

NOZZLE & WRENCH

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KIRK'S CORNER

Legislative Update – Maryland



By Kirk McCauley,
Director Of Member
Relations &
Government Affairs

As of February 8th, WMBA/CAR is tracking 38 bills out of 2600 introduced so far and have turned in written testimony or testified on 6 bills that effect our industry. Two of the bills HB154 and HB158 affected Maryland State inspections and ASED asked for our support on those. At the same time we opened a discussion on periodic inspections with some meetings to follow. There is also a bill SB 566 in by senator Mary Washington for a 2-year registration inspection. I have not been able to talk to her, but the bill is not going anywhere, cost is to high and she has not consulted with ASED at all nor contacted any trade groups to my knowledge. I will keep you posted on the progress or lack thereof.

- Bill SB220 would make you post your highest price of Regular gas.
- Bill SB 3 would add \$2.00 tax to a pack of cigarettes and 86% tax on ESD products.
- Bill HB 3 would ban all flavored tobacco products and flavored vape products from sale, no exceptions, including menthol.

WMBA/CAR does not defend the tobacco companies or vaping industry. The problem is banning Menthol cigarettes (Newport's and others) and flavors in cigars. This will bring organized crime to our towns to sell those products and raising Maryland cigarette tax to \$4.00 a pack will do the same. Street sellers can make more from selling Virginia cigarettes than opioids or heroin, with little penalties. These sellers ask for no I.D. and with the established social networks, the underage will have no problems finding locations, along with long time smokers who choose to smoke, with menthol being their choice. Retailers lose and no state taxes are collected. We would also be making criminals out of honest people for buying untaxed tobacco.



District of Columbia

The D.C. council has introduced a beverage tax of 1.5 cents per ounce. This comes from a city that has close to a billion dollars in surplus money. WMBA/CAR is part of a coalition to convince the city council to scrap this ill thought legislation. You can go to the alliance website <https://afforddc.com/>, send a message to the D.C. council and download flyers to post and keep your customers informed. Our coalition has made progress, but your email will make a difference.

Continues on page 4

- **SB233 is companion bill to HB 3 and would do the same**
- **HB1543 would charge all carbon fuels a tax that would escalate every year**
- **SB 912 is a companion bill to HB1543**

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A Division of the WMDA

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Gonzales Poll on Regional Plan

In a newly released Gonzales poll, Marylanders overwhelmingly reject the concept of a regional authority that would impose gasoline taxes and decide how to use those gas tax revenues to fight climate change. Seventy-three percent of Marylanders reject increasing the gasoline tax in the state to fight climate change. An even larger number of Marylanders (78%) oppose the idea of Maryland being part of a regional group that would have the authority to restrict the sale of gasoline (63% “strongly oppose” and 15% “somewhat oppose”). Clearly, Marylanders across all demographics and all parts of the state are united in their opposition to regional state gasoline controls and gasoline taxes. Go to wmda.net and click on Gonzales Poll.

Legislative Update – Maryland

Continued from page 1

Delaware

On January 31st WMDA had a meeting with the Secretary of Delaware Department of Natural Resources and Environmental control (DNREC) Shawn Gavin to talk about the Transportation Climate Initiative. The Secretary advised us that Delaware is leaning toward not participating in the Cap and Invest part of the TCI agreement which was good news. On the legislative front there is not much going on at this time but will heat up shortly.

Action Alert – Response needed on Transportation Climate Initiative!

This Action notice on TCI might be the last chance that businesses get to comment on a program that will hurt our service stations, convenience stores and automotive repair industry. TCI has been the best kept secret in town and really the whole Mid-Atlantic – North East Region. TCI plans on reducing gas and diesel sales by oil companies in the form of issuing a limited number of annual permits to emit carbon dioxide (gasoline & diesel sales). This becomes the “cap” on emissions and companies that don’t use all their permits can sell or trade unused permits to other companies. Permits are bought at Government auctions and volumes are reduced every year. As the volume of the permits is reduced, the price at auction goes up. This is simple supply and demand. I see no scenario where the oil companies will not pass these costs down to retail level.

Twelve states and the District of Columbia started this program that is basically a carbon tax

and New Hampshire has already dropped out, so we are down to eleven states and D.C. More states are talking about dropping out because of costs to consumers and limited benefits. TCI creates winners and losers in all participating states. Winners are the Electric vehicle infrastructure and companies that sell electric power, rebates for EVs, and manufactures of EVs. The losers are commuters who reside in areas of no public transportation, low income earners that will pay more for fuel, repair facilities, service station, convenience stores, businesses that pay a surcharge for delivery of the product and our customers when charges are passed along.

At a climate change meeting at the Maryland Department of Environment on January 21st I asked a simple question – who oversees Maryland planning on the Transportation Climate Initiative. Is it Secretary of Environment Grumbles, Tad Aburn MDE Air and Radiation Management, Georgetown Climate Center or Governor Hogan? All were there except Governor Hogan and I did not get an answer, just blank stares. I asked another simple question – where is the money for this start up coming from and who will make the decisions on the cost of volume permits and day to day decisions to run a massive program, and again no one would answer. When you cannot receive an answer on management or funding, someone is hiding something.

Maryland air quality has been improving for 20 years by MDE calculations and will continue to

TCI plans on reducing gas and diesel sales by oil companies in the form of issuing a limited number of annual permits to emit carbon dioxide (gasoline & diesel sales).

improve with Corporate Average Fuel Economy (CAFÉ) Standards, Cleaner power plants and electric vehicles as the products gets better, more reliable and more affordable to broader range of customers. My point is we are satisfied with EV competition but not when the state adds further costs to motor fuel. These additional costs harm the state’s largest employer, small businesses, and ultimately the consumer. Rural communities do not have options for transportation. Let EV development improve and sales will follow, but let’s not subsidize private industry anymore than we have already.

Is MDE giving us all the data or does their data show that air quality is improving enough without this massive and expensive undertaking they call TCI? According to MDE up to 70% of Maryland’s greenhouse gases (GHG) are coming from up wind states, 36 power plants in West Virginia, Ohio, Pennsylvania, Kentucky and Indiana. Maryland has filed a law suite with EPA to bring these states in compliance. This means whatever we do with TCI we are only affecting 30 percent of our greenhouse gases.



Take time to read and respond with comments to Georgetown Climate Center, your business could depend on it. Mid Atlantic Petroleum Distributors (MAPDA) have supplied the following information with links to send in comments. Deadline for comments is February 28th, 2020, please do it now. ■



The Governors of the Northeastern states including Governors Hogan and Carney have created the Transportation & Climate Initiative to develop a plan to reduce the sale of gasoline by 30% to reach aggressive, state-mandated caps on emissions. The plan will upend our industry with new requirements, mandates, and taxes and threatens to destroy hundreds of businesses and thousands of jobs. Our members must consider a response to the plan and policy debate regarding the environmental impacts of gasoline and Diesel. This debate has been playing out on a national stage and is now center stage in Maryland, Delaware and the entire Northeast. Without a clear response from WMDA/CAR members and allies, this initiative will move forward unchecked.

Here is what you need to know and how we need to act:

Action checklist:

Opposing comments need to be submitted by February 28, 2020.

- ☐ Read the pending plan and MOU
- ☐ Review Talking Points
- ☐ Submit Comments

Use the Talking Points (see above) and submit your comments here.

www.transportationandclimate.org/main-menu/tci-regional-policy-design-stakeholder-input-form

www.transportationandclimate.org/main-menu/tcis-regional-policy-design-process-2019

What do you do?



By Sandi Weaver
BA Auto Care, Inc.

I've been part of ASOG "Auto Shop Owners Group" on Facebook for a few years. It's an excellent resource for a shop owner to learn from each other and to grow. Each member of the group gets something different out of being a member. Some contribute their knowledge to help new shop owners, others absorb as much information as they can, while others just read and help where and how they can.

This past week a shop owner in the Midwest fell ill and had been off of work for over two weeks with no signs of improving. He owns a small shop with a few employees but he's the diagnostic tech and the one who runs the shop. Being out for so long has really taken a toll on his shop, the employees and his wife. His wife posted on ASOG asking for help and she was obviously distressed from worrying about her husband (they can't seem to figure out what is wrong with him) and having to deal with the shop at the same time. It's enough to overwhelm even the most seasoned shop owners.

I feel so much for this family, their business and their employees. They didn't know that this was going to happen or the effect something like this would have on their livelihood. I wanted to help but had no idea how and I also wanted to know if there was insurance or anything out there that could help other shop owners in this situation or similar. I turned to WMDA/CAR's Insurance sponsor Day, Deadrick and Marshall to learn more.

I learned a lot while speaking with Matt Deadrick and Jack. Here's the low down on insurance you can get.

Group Short Term Disability Insurance:

An example of a waiting period until injury benefits begins is "1st consecutive day of disability".

An example of a waiting period until sickness benefits begins is "8th consecutive days of disability".

Individual Disability Income Insurance:

Waiting periods are normally from 30-365 days.

If the owner of a shop were to write a Group Disability policy for themselves and their employees- the benefits would react faster than on a traditional, 'Individual' policy. The benefits would continue usually for up to 13 weeks.

Another option for a shorter wait time is Aflac. Although Aflac will only help you personally and not the company. Anything is better than not having any income when you are sick or injured.

While the above insurance options won't help the shop owner in the Midwest, it can hopefully help some of you. For more information or if you have any questions, stop by Day, Deadrick and Marshall's booth at Training Day (Feb. 29th, 2020) at CCBC or call them anytime at (301) 937-1500. ■



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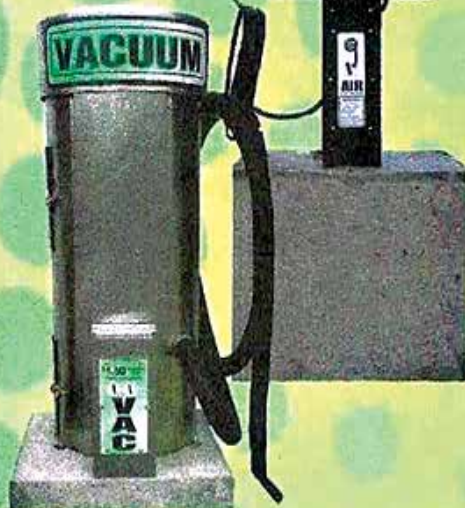
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SATURDAY, FEBRUARY 29, 2020 – 8AM TO 4PM

Community College of Baltimore County, Catonsville, 800 S. Rolling Road, Baltimore, Maryland

MORNING SESSIONS: 9:00 a.m.–Noon

- 1 Braking Systems**
Presenter: Jim DeAngelis, CCBC
- 2 Advanced Driver Assistance Systems and Calibration**
Presenter: George Lesniak, Director of Sales & Training, ADAS
- 3 Growth through Generation Change**
Presenters: William Hillmuth Jr (Founder & Former VP); William Hillmuth III (2nd Gen. VP), Hillmuth Auto Care; and attorney Jim Parsons, Lynott, Lynott & Parsons, P.A
- 4 Supercharge Your Front Counter Skills by becoming a Customer Relationship Manager**
Presenter: Matthew Winslow, Automotive Training Institute, Senior Instructor / Content Developer
- 5 Wheel of Fortune**
Presenter: Dan Gilley, RLO Training

AFTERNOON SESSIONS: 1:00–4:00 p.m.

- 6 Developing a Wheel Retention Program & TPMS**
Presenter: Kevin Rohlwing, Senior VP of Training, Tire Industry Association
- 7 Advanced Driver Assistance Systems and Calibration**
Presenter: George Lesniak, Director of Sales & Training, ADAS
- 8 Leading and Managing Effectively**
Presenter: Matthew Winslow, Automotive Training Institute, Senior Instructor / Content Developer
- 9 Seven Steps to a Sale**
Presenter: Dan Gilley, RLO Training

ALL-DAY SESSIONS: 9:00 a.m.–Noon & 1:00–4:00 p.m.

- 10 Advanced Electrical Diagnosis**
Presenter: Harold Babb, CCBC
- 11 Maryland State Inspection**
Presenter: William Hemling, CCBC

Lunch catered by Mission BBQ.

**See next page for
session descriptions.**

REGISTER TODAY!

Attendee 1: _____

Attendee 2: _____

Attendee 3: _____

MORNING # _____ AFTERNOON # _____ ALL DAY # _____

MORNING # _____ AFTERNOON # _____ ALL DAY # _____

MORNING # _____ AFTERNOON # _____ ALL DAY # _____

CONTACT INFORMATION

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Total Amount Due: \$ _____

(*Breakfast, Lunch & Snacks included with registration)

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Email: dwebster@wmda.net or ssripada@wmda.net



TRAINING DAY 2020 SESSION DESCRIPTIONS

MORNING SESSIONS – 9:00 a.m.-Noon

1. Braking Systems

Presenter: Jim DeAngelis, CCBC

Session for Auto Technicians.

- Electronic Parking Brake: Cable pull and motor-o-caliper
- Electronic Brake Booster Systems

2. Advanced Driver Assistance Systems and Calibration

Presenter: George Lesniak, Director of Sales & Training, ADAS

Session for Auto Technicians. Vehicles with Advanced Driver Assistance Systems have been around for nearly 20 years, however the number of ADAS equipped vehicles on the road has increased dramatically. Significantly increasing the number of ADAS calibrations which need to be performed. This class will discuss these systems, their operation and challenges/opportunities.

- Sensing and imaging technology used by various driver assistance systems.
- ADAS technologies, adaptive cruise control, forward collision warning, automatic emergency braking, rear collision warning, blind spot detection, around view monitoring and night vision.
- What you need to perform ADAS calibrations in your shop.
- Dynamic vs. static calibration and where the industry is heading.
- A virtual demonstration of a lane departure warning system calibration utilizing the Autel MaxiSys ADAS calibration system.

3. Growth through Generation Change

Presenters: William Hillmuth Jr (Founder & Former Vice President); William Hillmuth III (2nd Generation Vice President), Hillmuth Auto Care; and attorney Jim Parsons, Lynott, Lynott & Parsons, P.A

Session for Shop Owners. A thought-out plan, for succession, is essential to make a transition successful. The Hillmuth Family has learned many lessons throughout 40 years, expanding to 4 locations in Howard and Montgomery Communities. The family dynamic is real, hard, and tough to deal with everyday building a business. They help you to be accountable and push you to be better. What type of family culture does your shop have? Their mission is to serve and to lead their team to success. You will learn:

- Why do you want to grow, And why should you?
- How to start the Succession Plan, and when.
- How do you keep your current locations running and consistent?

4. Supercharge Your Front Counter Skills by Becoming a Customer Relationship Manager

Presenter: Matthew Winslow, Automotive Training Institute, Senior Instructor/Content Developer

For Owners, Managers, and Service Advisors.

- Discover how to build rapport instantly.
- Learn how to overcome the 5 most common price objections.
- Turn 1st time customers into long term service clients.
- Discover how to create loyal customers who return for more services regularly and write positive reviews about you to help you grow your business.

Most shops struggle with getting their technicians to do consistent courtesy checks. In this exciting 3-hour session, you'll learn how to turn a dysfunctional courtesy check process into a profit procedure that will increase your sales make your techs happy and keep your customers coming back long term.

This new advanced class will give you critical skills to become a world class service advisor in today's demanding market. **Don't miss it!**

5. Wheel of Fortune

Presenter: Dan Gilley, RLO Training

For Owners, Managers, and Service Advisors. Work can be overwhelming at times, like the merry-go-round spinning out of control. Shops fulfill customer requests, using shop resources, to achieve their business objectives. To achieve your business production goals you must understand how to balance Customer Demand, Business Resources, and Business Results. This course will give you a way of seeing the dynamics that drive the auto repair business through three-spoke wheel paradigm, so that you'll leave this session with a set of tools, that when implemented, will have a profoundly positive affect on the outcome of your shop's production.

AFTERNOON SESSIONS – 1:00-4:00 p.m.

6. Developing a Wheel Retention Program & TPMS

Presenter: Kevin Rohlwing, Senior VP of Training, Tire Industry Association

Session for Auto Technicians. It takes a lot more than a torque wrench to keep the wheels on a vehicle. If the condition of just one component is questionable, then the correct torque may still result in loose wheels even when everything else is serviceable. In other words, there are a lot of variables that ultimately determine if the correct torque generates the correct clamping force. The best practice is to develop a wheel retention program that will effectively do the job on a consistent basis, which is why TIA created the RIST (Remove, Inspect, Snug, Torque) procedure. This session will explain each step in the RIST process and demonstrate how it affects the torque and clamping force. It will conclude with a discussion on the real-world liability associated with wheel installation and the steps that service providers can take to protect themselves in the event of an accident that leads to a lawsuit.

7. Advanced Driver Assistance Systems and Calibration

Presenter: George Lesniak, Director of Sales & Training, ADAS

****See description listed in AM session #2**

8. Leading and Managing Effectively

Presenter: Matthew Winslow, Automotive Training Institute, Senior Instructor/Content Developer

For Owners, Managers, and Service Advisors. In this fast-paced course, Matthew Winslow shares secrets on how to transform your employees from unmotivated individuals into a high performance service team!

- Uncover the secrets between Leading Vs Managing people!
- Discover secrets on how to lead people effectively to align them to your agenda and unleash their energy!
- Discover key types of Power in your business. Motivate your people by understanding how the human brain works!
- Bond your people to you by creating a tribal environment!
- Come learn how to change your people's beliefs so you can change their behavior forever!

This course is for anyone that needs people to follow them into any situation. This is truly a new concept in Leadership that has been used since the beginning of time with tremendous success. Join us and learn how ATI has been helping shop owners and managers change their people's behavior.

9. Seven Steps to a Sale

Presenter: Dan Gilley, RLO Training

For Owners, Managers, and Service Advisors. To provide outstanding customer service and sales for the shop, advisors need to follow a consistent sales process. This class gives the advisor the seven steps that, if followed, will lead to higher customer satisfaction as well as increased sales.

ALL-DAY SESSIONS – 9:00 a.m.-Noon & 1:00-4:00 p.m.

10. Advanced Electrical Diagnosis

Presenter: Harold Babb, CCBC

Session for Auto Technicians.

- Next step from basic electrical
- Code diagnosis
- Following diagnostic Flowcharts
- Schematics and RPO Codes
- Meter diagnosis

11. Maryland Safety Inspection

Presenter: William Hemling, CCBC

Session for Auto Technicians.

Outlook For 2020 WOTC Campaign



By Roy Littlefield IV

SSDA-AT continues to fight for WMDA/CAR on the federal level to preserve WOTC, a tax credit that so many businesses in our industry are using. The Work Opportunity Tax Credit (WOTC) is a Federal tax credit available to employers for hiring individuals from certain target groups who have consistently faced significant barriers to employment.

Renewing WOTC will be hyper-challenging this election year, not only because we'll be lobbying candidates face-to-face at every opportunity (congresspersons and senators are more accessible during an election campaign), but also because we'll have to confront the issue of the Federal government's running trillion dollar annual deficits now.

The deficit will be the major factor in every bill that costs money, which means encountering more arguments to retrench, and more questions about the \$19 billion ten-year cost of WOTC.

The candidate that holds the power to wreck our plans is the nation's deficit-cutter-in-chief, President Trump, and more specifically the president's men on the hill, Treasury Secretary Steven Mnuchin and White House Legislative Director Eric Ueland. The more tight-fisted they are, the tougher our job.

In a few days, the President will issue his budget for FY 2021. It'll be a balanced budget based on around 3 percent economic growth, continued improvement in the workforce participation rate, and deep funding cuts for civilian agencies and social programs – a similar package as earlier years.

The President will also propose a trillion dollar infrastructure program and a tax cut for the middle class, with costs covered in part by revenue attributable to the tax cut, plus private sector participation in infrastructure development.

Hardly any tax extenders have been included in a Trump budget – not funding them is the same as calling for their cancellation. Certain conservative organizations – Heritage Foundation, AEI, Committee for a Responsible Federal Budget, the Koch organization, and others – are supporting this policy. We're always alert to counter their statements.

The fact that the President's budget will be dead-on-arrival on Capitol Hill doesn't help us because, when House and Senate negotiate on any bill, the White House is a party to the talks since the President has the veto – Secretary Mnuchin or Mr. Ueland show up on the Hill with facts and figures crunched by OMB to make their case.

A month ago, we prevailed over Mnuchin/Ueland through good work mobilizing bi-partisan support in both houses, especially in the tax-writing committees. But the



The President will also propose a trillion dollar infrastructure program and a tax cut for the middle class, with costs covered in part by revenue attributable to the tax cut, plus private sector participation in infrastructure development.



White House has staying power, and with trillion dollar deficits we'll have to keep our support in Congress from eroding.

Our goals remain the same – make WOTC permanent or enact a six-year extension, with specific improvements. We'll pick up where we left the talks last year, urging Ways and Means Chairman Neal and Finance Committee Chairman Grassley to agree on a tax measure making some extenders permanent, while compromising on Democrats' repeated demands for expansion of the Earned Income Tax Credit and Child Tax Credit.

Should the infrastructure bill falter and no stand-alone tax bill emerge, we'll work to pass a long-term extenders bill on one of the FY 2021 appropriations measures due by September 30th.

September 30 may stretch to December 20th if the Appropriations Committees fall behind writing their bills, as in past years. But if the Senate can finalize impeachment this week, appropriators will have a huge head start because, due to partisan differences, a joint (House and Senate) congressional budget is impracticable, thus each house will write its own budget. Budget committees can start now because the top-line spending ceilings for FY 2021 have already been



agreed – they were specified in law last summer.

By launching our campaign when the impeachment distraction ends, we may be looking at the prospect of permanent WOTC, Empowerment Zones, and



Indian Employment Credit, or a long-term extension of these, as early as September 30 if the tax committees cooperate and the White House doesn't threaten a veto.

Preserving WOTC will remain a priority for WMDA/CAR. ■



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SECURE Act



By Roy Littlefield

The SECURE Act, enacted into law on December 20, 2019, changed a number of retirement plan provisions, but will also have a significant impact on estate planning for those who have saved meaningful amounts for their retirement. Included will be ideas on how to make up for the reduction in value of retirement benefits for children/grandchildren caused by the elimination of the stretch IRA.

Major Retirement Plan Changes

Even though the law has been heralded as a major retirement plan law, almost all of the retirement related changes are fairly minor.

The one provision that could prove to be important is the open multiple employer plan, better known as a “MEP.”

The concept of a MEP is that a group of plans will band together and by doing so will enjoy lower plan administration costs, lower investment fees in mutual funds investments, reduced fiduciary responsibility and will no longer be burdened with filing annual IRS forms.

The SECURE Act removed two major roadblocks which in the past kept small businesses away from joining MEPs. Plan administrators have cast doubts on the ability of a MEP to reduce administrative fees, but it appears the other advantages will prove to be significant. What is not clear is how much flexibility with respect to investments and plan design an employer will have to give up to join a MEP. Some contend that while MEPs may not attract significant numbers of new plans, they are likely to attract a number of existing retirement plans from companies eager to reduce fees, fiduciary liability and some administrative burdens.

It is clear that many insurance companies, brokerage houses and associations will set up MEPs.

Other changes include:

- With respect to individuals who attain age 70 ½ after December 31, 2019, the required beginning age for required minimum distributions (RMDs) from retirement plans and IRAs has been moved back from age 70 ½ to age 72. This means that people who did not attain age 70 ½ before December 31, 2019, will be able to postpone taking out RMDs for a year and a half. Congress recognized that life expectancy has increased over the last 60 years, but of course life expectancy has increased more than 1 ½ years during those years! While this is a welcome change, moving back the required beginning date for taking out distributions from an IRA or a retirement plan by only a year and six months is not all that exciting.
- Starting this year, plan participants can take a penalty-free distribution from a defined contribution plan account (such as a profit sharing plan or a 401(k) plan) of up to \$5,000 within one year after birth or legal adoption of a child, with an option to repay under certain circumstances. It is not clear whether this is a mandatory



RETIREMENT

The SECURE Act allows a business to adopt a retirement plan up until the due date (including extensions) of the tax return for the taxable year and treat the plan as if it had been adopted on the last day of the taxable year.



provision which a plan must adopt or whether it is up to the employer to decide to allow this type of withdrawal. This new provision takes away the ten percent early withdrawal penalty for this type of withdrawal, but the distribution will still be taxable.

- For plan years beginning after December 31, 2019, the annual safe harbor notice for the 401(k) non elective safe harbor (this is the 401(k) safe harbor that requires a 3% employer contribution) is eliminated. By making a 3% non elective 401(k) safe harbor contribution, the IRS 401(k) discrimination rules are not applicable to the plan. The notice is still required for a safe harbor matching contribution.
- Before the SECURE Act there were stricter rules as to when a plan had to adopt a 401(k) safe harbor (as a general rule, notice that the plan was or might be safe harbored had to be given before the beginning of the plan year). For plan years beginning after December 31, 2019, the SECURE Act allows the employer to safe harbor a 401(k) plan before the 30th day before the close of the plan year. This new provision will allow an employer to determine that if the plan was

going to fail the 401(k) testing, then up to 30 days before the end of the plan year it could adopt the 3% non elective safe harbor and retroactively have the safe harbor rules apply to the beginning of the year. This would allow highly compensated employees to make the maximum 401(k) contributions in that year regardless of the contributions made by the non-highly compensated employees. Employers could monitor the employee contributions going in to the 401(k) during the year and adopt the safe harbor provision if needed to allow the highly compensated employees to keep their contributions. Even up until the end of the following plan year, the company can retroactively adopt the safe harbor provisions – but the 3% safe harbor contribution must be increased to 4%.

- For plan years beginning after December 31, 2020, the SECURE Act will allow part-time employees who have worked 500 hours over a consecutive three year period to make 401(k) contributions. No employer contributions would be required to be made for these individuals and they could be excluded from IRS

discrimination tests. Plans could still require part-time employees to attain age 21. Years starting January 1, 2021 will be used to determine if an employee has worked 500 hours per year over the three consecutive year period. This means that the first time part-time employees must be allowed to contribute to a 401(k) plan under this provision is the 2024 plan year. Plan administrators are going to need a lot of guidance from IRS to figure out how to make this provision work - for instance, what happens when employees go back and forth between full and part-time status?

- The SECURE Act allows a business to adopt a retirement plan up until the due date (including extensions) of the tax return for the taxable year and treat the plan as if it had been adopted on the last day of the taxable year. As long as a retirement plan is adopted on the last day of a taxable year, it can have an effective date retroactive to the beginning of that year. This provision is effective for tax years beginning after December 31, 2019. Prior to this new provision, a retirement plan had to be adopted by the

Secure Act

Continued from page 11

last day of the taxable year - thus, this provision will give companies more time to decide to adopt a plan. This provision is likely to be used by a smaller company which ends up with more profit than expected in a taxable year, particularly if the profit is determined after the close of the tax year.

Other provisions include:

- An increase in the automatic 401(k) contributions limit from 10% to 15%. Companies are already requesting transition relief and additional guidance from IRS with respect to this provision due to its effective date of plan years beginning after December 31, 2019.
- Defined contribution plans (profit sharing plans, 401(k) plans) will be required to give participants an annual estimate of the monthly income their account balance would purchase if the participant selected an annuity - even if the plan does not provide for an annuity option. Both a joint and survivor annuity (an annuity which will pay out during the lifetime of the participant and then to surviving spouse) and a single life annuity for only the participant must be illustrated. The Department of Labor has to issue a model disclosure and the assumptions that the plans must use to come up with the annuity values within a year of enactment. This provision is effective 12 months after the release of the DOL guidance. If a plan provides the DOL model disclosure and stays within the assumptions DOL requires and the guidance it has provided, then there will be no liability under ERISA. The SECURE Act does not provide a minimum account balance for which the disclosure is not required. The purpose of this provision is to encourage plan participants to consider purchasing an annuity with their account balances. This will add an administrative burden to plan administrators.
- The credit for a small employer plan startup costs is increased beginning after December 31, 2019. There is also a new small credit of up to \$500 per year for up to three years for new 401(k) and SIMPLE IRA plans that have automatic enrollment (or existing plans that add the auto enrollment feature). This credit is in addition to the credit for plan start-up expenses.
- Effective immediately, there is a new safe harbor intended to provide relief from the fiduciary liability involved in the selection of an annuity provider for participants who elect an annuity payout option. At least from the viewpoint of trial attorneys this safe harbor may not prove as difficult to get around as Congress would have hoped. On the other hand, it is certainly better than nothing. Many plans will want to wait for guidance from IRS before trying to fit within the safe harbor. If a company's retirement plan does not provide for an annuity option for payment of retirement benefits, then this provision is not relevant.
- Section 529 qualified tuition program is expanded to cover costs associated with registered apprenticeships and qualified education loan repayments. This is an important provision for many WMDA/CAR members and one which they supported while the legislation was developed. This may prove to be one of the more important sections of the SECURE Act.
- In-service distributions from defined benefit plans can be made for participants at age 59 ½ while they are still working (reduced from age 62). This is effective for plan years beginning after December 31, 2019. This does not appear to be a mandatory provision but guidance is required from IRS.
- Significant increases are made to penalties for failing to file Form 5500 and other notices. Because these penalties have increased so dramatically, it will be more important for companies to ensure that the required IRS forms are filed on time.
- The Act provides that if a plan is in operational compliance it does not have to be amended for the SECURE provisions until the last day of the 2022 plan year or a later date if Treasury so provides. ■



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