



**Colorado
Legislative
Council
Staff**

HB16-1342

FISCAL NOTE

FISCAL IMPACT: State Local Statutory Public Entity Conditional No Fiscal Impact

Drafting Number: LLS 16-0885
Prime Sponsor(s): Rep. Moreno
Sen. Cooke

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Bill Status: House Transportation and Energy
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BILL TOPIC: REPORTING DATABASE FOR MOTOR VEHICLE SALES

Fiscal Impact Summary	FY 2016-2017	FY 2017-2018
State Revenue	<u>at least \$72,792</u>	<u>at least \$63,945</u>
Cash Funds	at least 72,792	at least 63,945
State Expenditures	<u>\$57,792</u>	<u>\$48,945</u>
Cash Funds	47,814	38,815
Centrally Appropriated Costs	9,978	10,130
TABOR Impact	at least \$72,792	at least \$63,945
FTE Position Change	0.5 FTE	0.5 FTE
Appropriation Required: \$47,814 – Department of Revenue (FY 2016-17).		
Future Year Impacts: Ongoing revenue and expenditure increases.		

Note: This fiscal note is provided pursuant to Joint Rule 22 (b) (2) and reflects strike-below Amendment L.003.

Summary of Legislation

The bill requires licensed automobile dealers who sell salvage, non-repairable, flood-damaged, junk, or similarly branded motor vehicles to report each transaction to a third-party data consolidator within two days of the sale. The consolidator must be approved by the National Motor Vehicle Title Information System (NMVTIS) and must forward the report to NMVTIS by the following day. The consolidator may charge the dealer a per-transaction fee.

The report must be maintained electronically by the dealer for three years and must contain the following:

- the motor vehicle's make, model, year, vehicle identification number (VIN), and current odometer reading;
- the name and address of the purchaser and the seller;
- a copy of the purchaser's driver's license or other government-issued identification document; and
- proof of the purchaser's in- or out-of-state automobile dealer license, if applicable.

The consolidator is required to make information received under this section available without charge and upon request to law enforcement, the Department of Revenue (DOR), and, if the DOR approves, a nongovernmental entity.

Any person who violates the reporting requirements under the bill commits an unclassified misdemeanor, punishable by a fine of \$500 per transaction, credited to the Auto Dealers License Fund.

In addition, the bill increases penalties for unlicensed automobile sales. Under current law, a person commits a class 3 misdemeanor for selling a motor vehicle without a license. Under the bill, this violation becomes an unclassified misdemeanor with the following penalties on unlicensed motor vehicle dealers, manufacturers, distributors, wholesalers, manufacturer representatives, used motor vehicle dealers, buyer agents, wholesale motor vehicle auction dealers, and motor vehicle salespersons:

- **for an individual**, a fine of no less than \$1,000 and 25 hours of public service, neither of which may be suspended by the court. A second conviction results in a fine ranging from no less than \$5,000 to no more than \$25,000, neither of which may be suspended by the court; and
- **for a corporation**, a fine ranging from no less than \$5,000 to no more than \$25,000 for each separate offense.

Fines for unlicensed automobile sales are awarded half to the law enforcement agency that conducted the investigation and issued the citation and half to the Auto Dealers License Fund.

Background

Title brands. A brand is a permanent marking on a motor vehicle's title, associated with the vehicle's identification number (VIN), that provides information about the value of the vehicle. A vehicle's title brand must carry forward to future titles, and a brand from another state must carry forward to the vehicle's Colorado title. Under current law, a motor vehicle's certificate of title is branded if the vehicle:

- is a salvage vehicle or is rebuilt from salvage;
- is non-repairable or flood-damaged;
- has had its odometer tampered with; or
- has a designation that was placed on its title by another jurisdiction.

Owners of non-repairable vehicles must apply for a non-repairable title and may only sell the vehicles as scrap or for parts. Owners of salvage vehicles, which include vehicles damaged by collision, fire, flood, accident, trespass, or other occurrence, excluding hail damage, must apply for a salvage title, unless the vehicle has been made roadworthy, in which case the vehicle's title must be branded with "rebuilt from salvage." If a vehicle is determined to be junk, the DOR must cancel the VIN, collect the title, and remove the vehicle from the motor vehicle system. Current law also requires any owner or dealer to disclose any title brand prior to sale or trade of a motor vehicle through a branded title disclosure statement.

National Motor Vehicle Title Information System. NMVTIS was created under the federal Anti Car Theft Act of 1992 and is designed to allow state titling agencies to verify information on a paper title as well as to help reduce auto theft and title-related crimes. Vehicle titling agencies, insurance carriers, auto recyclers, and junk and salvage yards are required to report to NMVTIS with limited exceptions. Junk and salvage yards handling less than five salvage vehicles per year are exempt from reporting.

Motor Vehicle Dealer Board. The Colorado Motor Vehicle Dealer Board processes and reviews automobile dealer license applications. The board also generally enforces the laws regarding licensees, including holding hearings, ordering corrective actions, and resolving consumer complaints. The board does not have jurisdiction over private parties who are not licensees. There are currently 2,310 licensed dealers in Colorado, including franchisees (603), used vehicle dealers (1362), and wholesale dealers (345).

Automobile Industry Division. The Automobile Industry Division (AID) in DOR employs 12 criminal investigators who investigate consumer complaints against licensees. Additionally, these criminal investigators have limited peace officer authority, enabling them to write criminal summonses (citing persons into county court) for unlicensed motor vehicle sales activities, which are then adjudicated in county court. The AID investigated 1,265 cases in 2015.

Current penalties for unlicensed automobile sales. Currently, convicted unlicensed automobile dealers are subject to a class 3 misdemeanor, the standard penalties for which are a fine of \$50 to \$750, up to six months in jail, or both. Further, fine penalties for unlicensed automobile dealers are set in statute at:

- **for an individual**, a fine of no less than \$100 and no more than \$1,000;
- **for a corporation**, a fine of no less than \$500 and no more than \$2,500; and
- **for a second offense**, a fine of \$2,500.

Comparable Crime

Pursuant to Section 2-2-322 (2.5), C.R.S., Legislative Council Staff is required to include certain information in the fiscal note for any bill that creates a new crime, changes the classification of an existing crime, or changes an element of the existing crime that creates a new factual basis for the offense. The bill creates a new penalty for violating reporting requirements and increases the penalty on unlicensed automobile sales. In 2015, there were 10 convictions for unlicensed automobile dealers. Of these convictions, all involved males, and the minority status of the criminals was 9 Caucasian and 1 Hispanic.

State Revenue

State cash fund revenue from fees and fines will increase by **at least \$72,792 in FY 2016-17 and at least \$63,945 in FY 2017-18** as discussed below.

Department of Revenue. Automobile dealer fees will be raised to cover the estimated costs for AID enforcement, as discussed in the State Expenditures section, of \$57,792 in FY 2016-17 and \$48,945 in FY 2017-18. There are currently 2,310 licensed automobile dealers in the state and 38 different licensing and related fee categories. Fees have not been estimated for this fiscal note. They will be set administratively by the DOR based on the cash fund balance, estimated program costs, and estimated number of licensees.

In addition, beginning in FY 2016-17, this bill is anticipated to increase state fine revenue by at least \$15,000 per year, credited to the investigating law enforcement agency and to the Auto Dealers License Fund in DOR. The bill creates a new penalty for violating reporting requirements punishable by a per-transaction fine of \$500. In addition, the bill enhances penalties for unlicensed automobile dealers by requiring the court to impose a minimum fine of \$1,000 for an individual and \$5,000 for a corporation convicted of violating motor vehicle dealer licensing laws. Based on the 2015 individual conviction rate, the fiscal note assumes that the bill will generate at least \$15,000 in revenue per year.

TABOR Impact

This bill increases state cash fund revenue from fines, which will increase the amount of money required to be refunded under TABOR. TABOR refunds are paid out of the General Fund.

State Expenditures

This bill will increase state cash fund expenditures in the Department of Revenue by **\$57,792 and 0.5 FTE in FY 2016-17 and by \$48,945 and 0.5 FTE in FY 2017-18**, as shown in Table 1 and discussed below. The Judicial Department will also have a minimal workload increase, as discussed below.

Table 1. Expenditures Under HB16-1342		
Cost Components	FY 2016-17	FY 2017-18
Personal Services	\$37,846	\$37,846
FTE	0.5 FTE	0.5 FTE
Operating Expenses and Capital Outlay Costs	5,178	475
Investigative Supplies	4,790	494
Centrally Appropriated Costs*	9,978	10,130
TOTAL	\$57,792	\$48,945

* Centrally appropriated costs are not included in the bill's appropriation.

Assumptions and data. On average, there are approximately 1.7 million title transactions per year, of which approximately 70,000, or 4 percent, relate to salvage, non-repairable, flood-damaged, junk, or similarly branded motor vehicles. The AID currently manages 1,265 investigations per year, or 105 cases per investigator. The fiscal note assumes that the workload in the AID will increase by 4 percent, or 50 cases per year, under the bill.

Personal services. Beginning in FY 2016-17, 0.5 FTE Criminal Investigator II will be required to conduct investigations and to prepare investigation reports and affidavits of probable cause for presentation to law enforcement and the Motor Vehicle Dealer Board. Standard operating expenses and capital outlay costs are included. To the extent that investigations exceed AID workload capacity, it is expected that DOR will seek additional resources in the annual budget process.

Outreach. The Motor Vehicle Dealer Board and the AID will be required to update materials to reflect the new reporting requirements and noncompliance penalties, as well as the new penalties for unlicensed automobile sales. This workload can be accomplished within existing appropriations.

Judicial Department. Workload may increase in the Judicial Department related to a minimal increase in internal reviews and review hearings under the bill, and a potential increase in contempt hearings. The court's information technology system will also be updated. The fiscal note assumes these workload impacts are minimal and will not require a change in appropriations for any division in the Judicial Department.

Centrally appropriated costs. Pursuant to a Joint Budget Committee policy, certain costs associated with this bill are addressed through the annual budget process and centrally appropriated in the Long Bill or supplemental appropriations bills, rather than in this bill. Leased space is included to show the incremental impact of the additional FTE, and calculated at DOR's rate of 200 square feet per FTE at a rate of \$27 per square foot. The centrally appropriated costs subject to this policy are estimated in the fiscal note for informational purposes and summarized in Table 2.

Cost Components	FY 2016-17	FY 2017-18
Employee Insurance (Health, Life, Dental, and Short-term Disability)	\$4,039	\$4,039
Supplemental Employee Retirement Payments	3,239	3,391
Leased Space	2,700	2,700
TOTAL	\$9,978	\$10,130

Local Government Impact

AID enforcement cases under the bill may be referred to county courts. To the extent that this occurs, workload in county courts and the Denver County Court, which is funded by the City and County of Denver, will increase. This workload is expected to be minimal.

Technical Notes

While the bill allows half of the fines imposed by a court to be credited to the Auto Dealers License Fund, the Auto Dealers License Fund section currently precludes this.

While investigators in the AID are certified peace officers, they are limited to issuing criminal summons for certain violations, not including the newly created Section 12-6-132, C.R.S. under the bill. As a result, these cases will be required to be passed on to a local law enforcement agency to issue the summons.

Junk motor vehicles are no longer considered motor vehicles, and junk vehicle dealers are not required to be licensed automobile dealers, therefore junk vehicle dealers, like scrap yards, will not be required to report transactions or be enforced by the AID.

Effective Date

The bill takes effect July 1, 2016.

State Appropriations

For FY 2016-17, the Department of Revenue requires a cash fund appropriation of \$47,814 from the Auto Dealers License Fund and an allocation of 0.5 FTE.

Departmental Difference

The DOR estimates state cash fund expenditures for AID enforcement of \$2,216,171 and 22.4 FTE in FY 2016-17 and \$2,126,971 and 24.0 FTE in FY 2017-18 from the Auto Dealers License Fund. These costs require a correlating increase in fee revenue of \$2,216,189 in FY 2016-17 and 2,126,990 in FY 2017-18. The DOR assumes that 5 percent of 50,000 title transactions, or 2,500 per year. Because an AID investigator can manage 105 cases per year, DOR assumes this creates the need for 24.0 FTE to handle the additional workload. DOR cost estimates include 10 vehicle leases and law enforcement equipment costs in addition to standard operating and capital outlay costs. The fiscal note assumes that because there are approximately 1.7 million title transactions per year, of which approximately 70,000, or 4 percent, relate to salvage, non-repairable, flood-damaged, junk, or similarly branded motor vehicles, workload will increase in the AID by 4 percent, or 50 cases per year, which can be managed by an additional 0.5 FTE.

State and Local Government Contacts

Information Technology
Public Safety

Judicial
Revenue

Law