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FISCAL IMPACT REPORT

SPONSOR Correa Hemphill **LAST UPDATED** 2/22/23
ORIGINAL DATE 2/6/23
SHORT TITLE Electronic Motor Vehicle Documents **BILL NUMBER** Senate Bill 68/
aSTBTC/aSJC
ANALYST Anderson

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT* (dollars in thousands)

| | FY23 | FY24 | FY25 | 3 Year Total Cost | Recurring or Nonrecurring | Fund Affected |
|-----|---------------------------|---------------------------|---------------------------|-------------------|---------------------------|---------------|
| TRD | Indeterminate but minimal | Indeterminate but minimal | Indeterminate but minimal | | | |

Parentheses () indicate expenditure decreases.

*Amounts reflect most recent version of this legislation.

Relates to House Bill 117,

Sources of Information

LFC Files

Responses Received From

Taxation Revenue Department (TRD)
Office of the Superintendent of Insurance (OSI)
Administrative Office of the Courts (AOC)

No Response Received

Department of Transportation (NMDOT)

SUMMARY

Synopsis of SJC amendment Senate Bill 68

The Senate Judicial Committee amendments strike the STBTC amendments and removes “certificates of title and” from page one of the bill, thereby including power of attorney (POA) forms to documents that may be signed electronically and without notarization since they would be considered a related document for total loss settlements. Regarding accident and injury law, the process of being compensated by an insurance company for a wrecked vehicle often involves the driver giving the insurance company some form of power of attorney.

On page 6, lines 11 and 12 the language, “Notwithstanding any other statute, supporting documents, including certificates of title” is amended to be replaced by “Any documents.” The amendment makes electronic signatures legal for any document required by an insurance company as a result of a total loss insurance settlement.

Synopsis of STBTC amendment Senate Bill 68

The Senate Tax, Business and Transportation Committee amendment adds power of attorney (POA) forms to documents that may be signed electronically and without notarization. This would entail the use of an eSignature for official POA documentation. Powers of attorney are used extensively by estate planners to name a trusted agent who can act in case of the principal's future incapacity, avoiding the need for a court-appointed conservator according to the Uniform Laws Commission. The Commission indicates New Mexico has already enacted the Uniform Power of Attorney Act (UPOAA) which provides a way for a person to name the agent to act on a principal's behalf and manage financial assets and contains safeguards to deter and detect financial abuse <https://www.uniformlaws.org/committees/community-home?CommunityKey=b1975254-8370-4a7c-947f-e5af0d6cb07c>. The amendment is in Section 66-3-4 of NMSA 1978, "Application for registration and certificate of title; nonrepairable vehicle certificate."

The ability to sign a POA electronically differs from a digital power of attorney, language that would be updated language within a POA to explicitly allow access to the principal's online accounts. <https://www.cohenandwolf.com/publication-digital-power-of-attorney>

The company DocuSign, which hosts electronic notary tools for POAs, recognizes there's often urgency around creating and signing due to medical crisis or a need to get financial affairs in order quickly, which makes the traditional notarization process cumbersome and inefficient resulting in delays. They state that general categories of POA fall within real property, stock, bonds, estates, trusts and other beneficiary interests, personal and family maintenance. Authority over survivorship rights, to make gifts, or other special instructions might be included. Powers of attorney generally come in four types: General POA, Special or Limited POA, Durable POA and Healthcare (Medical POA). <https://www.docusign.com/blog/remote-online-notarization-power-of-attorney>. DocuSign also outlines the four primary sections of a POA form:

The first section designates an agent (also known as the attorney-in-fact), which is the person or entity granted powers by the principal (or grantor). The next section spells out the general and specific powers to be granted to the agent. The third section sets the duration of the POA and (optionally) nominates a guardian if the principal becomes incapacitated. The final section is where the POA is signed, dated and notarized.

Synopsis of Original Senate Bill 68

This bill amends Section 66-3-4 NMSA 1978 to allow electronic signature on documents necessary to convey ownership of a motor vehicle to an insurance company in the case of a total loss settlement. With this provision, these specific documents will no longer require notarization.

This bill does not contain an effective date, and as a result, would go into effect June 16, 2023, (90 days after the Legislature adjourns) if signed.

FISCAL IMPLICATIONS

Fiscal implications for the Taxation and Revenue Department will be indeterminate but minimal

based on the feedback received from the agency. The Office of the Superintendent of Insurance said it will not be fiscally impacted by this legislation. The Administrative Office of the Courts also reported no fiscal impact.

SIGNIFICANT ISSUES

The Taxation and Revenue Department stated the following:

This bill will require the Motor Vehicle Division (MVD) staff and private partner offices to retrain staff on uploading electronically signed PDF documents rather than scanning images of wet signature documents. An image or photograph of the document cannot be accepted because that image can be altered then rescanned. MVD will require a signed PDF, which has protective properties that offer added security and validation.

MVD accepts documents at face value and is not required to validate the signature authenticity via the system (DocuSign, AdobeSign) used to sign the document electronically in conformance with the Electronic Authentication of Documents Act and the Uniform Electronic Transaction Act. This means interfaces will not have to be created between Tapestry and these systems.

This process only pertains to the transfer of ownership for total loss vehicles specifically as it applies to the removal of any notarization requirements.

ADMINISTRATIVE IMPLICATIONS

TRD said staff would need to be trained to upload electronically signed PDF documents in addition to scanning documents into the Tapestry system. The notarization requirement on MVD Durable Power of Attorney form would need to be removed.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

House Bill 117 (HB117) amends Section 45-5B-105 NMSA 1978 (Uniform Probate Code) to provide that a power of attorney used to support an application for, or transfer of title by, an insurance company shall only require a signature or electronic signature of the insured receiving a settlement of a damage or theft claim from the insurance company. The bill also amends Section 66-3-4 NMSA 1978 (Motor Vehicle Code) to provide that TRD shall accept an executed power of attorney containing either a signature or electronic signature in an application for or transfer of title by an insurance company in the event of a total loss settlement of the insured's vehicle.

GA/ne/mg/al