispensers to accept EMV chip card technology by the October 2017 liability shift—an estimated \$6 billion expense for the convenience and fuel retailing industry. Visa says that its VTA service can help merchants identify and block high-risk transactions before they are processed.

“For the many retailers unable to meet the aggressive EMV liability shift deadline, real-time risk scoring might buy some breathing room and protection from the onslaught of chargebacks after October 2017,” Gray Taylor, executive director of Conexus, said.

Meanwhile, Bloomberg reports that cyber thieves are taking advantage of the situation. Counterfeit fraud is expected to increase 12.5% in 2016, according to Aite Group, as thieves seek to “use up” stolen card data before the next EMV liability shift.

“There’s a fire sale, to try to burn through all of the stock of card data that they’ve seen,” Julie Conroy, an analyst at Aite Group, told the news source.

Carman Wenkoff, chief information and digital officer at Subway, told Bloomberg that the company will complete its EMV rollout at its U.S. locations this month. Declining to disclose Subway’s chargeback costs, he noted that it’s been significant. “Every merchant should be thinking about how they should deploy EMV as soon as they can,” he said.

### **Merchant Community Urges Congress To Protect Debit Swipe Fee Reform**

This week more than 160 national and state merchant trade associations, sent a letter to House leadership to express the merchant community’s strong opposition to H.R. 5465 and the “CHOICE Act” language that would repeal the debit swipe fee reforms included in the 2010 Dodd-Frank Wall Street Reform and Consumer Protection Act.

U.S. Rep. Jeb Hensarling, chairman of the House Financial Services Committee, is circulating draft legislation that allows price-fixing of debit card swipe fees and includes a full repeal of the Durbin Amendment and debit reform.

Although he’s recently spoken about his commitment to helping Main Street and ending government bailouts, a repeal of debit swipe fee reform would do the exact opposite.

The debit reforms contained in Dodd-Frank, provided by the Durbin Amendment, brought the first piece of competition and transparency into a market that was historically void of it. “The reforms in the law have benefitted American consumers, merchants, small financial institutions and the economy as a whole. Repealing or weakening the law will only benefit fewer than two percent of the country’s largest banks and remove any and all competition from the debit routing market,” notes the letter.

### **The Double-Speak Of Big Banks**

George Orwell’s 1984 novel has nothing on banks these days in terms of double-speak, wrote Lyle Beckwith, in a blog posted to The Hill. “The banks don’t like an amendment to the Dodd-Frank financial-regulation law that opens up to competition to what had been a rigged market,” he wrote.

MasterCard and Visa dominate the credit and debit card market, allowing these two giant companies to “price-fix swipe fees for their member banks at horrendously high levels. That’s bad for merchants, especially small ones; they take such a huge hit on swipe fees that they can’t expand and hire as much, which of course hurts the entire economy. Swipe fees have come out of nowhere to become many merchants’ second-largest operating cost, after only labor,” Beckwith said.

The Durbin Amendment, signed into law in 2010 and directs the Federal Reserve to ensure debit interchange fees are “reasonable and proportional” to the costs incurred, says that debit cards at least should be open to competition and that banks that won’t compete must at least charge no more than a reasonable profit—what the Federal Reserve generously determined to be about a quarter on every transaction.

“Yet the banks’ costs of doing this business are so small that they are still gobbling up an average 500% profit on each transaction, according to figures the banks themselves report to the Fed,” Beckwith wrote. “This is what banks are whining about. We merchants—and, in fact, most businesses—can only envy profit margins that extreme.”

One example of bank double-speak is the claim that lower profits from swipe fees has meant fewer free checking accounts. But the American Bankers Association found that “free-checking accounts have actually risen since reform, from 53% of consumers to 61% now. In fact, debit reform saved consumers \$6 billion in its first full year alone, according to the most authoritative study of reform so far. Yet Americans still pay far higher swipe fees on debit and credit cards than much of the rest of the world,” Beckwith said.

Now U.S. Rep. Jeb Hensarling, chairman of the House Financial Services Committee, wants to repeal Dodd-Frank. “Repealing the only significant reform so far of the broken

swipe-fee market isn't going to create a free market. It would simply let banks return to fixing prices utterly unchecked by competition. That is so far from Americans' traditional notion of free markets that no amount of double-speak can disguise it," concluded Beckwith.

### **ExxonMobil Debuts Its 'Most Advanced Gasoline' Yet**

Exxon and Mobil branded gas stations across the United States now feature Synergy Gasoline, ExxonMobil's "most advanced" gasoline manufactured to date. The improved fuel uses a proprietary additive formulation with seven ingredients that helps remove intake valve deposits and improve gas mileage, the company said.

"The new additive formula, which is part of our suite of Fuel Technology Synergy products, is a step-change innovation for our Exxon- and Mobil-branded stations compared to our previous additive package," stated Rob Wollard, America's retail fuels marketing manager for ExxonMobil Fuels, Lubricants and Specialties Marketing Co. "From our new Speedpass+ mobile payment option to our Plenti loyalty program, we are constantly looking for new ways to enhance our customers' experiences and overall satisfaction with our products and services."

The new gasoline was developed at the same ExxonMobil research and engineering labs as ExxonMobil Formula 1 racing fuels.

Synergy gasoline is currently available at nearly 11,000 Exxon- and Mobil-branded retail gas stations in the U.S. The Synergy forecourt image will be implemented nationwide in a multiyear rollout.

### **California Subpoenas Oil Refiners Over High Gas Prices**

Why are gas prices in California higher than nearly every other area in the country?

Golden State Attorney General Kamala Harris wants to know the answer and has subpoenaed refiners Chevron Corp., Exxon Mobil Corp., Valero Energy Corp. and Tesoro Corp. to find out, reported Digital Journal. Of particular question is why a state that drills for its own oil and also processes crude in refineries within its borders pays such a high rate for gasoline at the pump.

On June 30, AAA reported the average price for a gallon of gas in California was \$2.90, 71 cents per gallon above the national average price per gallon.

All companies involved acknowledged they received subpoenas or at least were contacted by the California Attorney General's Office.

Gordon Schremp of the California Energy Commission told the news outlet his agency was also investigating price hikes in 2015 he called "extraordinary," and had been in contact with the Attorney General's office.

"We are aware that they [are conducting an investigation] because off and on they've talked to us about what was going on with the 2015 market, important factors that can cause spikes in the market," he told the news source.

Rebecca Adler of the American Fuel & Petrochemical Manufacturers told Digital Journal she is "confident that nothing will come of" the subpoenas.

However, Jamie Court, president of Consumer Watchdog, said it is "great" a law enforcement official is questioning equitable pricing within the market.

Harris is running for the U.S. Senate on the Democratic ticket in November.

### **Lower Gasoline Prices Raise 2015 Household Income by 1%: JPM Chase**

With U.S. gasoline prices down 25% year over year in 2015, middle income households spent \$477 less at the pump, according to a report issued by the JPMorgan Chase Institute on Thursday.

For every dollar saved from lower gasoline prices, households decreased their spending on transit by roughly 14 cents, while at the same time increasing their spending at gas stations.

The report also estimates that households spent 58% of total potential gasoline savings.

This report studies the consumers' financial response to a year of lower gasoline prices, and it relies on an anonymized sample of 1 million Chase customers across 23 states to quantify the impact of an entire year of lower gasoline prices in 2015.

"The drop in gas spending is significant for consumers - it is equivalent to more than a one percent increase in annual income for low and middle income households," said Diana Farrell, CEO of JPMorgan Chase Institute.

"This savings at the pump benefited restaurants and retailers and contributed to changes in consumers' transportation choices that we haven't seen in five years. People are driving more and using transit less," she said.

The JPMorgan Chase Institute research evaluates the savings that households experienced from lower gasoline prices and what they did with these gains.

Middle-income households spent \$477 less on gasoline in 2015 than in 2014, equivalent to more than a 1% increase in annual income for 60% of households. These savings are substantial for a middle income household -- equivalent to half of the average month's rent or mortgage payment.

Households spent an estimated 58% of their potential savings from lower gas prices. A 25% drop in gas prices generated an estimated potential savings of \$632 for middle-income households, including the \$477 actual savings on gas in addition to \$155 spent at gas stations.

Households spent approximately 34% of this potential savings on non-gas goods and services, principally on restaurants and retail.

Specifically, households spent 19 percentage points of their savings from lower gas prices on restaurants, 16 percentage points on retail, 13 percentage points on online retail, and 11 percentage points on groceries. They spent roughly 24% of their savings from lower gas prices at gas stations.

The other 42% might have been saved or otherwise spent on purchases not typically paid for using a debit or credit card, notably vehicles or other durables.

The fall in gasoline prices had meaningful impacts on households' transportation choices, according to the report.

In the low gas price environment, households increased spending at gas stations and decreased spending on transit. For every dollar saved from lower gas prices, households decreased their spending on transit by roughly 14 cents.

Sustained low and falling gas prices contributed to a reversal of the five-year trend of declining real gasoline consumption and vehicle miles traveled.

While 72% of households spent less on gasoline in 2015 than in 2014, the drop in gas prices had disparate impacts across income and geographic groups.

Households earning less than \$30,000 annually benefited the most -- their saving from lower gas prices of \$332 was the equivalent of a 1.4% boost to discretionary income.

Twenty-eight percent of households, primarily located in California, increased their gas spending. Households in the West and Northeast were impacted the least.

The metro areas with the largest drops in gas spent as a fraction of income were in the Midwest or South. The areas with the smallest drops were in California with the exception of New York City, Washington, D.C., Las Vegas and Seattle.

In October 2015, the JPMorgan Chase Institute released the report, *How Falling Gas Prices Fuel the Consumer*, which estimated the impact of the decline in gas prices on consumer spending as prices fell precipitously to a low in January 2015. This new report quantifies the impact of a full year of low gas prices in 2015 on spending both at gas stations and on non-gas goods and services.

The JPMorgan Chase Institute is a global think tank dedicated to delivering analyses and insights for the public good. Its aim is to help decision makers -- policymakers, businesses, and nonprofit leaders -- appreciate the scale, granularity, diversity and interconnectedness of the global economic system and use better facts, timely data and thoughtful analysis to make smarter decisions to advance global prosperity.

--Edgar Ang, eang@opisnet.com

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### **Dealer Suit Challenges Mystery Shopper Program**

A Shell dealer whose franchise is being terminated after failing two consecutive evaluations under the company's new, more stringent mystery shopper program, has filed suit against a Shell affiliate and its branded wholesaler calling the evaluations "arbitrary."

The complaint, filed this month in U.S. District Court for the Central District of California, claims that the termination is a veiled attempt to oust the retailer and turn over the station to the wholesaler. The wholesaler, Apro Distribution LLC, was one of the preferred bidders in Shell's Los Angeles divestiture several years ago involving about 100 gas stations, the suit says.

A Shell spokeswoman said the company does not comment on pending litigation.

Black Gold Corp., which operates a Shell station in Whittier, Calif., and Whittier Petroleum LLC, owner of the real estate underlying the gas station, are suing Equilon Enterprises LLC and Apro Distribution.

Equilon, doing business as Shell Oil U.S., gave Black Gold the right of first refusal to purchase its gas station, and Black Gold agreed to the purchase in 2009. As a condition of sale, Shell required Black Gold to enter into a new 10-year franchise and supply agreement.

In 2010, Apro entered into a branded wholesale agreement with Shell, and it bought Equilon's interests in multiple Los Angeles gas stations, including the fuel supply contracts. As part of the transactions, Apro also acquired the rights under Black Gold's franchise agreement.

Black Gold conveyed the property to Whittier Petroleum in 2013.

In October 2015, Equilon sent Apro a letter to debrand, saying that Black Gold's station failed Shell's most recent Mystery Motorist Program (MMP) evaluation. Black Gold was required to debrand the station by March 28, 2016, unless the retailer passed the next MMP evaluation. The debrand notice said Apro must terminate Black Gold's franchise if it failed the next MMP test.

Apro forwarded the debrand notice to Black Gold on Nov. 13, 2015, along with a warning letter saying the retailer was required to participate in the MMP, according to its supply contract with Apro. The complaint says Black Gold did not enter into a supply contract with Apro.

On March 15, 2016, Apro received notice that Black Gold failed a second MMP evaluation, and Equilon initially said the debrand would take effect March 28, 2016. Later, Equilon extended the franchise termination date to Aug. 31, 2016, contingent on Apro installing a new retailer by July 31.

Apro wrote Whittier Petroleum in April offering to lease the station premises as a company-operated site for 20 years beginning June 1, 2016, with three five-year options to extend the lease.

"Apro is terminating Black Gold's franchise for the purpose of converting the marketing premises to a company-operated station in violation of the PMPA (Petroleum Marketing Practices Act)," the complaint says.

Black Gold has asked the court to block the termination and to allow it to continue to buy fuel from Apro. The retailer requests damages in an amount "sufficient to deter further violations of the PMPA" as well as attorneys' fees, expert fees and costs under the PMPA.

Black Gold also accuses Equilon with "intentional, reckless, malicious" interference with the retailer's supply contract. The dealer requests unspecified exemplary and punitive damages against Equilon.

Whittier Petroleum argues that the brand covenant is "invalid" and "unenforceable" and asks the court for quiet title to the property.

--Donna Harris@opisnet.com

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## **Visa, Mastercard Settlement Thrown Out**

It may be back to the starting line for credit card swipe fee litigation that began in 2005.

On Thursday morning, the 2nd U.S. Circuit Court of Appeals in New York threw out the \$7.25-billion antitrust settlement among Visa Inc., MasterCard Inc. and millions of retailers over credit card fees. In the move, the federal appeals court said some of the retailers were inadequately represented in the litigation, according to Reuters.

It also decertified the case as a class action.

A Visa spokeswoman told the news outlet the company is reviewing the decision and MasterCard had no immediate comment.

The court's decision overturns a July 2012 agreement that settled claims that the credit card companies overcharged merchants on swipe fees — also known as interchange fees. U.S. District Judge John Gleeson in Brooklyn, who has since left the bench, had approved the settlement in 2013.

The settlement had been the largest all-cash antitrust accord in U.S. history, according to Reuters. One class of merchants that accepted Visa or MasterCard from January 2004 to November 2012 was to share up to \$7.25 billion, while a second class accepting the cards from then on was to get injunctive relief in the form of rule changes.

But many retailers objected, saying the settlement, among other things, forced members of the second class to give up their right to sue over various policies and practices, the news outlet reported.

Writing for the appeals court, Circuit Judge Dennis Jacobs said the two classes should not have been represented by the same lawyers, who were awarded \$544.8 million in fees. He said the lawyers suffered from a "fundamental conflict," having been in position to negotiate terms that could simultaneously benefit one class and harm the other.

"We have reason to think that that occurred here," and in the end "sapped class counsel of the incentive to zealously represent" the class obtaining injunctive relief, Jacobs said.

The proposed settlement also required class members to release Visa and MasterCard from liability for any anticompetitive rules currently in place (including the interchange or swipe fee rules) and/or any "substantially similar rules" instituted at any time in the future, according to the association.

RILA, along with a majority of the named class plaintiffs and many more within the merchant community, has argued that the settlement fails to address the anti-competitive practices that were the genesis for the lawsuits, and denies merchants their right to challenge these practices ever again in court. Specifically, RILA argued that the terms of the settlement

- Lock in the Visa/MasterCard duopoly,
- Provide no relief from interchange rate setting or other rules,
- Denies all current and future retailers their right to bring future legal action related to interchange rules and rate setting, among other things, against Visa, MasterCard and the banks, and

- Could limit emerging innovations that can bring meaningful competition to the marketplace, such as mobile payments.

## **California Tobacco Ban Is DOA**

Legislation to outlaw tobacco sales in convenience stores and other retail outlets was declared dead without a vote by the California Assembly Business and Professions Committee. The measure did not even receive a motion to support, although it did pass the state Senate earlier this month.

State Senator Bob Wieckowski authored the bill (SB 1400), which would have made c-stores and grocery stores ineligible to sell tobacco products by changing the definition of a retail location that's able to obtain a license to sell tobacco. The bill would have changed the definition of an eligible retail location to businesses that generate 60% or more of gross revenue annually from tobacco-related products.

The Sacramento Bee reports that opponents of the bill, including more than 200 convenience store owners, showed up in force at the Assembly Business and Professions Committee hearing this week to voice their concerns about the negative impact SB 1400 would have on their livelihoods.

According to a committee analysis, more than 30,000 retailers, including convenience stores and grocery stores, would lose the ability to sell tobacco. While they appreciated Wieckowski's intent, committee members said his bill went too far and would harm small businesses.

## **VW Agrees To \$14.7 Billion Settlement On Diesel Emissions**

Volkswagen has agreed to spend up to \$14.7 billion to settle allegations of cheating emissions tests and deceiving customers, according to an announcement today.

In related settlements -- with two federal agencies and California -- Volkswagen also will offer consumers a buyback and lease termination for nearly 500,000 model-year 2009-2015 2.0-liter diesel vehicles sold or leased in the United States and spend up to \$10.03 in restitution to consumers.

The German automaker and its affiliates will spend an additional \$4.7 billion to mitigate the pollution from these vehicles and to invest in "green" vehicle technology, the announcement said.

The settlements partially resolve allegations from the U.S. EPA, California's attorney general and the California Air Resources Board under the federal Clean Air Act, the California Health and Safety Code and California's Unfair Competition Laws, relating to the vehicles' use of "defeat devices" to cheat emissions tests. The agreements also resolve the Federal Trade Commission's claims that Volkswagen violated the FTC Act dealing with deceptive and unfair advertising and sales.

Left unresolved are pending claims for civil penalties, any claims concerning 3.0-liter diesel vehicles and potential criminal liability.

The vehicles affected are 2009-2015 Volkswagen TDI diesel models of Jettas, Passats, Golfs and Beetles, as well as the TDI Audi A3.

--Donna Harris, dharris@opisnet.com

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### Because You Asked

#### Question

Is there a law in New York State that requires a used car dealer to provide recall information to the purchaser of a used car?

#### Answer::

NO, The New York State Legislature New York City Consumer and the State Attorney General are trying to initiate a law or regulation but they have not been successful.

#### Question:

What should I tell a customer who asks why he should get his car inspected.

#### Answer:

“If you don’t get your car inspected, you will get pulled over by the police. If you get pulled over by the police, they will likely find other violations. If they find other violations, you will likely have to go to court. If you go to court, you will need a lawyer. If you get a lawyer you will feel like an outlaw. If you feel like an outlaw, you will begin taking risks. If you start taking risks your girlfriend will leave you. If your girlfriend leaves you, you will feel very depressed. If you feel depressed, you will start to withdraw. If you withdraw, you will find yourself alone. – Get your car inspected.”

### 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 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 than the one to be inspected is substituted 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.

### Insurance Corner

By Kelly Hurley

### Garagekeepers Vs. Garage Liability Insurance-



Many shop owners, especially newer shop owners, confuse garage liability coverage with garagekeepers liability coverage.

Shop owners think they are one in the same but they are very different. Garage liability is really the liability that arises out of your work, bodily injury and/or property damage arising out of your work. Garagekeepers is a separate coverage that covers the damage to the vehicle.

Garagekeepers is more like automobile coverage and protects shop owners while vehicles are in the care, custody and control of the shop.

Garagekeepers is where we usually find the least sufficient coverage. Insureds don’t understand how to calculate the right amount of coverage and often brokers don’t accurately figure out how much garagekeepers insureds should carry.

We look at a lot of policies where shops might have five bays and they might keep 10-15 cars at any one given time, yet they’ve got \$60,000 in comp and collision coverage for vehicles in their care, custody and control. If something happens, like a big catastrophic event like a fire, they’re not going to have nearly enough limits to cover all of the vehicles that were damaged in the fire.

While garagekeepers is not a required coverage to operate, it’s a critical coverage.

Mobile auto repair businesses are at risk as well. With mobile repair guys, the guys that fix windshields, their mindset says, ‘I don’t have a garage so why do I need garagekeepers?’ But again, it’s while the vehicle is in your care, custody or control.

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## Memorandum

**To:** Affiliates, Directors and Members  
**Date:** 2/23/16  
**From:** Association Office  
**Re:** Catalytic Converter Standards

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### **Fact Sheet Prohibition of Used Catalytic Converters/New Aftermarket Catalytic Converter Standards**

6 NYCRR Part 218, Emissions Standards for Motor Vehicles & Motor Vehicle Engines

Section 177 of the federal Clean Air Act (42 USC 7507) provides the general authority for states to adopt the State of California's low emission vehicle (LEV) program standards. New York State first adopted California's motor vehicle emissions standards program in 1990 with implementation beginning with model year 1993 vehicles. These standards are incorporated in 6 NYCRR Part 218, ([link leaves DEC's website](#)) Emissions Standards for Motor Vehicles & Motor Vehicle Engines.

Pursuant to regulatory revisions completed in 2012, the New York State Department of Environmental Conservation (Department) adopted California's aftermarket catalytic converter requirements. These requirements include a) the prohibition of installing used catalytic converters, and b) standards for new aftermarket catalytic converters. These requirements can be found under subdivision 218-7.2(c). ([link leaves DEC's website](#)) New York's aftermarket catalytic converter requirements apply to all model year 1993 and newer on-road motor vehicles, with the exception of the 1995 model year vehicles, certified by the California Air Resources Board (CARB) including vehicles with 50 state certification. Use of an EPA certified new aftermarket catalytic

converter is still permitted on federally certified (not CARB or 50 state) and pre-1993 model year vehicles. Distribution centers located in New York State may continue to supply EPA certified aftermarket catalytic converters for applicable NYS vehicles and for sale outside of New York State.

### **Prohibition of Used Catalytic Converter Sales**

**Pursuant to 6 NYCRR Part 218-7.2(c)(2), (link leaves DEC's website) and effective June 1, 2013, it is unlawful for any person to sell, offer for sale, advertise, or install any used, recycled, or salvaged catalytic converter on any vehicle in New York State. This prohibition applies to all vehicle types and model years. A used catalytic converter is not a new aftermarket catalytic converter, or a replacement part as defined below. This prohibition does not apply to the sale of used catalytic converters for recycling purposes.**

### **New Aftermarket Catalytic Converter Standards**

Pursuant to 6 NYCRR Part 218-7.2(c)(1), (link leaves DEC's website) and effective June 1, 2013, it is unlawful for any person to sell, offer for sale, advertise, or install any new aftermarket catalytic converter for use on 1993, 1994, 1996 and newer CARB and EPA 50 state certified vehicles in New York State unless that new aftermarket catalytic converter has been certified by CARB. However, in accordance with a letter from the Department, the Department exercised enforcement discretion for the remainder of 2013 not to enforce the new aftermarket converter requirements against persons who installed a federally-certified converter in violation of 6 NYCRR Section 218-7.2(c). (link leaves DEC's website)

A new aftermarket catalytic converter is defined as being constructed of all new materials and is not an original equipment catalytic converter. New aftermarket catalytic converters for CARB and EPA 50 state certified vehicles will be required to:

Display a certification stamp or label on the catalytic converter shell. The label or stamp must display the CARB Executive Order approval number, the part number, date of manufacture, and proper installation direction.

Comply with a vehicle's original emissions certification limits.

Be compatible with the onboard diagnostic systems (OBD II) on 1996 and newer vehicles.

**Be covered by a warranty for a period of 5 years or 50,000 miles of use. The warranty will cover failures related to construction defects, performance defects, and OBD II compatibility issues.**

#### Reporting Requirements

Manufacturers of aftermarket catalytic converters are required to submit semi-annual warranty information reports to the Department. The reports are identical in format and content to those submitted to California and must contain the manufacturer's name, a description of each class or category of California certified new aftermarket catalytic converters including model year and series, the cumulative number and percentage of catalytic converters covered by the CARB Executive Order, and the number of each type of catalytic converter produced for sale. The lone exception is the inclusion of New York sales data rather than California sales.

If confirmed warranty claims for new aftermarket catalytic converters in New York State exceed 4 percent or 100 claims, whichever is greater, the manufacturer is required to submit additional information in the warranty information report. This required information includes the type of failure, the probable cause of the failure, and an evaluation of the impact on vehicle emissions.

Installers of aftermarket catalytic converters are required to complete a warranty card in triplicate with the original going to the customer, one copy to the installer, and one copy to the manufacturer of the converter.

#### Enforcement

Manufacturers of aftermarket catalytic converters are required to submit semi-annual warranty information reports to the Department. The reports are identical in format and content to those submitted to California and must contain the manufacturer's name, a description of each class or category of California certified new aftermarket catalytic converters including model year and series, the cumulative number and percentage of catalytic converters covered by the CARB Executive Order, and the number of each type of catalytic converter produced for sale. The lone exception is the inclusion of New York sales data rather than California sales.

If confirmed warranty claims for new aftermarket catalytic converters in New York State exceed 4 percent or 100 claims, whichever is greater, the manufacturer is required to submit additional information in the warranty information report. This required information includes the type of failure, the probable cause of the failure, and an evaluation of the impact on vehicle emissions.

Installers of aftermarket catalytic converters are required to complete a warranty card in triplicate with the original going to the customer, one copy to the installer, and one copy to the manufacturer of the converter. Part 218 (link leaves DEC's website) violations at a minimum of \$500 for a first violation, and up to \$26,000 for each subsequent violation. This penalty structure is identical to the one which is used to enforce new vehicle sales under Part 218. (link leaves DEC's website) A violation would be each non-compliant converter sold and/or installed. Failure to maintain complete records or submit reports may also result in a violation. The Department periodically conducts audits at facilities to ensure compliance with the requirements of Part 218. (link leaves DEC's website)

The new aftermarket catalytic converter standards became effective June 1, 2013. The Department did exercise its authority to utilize enforcement discretion with respect to certain provisions of 6 NYCRR Part 218 concerning aftermarket catalytic converters. In order to ensure a smooth transition, the Department did not enforce the provisions of Section 218-7.2(c)(1) until January 1, 2014. The Department's enforcement of the aftermarket catalytic converter standards for the period January 1, 2014 to December 31, 2015 has resulted in:

**279 aftermarket catalytic converter audits conducted**

**99 potential violations of the aftermarket catalytic converter standards discovered**

**67 Notices of Violation issued**

**Fines ranged from \$500 to \$3,000**

**\$28,500 in penalties collected**

As a vehicle owner, what are my options if my vehicle's catalytic converter needs to be replaced after June 1, 2013?

For the subject model year CARB and EPA 50 state certified vehicles, all catalytic converter replacements should be either an original equipment manufacturer (OEM) replacement part or a CARB certified new aftermarket catalytic converter. Federally certified new aftermarket catalytic converters may still be used on vehicles with a federal only certification. Used, salvaged, or recycled catalytic converters cannot be installed after June 1, 2013 on any vehicle.

To allow for a period of transition, DEC will not enforce the prohibition on the installation of EPA certified catalytic converters on CARB and EPA 50 State certified vehicles until January 1, 2014. However, DEC strongly encourages the installation of OEM and CARB certified catalytic converters, which provide greater emission reductions and may have a longer warranty than other catalytic converters.

#### Other Information

The Department has developed additional guidance including a Frequently Asked Questions fact sheet.

Any questions related to compliance with Part 218 (link leaves DEC's website) should be directed to:

*February 24, 2016*

New York State Department of Environmental Conservation

Division of Air Resources

Bureau of Mobile Sources

625 Broadway

Albany, NY 12233-3255

Telephone: (518) 402-8292

Email: dar.web@dec.ny.gov

More about Fact Sheet Prohibition of Used Catalytic Converters/New  
Aftermarket Catalytic Converter Standards:

New Aftermarket Catalytic Converter Requirements & Used Catalytic  
Converter Prohibition - Frequently asked questions regarding new aftermarket  
catalytic converter requirements and used catalytic converter prohibition

# New Overtime Rules: FAQs



In May 2016, the Department of Labor (DOL) released [final overtime rules](#) under the Fair Labor Standards Act (FLSA). Here is a brief overview of the final rules, effective December 1, 2016:

- Minimum salary requirement increases to \$913 per week for the administrative, professional (including salaried computer professional), and executive exemptions
- For the first time, certain bonuses and other incentive payments can help employers meet the minimum salary requirement for these exemptions
- Minimum salary requirement for the highly compensated employee exemption increases to \$134,004 in total annual compensation
- There will be automatic adjustments to these minimum salary requirements every three years, beginning January 1, 2020

## Frequently Asked Questions:

Q: Who is covered by the FLSA?

A: The FLSA applies to virtually all employers, including:

- Enterprises (including non-profits) with gross sales or business of \$500,000 or more per year;
- Hospitals; care facilities where the sick, elderly, or the mentally ill reside on the premises; schools, including preschools, elementary or secondary schools, and institutions of higher education (whether operated for profit or not for profit); and
- Public agencies

The FLSA also applies to employees individually if they engage in interstate commerce (which includes activities such as making out of state phone calls, sending or receiving interstate mail or email, ordering or receiving goods from out of state, and handling credit card transactions or accounting functions for such activities), foreign commerce, or the production of goods for interstate or foreign commerce.

Q: What is the difference between an exempt and non-exempt employee?

A: Under the federal FLSA, a non-exempt employee is entitled to at least the minimum wage for each hour worked and overtime whenever he or she works more than 40 hours in a workweek. Any employee may be classified as non-exempt. By contrast, an exempt employee isn't entitled to the minimum wage or overtime. Generally, to be exempt, an employee must:

- Receive at least the minimum salary requirement;
- Receive their full salary in any week they perform work, regardless of how many hours they work; *and*
- Perform primary duties that meet certain [criteria](#).

Q: I am a small employer. Do the new overtime rules apply to me?

A: If you have exempt employees and you or your employees are covered under the FLSA, you must comply with the new overtime rules.

Q: Do owners of the company need to be paid the minimum salary to be exempt from overtime?

A: Under a special rule for business owners, an employee who owns at least a 20-percent equity interest, regardless of the type of business organization (e.g., corporation, partnership, or other), and who is actively engaged in its management, is considered a bona fide exempt executive (and therefore not entitled to overtime or the minimum wage). If this special rule applies, there are no salary requirements.

For this rule, management generally includes but is not limited to the following activities:

- Interviewing, selecting, and training employees;
- Setting and adjusting pay and work hours;
- Directing and planning employees' work;
- Maintaining production or sales records for use in supervision or control;
- Evaluating performance for the purpose of recommending promotions or other changes in status;
- Handling employee complaints and grievances;
- Disciplining employees;

- Determining the type of materials, supplies, machinery, equipment or tools to be used or merchandise to be bought, stocked and sold;
- Providing for the safety and security of the employees or the property;
- Planning and controlling the budget; and
- Monitoring or implementing legal compliance measures.

Q: I have some exempt employees who currently earn less than \$913 per week. What are my options for complying with the new rules?

A: You must either:

1. **Raise their salaries** to the new requirement; or
2. **Reclassify** impacted employees as non-exempt and pay them overtime whenever they work more than 40 hours in a workweek.

For more details on each of these options, including tips for keeping your compensation costs comparable to what they are now, visit our [FLSA page](#).

Q: Do we have to use the same option for all impacted employees? For example, if our company decides to reclassify some employees, do we have to reclassify all impacted employees?

A: You generally can choose to reclassify some currently exempt employees and raise the others' salaries.

Q: To keep my overtime costs down, can I adopt a policy that prohibits employees from working overtime unless approved by their supervisor in advance?

A: Yes, but remember that even if employees violate the policy, you will still have to pay them overtime if they work more than 40 hours in a workweek. While you may subject them to discipline for violating your policy, you may never withhold overtime pay.

Q: Can I continue to pay impacted employees a salary after I reclassify them as non-exempt?

A: If you reclassify employees as non-exempt, you can still pay them a [salary](#) as long as they receive at least the minimum wage for each hour worked and overtime pay whenever they work more than 40 hours in a workweek. Remember, you will need to track their hours closely to ensure you pay overtime in accordance with the law.

Q: What is the highly compensated employee exemption?

A: Under the FLSA's highly compensated employee exemption, employees may be classified as exempt if:

- Their primary duty includes performing office or non-manual work;

- They are paid a total annual compensation of \$100,000, including at least \$455 paid weekly (this requirement increases to \$134,004, including at least \$913 paid weekly effective December 1, 2016); *and*
- They customarily and regularly perform at least one of the exempt duties of an exempt [executive](#), [administrative](#) or [professional](#) employee.

Q: What is changing with respect to bonuses and other incentive payments for the administrative, professional, and executive exemptions?

A: Beginning December 1, 2016, employers may use nondiscretionary bonuses and incentive payments (including commissions) to satisfy up to 10 percent of the minimum salary requirement for the administrative, professional, and executive exemptions, as long as these forms of compensation are paid at least quarterly. This means that the maximum nondiscretionary bonus or incentive payment that can apply toward the employee's weekly minimum salary is \$91.30 (10 percent of \$913). Previously, employers were prohibited from counting *any* portion of these forms of compensation toward meeting the minimum salary requirement.

**Note:** For the highly compensated employee exemption, employers are already allowed to include nondiscretionary compensation toward meeting the total annual compensation requirement. In fact, these types of payments often make up a large percentage of the highly compensated employee's compensation. Under the final rules, as long as the employer pays highly compensated employees at least \$913 on a weekly salary basis, the employer can count these other forms of compensation toward meeting the minimum total compensation requirement (\$134,004 per year).

Q: What are nondiscretionary bonuses?

A: While the final rules don't define nondiscretionary bonuses, the DOL has said that nondiscretionary bonuses are generally announced or promised in advance to induce employees to work more efficiently or to remain with the company. Examples include bonuses for meeting set production goals, retention bonuses, and commission payments based on a fixed formula. Most bonuses are considered nondiscretionary. By contrast, discretionary bonuses aren't announced or promised in advance. For example, if you decide at the end of the year to surprise employees with a bonus, this would generally be considered a discretionary bonus. Discretionary bonuses may not be counted toward meeting the minimum salary requirement.

[Click here](#) for more information on counting bonuses and other incentive payments toward meeting the minimum salary requirement.

Q: Can I count health coverage and other benefits I provide toward meeting the minimum salary requirement for exemption?

A: Only a direct salary and nondiscretionary bonuses and incentive payments may count toward meeting the minimum salary requirement.

Conclusion:

Employers now have less than five months to prepare for the new rules. Take this opportunity to:

- Ensure your exempt employees meet applicable exemption tests. To learn more about the [administrative](#), [professional](#) and [executive](#) exemptions, see the other articles in this newsletter.
- Identify which exempt employees currently earn less than the new minimum.
- Assess your options for complying with the new rules.
- Develop a plan for [communicating](#) the changes to your employees.

# CBRE, Inc. – 1025 Altamont Avenue, Vehicle Related 1025 Altamont Avenue, Schenectady, NY

1025 Altamont Avenue, Schenectady, NY 12303

\$325,000



## Highlights

- Parking for ±15 vehicles
- (5) Overhead doors at grade
- Forced air gas heating system
- Air conditioning

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NAPA Street Address:		
City:	State:	Zip:
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Additional NAPA Dealer(s) you do business with:		
Name of NAPA Dealer:		
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## 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:		
<input type="checkbox"/>	<input type="checkbox"/>	Property & Casualty
<input type="checkbox"/>	<input type="checkbox"/>	Workers Comp
<input type="checkbox"/>	<input type="checkbox"/>	Disability
<input type="checkbox"/>	<input type="checkbox"/>	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

# **Bradley & Associates, Inc.**

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## **ACCOUNTANTS & CONSULTANTS**

P.O. Box 1093 • Latham, NY 12110  
417 Troy-Schenectady Road

- *Monthly Financial Statement*
  - *Quarterly Payroll & Sales Tax Reports*
    - *Year End Reports & Tax Returns*
- 

*Specialized Reports For The  
Service Station Industry*

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Call For Your Free Consultation & Evaluation

**(518) 783-8492**

# GRANY

## LEGAL PLAN

As a member in good standing of the Association, you are entitled to participate in our group legal service plan. If you are in need of this service, you must first call the Association office at (518) 452-4367. An appointment will be arranged that will be convenient for you and the attorney.

*Covered services available to members include:*

- Defense in Small Claims Court if your business is sued or at Department of Motor Vehicles or at any other New York State Administrative Proceeding hearing. (Once per year.)
- Review of leases, supply contracts and franchise agreements to advise you of your obligation under these contracts. The plan does not include actual negotiation on your behalf. (One hour per issue, up to five hours per year.)
- Consultation on legal questions pertaining to your business. (One hour per issue, up to five hours per year.)

Appeals of judgments against you are not a covered benefit, but are available to members at special contract prices.

Additional legal services will be provided by the designated law firm's standard hourly rate less 15%. Special contract prices have also been negotiated for the following services.

- Residential real estate purchase or sale. The designated law firm will represent you in the sale of purchase of your primary residence and/or a second home or vacation property at the following rates:

Sale	\$295.00
Purchase	\$350.00
- Simple will \$75.00                      Simple will (husband and wife) \$125.00

In order to participate in the plan you must be a member in good standing and must have been a member for ninety days prior to the need for legal service.

**CIGARETTE SALES TO MINORS  
CLERK CERTIFICATION**  
COMPLIANCE WITH THE NEW STATE CERTIFICATION OF  
CLERKS WHO SELL TOBACCO PRODUCTS

CERTIFICATION OF A CLERK WHO SELLS TOBACCO PRODUCTS  
*POINT REDUCTION CLASS*

NEW YORK STATE AMENDED ITS POLICY OF ENFORCEMENT FOR RETAILERS WHO SELL TOBACCO. UNDER THE NEW LAW A POINT SYSTEM HAS BEEN ESTABLISHED. EACH VIOLATION OF A TOBACCO SALE TO A MINOR WILL GENERATE A FINE AND TWO POINTS. THREE POINTS AND THE RETAILER'S LICENSE TO SELL CIGARETTES WILL BE SUSPENDED. HOWEVER, IF THE CLERK HAS RECEIVED A CERTIFICATION BY TAKING AN APPROVED SEMINAR, THE VIOLATION WILL RECEIVE ONE POINT.

**THE STATE IS ENFORCING THIS LAW**  
*IN ORDER TO ACCOMMODATE OUR MEMBERS,  
WE ARE CERTIFIED TO PROVIDE THIS TRAINING.*  
*PLEASE NOTE DATES, TIME, AND LOCATION OF THE NEXT SEMINAR*

WHERE:

ASSOCIATION OFFICE  
6 Walker Way  
Albany, New York 12205

WHEN:

The First Tuesday of every month at 2:00 PM  
The Third Wednesday of every month at 10:00 AM

COST:

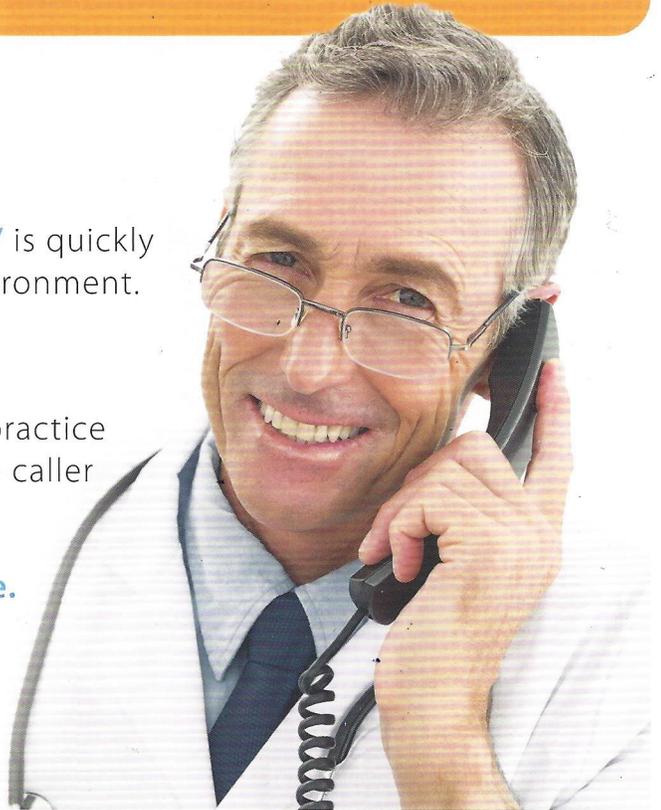
MEMBERS: \$15.00 - NON-MEMBERS \$30.00

**PLEASE CALL FOR RESERVATIONS AT (518) 452-4367**

**SPONSORED BY: GRANY**

## What is Telemedicine?

- » Telemedicine a/k/a **"Doctors by Phone Service"** is quickly becoming an integral part of the healthcare environment.
- » Speak to a real live doctor **24/7/365**.
- » All doctors are **US Board Certified**, licensed to practice medicine and write prescriptions in the state the caller is located in.
- » Doctors have an average of **15 years experience**.
- » **100% HIPAA** Compliant.
- » Designed for **non-emergency care**; 71% of all medical visits today are non-emergency.



### WHAT CAN BE TREATED

**GENERAL CARE:**

Allergies · Asthma · Bronchitis · Cold and Flu · Ear Infections · Joint Aches and Pain · Respiratory Infection · Sinus Problems · and many more

**PEDIATRIC CARE:**

Cold and Flu · Constipation · Ear Infection · Fever · Nausea & Vomiting · Pink Eye · and many more

### EMPLOYEES:

- » Speak with a U.S. Board Certified Physician 24/7/365
- » \$0 consultation cost to speak to a doctor.
- » Avoid wait times at Doctors Office, Urgent Care and ER.
- » Save your co-pay, deductible and claim against your policy.
- » Avoid leaving work to go to the doctor. (national average of 4 hours missed work time)
- » Speak with a doctor anytime day or night.
- » Membership includes all dependents.
- » Get a prescription called into your local pharmacy.

### EMPLOYER GROUPS:

- » Reduce costly visits to the doctor.
- » Reduce claims against your company health benefits policy.
- » AllyHealth includes Unlimited Consults with No co-pay or consultation fee. This is ZERO cost compared to \$140 doctor visits, \$158 urgent care visits and \$750 ER visits.
- » Reduce employee absenteeism and therefore reduce lost productivity.
- » Monthly reports on utilization and productivity savings.
- » Membership includes employee and all legal dependents.

NEW YORK STATE  
SAFETY GROUP 536  
DECLARES



DIVIDEND

GET ON THE TRAIN - CALL 518-452-4367