



CATA Bulletin

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Contested bill in Springfield would provide accident reports for resales

State legislators this spring are debating a bill that would make available in electronic form any accident reports related to a vehicle offered for sale in Illinois. If the measure becomes law, companies that sell vehicle history reports would add such information to their reports, which would harm the values of used vehicles, including customer trade-ins.

The measure, Illinois House Bill 3206, was introduced after lobbying by Carfax, headquartered in Fairfax, Va. After one amendment, the bill on March 12 remained in the House Transportation & Motor Vehicle Committee.

Detractors of the bill have cited several faults with the legislation, notably

that Carfax would not guarantee the accuracy of any accident information in its history reports. In other words, Carfax would not be liable for an incorrect report, which would deflate the selling price of a used vehicle.

Inaccuracies related to accident reports are common. Police officers who complete the reports rarely are expert at determining the extent of damage or the costs to correct the damage. Also, a VIN entered wrongly on the report or transposed later by a typist would assign any damage to a different vehicle.

Carfax itself reportedly discards more than 40 percent of the accident reports it reviews in some states because of inaccuracies in the transcripts.

A dealer who sells a used vehicle without disclosing prior damage—known or unknown—can face demands of a refund by the purchaser or a lawsuit. Prosecuting attorneys in other states already point to Carfax reports as containing definitive information.

Damage reports completed at accident scenes establish a \$500 damage threshold and indicate merely whether the harm to a vehicle is above or below that amount. The reports do not indicate whether any damage should affect the resale price of the vehicle.

Lobbyists for the CATA will track the legislation. Dealers should be prepared to contact their state representatives if Illinois HB 3206 advances.

State bill would open Chicago's Lake Shore Drive to pickup trucks

Chicago's network of boulevards, including Lake Shore Drive, would be open for travel by pickup trucks, vans and recreational vehicles that weigh up to 8,000 pounds, under legislation pending before the Illinois General Assembly.

Illinois House Bill 3527 would allow those second division vehicles to register as first division vehicles and display passenger vehicle license plates. Moreover, local units of government, in-

cluding home-rule units, could not prohibit such vehicles from operating on boulevards.

The state measure to permit pickups on Chicago's scenic drives would overcome a ban by the city that dates to the 1920s, when pickups were used for work and were considered eyesores.

One alderwoman whose lakefront ward is undergoing gentrification said she feared that Lake Shore Drive would

be overrun by pickups laden with ladders and paint cans, if the stretch was opened to such vehicles.

But pickups nowadays often are family vehicles with many luxury features. And suburbanites unaware of the ban are easy prey for police on Lake Shore Drive and the many boulevards of Chicago.

Among urban residents, new-car dealers have suspected the current roadway bans for B-plated vehicles

has created a modest chilling effect on sales of such vehicles.

The state bill awaits a second reading in the House. It would be ratified upon a third successful reading and then move to the Senate for consideration.

Other state legislation the CATA is monitoring:

- Vehicle title applications would be amended to include the applicant's age. If an applicant is under age 18

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Laws protect employees called to perform military service

With the activation of thousands of military reservists, employers no doubt want to understand their obligations to any workers called to duty.

Any federal obligations are governed by the Uniformed Service Employment and Reemployment Act (USERRA). Illinois also has a statute, the Servicemen's Employment Tenure Act (SMETA).

There are many questions commonly asked about military leave:

Is an employee required to give the employer advance notice before leaving for military service?

Unless precluded by military necessity, the employee, authorized representative of the employee, or uniformed representative must give verbal or written notice to the employer in as timely a manner as possible. If notice is not possible because of military necessity, the employer still must comply with USERRA.

Who is protected under the law?

The reinstatement benefits apply to individuals performing, or who have performed, military service. The Act provides an expansive definition of military service, including but not limited to: Army, Navy, Marine Corps, Air Force, Coast Guard, reserve units, National Guard, and commissioned Corps of the Public Health Service; and any other category of persons designated by the President in time of war or National emergency.

Are all employers bound by the military leave law?

Yes. All civilian employers, regardless of size, are bound by USERRA.

What happens to an employee's health insurance while on leave?

Under USERRA, an employer must continue to cover an employee who performs military service for up to 18 months. The employee cannot be required to pay more than 102 percent of the health care costs. If the employee's military service is for 30 days or less, the employee can only be required to pay the employee's share of the health care cost while on leave.

What happens to an employee's pension while on leave?

Time spent in the military must be counted for vesting and benefit accrual purposes under defined benefit plans, defined contribution plans, and profit sharing plans. In other words, the employer must continue making contributions in the same manner as if the employee had never left service.

Do the benefits of employee stock ownership accrue



to an activated reservist?

Yes.

What happens to an employee's outstanding 401(k) while on military leave?

If an employee called to military service has an outstanding 401(k) loan, pursuant to the Federal Soldiers' and Sailors' Civil Rights Act, the interest rate on this outstanding loan may be lowered to a cap of 6 percent during the period of active duty.

Must an Illinois employer continue to pay an employee who is on military leave?

Neither federal nor Illinois law requires an employer to continue paying employees while they are absent due to military service.

When an employee returns from military service, must the employer reinstate the employee?

Yes. The employer must reinstate a returning member of the military service to his/her former position with the same status, seniority, and wage increases as if the person's employment has not been interrupted by military service.

If such employee is not qualified to perform the duties of his/her prior position because of a service-related disability, but can perform the duties of another position, the employer must place the person in the other position. If there are multiple open positions that the employee could perform, the employer must restore the employee to the position that is the most consistent with the employee's prior job in the areas of seniority, status and pay.

If an employee left to enter military service but was rejected due to lack of qualifications, the employer must reinstate the employee to his same position without loss of seniority and wage increases. If the employee remains

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Review past editions at <http://cata.drivechicago.com/>

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AYES ready to train mentors for new crop of high school interns

Local officials of Automotive Youth Educational Systems will begin meeting with service managers in the next month to prepare them to supervise high schoolers in year-long technicians-in-training internships that begin this summer.

Dealerships interested in hosting a student technician should contact Jim Butcher, Illinois AYES manager, at 630-424-6020. The area AYES program has more eligible students than can be placed because of a shortage of dealers in the program.

An AYES display was well received by consumers at last month's Chicago Auto

Show, Butcher said. He staffed the display with dealership technicians, students enrolled in AYES and representatives from the manufacturer-supported post-secondary training programs at Triton College in River Grove.

A common inquiry: students who asked how their high schools can get certified to participate in AYES. Four area schools currently are certified—Farragut Career Academy and Currie Metropolitan High School in Chicago, Lake County Technology Campus in Grayslake, and Technology Center of DuPage in Addison—and two more are undergoing the

certification process.

General Motors helped enliven the AYES exhibit by displaying a 50th anniversary Chevy Corvette, and area native Jim Moran donated \$10,000 to AYES as a gesture of what has been his devotion for many years: assisting dealerships with recruiting and training.

Butcher said that parents of students interested in the AYES program were im-



The AYES display at the Chicago Auto Show.

pressed by the curricula the students must complete even before qualifying for an internship: 105 hours of training on brakes; 95 hours on steering and suspension; 230 hours on electrical systems; and 220 hours on engine performance and "driveability."

Military

CONTINUED FROM PAGE 2

qualified for the former position, but the pay and position is unavailable, then the employer must place the employee in a position of like seniority, status and pay.

How long must the employee's job be held open?

The employee's job must be held for him/her for at least five years—sometimes longer, when an employee must remain on active duty due to a war or national emergency. If an employee has been hospitalized because of a service-related illness or injury, the employer must hold the employee's job open for two years.

Are there any exceptions to an employee's reemployment rights?

An employer need not reemploy a person after military service if the employer's circumstances have changed such that reemployment would be impossible or unreasonable. An example of this type of situation: A reduction-in-force would have included the employee's position.

An employer also need not accommodate an employee's service-related disabilities, if to do so would cause the employer undue hardship.

When must an employee apply for reemployment?

Under Federal law, if the employee's military service lasted for less than 31 days, the employee must report to work by the next scheduled shift, plus eight hours to allow

for a safe return home. If the service last more than 30 days but less than 181 days, the employee must report to work within 14 days after completing service. If the service lasted longer than 180 days, the employee must report to work within 90 days after completing service.

Illinois law may be construed to afford the employee with up to 90 days to apply for reemployment after any period of military service.

After an employee who has performed military service is re-employed, what protection does the employee have against future discharge?

If the employee's service lasted more than 30 days but less than 181 days, the employee cannot be discharged without cause for six months. Employees who served for 181 days or more cannot be discharged without cause for one year.

What other types of protections does the USERRA provide to employees?

Employment discrimination because of past, current or future military obligation is prohibited under the Act. Furthermore, employers are prohibited from retaliating against anyone who files a complaint, testifies, assists or otherwise participates in an investigation, or otherwise exercises any right under the USERRA.

The preceding information is offered by Fisher & Phillips LLP, a national law firm that represents employers in labor and employment matters.

Consumer fraud act ruling appealed to supreme court

The CATA and the IADA in Springfield have joined to contest a recent Illinois Appellate Court ruling which contends a provision of the state's Consumer Fraud and Deceptive Business Practices Act represents "special legislation" pertinent only to dealers and therefore is unconstitutional.

The ruling stems from a lawsuit filed against an area Chevrolet dealer over a used vehicle purchased in 1996.

An amendment that year to the Illinois consumer fraud act states, in part: "No award of punitive damages may be assessed . . . against a party defendant who is a

new-vehicle dealer or used-vehicle dealer within the meaning of Chapter 5 of the Illinois Vehicle Code, unless the conduct engaged in was willful or intentional and done with evil motive or reckless indifference to the rights of others."

According to legislative history, the act was amended because of abuse "as exemplified by situations in which simple mistakes by car dealers have garnered as much as \$20,000 in punitive damages."

The CATA/IADA brief to uphold the amendment will be considered by the Illinois Supreme Court.

More Chinese families take to the road

Oh, to be a dealer in China.

According to the state-controlled China Association of Automobile Manufacturers, February 2003 car sales totaled 141,200 vehicles, up 184 percent over the same month last year.

Extrapolating the numbers puts China on track to sell more than 1 million passenger vehicles this year.

Chen Hong, vice president of China's largest automaker, Shanghai Automotive Industry Corp., said

his company projects 150 million families to buy cars in the next 10 to 15 years.

That means nearly half the population would have access to a vehicle and could make China the number one car market in the world.

However, the infrastructure in China is not equipped to handle that many vehicles.

Other forecasters expect sales to level off unless the government commits a huge amount of resource to building and maintaining roadways.

Suit challenges taxation on employee vehicle purchases

A Chrysler dealer, with legal backing from DaimlerChrysler Corporation, won a court ruling which exempts manufacturer rebates on employee purchases from tax. The Illinois Revenue Department is expected to appeal the decision.

The department's policy is to treat payments from a manufacturer to a dealer in connection with an employee purchase as part of the "gross receipts" paid for the vehicle by the customer and therefore subject to retailers occupation tax.

The court decision overturns that policy and indicates that payment by DaimlerChrysler of 6 percent of the purchase price plus \$75 (pursuant to the DaimlerChrysler program) is not subject to taxation.

Dennis O'Keefe, the CATA's legal counsel, cautioned dealers from changing their practices of charging the tax until a higher court rules on the matter.

Nevertheless, O'Keefe said: "This win should be considered a positive step for both the dealer and for the employee purchasing the vehicle pursuant to the DaimlerChrysler program. Furthermore, while this ruling applies only to the DaimlerChrysler program, it is likely that, should it be upheld in a higher court, agreement might be had with the Department of Revenue on a broader application to similar situations with other automobile manufacturers."

During the appeal process, DaimlerChrysler indicated it would indemnify its dealers who do not pay tax on the manufacturer contributions.

Pickups

CONTINUED FROM PAGE 1

and is not legally an emancipated minor, the application must be accompanied by a statement, signed by the applicant's parent or legal guardian, consenting to the application.

If a vehicle has multiple owners and no owner is 18 or a legally emancipated minor, a parental statement of

consent is also required, unless one of the other owners is the minor's parent or legal guardian (HB 94).

- All insurance companies licensed in Illinois would be required, by July 1, 2004, to provide the secretary of state with a record of all motor vehicle liability policies in effect on the date the information is provided. Bill also provides for monthly reporting of all policies issued or canceled (HB 1568).

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