



Monthly Bulletin

January 2023

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Chairman's Corner: Welcome to a New Year

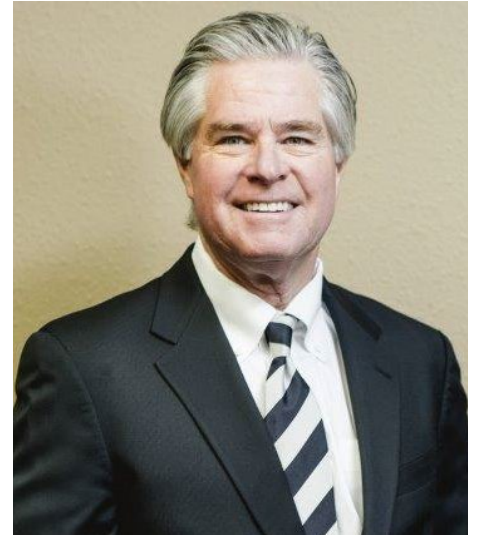
By: Tony Toohey, Auburn Toyota, Chairman, CNCDA

Happy New Year to our members, sponsors, associates, and friends. As your new Chairman, I am excited for the opportunity to meet more of you and share updates from CNCDA.

We are starting 2023 strong, with many planning and strategic meetings already attended by our Board of Directors and other key dealers. These meetings helped us determine the association's direction for the road ahead and directly shape our goals for this year.

First and foremost, our major goal for 2023 is to introduce a franchise bill to the California legislature. Passing this bill is the first step in setting a precedent across the entire country that dealers are an integral part of the car purchasing process.

Using vital data from our **Economic Impact Report** will arm us with the information needed to demonstrate to legislators auto trends, and the vital economic, employment, and community-giving roles California's new car dealers play in the state. Essentially, this data demonstrates that without our dealerships, the world's fourth-largest economy would greatly decline. **Please have your dealership complete the survey by February 6, 2023. [Fill out the 2022 EIR survey by clicking HERE.](#)**



While we are excited at the opportunity to play offense this year in Sacramento, the association will require a strong defense and we are anticipating these challenges. A repeated bill from last year requiring catalytic converter marking by dealers the bill has already been reintroduced as SB 55 (Umberg) and we are prepared to act on this and other potential issues.

This year we are planning for a fundraising ramp-up to repeal and replace the Private Attorneys General Act now that we have qualified this measure for the November 2024 ballot. If you remember, CNCDA led a coalition of major statewide groups to get this measure on the ballot. This began the process of ensuring that California's businesses are not unfairly sued and that employees are better protected while receiving proper compensation. So far, these actions have been a drain on dealer resources and the problem could get much worse without the support of our membership and the business community in general.

If you want to help CNCDA accomplish these goals, consider joining 2023 Dealer Day in Sacramento. Save the date: March 29, 2023. The event allows members the chance to speak directly with legislators at the Capitol to explain the importance of protecting the State's franchised new car model, among other topics, and provides real face-to-face representation. Registration opens soon.

Lastly, for our dealers and invited guests: CNCDA will again host the [NADA Convention 2023 Welcome Party](#) at the Omni Hotel in Dallas, TX. Please join us for an evening of networking and socializing. Enjoy drinks and small bites while catching up with associates from around the state. [RSVP today!](#)

Tony Toohey
Auburn Auto Group
Chairman, CNCDA

Notice on Partial Driving Automation Features Must be Provided to Customers Before Vehicle Sale

By: Anthony Bento, Chief Legal Officer



As we discussed in our [2022 Legislative Summary](#) and at our New Laws Seminars, SB 1398 requires dealers to provide a notice describing a vehicle's "partial driving automation features" to customers before selling new vehicles with such features.

This new law further requires manufacturers to "provide information necessary to comply with" the notice requirement, which includes "specific language recommended for the notice." Dealers may reasonably rely on the notice language recommended by the manufacturer (Cal. Vehicle Code section 24011.5.).

To comply with this new requirement, dealers should ask their manufacturers for the "specific language" they recommend for the notice. Dealers can present such language to the customer and obtain the customer's initial or signature on the notice to demonstrate compliance with the law. Retain the signed or initialed copy of the notice in the deal jacket.

Finally, dealers should note that this requirement only applies to the sale of "new passenger vehicles." In other words, the notice does not need to be provided for used vehicles.

CNCDA is in communication with representatives from various manufacturers to promote compliance with this law. If you have any questions, do not hesitate to call our legal hotline at 916-441-2599 x1.

CDTFA Issues Guidance on Partial Sales Tax Exemption for Vehicles Purchased Through Clean Cars 4 All Program

By: Anthony Bento, Chief Legal Officer

SB 1382 provides for a reduction in the sales and use tax of vehicles purchased by qualified buyers through the Clean Cars 4 All program. The California Department of Tax and Fee Administration ([CDTFA](#)) issued [guidance on how dealers should apply the partial exemption, accessible here](#).

As background, the Clean Cars 4 All programs are administered by regional air quality districts and can provide substantial financial assistance to low and moderate-income consumers to purchase qualifying clean-air vehicles. You can [read more about the Clean Cars 4 All programs here](#).

CNCDA Updates Legislative Summary on GAP Waiver Requirements

By: Anthony Bento, Chief Legal Officer



On December 21, CNCDA clarified guidance in our 2022 Legislative Summary on the restrictions on pricing of GAP waiver, which are part of AB 2311. Concerning the restrictions on the pricing of GAP waiver, the 2022 Legislative Summary now reads:

a) The price of the GAP waiver cannot exceed 4% of the loan's underlying principal amount. For example, a GAP waiver covering a \$40,000 loan may not exceed \$1,600.

b) A GAP waiver may not be sold if the amount financed for the car purchase is 70% or less of the vehicle's MSRP (if new vehicle) or the average retail value of the vehicle at the time of sale, as determined by national pricing guides, such as Kelley Blue Book (if used vehicle).

c) If a GAP waiver is sold that does not cover all the amount financed, a dealer must obtain a separate acknowledgment from the customer.

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You can download an updated copy of our [2022 Legislative Summary](#) on CNCDA Comply.

Minimum Wage Increases Effective This Year Could Impact Your Dealership

By: Les Swizer, Legal & Regulatory Affairs Counsel

It's that time of year again! Dealers should be sure to adjust payroll accordingly to reflect increases in the minimum wage this year.

In CNCDA's [2022 Legislative Summary](#), members can find a chart of minimum wage increases (page 36), along with valuable information on new employment laws and other laws affecting your dealership. We also encourage dealers who haven't already done so to access the New Laws Webinar, [available here](#). Dealers can also reach out to Fine, Boggs, & Perkins for updated sample pay plans and other employment information and advice. [Click here](#) to access their website.



Navigating the Federal EV Tax Credit and Guidance on Consumer Vehicle Leases

By: Les Swizer, Legal & Regulatory Affairs Counsel

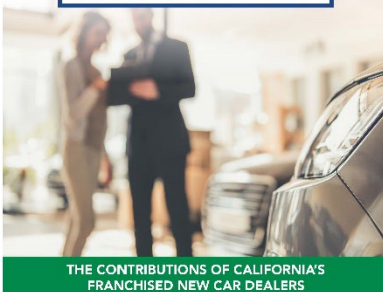


We have received numerous inquiries on the Legal Hotline regarding the federal new clean vehicle credit and the IRS reporting requirements under 26 USCS § 30D. The new clean vehicle tax credit applies to clean vehicles placed in service after January 1, 2023, and acquired by a taxpayer for original use. To qualify for the credit, the vehicle and the consumer must meet certain requirements. To view those requirements and a list of qualifying vehicles, [click here](#). The site will be updated as more vehicles are added to the list.

Further, for a taxpayer to claim the credit, the seller of a new clean vehicle must provide a report containing taxpayer and vehicle information to the taxpayer and the IRS. These reports will need to be compiled and filed with the IRS by January 15, 2024. [Click here](#) for more details about the form. NADA has created a model sellers report form for this purpose, which dealers can [access here](#).

On December 30, the U.S. Department of Treasury, in conjunction with the IRS, released preliminary guidance indicating consumer leases qualify for the commercial clean vehicle credit under 26 USCS § 45W. Effectively, this guidance removes much of the vehicle sourcing and income requirements from consumer lease transactions. However, these vehicles will still be subject to the commercial clean vehicle credit requirements, and it is important to note that retail vehicle sales are still subject to the § 30D requirements. [Click here](#) to view the guidance fact sheet.

While Treasury and the IRS often allow taxpayers to rely on proposed guidance in the interim between notice and issuance of regulations, it is important to note that this guidance is not regulatory action, and dealers should stay tuned as CNCDA and NADA follow this developing body of law. We also encourage dealers to access and review the materials prepared by NADA. [Click here](#) for more information.



THE CONTRIBUTIONS OF CALIFORNIA'S FRANCHISED NEW CAR DEALERS

Economic Impact Report Survey

By: Autumn Heacox, Director of Communications & Marketing

Every year, CNCDA asks each dealership to complete a survey that gives us the vital data we need to create our Annual Economic Impact Report. While the survey takes 20-30 minutes to complete, the information you submit is crucial to our mission and allows us to better represent dealers at the Capitol. **We will share a list of those dealers that help us complete this survey in upcoming emails and bulletins.** [Please submit by February 6; click here to complete the survey.](#) Thank you for your participation!



Welcome 2023 Executive Committee and New Board Members

By: Autumn Heacox, Director of Communications & Marketing

CNCDA would like to welcome our incoming 2023 Executive Committee and new Board Members. Thank you all for your passion, time, and commitment to serving our association.

2023 Executive Committee

Tony Toohey, Chairman
Hilary Haron, Vice-Chairwoman
David Simpson, Secretary/Treasurer
John Oh, Immediate Past Chairman

Rick Niello, Region I Vice-President
Jessie Dosanjh, Region II Vice-President
Cheryl Bedford, Region III Vice-President
Bruce Hamlin, Region IV Vice-President
Robb Hernandez, Region V Vice-President

2023 Board of Directors

Devinder Singh Bains
Cheryl Bedford
Anne Boland
Ron Charron
Cliff Cummings
Randy Denham
Jessie Dosanjh
Gary Fenelli

Ryan Fitzpatrick
Sal Gonzales
Bruce Hamlin
Matthew Hall
Hilary Haron
Taz Harvey
Bill Hatfield
Robb Hernandez

Greg Kaminsky
Dave Moeller
Rick Niello
Mark Normandin
John Oh
Ellena Sweet
David Simpson
Tony Toohey

New Political Engagement Manager

By: Autumn Heacox, Director of Communications & Marketing

CNCDA welcomes Andrea Daugherty as our new Political Engagement Manager. In this new position at CNCDA, Andrea will encourage and manage relationships between our dealers and state elected officials, legislators, and political candidates.

Formerly, Andrea was the CHPAC Executive Director at the California Hospital Association for four years. Before that, she worked at California and Nevada Credit Union Leagues, spending eight out of her ten years there as Manager of Political Advocacy.

We are happy to have you on the team, Andrea! She can be reached at adaugherty@cncda.org



Pay Scales? And I Thought the Only Scale I had to Worry About with My New Years' Resolution was My Bathroom Scale!

By: Dave Reese, Fine Boggs & Perkins, LLP

The Association and its outside employment legal counsel have been busy informing members of a spate of new legal requirements that California employers must navigate to avoid legal liability. One of the most overt of these requirements involves the establishment, publication, and retention of pay scale information for both existing employees (upon request) and potential new employees sought through the posting of job opportunities. And while the statute was signed into law several months ago, it was not until late December—only days before the January 1, 2023, introduction of the new rules—that the Labor Commissioner's office published any interpretive guidelines on the new requirements.



This Bulletin Article supplements previous information made available by the Association and its employment counsel as part of ongoing guidance designed to assist members in avoiding liability under these new rules.

What are Pay Scales and How do they Apply at Dealerships?

While the concept of pay scales is common in certain industries (such as construction trades), it is far less common in dealership environments, where compensation has, for many positions, focused on commission, piece-rate, or other production-based achievements. The Labor Code defines “pay scale” to mean “the salary or hourly wage range the employer reasonably expects to pay for a position.” According to the Labor Commissioner, this may be a range of hourly or salary levels, or it may be expressed as a single figure if the employer intends to pay everyone a single set hourly amount.

Do these Requirements only Apply to Base Compensation?

While the norm for incentive compensation structures in the dealership industry had been, for many years, based primarily on piece-rate or commission wages that might have been relatively amenable to disclosure as a pay scale, changes over the last decade to minimum compensation requirements and distinctions between productive and non-productive time (or non-sales-activity time) have required dealerships to move to hybrid compensation structures involving both a base wage with an incentive bonus or commission payment in addition.

The Labor Commissioner has explained that where a job position is expected to include piece-rate or commission compensation, the new rules requiring inclusion in the job posting of any piece-rate or commission range the employer reasonably expects to pay for the position. But at the same time, the

FAQ responses also explain—in response to a question about whether to include “bonuses, tips, or other benefits” in the wage scale—that “compensation or tangible benefits provided in addition to a salary or hourly wage are not required to be posted.” Because many dealership compensation agreements calculate production-based bonuses that may include piece-rate or sales-related elements, most dealerships should refer to contemplated bonus elements in pay scale disclosures. But because these incentive compensation elements vary widely, the range of compensation “reasonably” expected will range from as low as zero to as high as the sales or other production achievements may reach.

How are the Pay Scales Disclosed? And to Whom?

Labor Code section 432.3 requires that the employer, upon reasonable request, provide the pay scale for a position to an applicant applying for employment, or to an employee asking for information about his or her position. (See FAQ Nos. 27–28.) And any employer with 15 or more employees (nationwide including part-time employees, as long as at least one employee is in California) is required to affirmatively include the pay scale for a position in any job posting. This applies both to postings made by the employer, or postings made by or publicized by any third party, such as a recruitment aggregator like Monster or Indeed. Employers must provide the pay scale to the third party and the third party must include it within the job postings. Importantly, such pay scales must be included in the posting itself and not merely linked to via hyperlink or a QR code in a paper posting. (See FAQ No 34.)

In addition to their inclusion in job position postings, compensation ranges must also be provided to employees upon request. This requirement has generated a fair amount of concern, with many employers rightfully concerned that employees may seek to use this requirement to nose around into what other employees are earning. The new law stops short of requiring an employer to provide information about how much other employees are paid, but the Labor Commissioner recently underscored both that employees are free to inquire of the employer how much others are paid, and that the employer is forbidden from retaliating against any employee making such inquiries. (See FAQ Nos. 23–24.)

How Can Employers Prove Compliance?

Remember the old question, “If it wasn’t written down, did it really happen?” That applies here. Employers should maintain copies of each pay scale that was included with job postings. Indeed, one way to ensure that such records are kept is to include the pay scale information on the employment application. HR Hotlink, for example, has modified its application process to ensure not only that the pay scale is included directly in the job postings and reviewed by each applicant during the application completion process, but that the pay scale information is amended for each completed application to become part of the personnel record.

Similarly, inquiries as to the pay scale from existing employees should be addressed in writing—preferably through email, as it creates a time-stamped record of the disclosure—with copies included both in the employee’s personnel file and a separate chronological file of such responses to demonstrate to the Labor Commissioner that the employer is complying with the law as to such requests.

This can be particularly important because of changes to recordkeeping requirements. Starting January 1, 2023, employers must keep records of job titles and wage histories for each employee for the duration of the employment plus three years after the end of the employment. These records are

subject to inspection by the Labor Commissioner to evaluate whether there is a pattern of wage discrepancy.

What Happens if the Employer Violates These Mandates?

Civil penalties are provided for in the statute, ranging from a minimum of \$100 per violation to as much as \$10,000 per violation. Time and enforcement history will provide more insight into the factors that the Labor Commissioner or judges apply to determine which level of punishment is appropriate under the circumstances. But dealerships should prepare for the possibility of not only potential civil penalties but other PAGA-based relief, including employers ordered to pay attorneys' fees for enforcement actions.

Where Can I Find More Information?

Referenced above are a number of responses to FAQ inquiries posted by the Labor Commissioner regarding the Equal Pay Act, under which umbrella these new rules fall. As promised in recent webinars offering guidance and assistance for dealerships seeking to meet these requirements. [Click here to view those FAQs and responses.](#)

In addition, we have prepared an Excel Workbook designed to assist dealerships in identifying, disclosing, and maintaining records of pay scales for individual positions. [This spreadsheet \(including instructions on its use\) can be accessed here.](#)

And, as always, the Association and employment counsel make themselves available to address both general and specific questions from members on best practices in this and other compliance areas. Members are encouraged to contact John Boggs or Dave Reese of Fine, Boggs & Perkins at (650) 712-8908 for more information and assistance.

Taking Care of your Out-of-State Buyers' Title & Reg Doesn't have to be a Nightmare

Besides accurate fees, pre-filled forms, and national expertise, chances are you are looking for a true partner.

By: Mike Platteter, Vitu



You read the headline correctly. It really doesn't have to be a nightmare. Think of how you currently take care of your out-of-state buyers. You either a) have a service take care of it all, b) place the burden on your staff to research and facilitate your out-of-state buyer's title and registration process, or c) have your buyer take care of it themselves. It doesn't matter which option you choose, it's all a nightmare. Worst of all, if you are currently using an existing service, how often are you or your buyers left in the dark?

How complex is national title and registration?

Short answer — very complex. Think about it. When a vehicle is purchased, it always has an origin — the state it's being sold from. Your buyer may or may not be living in that same origin state, but either way, the title, and registration is needed for the buyer's state. This process involves a wide variety of rules, requirements, and fees from state to state, not to mention the specific circumstances for each vehicle and buyer. It's clearly evident that a comprehensive national title and registration solution is a necessity.

What do you really need when selling to an out-of-state buyer?

When you are selling a vehicle to an out-of-state buyer, you need details — and fast. How much do the registration fees cost for the vehicle in the buyer's state? What forms do they need? How do I get these forms? And, maybe most importantly, "Can't someone complete the title and registration — we're busy selling cars?"

Give me the Estimated Fees

Of course, one of the most important questions your buyer may have is, "How much is it going to cost to register the vehicle in my home state?" This is where fee estimates come in. With some basic information about the vehicle, the buyer, and the selling and destination states, a detailed fee estimate is needed. State registration and title fees, county fees, taxes — you need all of this information to present to your buyer.

With a comprehensive set of fee estimates, you and your buyer have a good idea of just how much titling and registering the vehicle is. Being able to provide an in-depth breakdown of fee estimates is a great way to provide a complete picture of the complete cost of a vehicle sale.

A Checklist of Necessary Documents

Titling and registering a vehicle always requires specific paperwork — either state forms or ancillary items such as a driver's license or proof of insurance, to name a few. Wouldn't it be nice if all of those required items were on a single, easy-to-read checklist? The vehicle title or MSO, bill of sale, title application, odometer disclosure, power of attorney — the list goes on as you all know. And when dealing with out-of-state transactions, the scenarios, and possible permutations number in the millions.

As a dealer, you expect a checklist that is easy to follow and in plain English — especially if you ever needed to present this type of information to your buyer. All the paperwork and documentation needed for a smooth title and registration process is listed and needed for eventual submission to your buyer's home state. Having all required paperwork listed in one place makes for a smooth title and registration process once all is said and done. Go through the list and check each item off — that's how it should be.

Pre-Populated and Ready-To-Sign State Forms

Think about all of the title and registration forms we have here in California — the REG 397, REG 51, REG 227, and on and on. Now, imagine trying to get a hold of the forms needed for your buyer's home state. Sometimes it's as easy as downloading them off the internet, but then you have to fill it out. When your buyer is there and finalizing the sale, who has time to hunt around the web or call other states to track down specific forms? What you really need for a smooth vehicle sale are state

forms pre-populated with all the information about the vehicle, buyer, and the selling and destination states.

Full-Service Title and Registration

If you sell to many out-of-state buyers, chances are you would want to work with a service or partner that “just takes care of it all.” Time is money and if your staff is spending hours on the phone or hunting down fees and forms, you’d probably rather have them selling or servicing customers.

Choosing a trusted partner with the complexities of out-of-state title and registration for your buyers is important. And if you currently use a service, are you getting all the fees, checklists, forms, and customer service you are hoping for?

It’s that last part — customer service — that might be non-existent. Once you send all your paperwork to be processed, wouldn’t you like to ask questions and get answers? How about knowing exactly where in the title and registration process things are?

Looking For A True Partner

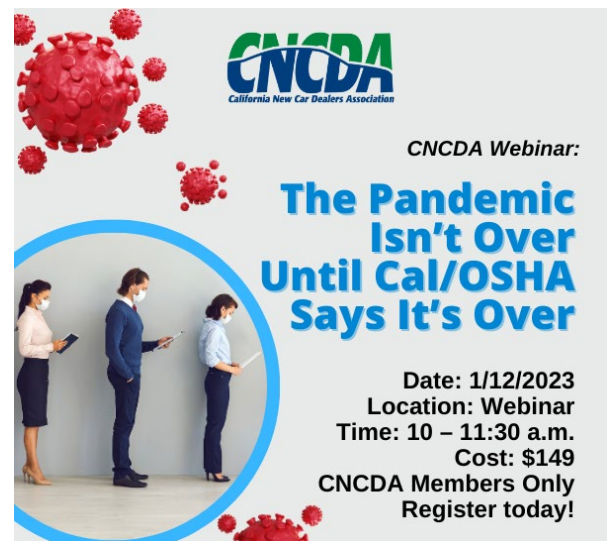
There are several providers that might offer some of the above, but CNCDA recommends Vitu Interstate for that complete toolbox you need when selling to out-of-state buyers. Did you know that each day, we here at Vitu process thousands and thousands of transactions across the nation? Our partners rely on and trust our expertise in providing accurate title and registration fee estimates, pre-filled forms, and, when requested, offering that “over the finish line” service where plates and indicia are delivered directly to you or your buyers.

Events

Webinar: The Pandemic Isn’t Over Until Cal/OSHA Says It’s Over

At its December 15, 2022 meeting, Cal/OSHA adopted non-emergency COVID-19 workplace safety regulations, which are expected to remain in effect until the end of 2024. These regulations relax some existing requirements on employee screenings, exclusion pay, and outbreak protocols. Join John Boggs, Anthony Bento, and Brian Maas for an overview of the updated requirements and how they will impact your dealership’s operations

[Click here to register for this webinar today.](#)



The graphic is a promotional poster for a webinar. At the top left, there are several red, spherical virus-like particles. In the top right corner is the CNCDA logo, which consists of the letters 'CNCDA' in a bold, blue, sans-serif font, with 'California New Car Dealers Association' written in a smaller font below it. The main title of the webinar, 'The Pandemic Isn't Over Until Cal/OSHA Says It's Over', is written in a large, bold, blue font in the center-right. Below the title, the date 'Date: 1/12/2023', location 'Location: Webinar', time 'Time: 10 - 11:30 a.m.', and cost 'Cost: \$149' are listed. At the bottom right, it says 'CNCDA Members Only Register today!'. On the left side of the graphic, there is a circular inset showing three people (two women and one man) standing in a line, looking at their phones or documents. The background of the graphic is a light gray.



2023 NADA Welcome Reception

CNCDA dealers are invited to attend our 2023 CNCDA Welcome party at the NADA convention in Dallas on **Friday, January 27, from 6- 8 p.m.** We look forward to kicking off a great convention with our California members and guests.

[RSVP HERE TO RSVP AND JOIN THE PARTY!](#)

Dealer Day 2023

Save the Date: March 29, 2023

Your participation and engagement with Sacramento policymakers are critical to the success of your business and the California retail automotive industry. We look forward to hosting Dealer Day, giving you the opportunity to meet with lawmakers to share your personal stories and compel them to continue supporting our industry. Help us create a business-friendly environment for dealers across the state. ***Your voice makes a difference.***



Thank You to CNCDA's 2023 Sponsors!

Thank you for investing in CNCDA. We could not accomplish our goals without the continued support, involvement, and enthusiasm of our committed sponsors. *Interested in securing your 2023 CNCDA sponsorship? Email [Jennifer Aragon](#) today.*

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NATIONAL BUSINESS BROKERS

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