



# Montana Automobile Dealers Association

## JUNE 2018 NEWS BULLETIN

PRESIDENT’S MESSAGE:

### Automotive Industry Technician Career Pathways

As we know all too well, Montana is facing a workforce shortage in the Automotive Technician Industry. Where others see obstacles, we see opportunity. Housed within the Montana Department of Labor and Industry lives the Montana Registered Apprenticeship (MRA) program, which was established in 1941. Working with both union and non-union businesses, MRA has been implementing apprentice based training programs all across Montana.

You may ask what an apprenticeship is. Apprenticeships are highly customizable training programs that have been used for centuries. The two main components of apprenticeships are the on-the-job-training and the related technical instruction, through an educational partner, such as a two-year college or training facility. As an apprentice moves through their training program, they receive incremental wage increases that are established by each individual dealership. In partnership with MRA, the Montana Auto Dealers Association has been working to develop an Automotive Technician Apprentice program for Montana’s dealers. With a completely customizable program, each dealership is able to build its own apprentice training program and therefore are able to lead the upbringing of the next generation of automotive technicians. Lithia Toyota of Billings and Helena Motors are the first dealerships to get their programs registered with the state. They each currently have 1 apprentice in their shop!

Offering an apprenticeship program is a way that you can invest in both your community and your industry. When bringing an apprentice up through a registered apprenticeship program you are offering a career rather than just another job creating both employee retention and community retention. By the time an apprentice graduates from his or her registered program, they will have

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**Eric Henriksen**  
MTADA President

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## DIRECTOR'S MESSAGE: Hello Montana Auto Dealers

I am happy to announce that our annual all member meeting will be on the afternoon of August 3rd from 1-4 pm as part of our yearly convention at Big Sky. This year's meeting is more important than ever- I strongly encourage all of you to attend. During the meeting, we will discuss issues that impact each and every dealer in Montana. We'll be going over what has changed in the 2017 legislative session, including the two bills the MTADA passed, as well as your ideas for the 2019 legislative session. This is your chance to have a voice within the industry and to shape the laws and statutes effecting Montana dealers.

Last year as you know, we were able to get two huge wins in the legislature.

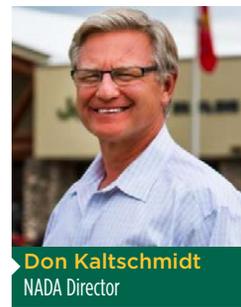
Senate Bill 89 is an act revising standards for determining good cause in terminating or not continuing a new motor vehicle franchise. This bill was passed in order to prevent manufacturers from arbitrarily terminating a dealership due to unattainable sales goals based on sales areas outside of their local market. Manufacturers now have to have sales goals that are essential, reasonable, not discriminatory, and

that take into account the franchisee's local market variations beyond adjusting for the local popularity of general vehicle types.

Senate Bill 108 prohibits enforcement of a right of first refusal. Passed to ensure that selling dealers are able to sell their dealership to a well-qualified individual of their choice, selling dealers now have the right to sell to a qualified individual of their choice without fear of the manufacturer swooping in at the last minute and giving the deal to another buyer. This also applies to a dealer when purchasing a dealership. We are only the sixth state to get this legislation passed.

We will definitely need your input as we will be going back to the legislature for more protection for our dealers in 2019.

Please email or call me before the meeting for any thoughts you might have for the 2019 session.



Don Kaltschmidt  
NADA Director

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CHAIRMAN'S MESSAGE:

# Auto Dealers Uphold Fair Credit and Consumer Competition

Since 2013, the nation's franchised new-car dealers and industry allies stood side-by-side as we fought the Consumer Financial Protection Bureau (CFPB) to preserve the dealer assisted financing model, and its irrefutable benefit to all car-buying customers. In May, our customers won a major victory when Congress and the President voided the CFPB's 2013 guidance – a NADA priority for the last five years.

But our work is not done. I want to remind all franchised dealers who have not already done so to review and consider implementing NADA's voluntary Fair Credit Compliance Policy & Program, which we released in 2014 with the American International Automobile Dealers Association (AIADA) and the National Association of Minority Automobile Dealers (NAMAD). Our program helps dealers to offer competitive rates to our customers while abiding by the nation's fair credit laws. It's good for our customers, good for our businesses, and implementing it is the right thing to do.

I cannot stress the benefits of this program enough. It is an effective approach to promote compliance with the federal Equal Credit Opportunity Act (ECOA), while preserving flexibility for dealerships to allow customers to benefit from today's intensely competitive vehicle financing market. Our NADA program fully adopts – and adds to – the beneficial fair credit risk mitigation model that the Department of Justice developed in 2007 to resolve two fair credit cases involving dealerships.

We have worked to make dealer adoption and implementation of the voluntary NADA/NAMAD/AIADA Fair Credit Compliance Policy & Program as straightforward as possible. To this end, each of the three major credit application aggregators – Dealertrack, RouteOne and CU Direct – as well as several other companies have licensed the use of the program and included it in their automated offerings to dealers.

Time and time again, NADA has shown empirically that policies that attempt to upend our dealer reserve model will harm car buyers because they reduce the

competition that brings lower rates for customers. This has been the crux of our argument since the CFPB rolled out its flawed auto finance guidance—a rule that, in essence, threatened to take away our customers' right to find a better and more competitive deal.

NADA will continue to support our members through the challenges ahead. In the meantime, it's up to our industry to lead the way when it comes to offering credit fairly to our customers. I'm confident that we'll continue to prove that dealers provide the most competitive, efficient, consumer benefits in our current auto finance model while abiding by some of our nation's most important laws and doing right by our customers.

Learn more at [www.nada.org/faircredit](http://www.nada.org/faircredit). ■

*Lutz is 2018 NADA chairman and president of Extreme Chrysler-Dodge-Jeep-Ram in Jackson, Mich*



Wes Lutz  
2018 NADA Chairman

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**LEGAL UPDATE**

# Doc Fees on Lease End Purchase

Most consumer vehicle leases offer the lessee the option to purchase the leased vehicle for a stated, fixed price at the scheduled end of the lease term or based on a formula if the lessee chooses to purchase the vehicle before the scheduled end of the lease term. Under both options, the lessee has a contractual right to purchase the vehicle for a fixed option price. The question is, may the dealer who handles this purchase option for the lessee-purchaser add a Doc Fee to the transaction.

The short answer is it's probably not a good idea. Adding the Doc Fee likely violates Federal Reserve Board Regulation M according to Tom Buiteweg of Hudson Cook, LLP. Mr. Buiteweg was asked to answer the question by Paul Metrey of the NADA legal staff. The following is a synopsis of Mr. Buiteweg's opinion. I have the full opinion and would be happy to share with anyone who may be interested.

If a lessee elects to purchase the vehicle, many leasing companies will enlist a dealer to handle the sale. Some leasing companies reassign the lease and sell the vehicle to the dealer. In these cases, the dealer, as the lease holder, is contractually obligated to sell the vehicle to the lessee at the lease purchase option price. Other leasing companies simply sell the vehicle back to the dealer. In these cases, the dealer takes ownership of the vehicle subject to the lessee's right to purchase it for the lease purchase option price.

Charging a documentary fee in a dealer lessee purchase transaction risks a claim against the lease holder that the practice breached the contract and or violated Reg. M, unless: the original lease disclosed the amount of the documentary fee charged in the dealer lessee purchase transaction as a separate purchase option fee; or the sum of the documentary fee and the price charged the lessee for the vehicle (excluding official fees and the price of any voluntary protection products sold to the lessee in connection with the dealer-lessee purchase transaction) is equal to the lease purchase option price.

If a lease does not disclose the documentary fee as a purchase option fee, charging a documentary fee in addition to the lease purchase option price risks a claim

that the initial disclosure of the lease option price was not accurate and thus violated Reg. M. It also risks a claim that the lease holder breached the original lease agreement by charging more than the agreed to lease option price.

A lessor could argue that a documentary fee is for separate services performed by the dealer for transferring title to the lessee and registering the vehicle. As such, the dealer should be able to charge additional consideration for these separate services. This argument is strengthened if the dealer offers lessees the option to perform these services themselves to avoid the charge and some lessee's elect that option. But there remains a risk that a court or regulator will conclude that the term



Continued on **NEXT PAGE**

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## Legal Update

CONTINUED FROM PAGE 4

“purchase option fee” as used in Reg. M includes such services and thus must either be disclosed separately or included in the lease option purchase price.

Several lawsuits have been brought by lessees who were charged documentary fees in addition to the lease option price where the related lease agreement did not disclose the amount of the documentary fee as a purchase option fee. The lessees in these cases claimed that the practice breached the lease agreement and/or violated Reg. M. To date none of these cases has addressed the merits of these claims. One case is still pending. The remaining cases were either resolved on procedural grounds or settled. ■

## President’s Message

CONTINUED FROM PAGE 1

a degree, a certificate from the Department of Labor, and over 1500 hours of on-the-job learning along with industry specific certificates.

As part of Governor Bullock’s “Quality Jobs” legislative package, the 2017 Montana Legislature passed the apprenticeship tax credit to provide businesses a financial incentive when expanding current or launching new registered apprenticeship training programs. A \$750.00 tax credit is given for each new apprentice and a \$1500.00 tax credit is given for any new apprentice that is also a veteran. As you can see, there has been buy-in on the apprentice program from both manufacturers and local government. Now all we need is the support from Montana’s dealers.

If you would like to learn more about the Automotive Industry Technician Career Pathways Apprenticeship Program attend the All Member Meeting August 3 at 1:00pm during the 104th Annual MTADA Family Convention in Big Sky, MT or please contact Jordan at [jglosser@mtada.com](mailto:jglosser@mtada.com) or (406)442-1233. ■

*Eric Henricksen is the owner of Don Aadsen Ford in Ronan, Montana*

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### SPEAKERS:

**Wes Lutz**, NADA New Chairman, *How the NADA can serve and represent the franchised new-car and -truck dealers of America.*

**Jason Volny**, National Training Manager, DrivingSales, *Human Capital Management and how it can amplify the growth of future leaders in your dealerships.*

**Erik Chase**, Franchise and Dealership Attorney, Bressler Amery Ross, *Top 10 Legal Trends for Auto Dealers in 2018.*

### ACTIVITIES:

- Annual President's Banquet with Legislators from Helena and Washington D.C.
- Texas Hold'Em Poker Night
- 9-Hole Shotgun Style Golf Scramble
- Annual Family Dinner
- Yellowstone Park Bus Tour
- Plus many other activities offered by Big Sky Resort.

**We encourage all of you to bring your families!**  
**Childcare will be offered at certain times of the day.**

**Please Register Online at [MTADA.Com](http://MTADA.Com)**



## Director's Message

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### Electronic titling is coming to Montana.

A representative from Vitu will be at our meeting to go over how the electronic titling will work. Currently Vitu does 70% of all electronic titling in California, all of the titles in Oregon and works in Illinois and Virginia as well. This service will be free of charge. It will not be mandatory, but you will be able to cut out the MVD for all services that are done by Vitu. Yes that is correct, for every title you use Vitu for you will never have to contact the MVD ever again. When the Vitu system is completed in Montana, we will have the most cutting edge technology in the United States.

Vitu will also be supporting us in the upcoming session with their lobbyists. This is a huge deal.

- We will be giving an update on our apprenticeship program across the state that is now live and operating. You will want to know how you can get some apprentices in your dealership and how the program works.
- We will also be introducing our new website that we will be offering over 6000 products for your dealership.

In addition to the all Dealer meeting, we'll have State and National representatives in attendance at our banquet. We will have Senator Steve Daines, Congressman Greg Gianforte, Matt Rosendale (Insurance Commissioner), Wes Lutz (NADA Chairman) along with several state legislators.

Following the Saturday sessions, we'll have a fun golf tournament at the Big Sky course or free time followed by dinner, golf awards and music.

The convention is a family event, with ample family-friendly activities. Please bring your family, come early and stay late. We currently have more families registered for the convention than since I came on board. This includes 26 children. This is a great opportunity to squeeze in a last-chance family vacation before the fall while taking care of important issues that will undoubtedly impact the family business.

I look forward to seeing you all at Big Sky. ■

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Erin Dickey  
IT Services Director  
DIS Technologies

# IT Security Tip #81: Windows Updates?

If you've used a Windows computer for any length of time, you notice the little pop-up bubbles

telling you X or Y needs to be updated. Windows, Office, Adobe, Intuit and Java are just a few of the products and companies that typically release multiple updates and patches frequently. To complicate matters, updates can be frustrating. They require reboots, they can arbitrarily change settings and functionality, and something that behaves one way may behave differently post-update.

Are these updates really needed? While that topic can be debated for hours, consider these facts:

In early 2017, Microsoft released a particular "0 day" update to resolve a security bug that was discovered the same day. Microsoft reported that one week after the update was released, there were hundreds of thousands of machines infected – because while prevention was possible, those machines just hadn't installed their updates. Adobe Flash, which almost everyone uses in their



web browser, is a notorious security risk, and Flash updates are released several times a month. There have been situations where someone had all of their data and the data on the server they were connected to encrypted and held for ransom – the breach originated because they visited a website that was compromised, and their computer had an outdated version of Flash.

Regular updates will only become more prevalent in our lives. Take care of them right away or let us take care of the updates for you!

Would you like to know more about IT security strategies? Download our free report, *The 7 Most Critical IT Security Protections Every Business Must Have In Place Now To Protect Themselves From Cybercrime, Data Breaches And Hacker Attacks*. To get instant access, go to: <http://www.dismt.com/cybersecuritytips/>. ■

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**WES LUTZ**  
**NADA Chairman 2018**

Wes Lutz is president of Extreme Chrysler/Dodge/Jeep, RAM Inc. in Jackson, Mich. He has been a Chrysler dealer since 1976. Lutz is 2018 chairman of the National Automobile Dealers Association and represents Michigan’s franchised new-car dealers on its board of directors. He previously served on the NADA board from 2001 to 2004. (Term: February 2013-January 2019)



**ERIC CHASE**  
**Franchise and Dealership Attorney, Bressler Amery Ross**

Eric L. Chase is one of America’s leading automotive franchise attorneys. Over many years he has represented hundreds of dealers in their disputes with automobile factories, distributors and importers, as well as in investigations by and disputes with state and federal agencies. He has been lead counsel in a number of class actions, representing franchised motor vehicle dealers. He has served as lead counsel in a variety of landmark cases that are important and enduring legal precedents for dealers. Selected as a New Jersey Super Lawyer for many years, including 2018.



**JASON VOLNY**  
**National Training Manger, DrivingSales**

Jason Volny’s fifteen-year career in the automotive world, coupled with his desire to research and innovate historical and immediate industry practices, contributes to the ongoing future growth of the industry professionals. His keen understanding of Human Capital Management amplifies the growth of future leaders. His sales manager, finance manager, and salesperson’s pedigree, provided him with the necessary experience to question the status quo. His multi-angle approach to the improvement of the modern customer experience inspires a counterintuitive evolution of brand perception.



# Only 21 States Have Laws that Protect Consumers from So-Called Balance Billing

Going to the hospital can be stressful enough. The last thing patients need is a huge bill from a doctor they thought their insurance plan would pay, but surprise bills are becoming all too common. The problem is gaining wider attention as more consumers choose health plans with narrower provider networks. However, only 21 states have laws that protect consumers from so-called balance billing, according to a report by the Commonwealth Fund.

Balance billing can cost patients thousands of dollars — even if they have health insurance. This happens when someone is cared for by an out-of-network facility or doctor, who then bills the patient for whatever amount is not covered by the insurer.

The “surprise” part of this scenario is that patients may get hit with these bills even when they do their homework and choose an in-network hospital.

That’s because not every doctor who treats patients at a given hospital is in the same insurance networks as the facility. At times you may not even know you’ve received care from an out-of-network doctor until you get the bill.

For instance, many hospitals outsource the staffing of their ERs. The doctors who are part of those staffing companies are often not in-network with an insurer, causing a surge in surprise bills.

In 2014, 14 percent of outpatient visits to the ER and 20 percent of hospital admissions from the ER resulted in a surprise bill for patients, according to a study published in the January 2017 issue of Health Affairs. Ground and air ambulance transports present similar problems.

Even planned procedures with an in-network surgeon may trigger a balance bill if an anesthesiologist, radiologist or other doctor involved in the surgery isn’t in the network.

Federal law requires most health plans to pay a certain amount for out-of-network emergency care. It does not, however, stop doctors and hospitals from turning around and billing the patient for more.

State laws protecting patients from surprise bills vary significantly, according to the report by the Commonwealth Fund, a nonprofit organization that promotes health care access and quality. Some states actually prohibit doctors and hospitals from balance billing. Others hold consumers harmless for the charges — meaning the provider can’t take legal action against the consumer to collect the debt.

“Some providers send balance bills in the hope that patients will complain to their insurer or state insurance department,” the Commonwealth Fund researchers said in the report.

Some states impose standards for what insurers are required to pay in these situations or establish a process for resolving payment disputes. And some, such as California and New York, do both.

A California law enacted in late 2016 requires insurers to pay — and providers to accept — the region’s average in-network rate or 125 percent of what Medicare would pay, whichever is greater. It also established a binding independent review process to resolve disputes between insurers and providers.

Also, some of these laws don’t apply everywhere a patient might get care. For example, New Mexico’s law only protects patients from bills for emergency care. Texas just recently expanded its law to apply to all out-of-network emergency providers, including freestanding emergency rooms, and all out-of-



By Emma Passe  
Communications Manager  
EBMS

## Educating Your Members Begins with You

The Montana Automobile Dealers Association has partnered with EBMS to provide you and your employees with a variety of resources to keep you physically and financially well on your journeys. So pass it on! Consider sharing this information with your employees so you can empower them to be their healthiest selves. After all, a healthy workforce means a healthy business.

**Healthcare** CONTINUED FROM PAGE 11

network providers working at a network facility.

Freestanding ERs are a common sight in Texas, with about 250 scattered throughout the state, and many don't contract with insurers. To make matters worse, patients often confuse freestanding ERs for urgent care centers — and end up paying more for an innocent mistake.

“You can go in for a sore throat and end up with a bill for thousands,” said Amy Suter Hill, senior director of network management with Blue Cross and Blue Shield of Texas.

Balance billing has hit patients in Texas particularly hard. The number of balance-billing complaints grew from 277 in 2013 to 1,331 in 2015, according to data from the Texas Department of Insurance, and nearly \$621,700 was returned to customers.

For their part, insurers try to contract with out-of-network providers, but those providers are not always receptive, Suter Hill said.

No matter what state they're in, consumers should be diligent when possible, Suter Hill said. Avoiding freestanding ERs is a good first step, as is asking if all providers involved in a planned procedure — including anesthesiologists, radiologists and others — are in your plan's network. Asking upfront is a good way for members to protect themselves from getting a surprise bill in the

mail. It may also raise awareness of the issue.

Many patients are in the dark about what they can do if they receive a bill for the amount not covered by their insurance, a practice called balance billing. A 2015 survey conducted by Consumer Reports National Research Center found 57 percent of people ended up paying the amount in full.

But before paying, patients should “exhaust all their options,” Suter Hill said. Those include:

- Calling the care provider who billed them
- Calling the hospital or other facility where they received care
- Calling their insurance provider
- Checking with the state insurance regulator to see if protections are in place against balance bills

Taking those steps may lead to a smaller bill. In some cases, it may even eliminate the outstanding amount all together. That, without a doubt, would be a welcome surprise. ■

*Source of data: <https://www.makingthehealthcaresystemwork.com/2017/08/29/protection-from-surprise-medicals-bills-depends-on-where-you-live/>*



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