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F I S C A L I M P A C T R E P O R T

SPONSOR Rehm **ORIGINAL DATE** 01/26/21
LAST UPDATED 02/27/21 **HB** 60/aHCEDC/aHFl#1

SHORT TITLE Motor Vehicle Sale Locations **SB** _____

ANALYST Graeser

REVENUE (dollars in thousands)

Estimated Revenue					Recurring or Nonrecurring	Fund Affected
FY21	FY22	FY23	FY24	FY25		
	Potentially positive to neutral, but not significant				Recurring	State Road Fund
	Potentially positive to neutral, but not significant				Recurring	Local Governments
	Potentially positive to neutral, but not significant				Recurring	General Fund (MVEX)
	Potentially positive to neutral, but not significant				Recurring	General Fund (Fines)

Parenthesis () indicate revenue decreases

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

FY21	FY22	FY23	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
	0.0	0.0	0.0	Recurring	TRD Operating
	Unknown	Unknown	Unknown	Recurring	District Attorney's operating
	Unknown	Unknown	Unknown	Recurring	District Court operating

Parenthesis () indicate expenditure decreases

SOURCES OF INFORMATION

LFC Files (FIR on HB362 – 2019)

Response Received from:

Taxation and Revenue Department (TRD)

SUMMARY

Synopsis of House Floor #1 Amendment

The House Floor #1 amendment to House Bill 60 as amended, removes the prohibition on a registered motor vehicle dealer displaying a vehicle at an off-site location.

Synopsis of HCEDC Amendment

The House Commerce and Economic Development Committee amendment to House Bill 60 removes a 12-hour limit on off-site exhibition or demonstration non-sale activities.

Synopsis of Original Bill

House Bill 60 proposes limitations on casual “roadside” sales of motor vehicles and further restricts off-site sales of motor vehicles by licensed motor vehicle dealers. Provisions include:

- Individuals who are not registered as motor vehicle dealers may not sell more than four motor vehicles in a calendar year;
- Individuals who are not registered as motor vehicle dealers must possess the title to the used motor vehicle and the motor vehicle shall be registered in the seller’s name.
- New Mexico licensed dealers are limited to selling motor vehicles only from the established business locations, Certain exceptions apply:
 - Off-site demonstrations/advertising purposes are permitted for fewer than 12 hours.
- Violations of the casual sales rules (Section 1) are declared a misdemeanor punishable by a fine of \$300 or by imprisonment for not less than 30 days or both upon conviction.
- Violations of the off-site sales by motor vehicle dealers are not similarly subject in the section to similar criminal punishment.

The effective date of this bill is July 1, 2021,

FISCAL IMPLICATIONS

If the provisions of this law were aggressively enforced, there would be two collateral impacts: (1) far fewer cars would be sold from casual locations at prices that would be lower than those that apply at registered sales locations; (2) there would be some individual entrepreneurs who would pay an annual fee of \$50 and register as used car dealers, They could sell more than four vehicles a year, but only from established locations and could also bypass the requirement of registering and titling the vehicles in their own name . Prices would be no different than under current practice, although higher than provided by the current casual sales market. Depending on the extent to which the provisions were effective, they might affect supply and demand considerations and prices of used cars might trend upward, if fewer cars were sold or sold at higher prices. There might be a slight increase in motor vehicle excise taxes and titling and registration fees, affecting the general fund, the state road fund and other 66-6-23 and 66-6-23.1 NMSA 1978 revenue beneficiaries.

SIGNIFICANT ISSUES

The purposes of this bill seems to be to restrict casual sales of used motor vehicles displayed for sale at curbside and other casual locations. Two strategies are proposed to accomplish this restriction: (1) the bill imposes direct and indirect restrictions on casual sales of motor vehicles from casual locations and provides penalties for individuals violating these restrictions; (2) encourages entrepreneurs to register as mini-dealers and establish fixed sales locations and thereby attempts to provide a clearer definition and bright line between truly casual sales of motor vehicles and not-so-casual sales of motor vehicles by unlicensed car dealers. Depending on how aggressively these provisions are enforced, these provisions will encourage more sales of motor vehicles at established (and registered) locations.

TRD describes the policy involved in the provisions of this bill:

This bill removes the prohibition on where an individual can display a personal vehicle for sale; this might encourage “curbstoning,” which is the sale of a vehicle by an unlicensed dealer on the street or at the curb. This bill requires and provides a penalty for a private purchaser to “register” a vehicle in their name prior to selling to another person, which would eliminate the double transfer process. The double transfer process allows a person to sell a vehicle in which the title has not been transferred in to his/her name. This poses a customer service issue as the current buyer may not be able to contact the previous owner to obtain the title in his/her name. If the current buyer cannot contact the previous owner, they will be forced to utilize the Surety Bond process. This could potentially allow vehicles in a car dealers’ inventory to be used for purposes other than to sell, offer, or display a vehicle.

These may be provisions that are difficult to enforce. However, a licensed car dealer could file a complaint with the local police or sheriff’s department regarding a non-licensed dealer who, it would be alleged, had violated either the location provision, the sale of more than four vehicles provision or the failure to possess title and valid registration documents provision. The police or sheriff’s departments would be encouraged, if not required, to investigate such a complaint.

Overall, it is unknown if police and sheriff’s departments would aggressively enforce the provision of this bill. Thus, the administrative and revenue consequence of this bill would be small.

PERFORMANCE IMPLICATIONS

Depending on how aggressively police and sheriff’s departments enforced the provisions of this bill, it could affect the performance statistics of the law enforcement departments, district attorneys and district courts. The misdemeanor penalty imposed in this bill is not a mail-in penalty assessment misdemeanor but would be cited into court. MVD is not expected to be able to be enforcement agent for this effort.

ADMINISTRATIVE ISSUES

TRD describes some of the issue involved in implementing these changes:

Section 1 Paragraph B requires that a vehicle seller, unless the person is a motor vehicle dealer, shall possess the title to a used vehicle and that the vehicle be registered in that person’s name. Paragraph C establishes that violation of any provision of the section is a misdemeanor and shall be punished by a fine of \$300 and/or imprisonment for not less than 30 days. These provisions would be difficult for MVD to enforce because the seller would not be required to make sure the title is in their own name before selling the vehicle to a new owner. MVD would only know about the sale at the time that the new owner/purchaser came to MVD to register the vehicle. If the seller was not the last owner, locating and fining that individual would be difficult and sometimes impossible.

If the proposed a \$300 fine would be assessed against the newest owner of the vehicle during the title and registration process, then the penalty is inappropriately assigned to an individual who is attempting to comply with the law, rather than to an individual who failed to comply with the law by not titling and registering a vehicle prior to selling it. In the absence of a proper title and registration that would identify the previous owner, the true offending individual will be impossible to identify.

It will be difficult to determine how many vehicles a person has sold per year unless MVD's Tapestry system will disallow transactions based on current ownership within the system. A requirement to file "Vehicle Sold" documentation before a title transfer or at the time of transfer may be one avenue of check and balance. Non-compliance with this statute will generate an increase in Surety Bond applications due to existing habit of non-transfer of title.

TECHNICAL ISSUES

TRD is somewhat concerned with these changes:

There are no legal issues with the additions of B under Section 66-3-12 NMSA 1978. There may be issues with A under the section. An individual could indicate that MVD is interfering with their ability to enter contracts. On the other hand, it provides needed regulation of people who are essentially mini dealers. These individuals can easily become a dealer by paying a \$50 yearly registration fee.

There are potential legal issues with removing the language currently in Section 66-3-126(A) NMSA 1978 because it removes previous restrictions on where a private individual can sell a car. Under this bill, people would be able to park cars for sale on any vacant lot or any parking place anywhere. This bill removes the requirement that a person needs to obtain a landlord's written permission to display a vehicle for sale at a location that is not their current residence. Without specified location of offer or display, this would allow "curbstoning" from any location within the State. Dealers must offer their inventory from their established place of business, but this bill could give individuals who are not dealers a competitive advantage by allowing them to place vehicle at prime locations.

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