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FISCAL IMPACT REPORT

ORIGINAL DATE 02/18/13

SPONSOR Griego LAST UPDATED _____ HB _____

SHORT TITLE Motor Vehicle Recycler Records Access SB 446

ANALYST Geisler

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY13	FY14	FY15	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		NFI				

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Taxation and Revenue Department (TRD)

Attorney General's Office (AGO)

SUMMARY

Synopsis of Bill

Senate Bill 446 (SB 446) amends Section 66-2-7.1 NMSA 1978, to provide access to motor vehicle-related records for licensed auto recyclers who are in possession of towed, impounded, or abandoned vehicles.

FISCAL IMPLICATIONS

No fiscal impact noted for state agencies.

SIGNIFICANT ISSUES

The Attorney General's Office (AGO) notes that the amendments proposed by SB 446 fall within authorized uses of motor vehicle records in federal law and therefore likely will not conflict with federal law. The Taxation and Revenue Department (TRD) has a different view. The TRD notes that the federal Driver Privacy and Protection Act (18 U.S.C. 2721) (DPPA) lists permitted exceptions to the general rule that "personal information" on driver records is confidential and may not be released by any employee of a motor vehicle agency. A state can enact a confidentiality law that is stricter than the DPPA, but it cannot enact a statute that is less

strict. New Mexico statute section 66-2-7.1 incorporates most of the exceptions in the DPPA but not all of them, making New Mexico's statute (acceptably) stricter than the DPPA. The TRD notes there is no provision in the DPPA that allows the release of personal information to an auto recycler. SB 446 as written would allow such a release, impermissibly in the TRD's view making New Mexico's confidentiality statute less strict than the DPPA.

The DPPA contains a provision that allows release of personal information to "any legitimate business" for certain listed purposes, but SB 446 does not limit an auto recycler's use of the personal information to the purposes listed in the DPPA. (See 18 U.S.C. 2721(b)(3):

For use in the normal course of business by a legitimate business or its agents, employees, or contractors, but only -

- (A) to verify the accuracy of personal information submitted by the individual to the business or its agents, employees, or contractors; and
- (B) if such information as so submitted is not correct or is no longer correct, to obtain the correct information, but only for the purposes of preventing fraud by, pursuing legal remedies against, or recovering on a debt or security interest against, the individual.)

The DPPA also contains an exception that was copied verbatim in New Mexico's statute: 18 U.S.C. 2721(b)(7), for use in providing notice to the owners of towed or impounded vehicles.

The amendment proposed by SB 446 on page 3 lines 5-8 to Section 66-2-7.1(A)(6) would permit the disclosure of personal information to licensed auto recyclers "in possession of towed or impounded vehicles" but does not limit the use to which such auto recyclers could use the information to providing notice to owners of towed or impounded vehicles.

OTHER SUBSTANTIVE ISSUES

The AGO notes the amendments to NMSA 1978, Section 66-2-7.1(A)(6), in their current form, may have unintended consequences. As amended, so long as a person is required by law to provide notice to owners of towed or impounded vehicles or is a licensed auto recycler in possession of towed or impounded vehicles, that person may receive personal information from the Department or Bureau. Although such disclosure is presumably for the purpose of notifying owners of towed or impounded vehicles, the language, as amended, does not restrict use of personal information to any particular purpose. If passed in its current form, SB 446 may be read to authorize disclosure to those authorized persons for any purpose. If this is not the intent of the legislature, it may wish to include additional language limiting the scope of purposes for which persons authorized to receive personal information may use that information.

AMENDMENTS

The TRD notes that if the intention of this bill is to allow auto recyclers to have access to vehicle owners' personal information so that the recyclers can comply with statutory and regulatory requirements to notify the owners of abandoned vehicles in their possession, the TRD believes that the amendment to Section 66-2-7.1(A)(6) on page 3, lines 5-8 is unnecessary and that the amendment to Section 66-2-7.1(A)(11) on page 4, line 7 is sufficient.

The AGO notes that if the will of the legislature is to restrict the uses for which such persons may receive personal information, it should consider making such restrictions explicit. One

suggestion for achieving this is to add the phrase “for the purpose of providing notice that a vehicle has been towed or impounded to the owner of that vehicle” immediately after term “impounded vehicles” at page 3, line 8.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Per the AGO status Quo – disclosure of personal information to any person for the purpose of providing notice to owners of towed or impounded vehicles will continue to be authorized with no requirement that such disclosure be limited to persons required by law to provide notice or licensed auto recyclers in possession of towed or impounded vehicles. The existing reference in NMSA 1978, Section 66-2-7.1(A)(11) to “wrecker yards” will remain, rather than incorporating the proposed substitute of “licensed auto recyclers,” and therefore, no requirement that an auto recycler be licensed in order to receive personal information containing names and addresses of lienholders and owners of record of abandoned vehicles will be created. A wrecker yard, regardless of its licensing status, would be authorized to receive personal information about lienholders and owners of record of abandoned vehicles.

GG/svb