

NEW JERSEY auto retailer

Issue 1 | 2022



Wrongly Conflating EV Sales with Direct Sales:

**An Effort to Misguide
Legislators Across the Country**

Official Publication of **nj car**

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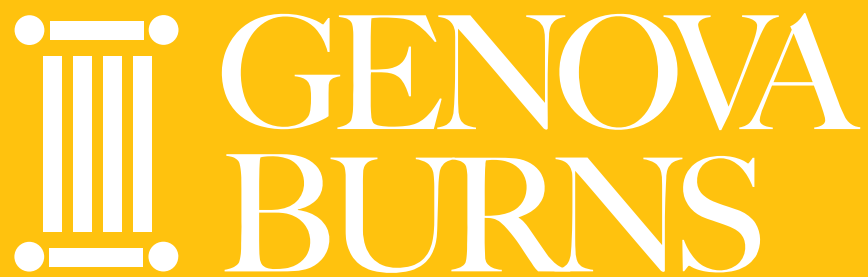
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Chairman's MESSAGE | BY Michael P. DiFeo

Doc Fees Under Scrutiny in Trenton



Earlier this year, Bill S1031 was introduced in the New Jersey Legislature. The bill would require licensed dealerships to report their documentary preparation fees (*Doc Fees*) to the Attorney General's office. Subsequently, the fees would be posted on the websites maintained by the Department of Law & Public Safety and the Division of Consumer Affairs.

As you know, Doc Fees are professional service fees charged by dealers to complete dozens of administrative tasks required by regulators and finance sources to process a new or used car deal. As you can see by the accompanying list of services on page 8, dealers save consumers valuable time and aggravation of getting on the phone, online or physically standing in line to complete the necessary tasks.

While the State of New Jersey does not regulate the amount of Doc Fees, and this bill does not propose regulating the

amounts either, their disclosure is already regulated in two ways. *N.J.A.C. 13:45A-26BN.2(b)* requires dealers to clearly disclose all pre-delivery service fees (*including Doc Fees*) on the Retail Order Form. *N.J.A.C. 13:45A-26A.5* requires dealers to include their Doc Fee in any motor vehicle price advertising. These regulations ensure consumers know **up-front** what they will be paying (*in detail*) **at the point of purchase**. While S1031 may seem duplicative, NJ CAR didn't oppose the legislation, preferring to show our elected officials that the industry supports transparency.

At the same time S1031 was pending in the Senate Transportation Committee, NJ CAR began to hear whispers of possible legislation to impose a cap on Doc Fees. The Coalition has been aggressively making the case to elected officials that this is unnecessary.

CHAIRMAN'S MESSAGE continued on page 8

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CHARIMAN'S MESSAGE *continued from page 6*

DOC FEE DISCLOSURES GIVE CAR BUYERS AMPLE OPPORTUNITY TO SHOP AROUND AND GET THE BEST DEAL ON THE VEHICLE THEY WANT AND THE DOC FEE THEY'LL PAY.

The State of New Jersey does not regulate the professional service fees charged by lawyers, accountants, doctors, contractors, landscapers, barbers or dozens of other regulated professions serving the public. One of the primary benefits of a free market is that informed consumers can shop for the best deal. Dealers are already required to disclose their Doc Fees in two ways, with a possible third required disclosure if S1031 eventually becomes law.

The 500+ franchised new car and truck dealerships in New Jersey provide consumers with fierce inter- and intra-brand competition for sales and service. Doc Fee disclosures give car buyers ample opportunity to shop around and get the best deal on the vehicle they want and the Doc Fee they'll pay.

NJ CAR conducted a Doc Fee survey in mid-February, with 175 dealerships (35% of all dealers) participating. The survey found that 43% of respondents (75 dealers) had a doc fee between \$400 and \$500, and nearly 80% had a doc fee in the \$300-\$600 range. A small percentage reported a doc fee below \$300 or greater than \$600. Hudson, Union and Morris counties had the highest average Doc Fee, while Cumberland, Cape May, Camden and Gloucester counties had the lowest averages.

Government should not cap what a business charges for the professional services it provides. A cap on what dealers can charge for a Doc Fee doesn't come with a cap on the cost of providing those services. Inevitably, a government mandate that caps Doc Fees will force some dealers to charge higher prices for the vehicles they sell to cover their costs and earn a fair return on their investment. **nj car**

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FOR ANY VEHICLE SALE OR LEASE	
Verify insurance coverage	✓
Issue a Resident or Non-Resident eTemp (<i>temporary registration</i>)	✓
FOR SALES TRANSACTIONS	
Complete a Retail Order Form	✓
Provide consumers with the New/ Used Vehicle Lemon Law Notice	✓
Provide consumers with the FTC Used Car Buyer's Guide (<i>used vehicle sales</i>)	✓
Complete the Odometer Disclosure document (<i>dealer to buyer</i>)	✓
Provide consumers with the Privacy Notice	✓
Provide consumers with any required manufacturer's documents for applicable rebates	✓
Process a Power of Attorney form to obtain title and registration for customer	✓
Complete the Application or Certificate of Ownership (<i>Form OS/SS014</i>)	✓
Complete the New Jersey Vehicle Registration Application (<i>Form BA-49</i>)	✓
Execute multiple waivers (<i>Service Contract, GAP, etc.</i>) if a consumer doesn't want to purchase ancillary products	✓
Perfect assignment of Title/ MSO	✓
Provide Graduated Driver's License (<i>GDL</i>) brochure to all customers	✓
Deliver required documents to the NJMVC or Dealer Service Provider (<i>DSP</i>) to obtain title and registration for vehicle purchased or leased by NJ residents	✓
Deliver title (<i>in "cash" transactions</i>), registration and plates to customer	✓
IF TRADE VEHICLE IS INVOLVED	
Complete Odometer Statement (<i>customer to dealer</i>)	✓
Execute Power of Attorney form to obtain title in dealership's name	✓
Obtain authorization from customer to pay off lien (<i>if vehicle was financed</i>)	✓
Obtain authorization to use vehicle as a trade (<i>if not owned by purchaser</i>)	✓
Complete application for replacement title (<i>if title to trade vehicle is "lost"</i>)	✓
Deliver authorization for loan pay-off and payment of balance to lienholder	✓
Deliver required documents to NJMVC/DSP to obtain title in dealership's name	✓
ADDITIONAL SERVICES IF PURCHASED VEHICLE IS FINANCED	
Review credit application and transmit to lender(s) for approval	✓
Complete finance contract and transmit to lender(s) for approval	✓
Provide customer with Risk-Based Pricing or Credit Score Disclosure Notice	✓
Provide customer with Adverse Action Notice (<i>if unable to secure financing</i>)	✓
Deliver finance agreement and encumbered title to lender, upon receipt	✓
ADDITIONAL SERVICES IF PURCHASED VEHICLE IS LEASED	
Complete and deliver lease agreement	✓
Deliver credit application to lease funding sources, as well as completed lease contract and title to ultimate funding source	✓
IF PURCHASE OR LEASE IS EXEMPT FROM NJ SALES TAX	
Obtain and review appropriate exemption certificate from customer	✓
IF CUSTOMER IS A NON-RESIDENT	
Deliver applicable motor vehicle documents to a "tag service" to obtain title and registration in customer's resident state	✓
Deliver title (<i>in "cash" transactions</i>), registration and plates to customer	✓



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President's MESSAGE | BY JAMES B. APPLETON



The Franchise System Benefits Consumers — The Direct Sales Model Does Not



FRANCHISE DEALERSHIPS PROVIDE CONSUMERS WITH FIERCE INTER- AND INTRA-BRAND PRICE COMPETITION AND PREVENT MANUFACTURER MONOPOLIES. THEY OFFER READY ACCESS TO WARRANTY, RECALL AND GENERAL REPAIR SERVICE AND GENERATE GOOD-PAYING, LOCAL JOBS (MANY OF WHICH DON'T REQUIRE A COLLEGE DEGREE) THAT CAN'T BE OUTSOURCED.

The Direct Sales model is WRONG FOR CONSUMERS. New Jersey has been at the forefront of this fight for several years, but direct sales fights continue to rage all over the country, as you will see in our featured story from this issue of *New Jersey Auto Retailer*. Initially, it was just Tesla, but now Rivian, Lucid and other startups are taking up the mantle and trying to gain special consideration from Legislatures coast to coast. Even some legacy automakers are toying with the idea of breaking off their EV product into standalone companies.

Direct sale advocates have long said franchised dealers are unwilling or unable to sell EVs and that EV startups with direct sales are the only ones giving consumers the convenience of online vehicle purchasing. *Neither of these assertions are true.* Franchised dealers currently offer more than 40 vehicles with a plug, and dozens more are coming in the next few years. They also offer the consumer flexibility to complete their retail purchase online if the consumer prefers a remote or digital experience.

The network of 500+ franchised new car and truck dealerships in New Jersey represents a \$34.6 billion industry and directly employs nearly 36,000 men and women, supporting an additional 34,000 jobs in the Garden State. Franchise dealerships provide consumers with fierce inter- and intra-brand price competition and prevent manufacturer monopolies. They offer ready access to warranty, recall and general repair service and generate good-paying, local jobs (*many of which don't require a college degree*) that can't be outsourced. They contribute billions of dollars in tax revenue and other benefits to the State and local economies. **Factory-direct sales are simply an attempt to monopolize the electric vehicle (EV) market, eliminate competition and limit access to independent warranty and safety recall services.**

NJ CAR has been communicating this message through a variety of paid and earned media campaigns targeting New Jersey's elected officials and the public at large for more than a year. NJ CAR staff and dozens of dealers have participated in more than 100 Zoom calls and in-person meetings over the past 14 months, meeting with virtually every legislator to ensure the industry's message stays in front of the State's decision-makers. We have been proactive in our efforts, rather than reactive, and we are committed to staying one step ahead of Tesla, Rivian, Lucid and the other advocates for direct sales, including some legacy automakers that have begun to explore the possibility of factory-direct sales of EVs and autonomous vehicles.

For instance, Ford Motor Company recently announced it was spinning off its electric vehicle operation into a company separate from its legacy business. After receiving massive pushback, the company dialed back the spinoff talk and announced an internal separation of the EV business as its own unit under the Ford umbrella, but you can't put the toothpaste back in the tube. And, as of this writing, it is unclear how this decision will impact Ford's franchisees.

Direct sales advocates have said the unique nature of this evolving technology requires a factory-to-consumer direct sale. The fact is vehicles have been evolving for more than a century, and there is absolutely no reason to abandon the franchise system that has served consumers **AND** auto manufacturers well for all that time.

Consumers want convenient access to service. They want a strong local business that employs their neighbors and is active in the community. They want hearty competition on pricing for sales and service. The franchise system meets those needs. The direct sales model does not. **njcar**

NADA Director's MESSAGE | BY RICHARD A. DESILVA, SR.

NADA Continues the Fight for LIFO Relief



NADA Chairman Paul Walser recently authored an article regarding NADA's efforts to find relief for the many dealers that rely upon the Last-In, First-Out (*LIFO*) accounting method for their new vehicle inventories. Below is an edited version of the article.

New vehicle inventories dwindled as the pandemic lingered and worsened as the persistent worldwide microchip shortage impacted vehicle manufacturing. With inventories still a fraction of what they have been for many dealers, those that rely on LIFO now face significant "LIFO recapture."

Dealers using LIFO will face higher income taxes through no fault of their own. NADA has been working diligently for more than a year to obtain LIFO relief and highlight planning strategies, under current law, that could potentially mitigate LIFO recapture for some dealers.

In November 2020, NADA petitioned the Department of the Treasury to use authority under a never-before-used section of the Internal Revenue Code (*section 473*) to grant LIFO relief when dealerships found it difficult or impossible to replace its inventory due to a "major foreign trade interruption." NADA has met with Treasury four times in the past year, coordinated its advocacy with several other industry groups, and provided data demonstrating the relationship between the pandemic and the unprecedented nature of the inventory decline. **To date, Treasury has failed to act on NADA's petition.**

Fortunately, there has been a success in promoting bipartisan congressional efforts to convince Treasury to grant relief. Twenty Senate Democrats sent a letter and 92 Democrat and Republican Representatives sent another letter to Treasury Secretary Janet Yellen, in November 2021, urging her to issue LIFO relief.

Treasury explained in a recent letter to Congress that to obtain LIFO relief, "businesses with global supply chains would need to demonstrate that the decrease in the closing inventory... is directly and primarily attributable to the foreign disruption in the supply chain."

The Alliance of Automotive Innovators backed up NADA's LIFO request with a letter to Treasury documenting that the

unavailability of foreign microchips has delayed or reduced OEM production and prevented the OEMs from sending dealers the necessary vehicles to replenish inventory. NADA followed up with a letter to Treasury on January 24, 2022, explaining that Treasury's condition for relief has been met and LIFO relief should be granted to dealers in advance of the 2021 return filing deadline.

On February 4, 2022, Senate Democrats (*19 signers of the first letter*) sent a second, stronger letter to Secretary Yellen urging her to grant LIFO relief no later than Feb. 15, 2022. When Treasury did not act, 32 Senate Republicans sent a similar letter on February 18, 2022.

It's now up to Treasury to act. This extraordinary congressional support for LIFO relief is important to NADA's regulatory advocacy but will also be critical if we need to seek a legislative solution quickly.

While there is no "silver bullet" to avoiding the adverse tax consequences of LIFO recapture under current law, the accounting firm Crowe has created several informational sheets for NADA that highlight ways to mitigate the consequences, one of which can be found at crowe.com/insights/considerations-for-dealers-facing-significant-lifo-recapture.

Dealers who rely on LIFO may also want to consider changing to the Inventory Price Index Computation (*IPIC*) accounting method, which would allow dealers on LIFO to combine their new, used, and parts inventories. This could be advantageous, but dealers are encouraged to work with their tax professionals, as mitigating LIFO recapture depends on a taxpayer's individual facts and circumstances.

LIFO relief has been (*and will continue to be*) a top priority for NADA. The Association will continue to seek temporary deferral of LIFO recapture to provide dealers an opportunity to replenish inventory during a normal business cycle. Now is not the time to take working capital out of dealerships. Not only are we major employers, but we also generate significant tax revenue and contribute to local communities, which is critical as our industry continues to lead the economic recovery. **njcar**



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Navigating New Jersey's Electric Vehicle Charging Landscape

By Chris Donnelly



Electric Vehicles (EVs) and

hybrid EVs have been steadily growing in popularity over the past decade, especially in the last two years, as talks of climate change, sustainability, and environmental stewardship come to the forefront. Many car manufacturers are already making plans to expand their plug-in offerings or are going all-electric, mandating that dealerships adopt EV charging infrastructure as a result. Navigating the new electric vehicle charging landscape in New Jersey can be overwhelming.

NEW JERSEY'S EV FRONTIER

The State of New Jersey has ramped up its efforts to address electric vehicle adoption and meet infrastructure needs as a part of its 2019 Energy Master Plan. The Energy Master Plan sets out a wide range of targets for EV starting in 2025 — just three short years away. The goal is to have 330,000 Plug-In EVs on the road, 400 DC Fast Chargers in at least 200 locations, and 1,000 Level 2 Chargers installed by 2025. In response to these aggressive goals, incentive programs have been created to encourage car buyers and commercial facilities alike to adopt EVs and expand the charging infrastructure necessary to power the EV fleet.

GIVING NJ'S EV INFRASTRUCTURE A BOOST

If New Jersey is to have any chance of hitting its EV goals, they need to make it easy and affordable for this initiative to be adopted statewide.

New Jersey's public utilities have begun implementing their own EV infrastructure programs designed to provide rebates toward behind-the-meter and/or pole-to-meter service construction to accommodate EV charging equipment. *(This means covering the cost of any excavation work, running conduits and wiring, service panels, junction boxes, etc.)*

Each electric utility offers its own unique program and restrictions. Programs that are currently up and running include PSE&G and Atlantic City Electric. JCP&L and Orange & Rockland will be launching soon.

Then there are state-funded programs that can help cover the cost of the charging equipment itself. These can be used in conjunction with the public utility rebates.

The New Jersey Department of Environmental Protection (DEP) offers the **It Pay\$ to Plug In** program, where they provide grants to help pay for EV chargers.

The DEP recently announced a \$4 million round of competitive grants for installing 24/7 public Direct Current (DC) Fast Chargers in community settings, meaning where people live and work. The application portal opened on March 14, 2022, and will close on May 13, 2022. You can learn more about the DEP's grant opportunities on their Drive Green website at nj.gov/dep/drivegreen/.

WHAT DEALERSHIPS NEED TO KNOW

When it comes to electric vehicle infrastructure solutions, having a basic knowledge of the overall process, as well as funding opportunities, can help owners make the best-informed decisions for their dealerships. Some EV infrastructure projects can be more labor-intensive and construction-heavy than others. In the end, it all has to do with electricity.

A common commercial building's electric service system is 120/208 volts(v). This is fine if installing a Level 1 charger (120v), but typically commercial spaces install Level 2 or DC Fast Chargers due to faster-charging speeds.

A Level 2 charging port needs 208v to 240v to power. A DC Fast Charge unit needs 208v or 480v. This is where a service or equipment upgrade could come in, which can be tricky to manage between the utility and your township.

It is critical to first determine if there is adequate power to the building when considering an EV infrastructure project. It's important for both the dealership's utility and contractor to work together on a game plan if there isn't enough power coming in for any future EV plans.

Your contractor should work to assess your current power supply capabilities, identify any room for energy efficiency improvements, plan out the best layout and best hardware options to meet your financial and operational requirements (*Level 2 & DC Fast Charging*), and apply for any available rebates.

Having an energy-efficient dealership is an added bonus because it'll help lower the energy load on its own, making some room for the additional demand of adding EV chargers.

Dealerships can utilize their local public utilities energy efficiency programs, like Direct Install, to upgrade outdated lighting to LEDs and retrofit any inefficient HVAC equipment using state incentives and on-bill repayment options.

IN THE EV FAST LANE

Getting ahead of the EV race, especially while recovering from the COVID-19 pandemic, is a better strategy for dealerships in the long run. For example, Brogan Cadillac of Totowa approached Donnelly Construction about wanting to adopt electric vehicle charging for their facility over a year ago.

Even with due diligence and foresight from Donnelly's project planning team, construction was at the mercy of long product lead times due to supply chain issues. According to TJ Ely, Jr., President of Brogan Cadillac, if your dealership has a deadline on when to install EV chargers, you really can't wait until the last minute to implement a plan.

Ongoing supply chain issues have been affecting industries across the board, including New Jersey's major utilities. A new transformer was needed to help supply more power to Brogan, with the equipment lead time being 45 weeks, delaying their installation. What should have been a four-month construction project turned into seven.

However, not every electric vehicle charger installation requires heavy behind-the-meter work or service upgrades.

At Wholesale Auto Supply (WASCO) in South Hackensack, Donnelly was able to install two Level 2 chargers at their facility, as well as upgrade all of their lighting, in less than three months from the initial site assessment to final installation.

Wholesale Auto had enough power supply to match the demands of their chargers and the perfect layout to install. No additional excavation work or "heavy lifting" was needed.

Wholesale Auto Supply will also be participating in PSE&G's EV



charger program, which will cover all construction-related costs (*labor, wiring, and conduit*) for their new EV chargers. According to Andrea Karsian, CEO of WASCO, because the company had the extra capacity on their existing service to handle the installation of Level 2 chargers, the company was able to avoid any major construction work, making installation quick and seamless.

New Jersey's EV landscape is ever-changing and adapting to the times. Working with a top-performing

IF NEW JERSEY IS TO HAVE ANY CHANCE OF HITTING ITS EV GOALS, THEY NEED TO MAKE IT EASY AND AFFORDABLE FOR THIS INITIATIVE TO BE ADOPTED STATEWIDE.

contractor who has your best interest in mind and strong programmatic relationships can help ensure the best return on investment. **nj car**

Chris Donnelly is Vice President of Business Development at Donnelly Construction. Founded in 1977, Donnelly Construction is a leading general contractor, construction manager, and property developer headquartered in Wayne, New Jersey. Chris can be reached at 862.400.6106 or, via email, at cdonnelly@donnellyind.com.

Wrongly Conflating EV Sales with Direct Sales:

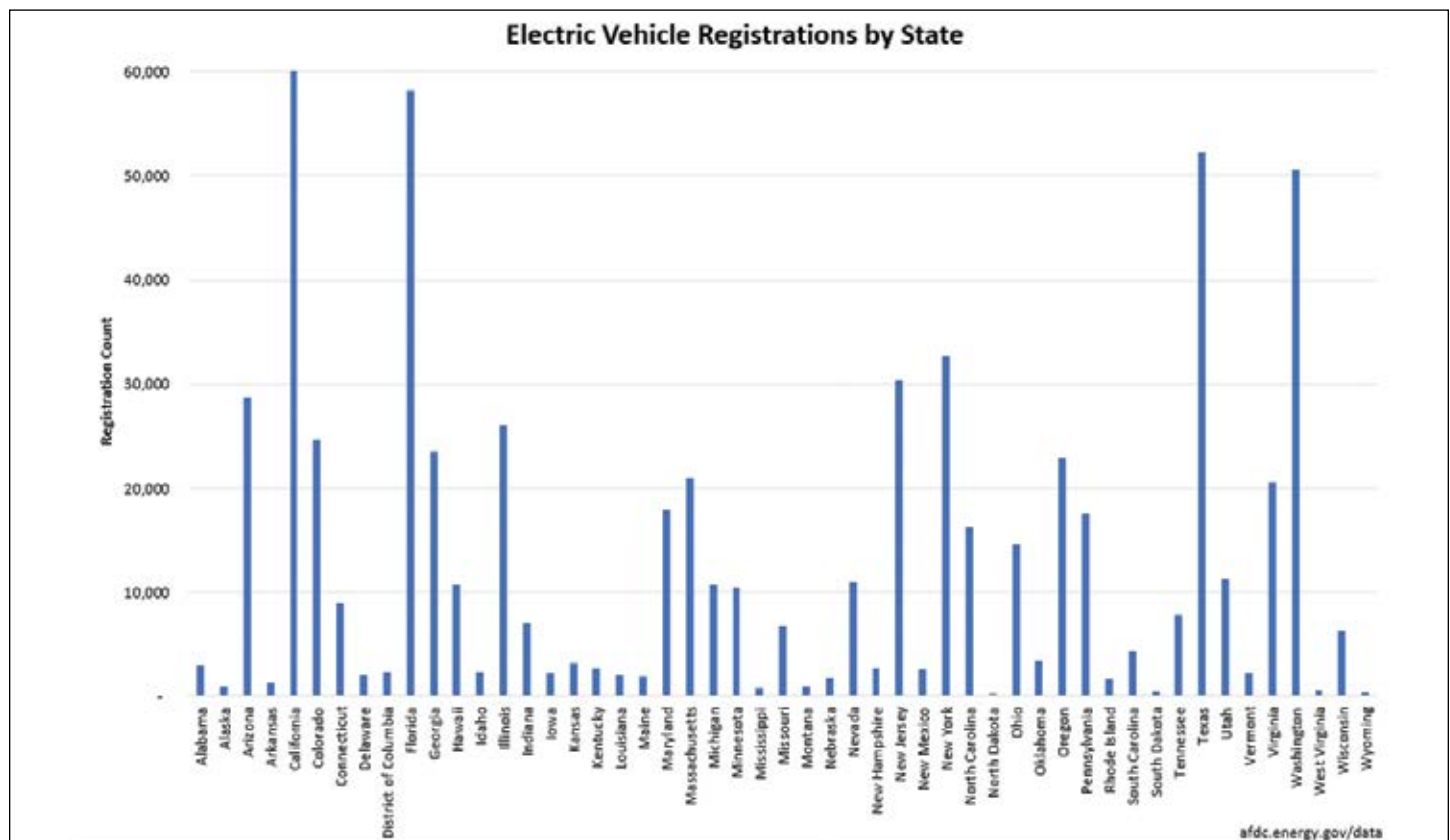
An Effort to Misguide Legislators Across the Country

By Magdalena Padilla

For more than 100 years, auto manufacturers have used franchisees to distribute their products to consumers. The franchise model provides many benefits to consumers, including inter and intra-brand price competition and ready access to warranty, recall, and general maintenance service.

Electric Vehicle (EV)-only manufacturers have long claimed that their EVs must be sold directly to consumers because franchised dealers were either unwilling or unable to sell EVs. In 2021, EV-only manufacturers repeated these claims in legislatures across the country.

Their claim ignores the reality at thousands of showrooms across the country and hundreds right here in New Jersey. The fact is franchised dealers currently offer more than 40 models with a plug, and that number will be 140 in the next few years. While many states (*including New Jersey*) incentivize consumers to purchase an EV, the vehicles continue to sell across the country, as you can see in the chart below, from the U.S. Department of Energy (*updated in June 2021*). Note that New Jersey sits behind only California, Florida, Texas, Washington, and New York in total EV sales.



Source:

Vehicle registration counts derived by the National Renewable Energy Laboratory with data from Experian Information Solutions

Notes:

Only all-electric vehicles (EVs) are included in this chart; plug-in hybrid electric vehicles (PHEVs) are not included.

Registration counts are approximate.

California had approximately 425,300 light-duty electric vehicle registrations in 2020, but the chart is cut off at 60,000 to make it easier to see the other states.

Worksheet available at afdc.energy.gov/data

Last updated June 2021

A CRITICAL FIGHT WORTH HAVING

Despite franchised car and truck dealers' role in the sale of the full spectrum of clean vehicles (*EVs, HEVs, and PEVs*), an effort has been undertaken to marginalize their contribution. Some EV-only manufacturers have been knocking on legislators' doors across the country, asking them to change state laws to suit their direct-sales business model. In the last year, they have lobbied legislatures across the country to legalize the direct sale model for EVs. Encouraged by the prospect of a sales model that will increase their shareholders' profits, **some legacy original equipment manufacturers (OEMs) are analyzing the prospects**

of similar transitions for themselves. This is a critical fight worth having, and dealerships must remain engaged to ensure any legislation that would undercut their franchise(s) is defeated. New Jersey already authorizes direct selling for EVs, but only for Tesla. In 2015, New Jersey enacted special legislation that allowed an EV-only manufacturer, licensed by the New Jersey Motor Vehicle Commission (*NJMVC*) on or prior to January 1, 2014, to sell directly to consumers. This legislation is only applicable to Tesla since they were the only EV-only manufacturer licensed by the NJMVC at the time. Tesla went on to seek similar special legislation from other states. But Tesla's claims for direct sales are based on fiction.

Tesla Claims	Reality
Independent Dealer Locations can only be achieved in direct sales.	In a franchise system, Tesla could determine locations.
Large inventories are unsuitable for Tesla.	In a franchise system, Tesla could dictate inventory sizes.
Only direct sales allow for high-volume, fast-paced sales.	In a franchise system, Tesla could mandate the training and staff for its sales standard.
Franchised dealers would not know how to profit from a Tesla, because they profit from ancillary services (trades, financing, service contracts, parts, services).	In a franchise system, franchise candidates determine the risk of investing, but would look to Tesla to provide the franchise proposition.
Franchised dealers selling EVs conflict with ICE vehicles.	In a franchise system, Tesla could establish exclusive dealerships.
Franchised dealers rely on advertising.	In a franchise system, Tesla could continue to rely on its brand recognition or engage in conventional advertising as competition increases.
Franchised dealers profit from mark-ups.	In a franchise system, Tesla dealers would want to succeed! Currently, Tesla's mark-ups go directly to Tesla.

Source: MK&A, 2017

The direct sale model is not a requirement for EVs. It is, however, harmful to New Jersey's consumers and economy. Put simply, no components in an EV require that the car be sold using the direct sale model. It is a choice made by OEMs. All EVs can currently be sold throughout the country under the laws that exist today in every state. Some OEMs want the

laws to change to favor their profit-centered choice despite the negative consequences to consumers and local economies. The direct sales model does not favor the consumer. In contrast, the franchise model is consumer-centric, as you can see in the following graphic:

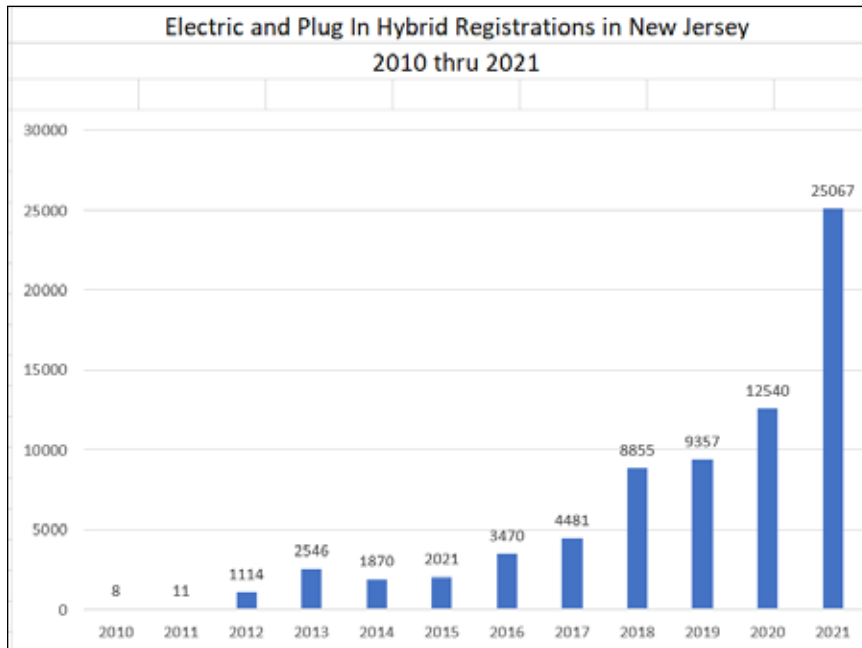
Status of NJ's New Car and Truck Industry	Motor Vehicle Franchise Model	Direct Sales Model
Consumers have an advocate against OEMs on safety and recall issues	YES	NO
Consumers have an immediate partner to make OEMs accountable	YES	NO
Consumers benefit when dealers compete	YES	NO
Dealers compete on pricing for sales & service	YES	NO
Consumers' purchases align with local jobs and local interests	YES	NO
Employ 36,000+ New Jersey residents	YES	NO
Generate \$36 billion in sales	YES	NO
Represent over 500 local rooftops	YES	NO
Large network of factory-authorized sales and service points	YES	NO
Support local charities, internships, and employment programs	YES	NO
Complete solution for consumer's needs (sales, trade-ins, on-the-spot financing, large parts inventory, complete maintenance, warranty and recall repair)	YES	NO
Assume advertising, building and personnel costs	YES	YES

WRONGLY CONFLATING continued on page 20

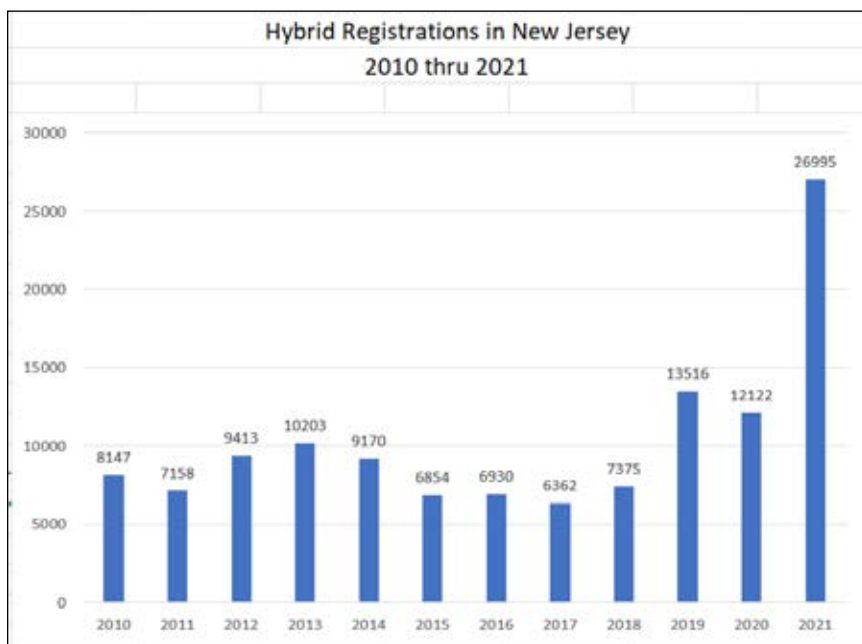
WRONGLY CONFLATING continued from page 19

NEW JERSEY'S EV, PLUG-IN HYBRID, AND HYBRID SALES ARE GROWING

As you can see in the accompanying graphs, New Jersey sales of EVs and plug-in hybrids have nearly tripled since 2018 and more than doubled from 2020 to 2021 alone. Sales of hybrid vehicles were relatively flat from 2010 until 2018 but more than doubled from 2020 to 2021. This upward trajectory clearly illustrates that these vehicles are being successfully sold using the franchise model.



Source: Auto Outlook, based on registration data provided by Experian Automotive. Some figures are estimated.



Source: Auto Outlook, based on registration data provided by Experian Automotive. Some figures are estimated.

NEW JERSEY PUTS MONEY BEHIND ITS AGGRESSIVE EV GOALS & CAL-LEV MANDATES

New Jersey Governor Phil Murphy's EV goals need a committed partner, and the state's 500+ franchised new car and truck dealerships are ALL IN on EVs. Their dealerships are where these sales occur, where the transition from an internal combustion engine to an EV is encouraged, where the relationships are made to address an EV consumer's unique needs.

New Jersey's franchised dealers have helped the state in its goal of registering 330,000 EVs in New Jersey by 2025. The State's Charge Up New Jersey EV incentive program is intended to boost EV adoption among New Jersey consumers by offering a best-in-the-nation incentive of up to \$5,000 off a qualifying EV. The \$300 million program launched in 2020 is expected to provide \$30 million per year for 10 years. To date, two years of the program have been completed, and legislation providing funding for the third year of EV incentives is forthcoming.

According to data available on the Charge Up New Jersey website, as of March 7, 2022, New Jersey's retail automotive industry has assisted the State in providing consumers with \$53 million EV, HEV, and PHEV purchase incentives. To date, 17 different brands (including 16 utilizing the franchise model, noted in **BOLD**) have participated in the incentive program, including:

BMW
Chevrolet
Chrysler
Ford
Honda
Hyundai
Jeep Wrangler
Kia
Mercedes-Benz

Mini Cooper
Mitsubishi
Nissan
Subaru
Tesla
Toyota
Volkswagen
Volvo

Another year of incentives is anticipated by the summer, and more automakers (and models) will be entering the EV market. New Jersey's dealers are eager to continue participating in the Charge Up New Jersey EV incentive program and showcase and sell all existing and soon-to-be-introduced EV models.

New Jersey dealers should contact their manufacturers NOW to encourage them to release inventory to New Jersey in anticipation of the next round of best-in-the-nation EV incentives and consumers' increasing appetite for more options. EVs do not need the direct sale models to be sold. They need to be made available, and they need to be competitive, just like dealers. **nj car**



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Existing EV Incentives

(As of 3/21/22)

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Alaska
Arizona
Arkansas
California
Colorado
Connecticut
Delaware
Florida
Georgia
Hawaii
Idaho
Illinois
Indiana
Iowa
Louisiana
Maine
Maryland
Massachusetts
Michigan
Minnesota
Mississippi
Missouri
Montana
Nebraska
Nevada
New Hampshire
New Jersey
New Mexico
New York
North Carolina
Ohio
Oklahoma
Oregon
Pennsylvania
Rhode Island
Tennessee
Texas
Utah
Vermont
Virginia
Washington
Wisconsin
Wyoming

Tesla Locations

(Sales or Show Galleries Only;
As of 3/21/22)

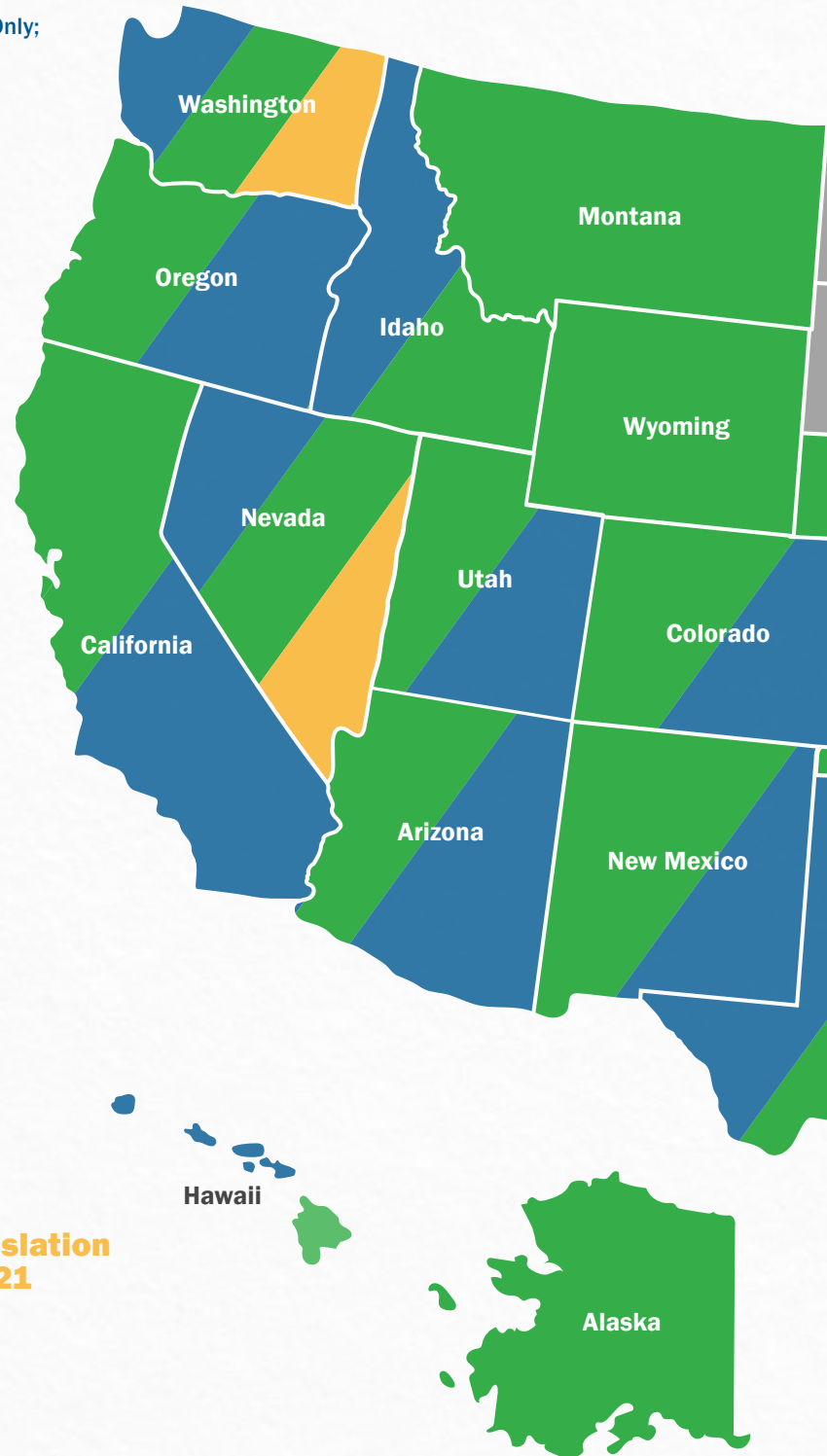
Arizona
California
Colorado
Connecticut
Delaware
Florida
Georgia
Hawaii
Idaho
Illinois
Indiana
Iowa
Maryland
Massachusetts
Michigan
Minnesota
Mississippi
Missouri
Nevada
New Jersey
New Mexico
New York
North Carolina
Ohio
Oklahoma
Oregon
Pennsylvania
Rhode Island
Tennessee
Texas
Utah
Virginia
Washington
Wisconsin

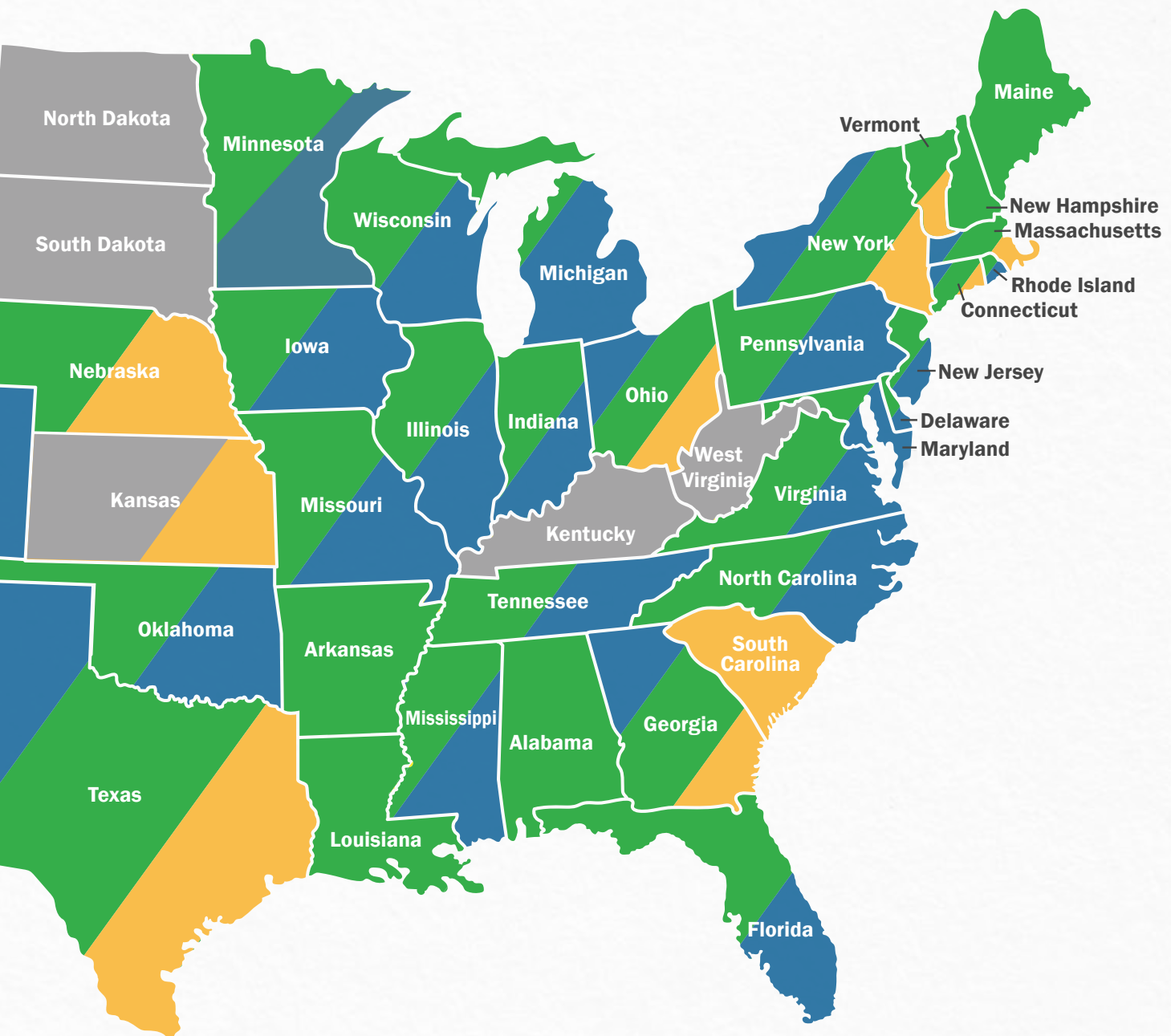
Direct Sales Legislation Introduced in 2021

Connecticut
Georgia
Kansas
Massachusetts
Nebraska
Nevada
New York
Ohio
South Carolina
Texas
Vermont
Washington

No Incentives

Kansas
Kentucky
North Dakota
South Dakota
West Virginia







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Cost Analysis ■ Buy/Sell Agreements & Succession Planning

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The Future is Electric

By Dante Pileri

Increasing awareness of environmental issues

caused by vehicles is one of the primary factors driving the growth of the global zero-emission vehicle (ZEV) market. As a result, reducing carbon emissions from vehicles has been identified as one of the key strategies in limiting climate change.

Within the transportation sector, more than half of greenhouse gas emissions come from passenger cars, medium- and heavy-duty trucks, and light-duty trucks, including sport utility vehicles, pickup trucks, and minivans, according to estimates from the EPA's Inventory of U.S. Greenhouse Gas Emissions 1990-2019.

Electric vehicles (EVs) are an excellent solution to these problems since they do not emit pollutants, and many use renewable energy sources, such as solar, to power up. This reduction in environmental pollutants leads to cleaner air and fewer health problems. EVs also contribute to savings on fuel and maintenance.

EVs have become increasingly appealing to environmentally-conscious consumers, with an increasing number factoring sustainability — specifically clean, electric, software-connected vehicles — into their buying decisions. This led to a jump of 43% (*nationally*) in EV sales in 2020. EV sales nearly more than doubled in New Jersey from 2020 to 2021.

Auto manufacturer-prioritization of ZEVs has seen rapid adoption from some of the largest automakers across the globe. In January 2021, General Motors announced it would sell only zero-emission vehicles by 2035. The bold pronouncement made major news in the U.S. and around the world. Since that time, the industry has seen a surprising number of manufacturers following suit.

- **Carmakers worldwide will spend more than \$268 billion through 2030 developing new electrified passenger vehicle models.** Nine manufacturers have already announced plans to spend over \$22 billion to

open new or renovated plants in the U.S. to build EVs in five states.

- Between 2021 and 2023, the number of **battery-electric (BEV) and plug-in hybrid (PHEV)** passenger vehicle models available to U.S. consumers will increase from 64 to 82.
- Bloomberg estimates that at least **two-thirds of global car sales will be electric by 2040.**

Automakers committed to zero-emission lines collectively own a large percentage of the U.S. market. Their switch to EVs will significantly impact emissions and vehicle trends in the U.S.

EVs have become a priority for an increasing number of consumers and an even higher priority for automakers. Many car dealers are embracing the EV transition, and the excitement is warranted. Though there are unresolved questions about inventory management, sales and service training, and the impact on revenue generated through F&I and fixed operations, OEM commitment to producing EVs and demand by sustainability-conscious businesses and consumers alike gives dealers reason to embrace the evolution.

NEW JERSEY ELECTRIC VEHICLE INCENTIVE PROGRAMS

New Jersey is leading the way on EV adoption on the East Coast, with a goal of registering 330,000 EVs in the State by 2025. This goal aims to reduce emissions from the transportation sector and help reach the goals of New Jersey's Energy Master Plan and the Global Warming Response Act. For more information about New Jersey's EV incentive programs, visit njcleanenergy.com/ev. **nj car**

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NJ CAR Workers' Compensation Program

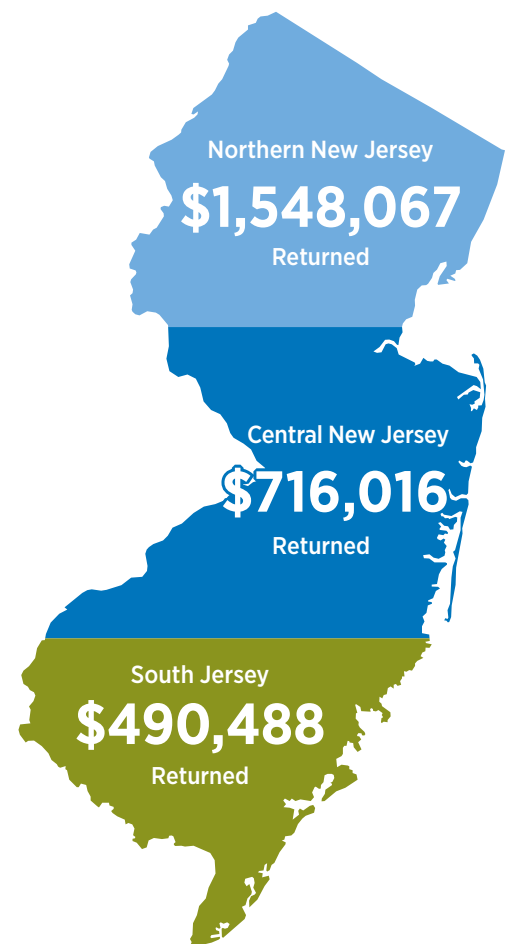
Lowering costs for franchised auto dealers across New Jersey.



NJ CAR in partnership with Gallagher and AmTrust, offers the industry's most comprehensive workers' compensation program custom tailored to New Jersey Franchised Auto Dealers. One of the key benefits of the program is a generous dividend return of **up to 25% of your policy premium** — not a credit applied to future premiums — and is based on individual loss experience rather than group performance. In 2021, over \$840,000 in dividends were paid out to program members for the 2019 policy period, the highest annual total to date.

Other program benefits include:

- **Broker-friendly access:** Dealerships don't need to give up their existing relationship.
- **Industry-specific classification rules:** premium reductions between 15%–20%.
- **Scheduled underwriting credits:** up to 25%, based on individual dealers' risk profile.
- **Collaborative claims advocacy:** aggressive claims investigation and cost containment.
- **Access to NJ CAR's Zero Injury Program:** a proven industry loss prevention program.



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NJ CAR Risk Management and Safety Specialist

T: 609.883.5056, ext 314 | E: crusso@njcar.org

NJ CAR Recognizes the Dealerships That Have Contributed to CAR-PAC

NJ CAR appreciates the support of the 312 dealers

who contributed to CAR-PAC, the Coalition's political action committee, **between Jan. 1, 2021 and Dec. 31, 2021**. CAR-PAC needs the contributions of **ALL** dealers to ensure it has the necessary financial resources to support candidates **(on both sides of the aisle)** who support the franchised retail automotive industry in New Jersey and ensure the dealers' voice is heard in Trenton on a wide variety of important public policy issues. CAR-PAC has been **(and will continue to be)** very active in supporting the candidates who support our industry.

The New Jersey Election Law Enforcement Commission (ELEC) rules allow contributions to a political action committee **of up to**

\$7,200 per business or jointly-controlled business. And, don't forget, **contributions can be made with corporate funds**.

If you have any questions regarding how much your dealership or dealership group can still contribute this election cycle, please contact Jim Appleton at 609.883.5056, ext. 330, or by email at jappleton@njcar.org.

NJ CAR encourages those dealers who have not yet contributed to support CAR-PAC's efforts on behalf of **ALL** New Jersey franchised automotive retailers.

The following dealerships contributed to CAR-PAC between Jan. 1, 2021 and Dec. 31, 2021:

Ace Ford
Action Hyundai of Millville
Acura of Denville
Acura of Ocean
Acura of Ramsey
Acura Turnersville
All American Ford in Point Pleasant
All American Ford of Paramus
All American Ford Subaru of Old Bridge
All American Ford, Inc.
All American Mazda in Brick
Audi Meadowlands
Audi Princeton
Audi Turnersville
Autoland Chrysler Jeep Dodge Ram
Autoland Toyota
Avalon Honda
Baker Chrysler Jeep Dodge, Inc.
Barlow Buick GMC-Manahawkin
Barlow Buick GMC-Woodbury
Barlow Chevrolet
Bell Audi
Bell Ford
Bennett Chevrolet
Bentley Parsippany
Bentley Truck Services Logan Twp.
Bentley Truck Services Maple Shade
Benzel-Busch Motor Car Corp.
Bill Vince's Bridgewater Acura
BMW of Atlantic City
BMW of Bridgewater
BMW of Ramsey
BMW of Springfield
BMW of Tenafly
Boardwalk Acura

Boardwalk Honda
Bob Novick Auto Mall
Bridgewater Kia
Brogan Cadillac Company
Buhler Chrysler Jeep Dodge
Buick GMC of Mahwah
Burke Motors, Inc.
Burlington Chevrolet, Inc.
Burlington Kia
Burlington Volkswagen
Burns Buick GMC Hyundai
Burns Honda
Cadillac of Mahwah
Cambria Mack
Campbell Freightliner
Causeway Ford Lincoln
Causeway Honda
Causeway Hyundai
Causeway Nissan
Chapman Ford Lincoln Mazda
Chevrolet of Jersey City
Chrysler Dodge Jeep of Paramus
Chrysler Jeep Dodge Ram of Englewood Cliffs
Ciocca Chevrolet of Princeton
Ciocca Subaru of Pleasantville
Circle BMW
Circle Infiniti
Coast Cities Truck Sales, Inc.
Coast Honda
Coleman Buick GMC Cadillac
Crown Cadillac, Inc.
D & C Honda of Tenafly
DARCARS Lexus of Englewood
Dayton Toyota
DCH Academy Honda

DCH BMW of Bloomfield
DCH BMW of Freehold
DCH Brunswick Toyota
DCH Freehold Toyota
DCH Kay Honda
DiFeo Kia
Dodge Chrysler City
Douglas Infiniti
Douglas Volkswagen
Dover Dodge Chrysler Jeep, Inc.
Downs Ford
East Coast Toyota
Echelon Ford, Inc.
Edison Nissan
Elite Acura
Elkins Chevrolet
F.C. Kerbeck & Sons
Family Ford, Inc.
Fette Ford, Inc.
Fette Infiniti
Frank's Truck Center, Inc.
Franklin Sussex Auto Mall, Inc.
Franklin Sussex Hyundai
Fred Beans Hyundai of Flemington
Fred Beans Nissan of Flemington
Fred Beans Toyota of Flemington
Freehold Buick GMC
Freehold Dodge, Inc.
Freehold Ford
Freehold Nissan
Freehold Subaru
Fullerton Alfa Romeo Maserati
Fullerton Automotive Corp.
Fullerton Ford
Gabrielli Kenworth of NJ
Gabrielli Truck Sales

Galaxy Toyota
 Gensinger Motors, Inc.
 Gentilini Chevrolet
 Gentilini Ford, Inc.
 George Wall Ford Lincoln
 Glen Toyota
 Global Auto Mall
 Gold Coast Cadillac
 H & H Mack Sales
 Haldeman Ford
 Haldeman Ford of Hightstown
 Haldeman Lexus of Princeton
 Hamilton Mazda Volkswagen, Inc.
 Hawthorne Chevrolet
 Hilltop Nissan, Inc.
 Honda of Freehold
 Honda of Princeton
 Honda of Toms River
 Honda of Turnersville
 Honda Universe
 Hudson Chrysler Jeep Dodge
 Hudson Hyundai Subaru
 Hudson Nissan
 Hudson Subaru
 Hudson Toyota
 Hunter Jersey Peterbilt-Clarksburg
 Infiniti of Englewood
 Irwin Lincoln Mazda
 Jaguar Land Rover Englewood
 Jaguar Land Rover Paramus
 Jaguar Land Rover Parsippany
 Jim Curley Buick GMC
 Joe Heidt Motors
 Johnson Buick GMC Cadillac, Inc.
 Johnson Dodge Chrysler
 Joyce Honda
 Kerbeck Cadillac Chevrolet
 Buick GMC
 Kindle Ford Lincoln
 Kundert Volvo Cars of
 Hasbrouck Heights
 Larson Ford, Inc.
 Lawrenceville Ford Lincoln
 Lexus of Atlantic City
 Lexus of Bridgewater
 Lexus of Cherry Hill
 Lexus of Edison
 Liberty Hyundai
 Liberty Kenworth of South Jersey
 Liberty Kia
 Liberty Subaru, Inc.
 Liberty Toyota
 Llicardi Chrysler Dodge
 Llicardi Ford, Inc.
 Llicardi Mitsubishi
 Lilliston Chrysler Dodge Jeep
 Lilliston Ford, Inc.
 Lincoln of Wayne
 Lucas Chevrolet

Lucas Chrysler Jeep Dodge
 Lucas Ford
 Madison Honda
 Mahwah Ford Sales & Service, Inc.
 Mahwah Honda
 Malouf Buick-GMC, Inc.
 Malouf Chevrolet-Cadillac, Inc.
 Malouf Ford-Lincoln, Inc.
 Manahawkin Chrysler Dodge
 Manahawkin Kia
 Maplecrest Ford, Inc.
 Maplecrest of Union
 Maserati & Alfa Romeo of Monmouth
 Maserati of Morris County
 Matt Blatt Glassboro Imports
 Mitsubishi
 Matt Blatt Kia Toms River
 Matt Blatt Kia-Egg Harbor Twp.
 Matt Blatt Nissan
 Maurice Schwartz & Sons, Inc.
 McGuire Buick GMC (LF)
 McGuire Cadillac
 McGuire Chevrolet
 Mercedes-Benz of Atlantic City
 Mercedes-Benz of Flemington
 Mercedes-Benz of Newton
 Mercedes-Benz of Paramus
 Mercedes-Benz of Princeton
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 Miller Buick GMC Corp.
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 Nielsen Chevrolet
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 Nissan City of Red Bank
 Nissan of North Plainfield
 Nissan of Turnersville
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 Paramus Chevrolet
 Paramus Hyundai
 Park Avenue Acura
 Park Avenue BMW
 Parkway Toyota
 Paul Miller Audi
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 Paul Miller Honda of West Caldwell
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 Paul Miller Volkswagen of
 Bernardsville
 Pellegrino Buick GMC
 Pellegrino Chevrolet

Pellegrino Chrysler Jeep
 Performance Dodge Ram
 Pine Belt Cadillac of Toms River
 Pine Belt Chevrolet of Lakewood
 Pine Belt Chrysler Jeep Dodge Ram
 Pine Belt Nissan of Toms River
 Pine Belt of Keyport
 Pine Belt Subaru
 Pointe Buick GMC
 Precision Acura
 Precision Chrysler Jeep Dodge Ram
 Prestige Volkswagen Subaru
 Raceway Kia of Freehold
 Ramsey Alfa Romeo Fiat
 Ramsey Chrysler Jeep Dodge Ram
 Ramsey Infiniti
 Ramsey Mazda
 Ramsey Nissan
 Ramsey Subaru
 Ray Catena Motor Car
 Ray Catena of Union
 Red Bank Volvo, Inc.
 Reydel Volkswagen of Linden
 Riverside Nissan
 RK Chevrolet Subaru Kia
 Rossi Chevrolet Buick GMC
 Rossi Chrysler Dodge Jeep Ram
 Route 1 Mazda-Woodbridge
 Route 1 Toyota
 Route 17 Nissan
 Route 18 Chrysler Jeep Dodge Ram
 Route 22 Nissan
 Route 33 Nissan
 Route 46 Chrysler Jeep Dodge
 Route 46 Mitsubishi
 Route 46 Subaru
 Route 130 Chrysler Dodge Jeep Ram
 Royal Buick GMC, Inc.
 Salerno Duane Infiniti
 Salerno-Duane, Inc.
 Sansone Chrysler Jeep Dodge
 Sansone Hyundai, Inc.
 Sansone Jr's 66 Auto Mall
 Sansone Kia
 Sansone Nissan
 Schumacher Chevrolet Buick
 of Boonton
 Schumacher Chevrolet of Clifton
 Schumacher Chevrolet of Denville
 Schumacher Chevrolet of Little Falls
 Schumacher Chevrolet of Livingston
 Scott Harvey Auto Group
 Sea Breeze Ford
 Sea Coast Chevrolet
 Sea View Auto Corp.
 Shore Toyota
 Shrewsbury Motors
 Smith Motor Company, Inc.
 Spirit Chrysler Dodge Jeep

CAR-PAC continued on page 30

CAR-PAC *continued from page 29*

Springfield Acura
 Subaru of Morristown
 Sussex Honda
 T & T Coast Buick GMC
 Team Welsh Jeep Chrysler
 Teterboro Chrysler Jeep
 Three County Volkswagen Corp.
 Tom's Ford
 Towne Hyundai
 Towne Toyota
 Toyota of Hackensack

Toyota of Morristown, Inc.
 Toyota of Runnemede
 Toyota of Turnersville
 Toyota of Vineland
 Toyota Universe
 Trend Motors
 Tri-County Lexus
 Turnersville Auto Mall
 Turnersville Kia
 Vann Dodge Chrysler Jeep
 Verner-Cadby, Inc.

VIP Honda
 Volkswagen Princeton
 Volkswagen World of Newton
 Volvo Cars Manasquan
 Volvo Cars Ramsey
 Wayne Ford
 Wayne Subaru, Inc.
 Windsor Nissan
 Woodbury Nissan, Inc.
 World Volkswagen



Thank You to Those Who Contributed to NADA PAC

NADA PAC helps to elect to Congress qualified individuals who understand the needs of new car and truck dealers. NADA PAC is consistently credited as being one of the nation's top trade association political action committees in terms of both total fundraising and contributions to federal candidates. NADA PAC supports candidates for Congress on a bipartisan basis from the recommendations of the NADA PAC dealer leadership for each state.

The 2022 NADA PAC leadership team for New Jersey consists of NADA Director Rick DeSilva, NJ CAR Chairman Michael DiFeo, NADA PAC State Chairman Rob Sickel, and NJ CAR President Jim Appleton.

The following individuals from New Jersey have contributed this year to NADA PAC from Jan. 1, 2021 through Dec. 31, 2021:

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FTC Strengthens Security Safeguards for Consumer Financial Information

By Michael Dachille



The Federal Trade Commission recently announced

a newly updated rule that strengthens the information security safeguards that automotive dealers are required to put in place to protect their customers' financial information. In recent years, widespread paper-based documents, other data information breaches, and cyberattacks have significantly harmed consumers, including monetary loss, identity theft, and other forms of financial distress. The FTC's updated Safeguards Rule requires motor vehicle dealers to develop, implement, and maintain a comprehensive security system to keep their customers historic and current paper-based document information safe.

The updates adopted by the Commission to the Safeguards Rule detail common-sense steps that motor vehicle dealers must implement to protect consumer information from cyberattacks and other threats.

The changes adopted include more specific criteria for what safeguards dealers must implement as part of their information security program. These include using compliant document scanning services, limiting who can access consumer data

information, and using encryption to secure the data. Under the updated Safeguards Rule, motor vehicle dealers must also explain their information-sharing practices, specifically the administrative, technical, and physical safeguards they use to access, collect, distribute, process, protect, store, use, transmit, dispose of, or otherwise handle customers' secure paper documents and other personal information. In addition, dealers will be required to designate a single qualified individual to oversee their secure document scanning services and data information security program and report periodically to an organization's board of directors or senior officer in charge of information security.

NJ CAR has partnered with AutoTrieve to provide our dealership members with compliant document scanning services. AutoTrieve collects, scans, and protects historic and current paper-based customer information collected by dealerships from a breach and cyber theft while simultaneously helping dealers mitigate the risk of excessive fines from the FTC. **nj car**

Michael Dachille is Managing Director of Business Development at AutoTrieve Document Scanning & Records. He can be reached at michaeld@mccimaging.com or 201.820.7419.



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NJ CAR Compliance Forms Series:

Prior Use Disclosure Form And Prior Use and Damage Disclosure Acknowledgment Form

By Greyson P. Hannigan, Esq.



Two of the most important

and widely used forms in a dealership include the **Prior Use Disclosure Form** (*Sample on page 37*) and **Prior Use and Damage Disclosure Acknowledgment Form**. (*Sample on page 36*) These forms were developed by NJ CAR. The Prior Use Disclosure Form is used by dealers to disclose all possible prior uses of a vehicle, including use as a Company Vehicle/Factory Executive Vehicle (*ex. Demonstration and Loaner vehicles*), Program Vehicle/Factory Repurchase Vehicle, Rental Vehicle/Off-Lease Vehicle, and Wholesale Vehicle. If applicable, each disclosed use should be signed for by the customer.

The **Prior Use and Damage Disclosure Acknowledgment Form** is primarily used to disclose prior uses of a vehicle and damages that have been repaired on a vehicle. It can also be used to disclose any other items that a dealer believes a customer should or would want to know when buying a vehicle. This form is basically a combination of the two disclosure forms; therefore, it can also be used to accomplish both prior use disclosures.

The obligation to disclose information that could affect a customer's decision to purchase a vehicle is derived from the New Jersey Consumer Fraud Act (CFA). Dealers often ask: what is the threshold dollar amount of damage to a vehicle that requires disclosure to a customer? This is an important question given the potential penalties for failure to disclose prior damages to a vehicle under the CFA. With its complicated requirements, imposition of strict liability, treble damages and award of attorney fees, the CFA has become a vehicle for claims against automotive dealers.

Under the CFA, a seller must disclose to a buyer any "material defect" known to the seller. "Material defect" is defined as any defect that a reasonable buyer would consider important in deciding

to buy a car at a given price. Therefore, what constitutes a material defect can mean anything to the average person. Dealers should be extra cautious because they could be held to a higher standard as being particularly knowledgeable about the automotive industry.

The Used Car Lemon Law requires mandatory disclosures to customers during the sale of a used vehicle. The Used Car Lemon Law provides that it is a violation of the CFA to do any of the following:

1. To fail to disclose to the buyer any material defects in the mechanical condition of a vehicle, which is known to the dealer;
2. To represent that a vehicle is free from any defects unless the dealer has a reasonable basis for making this statement (*such as a mechanical inspection*);
3. To fail to disclose any existing warranty covering the vehicle when that warranty is transferable; or
4. To misrepresent the physical condition of a vehicle, the terms of any warranty, to fail to disclose that a vehicle is sold without a warranty or to fail to explain, in writing, the meaning of the term “as-is” if a vehicle is sold as-is.

Throughout the years, NJ CAR has combined all the statutes and regulations that impose an obligation to disclose under the CFA. The following list of disclosures should be considered mandatory to avoid or reduce the possibility of lawsuits against the dealership when selling a used vehicle:

1. **Odometer reading.** N.J.A.C. 13:45-26A.5(b), 13:45-26A.6(f).
2. **Nature of prior use,** unless the vehicle was exclusively owned or leased by an individual for personal use, whenever the dealer knew or should have known the prior use. N.J.A.C. 13:45-26A.5(b)(2). This includes fleet vehicles, rental vehicles, police cars, etc.
3. **Whether the vehicle is a “demo” vehicle.** N.J.A.C. 13:45-26A.5(b), 13:45-26A.6(f).
4. **Any prior damage** that the dealership knew or should have known about that would cost more than \$1,000 to repair. N.J.A.C. 13:45-26A.7(a)(7).
5. In many cases, **prior damage,** which would cost less than \$1,000



THE OBLIGATION TO DISCLOSE INFORMATION THAT COULD AFFECT A CUSTOMER'S DECISION TO PURCHASE A VEHICLE IS DERIVED FROM THE NEW JERSEY CONSUMER FRAUD ACT (CFA).

to repair, provided the damage was severe enough that a reasonable person would not have bought the car if they had known about it. This would include damage such as flood damage and damage from a collision resulting in significant body or frame repair work.

6. **Whether the vehicle was returned or repurchased** by the manufacturer under the “lemon law.” N.J.A.C. 13:45A-26.3.
7. **Any damage or defect to the emission system.**

A new vehicle sometimes sustains damage during transportation or on the dealership's premises. This damage may be small or fairly significant. A dealer may also make warranty repairs of mechanical defects on a vehicle. There is a duty to disclose significant damage or repairs done on a new vehicle before sale to a customer. As with a “material defect,” “significant damage” could be subject to interpretation. At least one court decision found \$220 in repairs to be significant enough to require disclosure.

NJ CAR has always advised dealers to disclose all damages even though the cost to repair the vehicle is less than the \$1000 threshold set by the Consumer Fraud Act's advertising regulations.

Another use for the form is the disclosure of recall information. Federal law

prohibits the sale of a new vehicle under an open safety recall. However, neither federal law nor New Jersey law prohibits the sale of a used vehicle under an open safety recall. When a used vehicle is sold with an open safety recall, the Consumer Fraud Act likely requires disclosure because of the requirement to disclose any defect or condition that would be considered material to a purchase decision. NJ CAR has always advised dealers that the decision to sell a used vehicle with an open safety recall is a business decision that should be made, taking into account all aspects, especially the safety of the customer.

Both the **Prior Use Disclosure Form** and the **Prior Use and Damage Disclosure Acknowledgement Form** serve important purposes that protect dealers against potential Consumer Fraud Act claims. The forms can be ordered by calling NJ CAR Services, Inc. at 1-609-884-5056 Ext. 402 or visiting njcarservices.com. They are also available through Dealer Management System providers, including CDK, DealerTrack, Reynolds and Reynolds and DealerSocket. **nj car**

Greyson Hannigan is NJ CAR's Director of Legal and Regulatory Affairs. He can be reached at 609.883.5056, x340 or, via email, at ghannigan@njcar.org.

Prior Use And/Or Damage Disclosure & Acknowledgement

Year _____ Make _____

Model _____ Vin Stock No. _____

Damage and/or Repairs

_____ Dealership has no knowledge of any prior damage and/or repairs to the vehicle (beyond normal wear and tear).

_____ Dealership has knowledge that the vehicle has been damaged and or repaired as follows:

Prior Use

Dealership policy is to disclose to Customer the prior use of a vehicle when that use is known or ascertainable to the Dealership and that use was anything other than as a private passenger vehicle. The prior use of the vehicles is indicated below:

_____ Private Passenger Vehicle

_____ Company Vehicle/Factory Executive Vehicle (purchased from manufacturer after use by the manufacturer as a demonstrator or executive vehicle).

_____ Rental Vehicle

_____ Wholesale Vehicle (purchased from a wholesaler or at a dealer-only auction).

_____ Other _____

Dealership has no knowledge of and makes no representation regarding prior use which has not been disclosed to the Dealership or which is not ascertainable from the title and other documentation regarding the vehicle.

Representations and Acknowledgement

Dealership policy is to inform Customers of any significant prior damage or repairs which are known to the Dealership. However, Dealership cannot warrant that a vehicle is free from any prior defects, damage, or repairs. In some cases, prior mechanical or body damage and/or repairs may not have been disclosed to the Dealership, or may not be detectable in the course of the Dealership's inspection of the vehicle.

Dealership allows all customers the opportunity to have the vehicle they are considering inspected by a technician or auto body expert prior to purchase (at Customer's own expense). If Customer has any concerns about prior damage or repairs, Customer is advised to have an inspection performed.

Customer acknowledges that Dealership is not responsible for any prior mechanical or body damage and/or repairs which Dealership had no knowledge of at the time of the sale and that Dealership makes no representations or warranties that the vehicle is free from any prior damage and/or repairs. Dealership's obligation is limited to the disclosure of known damage or prior repairs.

Dated _____

Buyer's Signature _____ Co-Buyer's Signature _____

(Print Name) _____ (Print Name) _____

DISCLOSURE OF DEALERSHIP INFORMATION ON PRIOR USE OF VEHICLE

MAKE _____ MODEL _____ YEAR _____
VIN _____ STOCK NUMBER _____

Various terms are used in the automobile industry to describe prior use of vehicles. This disclosure is made by the DEALERSHIP to inform the PURCHASER as to the DEALERSHIP'S understanding of the terms used to describe this vehicle. The vehicle, which PURCHASER is purchasing, has been described using some or all of the terms defined below in the section in which PURCHASER'S signature appears. The DEALERSHIP has not described this vehicle using any of the terms defined below other than those in the section in which PURCHASER'S signature appears. To the best of the DEALERSHIP'S knowledge, the prior use acknowledged by PURCHASER below is in fact the only prior use of the vehicle.

COMPANY VEHICLE/FACTORY EXECUTIVE VEHICLE – A unit used by the manufacturer for business purposes, testing and/or demonstration, which was purchased by the DEALERSHIP through the manufacturer's auction or from the manufacturer directly. DEALERSHIP has no knowledge of and makes no representation or guarantee as to whether the vehicle had any other prior use.

PURCHASER(S) Authorized DEALERSHIP Representative

PROGRAM VEHICLE/FACTORY REPURCHASE VEHICLE – A unit sold by the manufacturer to a retail or fleet company and then repurchased by the manufacturer from the retail company under one of several defined programs. DEALERSHIP purchased the vehicle at the manufacturer's auction. DEALERSHIP has no knowledge of and makes no representation or guarantee as to whether the vehicle had any other prior use. DEALERSHIP is selling this vehicle as a USED vehicle only.

PURCHASER(S) Authorized DEALERSHIP Representative

RENTAL VEHICLE/OFF LEASE – DEALERSHIP purchased this vehicle directly from a rental company, such as Enterprise Rent-A-Car. DEALERSHIP has no knowledge of and makes no representation or guarantee as to whether the vehicle had any other prior use. DEALERSHIP is selling this vehicle as a USED vehicle only.

PURCHASER(S) Authorized DEALERSHIP Representative

WHOLESALE VEHICLE – DEALERSHIP purchased this vehicle from another dealer or at a dealer-only auction. DEALERSHIP has no knowledge of and makes no representation or guarantee as to whether the vehicle had any other prior use. DEALERSHIP is selling this vehicle as a USED vehicle only.

PURCHASER(S) Authorized DEALERSHIP Representative

OTHER VEHICLE – (Describe) _____
DEALERSHIP has no knowledge of and makes no representation or guarantee as to whether the vehicle had any other prior use. DEALERSHIP is selling this vehicle as a USED vehicle only.

PURCHASER(S) Authorized DEALERSHIP Representative

I certify that I have read this disclosure and that the terms in the section in which I placed my signature were the only terms used by the DEALERSHIP to describe the vehicle that I am purchasing. PURCHASER acknowledges that PURCHASER will not hold the DEALERSHIP responsible for prior uses not listed above about which the DEALERSHIP has no knowledge.

DATED _____ PURCHASER(S) _____

I certify that I have reviewed this disclosure and delivered a copy of the disclosure to PURCHASER(S).

DATED _____ SALESPERSON _____

DATED _____ SALES MANAGER _____

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FORM 444

Acting With Urgency Against Cyber Threat to Auto Dealers

By Stephen McLaughlin



Cyber-attacks on dealerships

are becoming more and more prevalent and are costing hundreds of thousands of dollars, lost customers, and reputational damage. You probably already know of a dealership that has been a victim of this growing crime.

With the increasing reliance on technology and the growing threat of cyber-attacks, it's more important than ever that you have the right strategy, technology, and resources in place to survive a data breach and its potential multimillion-dollar impact.

WHAT IS THE RISK AND WHY THE URGENCY?

- **84% of car buyers say they would not return to a dealership** whose data had been breached
- **On an average day, 153 viruses and 84 malicious spam emails** are blocked by technology on a dealership's network
- **70% of dealers are not up-to-date on their anti-virus software**, leaving consumer data at risk of being exposed during a cyber-attack

A data breach can hit businesses with less than 1,000 employees, with disproportionately higher costs, compared to organizations with 25,000 or more employees. Breaches of smaller organizations **cost an average of \$2.65 million or \$3,533 per employee.**

WHY ARE AUTO DEALERSHIPS ATTRACTIVE TARGETS FOR CYBERCRIMINALS?

Dealerships have become very attractive targets for cybercriminals because they have several key potential vulnerabilities that potential thieves can exploit:

- **The data dealers possess represents a treasure of information to hackers.** Dealerships store large amounts of confidential, personal data, including financing and credit applications, customer financial information, and home addresses.
- Some dealerships **lack basic cyber-security protections** and use outdated systems and/or software. Unsecure networks can act as gateways to stealing information.
- In addition, **dealership systems are often interconnected** to external interfaces and portals, such as external service providers.
- Finally, dealership employees may lack training in the most frequent cyber-attack phishing scams. **Phishing campaigns and ransomware attacks have seen big increases**, with email and other communications aimed at tricking users into opening malicious attachments or, in some cases, making wire transfers on behalf of their company.

More than 90% of cyber breaches start with phishing or social engineering campaigns.

ASSESSING YOUR EXPOSURE AND MANAGING THE RISK

Dealers must be diligent in cyber protection and response capabilities. Building resilient systems is the best preparation for the next cyber-attack. Taking a multi-department approach that includes strengthening protections and educating employees on the scope of the threat can thwart efforts to break into dealership networks.

The National Institute of Standards and Technology (NIST) established its Cybersecurity Framework in 2014, in response to a 2013 executive order. The framework is aimed at reducing risk to critical infrastructure and is a great resource dealers can use to identify risk and protect operations prior to a cyber incident, as well as detect, respond and recover should an incident occur.

NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY (NIST) CYBERSECURITY FRAMEWORK

Identify	Protect		Detect	Respond	Recover
Asset Management	Identity Management & Access Controls	C Y B E R I N C I D E N T	Anomalies and Events	Response Planning	Recovery Planning
Business Management	Awareness and Training		Security Continuous	Communications	Improvements
Governance	Data Security		Monitoring	Analysis	Communications
Risk Assessment	Information		Detection Processes	Mitigation	
Risk Management Strategy	Protection Processes and Procedures			Improvements	
Supply Chain Risk Management	Maintenance				
	Protective Technology				

Source: nist.gov/cyberframework/online-learning/five-functions

Steve McLaughlin is Area Sales Manager in Philadelphia for Zurich North America. He can be reached at 610.716.2609 or via email at stephen.mclaughlin@zurichna.com.

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Using Diversity and Inclusion as a Competitive Advantage

By Kerri Wise

Imagine fishing from your favorite pond and catching the same fish over and over again. And even when you catch a new type of fish, you aren't able to keep it on the line because you don't have the right pole. You hope things improve, but you continue to fish out of the same pond with the same pole. This simple metaphor reflects the state of diversity and inclusion in automotive retail.

The harsh reality is that the industry lacks representation in key segments, like women and minorities, and/or lacks the culture to support these groups when they are hired. Many dealership teams do not reflect the communities they serve, and there are negative implications to this that hurt the organization's ability to innovate and grow.

The disparities are obvious when you look at the data. Women consumers are responsible for 65% of new vehicle purchases and service work done at dealerships but only represent 21% of dealership employees. Likewise, minorities represent 30% of new vehicle car buyers but only represent 6% of dealership owners.

Companies with diverse teams are not only more attractive to prospective employees, but also have better ROI. **According**

to a McKinsey study, companies with more racial diversity are 36% more likely to have greater financial returns than average and companies with more gender diversity are 25% more likely to perform better financially.

A focus on diversity and inclusion is a business decision. The reality is that customers often feel more comfortable when a dealership's staff has representation that looks like them. For example, a dealership with an all-male staff is at a disadvantage when half the population is female. A dealership with all white employees is at a disadvantage in a community with a significant Latino population.

But there are other implications in our current environment to consider. The "great resignation" occurring in America has resulted in 4.5 million people voluntarily leaving their positions as of November 2021, exacerbating employers' ability to retain their teams.

Now, this doesn't mean you should seek to hire every kind of person. But it does mean that you should strive to build a staff that is representative of the demographics of the community that you serve. There is an opportunity to "fish in new ponds and with new poles," attracting talent that may look different than the typical automotive profile but have transferable skill sets.

While diversity is important, it's imperative to also focus on the inclusion part as well. Even if you succeed in attracting more diverse talent, those employees are not likely to stay until dealerships create more inclusive environments for them to thrive. This means dissecting the current culture and the environment it creates before focusing on attracting diverse talent.

So, where should a dealership start? In order to breakthrough, it's going to require significant intention and effort. It's not a matter of "hoping" that you'll "catch more fish in that pond." It's actively finding some "new ponds and new equipment and strategies for fishing."

Below are a few ideas to consider when looking to increase diversity and inclusion at your store:

- **Get leadership buy-in** — Leadership must understand the **WHY** and have bought in. Otherwise, employees are less likely to follow, and the initiative will fail — kick off your diversity initiative with a management meeting to help leadership understand how this initiative will benefit the dealership and them personally.
 - **Hire a DEI consultant** — Often, an "outsider" can help us navigate and build momentum faster. A DEI (*Diversity, Equity, and Inclusion*) expert can provide an independent assessment of what's going on and a game plan for improvement.
 - **Measure and identify your dealership's gaps in diversity and inclusion** — Send out an anonymous employee survey or host listening sessions to understand which demographics are underrepresented (*relative to your community*), and identify differences in employee satisfaction, perceptions, pay, etc.
 - **Create a diversity committee** — Offer employees an opportunity to contribute through a committee that will brainstorm new ideas and help execute on key projects.
 - **Offer Employee Training** — Bring in a DEI trainer to help your team cover key topics like allyship, sexual harassment, unconscious bias, and microaggressions.
 - **Spotlight the diverse talent you already have** — Prospective employees, in many cases, will develop perceptions of your culture and environment based on what they see on your website and social media. Consider spotlighting the diverse employees you already have through social posts, pictures, and videos that share their unique stories and experiences.
 - **Get creative on where you recruit** — Tap into and get involved with community and affinity groups that cater to the demographics you want to recruit. This includes women's groups, historically black colleges, ethnic professional associations, youth groups, etc.
 - **Adjust your screening process** — Employers often set requirements for jobs that have nothing to do with success, and these standards eliminate diverse talent. Identify the true requirements of the position, not based on historical trends but based on the current landscape.
- For example, in the past, selling cars took a more transactional salesperson that could aggressively close. However, in a world where most consumers are digitally armed with more information, the profile of a successful salesperson has changed to someone who is more relational and can offer value beyond a transaction.
- **Offer key benefits and flexibility that attract diverse talents** — One of the key reasons women avoid working in automotive retail is the lack of work-life balance and flexibility in schedules. However, this isn't just an issue that impacts women. Younger generations, fathers, and single people (*just to name a few*) are looking for flexibility as well. It's beneficial to get creative by offering alternative schedules like part-time roles, shifts, and regular days off on weekends.
 - **Establish policies on how to deal with diversity complaints before they are needed** — It's easy to ignore and allow bad behavior from your superstar salesperson. However, this is to the detriment of creating a diverse and inclusive culture. Instead, create policies upfront that identify bad behavior as it relates to diversity and inclusion and establish the actions you will take to address these behaviors (*e.g., training, termination, etc.*). More importantly, make sure to enforce these policies, regardless of who the offenders are, in order to set a good example for your entire team.
 - **Employee resource group** — Start affinity or employee groups (*e.g., women, Latino, etc.*) that enable diverse employees to have a safe place to discuss their unique challenges, network and gain inspiration. You can also consider supporting outside organizations and encourage your diverse employees to participate.
 - **Celebrate key holidays that matter to diverse employees** — Acknowledge and celebrate key holidays and months that are significant to diverse employees such as Black History Month, Women's History Month, Chinese New Year, Hispanic Heritage Month, etc. This could include a mention in a sales meeting, newsletter, or an employee event. **nj car**

Kerri Wise is President of Women of Color Automotive Network (WOCAN) and Chief Marketing Officer at AutoFi, a leading commerce platform for digital sale and financing. She can be reached at kwise@autofi.io.

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