

# ILLINOIS

AUTOMOBILE DEALER NEWS

## Consultant's Corner: What to Do in an Inventory-Driven Sales Slow Down

Page 14



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**BACKGROUND:**

Principal, Private Law Firm  
Former, IADA Legal Counsel  
Former, Illinois Assistant Attorney General,  
Deputy Chief, Consumer  
Protection Division  
Drafted Illinois Motor Vehicle Franchise  
Act Amendments Creating Motor  
Vehicle Review Board  
Drafted Illinois Motor Vehicle  
Advertising Regulations



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# ILLINOIS

AUTOMOBILE DEALER NEWS

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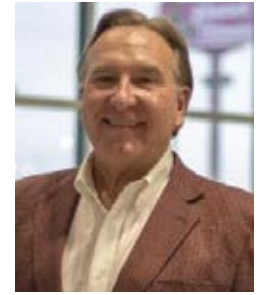
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**O**n behalf of the IADA Board of Directors and staff, I would like to dedicate this edition of our Illinois Automobile Dealers Association News to the Association members sharing the success of our most recent legislative spring session. IADA enjoyed an extremely successful year at the State Capitol thanks to the joint effort of our members' grassroots participation and the support of our state legislators.

We encourage you to reach out to your legislators, reintroduce yourselves, and thank them for their support and advocacy of the many IADA-promoted bills that passed out of the General Assembly this 2021 Legislative Session.

Some of the dealer issues the legislature addressed include the following:

## **SB 58 – RESTORES SALES TAX CREDIT ON TRADE-IN VEHICLES**

This legislation restores the total sales tax trade-in credit on vehicle trade-ins. Two years ago, lawmakers capped the sales tax trade-in credit at \$10,000 to fund capital infrastructure projects necessary statewide.

This bill will be sent to the Governor this month for his signature to ensure the bill becomes law. We will be reaching out to you, our membership, to urge him to sign. And if signed into law, this legislation becomes effective Jan. 1, 2022.

## **HB 3940 – DEALER COMPENSATION FOR WARRANTY WORK**

HB 3940 amends the Illinois Motor Vehicle Franchise Act to require vehicle manufacturers to compensate franchised

dealers fairly and adequately for vehicle warranty work. Also, this bill adjusts manufacturer calculations for time allowances, labor rates, and parts prices for warranty work.

HB 3940 passed the Illinois legislature and now goes to the Governor for his consideration. If signed into law, it becomes effective Jan. 1, 2022. We express our heartfelt appreciation to CATA who joined together with us to advocate for dealers and mechanics in passing this legislation.

## **ELIMINATION AND CAPPING RETAILERS DISCOUNT (SEVERAL PROPOSALS/LEGISLATION) — DEFEATED**

IADA was able to block the many proposals capping or eliminating the retailers' discounts. The Governor's administration was looking for ways to raise revenue for the state, and one of their proposals was to eliminate or cap the retailers' discount.

Currently, dealers and Illinois retailers receive a discount of 1.75% of the sales tax they collect as partial reimbursement for the cost of calculating, collecting, and remitting sales tax on behalf of the state. IADA is happy to report that all of these proposals have stalled for this year.

We expect these bills to be re-introduced annually as the state continues to look for increased revenues.

## **SB 573 – 90 DAY DRIVE AWAY PERMIT/\$20 DEALER TITLE**

IADA was able to make a couple of changes to the Illinois Vehicle Code. The first change was to extend the current 30-day drive-away permit to 90

days, thereby assisting dealers and consumers with enough time for titling and registering vehicles.

SB 573 also allows dealers to pay \$20 for a dealer title when the assignment areas are full, saving dealers from paying the total price on titles.

If signed into law, this legislation becomes effective Jan. 1, 2022.

## HB 2435 – AMENDS THE MOTOR VEHICLE FRANCHISE ACT

HB 2435 defines the term “secondary product” as all products that are not new motor vehicles or OEM parts. It also states that a manufacturer cannot prohibit or require a dealer to offer a secondary product, including but not limited to service contracts; maintenance agreements; extended warranties; protection product guarantees; gap waivers; insurance; replacement parts; vehicle accessories; oil; or supplies.

HB 2435 also permits a manufacturer to offer an incentive program to encourage dealers to suggest manufacturer-approved or endorsed secondary products. And this bill prevents manufacturers from dictating those dealers use only manufacture branded products and extended service contracts. If signed into law, it will be effective Jan. 1, 2022.

## ISSUES THAT IADA OPPOSED AND WERE DEFEATED:

- Capping the doc fee at \$150.00, a 50% reduction from the current doc fee
- Creates the Paid Family Leave Act
- Increasing minimum wage to \$20 an hour
- Blocking consumer privacy bills; adds extra layers of work/disclosures for dealerships
- Creates the Fair Workweek Act — provides for guaranteed work schedules/rest periods
- Creates the Healthy Workplace Act — provides a specified number of paid sick days for employees

IADA would like to express its gratitude for IADA members' calls and notes to their respective legislators to pass these vital legislation pieces to the Governor. In the near future, we will be asking dealers for their continued assistance in contacting the Governor for his approval on legislation and his subsequent signatures that make bills into law. As you can see, your continued support of IADA is so essential! We appreciate your involvement, and the IADA Board of Directors and staff continue to work hard on your behalf. ■

Rick Yemm  
2021 IADA Chairman



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# The FTC Safeguards Rule — Perils of Non-Compliance — 4 Key Must-Haves to Avoid These Perils

By Doug Fusco – CEO – DSGSS – IADA Compliance Partner



**T**he FTC Safeguards Rule has been around since 2003 and sets forth standards for developing, implementing and maintaining reasonable administrative, technical and physical safeguards to protect the security, confidentiality, and integrity of customer information. It, unfortunately, remains one of the biggest challenges in our day-to-day operations. With the new pandemic creation of the “virtual showroom” environment, the threat landscape has grown exponentially. And the new administration has already announced a renewed focus in this area.

When you consider the pressures we face today — speed, transparency, economic pressure, market competition, turnover, training and temptation — one can see why the challenges still exist. We need a better way to protect ourselves against not only the fines we have all heard about (which can

now be up to \$42,000 per violation) but, equally important, the collateral damage to your brand from such an incident. And to make matters worse, it's not going away anytime soon!

Experts have predicted a renewed focus on Safeguards, mystery shoppers in more markets, and potential new laws making it easier for consumers to file class-action lawsuits. Plaintiff's Attorneys have gone as far as renting billboards in major markets requesting a phone call “if a dealer has run your credit.” The deck is not stacked in our favor.

We make a written promise to every customer and prospect in our Privacy Statement. Yours most likely has a phrase similar to this: “To protect your personal information from unauthorized access and use, we use security measures that comply with federal law. These measures include computer



**There are four simple steps we can take to make substantial improvements in your current environment. Three of these are required by law. The first is a dedicated compliance officer, someone with both the responsibility and authority to “have your back,” not just a signature in your policies and procedures.**



safeguards and secured files and buildings.” Do we really demonstrate the necessary consistent behavior to fulfill this obligation? If the answer is no, it is time to make the required changes to correct the problem.

There are four simple steps we can take to make substantial improvements in your current environment. Three of these are required by law. The first is a dedicated compliance officer, someone with both the responsibility and authority to “have your back,” not just a signature in your policies and procedures. The second is to periodically review and update your policies and procedures and consistently train your staff to comply. Training is a must because of turnover, business pressures, and the overall chaos in showrooms during busy times. The third is routinely audit/review your staff’s behavior against these policies. If there are gaps, you should adjust and retrain to eliminate these risks. The specific requirement from the Safeguards program states to “evaluate and adjust the program in light of relevant circumstances, including changes in the firm’s business arrangements or operations, or the results of testing and monitoring safeguards.”

The fourth, which many organizations still struggle with, is execution against these policies on a consistent basis. With

so many moving pieces around front-end compliance, dealers should consider embracing technologies such as compliance enforcement platforms to assure the proper behavior after training. This platform is different from the standard Red Flag/OFAC commoditized items that return with a credit report. More specifically, it should be a platform that “forces” the appropriate behavior on every transaction, assuring the proper creation, processing and retaining of customer information. Most dealers do an excellent job with sold deals and do not always do a good job with dead deals. There are recent public examples of these types of breaches.

You would never consider running your business today without a DMS solution. Why would you treat compliance any differently? With all the complexities in the regulations, constant changes in staff and the busy environment, leveraging technology is the best and most effective way to glue together the first three items. You must lock down a process you can stand behind to protect your customers, your business and yourself. With the renewed focus on compliance, the time to act is now. ■

For more information, contact Matt Hanaman, Regional Sales Manager, at 815.414.0886, or [matt@dsyss.com](mailto:matt@dsyss.com).



# WORKING TOGETHER THROUGH OUR LEGAL DEFENSE FUND

**T**he purpose of the Legal Defense Fund is to provide legal and or financial assistance in proceedings before administrative agencies, federal and state courts, and any other proceedings that have a significant impact and importance to the dealer body or a broad cross-section of IADA members. Some examples:

- The IADA Legal Defense Fund currently supports IADA, CATA, the Peoria Metro New Car Dealers Association, the Illinois Motorcycle Dealers Association, and over 300 dealer members in our lawsuit against the Illinois Secretary of State, Rivian Automotive, and Lucid Motors to preserve the important consumer and dealer benefits of the franchise dealer sales model. Motor vehicle manufacturer attempts to disregard the Illinois Vehicle Code and the Illinois Motor Vehicle Franchise Act and sell directly to customers is perhaps the most significant challenge motor vehicle dealers face today. Dealer support of the Legal Defense Fund is crucial to our support of the franchise system.
- The IADA Legal Defense Fund also supports a group protest before the Illinois Motor Vehicle Review Board filed by several Volvo dealers to challenge Volvo's attempts to rebadge certain Volvo vehicles under the Polestar nameplate and offer the rebadged vehicles to a small minority of Volvo dealers. This challenge will make it much more difficult for manufacturers to impair dealership rights under their sales and service agreements if successful.
- In past years, the IADA Legal Defense Fund has supported several challenges to the Motor Vehicle Franchise Act, including a successful protest filed by Nissan and Infiniti dealers challenging Nissan North America's \$10 Million in illegal warranty cost recovery surcharges.

As you can see, your support of the IADA Legal Defense Fund is more important than ever. Legal defense funds are only expended on approval of the IADA's Executive Committee or Board of Directors on behalf of IADA members who contribute to the Legal Defense Fund. ■

Thank you for your participation in this vital fund to help franchised dealers in Illinois.

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# CUSTOMER DATA BREACH SECURITY — DEALERS SHOULD ENSURE DATA SECURITY COMPONENTS ARE IN PLACE AND ENFORCED IN EXISTING AND PROSPECTIVE VENDOR AGREEMENTS

By Julie A. Cardosi, Law Office of Julie A. Cardosi, P.C.



**W**ith alarming frequency, we hear news of the latest data breach or privacy intrusion involving customer information. Indeed, as this article was going to print, reports surfaced of an OEM's circulated memorandum to its franchised dealers advising them of a vendor data breach potentially affecting more than a reported 3.3 million customers and prospective car buyers<sup>1</sup>, causing the industry to once again take inventory of data security and privacy issues.

According to the reports, along with public statements issued by the OEM, customer information was ostensibly collected for sales and marketing purposes by the OEM's vendor and

allegedly held in an unsecured electronic file which was compromised, impacting customers' sensitive information related to vehicle purchases, loans and leases. Additionally, while the details of the breach are still developing, it's been further reported that dealers that use a specific lead management program offered through the vendor may also be impacted. The OEM preliminarily reported that the customers' potentially compromised data consisted of driver's license numbers, and in some instances, dates of birth, Social Security numbers and account numbers, as well as email addresses and telephone numbers. So, what does this mean besides the possibility of litigation, potential liability, regulatory scrutiny and investigation and unsettled or unhappy customers?

The most recent data breach incident is yet another reminder to dealers of the significance of the need to regularly evaluate the data security components of both existing and prospective vendor contracts and agreements. Customers' privacy and their assurance of its security when doing business with your dealership is not only important to your dealership's goodwill and reputation in the retail community, it's also the dealership's legal obligation.

Even prior to this most recent OEM vendor security breach incident, the privacy and security of customer information has been and continues to be a primary focus of federal and state regulatory enforcement activity. In one of its recent consumer protection enforcement cases relating to breach of data security, the Federal Trade Commission (FTC) charged Ascension Data & Analytics, LLC<sup>2</sup> with violations of the FTC's Standards for Safeguarding Customer Information Rule ("Safeguards Rule"), 16 C.F.R. Part 314, and the Gramm-Leach-Bliley ("GLB") Act, 15 U.S.C. § 6801 et seq., by failing to properly vet and oversee protection of customer information placed in the cloud-based storage system by its vendor. The alleged breach resulted in over 60,000 customers' private, personal information being exposed (i.e., names, dates of birth, Social Security numbers, loan information, etc.), and the FTC sought to hold the mortgage data analytics company responsible for the breach of its hired vendor in failing to develop, implement and maintain a comprehensive information security program in contravention of the Safeguards Rule. The Safeguards Rule requires that third-party service providers also be mandated to protect the security of customers' personal information. Parenthetically, in the most recent security breach incident involving the OEM and its vendor, the OEM advised its dealers that it has informed the appropriate law enforcement authorities and is working with cybersecurity professionals to assess the scope of the problem.

Importantly, the privacy and security consumer protection laws cited above also apply to auto dealers, which is one reason the most recent OEM vendor data security breach should serve as a reminder to all auto dealers to ensure they and their vendors have comprehensive programs in place for the protection and security of customer information. This includes but is not limited to: (i) ensuring any potential third-party service provider has developed, implemented and maintains a comprehensive information security program before the dealer enters into a business relationship with that vendor; (ii) requiring contractually that all third-party vendors comply with applicable federal and state statutory and regulatory requirements and prescribing contractually such vendors' responsibility for compliance and for ensuring the security of customer information pursuant to the Safeguards Rule and related federal and state law requirements, including listing the safeguards vendors must have in place and follow; and (iii) continuously monitoring third-party service vendors'



compliance with applicable federal and state laws and adherence to the contractual requirements through the dealership's establishment and implementation of an audit program to effectively monitor the vendors' practices.

Protection of customer data and ensuring your third-party service providers do the same is not only vital to your business, it is also your legal obligation. Ensure your data security programs and those of your vendors are in place, implemented and strictly monitored. Dealerships' compliance with their legal obligations, including ensuring compliance by their third-party vendors, will serve to protect the security of customer data and preserve the dealership's goodwill and business success. ■

<sup>1</sup> Vellequette, Larry P., "Vendor Linked to VW Data Breach Named in Memo to Dealers", *Automotive News*, June 11, 2021.

<sup>2</sup> See In the Matter of ASCENSION DATA & ANALYTICS, LLC, <https://www.ftc.gov/enforcement/cases-proceedings/192-3126/ascension-data-analytics-llc-matter>.



Julie A. Cardosi is an attorney and president of the private firm, Law Office of Julie A. Cardosi, P.C., of Springfield, Illinois. She has practiced law for 35 years and represents the business interests of franchised new vehicle dealers. Formerly in-house legal counsel for IADA, she concentrates her practice in the areas of mergers and acquisitions and other transfers of dealer ownership, franchise law, commercial law, state and federal regulatory compliance matters, including employment and other areas impacting day-to-day dealership business operations. She has also served as former Illinois Assistant Attorney General and Deputy Chief of the Consumer Fraud Bureau of the Attorney General's Office. The material discussed in this article is for general information only and is not intended as legal advice and should not be acted upon as such. Dealers should consult their own private legal counsel for application to their specific circumstances. For more information, Julie can be reached at [jcardosi@autocounsel.com](mailto:jcardosi@autocounsel.com), or at 217-787-9782, ext. 1.

# What to Do in an Inventory-Driven Sales Slow Down

By Joel Kansanback, Executive Vice President, Brown & Brown Dealer Services

If you have been around the retail business for any time, you have experienced a sales slowdown. Such a slowdown can be from a normal economic cycle, possibly a market-specific catastrophe, or maybe specific to a manufacturer image problem, or even as we have seen recently, a pandemic.

Not seen before is a mass inventory problem believed to be tied to chip shortages, affecting nearly every brand. It is unique not just because it is a first or because it is across most brands but also because it has a defined ending. This problem hails without the usual questions about “how long will this recession last?” “How long will the pandemic last?” Or “with the tsunami taking away my shipments, how much will my competitors be able to go after my sales?”

This one has a clear ending and mainly because we have been in a period of unprecedented profitability. Dealers have a unique opportunity to use this slowdown to play strategic offense for the future while also making some defensive moves to set them up for tremendous success.

1. This is a temporary solution. Hold your team together or amend pay plans where necessary. Keep your sales team intact. Consider doubling the value of a unit sale, increasing F&I-related sales compensation but keep it commission-based. Taking the attitude that “they should have been smart squirrels when times were good” is foolish and shortsighted. Are you saying you do not understand salespeople at all?

What share of salespeople saves a chunk of their pay?

2. Focus on F&I. There is room for improvement here at almost every dealership. Imagine the economic value to your dealership of an extra \$400 per vehicle. Having more time to spend with each customer equals the opportunity to not shortcut processes. Instead, be more strategic and maximize each deal.
3. Focus on Fixed Operations. This is another area with room for improvement in almost every dealership. As managers, now is the time we can go back and examine our shortcomings, review the lack of processes followed, explore the lack of sales, and scrutinize the opportunity to discuss our speed with customers.
4. Focus on Training. If you want your dealership to sell twice as many cars as you do today, could you do it with the processes presently in place? For example, suppose you have three desk managers who do things a bit differently from one another. Or you have only one person who can appraise trades. Or your four top salespeople do not follow the dealership’s “Road to a Sale” motto. Then the answer is you are not equipped to jump to the next level.

Use this slowdown to establish your best practices, train on those processes and decide what level of accountability you want to apply to get them done. I assure you that in dealerships selling 1000 cars per

month, there is only one process. Everyone knows what it is and there is no tolerance for variation.

A culture of training starts at the top. Training needs to be a comprehensive ongoing plan – not a one-time event.

5. Streamline reconditioning. A slowdown in new car sales means a slowdown in trade-ins. Like sales, you want to keep this team together and provide them financial opportunities. Evaluate what is being sent out for work that could perhaps be done internally. Retrain some internal employees on detailing enhancement and cosmetic-type repairs. Use this unique opportunity to look at any department that lacks the processes to move fast and efficiently when times are good.

Have you considered having a different team or process for lower mileage vehicles – creating a faster turnaround? Check on who is ordering parts and when they are ordered for non-core vehicles. It could be that your one size fits all process is creating unnecessary delays. If bottlenecks occurred during our excellent spring selling season, now is the time to dig into what is causing them and make changes ahead of the impending sales surge. ■

For more information, please contact Francis Fagan with Brown & Brown Dealer Services at 312-608-4979 or [ffagan@bbins.com](mailto:ffagan@bbins.com). Francis is the Regional Training Director for Illinois and Indiana. At Brown & Brown Dealer Services, we emphasize training. Visit our website for our training calendar and to meet our nationally renowned trainers at [bbdealerservices.com](http://bbdealerservices.com).

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# Solar Power May Play a Bigger Role for Dealers



**Y**ou may have considered solar in the past, and for whatever reason – timing, costs, logistics, or even disinterest – it did not make sense for your dealership. It is time to look again. Solar is the future for car dealerships, and that is a fact we stand behind.

Consider this: according to the NADA, auto dealerships use on average 18% more energy than typical office buildings. Lighting outdoor lots, running technology-enhanced showrooms, and powering service center equipment can accumulate quite a power draw. Dealerships as a whole spend almost \$2 billion in annual electricity costs.

So, it makes sense that several auto dealerships are going solar.

## Why Solar?

Let us start with the basics. Benefits include:

- Reduced operating costs thanks to thousands of dollars of savings on monthly electricity bills
- Lower tax liability with the federal solar investment tax credit (ITC)
- High internal rate of return on a long-term warranted asset
- Hedge against rising energy costs
- Marketing and PR opportunities related to sustainability efforts with a lower carbon footprint (even if saving the polar bears is not high on your list of priorities, it likely is for a sizable fraction of your buyers. Take the edge and use it wisely.)

## Why Solar for Auto Dealers?

As mentioned above, auto dealerships use approximately 18% more energy than typical office buildings. Toss in the fact that electricity is one of the most significant cost factors for businesses and you're looking at the potential for substantial savings for decades to come. In addition, for dealerships, energy is usually the third-highest overhead expense. To top that off, EV charging stations are on the horizon, and with them, unwelcome spikes in your energy use – and your electricity bill. More expense certainly, but not if you take action now and turn your roof into a viable profit center.

Rooftop solar is quickly becoming the standard for commercial buildings whose owners opt for solar. Of course, large, flat roofs are ideal, but what is appealing is being able to reduce your electricity bill while hedging against future energy costs and concurrently making a profit. The untapped savings from solar is equal to two to three more vehicles sold per month. Stretch that out across several decades, and, well, you get the idea.

Some auto dealers see their hefty monthly electric bill as another fixed expense, but this does not have to be the standard. A solar power system helps drive down those energy costs by enabling more on-site energy production and, thus, optimizing a dealer's bottom line.

Solar installations are also an excellent way to boost a dealer's brand. Customers want to patronize businesses that share the



same values, and eco-conscious customers will appreciate that an auto dealer is committed to helping power the local community using clean, renewable energy. In addition, the growth of electric and alternative fuel vehicle sales indicates automotive buyers' increasing support for eco-friendliness.

For instance, a Nissan dealer in Boulder, Colorado, experienced this brand boost after adding solar panels to the roof of its facility. Ted Christiano, the general manager, noted, "Customers are choosing us over the competitors because we are demonstrating our concern for the community and environment by going solar." Investing in a solar power system sends a statement to any potential customer that your business cares about the environment. Besides the increase in customer traffic, Boulder Nissan dropped its energy use by 20% and now charges their substantial Nissan Leaf inventory with solar power.

According to industry experts, the transition is coming. According to a Bloomberg New Energy Finance report, EVs stock will increase to 548 million worldwide – or 32% of all passenger vehicles – by 2040. While this is good news for reducing carbon emissions that contribute to global warming, this presents a fundamental question for auto dealers and consumers: How will an entirely electric vehicle fleet be powered?

There's no question that those EVs will increase the demand on the grid and, ultimately, the need for clean, affordable solar energy. It just makes sense: Homeowners and business owners who go solar will not have to worry about finding a charging station and can lock in the price they pay to power their EVs in the face of rising energy costs. According to the International Energy Agency, electricity demand from the global EV fleet could increase tenfold by 2030 compared to 2018 levels.

Savvy auto dealers are choosing to go solar now to get the best incentives. However, they know that the inevitable shift toward EVs will mean more on-site chargers are needed. The increased power demand will eventually only cost them more in utility costs.

And that makes it clear: Solar energy is a good choice for saving money and helping the environment. It positions auto dealers well for a transportation future that will be increasingly electric.

## Auto Industry Embracing Solar

In 2012, Luther Auto Group, the largest privately owned automotive group in the Midwest, decided to make a dent in its electric bill by partnering with SunPower to install high-efficiency SunPower® solar systems on 10 of its 33 dealerships, adding about 454 kilowatts of solar. Using the 30% Federal Investment Tax Credit (ITC) and other tax depreciation benefits, the company saved approximately 55% on installation costs. Rebates from the local power company saved them another \$292,000 in project costs. Best of all, the solar systems are expected to save Luther Auto more than \$45,000 each year.

"It's clean power on 'unthought of' spots," says Linda McGinty, Luther Auto's vice president of real estate. "On top of a car dealership surprises people."

## Is Solar Right for You?

All you need to do is ask your office manager or accounts payable clerk to scan and send your last 12-months of utility bills. Then, we team with the nation's top dealership solar experts who will effectively identify where you are losing money, where you will make money, and how to best leverage solar technology to reduce operating costs immediately and for years to come. Here is what to expect:

- Our team will provide a no-cost feasibility analysis based on 12-months of your dealership's trailing utility bills.
- Your analysis will include all tax incentives and subsidies and detail the options unique to your store so you'll be able to make an informed decision.
- We will explain all the variables in your solar proposal that impact ROI.

## OK, But Again, Why Now?

A common question and we hear it all the time. If you wait, you're giving all your money to the utility company versus creating 'My Power Company LLC' (similar to an F&I reinsurance concept) and reaping the financial benefits for years and years to come. Your CPA can identify the LLC entity/shareholders that will benefit from incentives and tax appetite. You'll lease the equipment and sell the energy back to the store, saving on monthly energy costs while the LLC creates an off-balance sheet revenue for 25+ years. Win-win. ■

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**2**

### Explore the Platform

Grab a OoS file you have and run it through the platform. See just how easy it is!

**3**

### Attend a Demo/ Q&A

Our team offers a Webinar covering the platform and questions every Wednesday at 12 pm CST. Please join us at <https://zoom.us/j/91693586982?pwd=Qkwybk1nNk54R0s3R041bktxT0Fxdz09>

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*Bob Boggus  
Owner  
Boggus Motor Company, McAllen, TX*



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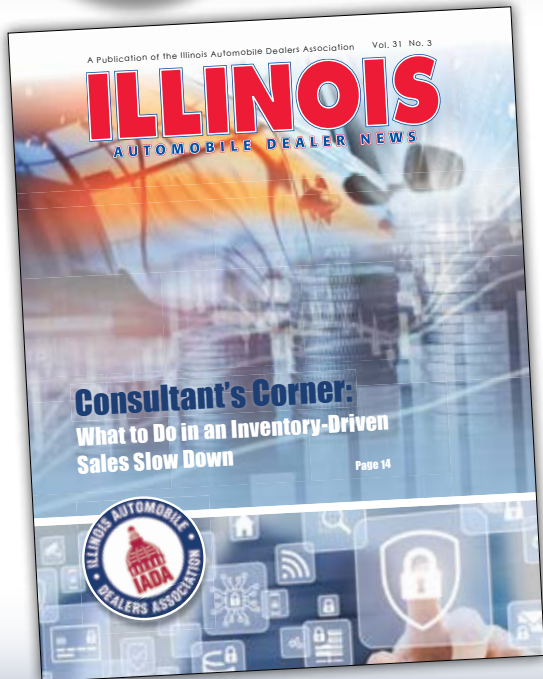


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