

## READING & RESPONSE

### MARCH 2007

**By: NIADA General Counsel Keith Whann**

#### · ***Federal Legislative Developments***

The month of December was a quiet month on the Hill. The President signed both the Tax Relief and Health Care Act of 2006 and the Tax and Trade Bill into Law while Lawmakers enjoyed their winter break. Members of Congress returned to Washington on January 3rd to officially convene for the 110th Congress. Sweeping into power in both the House and Senate, Democrats jumped into their "first 100-hours agenda," which consisted primarily of developing new lobbying and ethics rules. The House Lobbying Reform Package would ban providing gifts and meals to lobbyists, require pre-approval from the ethics committee for travel paid for by outside groups, prohibit the official use of corporate jets, require full disclosure of all earmarks, and create an outside group to enforce ethics laws. The Bill is likely to be one of the few bipartisan legislative measures to advance early on in the new Congress.

The next set of priorities will likely consist of passing some of the September 11th Commission recommendations, increasing the federal minimum wage, lowering interest rates on student loans, empowering the government to negotiate lower prescription drug prices for senior citizens and increasing the Corporate Average Fuel Economy Standards. These issues are sure to spark considerable debate. Republicans have already said that they will not permit a minimum wage bill to pass without some kind of small business tax breaks and the President has consistently opposed rewriting the 2003 Medicare Prescription Drug Bill. Additionally, there is no consensus among Members of the Senate regarding whether the CAFE Standards should be increased as a result of a legislative mandate or new authority granted to the Administration. Lawmakers will also feel pressure to take up some even tougher issues, such as finding an exit strategy for the war in Iraq, and must pass a new Budget Resolution, both of which may take considerable time away from other priorities.

It's early, but how Lawmakers interact now will set the stage for the remainder of the Session. Keep in mind that while Democrats have a 31-seat margin in the House, they only have a two-seat margin in the Senate, far short of the 60 votes needed to overcome filibusters and pass Legislation. Then there is the President, who has the most powerful of all legislative weapons- the veto.

#### · ***Federal Regulatory Activity***

##### FTC Issues Report to Congress Regarding FACT Act Studies

The Federal Trade Commission (FTC) issued its second interim report to Congress on December 5, 2006 concerning its studies on the accuracy and completeness of information

in consumers' credit reports. Under Section 319 of the Fair and Accurate Credit Transactions Act of 2003 (the FACT Act), the FTC must complete a total of five interim reports for members of Congress (one every two years from December 2004 until December 2012) and a final report is due in 2014. In the first report that was submitted to Congress in December of 2004, the FTC examined the history and current practices of the credit reporting industry, identified key areas where errors in credit report data can occur, reviewed and evaluated studies conducted to date on credit report accuracy and completeness, examined possible methodologies for conducting a more comprehensive study, and described a pilot study for testing a methodology for a nationwide survey.

Over the past two years, the Agency conducted a test survey with the help of a third party contractor. They randomly selected consumers to review their credit reports with an expert and identify potential errors. The consumers were then encouraged to dispute those errors that the expert felt could have an impact on their credit standing. Based upon the results of this initial study, the FTC has identified issues that need to be addressed further. For instance, they found that many consumers who alleged errors existed did not file a dispute and, therefore, FTC Staff could not evaluate the allegations. The FTC is now putting together a follow-up study to improve the design for the survey. The primary focus will be on evaluating consumers' experiences in identifying and disputing errors and being able to categorize errors by the type and seriousness in terms of potential harm to their credit standing. We will continue to monitor these studies on behalf of NIADA and its Members as the FTC's conclusions will likely impact both existing and future Regulations implemented pursuant to the FACT Act.

#### IRS Releases Guidance on Newly Passed Deductions

The 2007 filing season may begin on time, but recent changes in the Tax Law mean the IRS may not be able to process some individual and business tax returns until early February. On December 22, 2006, just two days after the President signed the Tax Relief and Health Care Act of 2006 into Law, the Internal Revenue Service (IRS) released new guidance to help taxpayers claim the extended deductions for state and local sales taxes, higher education tuition and fees, and educator expenses, and other tax advantages now available to taxpayers. The IRS has posted information concerning the newly passed Legislation on its website at [www.IRS.gov](http://www.IRS.gov) and plans to mail out a Publication in early January explaining how to take the deductions. The IRS is also encouraging taxpayers to file electronically, since electronic filing systems like e-File will be updated to include these changes.

#### **· Activity of Interest**

#### Settlement Related to Use of Drivers' Records Could Impact More Than 200 Million People

Eleven lawsuits filed in Florida against various Companies that gather consumer information on a national basis could affect more than 200 million people nationwide. The plaintiffs claimed that the Companies obtained and used their personal driver's license or vehicle registration information for marketing purposes without permission. After four years of litigation, all but two of the Companies named in the lawsuits have reached a tentative settlement agreement, and they are proposing that the Judge make the agreement apply

to anyone throughout the 50 States whose data was obtained by the Companies since April 1, 1998.

Each of the original plaintiffs in the cases would receive \$15,000 and their attorneys could get as much as \$25 million in costs and fees. While no other damages would be paid at the time of settlement, those individuals who have evidence of being harmed by misuse of their personal data could still file lawsuits. The Companies have also agreed to: Adopt safeguards to protect personal information made available from state motor vehicle agencies; include language in their contracts with customers stating that they will maintain the confidentiality of driver information and identify how the information may be used; set up educational programs for employees; and appoint an independent third party to evaluate and ensure continued compliance with applicable laws.

#### Employee's Theft Forces Owners to Sell Dealership

A Louisiana Dealer was forced to sell his store after discovering that the General Manager stole almost \$1 Million from the Dealership. The General Manager wrote at least 90 checks from the Dealership to two different marketing companies that he owned over a four-year period. He also falsified financial statements provided to two of the Dealership's lenders and one of its distributors. By the time his activities were discovered, the Dealership was \$5 million out of trust and a \$5 million savings account had been completely drained. In addition to civil charges brought by the Dealer's representatives for monetary damages, the General Manager faces federal criminal charges that include wire fraud, illegal monetary transactions and making false statements to a bank, which could result in a 150-year prison term and a \$3 million fine. This is a great reminder to all dealers to hire cautiously and continually monitor employees' activities-no matter how many years they have been there!

#### · ***Case of the Month***

#### Study Reveals Customers Are Happy With Their Buying Experiences: Let's Keep It That Way

This month we decided to skip the facts and findings and jump straight to the moral: If you put forth some effort at developing a compliance program, you can avoid learning the lessons that others you have read about in this section learned the hard way. What's more, you'll probably find that your customer satisfaction will increase, along with your bottom line profit. Despite the negative press dealers often receive from the media and consumer advocates, a new study commissioned by Automotive Retailing Today (ART) and conducted by Harris Interactive, revealed that dealers' customers report having a pleasant and satisfying car buying experience more often than not. They also found that there was a 35% difference between the number of positive experiences reported by the media and those reported by consumers themselves. Let's keep that trend moving in the right direction!

For dealers in many parts of the Country, the months of December through February are the slowest for sales, making this the ideal time to reflect on the past year and plan ahead. Based on what we have heard and seen ourselves during 2006, education (for consumers

and dealers alike) has played a large factor in this positive trend. Take a look back at the cases we have brought to your attention; then, while you are conducting those annual reviews of your employee's performances, plan to conduct one of your Dealership as well. Make it your New Years Resolution to follow through with the review and updating of your Dealership's paperwork. Stop saying you are going to audit actual deals to ensure that the documents are being properly completed and that computers are programmed to print information in the appropriate places and do it! Don't stop there either, update those job descriptions and employee handbooks, schedule training for employees, and block out some time to attend seminars and conventions yourself to stay apprised of legal, legislative and regulatory developments. If you need a little help getting started, visit [www.NIADA.TV](http://www.NIADA.TV) and take a look at the Compliance Day segments. Start with the Dealership Walk Thru segment and go on from there. The time and effort you invest now will pay dividends throughout the entire year!

Click [here](#) to unsubscribe

National Independent Automobile Dealers Association  
2521 Brown Blvd., Arlington, TX, 76006  
800-682-3837

## LOANER TEST DRIVE FORM

Test-drives and loaner cars continue to be of concern to all insurance companies writing Garage and Dealer Insurance. Fewer and fewer companies allow the use of loaner cars. Most insurance companies require accompanied test drives. Insurance company underwriters know that test drives and loaner cars are the cause of many of the incidents affecting claims on Dealer Insurance. Constantly we discuss with dealers the hazards and concerns over unaccompanied test-drives.

As a result of House Bill 2740, which has been Oregon Law since about 1999, dealers have an opportunity to reduce their exposure to potential auto vehicle liability claims caused by persons other than employees. This law now "limits liability of person engaged in business that loans, rents, donates, or otherwise makes available motor vehicle for use by another person pursuant to a written agreement". It "specifies that a person making a motor vehicle available is **not** liable for injury, death or damage that results from the use of a motor vehicle, *except* for injury, death or damage resulting from negligent maintenance."

What does this mean to dealers? It means if you use the Loaner Test-Drive Form, that OIADA has prepared, the person driving the car may be responsible for the accident and the resulting damage instead of it being the responsibility of the dealer insurance policy. The law goes on to state that any insurance that the person receiving a motor vehicle has, is considered primary and any insurance the dealer has is secondary or excess. Further it states if the person receiving the motor vehicle uses the motor

vehicle in the course of the person's employment, any insurance that is available to an employer of the person providing coverage for motor vehicles operated by employees of the employer is also primary, and any insurance available to the person providing the vehicle is secondary or excess insurance.

Actually, Dealer Insurance Policies already read this way. Most policies say the customer of the dealership is not covered by the dealer insurance policy unless he does not have insurance. However courts and an agreement between insurance companies have long used the "insurance follows with the car rule" and when someone else is driving an insured vehicle with the owner's permission the claim is paid by the policy covering the vehicle being damaged and no attempt is made to pass it back to the negligent driver. Until now!

Because of the efforts of your dealer association, we have a law that supersedes a long-standing method of settling claims. So dealers it is in your best interest to obtain the signature of each person driving your cars before an accident occurs. If you have a completed Loaner Test-Drive Form for each and every test-drive, you may be saving yourself and your insurance company from a costly claim.

All new laws must meet the test of time and the courts interpretation if it comes to that. It has been several years now that this law has been on the books. During this time we have had claims settled without the dealer insurance having to pay customer caused claims when the form is signed and on file with the dealer. We have had customer insurance challenge the Loaner Test-Drive Form. But the result in every instance has been the customer's personal insurance has responded. When no form is on file even though the customer has insurance and even when the Dealer Insurance policy reads that the customer is not covered for a claim or loss unless he has no insurance, the dealer insurance policy almost always has to pay the claim.

So it is critical that you get customers to sign a Loaner Test-Drive Form prior to every test-drive if you wish to avoid customer claims resulting against your dealer insurance policy.

If there is an accident, when reporting it, provide a copy of the form that you had signed before the loss occurred. The conscientious use of this form may significantly reduce future losses and claims for all dealers. The lower the claims the more we are able to help control the price you must pay for your dealer insurance.

As your insurance agent of record we aim provide the very best insurance available at a competitive price. We are here to provide courteous and prompt service. We look forward to the opportunity to work with you. "Service First" @ Hecht & Hecht Insurance, whatever your insurance need we are here to assist you. Please contact **Evelyn Hecht** 800.609.0979 / 503-542-1131 or **Larry Hecht** 800.608.0959 / 503.542.1128. [info@hechtinsur.com](mailto:info@hechtinsur.com).

# Power Sport HEADLINE NEWS

## Bills of Interest to ODOT

### **SB 49 (Critical)**

Sponsored by Senators DEVLIN, BATES **SUMMARY**

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editors brief statement of the essential features of the measure **as introduced**.

Prohibits operation of all-terrain vehicles by persons under 12 years of age. Restricts operation of all-terrain vehicles by persons 12 to 15 years of age based on vehicle engine displacement. Prohibits sellers of all-terrain vehicles from knowingly selling all-terrain vehicles for use by persons under 12 years of age or for use by persons 12 to 15 years of age in violation of engine displacement limitations. Punishes by fine of \$90.

Directs State Parks and Recreation Department to produce and provide safety information to retailers. Directs retailers of all-terrain vehicles to distribute safety information to buyers of all-terrain vehicles. **SB 49** was introduced by Adrienne Greene, coordinator for Oregon Safe Kids. Contact Adrienne Greene at 971-673-1001 or by mail to 800 NE Oregon St. #772, Portland, OR 97232 to further comment on State Park Proposals.

**Join OIADA in TOTAL OPPOSITION of this bill. Contact Addrieene Green who introduced the bill and the following Senators who support the bill and voice your opposition as well. Dr. Alan Bates, with the Oregon Senate at (503) 986-1703 or [www.alanbates.net](http://www.alanbates.net), or Deputy Majority Leader Senator Richard Devlin at (503) 986-1719 or [www.leg.state.or.us/devlin/homepage.htm](http://www.leg.state.or.us/devlin/homepage.htm).**

### **HB 2437**

Requires person to complete education requirements within three years prior to submitting application for issuance of vehicle dealer certificate.

**OIADA OPPOSITION AS WRITTEN** – acceptable with completing education on a yearly basis as apposed to a 3 year period.

### **HB 2063**

Directs Department of Transportation to issue titles to owners of Class 1 and Class 111 all-terrain vehicles. Creates offense of failure to title. Punishes violation with \$90 fine.

**OIADA OPPOSITION AS WRITTEN** acceptable if written to allow for two riders for the purpose of instruction with the person under twelve being in the front of the driver. Otherwise, how else are you ever to train a person to ride.

**HB 2062: OPPOSITION AS WRITTEN** Needs clarity as written, it needs to state a DOT certified helmet, the law currently is helmets must be worn by 18 years and younger and would extend it to all ages. No opposition if "DOT certified helmet" is added.

**OIADA has NO OPPOSITION BUT A QUESTION ON THE USE OF FUNDS RECEIVED.**

The Oregon Parks and Recreation Department (OPRD) has proposed four new laws for the 2007 Oregon Legislature. Each proposal deals with some aspect of ATV safety or protection on public lands. Based on recent trends, the department has decided the only responsible course of action is to propose laws to improve rider safety. Below is the four proposals and their application.

1) **Passengers** – Most ATV's are not designed to carry passengers. Attempting to carry passengers on those ATV's can make them unstable. Accidents involving ATV's with passenger killed 15 people between 1984 and 2004.

**Proposal** – Passenger restrictions for Class I and III all terrain vehicles. Only vehicles designed to transport more than one person will be permitted to carry passengers. Manufacturers state whether or not a vehicle is suitable for passengers.

2) **Helmets** – A recent Consumer Products Safety Commission study reported, “Helmets could have saved the lives of nearly 25% of the people who died from head injuries in ATV-related accidents.” Currently only riders under the age of 18 are required to ride a helmet.

**Proposal** – Helmets would be required for all riders and their passengers on Class I and Class III all-terrain vehicles, regardless of age, on land open for public use.

3) **TITLING** – Oregon has no law that requires proof of ownership when selling a used ATV. As such, stolen ATV's may be sold easily in Oregon.

**Proposal** – Mandatory Class I and Class III all-terrain vehicle titling. This would require all new or used Class I and Class III all-terrain vehicles purchased after January 1, 2008 for recreational purposes on public lands in Oregon be titled through the Oregon Department of Transportation.

4) **SAFETY TRAINING** - As ATV riding becomes more popular, deaths and injuries are increasing. Over the last 20 years, 109 people have died in ATV accidents in Oregon. Safety training is available but very few people complete the course.

**OIADA Stance** – We support it as long as the funding and educators are in place before making it mandatory.

**Proposal** – Under Oregon law, all operators of Class I and Class III vehicles would be required to complete a certified training to operate ATV's on public lands in Oregon.

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Contact Also contact your OIADA representatives Gary Sargent at 503-775-9445 or Jose Pinomesa at 503-789-0438. Our lobbyist is working hard for OIADA on these issues.

NIADA Message

By: Mike Linn

Title: Tune Into NIADA.TV

Sub: NIADA.TV is available 24/7. Log on anytime to view the latest industry news and educational programs.

NIADA.TV is getting a new makeover. What does this mean to you? Well it means that you will no longer have to pay a subscription fee to watch educational programs. This is a new benefit of membership. The member channel and the education channel will be combined into one network of educational training programs available exclusively for NIADA members, employees and industry leaders and vendors. The network will include educational programs, industry news programs, industry highlights and live broadcasts of industry events along with educational sessions from NIADA, State Association conventions and many other industry related events.

The network is going through last stages of production and will be available to you in the first quarter of 2007. You will be receiving a letter in the mail from NIADA.TV that will contain your free codes so you will have complete access to everything this network has to offer. The new codes are completely transportable which will allow you to access the network from any computer with a high-speed internet connection.

Also during the first quarter, NIADA.TV will be launching its newest network, Automotive Consumer Television (ACT). ACT will provide consumers and car buyer's free access to hundreds of auto-related short program segments and helpful hints. Programs on this network will cover auto research, auto buying tips and paperwork issues, as well as post-purchase programs and tips covering topics such as warranties, insurance, service issues and auto maintenance. One of the special programs designed for ACT is "Ask The Car Counselor" with Keith Whann. ACT will promote to the consumer that they develop a relationship with dealer's that display the NIADA or State Association logo. Consumers will also have access to a database listing of NIADA's Certified Master Dealers (CMD's).

NIADA.TV is very excited about the launching of this free service to dealers, salespeople, auto auction executives, allied industry executives and consumers. Stay tuned for more information about NIADA.TV, which will be available in the December issue of *Used Car Dealer Magazine*.

"Kelly's Korner"

NIADA *Oregon Dealer News*

March 2007

**Going for the Goals**

By Jan Kelly

The first quarter of the New Year is nearly history. Are you gaining on your goals? Goals are sometimes handed to F&I professionals with a percentage to reach but no markers to guide them. Even when the sales department production goals remain the same, the bar for F&I will typically rise. So let's assume you want 6% of the sales volume as F&I income. How will you get there?

First, think SMART. Set your Specific • Measurable • Attainable • Relevant • Trackable F&I goals as *percentages of penetration*. One dealer I worked for in my retail years taught me that if the percentages are there, the dollars follow.

F&I managers and the sales manager are members of the same team. They are jointly accountable for the number of *financed deals* expressed as a percentage of retail sales.

In the *products* arena, measure service agreements, prepaid maintenance, tire and rim coverage and protective coatings as a percentage of retail sales. Treat equity protection such as GAP and credit insurance as a percentage of financed deals.

Now take a look at the F&I production for last year. Your new goals should reflect a *small increase in percentages over a 30-60 day period*. Make sure the goals are out of reach, but not out of sight. Reasonable goals promote growth and build self-esteem. When people can reach their goals, they gain confidence and are willing to increase them the next time. Impossible goals defeat the team before the race gets started.

Do you track the progress of your F&I production? Do you review reports daily, weekly, or monthly? Senior management needs to *track progress daily* in the form of a DOC report and comment on the percentages. If the numbers are on pace say so. Let the producers know you take notice of a job well done. If the numbers fall short, start coaching.

Job aids such as goal cards can serve as daily reminders to stay the course. The goal cards we developed for the entire sales department sometime ago are still a popular item with our clients. The cards are double-sided and feature a daily work plan on one side and 30-day goals on the other. Design your own goal aids or give us a call to learn more about ours.

Goals unattended are no more than good intentions unless they are routinely measured and monitored. So set SMART goals and do get rolling, because when the going gets tough, the tough start showing!

*Article written by: Jan Kelly, President of Kelly Enterprises. She is a sales trainer and consultant, convention speaker, and writes frequently for industry publications. For information about training opportunities telephone 800.336.4275 or contact Kelly Enterprises at [www.JLKelly.com](http://www.JLKelly.com).*

### **Kelly Enterprises F&I Training Calendar**

#### 4-Day F&I Seminar Schedule

April 23-26	Portland, OR
May 8-11	Minneapolis, MN
July 24-27	Baltimore, MD

October 23-26	Portland, OR
November 6-9	Dallas, TX

2-Day Advanced F&I Seminar Schedule

March 15-16	Atlanta, GA
June 7-8	Portland, OR
August 9-10	Portland, OR
September 13-14	Kansas City, MO
December 13-14	Portland, OR

## READING & RESPONSE FORM

### March 2007

- | ARTICLE:          | QUESTION  |
|-------------------|---|
| LLR-              | For dealers in many parts of the Country, the months of October through December are the slowest for sales.<br>(1) True _____ False _____   |
| Hecht & Hecht     | If you have a completed <u>Loaner Test-Drive</u> form for each and every test-drive, you may be saving yourself and your insurance company from a costly claim.<br>(2) True _____ False _____   |
| Power Sports News | Senate Bill 49 prohibits operation of all-terrain vehicles by persons under 12 years of age.<br>(3) True _____ False _____  |
| NIADA.TV          | NIADA.TV viewers (available to all OIADA members) will no longer have to pay a subscription fee to watch educational programs.<br>(4) True _____ False _____  |
| Power Sports News | <b>Proposal</b> – Mandatory Class I and Class III all-terrain vehicle titling. This would require all new or used Class I and Class III all-terrain vehicles purchased after January 1, 2008 for recreational purposes on public lands in Oregon be titled through the Oregon Department of Transportation.<br>(5) True _____ False _____ |
| Kelly's Korner    | Reasonable goals promote growth and build self-esteem. When people can reach their goals, they gain confidence and are willing to increase them the next time.<br>(6) True _____ False _____  |
| NIADA.TV          | NIADA is launching its newest network, Automotive Consumer Television (ACT). ACT will provide consumers and car buyer's free access to hundreds of auto-related short program segments and helpful hints.<br>(7) True _____ False _____   |

I certify to OIADA that I have personally read these articles in Oregon Dealer News Magazine issue for  
**Mar. 2007 Continuing Education Packet # 3-07**

**NOW DROP DOWN AND SEE HOW YOU DID!**

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