



**Colorado
Legislative
Council
Staff**

HB16-1342

**REVISED
FISCAL NOTE**

(replaces fiscal note dated April 7, 2016)

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

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

Date: April 20, 2016
Bill Status: House Finance
Fiscal Analyst: Erin Reynolds (303-866-4146)

BILL TOPIC: REPORTING DATABASE FOR MOTOR VEHICLE SALES

Fiscal Impact Summary	FY 2016-2017	FY 2017-2018
State Revenue	<u>at least \$2,500</u>	<u>at least \$5,000</u>
Cash Funds	at least 2,500	at least 5,000
State Expenditures	<u>\$8,000</u>	Workload increase.
Cash Funds	8,000	
TABOR Impact		at least \$5,000
Appropriation Required: \$8,000 – Department of Revenue (FY 2016-17).		
Future Year Impacts: Ongoing revenue and workload increases.		

Summary of Legislation

The bill, ***as amended by the House Transportation and Energy Committee***, requires individuals or entities engaged in the business of operating a junk yard or salvage yard, as well as a person who sells a motor vehicle as part of a salvaging business or auction business, to acquire and report the following information upon each sale of a salvage, nonrepairable, flood-damaged, junk, or similarly branded motor vehicle:

an electronic record of:

- the vehicle's make, model, year, vehicle identification number (VIN), and current odometer reading, if available; and
- the name and address of the purchaser, if the purchaser is an individual, and the seller;

a copy (which must be maintained for three years) 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.

This information, stripped of personal identifying information, must be reported to a third-party National Motor Vehicle Title Information System (NMVTIS) data consolidator within ten days. This reporting requirement does not apply to licensed motor vehicle dealers, licensed used motor vehicle dealers, or motor vehicle recyclers.

The consolidator may charge a service fee to those required to report under the bill. The consolidator is required to make information received under this section available, without charge and upon request to law enforcement agencies and the Department of Revenue (DOR). The consolidator may not release information on the vehicle make, model, year, VIN, or odometer reading to any nongovernmental entity unless the DOR approves the entity to receive the information.

Any person who violates the reporting requirements under the bill commits an unclassified petty offense, punishable by a fine of \$250 per transaction, credited to the Auto Dealers License Fund.

The bill also increases penalties on unlicensed motor vehicle dealers, manufacturers (with the same exceptions as in current law), distributors, wholesalers, manufacturer representatives, used motor vehicle dealers, buyer agents, wholesale motor vehicle auction dealers, and motor vehicle salespersons as follows:

- **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, and 10 days in jail, 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.

Under current law, a person commits a class 3 misdemeanor for violating motor vehicle dealer licensing laws. Under the bill, this violation becomes an unclassified misdemeanor. 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 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 set in statute are:

- **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. 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

Beginning in FY 2016-17, this bill is anticipated to increase state fine revenue by at least \$5,000 per year, credited to the Auto Dealers License Fund in DOR, and prorated for the effective date. It is an unclassified petty offense punishable by a fine of \$250 per transaction to violate the reporting provisions of the bill. The court must also impose a minimum fine of \$1,000 for an individual and \$5,000 for a corporation convicted of violating motor vehicle dealer licensing laws. In the case of a second individual conviction, the court must also impose ten days in jail. Based on the low issuance of fines, generally, and the 2015 individual conviction rate and penalty assessment related to unlicensed motor vehicle sales, which mainly involved \$100 fines, the fiscal

note assumes that the bill will generate at least \$5,000 in state revenue per year. This represents half of the total fine revenue expected under the bill; the other half will be credited to local law enforcement agencies.

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

The bill will increase one-time state cash fund expenditures in DOR by \$8,000 in FY 2016-17 from the Auto Dealers License Fund. It will also minimally increase workload in the DOR and the Judicial Department.

Department of Revenue. DOR will have one-time computer programming costs to modify the Colorado Integrated Tax Architecture system in GenTax. Changes are programmed by a contractor at a rate of \$200 per hour. The changes in this bill are expected to increase Auto Dealers License Fund expenditures by \$8,000, representing 200 hours of programming, in FY 2016-17. All GenTax programming changes are tested by DOR staff. The DOR can perform the testing required in this bill within existing appropriations. In addition, the Motor Vehicle Dealer Board and the AID in DOR will be required to update materials to reflect the new minimum penalties. This workload can also 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. These workload impacts are expected to be minimal and can be accomplished within existing appropriations.

Local Government Impact

Local law enforcement agencies that conduct investigations and issue citations related to unlicensed automobile sales will see an increase in fine revenue of at least \$5,000 per year, prorated for the effective date in FY 2016-17. To the extent there are second convictions for unlicensed automobile dealers, these offenders will be sentenced to ten days in jail. The cost to house an offender in county jails varies from about \$53 to \$114 per day. For the current fiscal year, the state reimburses county jails at a daily rate of \$52.74 to house state inmates. These impacts will also apply to the Denver County Court, managed and funded by the City and County of Denver.

Technical Note

While the bill requires the consolidator to obtain DOR approval to release information to nongovernmental entities, consolidators are required to adhere to the federal Driver's Privacy Protection Act requirements for the release of motor vehicle records and information, and therefore DOR has no authority to approve what information a consolidator releases.

Effective Date

The bill takes effect January 1, 2017, if no referendum petition is filed. It applies to offenses committed on or after this date.

State Appropriations

For FY 2016-17, the bill requires an appropriation of \$8,000 from the Auto Dealers License Fund to the Department of Revenue.

State and Local Government Contacts

Information Technology
Public Safety

Judicial
Revenue

Law