

# SOGGDA NEWS

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Southwestern Ohio Garage & Gasoline Dealers Association, Inc.



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## Family Smoking Prevention and Tobacco Control Act

The enactment of the Family Smoking Prevention and Tobacco Control Act (the “Act” or the “FSPTCA”) last year imposes numerous new, stringent regulations on retailers of tobacco products. This memorandum will outline those requirements in two categories: (1) regulations currently in effect and (2) regulations that will become effective on June 22, 2010.

An important note: the Act grants the Food and Drug Administration (“FDA”), which is the federal agency charged with implementing the law, with fairly sweeping power in how to do so. As a result, the regulation of retail sales of tobacco products will be subject to change as the Act is put into effect. Moreover, the Act permits states and local governments to implement their own rules and regulations governing retail sales.

### Current Federal Regulations on the Retail Sale of Tobacco Products

The following regulations are currently on the books,

#### 1. Retailers May Not Market Tobacco Products with other Regulated Products

The Act prohibits retailers from combining tobacco products for sale with other products that are or may be regulated by the FDA as of June 22, 2009; Here are some examples of what is not permitted under the Act:

- Adding compressed or powdered tobacco to candy or gum and the candy or gum is identified as containing a tobacco product.
- Selling a pack of cigarettes in box, bag, or other container with a bottle of mouthwash or a bottle of

*Continued on page 5*

## SOGGDA SCHOLARSHIP

Southwestern Ohio Garage & Gasoline Dealers will be offering Scholarships this year. SOGGDA member’s families and employees will be eligible to apply.

Information will be published in the May /June issue of the SOGGDA NEWS ,  
by mail and e-mail.

# THE SOGGDA NEWS

Official publication of Southwestern Ohio Garage Gasoline Dealers Association is published 12 times yearly and dedicated to the betterment of the position of independents in the automotive and petroleum industry.

**Patricia S. Booker** Executive Director  
**Vonnie Schriml** Accountant

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## SOGGDA

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**Patricia S. Booker** Editor

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## Are you online?

SOGGDA is able to send you this newsletter via e-mail for those who wish to receive it electronically rather than US Mail. If you would like to be added to the list, call today at 937/890-9670 or send an email request to [soggda@aol.com](mailto:soggda@aol.com)

## Deductible Program Enrollment Period Now Open

BWC offers a Deductible Program that helps employers lower their premiums by offering an upfront premium discount in the form of a per claim deductible. It also encourages employers to focus on workplace health and safety to reduce injuries and illness.

Employers who wish to participate in the deductible Program must enroll by April 30, 2010.

## BWC Nearing Introduction of New Drug-Free Safety Program

As part of BWC's commitment to reduce on-the-job drug- and alcohol-related incidents, the agency is putting the final touches on a newly developed Drug-Free Safety Program (DFSP). BWC presented the new program to the BWC Board of Directors at its February meeting. The agency will ask the board to replace the current Drug-Free Workplace Program on July 1, 2010. BWC designed the new program to promote the health of Ohio's work force by preventing workplace injuries attributed to the use or abuse of drugs and alcohol.

The DFSP simplifies the process for employers wishing to join and implement a program that will provide measurable results by tracking drug or substance abuse related accidents. The restructured program offers

*Continued on next page...*

SOGGDA News

## **BWC Nearing Introduction of New Drug-Free Safety Program Continued...**

two levels of participation, basic and advanced. It also offers premium discounts in the range of 4 percent to 7 percent. BWC expects the new program will allow some small discount stacking for group-rated employers participating at the advanced level.

BWC began a redesign of the Drug-Free Workplace Program after receiving results of the comprehensive study performed by Deloitte Consulting LLC. The study recommended development of a program more consistent with similar programs in other states. In addition, it recommends BWC place a greater emphasis on maintaining drug-free work environments through safety and prevention.

BWC's Division of Safety & Hygiene and the Actuarial Division lead the development and design efforts of the DFSP. The design process incorporated a thorough review of scientific literature in this area and benchmarking of similar programs at the national level. The BWC consulted with experts, including the National Institute of Occupational Safety and Health and the Ohio State University. The process also included structured meetings for soliciting input from employers, interested parties and safety vendors.

Watch for more details in the April edition of BWC e-news.

### **Support Your Business Associates**

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## General Counsel Corner

By: *Peter H. Gunst, Esq.*  
pgunst@aggt.com

### Be Careful What You Ask For

There is an old adage, “Be careful what you ask for, you may get it.” This could apply to the recent judgment obtained by Shell Oil in *the Supreme Court, Mac’s Shell Service, Inc. v. Shell Oil Products Co., 559 U.S.*

(March 2, 2010).

In the *Mac’s Shell* case, Shell succeeded in persuading the Supreme Court to reverse a judgment obtained against it by a group of Massachusetts dealers who claimed that their franchises had been constructively terminated in violation of the Petroleum Marketing Practices Act (“PMIPA”). This was the first time that the Supreme Court had seen fit to review the scope of the PMPA.

The dealers contended that Shell’s assignment of their leases and supply agreements had so worsened their position because of Motiva’s harsh rental and pricing policies as to be tantamount to a termination of their franchises in violation of the PMPA.

They further claimed that the replacement franchise agreements presented to them by Motiva, which the dealers had signed “under protest” so as not to lose their stations, were so punitive as to constitute constructive non-renewal of their franchises in violation of the PMPA.

The Supreme Court rejected both of the dealers’ claims under the facts of the case. The Court held that the dealers’ worsened condition following the assignment of their franchises to Motiva did not amount to a termination because they continued to operate their stations, selling Shell products under the Shell brand.

The dealers’ nonrenewal claim also failed, the Supreme Court said, because the dealers had in fact accepted the renewal agreements, albeit signing them “under protest.”

The very act of signing those renewal agreements, the Supreme Court said, was antithetical to their contention that their franchises had been nonrenewed within the meaning of the PMPA.

Significantly, the Supreme Court rejected Shell’s invitation to declare categorically that no claim for constructive termination or non-renewal could ever fall within the ambit of the PMPA. Instead, the Court left that issue for another day, thus leaving some uncertainty as to the scope of the act.

So far so good for Shell. But in asking the Supreme Court to construe the PMPA narrowly, it also opened the door for the Court to express its view on the extent of the dealers’ potential remedies under state law.

The extent of a dealer’s legal remedy under state law is inversely related to the scope of the PMPA because that statute contains a preemption provision, which negates any state law remedy for wrongful termination or nonrenewal. Hence, if an excessively burdensome franchise assignment is deemed to constitute a constructive termination or non-renewal under the

PMPA, the dealer loses the right to seek redress under state law.

In its decision, the Supreme Court emphasized the limited preemptive reach of the PMPA, concluding that “franchisees can still rely on state-law remedies to address wrongful franchisor conduct that does not have the effect of ending the franchise.”

In other industries, suppliers often have taken an approach quite different from that taken by Shell in the *Mac’s Shell* case. They have argued that federal regulatory laws should be given broad scope, in order to preclude their customers from pursuing state law claims. They argue the benefit of applying nationwide federal standards, as opposed to having to comply with divergent state standards applied in an idiosyncratic manner by a multitude of state court judges.

The end result of the judgment obtained by Shell in the *Mac’s Shell* case may be what was predicted by a marketing attorney in a recent article in the *Oil Express*. He said that the ultimate result of the *Mac’s Shell* opinion might well be “an increase in state law claims for alleged wrongful conduct by marketers,” which “may lead to greater, inconsistent results, complicating dealer relations for those marketers with multi-state operations.”

Be careful what you ask for, you may get it.

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To access the latest articles by the Service Station Dealer’s legal counsel, please visit the “Service Station Dealers: Legal Issues” section of the Astrachan Gunst & Thomas P.C. website at:

[http://www.agtlawyers.com/  
resources-petroleum.html](http://www.agtlawyers.com/resources-petroleum.html).

## Family Smoking Prevention and Tobacco Control Act Continued from front page

skin cream,

- Offering a coupon or a 50 cent discount on 2 specifically identified mouthwashes with the purchase of a pack of cigarettes.

Retailers should be very cautious about the sale of any tobacco product in conjunction with the sale of a non-tobacco product.

### 2. Retailers May Not Sell Flavored Cigarettes

Effective June 22, 2009, The Act outright banned the sale of “flavored” cigarettes, and FDA has been enforcing this ban over the last six months, “[the ban applies to “a cigarette ... (including the tobacco, filter, or paper) [that] contain[s an] ... additive, an artificial or natural flavor (other than tobacco or menthol) or an herb or spice, including strawberry, grape, orange, clove, cinnamon, pineapple, vanilla, coconut, licorice, cocoa, chocolate, cherry, or coffee, that is a characterizing flavor of the tobacco product or tobacco smoke.”

Retailers should never advertise or sell flavored cigarettes.

### Retailer Regulations That Will Take Effect on June 22

On March 18, 2010, the FDA issued an enormous set of regulations that will become effective on June 22, 2010. The new rule contains numerous provisions of importance to retailers, including:

- No retailer may sell cigarettes or smokeless tobacco to anyone under the age of eighteen (18).
- Retailers must verify the age, through a picture identification, prior to making sales to persons under the age of twenty seven (27).
- All sales must be made in face-to-face transactions. That is, retailers may not use vending machines or other self-service machines to sell tobacco products. The FDA has not announced whether it will prohibit in-store displays or other consumer access prior to purchase. It is not known whether products may stay on display or will need to be put behind store counters.

- Retailers may not break open standard-sized cigarette packages (twenty (20) cigarettes per pack) and sell cigarettes in lesser quantities.
- Each retailer has an obligation to comply with the advertising and labeling requirements of the regulations. It is anticipated that severe limits on the ability of retailers to advertise tobacco products outdoors; EPA has initiated a rulemaking proceeding on this subject. It is not clear what requirements, if any the FDA will impose on in-store advertising; the Act gave the FDA very wide latitude in this area. Advertising issues are highly likely to wind up in court after the final rule is announced.
- Retailers may not alter or remove the warning labels on tobacco products.
- Retailers may not offer free samples of tobacco products.
- Retailers may not accept coupons, proofs-of-purchase or similar items received from the purchase of tobacco products in exchange for any gift or item.
- Retailers may not offer a gift or other item in connection with the sale of a tobacco product (for instance, a free Marlboro shirt with the purchase of a carton of Marlboros)

Finally, though the first wave of FDA regulation of tobacco retailers has arrived, the FDA is likely to issue more stringent and broader regulations in the future.

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# SOGGDA SAFETY

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## Talking about shift workers

By Mike Ely

### Before you begin

Review the answers to these questions

- Does your company have shift work?
- Take a look at your OSHA 300 and first-aid logs. Do you have more injuries during the second and third shift?
- Is your protection and quality control lower during the second and third shift?
- Have any of your employees had automobile accidents driving to or from work on the second or third shift?
- How does the company deal with shift work and managing workers on second and third shift?

### Introduction

America is a 24-hour a day, seven-day a week society. This results in many workers working shifts other than the normal hours of 9 a.m. to 5 p.m. This leads to problems with worker safety and health in the short and long term.

However, you can reduce the impact of working shift work. You can take the measures you need to improve worker performance and safety. The trick is to understand what to do and have a plan to successfully deal with the stress of shift work.

### Discussion

We live in a society where we work 365 days a year. To meet the demands of modern life, more than 15 million Americans work a night shift at some time during the year. It is very difficult to adjust to working nights or rotating shifts, and it causes problems for the worker.

Our bodies adjust to a circadian rhythm. This is a major body rhythm with regular ups and downs during the 24-hour day. Most people feel most active and alert at about 4 p.m. to 6 p.m. when the body's ability to produce energy from food is at its highest. They feel sleepiest at 4 a.m. to 6 a.m.

when the body is producing its lowest levels of energy.

There are different types of people. For example, some are morning people and some are night people. But for the majority, the day-work and night-sleep situation is best for performance and safety.

### Health effects

The shift worker is trying to sleep when his or her body tells the worker that he or she should be awake and working. This leads to poor sleep, fatigue and possible long term health effects for the worker.

Worker fatigue shows up as a causative factor in many serious incidents. For example, the BP refinery explosion in Texas City, Texas, killed 15 persons and injured another 180. In addition, many interstate trucking accidents frequently result from driver fatigue. Numerous studies show shift work causes medical conditions such as digestive conditions, an increased incidence of heart disease as well as certain cancers.

It is true that shift work impacts workers' safety. Second-shift workers are 15.2 percent more likely to be injured than first-shift employees. Third-shift workers are 28 percent more likely to be injured. Studies show an increased risk at night when the circadian rhythm is low and fatigue builds up.

### Reducing risk

What can you do to reduce the shift worker's risk? You cannot change the circadian rhythm, but you can address worker fatigue and reduce it. First, you can get enough good sleep. It is hard to sleep during the daytime when the rest of the world is active, and your body is telling you to be active. Most workers need a minimum of at least six hours of deep sleep, but most need more sleep than that.

Here are techniques to help ensure you get the good sleep you need to avoid fatigue at work.

#### Bedtime rituals

- Take a warm bath or soak in a hot tub.
- Lower the room temperature because a cool environment improves

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*Continued on the next page...*

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## SOGGDA SAFETY - Talking about shift workers Continued

sleep.

- Do not activate the brain by balancing a checkbook, reading a thriller or doing other stressful activities.

### Light

- Darken the bedroom and bathroom.
- Install light blocking and sound-absorbing curtains or shades in the bedroom.
- Wear eyeshades.

### Sound

- Wear earplugs.
- Use a white-noise machine to block other noises. An example is a fan.
- To absorb the sound, install carpeting and drapes.
- Unplug the telephone.

### Food

- Avoid caffeine less than five hours before your bed-time.
- Do not stop for a drink after work. Although it may bring the feeling of relaxation, alcohol disturbs sleep.
- Eat a light snack, and avoid too much sugar or fats before bedtime. Do not go to bed too full or too hungry.

### Exercise

- If you exercise at work or at home, do it at least three hours before you go to bed. Otherwise, exercise after you sleep. Because exercise is alerting and raises the body's temperature, it should not be done too close to your bedtime.

### Driving danger

Another concern is the worker returning home after his or her shift ends. For workers that are already

fatigued from poor sleep and a long shift, the drive home is dangerous. A moment of inattention can lead to disastrous results. Here are ideas to help you avoid the danger of driving when you are tired.

- If possible, carpool. Have the most alert person do the driving.
- Drive defensively.
- Do not stop off for a night cap.
- When you are sleepy, stop to nap. But, do it in a locked vehicle that is in a well-lit area.
- When you can, take public transportation.

### Summary

Shift work can be disruptive to our bodies and our personal lives. Working nights puts you in a situation where you are active when your family and friends are asleep, and you need to sleep when they are active. Careful planning helps you maintain as normal a life as possible while ensuring you get the good quality sleep you need to avoid fatigue.

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# Americans with Disabilities Act

## ADA Business BRIEF: Assistance at Gas Stations

People with disabilities may find it difficult or impossible to obtain gas for their vehicles because they are unable to use the controls, hose, or nozzle of a self-serve gas pump. At stations that offer only self service, they may be unable to purchase gas. At stations that offer both self service and full service, people with disabilities may have no choice but to purchase the more expensive fuel from a full-service pump.

The Americans with Disabilities Act (ADA) requires gas stations to provide equal access for their customers with disabilities. If necessary to provide access, stations must—

- Provide refueling assistance upon the request of an individual with a disability. A service station or convenience store is not required to provide such service at any time that it is operating on a remote control basis with a single employee, but is encouraged to do so, if feasible.
- Let customers know (e.g., using signs or notification on or near pumps) that individuals with disabilities can obtain refueling assistance by honking their horn or otherwise signaling an employee. Some stations provide a call button.
- Provide the refueling assistance without any charge beyond the self-serve price, if the customer wants only fuel. The attendant may provide assistance at a self-service pump or at a full-service pump. In either case, the customer must be charged the self-service price.

If you have additional questions concerning the ADA and gas stations, please call the Department of Justice's ADA Information Line at (800) 514-0301 (voice) or (800) 514-0383 (TTY) or visit the ADA Business Connection on the ADA web site at [www.ada.gov](http://www.ada.gov).

## SOGGDA Will Offer SCHOLARSHIPS in 2010

**The Southwestern Ohio Garage & Gasoline Dealers will be offering Scholarships this year.**

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**Look for details in the May/June SOGGDA NEWS.**

**Information and rules will be finalized this month and members will be notified in the newsletter as well as by mail and e-mail. Don't miss this great opportunity for your family and employees.**

## **Office of Handicapped Concerns Will Assistance at Self-Serve Gas Stations**

A caller approached me recently asking about assistance in pumping gas at self-serve gas stations in Oklahoma. I went to my supervisor to ask about this, and he handed me a U.S. Department of Justice printout entitled Americans with Disabilities Act: Assistance at Self-Serve Gas Stations. I am including that printout within this article. For the 8000 plus Oklahomans who are mobility impaired, this information may be of special interest to you.

People with disabilities may find it difficult or impossible to use the controls, hose, or nozzle of a self-serve gas pump. As a result, at stations that offer both self and full service, people with disabilities might have no choice but to purchase the more expensive gas from a full-serve pump. At locations with only self-serve pumps, they might be unable to purchase gas at all.

The Americans with Disabilities Act (ADA) requires self-serve gas stations to provide equal access to their customers with disabilities. If necessary to provide access, gas stations must—

Provide refueling assistance upon the request of an individual with a disability. A service station or convenience store is not required to provide such a service at any time that it is operating on a remote control basis with a single employee, but is encouraged to do so, if feasible.

Let patrons know (e.g., through appropriate signs) that customers with disabilities can obtain refueling assistance by either honking or otherwise signaling an employee.

Provide the refueling assistance without any charge beyond the self-serve price.

If you have additional questions concerning the ADA, you may call the Department of Justice's ADA Information Line at 800-514-0301 (voice) or 800-514-0383 (TDD) or access the ADA Home Page at [www.usdoj.gov/crt/ada/adahoml.htm](http://www.usdoj.gov/crt/ada/adahoml.htm).

If you need assistance with pumping gas at self-service stations in your local area, ask for it. Talk with the manager of the store about your needs. Question the manager about a good time for you to fill up, maybe a time when two employees are on duty and one would be available to assist you.

[www.odc.ok.gov](http://www.odc.ok.gov)

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# Do you really know how to forward e-mails?

## 50% of us do; 50% DO NOT

Do you wonder why you get viruses or junk mail? Do you hate it? Every time you forward an e-mail there is information left over from the people who got the message before you, namely their e-mail addresses & names. As the messages get forwarded along, the list of addresses builds, and builds, and builds, and all it takes is for some person to get a virus, and his or her computer can send that virus to every E-mail address that has come across his computer. Or, someone can take all of those addresses and sell them or send junk mail to them in the hopes that you will go to the site and he will make five cents for each hit. That's right, all of that inconvenience over a nickel! How do you stop it? Well, there are several easy steps:

(1) When you forward an e-mail, DELETE all of the other addresses that appear in the body of the message (at the top). That's right, DELETE them. Highlight them and delete them, backspace them, cut them, whatever it is you know how to do. It only takes a second. You MUST click the "Forward" button first and then you will have full editing capabilities against the body and headers of the message. If you don't click on "Forward" first, you won't be able to edit the message at all.

(2) Whenever you send an e-mail to more than one person, do NOT use the To: or Cc: fields for adding e-mail addresses. Always use the BCC: (blind carbon copy) field for listing the e-mail addresses. This way the people you send to will only see their own e-mail address. If you don't see your BCC: option click on where it says To: and your address

list will appear. Highlight the address and choose BCC: and that's it, it's that easy. When you send to BCC: your message will automatically say "Undisclosed Recipients" in the "TO:" field of the people who receive it. If that phrase does not appear, type your own email address in the "TO" field, but put everyone else's in the BCC field. [To get the BBC option in Outlook Express: when at a new message click on "VIEW" then click on "All Headings" and in Yahoo when typing a new message at the right end of the "TO: \_\_\_\_\_" "you can click on "Show BBC"]

(3) Remove any "FW:" in the subject line. You can rename the subject if you wish or even fix spelling.

(4) ALWAYS hit your Forward button from the actual e-mail you are reading. Ever get those e-mails that you have to open 10 pages to read the one page with the information on it? By Forwarding from the actual page you wish someone to view, you stop them from having to open many e-mails just to see what you sent. (AMEN!) If you can't forward from that page, "Copy" the info and then open a new e-mail blank page and "Paste".

(5) Have you ever gotten an e-mail that is a petition? It states a position and asks you to add your name and address and to forward it to 10 or 15 people or your entire address book. The e-mail can be forwarded on and on and can collect thousands of names and e-mail addresses. A FACT: The completed petition is actually worth a couple of bucks to a professional spammer because of

the wealth of valid names and e-mail addresses contained therein. If you want to support the petition, send it as your own personal letter to the intended recipient. Your position may carry more weight as a personal letter than a laundry list of names and e-mail address on a petition. (Actually, if you think about it, who is supposed to send the petition in to whatever cause it supports? And don't believe the ones that say that the e-mail is being traced, it just not so!)

One of the main ones I hate is the ones; that say that something like, - Send this e-mail to 10 people and you'll see something great run across your screen.- Or sometimes they just tease you by saying something really cute will happen. IT AIN'T GONNA HAPPEN!!! (Trust me, I'm still seeing some of the same ones that I waited on 10 years ago!) I don't let the bad luck ones scare me either, they get trashed. (Could be why I haven't won the lottery) Before you forward an Amber Alert, or a Virus Alert, or some of the other ones floating around nowadays, check them out before you forward them. Most of them are junk mail that have been circling the net for YEARS! Just about everything you receive in an e-mail that is in question can be checked out at Snoops. ; Just go to [www.snopes.com/](http://www.snopes.com/) & nbs; It is really easy to find out if it is real or not. If it is not, please don't pass it on. So please, in the future, let's stop the junk mail and the viruses.

Send this to everyone you know This is something that SHOULD be forwarded.

## Cigarette Taxes Are ‘Gold Rush’ for States

Since last year, 22 states and the District of Columbia have increased or are considering increases to cigarette taxes

MCLEAN, Va. · An article in Friday’s *USA Today* detailed how “cash-strapped states” are raising cigarette taxes to help address budget deficits.

So far in 2010, Utah has voted to increase cigarette taxes by \$1 per pack and New Mexico has added an increase of 75 cents per pack. At least six other states have considered tobacco tax increases, including South Carolina and Georgia. Last year, 14 states and the District of Columbia raised cigarette taxes. It’s only the 10<sup>th</sup> time since 1950 that so many states have raised cigarette taxes during the same time period, according to the Centers for Disease Control and Prevention (CDC).

The average state cigarette tax is \$1.34, with Rhode Island the highest (\$3.46 per pack) and South Carolina the lowest (7 cents). The federal tax is \$1.01 per pack.

Among other states considering cigarette tax increases:

- Washington: \$1 per pack increase (bringing the total to \$3 per pack),
- South Carolina: House lawmakers voted this month to increase the tax by 30 cents per pack; the Senate is considering the issue.
- Georgia: \$1 per pack increase (bringing the total to \$1.37 per pack).
- Kansas: \$.55cents per pack increase (up from the current 79 cents per pack).

## Signs of Hearing Loss

Loss of hearing frequently accompanies aging or working around loud noises. The American Speech-Language-Hearing Association lists these signs of a developing hearing problem:

- ✓ People seem to mumble, their speech does not seem clear to you, or you hear only parts of conversations.
- ✓ You have to ask people to repeat what they said.
- ✓ Your friends or relatives say you don’t seem to hear very well.
- ✓ You don’t laugh at jokes because you miss too much of the story.
- ✓ After a meeting, you have to ask others about details.
- ✓ People say you play the TV or radio too loudly.
- ✓ You have trouble hearing the doorbell or the telephone.
- ✓ You find it easier to understand people when you are looking at them, especially in a noisy place.



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# Legislative Update

By Paul Fiore

We apologize in advance if you tire of reading about healthcare but we would like to provide some analysis of where we are, now that this major legislative initiative has become law. One thing must be duly understood; that much of the details of the law have yet to be fleshed out. We are going to sprinkle some opinion in the mix that will have a skeptical tone and please note the onerous new requirement that starts in 2012. In addition, please keep in mind that many of you won't be affected by all of this in the beginning, as you are exempt from certain mandates if you are under 50 employees but ineligible for certain tax breaks if you have more than 10 employees (see below) that make a certain amount of money.

The healthcare bill Passed by the Senate and House will go into effect over a number of years. In 2010, 2011, 2012, and 2013, most of the bill's provisions involve new taxes and obligations. For the most part, the health-care system changes will begin with some aspects of implementation farther in the future. Below is a time-line of some of the major provisions of this bill.

This timeline reflects only the Senate bill signed into law on March 23, 2010. Please note that the Reconciliation Bill may contain some provisions

## 2010

- **Small business health tax credit:** This will do little to nothing to help small firms afford insurance. The credit is very restrictive and puts small business owners through a series of complicated tests to determine the actual amount of the credit. (1) Very few Small firms will receive the full credit (only firms with 10 employees or less). For firms with 11- 25 employees, the credit is reduced per employee. Firms with more than 25 employees get NO credit. (2) Only firms who pay their workers \$25,000 or less are eligible for the full credit. The credit is reduced as the average wage goes up, stopping at \$50,000. The credit is only available for a maximum of six years.
- **Brand-name drug tax:** Manufacturers and importers of brand-name drugs will pay a tax of \$2.3

billion. This cost will be passed on to consumers.

- **Age 26:** Children may stay on their parents' policies until age 26.

## 2011

- **W-2 reporting:** Employers will be required to report employees' health benefits on W- 2s.
- **HSA & FSA limits:** Consumers can no longer use HSAs and FSAs to purchase certain items, including most over-the-counter medication prescribed by physicians.
- **HSA penalty:** The penalty for making non-qualified purchases with an HSA increases to 20%.
- **FSA limits:** Cafeteria plan FSAs will be limited to \$2,500 (inflation adjusted after 2011.)
- **Medical device tax:** Manufacturers and importers of certain medical devices will be taxed \$2 billion per year (for 2011-2017) and then \$3 billion per year thereafter. These costs will ultimately fall on the consumer.
- **Small business health insurance tax:** An annual fee on health insurance providers will be passed on to consumers. This tax will fall on the vast majority of plans that small businesses purchase, but not on self-insured plans (such as most big business and labor union policies). The amounts are \$2 billion for 2011, \$4 billion for 2012, \$7 billion for 2013, and \$9 billion per year for 2014 through 2016, \$10 billion thereafter, with certain exceptions.
- **Federally subsidized long-term care:** Voluntary payroll deductions begin for the CLASS long-term care program. All working adults will be automatically enrolled unless they choose to opt out. This program will almost certainly cost the federal government far more than what the payroll deductions will cover. So this entitlement is yet another un-funded liability to add to federal deficits for decades to come.

## 2012

- **1099 reporting:** Businesses will have to send Form 1099s for every business-to-business transaction of \$600 or more - a tremendous new paperwork burden for small business.

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*Continued on the next page...*

SOGGDA News

## Legislative Update Continued...

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### 2013

- **Cadillac tax:** The government will collect a so-called “Cadillac Tax” - a 40% excise tax on health coverage in excess of \$8,500 annually for an individual or \$23,000 annually per family. This tax is inadequately indexed for medical inflation, so as healthcare costs rise, more and more people will be swept into this tax each year. This is similar to the Alternative Minimum Tax - designed to hit the “rich” but reaching farther and farther into the middle class each year.
- **Fewer deductible medical expenses:** New limits are placed on the deductibility of medical expenses on individual income tax returns. This provision raises the 7.5% AGI floor on medical expenses deductions to 10%. The AGI floor for those 65 and older (and their spouses) remains at 7.5% through 2016.
- **“Medicare” payroll taxes:** The Medicare pay-roll tax on wages and self-employment income in excess of \$200,000 (\$250,000 joint) will increase to 2.35% and is not indexed to inflation. This tax marks the first time that funds designated for Medicare will be diverted elsewhere - specifically to pay for the insurance policies of people under the Medicare age. This establishes a precedent for treating the payroll tax as a revenue raiser for other purposes.

### 2014

- **Health insurance exchanges:** Up until 2014, the bill collects a great deal of taxes but does little

to change healthcare. In 2014, that begins to change with the opening of insurance exchanges.

- **Premium credits:** The federal government begins subsidizing individuals up to 400% of the federal poverty line - around \$88,000 today. These credits will subsidize individuals purchasing insurance in exchanges, but not those with traditional employer-sponsored plans.
- **Medicaid eligibility expands:** The income level for Medicaid eligibility rises, bringing tens of millions of new people into Medicaid. This Medicaid expansion will account for around half of the total increase in insurance coverage and will place considerable new financial pressure on states, with higher taxes a likely response.
- **Medicare cost-cutting:** Beginning in 2014, Medicare must begin recommending ways to cut costs in the provision of care.
- **Benefits package:** Federal government defines essential benefits package. All policies must comply.

**Individual mandate:** Starting in 2014, all U.S. citizens and legal residents must have qualifying health coverage or pay penalties. For an individual, the penalty begins in 2014 at the greater of \$95 or 0.5% of household income. In 2015, it grows to \$495 or 1.0%. In 2016, it reaches \$750 or 2%. (For families, the figure will be \$2,250.) After 2016, the amount will rise by a cost-of-living adjustment.

**Employer mandate:** The bill contains a complex employer mandate requiring some firms to

provide insurance, pay penalties or both. The penalties are based on (1) the number of full-time employees, (2) whether or not the firm offers coverage, and (3) whether or not one or more employees qualify for government subsidies toward the purchase of health insurance. An employee qualifies for a subsidy if his or her household income is below 400% of the federal poverty line (\$88,000 for an individual today).

Here are some of the rules:

- More than 50 full-time employees. Does not offer insurance. Has one or more employees receiving premium subsidies. Penalty = \$750 per employee.
- More than 50 full-time employees. Offers insurance. Has one or more employees receiving premium subsidies. Penalty = lesser of \$3,000 per subsidized employee or \$750 per employee.
- More than 50 full-time employees. Offers insurance. Has no employees receiving pre-mium subsidies. No penalty.
- 50 or fewer full-time employees. No penalty.

There are extra penalties for firms who have a waiting period before employees are eligible for insurance.

## Select Employer Group Benefits

**As a Select Employer Group you can offer the following benefits to your employees:**

- ▶ Your own personal Business Development Representative assigned to visit and review new products/services and help your company reach its financial goals.
- ▶ On-site enrollments
- ▶ Attend new hire orientations
- ▶ Attend benefit fairs
- ▶ Financial planning workshops
- ▶ Financial counseling, as a group or individually
- ▶ Informational posters, flyers and payroll stuffers

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# Protect Yourself From Malware

## Malware

Short for malicious software, malware is designed to damage your computer, server, and network and/or to collect personal information. We have included definitions of several different types of malware and information on how to protect your computer from them.

## Trojan Horses (or “Trojans”)

Trojans are destructive programs that masquerade as benign applications. Trojans often arrive in email attachments, Instant Messages, and downloads from infected web sites.

Two of the most common types of Trojans are spyware and key loggers, both of which secretly collect information and send it to a third party without your knowledge.

## Spyware

Spy-ware covertly gathers information about your Internet use and is typically used for advertising purposes.

## Key Loggers

Key loggers record keystrokes to gather passwords, credit card numbers, and other personal information. Hackers often include key loggers as attachments to SPAM.

## What Can I Do To Protect My Computer?

- √ **Don't open attachments** to unsolicited email. This is the most common way computers become infected with key loggers.
- √ Install and run **spyware** removal software regularly Two **free** programs you can use are:
  - **Spybot Search and Destroy** — available at [www.spy-bot.net](http://www.spy-bot.net)
  - **Ad-Aware** — available for non-commercial use at [www.lavasoftusa.com](http://www.lavasoftusa.com)
- √ Try to avoid **spyware** altogether by taking the

following steps before loading software onto your computer:

- Read the license agreement. Learn what to look for at <http://grc.com/oo/fineprint.htm>
- Search the Internet for spyware reports. Use the software's name and the word 'spyware' as your search keywords.

- √ Do not allow anyone to access your computer without your knowledge. Keep your computer turned off or locked when you're not using it.
- √ Never use the “save ID and password” option.
- √ Never write your user ID and/or password on a piece of paper and leave it near your computer.

## Viruses and Worms

- In general, worms harm networks and consume bandwidth, whereas viruses corrupt files on a specific computer.
- Viruses and worms both spread via email. Viruses require human intervention to spread (e.g., opening the infected program), whereas worms do not.

## What Can I Do To Protect My Computer?

- √ Install **anti-virus and anti-spyware software** that scans email and files as they are downloaded from the Internet.
- √ Install **updates and patches** for your operating system and anti-virus & anti--spyware program as they are made available.
- √ Install a **firewall** to prevent unauthorized access to your computer.

Being educated is your best defense against theft of your money and/or your identity.

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