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FISCAL IMPACT REPORT

SPONSOR: Campos DATE TYPED: 02/04/01 HB _____
 SHORT TITLE: Amend Motor Vehicle Code SB 137
 ANALYST: Rael

REVENUE

Estimated Revenue		Subsequent Years Impact	Recurring or Non-Rec	Fund Affected
FY01	FY02			
	\$ 2.0	\$ 2.0	Recurring	State Road Fund

(Parenthesis () Indicate Revenue Decreases)

SOURCES OF INFORMATION

Taxation and Revenue Department (TRD)

SUMMARY

Synopsis of Bill

This bill provides that each activity that a motor vehicle sales and service entity engages in must have a separate license and bond. The various activities effected are as follows: dealer, wholesaler, distributor, wrecker, or license or title service company. Upon notification to the Motor Vehicle Division from a federal or state environmental protection agency that a wrecker has violated a state or federal environmental law, the Department is required to cancel or suspend the wrecker's license. Under current law, a wreckers license can be bundled with all other motor vehicle service activity, and all other separate motor vehicle service activities may bundle a wreckers license with the main activity. This extends to bonding provisions as well. Under the proposal, each separate activity must be separately licensed and bonded. The annual fee for a license is \$50.

Significant Issues

The Taxation and Revenue Department is concerned that the bill may face both due process and double jeopardy constitutional challenges. Furthermore, the department claims that it does not have knowledge or expertise in federal or state environmental laws and regulations required by the bill. Finally, it is concerned that it may see increased litigation over license suspensions.

FISCAL IMPLICATIONS

The estimated recurring revenue to the State Road Fund from this measure is \$2.0 annually.

The 1997 Census of Transportation Industries report 42 establishments, with 186 employees in NAICS 48841 - motor vehicle towing. There are an additional 44 firms with fewer than 500 employees listed as used auto parts dealers. If half of these firms have a multiple motor vehicle service license, then the direct revenue impact of this measure is \$2.1 to the State Road Fund.

The cost to these same 43 establishments of an additional \$50.0 bond is likely to be in the region of \$50.0 per establishment, or about \$220.0 for the industry. There are probably a number of unregulated, unlicensed and unbonded operations that did not respond to the survey. However, it is unlikely that any firms that did not respond to the U.S. Census survey will voluntarily seek licensure.

ADMINISTRATIVE IMPLICATIONS

The Motor Vehicle Division will see a small increase in activity in motor vehicle dealers and wreckers license section.

Section 2, Subsection B requires the Department to refuse to issue a wrecker's license unless the applicant is in compliance with all state and federal environmental laws and rules related to emissions or discharges from the applicant's business. The Department has no knowledge or expertise in federal or state environmental laws and rules. The Department can defer to the Environmental Protection Division of the Department of Environment, but the Taxation and Revenue Department claims that it has neither the budget, nor the expertise to conduct independent investigations of these entities. The Department feel that this is likely to consume enormous amounts of time and money hearing or litigating capricious suspensions.

TECHNICAL ISSUES

The Taxation and Revenue Department recommends the following amendments:

1. Section 1.B. should be amended to read: "Application for a dealer, wholesaler, distributor, wrecker of vehicles [~~license~~] or a title service company license . . ."
2. The bill should be changed to prohibit the Department from licensing a wrecker of vehicles unless the Environmental Protection Division of the Department of Environment certifies that the wrecker is in compliance with all state and federal environmental laws and rules related to emissions or discharges from the applicant's business.

OTHER SUBSTANTIVE ISSUES

The Department of Taxation and Revenue believes that separating vehicle wreckers and dismantlers from other motor vehicle services is probably a step in the right direction. The bonding requirement is intended to protect a customer who buys a rebuilt wreck from a wrecker and who later has problems with the vehicle. If the wrecker has not disclosed the vehicle's history, the complainant may have cause of action for recovery. Under the bill, there will be two separate licenses and two separate bonds. This doubles the ability of an aggrieved customer to collect on damages.

The intent of this legislation appears to mirror the administrative per se revocation procedures of the Implied Consent Act for driving while intoxicated violations. However, the DWI revocation statutes have very specific and quantifiable circumstances under which the revocation may proceed. This proposal would have a wreckers certificate revoked or suspended on the application of the federal or state agency responsible. Although a hearing is mandatory, the Departmental hearing officers have no training or experience in administrative environmental law. It may be better to require any hearing to

Senate Bill 137 -- Page 3

be held within the same administrative agency that initiated the complaint. Additionally, the revocation should not occur until a final administrative or judicial determination of violation has occurred.

The proposal does not state a term of suspension or revocation. Apparently, a single confirmed violation, even if rectified, is sufficient to put a wrecker out of business. This is unfair and may be a serious violation of due process.

This sets-up an administrative mechanism to impose economic sanctions for violations which may also be criminal acts. This may come within the scope of "double jeopardy" provisions of the constitution. The state's short-lived Controlled Substance Tax Act, which imposed an excise tax on the possession of illegal drugs, was set down by the U.S. Supreme Court as a duplicative and additional penalty to any criminal sanctions.

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