

## READING AND RESPONSE

### AUGUST 2006

#### A Spot Delivery Goes Bad

If you want to institute a spot delivery procedure that is an invitation to a lawsuit, just follow the following handy-dandy directions.

Jeremiah Mann and DeeAundrea Cartier entered into a purchase contract and a retail installment sale contract with Brown Credit Lot for the purchase of a 2001 Saturn. Both documents purported to be "the entire agreement" between the parties.

The buyers gave Brown a \$500 cash downpayment and traded in a 1993 Honda Civic valued at \$500. The buyers were told before they left Brown that their financing through Household Auto Finance was approved. However, Household declined to buy the contract.

At some point, Brown told the buyers that financing was not approved and that new documents would have to be signed. Unhappy, the buyers asked for the return of their trade-in and downpayment. Brown told the buyers that the Honda had been sold and refused to return their downpayment.

According to Brown's finance manager, the buyers' financing fell through when Household found a 9-month gap in Mann's employment between his current and former jobs, and did not find this information reflected on Mann's credit application. In fact, the credit application did not ask for employment dates and had no questions that would identify a gap in employment.

The buyers sued Brown, alleging that Brown's representation that financing was approved when such was not the case was unfair, deceptive, and unconscionable in violation of the Consumer Sales Practices Act.

The Ohio Municipal Court characterized the transaction as a "yo-yo deal" that was a "variation of the classic bait-and-switch." The court had no difficulty concluding that the following acts by Brown were unfair or deceptive: the demand on the buyers to return the vehicle when Household declined to buy the contract; the representation that financing was approved when it was not; the failure to provide the buyers with a copy of the retail installment sales contract; the delivery of the vehicle pursuant to a sale subject to financing without a written agreement setting forth the parties' rights and obligations; and sale of the buyers' trade-in before the deal was finalized.

Limited by its small claims court maximum jurisdictional amount, the court awarded the buyers three times their actual damages of \$1,000, or \$3,000, plus costs. In a court other than a small claims court, the dealer would have faced the possibility of a much larger hit.

What are the lessons here? There are several, and at least some of them have appeared before in cases like this one.

Lesson 1. A dealer entering into a retail installment sales agreement with a car buyer is extending credit. If a dealer does not have some sort of "unwind agreement" permitting the dealer to rescind the deal if he cannot assign the agreement to a finance company or bank, the dealer must hold the agreement and collect the payments. He has no right to unilaterally cancel the deal. He cannot repossess the car if the customer is not in default. If you want to paint a big bullseye on your dealership, try to unwind a deal in the absence of an unwind agreement.

Lesson 2. A dealer should not sell the buyer's trade-in vehicle until the assignment of the buyer's agreement to an assignee is complete, even if state law permits it and the dealer's buyer's order permits it. Judges and juries don't like the practice, and will try to find some way to punish dealers who engage in it.

Lesson 3. Dealers should be careful what they tell their customers about the finality of the financing for their cars. It is possible that in this case, Household's communications with the dealer about these buyers led the dealer to believe in good faith that the financing was final. If the possibility exists, however, that a bank or finance company could kick a deal back to a dealer after some delay, the dealer should be open with its buyers about that possibility.

Lesson 4. If the sales finance companies and banks your dealership assigns contracts to requires a continuous period of employment as a condition of approving deals, make sure that your credit application is set up to elicit that information. If it isn't, your people should be trained to inquire about such gaps.

Spot deliveries are under attack by consumer advocates, and have gotten the attention of state regulators and state legislators. There are sometimes-dicey federal and state law problems with spot deliveries. If you haven't had your spot delivery procedures reviewed by you lawyer recently, you need to put that on your "to-do" list.

*Cartier v. Brown Credit Lot*, 2005 WL 3867414 (Ohio Mun. April 4, 2005)

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## THIS AND THAT

By: Larry Hecht, Hecht and Hecht Insurance Agency Inc.

**Test Drive/Loaner Car Form.** Several years ago the OIADA actively pursued legislation that takes the dealer off the hook for customer accidents that occur while customers drive dealer vehicles. The “standard” dealer garage liability policy already limits your liability by saying in the “small print” the customer is not insured unless he has no insurance and only then up to the statutory limit in your state. Over the years the courts have watered this down and what happens now is that insurance follows the car and is not passed on to the “driver”. However, through OIADA’s active interest in the legislature, they got a law passed that says the customer is responsible for the operation of your vehicle and in most instances you are not liable if YOU USE A TEST DRIVE/ LOANER CAR FORM. This form needs to be signed and dated by each customer driving your dealer car. Should an accident occur this form would help determine whose insurance pays – yours or your customers? During the past several years, where the form has been used correctly, dealer insurance has avoided having to be responsible. Where the form has not been used or used improperly the dealer still gets stuck. Test Drive/Loaner/Rental Agreement (OIADA Form #905/905) are available at the OIADA office.

**Young Drivers.** Young drivers are a NO NO with every dealer insurer that we are aware. What is a young driver differs with each company. Suffice to say anyone under the age of 21 may be a “young driver”. It is important to know the limitations in your insurance policy. If you allow an unreported driver, young or old, to drive your vehicles without the knowledge of your insurer you may be jeopardizing your continued insurability with your insurance company and possibly any other insurer. Many policies require being notified before allowing new employees or other “regular” drivers to drive dealer vehicles.

**Hiring Employees.** It is becoming more and more important to know whom you hire. Employment application, background checks, drug testing and confirming MVR’s are becoming commonplace in the hiring process. Employers can be help liable for the conduct of their employees in the work place. So if an employee has a “past” an employer can be held responsible for his future behavior.

**Test Drive Route.** Every dealership should have a well-defined test drive route. It should allow for an appropriate test of the vehicle on city streets and freeway. It should consider as much as possible not having to turn across traffic or get in confusing situations. It should always be with an accompanied person from the dealership. The route and the duration should be well known to all in the dealership. If your vehicle is “overdo” you will have a location and route to start your search.

**Independent Contractors.** This is a term that is used very loosely in the automobile dealer industry. Daily we hear “I have no employees, they are all independent contractors or subcontractors or sometimes referred to as just part-time drivers”. No matter what you call them and no matter how you pay them, they are most likely “EMPLOYEES”. You may think you are paying them in a way that they are not employees but they are employees in the eyes of insurance, the state and federal government and for state workers compensation. There is so much of this going on that it may appear to be OK. But you will find that is not OK when one of them has a serious accident and is now represented by an attorney.

**Workers Compensation.** Every business that has people working for them is required to carry Workers Compensation Insurance. It makes no difference what you call people or how you decide to pay people you are required to provide and carry Workers Compensation Insurance.

Hecht & Hecht Insurance Agency Inc is a full service insurance agency and has represented the interests of OIADA since 1989. We are here to assist you in every aspect of your insurance needs. We can be reached in Portland 503-288-6371, toll free 800-285-1773 or [info@hechtinsur.com](mailto:info@hechtinsur.com)

**A License to Drive  
By  
Jan Kelly**

**Q:** At what point in the sales process is it appropriate to obtain a copy of the customer's driver's license?

**A:** Typically, the sales professional asks for a copy of the customer's driver's license after the salesperson and the customer locate a vehicle that meets the customer's needs and the customer wants to drive it.

**Making a copy of the driver's license is not only a standard practice; it is also a sound business procedure for several reasons:**

- Ensures that the customer has a valid license.
- Verifies that the customer is who he or she claims to be.
- Provides a search tool for dealership management if something goes wrong.

Most insurance companies want a copy of the driver's license in order to extend coverage while the customer test-drives a vehicle. Further, some lenders require a copy of the customer's driver's license as part of the lending packet.

**A driver's license copy is subject to the protection afforded documents classified as NPI (Non Public Information) under the Safeguards Rule. The sales manager should secure the license copy in a closed file jacket.**

In the event that the customer is visually impaired and requires a driver, you will want to follow the same procedure for the driver who accompanies the customer to the dealership.

As identity theft proliferates, precaution is the watchword. Make it your business to treat your customers' non-public information with great care.

*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 Financial Center (F&I) '06 Summer-Fall Seminar Schedule

- |                 |                        |
|-----------------|------------------------|
| - Irvine, CA    | <b>August 14-18</b>    |
| - Baltimore, MD | <b>September 18-22</b> |
| - Portland, OR  | <b>October 9-13</b>    |
| - Dallas, TX    | <b>November 13-17</b>  |
| - Vancouver, WA | <b>December 11-15</b>  |

## **LEGAL, LEGISLATIVE AND REGULATORY SUMMARY**

**By: Whann & Associates, LLC**

- ***Federal Legislative Developments***

Immigration Legislation captivated the media's attention, but it is only one of many contentious issues that Congress is dealing with right now. Passing an Energy Bill that will relieve the United States from its reliance on foreign resources is still a top priority; the issue dominated the House calendar during May and will be at the top of the Senate's agenda during June. Having passed the Tax Cut Package early in May, Lawmakers in the House also turned their attention to a new Tax Bill containing the provisions removed from the Package at the eleventh hour and to completing the long-stalled Budget Resolution, while the Senate tried once again to bring up the Estate Tax Repeal Bill that is much sought after by the business community. At the same time, Congress continued to deal with a number of other issues that could directly impact our industry, including the Right to Repair Act, Health Insurance Reform, and Preventing Identity Theft.

### **Lawmakers Continue Efforts to Pass Drilling Legislation**

Senators from Florida and Louisiana are working together to negotiate a deal with regard to offshore drilling in the Gulf of Mexico. They are supporting the passage of S. 2253, which would open approximately 3 million acres in the Gulf's Lease Sale 181 area to energy exploration, provided that the Legislation includes a provision establishing a 125 mile buffer zone from the Florida Coast and allocating more of the revenue generated from drilling to the coastal states. The Legislation currently provides for a 100-mile buffer zone and would give 27% of the lease and royalty revenue to the coastal states. If the Bill passes, it has been estimated that enough natural gas could be extracted to heat five million homes for fifteen years. Meanwhile, the Members of the House are focusing their efforts on working toward another form of legislation to bring economic relief from rising gas prices-opening the Arctic National Wildlife Refuge (ANWR) to drilling. Democrats attempted to send the H.B. 5429 back to the Resources Committee with instructions that a provision be inserted that would ban any energy company that is not paying full royalties on current leases in the Gulf of Mexico from bidding on ANWR leases. The motion was defeated and the House passed the Bill on May 25<sup>th</sup> by a 225-201 vote. The Bill will likely be coupled with renewable energy measures before it is taken up on the Senate floor during Energy Week, which is scheduled for the last week in June.

### **House Subcommittee Approves Right to Repair Act**

The Motor Vehicle Right to Repair Act (H.B. 2048) was approved by the House Subcommittee on Commerce, Trade, and Consumer Protection on May 25, 2006, despite manufacturers voicing concern over intellectual property rights. The Act would require manufacturers to disclose to vehicle owners, repair facilities, and the Federal Trade Commission (FTC) information necessary to diagnose, service and repair vehicles. As part of the Committee meetings leading up to the vote, the Chairman of the FTC was asked to present testimony regarding the Bill. The Chairman advised the Committee that the best way to resolve the difficulties independent repair facilities were experiencing with respect to accessing information and tools needed to diagnose, service, and repair vehicles would be for the industry to voluntarily come up with a mutually agreeable solution. Unfortunately, despite more than sixty hours of negotiations between interested parties, no resolution has been reached. One area that both sides have agreed on is the creation of an independent board for the National Automotive Service Task Force to oversee the information sharing process. A Board of Directors has been elected and its mission is to provide service information to repairers. The Bill will now go before the full House Energy and Commerce Committee.

## **Small Business Insurance Bill Blocked In the Senate**

Supporters of S. 1955 had been optimistic about its passage when the Senate kicked off "Health Week" during the first week in May, but that optimism faded by the end of the week. The Bill, which was defeated by a vote of 55-43, would have allowed small businesses to band together to purchase more affordable health insurance by allowing them to sidestep state coverage laws. An amendment offered by a supporter of the Bill would have required the plans offered to retain coverage mandates required by 26 states, including coverage for alcoholism treatment, breast reconstruction, and maternity leaves. Lawmakers who voted against the Bill maintained, however, that the plans would offer minimal coverage, would cause employees with existing conditions such as diabetes to be underinsured, and would increase the premiums paid by healthy employees. Despite this seeming defeat, supporters recognized that the Legislation was the first Bill of its kind to ever make it out of a Senate Committee and there is still another measure, S. 406, pending before the Senate committee on Health, Education Labor & Pensions.

## **Senate and House Committees Focus on Bills Aimed at Preventing Identity Theft**

Identity theft is a hot topic in Congress right now. There are currently five Measures pending before the Senate and House. Consumer groups favor passage of H.B. 4127 and S. 1789 because they contain a low threshold for the type of security breach that would trigger a company's obligation to provide notice to a consumer. The Bills have been approved by the House Energy and Commerce Committee and the Senate Judiciary Committee, respectively. Industry advocates, on the other hand, support H.B. 3997, which contains the highest threshold for triggering consumer notification and does not allow consumers to freeze their accounts after an alleged breach of their data has occurred. The standard for S. 1408 lies between the two. It was approved by the Senate Commerce, Science and Transportation Committee, and would allow a company to consider whether unauthorized third parties could access data when determining whether or not a consumer must be notified of a data security breach. On May 25, 2006, the House Judiciary Committee also approved H.B. 5318, which would criminalize some computer crimes and allocate \$30 million per year through 2011 to the Secret Service, the Justice Department and the FBI to investigate and prosecute hackers who breach online security measures.

### ***• Federal Regulatory Activity***

## **FTC Issues Report Concerning the Increase of Gasoline Prices**

The FTC released its report on the "Investigation of Gasoline Price Manipulation and Post-Katrina Gasoline Price Increases" on May 22<sup>nd</sup>. The study was conducted pursuant to the Energy Policy Act of 2005, which mandated that the FTC investigate whether oil refiners, wholesalers and retailers artificially manipulated the price of gasoline after Hurricane Katrina by reducing refinery capacity or by any other form of market manipulation or price gouging practices that in turn gave rise to the steep increase in gas prices from August to September of 2005. According to the FTC, it did not find any evidence of illegal market manipulation that led to higher prices, but did find 15 examples of pricing at the refining, wholesale or retail level that fit into the Energy Policy Act's definition of "price gouging." However, the FTC explained that other factors, such as regional or local market trends related to Hurricane Katrina appeared to explain the prices in nearly every case. The FTC also reiterated in the report it's position that competitive market forces should be allowed to determine the price of gasoline as opposed to Legislation related to price gouging because it would be difficult to enforce and could cause more problems for consumers than it solves. The FTC's opinion is especially noteworthy given that the House has passed a Bill (H.B. 5253) that would authorize the FTC to define, investigate and prosecute price gouging in the oil industry.

## **FTC Weighs Benefits of Using Social Security Numbers and Privacy Risks**

During testimony before the House Subcommittee on Commerce, Trade, and Consumer Protection on May 11<sup>th</sup>, a FTC Commissioner explained the importance of finding the proper balance between the beneficial uses of social security numbers (SSNs) for businesses and the government and the need to protect SSNs from identity thieves. The Commissioner recognized that the SSN is a key identification tool for businesses, government and others to ensure that credit information is placed in the correct data and that, without them, the granting of credit and the provision of other financial services, public health initiatives, criminal law enforcement and anti-fraud and anti-terrorism efforts would become more difficult and expensive. At the same time, because the use of SSNs also gives identity thieves an additional personal identifier to use when attempting to steal a consumer's identity, the Commissioner explained that the FTC has been aggressively enforcing privacy laws.

During the past five years, it has brought 13 cases against businesses that have failed to take reasonable steps to protect sensitive consumer information in their files, one of which paid \$10 million in civil penalties and \$5 million in consumer redress for identity theft victims. The Commissioner further noted that there are other things the government, industry and consumers can do to reduce identity theft, including: evaluating on an ongoing basis the types of information they collect and how best to protect it; developing and improving fraud prevention methods; and continuing to strengthen efforts to empower consumers with knowledge and tools to protect themselves from identity fraud and to deal with the consequences if it does occur.

## **Company Settles FTC Claims that it Violated Federal Privacy Laws**

The FTC settled its thirteenth case challenging data security practices in mid-May. A real estate services company, its financing subsidiary, and the president and sole owner of both entities claimed that they maintained "physical, electronic and procedural safeguards" to protect their confidential financial information," but the FTC alleged that they engaged in a number of practices that indicated otherwise. For example, according to the FTC's complaint, loan applications containing consumer's names, social security numbers, bank and credit card account numbers, and credit histories were disposed of in a public dumpster and a hacker was able to gain access to a company computer network using a common web site attack due to inadequate security measures. The FTC charged them with violating the Safeguards and Disposal Rule, the FTC's Privacy Rule, and the FTC Act because they failed to assess risks to the information they collected and to implement reasonable policies and procedures regarding the collection, handling and disposal of the information. Under the proposed settlement they are barred from misrepresenting the extent to which they protect consumers' personal information, must establish and maintain an information security program, and undergo an audit every two years for the next twenty years to confirm that they are complying with the settlement order

- *Activity of Interest*

### Lawyers Challenge New Bankruptcy Law

A group of organizations that represent attorneys from across the United States has filed a lawsuit in Connecticut claiming that the new Bankruptcy Law illegally hinders the attorney-client relationship and makes it difficult for those filing for bankruptcy to understand the bankruptcy system. The attorneys claim that the new Law requires them to give specific advice to those filing for bankruptcy, namely, to not go deeper into debt and, as a result, that they are being treated like a credit counselor rather than an attorney and are limited in how they can advise their clients. The complaint explains that in many instances an attorney would normally advise a client to do such things as take out student loans, make car repairs, pay medical bills or make child support payments in order to get a higher paying job, keep a current job, or avoid jail; however, under the current Law they are not allowed to offer this advice because paying such bills could be considered increasing the filer's debt. They are asking that the statute be interpreted such that these provisions not apply to attorneys to ensure that they can be adequately represented.

### States Looking to Increase the Minimum Wage

Looking toward elections in November, many State Lawmakers are campaigning to raise the minimum wage in their states. Seven state legislatures have already raised the minimum wage this year, and six other states are preparing to put similar proposals on their November ballots. The drive for such legislative and ballot initiatives are State Lawmaker's way of responding to the fact that Congress has not increased the federal minimum wage, currently set at \$5.15 per hour, since 1997. The House Minority Leader has said that raising the federal minimum wage will be a top priority for Democrats if they regain control of the House of Representatives. Opponents of wage increases argue that doing so will put a strain on businesses and will eventually result in job losses, while supporters maintain that putting more money in the pockets of consumers will help to fuel the economy.

- *Case of the Month*

### **Dealer's Compliance Program Saves It from \$100,000 Civil Penalty**

It's not often that we hear about a Court ordering the IRS to refund money to a Dealer. Perhaps even more noteworthy is the fact that the Dealership involved in *Tysinger Motor Company, Inc. v. U.S.* won its case because of the policies and procedures it adopted to avoid the mistake that occurred. The Dealership sued the IRS to obtain a refund of the \$100,000 civil penalty it paid for failing to report four cash transactions involving more than \$10,000 each. The Cash Reporting Rules are intended to curb money laundering and require retail businesses like motor vehicle dealers to report any such cash transactions. After enactment of the USA Patriot Act, IRS audits of dealership's compliance with the reporting requirements increased significantly.

The IRS audit at issue covered the 1999 and 2000 tax years, during which the Dealership sold 3,000 vehicles. During that period, eight customers made cash down payments of at least \$10,000. The Dealership filed forms for four of the transactions, but the other four weren't reported despite a compliance system developed by the Dealership. Having already been audited twice before and having paid nominal penalties for past cash reporting violations, the Dealership had developed an internal compliance system consisting of training, printing information in the Dealership employee handbook and developing a checklist for reporting cash transactions to ensure that the Form 8300 was filed for all applicable transactions. In addition, the Dealership required F & I managers to notify the CFO of all transactions that involved \$5,000 or more in cash so that he could review and questionable situations and prepare and file the Form 8300s himself. A representative for the Dealership explained that the F&I Managers did not report the transactions at issue to the CFO as required under the compliance system because the cash was received as a down payment in connection with finance transactions and they thought the transactions were finance deals, not cash deals triggering the reporting requirements.

The IRS assessed the maximum civil penalty of \$25,000 per transaction arguing that it was warranted because the Dealership had prior violations and, despite the Dealership's compliance system, it had violated the law. A U.S. District Court in Norfolk, Virginia disagreed and ordered the IRS to refund the entire \$100,000 paid to it. The Court held that the Dealership had proven that it did not intentionally disregard its obligation to file Form 8300s and there was no evidence that anyone at the Dealership consciously ignored the reporting requirements; the failure to report were simply mistakes. "The fact that the compliance system had an internal flaw which resulted in its not working 100 percent of the time did not prove that it was intended to be a sham." This case is an important reminder that having compliance systems in place can help reduce your risk with respect to both consumer disputes and regulatory actions.

## **What you should know about Credit and Debit Card Processing, and the FACTs about Card Truncation**

*Submitted By: Randy Christian, Director of Business Development for EMS*

Everyone is aware Identity Theft is a growing problem in the United States. To help reduce Identity Theft, President Bush, on Dec. 4, 2003, signed the Fair and Accurate Credit Transactions Act of 2003 ("FACTA"). In regards to credit/debit card acceptance and processing, ***this means card truncation.***

In addition to the Federal mandate, Visa and MasterCard have their own rules which include deadlines for requiring truncation of all electronically printed credit card receipts, and many states have stepped forward and created their own regulations. Regulations in states are anything from a small monetary penalty to a class D felony in Kentucky.

### **What is Card Truncation?**

This federal law sets deadlines by which the receipt electronically printed from a credit card sale must be truncated – meaning, the receipt given to the customer shows no more than the last five digits of the customer's credit card number and does not show the expiration date.

*Business owners are responsible for merchant account compliance with the truncation regulations and must make sure their printed cardholder receipts do not contain expiration dates or full account numbers.*

### **Why is truncating important?**

People being very careless with their credit card receipts have led to a rise in credit card fraud from receipts getting found by the wrong people. Truncating the customer's copy of the receipt protects the customer and other merchants from fraud when the consumer loses or disposes of their receipt.

### **When do I have to Comply?**

To be in compliance with FACTA:

- For machines in use before July 1, 2005, the merchant has three years to comply.
- For machines in use after Jan. 1, 2005, the merchant has one year to comply.

To meet Visa and MasterCard compliance:

- Visa requires all terminals deployed after July 1, 2003 be in compliance immediately, and terminals first in use prior to July 1, 2003 must comply by July 1, 2006.
- MasterCard set its new and existing terminal deadline at April 1, 2005.

Additionally, each state has set compliance guidelines. You would need to find out what your state's truncation compliance guidelines are.

### **What if my business does not comply, what are the penalties?**

Visa and MasterCard penalties:

1st Violation - \$5,000

2nd Violation - \$10,000

3rd Violation - \$25,000

4th Violation - \$50,000

Willful or Egregious Violation - \$500,000/month

Visa and MasterCard can also shut down a businesses credit card processing and prevent them from accepting credit cards ever again.

### **Truncation basics:**

- All rules about credit card truncation apply only to electronically printed receipts, not manual imprinters.
- Truncation rules apply to receipts electronically printed in any format, whether a small cash register receipt or a full-page invoice that also serves as a credit card receipt.
- Truncation is required only on the customer's copy of the receipt. When retailers' copies have truncated numbers, problems can arise with charge-backs or when a batch needs to be recreated. Because of this, two separate receipts (one truncated, one not) are necessary.
- Almost all new terminals provided are capable of credit card truncation.
- For truncation to work, three things need to be in place:
  - the machine must be capable of truncation
  - the software must be programmed for truncation
  - the option to truncate must be "turned on"

### **Which terminals may not truncate?**

- Verifone Zon Jr
- Verifone Zon JR XL
- Linkpoint 4000
- POS 50
- POS 500

### **How do I meet the Compliance?**

Depending upon which processing equipment you have, you may have some options. It could be that your terminal/software/POS system has the capabilities, but the card truncation function has not been "turned on." This may require your equipment be reprogrammed. You should contact your provider to find out if they offer truncation and if your current POS (Point of Sale) system has the capability.

If your equipment or merchant service provider does not have truncation capabilities, it may be time to find an updated POS system or merchant service provider. If your merchant service does have truncation capabilities, but has not informed you how to be in compliance, you may want to consider finding a new merchant service provider.

**Summary:**

Besides all of the monetary reasons, it is just a bad business practice not to truncate. Why should a business have the right to jeopardize the security of a consumer's credit card?

If meeting the truncation compliance means updating your POS system or merchant service provider, do so. How many times have you upgraded computers, fax machines and other items to run your business? Penalties for not meeting the compliance requirements can be very costly, perhaps even jeopardizing your business.

FACTA was enacted to help fight Identity Theft, and that's a war we all want to win!

**All questions regarding this article may be referred to Randy Christian of Electronic Merchant Systems at 800-726-2117, ext. 1158 or Matt Shepard at 888-588-4367, ext 1160.**

**\*\*Dealers can contact their state attorney general to find out effective dates for their state compliance. All states will have to comply by July 1, 2006.**

# READING & RESPONSE FORM

## August 2006

- | <b>ARTICLE:</b>        | <b>QUESTION</b>  |
|------------------------|--|
| Spot Delivery          | A dealer should not sell the buyer's trade-in vehicle until the assignment of the buyer's agreement to an assignee is complete, even if state law permits it and the dealer's buyer's order permits it.<br><p style="text-align: right;">(1) True _____ False _____</p>  |
| Hecht & Hecht          | Independent Contractors or subcontractors. No matter what you call them and no matter how you pay them, they are most likely employees. You may think that your paying them in a way that they are not employees but they are employees in the eyes of insurance, the state, federal gov. and workers comp.<br><p style="text-align: right;">(2) True _____ False _____</p>          |
| Kelly's Korner         | Making a copy of the drivers license is not only a standard practice; it is also a sound business procedure for several reasons: to ensure the customer has a valid license, verifies that the customer is who he or she claims to be, and provides a search tool for dealership management if something goes wrong.<br><p style="text-align: right;">(3) True _____ False _____</p> |
| LLR                    | Form 8300 is for reporting cash transactions involving more than \$10,000. The cash reporting rules are intended to curb money laundering and require retail businesses like motor vehicle dealers to report any such cash transactions. The minimum civil penalty for not reporting is \$25,000 per transaction.<br><p style="text-align: right;">(4) True _____ False _____</p>    |
| Hecht & Hecht          | The Test Drive/Loaner Agreement when signed and dated by your customers, should an accident occur, this form would help determine whose insurance pays, yours or your customers.<br><p style="text-align: right;">(5) True _____ False _____</p>   |
| LLR                    | The house has passed a bill that would authorize the FTC to define, investigate and prosecute price gouging in the oil industry.<br><p style="text-align: right;">(6) True _____ False _____</p>   |
| Credit Card Truncation | Electronically printed credit card receipts given to the customers must show no more than the last five digits of the customers credit card number and does not show expiration date.<br><p style="text-align: right;">(7) True _____ False _____</p>  |

I certify to OIADA that I have personally read these articles in Squeaky Wheel Magazine issue **Aug. 2006**  
**Aug. 2006**

Continuing Education Packet # 8-06

Signed: \_\_\_\_\_ Date \_\_\_\_\_

FAX TO: 503-364-7331 or mail to OIADA, 1475 Capitol St NE, Salem, Oregon 97303

Answers: (1) T, (2) T, (3) T, (4) F, (5) T, (6) T, (7) T,