



**Colorado  
Legislative  
Council  
Staff**

**HB17-1249**

**FISCAL NOTE**

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

**Drafting Number:** LLS 17-0947  
**Prime Sponsor(s):** Rep. Melton  
Sen. Tate

**Date:** March 13, 2017  
**Bill Status:** House Business  
**Fiscal Analyst:** Erin Reynolds (303-866-4146)

**BILL TOPIC:** PENALTIES FOR UNLICENSED MOTOR VEHICLE SALES

<b>Fiscal Impact Summary</b>	<b>FY 2017-2018</b>	<b>FY 2018-2019</b>
<b>State Revenue</b>	<b><u>at least \$10,000</u></b>	<b><u>at least \$10,000</u></b>
Cash Funds	at least 10,000	at least 10,000
<b>State Expenditures</b>	<b><u>\$8,000</u></b>	Workload increase.
Cash Funds	8,000	
<b>TABOR Impact</b>	at least \$10,000	at least \$10,000
<b>Appropriation Required:</b> \$8,000 – Department of Revenue (FY 2017-18).		
<b>Future Year Impacts:</b> Ongoing revenue and workload increases.		

**Note:** Not all agencies were able to respond with complete information within the time frames provided. The fiscal note will be updated if more information becomes available.

**Summary of Legislation**

The bill creates a new factual basis for unlicensed motor vehicle sales; increases penalties for the existing class 3 misdemeanor offense; credits fine revenue to local law enforcement and the Department of Revenue (DOR); and allows fine revenue to be used for enforcement of unlicensed motor vehicle sales.

***New factual basis for unlicensed motor vehicle sale.*** Under the bill, a person or corporation must both willfully violate the law and do so while acting in an official capacity to be charged with the unlicensed sale of a motor vehicle. For unlicensed motor vehicle sales by new and used motor vehicle dealers, wholesalers, buyers agents, wholesale motor vehicle auction dealers, and motor vehicle salespersons, the penalty is still a class 3 misdemeanor, which may include a sentence of up to six months in jail, but now includes a fine of at least \$1,000 and 25 hours of community service, neither of which may be suspended by the court. The fine also increases to a range between \$5,000 to \$25,000 for each offense committed by a corporation. A second individual conviction is a fine between \$5,000 to \$25,000 for each separate offense, which a court may not suspend.

***Application of current penalty.*** The bill clarifies that the current penalty for unlicensed motor vehicle sales applies only to persons who willfully violate the law by acting as a manufacturer, distributor, or manufacturer representative without proper authorization.

***Fine revenue.*** Fines for unlicensed automobile sales are awarded half to the law enforcement agency that issued the citation and half to the Auto Dealers License Fund in the Department of Revenue (DOR). Under the bill, this fine revenue is to be used for enforcement of unlicensed motor vehicle sales.

## Background

***Current penalties.*** Currently, the penalty for individuals convicted for the unlicensed sale of a motor vehicle is a class 3 misdemeanor with a fine ranging between \$100 to \$1,000, up to six months in jail, or both. The fine increases to \$2,500 for a second conviction. The penalty for a corporate violation is set between \$500 to \$2,500 per offense.

***Motor Vehicle Dealer Board.*** The Colorado Motor Vehicle Dealer Board processes and reviews license applications for entities and individuals selling motor vehicles. 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.

***Automobile Industry Division.*** The Automobile Industry Division in DOR employs criminal investigators to review and evaluate 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.

## Comparable Crime

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. This bill creates a new factual basis for the crime of unlicensed motor vehicle sales. From January 2014 through January 2017, there were 52 convictions for unlicensed automobile dealers. Of these convictions, all involved males, and the minority status of the criminals was 41 Caucasian, 3 African-American, 7 Hispanic, and 1 for which no race information was available. Of the 52 cases, 26 entered a guilty plea, and the total fee assessment for these cases was approximately \$12,000. Based on the prevalence of this crime, the fiscal note assumes that fines from ongoing convictions will generate additional state and local revenue.

## State Revenue

Beginning in FY 2017-18, this bill is anticipated to increase state cash fund revenue.

***Criminal fines.*** This bill is anticipated to increase state cash fund revenue from fines. Under the bill, half of the fine penalty for unlicensed motor vehicles sales is credited to the Auto Dealers License Fund in DOR and half to the law enforcement agency that investigated and issued the citation. The new minimum fine penalty is \$1,000 for an individual, which may not be waived by the court. The fine is also increased to between \$5,000 to \$25,000 for corporate offenses. In the past three years, there has been an average of 17 convictions per year, as discussed in the

Comparable Crime section. The fiscal note assumes that the increased fines, the inability for a court to waive certain fines, and the possibility of new convictions due to new investigation resources available to DOR and law enforcement will create an overall increase in the fine revenue collected. At a minimum, the fiscal note assumes that this amount will be at least \$10,000 per year beginning in FY 2017-18. Since \$500 is typically collected in fine revenue, this amount represents an additional \$500 per conviction, plus at least one corporate offense, of which half is credited to the DOR and the other half to local law enforcement.

**Court and administrative fees.** This bill will also increase state fee revenue each year to the General Fund and various cash funds. Fees are imposed for a variety of court-related costs, which vary based on the offense and the type of court. Some fee revenue is shared with local governments; please refer to the Local Government Impact section for additional information. Persons who are sentenced to perform community service are generally sentenced to probation, for which there is a fee of \$50 per offender, per month.

### **TABOR Impact**

This bill increases state cash fund revenue from fines and fees, which will increase the amount of money required to be refunded under TABOR for FY 2017-18 and FY 2018-19. TABOR refunds are paid out of the General Fund. Since the bill increases the TABOR refund obligation without a corresponding change in General Fund revenue, the amount of money available in the General Fund for the budget will decrease by an identical amount.

### **State Expenditures**

The bill will increase one-time state cash fund expenditures in DOR by \$8,000 in FY 2017-18 from the Auto Dealers License Fund. It will also increase workload in DOR and in 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 the vendor 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 40 hours of programming in FY 2017-18. All GenTax programming changes are tested by DOR staff. The DOR can perform the testing required in this bill within existing appropriations.

In addition, workload for the Motor Vehicle Dealer Board and the Automobile Industry Division in DOR may increase to the extent that resources from the increased fine penalty revenue allows these entities to investigate additional complaints. Both entities will also be required to update materials to reflect the new minimum penalties, which can be accomplished within existing appropriations.

**Judicial Department.** Workload is expected to increase in the Judicial Department. The bill potentially creates increased resources for unlicensed automobile sales investigations, which may increase the number of filings in the trial courts. It may also increase contempt hearings, due to bill's community service requirement. If additional people are sentenced to probation, workload for probation services may also increase. The fiscal note assumes these workload impacts can be accomplished with existing appropriations for the Judicial Department.

*Office of the State Public Defender an Office of Alternate Defense Counsel.* The bill may increase workload or costs for the Office of the State Public Defender and Office of Alternate Defense Counsel, to provide representation for any persons deemed to be indigent. The fiscal note assumes any such increases are minimal and will not require an increase in appropriations for these Judicial Department agencies.

### **Local Government Impact**

**Local law enforcement agencies.** Local law enforcement agencies that conduct investigations and issue citations related to unlicensed automobile sales will experience an increase in fine revenue similar to the state. Because of the increased fines, the inability for a court to waive certain fines, and the possibility of new convictions due to new investigation resources available to DOR and law enforcement, the fiscal note assumes that there will be an overall increase in fine revenue of at least \$10,000 per year collected by local law enforcement agencies beginning in FY 2017-18.

**County court expenditures.** The bill is expected to increase workload for district attorneys to prosecute any new misdemeanor offenses under the bill. To the extent that this bill increases misdemeanor convictions and offenders are sentenced to jail, costs will increase. A court may sentence an offender to jail for a class 3 misdemeanor for a period of up to 6 months. 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. The bill may also increase contempt hearings, due to the bill's community service requirement, as well as probation services to supervise individuals convicted under the bill.

**Denver City and County court expenditures.** Similar to county courts, this bill is expected to increase revenue and workload in the Denver County Court, managed and funded by the City and County of Denver.

### **Effective Date**

The bill takes effect August 9, 2017, if the General Assembly adjourns on May 10, 2017, as scheduled, and no referendum petition is filed. It applies to offenses committed on or after this date.

### **State Appropriations**

For FY 2017-18, 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

Judicial

Law

Revenue