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## FISCAL IMPACT REPORT

ORIGINAL DATE 02/19/13  
 SPONSOR Rehm LAST UPDATED 03/04/13 HB 468/aHBIC  
 SHORT TITLE Noncompliant Car Dealer Civil Penalties SB \_\_\_\_\_  
 ANALYST Jorgensen

### REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY13	FY14	FY15		
None	\$600.0	\$600.0	Recurring	General Fund

(Parenthesis ( ) Indicate Revenue Decreases)

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY13	FY14	FY15	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>	NFI	\$120.0	\$120.0	\$240.0	Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Administrative Office of the Courts (AOC)  
 Taxation and Revenue Department (TRD)

### SUMMARY

#### Synopsis of HBIC Amendment

The House Business and Industry Committee amendment to House Bill 468 provides that individuals in violation of provisions of 66-4-1.1 NMSA 1978, which relates to auto recyclers, shall be guilty of a misdemeanor and shall be punished by imprisonment for not less than 30 days, by a fine of \$1,000 for a first offense and \$2,500 for a second of subsequent offense, or both fine and imprisonment.

#### Synopsis of Original Bill

House Bill 468 (HB 468) amends Section 66-4-9 NMSA 1978, within the Motor Vehicle Code, Section 66-1-1 NMSA 1978 et. seq., to provide that any person conducting business as an

automobile dealer, wholesaler, distributor or title service company without a license required by Section 66-4-1 NMSA 1978 is guilty of a misdemeanor and shall be punished by imprisonment for at least 30 days or:

- by a fine of \$1,000 or both the fine and imprisonment for a first conviction;
- by a fine of \$2,500 or both the fine and imprisonment for a second conviction;
- by a fine of \$5,000 or both the fine and imprisonment for a third conviction; and
- by a fine of \$10,000 or both the fine and imprisonment for a fourth or subsequent conviction.

HB 468 also amends Section 66-4-9(D) NMSA 1978 to provide that a violation of Section 66-4-2.1, governing the licensure of recreational dealers, including licensing for special events, or of Section 66-4-2.2, governing off-site sales, is a misdemeanor, punishable by imprisonment for 30 days or more or a fine of \$10,000, or both. Section 66-4-9(A) is also amended to include a violation of Section 66-4-1.1, governing licensing of auto recyclers, within the list of statutory violations constituting a misdemeanor and carrying a fine of \$300 or a sentence of imprisonment of at least 30 days, or both. A second or subsequent violation of that section is a fourth degree felony. Current law places a violation of Section 66-4-1, noted above as carrying specific and unique penalties under the HB 468 amendment, within this list of subsection (A) violations.

**FISCAL IMPLICATIONS**

The Taxation and Revenue Department (TRD) provided the following estimate of the anticipated revenue generated as a result of enactment of HB 468:

Penalties (fines) from unlicensed dealers and auto recyclers start at \$1,000 for the 1st offense, increasing to \$2,500 then \$5,000 and finally \$10,000 for the 4th and subsequent offenses. This analysis assumes that the total number of offenders fined will decrease, with effective enforcement, as the penalties increase, then level out as the number of new offenders matches the annual decrease.

**Estimated penalties paid by:**

<b>Unlicensed Dealers:</b>				<b>Unlicensed Auto Recyclers</b>			
Fiscal Year	Number of Fines	Amount of Fine	Total	Fiscal Year	Number of Fines	Amount of Fine	Total
<b>FY14</b>	500	1,000	<b>500,000</b>	<b>FY14</b>	100	1,000	<b>100,000</b>
<b>FY15</b>	250	1,000	250,000	<b>FY15</b>	50	1,000	50,000
	100	2,500	250,000		20	2,500	50,000
			<b>500,000</b>				<b>100,000</b>
<b>FY16</b>	150	1,000	150,000	<b>FY16</b>	30	1,000	30,000
	50	2,500	125,000		10	2,500	25,000
	25	5,000	125,000		5	5,000	25,000
	10	10,000	100,000		2	10,000	20,000
			<b>500,000</b>				<b>100,000</b>
<b>FY17</b>	150	1,000	150,000	<b>FY17</b>	30	1,000	30,000
	50	2,500	125,000		10	2,500	25,000

25	5,000	125,000	5	5,000	25,000
10	10,000	100,000	2	10,000	20,000
		<b>500,000</b>			<b>100,000</b>

The enforcement penalty estimates are based on the dealer licensing bureau (DLB) direct enforcement experience, and on input from the dealers' associations.

According to the TRD, there would need to hire an additional two FTE investigators, at a total cost of \$60,000 per FTE, to enforce compliance. This cost is reflected in the estimated additional operating budget impact table.

### **SIGNIFICANT ISSUES**

Currently, the Dealer Licensing Bureau, the Attorney General's Office, the New Mexico Auto Dealers Association, and New Mexico Independent Auto Dealers Association receive a combined 500 annual complaints regarding unlicensed auto dealers selling vehicles throughout the State of New Mexico. The Dealer Licensing Bureau, Tax and Fraud Investigations Division and the New Mexico Auto Recyclers Association receive a combined 100 annual complaints regarding unlicensed auto recyclers dismantling or disposing of vehicles throughout the State of New Mexico. In both cases it is the licensed entities, the consumers and the community in general who may be harmed by the noncompliance of others.

### **OTHER SUBSTANTIVE ISSUES**

Unlicensed dealers and auto recyclers, to the extent that they are allowed to operate without meaningful penalties, have an unfair competitive advantage because they:

- do not comply with state law and do not have to bear the overhead of running a properly licensed dealership or auto recycling business;
- do not pay excise taxes (because they do not transfer vehicles properly);
- do not have to comply with the environmental requirements of licensed auto recyclers;
- put communities at risk for contaminated water tables, and other environmental hazards; and
- do not carry the \$50,000 bond required of licensed dealers and recyclers for the protection of consumers.