



*New Motor Vehicle Board*

# *In-Site*

April 2011

A Publication of the California New Motor Vehicle Board

2.11 Edition

## **2011 ROUNDTABLE**

The Board hosted an Industry/Attorney Roundtable on Wednesday, March 30, 2011, at the Secretary of State's building in Sacramento. The purpose of the event is to educate the members of the Board on industry-related issues and to provide them with an opportunity to interface with dealer and factory personnel; to educate attorneys that regularly appear before the Board or who would like to appear before the Board on procedures and laws relating to the Board; and to educate manufacturer and distributor counsel or employees who appear before the board or prepare/review statutorily required notices sent to the Board and the impacted dealers. Several topics of interest were presented.

The first topic on the agenda was the role of the American Arbitration Association in administrating the General Motors and Chrysler arbitrations. Speakers Dwight James, Vice President (San Francisco) and Jeffrey Garcia, Vice President (Fresno), presented an informative PowerPoint presentation on how the Section 747 (Sec. 747 of the Consolidated Appropriations Act of 2010) arbitrations were administered and some of the lessons that were learned from the experience. The speakers also addressed a number of questions from the audience.

The second topic on the agenda was a two part panel presentation. Pat Perez, Deputy Director of the Fuels and Transportation Division, California Energy Commission, gave an overview of the Energy Commission's alternative and renewable fuel and vehicle technology. Mr. Perez provided an in depth PowerPoint presentation that exhibited informative statistics relating to California, legislative policy, market transformation, the basics of AB 118, and much more. Russell Vare, EV Regional Manager, Nissan North America, Inc., and James Chen, Director of Public Policy with Tesla Motors, Inc., discussed the alternative fuel vehicle industry, the types and quality of vehicles, and whether "green collar" jobs are being created. They spoke on consumer

demand for alternative fuel vehicles, incentives and tax rebates that are available and whether these incentives drive consumer demand. They also discussed the role of new vehicle dealers and the investment requirements in terms of infrastructure.

Mary Garcia, Branch Chief, Occupational Licensing and Andrew Conway, Chief, Registration Policy and Automation Branch of the Department of Motor Vehicles ("DMV") addressed the audience and gave an overview of what is going on at DMV. Ms. Garcia discussed the new mission statement of DMV, and spoke on several DMV issues including licensing and registration of vehicles, the newly designed driver's license, and also explained the CMVRA (SB 729 Consumer Motor Vehicle Recovery Act). Mr. Conway addressed DMV's Business Partner Automation Program and electronic lien/titles. He stated that they will be enhancing the program over the next few years and will streamline the process by putting as much as possible online. An informative exchange took place between the audience and both speakers who expressed the Department's willingness to assist the industry and expressed their accessibility.

Next was a panel discussion concerning manufacturer and distributor pressure to upgrade facilities. Michael J. Flanagan, Esq. of Law Offices of Michael J. Flanagan, Aaron Jacoby, Esq. of Arent Fox LLP, Allen Resnick, Esq. of Jeffer, Mangels, Butler & Mitchell LLP, and L. Joseph Lines, III, Esq. of General Motors were on the panel. The topics included what manufacturers/distributors are requiring in terms of facility upgrades and new facilities, financial incentives provided, and any anticipated impact from the recently amended Vehicle Code sections 11713.1 and 11713.13. "Dualing" and whether the upgrades would keep in line with green technology were also addressed. There was a substantial exchange of questions and answers between the panel and the audience.

Topics 5 and 6 were presented by Robin Parker, Senior Staff Counsel for the Board. Ms. Parker provided an introduction and overview of the Board and addressed the

Roundtable, cont'd from page 1 trends in case management. Ms. Parker indicated that 85 protests were filed in 2010 and there were 164 involuntary notices of termination issued to franchised dealers by their franchisor. She addressed common mistakes in the issuance of notices along with law and motion.

In Topic 6, Ms. Parker outlined a number of changes that were recently promulgated in Title 13 of the California Code of Regulations. (See article on page 4)

The Roundtable was well-received by those in attendance as well as the Board members. If you are interested in the PowerPoint presentations from the event, you can find them on the Board's website at [www.nmvb.ca.gov](http://www.nmvb.ca.gov). Once on the Board's home page, select "NMVB Info", then select "Meeting Agendas and Minutes"; under March 30, 2011, select "materials".

## CNCDA 2011 DEALER DAY

The California New Car Dealers Association ("CNCDA") held their 2011 Dealer Day on March 29, 2011, in Sacramento. Members of the CNCDA, sponsors, and guests attended the luncheon. This year's speakers were State Treasurer Bill Lockyer and Assembly Member Connie Conway.

Attendees were briefed on legislation that impacts the vehicle industry. Two bills of particular interest are SB 642 (Padilla) and AB 1215 (Blumenfeld).

According to the CNCDA, Senate Bill 642 (Franchise Law Reform) is intended to restore the proper competitive balance between dealers and manufacturers so

that independent franchised dealers can continue to service the needs of their communities and customers.

Assembly Bill 1215 (Electronic Vehicle Registration Expansion ("EVR")), will according to the CNCDA, require new car dealers to use EVR for all eligible customer transactions by July 1, 2012. The net fiscal benefit to the state is well over \$10 million per year.

Following the legislative briefing, CNCDA members met with legislators to discuss the various legislative bills of interest. Several Board members and staff attended the luncheon.

## NEW STAFF COUNSEL

The Board is pleased to announce the newest member of our staff, Dana Winterrowd, Staff Counsel. Dana is a Sacramento native and resided here until attending UC Berkeley, graduating in 1976. After working two years as a loan officer for Wells Fargo Bank in Beverly Hills, he attended law school at McGeorge School of Law, graduated in 1981, and was admitted to the California State Bar later that year. In his first year of practice, he worked for a civil and trial law firm in San Francisco. In January 1994, he was admitted to practice in patent matters before the Office of Patent and Trademarks, U.S. Department of Commerce. In 1983, Dana returned to Sacramento where he opened a law practice that continued for 19 years. In 2001, he began his state service as staff counsel with the Office of Privacy Protection, and as tax counsel with the Board of Equalization. Dana has been married since 1981. He and his wife have one daughter. Welcome aboard Dana!



*State of California*  
Edmund G. Brown Jr.  
Governor

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*Department of Motor Vehicles*  
George Valverde, Director

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Glenn E. Stevens  
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## FEBRUARY 4, 2011 GENERAL MEETING

The New Motor Vehicle Board held a General meeting on February 4, 2011, in San Francisco, California. Mr. Flesh welcomed newly appointed Public Member Bismarck Obando to the Board.

Since this was the first General Meeting of 2011, the election of officers took place. Ramon Alvarez C. was unanimously elected President and Glenn E. Stevens was unanimously elected Vice President. Newly appointed President Ramon Alvarez C. announced committee selections for 2011, (see page 4 for committee selections).

There were two case management matters considered by the Public Members:

Bonander Pontiac, Inc. v. Daimler Trucks North America, LLC Protest No. PR-2239-10

On June 17, 2010, Protestant filed a termination protest with the Board. Respondent filed a motion to dismiss on July 22, 2010, that was ultimately denied. On October 1, 2010, Daimler Trucks withdrew its termination on behalf of Western Star Trucks Sales, Inc. On October 25, 2010, Daimler Trucks filed this second motion to dismiss the protest asserting that the protest was moot as there was no longer any intention by any party to terminate the Western Star Trucks Sales franchise of Bonander. A telephonic hearing was held before Administrative Law Judge Anthony M. Skrocki on December 7, 2010. The Public Members unanimously adopted the Proposed Order Granting Respondent's Motion to Dismiss.

Santa Monica Group, Inc. v. General Motors, LLC  
Protest Nos. PR-2276-10 and PR-2277-10

On October 29, 2010, Protestant filed a termination protest with the Board for its Buick and Chevrolet franchises. Respondent filed a motion to dismiss on November 19, 2010. A telephonic hearing was held before Administrative Law Judge Anthony M. Skrocki on December 15, 2010. The Public Members unanimously adopted the Proposed Order Granting Respondent's Motion to Dismiss.

### Administrative Matters

The members approved the 11 out-of-state trips requested for fiscal year 2011-2012. The trips are for the National Association of Motor Vehicle Boards and Commissions Fall Workshop in October 2011, in Reno, Nevada; the Recreational Vehicle Industry Association's 49<sup>th</sup> National Trade Show in December 2011, in Louisville,

Kentucky; the National Automobile Dealers Association Convention and Expo in February 2012, in Las Vegas, Nevada; and on-site training to an Administrative Law Judge in April 2012, in Sparks, Nevada

After a general discussion regarding the Board's financial condition, the Board unanimously approved reinstating the Annual Board Fee per manufacturer or distributor to \$.45 per vehicle with a minimum of \$300.00 and reinstating the dealer fee to \$300.00 coupled with the Board's ongoing responsibility to monitor its expenditures. In a subsequent agenda item, the Board approved the regulatory text to implement these proposed changes.

The members unanimously adopted the revised *Informational Guide for Manufacturers and Distributors*, which is on the Board's website at [www.nmvb.ca.gov](http://www.nmvb.ca.gov).

The members reviewed the Board adopted policies including those new policies approved in 2010.

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Mediation Services Staff  
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Email us at  
[nmvbmediation@nmvb.ca.gov](mailto:nmvbmediation@nmvb.ca.gov)*

## MARCH 29, 2011 GENERAL MEETING

The New Motor Vehicle Board held a General meeting on March 29, 2011, in Sacramento in conjunction with the California New Car Dealers Association "Dealer Day". The administrative matters included, in part, the following:

In compliance with the 1996 Performance Audit conducted by Business, Transportation & Housing Agency, it was reported to the full Board that an amicus curiae letter was filed in *Yamaha Motor Corporation, U.S.A. (Petitioner) v. Superior Court of the State of California County of San Luis Obispo (Respondent); Powerhouse Motorsports Group, Inc. and Timothy L. Pilg; California New Motor Vehicle Board (Real Parties in Interest)* in the California Supreme Court in support of Yamaha's petition for review. The jurisdictional issue presented was whether final Board decisions are binding with regard to other legal

March 29, cont'd from page 3

proceedings when the underlying writ concerning the final Board decision is denied, or whether these decisions are subject to re-litigation in a subsequent court action. [On April 13, 2011, the court denied Yamaha's petition for review and application for stay.]

John Hansen, Chief, DMV Facilities Operations Branch provided detailed information on the Board's current lease, the cost and availability of moving in the midtown area, available State buildings and the cost, and the timeframe and cost of buying or constructing a building. Mr. Hansen also discussed the facility improvements that DMV is currently embarking on at its headquarters in Sacramento in addition to its long-term plan to construct new facilities on the site formerly occupied by the CHP. Mr. Hansen indicated that there was room for the Board in this master plan. A number of questions requiring follow-up were asked of Mr. Hansen and Board staff by the members, and it was requested that Mr. Hansen come back to the Board to answer the questions posed. This matter will be on the next agenda.

It was reported that the Board's Consumer Mediation Program continues to be successful. During this discussion, the issue of the Board promoting the Consumer Mediation Program came up. There was a lengthy discussion by the members including the feasibility of advertising the Consumer Mediation Program in light of the 1996 Performance Audit; the potential increases in workload, costs, and staffing; and other State agencies that would need to be consulted including the Department of Consumer Affairs, Business, Transportation & Housing Agency, and the DMV along with the Brown Administration. This matter will be on the next agenda.

For the 2<sup>nd</sup> quarter of fiscal year 2010-2011, the Board expended 36% of its appropriated budget.

Administrative Law Judge Marybelle D. Archibald resigned effective upon the completion of the Proposed Decision *in Shayco, Inc. dba Ontario Volkswagen v. Volkswagen of America, Inc.*

The meeting tentatively scheduled for June 7 has moved to May 26, 2011, in Los Angeles.

## REGULATORY AMENDMENTS

The Board recently promulgated a number of regulatory amendments that were operative March 17-26, 2011, that mainly pertain to case management and the format of pleadings. The Office of Administrative Law hosts the California Code of Regulations ([www.oal.ca.gov](http://www.oal.ca.gov)) under "Sponsored Links", where you can search for specific information.

The Board's regulations, Sections 550 through 598, are under Title 13 (Motor Vehicles), Division 1 (Department of Motor Vehicles), Chapter 2 (New Motor Vehicle Board). There are separate and different regulation provisions for appeals (Articles 3 and 4), petitions (Articles 2 and 4), and protests (Article 5).

The following summarizes, in part, the regulatory changes:

Section 550 – a number of definitions have been added including ALJ, Appeal, Appellant, hearing, motion, papers, petition, protest, and serve or service of papers. These definitions are supplemental to and do not replace those found in the Vehicle Code or other applicable laws and regulations.

See Amendments, page 5

### COMMITTEE MEMBERS

#### ADMINISTRATION COMMITTEE

Mr. Hoffman, Chair and Mr. Brooks, Member

#### BOARD DEVELOPMENT COMMITTEE

Mr. Brooks, Chair and Mr. Obando, Member

#### EXECUTIVE COMMITTEE

Mr. Alvarez C., Chair and Mr. Stevens, Member

#### FISCAL COMMITTEE

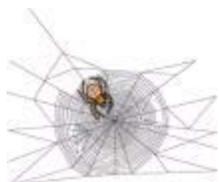
Ms. Pearson, Chair and Mr. Flesh, Member

#### GOVERNMENT AND INDUSTRY AFFAIRS COMMITTEE

Mr. Flesh, Chair and Mr. Wilson, Member

#### POLICY AND PROCEDURE COMMITTEE

Mr. Wilson, Chair and Mr. Stevens, Member



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## Amendments, cont'd from page 4

Sections 594, 595, and 597 – pertains to format of pleadings. Except as otherwise provided by statute or regulation, the Board may accept for filing papers, documents, and exhibits that bear a copy of a signature (13 CCR § 597(d)). Dates of the hearing and future pre-hearing or settlement conference dates should be on the first page of each pleading.

Papers can be filed via facsimile or e-mail, unless an original is required by order of the Board.

Papers delivered by the U.S. Postal Service or other means are deemed filed on the date actually received by the Board.

Papers hand-delivered and complete papers received by facsimile or e-mail during regular business hours will be filed on the date received.

Papers received after regular business hours are deemed filed on the next regular business day.

Protests sent by U.S. Postal Service certified or registered mail are deemed received by the Board on the date of certified or registered mailing and will be filed as of the date of the certified or registered mailing.

Section 593.1 – encompasses termination/refusal to renew and modification notices in addition to establishment, relocation, and off-site sales notices. The amendments mandate that these statutorily required notices be separately issued to each franchisee and separately issued for each line-make represented by a franchisee. Notices shall not be combined to include more than one franchisee nor combined to include more than one line-make.

Section 583 – clarifies who can sign a protest, and who can represent a protestant that is a corporation or is a natural person or other legal entity. It is consistent with the opinion that allows non-attorneys to represent corporations in administrative proceedings.

Section 551.13 – pertains to settlement conferences and mandatory settlement conference statements. Unless the parties agree orally or in writing that the statements shall be submitted only to the Board for use by the assigned settlement conference administrative law judge and designated “confidential”, the settlement conference statement filed with the Board shall be accompanied by a proof of service showing service on all other parties.

Section 551.2 – clarifies the Board’s issuance of subpoenas, updates obsolete statutory references when the California Civil Discovery Act was reorganized, and references electronically stored information (Section 1985.8 of the Code of Civil Procedure). A motion to

quash pursuant to Government Code section 11450.30 shall be made in compliance with Section 551.19 of the Board’s regulations. The motion shall be made within a reasonable time after receipt of the subpoena.

Section 551.19 – fills a gap in the Board’s case management procedures concerning motions. All motions shall be in writing and filed with the Board with an attached proof of service on all parties (unless made during a hearing while on the record). Motions and any response including an opposition to the motion and a reply to the opposition shall conform to the requirements of Article 6. The motion and any response shall state in plain language the relief sought and the facts, circumstances, and legal authority that support the motion or the response. Briefing may be permitted by stipulation of the parties or by Board order. Government Code section 11440.30(a) of the Administrative Procedure Act provides that “[t]he presiding officer may conduct all or part of a hearing by telephone, television, or other electronic means if each participant in the hearing has an opportunity to participate in and to hear the entire proceeding while it is taking place and to observe the exhibits.” Subsection (b) goes on to provide that “[t]he presiding officer may not conduct all or part of a hearing by telephone, television, or other electronic means if a party objects.” The regulation exempts the Board’s hearings from this optional provision and clarifies that all motion hearings are conducted by telephone, television, or other electronic means unless otherwise determined by the administrative law judge. However, in the event of live testimony, the regulation provides that the hearing shall be conducted in person before the administrative law judge.

Section 551.20 – pertains to the conduct of a hearing and protective orders consistent with Government Code section 11425.20 and Rule 2.550 and 2.551 of the California Rules of Court. A motion seeking an order for closure or other protective order for all or part of a hearing, including a motion to seal designated portions of the record shall be made before the ALJ presiding at the hearing to which the order will apply. The motion may be made by separate writing or it may be made orally on the record. It may be made at the commencement of or during the course of the hearing but must be made as early as is practicable. In any case, the provisions of Government Code section 11425.20 shall be applicable. The motion shall clearly identify the relief sought and the facts, circumstances, legal authority, and shall include declarations or other evidence that support the motion. An

## Amendments, cont'd from page 5

oral or written opposition to the motion may be permitted in the discretion of the ALJ. The ALJ shall set forth on the record the facts, legal basis, and findings that support any protective order, order to seal parts of the record, or order to close all or part of the hearing to the public.

Section 551.25 – ensures the parties and counsel are aware of the parameters permitting a substitution or withdrawal of counsel. It is consistent with the Rules of Professional Conduct (Rule 3-700) and Section 284 of the Code of Civil Procedure. The party to a protest, petition or appeal may substitute counsel of record at any time. It shall be evidenced by a writing signed by the party and new counsel of record and filed with the Board. The writing shall be served on all other parties named in the proceeding. Counsel of record for a party may not withdraw from a protest, petition, or appeal without permission from the Board. To obtain permission, counsel must file and serve a written request to withdraw, stating with particularity the factor or factors as set forth in Rule 3-700 of the Rules of Professional Conduct and Code of Civil Procedure section 284, justifying the request. Declarations of counsel may be filed under seal, but must be served on the party of the moving counsel, who then has an opportunity to be heard. Substitution or withdrawal of counsel does not alone constitute grounds for continuance of any previously scheduled dates in the proceeding.

Section 551.21 – pertains to sanctions for bad faith actions. The ALJ may recommend ordering a party, a party's representative or both, to pay reasonable sanctions, including attorney's fees and costs, incurred by another party as a result of bad faith actions or tactics that are frivolous or solely intended to cause unnecessary delay. "Actions or tactics" include, but are not limited to, the making or opposing of motions or the failure to comply with a lawful order or ruling of the Board. "Frivolous" means: totally without merit; or for the sole purpose of harassing an opposing party. The ALJ shall not recommend an award of sanctions without providing notice and an opportunity to be heard. Whether there has been bad faith by a party shall be determined by the ALJ based upon testimony under oath or other evidence. Any proposed order recommending sanctions by the ALJ shall be on the record, or in writing, setting forth the factual findings on which the sanctions are based, as well as setting forth the factual findings as to the reasonableness of the amount(s) to be paid. A proposed order recommending an award of sanctions shall be considered by the Board members at their next regularly scheduled meeting. A determination

not to award sanctions is not considered by the board members and is final upon issuance by the ALJ. The Board members' consideration to affirm, reject or modify the ALJ's award of sanctions does not alone constitute grounds for continuance of any previously scheduled dates in the proceeding.

Section 551.24 – formalizes how proof of service can be accomplished in Board proceedings. This regulation is consistent with Section 1013a of the Code of Civil Procedure and current Board practice that provides for service via facsimile and electronic mail. Where service is by facsimile the proof of service shall state the method of service upon each party, the date and time sent, and the facsimile telephone number to which the document was sent. Where service is by electronic-mail the proof of service shall state the method of service upon each party, the date and time of electronic service, and the name and electronic notification address of the person served.

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## NAMVBC 2011 WINTER WORKSHOP

The National Association of Motor Vehicle Boards and Commissions ("NAMVBC") held its Winter Workshop in San Francisco, California, February 4-6, 2011. The objective of the workshop was to share information and ideas of common interest to motor vehicle regulators, industry associations, manufacturers, and consumer advocates who attended. Bill Brennan, Treasurer of NAMVBC and Executive Director of the New Motor Vehicle Board welcomed attendees and facilitated introductions of those present.

The Saturday workshop featured Steven Schneider, Chief Executive Officer, from ZAP who gave a presentation on their vehicles. He explained that ZAP stands for zero air

See NAMVBC, page 7

NAMVBC, cont'd from page 6

pollution and it is anticipated that the next 5 years will bring more change to the auto industry than in the last 100 years for the newly emerging electric vehicle and alternative fuel transportation industry. Mr. Schneider has built his own platform with support from China. His objective for the future is to focus on corporate and government fleets.

Mary Garcia, Chief, Occupational Licensing Branch, California Department of Motor Vehicles, followed Mr. Schneider with a presentation of current issues within the department. Ms. Garcia opened her presentation with an explanation of DMV's logo, Director, George Valverde's inspirational idea of "DMV – Driving Change", and that DMV is a recognized and trusted leader, with public service as its main goal. She spoke on several DMV issues including licensing and registration of vehicles, the newly designed driver's license, and electronic lien transfers. She also explained the CMVRA Consumer Motor Vehicle Recovery Act), and how the claim process works in that it takes approximately 6 months, DMV collects the money, but it goes into the Attorney General's fund.

Following the speakers, the tentative location for the fall meeting was discussed. Reno, Nevada was selected, with the potential date of October 12-16, 2011.

## JAPAN DISASTER

The devastating earthquake and tsunami that hit Japan on March 11, 2011, had a profound affect on the automobile industry with automakers, suppliers and dealers having to prepare for shortages of parts and vehicles. In addition, U.S. Customs began screening the arriving Japanese sea and air cargo, including vehicles and auto parts for radiation contamination. Containers will be turned away if unacceptable levels of radiation are detected.

American Honda has predicted Honda and Acura orders may be disrupted into May 2011; General Motors's Shreveport, Louisiana factory which builds the Chevrolet Colorado and GMC Canyon pickups closed as a result of the supply of a particular part from Japan had run out; Toyota Motor Corp. and Subaru of Indiana Automotive Inc. slowed their North American production to ration parts; Sonic Automotive Inc. is prepared to supplement new-vehicle inventory with quality used vehicles if the disruption of new vehicle inventory supply lasts longer than anticipated.

Ford had declined to speculate on what future impacts the disaster may have on its sales. Although they did

not experience any parts shortages, the situation changes constantly and they are monitoring it.

Some factors that may also come into play would be that retailers may have to prepare for higher transaction prices on new vehicles. This would include all brands, not just Japanese brands. If there is a scarcity of Japanese models, it is likely incentives will fall, thus possibly creating a domino effect for all brands. Many models threatened by production disruptions are some of the most fuel-efficient, including Honda Fit, Insight, Civic Hybrid and the CR-Z. It is possible that "discount off" stickers may decrease, thus raising the price of vehicles.

Japan also exports 2 million transmissions a year to North America and 6.5 million to other world markets. It was estimated that possibly two-thirds of Japan's 72 engine and transmission plants had stopped production.

There is still unaccounted damage to buildings, machinery, bridges, roads and utilities, in addition to aftershocks, rolling blackouts and fear of radiation contamination, which may continue to impact much of the automotive industry.

## BOARD RECEIVES AWARDS

For its participation in the 2010 California State Employee Charitable Campaign (CSECC), the Board received a Platinum Award for achieving more than an 85% participation rate, a Platinum Award for our generous per capita gift of \$100.00 or more, a Red Shoe Award for achieving an increase of 20% or more over last year, and a wooden plaque that is the Spirit of California Award for our Outstanding Participation Increase. The awards are proudly being displayed on the "Award Wall" in the office.

## APRIL IS DISTRACTED DRIVING AWARENESS MONTH

In response to the growing concern around the dangers of distracted driving, the National Highway Traffic Safety Administration (NHTSA) has identified April as the nation's first *Distracted Driving Awareness Month*. California will join this observance during the month of April with increased public education and enforcement surrounding the very real danger of distracted driving, as well as the fine for violations.

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