



Colorado
Legislative
Council
Staff

HB16-1296

REVISED
FISCAL NOTE

(replaces fiscal note dated March 14, 2016)

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

Drafting Number: LLS 16-1005
Prime Sponsor(s): Rep. Melton
Sen. Tate

Date: April 12, 2016
Bill Status: Senate SVMA
Fiscal Analyst: Erin Reynolds (303-866-4146)

BILL TOPIC: PENALTIES FOR UNLICENSED AUTOMOBILE SALES

Fiscal Impact Summary	FY 2016-2017	FY 2017-2018
State Revenue Cash Funds	<u>at least \$5,000</u> at least 5,000	<u>at least \$5,000</u> at least 5,000
State Expenditures Cash Funds	<u>\$8,000</u> 8,000	Workload increase.
TABOR Impact	at least \$5,000	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 **reengrossed** bill 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

The Colorado Motor Vehicle Dealer Board processes and reviews license applications for the licensees listed above. 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.

The Automobile Industry Division (AID) in the Department of Revenue (DOR) employs criminal investigators to 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.

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. Under the bill, the court must 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 2015 individual conviction rate and penalty assessment, 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 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. 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 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 of state statute currently precludes this.

Effective Date

The bill takes effect August 10, 2016, if the General Assembly adjourns on May 11, 2016, as scheduled, and no referendum petition is filed.

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

Judicial Revenue