



## Right to Repair law broadened in Massachusetts

Massachusetts voters overwhelmingly approved a ballot question on Nov. 3 to expand the state's "Right to Repair" law, a decision with potentially far-reaching ramifications in the automotive industry about who has access to the highly proprietary data transmitted by carmakers. The measure amends a landmark 2012 "right to repair" law in the state.

Opponents of the latest Right to Repair initiative, known on ballots as Question 1, conceded defeat shortly after the polls closed. The results showed voters backing that measure by a 3-to-1 margin — 75% to 25%.

Under the newly approved Right to Repair law — which drew at least \$43 million in spending, the most for a ballot question in state history — automakers will be required to provide car owners and independent mechanics

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## FTC, Illinois AG take action against dealerships

The Federal Trade Commission made a big splash in May when it announced a whopping \$1.5 million settlement with a New York dealership for alleged discrimination in financing and alleged various deceptive business practices.

The practices included the customary deceptive advertising and bogus charges, but also included an allegation that the Chevrolet and Honda retailer offered "certified pre-owned" Hondas, which are covered by the manufacturer's seven-year, 100,000 mile warranty, wherein the customer was told he had to pay a "certification" fee to receive the advertised price and warranty, a practice prohibited by the manufacturer.

The dealership also assessed "prep, shop, or reconditioning" fees for some certified pre-owned Hondas. The unluckiest customers paid both fees, totaling about \$3,000, according to the complaint.

## Final Barbecue for the Troops tally tops \$50,000

The Chicago Automobile Trade Association on Nov. 10 announced a final amount raised by this year's Barbecue for the Troops campaign. After wrapping month-long fundraising campaigns in October, the area's new-car dealerships delivered \$53,801 to the USO of Illinois.

The new-car dealers' USO

Closer to home, the office of the Illinois attorney general recently sued a suburban Dodge dealer for allegedly violating the state's motor vehicle advertising regulations relating to sales events, trade-in values, discount substantiation, and advertised prices, as well as using fake checks and coupons in its advertisements, failing to disclose a consumer's potential responsibility for negative equity on a trade-in, failing to promptly pay off a lien on a trade-in, advertising financing opportunities to those facing bankruptcy, and other miscellaneous charges.

The complaint further alleges that the dealer violated a 2016 Assurance of Voluntary Compliance entered into by and between the dealer and the AG covering similar deceptive practices.

Both of the proceedings above should serve as a major red flag for dealers in their advertising and business practices.

Barbecue for the Troops initiative traditionally is held each July and features large community festivals with patriotic ceremonies. However, the CATA and the USO of Illinois this year made the collective decision to reschedule 2020's fundraising campaign to October due to the pandemic. Still, nearly 60 CATA

dealerships rallied around the cause that directly impacts local service members. Since the program's inception in 2013, the area's new-car dealers have brought in more than \$950,000 to support USO of Illinois initiatives with more than 630 unique fundraisers taking place. The

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## BBB cautions dealers to beware of Black Friday pitfalls in their ads

Upon finishing their turkey legs, Americans each year prepare for the next American holiday: Black Friday. Advertising around that occasion can get creative, but the Better Business Bureau reminds dealers about Illinois advertising rules that prohibit dealers from touting free gifts and offers.

Despite the times, the BBB has consistently applied the Illinois Motor Vehicle Advertising Regulations to dealer practices as they become known. Dealers themselves have expressed the importance of a fair marketplace in which no dealer offers promotions that conflict with the regulations and harm the sales of other dealers.

With that in mind, the BBB wants to alert dealers to certain practices relating to Black Friday promotions.

“We often see Black Friday offers that dealers would not otherwise run, involving free incentives with the sale or lease of vehicles,” said Patricia Kelly, senior counsel of the BBB’s Chicago office. She reminds dealers of the language of rule 475.590 that relates to Black Friday promotions.

### Section 475.590 Gifts and Free Offers

a) It is an unfair or deceptive act to advertise or offer free prizes, gifts or other incentives in connection with the purchase or lease of a vehicle where the vehicle is sold or leased at a price arrived at through bargaining or negotiation, unless the dealer meets the requirements of subsection (b) of this

Section.

b) A free prize, gift or other incentive may be advertised or offered in connection with the purchase or lease of a vehicle if:

1) the free prize, gift or other incentive is offered through a manufacturer’s program or a manufacturer’s authorized and approved dealer advertising association without any participation by the dealer, excluding dues or assessments that are required to participate in the advertising association. The program or association shall be clearly and conspicuously disclosed; and

2) all material terms and conditions relating to the offer are clearly and conspicuously disclosed at the outset of the offer.

While Black Friday is a time when other general retailers with fixed prices offer free promotions, Illinois dealers are prohibited by rule 475.590 from advertising or offering free prizes, gifts or other incentives in connection with the purchase or lease of a vehicle because the price is arrived at through bargaining or negotiation.

“This rule is very broad,” Kelly said. “It covers anything a dealer advertises or offers for free or included or any other expression of that notion.”

In past years, Kelly said the BBB has seen offers that included electronics, smart phone items and remote starters. The list, she said, is as long as the imagination.

“We have also seen contests, such as

wheel spins, that purport to be independent of sales and include ‘no purchase necessary’ language,” she said. “But consumers and BBB ‘shoppers’ have reported that dealer staff told consumers at the store of a different standard. Consumers who win a wheel spin free item, for instance, are told they must buy or lease a vehicle to obtain the prize.”

The BBB seeks to assist dealers in thinking about their Black Friday promotions in line with rule 475.590. The BBB has referred dealers in the past to the office of the Illinois attorney general under the BBB/CATA advertising review program because of free promotions during Black Friday events. “Violations of rule 475.590 are considered zero tolerance issues per the CATA Board of Directors and we take these issues very seriously,” Kelly said.

Therefore, the BBB hopes that dealers consider their Black Friday promotions carefully with this rule in mind. As always, the BBB is ready to assist CATA members by reviewing their advertising content prior to publication to ensure compliance with rule 475.590.

“We wish dealers good sales in the coming weeks, as the holidays approach,” said Kelly. “Our intent, as always, is to encourage a level playing field in usual times and in the times we are having now.

“We hope that all dealers consider their promotions for Black Friday with these principles in mind.”

## Congratulations!

**Al Piemonte Nissan** in Melrose Park is a winner of Nissan’s 2020 Award of Excellence and the Nissan Global Award. **Star Nissan** (Niles) and **Zeigler Nissan of Orland Park** won the 2020 Award of Excellence.

Elizabeth Heubel, of **Pugi of Chicagoland** in Downers Grove, was among the NADA Academy’s September 2020 graduating class. Karen Ford of **Sutton Ford** in Matteson graduated from the Academy in August.

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## What dealer compliance will look like in a Biden administration

By **RANDY HENRICK**

IGNITE CONSULTING PARTNERS

Joe Biden's victory likely will usher in a new era of consumer protection and compliance challenges for auto dealers. Four of the five Federal Trade Commission commissioners will have their terms expire during the Biden administration. President Biden will have the power to replace the head of the Consumer Financial Protection Bureau. The Democrats will, for at least two years, control the House and maybe the Senate, too.

The Democratic Party platform stated that a Biden administration would work "to ensure equitable access to credit and banking products for all Americans, and reinvigorate the CFPB to ensure that banks, financial institutions, and lenders cannot prey on consumers." The platform also indicates Democrats will "eliminate the use of forced arbitration clauses." Strong language is also given to protecting consumers' rights to privacy and protecting consumers from data breaches.

In short, as Democratic Sen. Chuck Schumer said with respect to the Supreme Court, everything is on the table.

That being said, it is reasonable to expect changes in the automobile world to be evolutionary not revolu-

tionary. The Trump administration has put new staffers at senior levels in the CFPB and the FTC. While some of these people may leave or be replaced, there will not be a wholesale firing and replacement of Republican staffers on Day One.

Here are some thoughts on what to expect.

### CFPB

It is important to remember that Sen. Elizabeth Warren, the original architect of the CFPB, will have an important voice in Biden administration policy. Warren raised concerns earlier this year about auto finance and has indicated her disdain for auto dealers in the past.

"Auto dealers got a specific exemption from CFPB oversight, and it is no coincidence that auto loans are now the most troubled consumer financial product," Warren said. "Congress should give the CFPB the authority it needs to supervise car loans — and keep that \$26 billion a year in the pockets of consumers where it belongs." The \$26 billion per year is Warren's estimate of total dealer participation which Warren would like to eliminate.

Warren also is closely aligned with Richard Cordray, who headed the CFPB during the Obama administration. You may recall that the CFPB under Cordray published the agency's bulletin on auto finance indicating that dealer par-

ticipation resulted in disparate impact credit discrimination. In May 2018, Congress passed a joint resolution that was signed by President Trump disapproving the bulletin.

Disparate impact credit discrimination involves facially neutral practices that have the effect of discrimination. Actual intent to discriminate is not required. Disparate treatment credit discrimination generally requires intent to discriminate.

The U.S. Supreme Court in 2015 decided the case of Texas Department of Housing v. Inclusive Communities Project. This case appeared to make it harder to bring a disparate impact credit discrimination case under a statute like the Equal Credit Opportunity Act, although the ECOA was not at issue in the case. The ECOA prohibits "any creditor to discriminate against any applicant with respect to any aspect of a credit transaction." This picks up disparate treatment credit discrimination. But the ECOA does not prohibit acts that "otherwise make unavailable" credit to protected classes as does the Fair Housing Act, which was at issue in the case. It was this language that the Supreme Court ruled 5-4 picks up disparate impact credit discrimination. The Supreme Court has not ruled on whether the ECOA prohibits disparate impact.

## BBQ

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funds enable the USO of Illinois to lend annual support to more than 350,000 service members and their families.

"While this year is certainly unique, not even a global pandemic could stand in the way of local new-car dealers' drive to give back to those in need, right within their local communities," said CATA Chairman Kevin Keefe.

"Furthermore, we found that people really rallied around the cause because it directly impacts local military who have been serving on the home front in the COVID-19 pandemic, as well as around the world."

USO of Illinois Executive Director Christopher Schmidt said: "We are truly grateful for the support we have received from our partners at the Chicago Autom-

obile Trade Association, the local new-car dealerships and our hometown communities. For the eighth consecutive year, the dealers have rallied to help raise funds for our local service members and their families.

"Our sincere thanks to everyone who stepped up to support the USO of Illinois and those that we serve, especially during these unprecedented times."

Awareness was also spread through social media through the #BBQ4Troops Ultimate At-Home Barbecue contest. The CATA and the USO of Illinois encouraged fans to nominate someone deserving of the grand prize, a \$150 Real Urban Barbecue catered meal, at-home grilling essentials and a signed hockey puck by hometown hero Chicago Blackhawks' Patrick Kane.

## Illinois veto session canceled

SPRINGFIELD — The fall veto session of the Illinois General Assembly, which was scheduled to begin Nov. 17, has been canceled amid a worsening COVID-19 pandemic, Democratic leaders announced Nov. 10.

The CATA and others had hoped to use the veto session to roll back the \$10,000 limit on the tax credit available on traded-in First Division vehicles. The cap took effect this year. Key lawmakers have indicated their support for the repeal.

The 101st General Assembly officially comes to an end on Jan. 12.

### Webinar to examine top regulation compliance challenges

CVR will host a two-hour webinar to review the top challenges license and title clerks face in Illinois in electronically filing documents for vehicle titles and registrations. The webinar is 10 a.m.-12 p.m. Nov. 19.

Joey White, CVR's Illinois account executive, will deliver the free presentation. White has 21 years' experience in state regulation processing. She will provide training on the best practices and tips to make the regulation process easier.

## Repair

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with access to wireless mechanical data, known as telematics, starting with model year 2022 cars.

The Right to Repair Committee, which had raised at least \$24 million to push the measure, framed it as a matter of preserving choices for car owners about where to get their car fixed, and protecting the competitive edge of independent mechanics around the state.

"Tonight is a great victory for the 1,600 independent repair shops here in Massachusetts, and the 40,000 jobs in the aftermarket," said Tommy Hickey, the committee's director. "It's pretty clear in the ballot what the will of the voters was."

The vote is likely to rumble quickly through the automotive world, which already has been roiled by the debate about who should have access to the highly proprietary data. It also remains to be seen whether lawmakers amend the ballot question's language after federal officials raised concerns about its proposed timeline.

The Coalition for Safe and Secure Data, an automaker-backed committee that fiercely opposed the question, conceded after the vote, though it contended the data privacy concerns it had raised remain.

"Today's vote will do nothing to enhance that right [to repair] — it will only grant real-time, two-way access to your vehicle and increase risk," the group



Supporters of the Right to Repair law gathered ahead of the vote.

said in a statement.

The new law builds on a measure voters passed in 2012 that first allowed independent repair shops to plug into a car and access the same digital codes that car dealers and their mechanics use to help diagnose problems.

That law, which legislators later tweaked in 2013, prompted automakers to agree to a memorandum of understanding that set similar requirements across the country.

It's unclear if the industry could follow a similar path on telematics. That system, often found in late-model cars, monitors and remits real-time readings on the vehicle back to the manufacturer, and the type of data can vary between manufacturers.

Under the newly approved law, manufacturers will be required to equip vehicles starting with 2022 models with an open-access platform for that data. Owners could then retrieve the mechanical readings through a mobile app, and grant a local repair shop access to help in repairs.

The debate over the measure quickly evolved into an expensive, and often hyperbolic, advertising war over cybersecurity and drivers' personal data. The Coalition for Safe and Secure Data, backed by nearly \$26 million in contributions from General Motors, Toyota, and other manufacturers, ran a series of ads insinuating that the garage codes to your home could be at risk, or that "domestic violence advocates" say predators could use a car's data to track their victim's location.

But cybersecurity experts differed on how much risk the ballot question posed to someone's data, and several said the claims pushed by automakers veered into exaggeration and "fear-mongering."

The newly passed measure had faced its own questions. It does not specify who will build the app or how it should operate, and the National Highway Traffic Safety Administration has said it is "effectively impossible" for automakers to design, test, and implement a secure approach within the proposal's time frame.