

NOZZLE & WRENCH



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Federal, state, local governments and a growing number of private employers have started implementing vaccine mandates for certain employees...

KIRK'S CORNER

Employer Mandated Vaccine and Unemployment Insurance



By Kirk Mccauley,
Director Of Member
Relations &
Government Affairs

Potential federal COVID-19 vaccine mandates will evaluate how far workers are willing to go if there is a risk of losing income or unemployment benefits if they choose not to comply. Many states such as New York have told workers, particularly in health and educational fields, they will not qualify for unemployment benefits if they defied policies evenly applied by their employers. Policy is not clear-cut in Maryland, DE, and DC. Officials have said they will consider mitigating factors in determining unemployment benefit eligibility for those refusing a vaccine mandate, but those factors have not been spelled out. Although it is too soon to predict how the unemployment office will manage the

claims of those fired or who has resigned due to new workplace requirements, the new government mandate will only increase the risk of denial of benefits.

Federal, state, local governments and a growing number of private employers have started implementing vaccine mandates for certain employees, bucking criticism of government overreach and calls for testing options.

People who lose their job over a vaccine mandate are generally considered ineligible for unemployment benefits because they failed to comply with company policy, but there are exceptions. State departments of labor decide who should and should not receive unemployment benefits. While employees nationwide are not guaranteed unemployment payments when fired for refusing a vaccine, a person terminated or



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Bottom line is if an employee says no to company policy there is a good chance, they will not be able to collect unemployment benefits.

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suspended without pay after receiving a medical or religious exemption could be entitled to payments.

In Florida, Iowa, Kansas, and Tennessee state legislatures have been working to change their unemployment insurance rules in recent weeks to allow those refusing to comply with vaccine mandates to claim benefits. I do not see that happening in the areas we represent.

Bottom line is if an employee says no to company policy there is a good chance, they **will not be able** to collect unemployment benefits. Vaccination and booster shots are available with truly little wait. It is the only way business will get back to something like normal.

WMDA/ CAR has sent out a printable sign for employers to use if all employees have received vaccination. Placing a sign on an entrance along with the cashier or service writer wearing a mask will say “ We Care About Our customers”. See page 7.

Right to Repair Amendment in Massachusetts

The Federal Judge has agreed with Massachusetts Attorney General Office (AGO) office to reopen evidence in the Telematic -Data amendment, Right to Repair law. After months of delays with the Alliance for Automotive Innovation claiming manufactures could not comply with law this quick, Subaru disconnected their star-link system on 2022 models. This seems to undermine one of the alliances main arguments that this could not be done.

From Seyfarth automotive legal services

The court had previously told

the parties that it would render a decision on the Alliance’s request for an injunction by November 2. On Monday, October 25, however the Massachusetts AOG filed a motion to reopen evidence so that the AGO could show that OEMs can comply with the Data Law by disabling telematics systems in MY22 and later vehicles sold in Massachusetts. The AGO explained that it had been contacted by a Massachusetts resident who reported that he had purchased a 2022 Subaru Outback with its telematics system disabled. According to the AGO, Subaru dealers in Massachusetts are selling MY22 vehicles with a disclaimer that Subaru’s Star - link system is “not available to Massachusetts residents,” and that this is “a direct result of the new Data Law.”

Read entire Article <https://www.seyfarth.com/news-insights/federal-court-reopens-evidence-in-case-challenging-massachusetts-right-to-repair-law.html>

District of Columbia Gouging bill

Bill 24-126 Seasonal Pricing Price Gouging Amendment Act of 2021

WMDA/CAR testified on this bill on November 30th and sent written testimony to Chairmen Mendelson (sponsor of bill). The Record will be open until December 14th at 5pm. Written comments can be sent to cow@dccouncil.us.

This bill is not about a new gouging bill during an emergency. It amends the current gouging bill to make mandatory penalties of \$10,000 per occurrence. If you sold ten rolls of toilet paper and the cost of each roll violated the gouging law, a judge would have no

choice but to fine you \$100,000 or it could be ten gallons of gas. Repair shops as all retailers, would fall under this law for the parts they sell, and labor charged on services.

Any questions call kirk at 301-775-0221 <https://lims.dccouncil.us/Legislation/B24-0126>

Howard County Minimum Wage bill CB82-2021

Council hearing on November 15th, WMDA/CAR sent in written testimony and is now scheduled to be voted on by council on December 6th at 7pm. You can watch that hearing online at this link <https://cc.howardcountymd.gov/Online-Tools/Watch-Us> WMDA/Car testimony is on page 6.

Minimum Wage Changes and Latest Posters

Delaware minimum wage will go to \$10.50 January 1, 2022, <https://laborfiles.delaware.gov/main/dia/olle/Labor%20Law%20Poster.pdf>

Maryland minimum wage will go to \$12.20 for 14 or less employees and \$12.50 for 15 or more [Maryland Minimum Wage and Overtime Law - Employment Standards Service \(ESS\) - Division of Labor and Industry \(state.md.us\)](https://www.maryland.gov/govmain/dia/olle/Labor%20Law%20Poster.pdf).

Note: Montgomery County wages do not change until July 1,2022 – there is a link on Maryland poster for Montgomery County poster

District of Columbia minimum wage changes in July 1,2022 <https://does.dc.gov/sites/default/files/dc/sites/does/publication/attachments/Minimum%20Wage%20Poster%202021.pdf>

All of these posters are required by law to be posted in workplace.



General Membership Meeting

A General membership meeting will be held on January 11, 2022, at the Silver Dinner in Ellicott City, MD 21075. We will discuss up coming legislative sessions in Maryland and Delaware and the on going one in District of Columbia. We also want to know what is on your minds, what we can do for you, what type of training do you need, and questions about any of the state agencies with which you must deal. We all know that debate over carbon fuels and replacement power (electric, solar, hydrogen and even bicycling is getting some

love) is beyond the debate stage now. We know we will have to adapt to changes, but we must keep the politicians honest about how quick changes will happen. Lets talk about it.

This is how you make a living and more than ever we need to have a herd mentality and the bigger the herd, the more people listen. Do you know a station or shop that is not a member? Bring them along. It is okay. Those businesses need to understand what is at stake and standing on the side lines is not an option.

Holiday Security

With Christmas approaching

it would be a suitable time to remind employees about security procedures and reinforcing and rules about safe drops. Keeping an eye on the pump islands and making sure cameras are all operating. Make sure you have the closes police contact number posted by register and tell employees to use it if they see someone hanging around that does not look or feel right. Car jackings happen at the pump more then any other location and these criminals will hang around looking for right opportunity. ■

From WMDA/CAR, have a great Holiday Season!



WMDA/CAR Service Station
and Automotive Repair Association

November 12, 2021

To: Members of Howard County Council

Re: CB82-2021 - In Opposition

I represent WMDA/CAR - service station, convenience stores and repair facilities. As well meant as CB82-2021 is, it will have a negative impact on locations and especially 24/7 locations and their employees.

The impact will also be felt by potential employees who will not be hired. Maryland already has a minimum wage bill that will reach full effect in January of 2025 and 2026 for small employer. Howard County would be the outlier in Maryland with the highest mandated Minimum wage in the state.

The positions at our locations were never meant to be a living wage with the exceptions of managers who are well above minimum wage. These positions are transition jobs where young and new to work force can learn communication and language skills and how to interact with customers. Flexible hours attract students. Unfortunately, these jobs could be eliminated or severely cut back with a wage that is too costly to fit in the budget.

This also discourages business development in Howard County. with wage compression, rising tide floats all boats. This becomes a very costly bill for small business at a time when they are struggling to come out of the unprecedented times of COVID 19.

Kirk McCauley
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ATTENTION



**OUR ENTIRE
STAFF HAS BEEN
VACCINATED
AGAINST THE
COVID-19 VIRUS**

Diversity in Our Industry



By Sandi Weaver
BA Auto Care, Inc.

I've always written articles based on my perspective and this one is no different. This is an amazing industry to be in and I am very proud to be a part of it. I'm also very excited by the diversity that has begun to enter our industry as well. Over the past 10 years or so, more and more people from outside our industry are buying repair shops and running them exceptionally well. This diversity includes men from the corporate world, women and well, just about anyone. While I don't know the exact reasons for so many new owners, I do know it has opened doors for many, including myself.

I grew up with my parents owning a shop. I loved hanging out at the shop but never wanted to be a part of it. While in college studying Criminal Justice, I took an office position within my dad's shop. When I realized becoming a police officer wasn't what I truly wanted, I went full time working for my dad as the office manager was retiring. I stepped up to take her place and I have loved just about every minute of it. So much so I went back to school to improve my business management skills. I have now been working for my dad for over 23 years. I've been through the recession, the influx of alternative fuel vehicles, the move from 3000 mile oil changes to 5-15k interval and the problems they cause and now a global pandemic. While I do not have the technical knowledge, I do have experience and a different view of how to handle things. I am now part owner of my parent's shop and handle 98% of the business. I don't always have the right answer to problems but I'm always working to improve myself and lift up those around me.

During the last convention WMDA/CAR had in Ocean City, I attended the round table discussion. At the end, those who wanted more information were asked to sign up for details. While in line the man behind me innocently said "Wow. My wife would never come to these thing". While walking through the Expo later that day with one of our service advisor, a man, every single person I asked a question to or spoke with would turn to him and answer my questions. A few months ago I was doing some work at the front counter while my male office assistant was helping a customer. The customer thank him and said "please thank your secretary for me too." Oh did we laugh after the customer left. I could go on and on with these examples.



What's my point in telling you all this? I want for everyone to be more aware of the changes taking place around them and to not judge someone by what they look like, where they come from because if you don't know that person, you don't know what they are capable of and all the good they are doing for our industry and the world. Change is inevitable and I hope you all choose to learn and grow with these changes. ■

"Wow. My wife would never come to these things."



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Work Comp Insights from AmeriTrust CONNECT:

The Importance of Communicating with Employees During Workers' Compensation Claims

Employees who face work-related injuries and illnesses commonly have subsequent stress and anxiety. Oftentimes, this stress is made worse should employers stop communicating with the employee while they're unable to work.

It is important for employers to make their employees feel appreciated and to invest in their well-being. This rapport helps employees feel welcomed, valued and trusted. As a result, if employees are injured at work, they are much more likely to report accidents and injuries.

Furthermore, lack of communication with employees can increase their workers' compensation claim costs. Injured employees are more likely to hire attorneys if they have a poor understanding of the workers' compensation claims process and a nonexistent relationship with their employer. Employers can avoid this by forming trusted relationships with their workers and creating an environment where the lines of communication are open. It is important that employees feel supported, particularly following workplace injuries. This shows employees they are valued and, at the same time, reduces their workers' compensation costs.

When Should the Communication Begin?

As a part of the onboarding process, employees should be trained on what to do in the event they experience a work-related injury or illness, including what the organization's workers' compensation protocols entail.

Employers should discuss how to report an injury and inform employees that communications will continue throughout the course of treatment of that injury. By setting expectations upfront, employers can facilitate ongoing communication, which helps foster these important relationships.

From the moment a workplace injury occurs until the injured employee returns to work, employers and employees should be able to communicate with each other. In general, following an injury, communication begins with employers, and they should:

- Explore what happened immediately following an injury. Employers should be empathetic toward injured employees and discuss what led to the injury.
- Give injured employees the information they need regarding who to contact with questions and how they can check on their claim status.
- Check in with employees to see how treatment is going and if their doctor is being supportive.
- Discuss wage replacement and how it works with injured employees.



Employers should discuss how to report an injury and inform employees that communications will continue throughout the course of treatment of that injury.



- Discuss how long injured employees need to wait until they receive a benefit paycheck.
- Explain that a workers' compensation adjuster will call to review the injury. It's also important to let employees know that this is a standard procedure for insurance claims.
- Discuss return-to-work options so injured employees clearly understand their options when that time arrives.

Follow-up Communications

At least every other week, employers should reach out to injured employees to check in on them. Key times to touch base include after surgery and scheduled treatments. It's important to reassure injured employees that you are looking forward to their return.

Employers should also reiterate to employees that they're there for them if they need help. By regularly following up with the employee, employers can determine how far along their employees are in their recovery process.

Employers will want to provide updates, if they receive them

from the employee, to the claims adjuster. This helps keep the claims adjuster in the loop of the employee's treatment.

Return-to-Work Assignments

When it comes to return to work, it's important for employers to let their injured employees know if they'll be able to provide light-duty work and to make the necessary accommodations so the employee can return to work as soon as medically possible.

Letting injured employees know that their employers are committed to bringing them back to work can help ease any of their anxiety or uncertainty. When employees return to work, employers should check in daily to make sure the transition is going smoothly. Employers should also ensure job tasks aren't causing the employee any pain, aggravating injuries or creating new injuries.

Back to Work Restriction-free

As injured employees return to work and continue to heal, employers can adjust the number of check-ins they have with the

employee. Initially, employers should communicate frequently to ensure employees are comfortable and the work isn't creating any further issues. However, as employees settle in, employers can occasionally check in, making sure injured workers are continuing to improve and able to confidently perform their jobs.

It is important to remember that employers often overlook the simplest way to mitigate claim costs – employee communication. Happy employees are ones who feel valued, and communication is essential to gaining their trust and controlling workers' comp costs.

Contact us today at 800.726.9006 to discuss your workers' compensation needs or apply online at www.AmeriTrustCONNECT.com/WMDA. ■

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Pay Close Attention to the Language in Your Franchise Agreement

By James L. Parsons, Jr., Lynott, Lynott & Parsons, P.A.

As a recent case from New Jersey illustrates, the details in the language of a franchise agreement can make the difference between survival or failure of a franchise. In the case of *SAT Agiyar, LLC v. 7-Eleven, Inc.* (2021 WL 147110, unpublished decision signed on January 15, 2021), SAT Agiyar, LLC (“SAT”) a 7-Eleven franchisee who owns and operates a 7-Eleven franchise in Princeton, New Jersey, filed a motion for a temporary restraining order seeking to enjoin 7-Eleven from enforcing certain provisions in the franchise agreement that penalized the franchisee for operating less than 24 hours per day.

Before SAT purchased the store, the town of Princeton had adopted a local ordinance that prohibited retail food establishments, including the store in question, from operating between the hours of 2 AM and 5 AM. The ordinance had a sunset provision that scheduled it to terminate three years after it was adopted. SAT entered into a franchise agreement with 7-Eleven while the ordinance was in effect. The franchise agreement required that the store be open 24 hours per day, “unless prohibited by law.” The parties also agreed that if the ordinance prohibited the store from operating 24 hours per day, that the store had to operate for “the maximum number of hours permitted by law.”

SAT also agreed in the franchise agreement to pay a percentage of the store’s gross profit to 7-Eleven, starting at a base of 48% (the “7-Eleven Charge”). If 7-Eleven granted permission to SAT to operate less than 24 hours per day, an additional 0.1% of gross profit was to be added to the 7-Eleven charge for each hour that the store was closed per week. Due to the ordinance, the parties signed an amendment to the franchise agreement, in which the parties acknowledged that that store was prohibited from operating 24 hours per day. The amendment also acknowledged that the 7-Eleven Charge would increase if the store was not open 24 hours per day “for any reason,” but temporarily allowed the 7-Eleven charge to remain unchanged until the earlier of (i) the store being permitted to operate 24 hours per day; or (ii) two years from the date of the franchise agreement. The amendment further provided that if the store was not permitted to operate 24 hours per day after two years, that SAT would continue to operate the store pursuant to the franchise agreement, but “subject to the adjustment of the 7-Eleven Charge for a permitted reduction in hours of operation.”

After the parties signed the franchise agreement and the amendment, but before the sunset date of the ordinance, Princeton readopted the ordinance and repealed its sunset provision. As a result, after the two year period in the amendment expired, 7-Eleven began adding the adjustment to the 7-Eleven Charge, which was calculated based upon the hours per week that the store was closed.

SAT filed suit against 7-Eleven, and sought a temporary restraining order to enjoin 7-Eleven from adjusting the 7-Eleven Charge based upon the hours that the ordinance required that the store remain closed. SAT claimed that, at the time that

...the details in the language of a franchise agreement can make the difference between survival or failure of a franchise.





the franchise agreement and amendment were signed, 7-Eleven represented that SAT would not be penalized with an adjustment to the 7-Eleven Charge due to the fact that the store could not be open 24 hours per day. SAT further claimed that a 7-Eleven representative told SAT that the ordinance was not likely to be renewed, but if it was, then the amendment would also be renewed so as to not penalize SAT.

In its unpublished opinion, the United States District Court for the District of New Jersey denied SAT's motion for temporary restraining order. The Court found that 7-Eleven was not forcing SAT to operate the store for 24 hours per day in violation of the ordinance, but rather was enforcing the terms of the agreed upon amendment, which allowed 7-Eleven to make the adjustment to the 7-Eleven Charge based upon the less than 24 hour operations after the two year period expired. The Court also rejected a pandemic related argument raised by SAT for the first time in its reply brief because SAT failed to raise the argument in its initial filing.

The SAT case reinforces the importance of carefully reviewing franchise agreements and amendments with experienced counsel prior to signing. While SAT understandably did not want to pay a higher commission

based upon the hours that the store was required to be closed due to the ordinance, the language in the amendment specifically allowed 7-Eleven to add the adjustment after two years. While it is difficult to prepare for every situation that can arise, amendments that address a specific topic, like the

one in the SAT case, should be drafted to account for multiple potential scenarios. Through careful review and negotiation ahead of time, franchisees should better understand the terms of their franchise agreement (and any amendment(s)), including potential risks. ■

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Want to Boost your Forecourt's Profitability?

Here are five things every fuel retailer should know

By Tony Caputo, Warren Rogers Precision Fuel System Diagnostics

As a convenience store or travel center retailer today, there are many challenges impacting your overall profitability. Savvy operators can gain more control by reducing or eliminating some of the factors affecting their bottom-line. Having the right applications and user tools in place for corporate and store staff can go a long way toward decreasing the impact of many “controllables”, such as meters giving away or holding back product, delivery shortages, fuel theft, and slowing or dormant dispenser flow. The data available from site tank gauges and dispenser controllers is immense. Used properly, curated forecourt analytics can provide your compliance, maintenance, supply, and accounting teams with the information they need to drive higher cost controls. Here are a few areas to focus upon in order to drive more profitability to your bottom-line:

1. The weights and measures inspector protects your customer — not necessarily your fuel inventory.

A state inspector can give your store a “thumbs up” in terms of meeting dispenser meter tolerances, even though you may be losing hundreds of gallons of product due to controllable meter drift. Making better use of available meter drift technology protects you, your fuel inventory, and your customers by identifying meters that are drifting away from strike and holding back or giving away product. Meter drift analysis reports for each dispenser position associated with a product can help you identify a meter error's impact on your profitability.

2. You may not always receive the delivery amounts you pay for.

Terminals, carriers, and drivers will all push back hard if you question a delivery amount and claim a delivery shortfall. Using continual reconciliation data, including actual calculated delivery amounts, you could have the information and evidence you need to pursue claims of fuel shortages. Today's remote diagnostic applications can identify the gross and net amounts of product delivered to the tank system, which is critical information because deliveries to retail facilities are not metered when product is introduced. A calculated delivery audit can provide a reliable measure of the actual amount of product delivered versus the bills of lading using precise delivery calculation factors such as temperature, tank geometry, and elapsed sales.

3. Want to attract business from the forecourt into the store? Don't ignore slow flow rates that irritate customers.

Restoring a dispenser to its proper flow rate will increase sales at the position by up to 20% and help increase your store traffic. Today's remote diagnostic software can calculate dispenser flow rates for each position associated with a particular product,



Having the right applications and user tools in place for corporate and store staff can go a long way...



and identify issues such as clogged filters, defective flow arrestors, and inadequate turbine pump capacity – all of which can affect how quickly product is delivered to your customer. Flow rate diagnostic reports can help you to improve efficiency and profitability and ensure a positive customer experience.

4. Fuel theft is a persistent issue.

Even at dispensing positions outfitted with anti-theft kits or intrusion detection devices, skilled fuel thieves can find ways to circumvent your defenses. A dispenser can be altered so that it will not record actual amounts of product withdrawn. An advanced use of technology can identify and alert you to such incidents by date, time, and amount.

5. Investigating fuel losses can be daunting for a technician without proper guidance.

Sending technicians to investigate fuel losses can be futile if they don't know where to look. In addition, during a dispenser or automatic tank gauge repair at a facility, service help desks can assess whether the repairs were effective or if additional work is needed. This ability to verify that a repair has been made and inform you that performance has been restored – in real-time – eliminates repair call-backs, increases efficiency, and saves you money.

In summary, used properly, curated forecourt analytics can provide your compliance, maintenance, supply, and accounting teams with the information they need to drive higher cost controls and improve your bottom-line profitability. Taking the necessary steps today to add technology to your operation can pay off for years to come in a big way. ■

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Historic Infrastructure Bill Signed into Law



By Roy Littlefield IV

On November 5th, the House of Representatives passed the “[Infrastructure Investment and Jobs Act \(IIJA\)](#),” with a bipartisan vote of 228 to 206. The IIJA was then signed by the President. After tumultuous months of negotiation, and procedural and political debates Congress has passed this vitally important bill that will make historic investments in roads and bridges, improve roadway safety, and make our roads more reliable and dependable for all highway users. WMDA/CAR being represented by SSDA-AT worked tirelessly on this bill for months.

The IIJA will provide **\$550 billion in spending above budget baseline over five years** and includes the text of [S. 1931](#), the Senate Environment and Public Works Committee surface transportation reauthorization bill that passed the Committee in May, which SSDA-AT strongly supported.

The bipartisan infrastructure legislation includes increases for highway funding via formula, increases roadway safety investment, important streamlining provisions, significant bridge investments, and preserves flexibility to invest in both new capacity and improvements to existing roadways.

The IIJA also includes the [Surface Transportation Investment Act](#), passed by the Senate Committee on Commerce, Science, and Transportation with bipartisan support, as well as the Senate-passed Drinking Water and Wastewater Infrastructure Act and the Energy Infrastructure Act, which received bipartisan support in the Senate Committee on Energy and Natural Resources.

Key Funding Highlights:

- **Highways** - \$351 billion for highways over five years from the Highway Trust Fund (HTF) and General Fund (\$307 billion or 90% provided as formula apportionments to states.) This is a 34% increase in highway elements from the Highway Trust Fund over funding levels in the Fixing America’s Surface Transportation Act (FAST Act).
- **Transit** - \$91 billion
- **Highway Safety (NHTSA/FMCSA)** - \$12 billion
- **Passenger Rail** - \$66 billion
- **Bridge Investment Program** - Provides **\$12.5 billion over five years** for a new Bridge Investment Program that funds competitive grants to address the nationwide backlog of bridge repair and rehabilitation projects.
- **Bridge Formula Program** - Appropriates **\$27.5 billion for a new bridge formula program** to provide funding to States and Tribal governments to repair and rebuild bridges.
- **INFRA Funding** - Provides **\$8 billion** over five years for the National Significant Freight and Highway Projects Program, known as “INFRA.” INFRA provides competitive grants for highway, bridge, and multimodal freight projects of national and regional significance.
- **Safe Streets and Road for All** - Provides \$5 billion and establishes a new grant program for metropolitan planning organizations, local governments, and Tribal

Congress has passed this vitally important bill that will make historic investments in roads and bridges, improve roadway safety, and make our roads more reliable and dependable for all highway users.

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governments to develop and carry out comprehensive safety plans to prevent death and injury on roads and streets, commonly known as “Vision Zero” or “Toward Zero Deaths” initiatives.

Climate Change and Resilience:

- **Reducing Carbon Emissions from Transportation** –

The IIJA establishes a new Carbon Reduction Program that will distribute approximately **\$6.4 billion over five years** to States by formula to invest in projects that support a reduction in transportation emissions. Eligible projects include transportation electrification and EV charging, public transportation, including Bus Rapid Transit, infrastructure for bicycling and walking, intelligent transportation systems (ITS) improvements, infrastructure to support congestion pricing, diesel engine retrofits, and port electrification.

- **PROTECT Resilience Grants** - Creates a new Promoting Resilient Operations for Transformative, Efficient, and Cost saving Transportation (PROTECT) grant program, which provides formula



funding to States and competitive grants to eligible entities to make our surface transportation infrastructure more resilient, including through the use of natural infrastructure, to the effects of extreme weather and natural disasters. Provides **\$7.3 billion** in formula funding and **\$1.4 billion** in competitive grants over five years funded from the HTE.

- **Electric Vehicle Charging** - \$5 billion over five years for a State formula program for EV charging infrastructure deployment.
- **Port Truck Emissions Reduction Program** - Provides **\$400 million** to reduce air emissions from trucks idling at port facilities.
- **Healthy Streets** - Authorizes a new Healthy Streets Program for eligible projects, including projects that mitigate urban heat islands, improve air quality, and reduce stormwater runoff.
- **Resilience and Adaptation Centers of Excellence** - Authorizes the creation of new Resilience and Adaptation Centers of Excellence, which will advance research to help make surface transportation infrastructure more resilient



to natural disasters and extreme weather.

Supporting Rural America & Tribal Communities

- **Rural Surface Transportation Grant Program** - Invests in rural America by authorizing **\$2 billion** over five years for a new competitive grant program to improve and expand the surface transportation system in rural areas.
- **Tribal Transportation Projects** - Authorizes nearly **\$3 billion** over its five years for the Tribal Transportation Program, ensuring that tribes will have greater access to funding for surface transportation projects throughout Indian Country.

Enhancing Safety and Equity for All Road Users

- **Reconnecting Communities Pilot Program** - Provides **\$1 billion** over five years for a new pilot program that provides competitive grants for planning and projects to remove, retrofit, or mitigate existing highways that were built through neighborhoods and created a barrier to mobility and economic development.
- **Highway Safety**

Improvement Program (\$15.6 billion over 5 years) - Provides States with the ability to flex 10% of their HSIP funds to behavioral projects and includes a new special rule to provide targeted funding to address the safety needs of vulnerable road users under certain circumstances. If vulnerable road users in a State represents not less than 15 percent of the total annual crash fatalities in the State, that State shall be required to obligate not less than 15 percent of their HSIP funds for the following fiscal year for projects to address the safety of vulnerable road users. This section also directs the Secretary to update the study on high-risk rural roads. And sets aside \$1.3 billion over five years for the Railway-Highway Crossing Program.

- *Note: SSDA-AT continues to be concerned with flexing HSIP funds to non-infrastructure programs as they have their own funding sources. The bill allows*

for 10% flex. We are very pleased with the increase in funding for the HSIP overall.

- **Transportation Alternatives** - The bill increases funding for the Transportation Alternatives Program (TAP), which funds bicycle and pedestrian projects among other projects, through a 10 percent set-aside of the STBGP.
- **Safe Routes to School** - Codifies the existing Safe Routes to School Program, which encourages children to safely walk or bike to school and amends it to apply the program through 12th grade.
- **Complete Streets** - Requires State and metropolitan planning organizations to spend a minimum amount of funding for either the adoption of complete streets standards and policies, development of a complete streets prioritization plan, active and mass transportation planning, regional and megaregional planning to address travel demand through alternatives to highway travel.
- **Reducing Wildlife-Vehicle**

Collisions - Authorizes \$350 million over five years for a new pilot program that provides competitive grants for projects that reduce wildlife-vehicle collisions.

Streamlining Provisions:

- **Codifies One Federal Decision policy**, which establishes a two-year goal for completion of environmental reviews for infrastructure projects. Also seeks to ensure environmental review documents remain under 200 pages.
- **Improving Federal Agency Coordination** - Allows federal land management agencies to use an environmental document previously prepared by the Federal Highway Administration (FHWA) for a project addressing the same action, and also allows for a federal land management agency to use the categorical exclusions listed in the implementing regulations of FHWA.
- **Improving Accountability** - Directs the USDOT to carry out a process to track, and annually submit to Congress

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a report containing the time to complete an environmental impact statement and an environmental assessment under the National Environmental Policy Act.

Other Provisions of Note:

- **Clean School Buses and Ferries—\$7.5 billion**
- The bill includes a historic amount of funding, \$5 billion, for the replacement of existing school buses with clean school buses, with a priority on low-income, rural, and Tribal schools. \$2.5 billion of this funding will be for zero-emission school buses and \$2.5 billion will be for zero-emission school buses and other buses that run on alternative fuels.
- **Buy America**
 - Expands Buy America to construction materials, which must be “produced in the United States.”
 - Requires review of general waivers to the program.
- **Exempts cement and cementitious materials, aggregates such as stone, sand, or gravel or aggregate binding agents or additives** from the definition of construction materials.
 - Note: SSDA-AT supported this language pertaining to the exemption.
- **Safety Contingency Funds:** Provides the opportunity for contingency funds that can be used to improve safety in work zones prior to, or during construction. Allows for a Federal share payable of up to 100% for these funds. **Note: SSDA-AT supported this effort.**
- **Vulnerable Roadway Users -** Drives policy changes in the bill

to protect vulnerable road users such as pedestrians, bicyclists, and people with disabilities.

- **MUTCD** - Requires updates to the Manual on Uniform Traffic Control Devices within 18 months of enacting the bill and then no less than every three years thereafter. It also expands the focus to cover vulnerable road users, the safe testing of automated vehicle technology, and minimum retroreflectivity of traffic control devices and pavement markings. And allows local jurisdictions to utilize their own design guide if accepted by the FHWA.
- **Safety Clearinghouses -**

Provides \$3.5 million per year from fiscal years 2022 through 2026 for Operation Lifesaver, work zone safety grants, and safety clearinghouses. **Note: This is where the Roadway Safety Foundation has received the bulk of its funding from historically.**

Highway Trust Fund: Includes a \$118 billion general fund transfer to the Highway Trust Fund. \$90 billion will be deposited into the Highway Account and \$28 billion will be deposited into the Mass Transit Account. This transfer was expected as a Highway Trust Fund fix remains elusive. ■

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BBB Still Harmful to Main Street



Ken Kies is out with an [excellent piece](#) that breaks down how bad of a deal the House-passed Build Back Better Act is for pass-through businesses. As the former Joint Committee on Taxation head explains, even though this latest bill abandons [efforts](#) to repeal the 199A deduction, the tax hikes that remain create an “extreme disparate treatment” for pass-throughs compared to C corporations.

By Roy Littlefield III

Kies focuses on the House bill’s new surtaxes (5 percent on pass-through income over \$10 million, and 8 percent over \$25 million) and the expansion of the 3.8

percent Net Investment Income Tax. Together, these changes raise the top pass-through rate to 41.4 percent, assuming the 199A deduction is received. Here’s Kies:

The following illustrates how an increment of \$10 million of income of a passthrough business subject to this 41.4 percent compares with a similar \$10 million increment of income for a C corporation:

TABLE 1

C CORP	PASSTHROUGH
\$10,000,000	\$10,000,000
0.21	0.414
\$2,100,000	\$4,140,000

Now let’s consider the tax on current and subsequent distributions of C corporate income as dividends under the tax regime before Congress:

TABLE 2

Income	\$10,000,000
Less corporate tax	(\$2,100,000)
Percent of corporate income subject to second layer of tax*	0.23
Income subject to second layer of tax	\$1,817,000
Maximum rate on dividend income	0.318
Additional second layer of tax	\$577,806

*The basis for the assumed 23 percent rate of C corporation income subject to a second layer of tax is described in my October 11 letter, *supra* note 1. I explain that the amount of C corporate income subject to double taxation is relatively modest, which is why I refer to C corporate double taxation as a myth of C corporation earnings.



Now let's compare the total tax burden on the same increment of \$10 million of income for a passthrough business and a C corporation:

limited useful life. Exhibit A in the limited useful life category would be the ill-fated and poorly thought-out wealth tax that had a useful life of about 18 hours over

regarding the disparate treatment of passthrough businesses were also not understood. If Congress is going to pursue surtax proposals, the problem of extreme disparate treatment should be addressed.

TABLE 3

	Maximum Tax on C Corp Taxable Income	Current Tax on Passthrough income Retaining Section 199A Deduction
Initial C corporate tax	\$2,100,000	
Tax on dividends ultimately paid	\$577,806	
Total ultimate tax on C corporate taxable income	\$2,677,806	\$4,140,000

With Majority Leader Schumer setting a Christmas deadline for passage of the BBB, Senators will have just over a month to decide whether they want a tax system that encourages economic growth and employment, or one that consolidates economic power and decision making into the C-suites of a few thousand public companies, leaving thousands family-owned businesses and the communities they serve worse off.

The comparison is truly astonishing. The same \$10 million increment of income of a C corporation will bear a total ultimate tax of \$2,677,806 while a passthrough business with the same increment of income will bear a total and immediate tax of \$4,140,000, a burden 54.6 percent.

October 24-25. House Speaker Nancy Pelosi, D-Calif., described its proposal as a publicity stunt. Surely, the surtax proposal's consequences

WMDA/CAR will continue to monitor and report on the BBB. ■

What could possibly be the policy rationale for such disparate tax treatment? Kies posits that it must be a misunderstanding:

Experience in the tax legislative process teaches that late-breaking ideas frequently have consequences that are not understood and that, also frequently, they may have a



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ELECTION 2022: WMDA/CAR PAC needs funds to Participate

Governor, Attorney General and Comptroller, along with delegates and senators are up for election in Maryland.

- ▶ **Ban on menthol cigarettes** in District of Columbia means there will be copycat bills in Maryland and Delaware this year.
- ▶ California **bans gas powered cars** by 2035, will MD, DE, or DC be next?
- ▶ Baltimore council members want to **ban new service stations** in the city, ban plastics, Styrofoam & sugary drinks. They have shut down many retailers with pad locks on doors, blaming business for crime. Police are telling our retailers you are on your own, hire security guards. They need to focus on crime, not plastic bags. The absurdity of actions like this underscores the need for new legislators.
- ▶ Labor and employee bills in all three jurisdictions would add thousands of dollars in **payroll cost** per year. While we have been successful in stopping or amending most bills, they will all be back this year.
- ▶ **Right to Repair** – New cars manufactured are installing devices in vehicles that send information over wireless networks to dealerships automatically.

As absurd as some of these bills are, they are real and affect all our members. These issues will be or already are in the legislative process. We need legislators who support retail business, do not be on the side lines.

Support your PAC and PROTECT your business.

We suggest \$150 per location however, any amount is welcome.

Please send contributions to: WMDAPAC 1532 Pointer Ridge Place, Suite F Bowie, MD 20716

Your fellow business owners and PAC officers,

Rick Agoris, *PAC Chairman*

Riaz Ahmad, *PAC Treasurer*

