

LFC Requester:	
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**AGENCY BILL ANALYSIS
2013 REGULAR SESSION**

WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:

LFC@NMLEGIS.GOV

And

DFA@STATE.NM.US

{Include the bill no. in the email subject line, e.g., HB2, and only attach one bill analysis and related documentation per email message}

SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Check all that apply:

Original X **Amendment**
Correction **Substitute**

Date January 23, 2013
Bill No: HB 8--305

Sponsor: Rep. Rick Miera
Short License for Vehicle Salvage
Title: Sales

Reviewing Attorney General's Office
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SECTION II: FISCAL IMPACT **FOR LFC OFFICIAL PURPOSES******
AGO STAFF SHOULD LEAVE SHAGED AREAS BLANK

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY13	FY14		

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:

Duplicates/Relates to Appropriation in the General Appropriation Act

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY13	FY14	FY15		

(Parenthesis () Indicate Expenditure Decreases)

Duplicates, Relates to, Conflicts with, Companion to

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

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

(Parenthesis () Indicate Expenditure Decreases)

SECTION III: NARRATIVE

This analysis is neither a formal Attorney General’s Opinion nor an Attorney General’s Advisory Opinion Letter. This is a staff analysis in response to the agency’s committee’s or legislator’s request.

BILL SUMMARY

Summary Synopsis:

HB 8 seeks to regulate the salvage vehicle sales industry in New Mexico. The bill amends NMSA 1978, 66-1-4.1, 66-1-4.16 by expanding the definition of dealer to include sellers of salvage vehicles, and defines “seller of salvage vehicles” as any person engaged in the “business of selling, transferring, auctioning or disposing of salvage vehicles on behalf of owners, insurance companies, authorized adjusters, leasing companies, self-insured persons or financial institutions.”

HB 8 adds a section to the statute prohibiting persons, unless licensed to do so by the Department of Motor Vehicles, to engage in the active trade or business as sellers of salvage vehicles. Sellers of salvage vehicles are prohibited from selling more than three salvage vehicles to “a purchaser who is not licensed as” a dealer or auto recycler during a calendar year. Sellers may only exceed the three vehicle limit when selling salvage vehicles to licensed dealers or auto recyclers.

HB 8 imposes strict registration procedures on sellers of salvage vehicles. Specifically HB 8 requires sellers of salvage vehicles to register the sale of all salvage vehicles with the Department of Motor Vehicles prior to allowing purchasers to take possession of the vehicles. Sellers may accomplish registration by one of two methods: (1) sellers may register salvage vehicles through an electronic registration system; or (2) sellers may register salvage vehicles to the purchasers through the Department of Motor Vehicles, provide an affidavit to purchasers stating that the vehicle is salvaged, and within 48 hours after the sale, provide the Department of Motor Vehicle a brief description of the salvage vehicle, copy of the purchaser’s perfected title and copy of the affidavit provided to the purchaser. The record of sale shall be maintained for review by the Department of Motor Vehicle and other authorized law enforcement agencies for three years.

FISCAL IMPLICATIONS WITH ENACTING THIS BILL

There are potential costs associated with establishing an electronic registration system if there is not an electronic registration system currently operating that can accommodate the registration requirements. Costs associated with establishing an electronic registration system could be offset by associated fees either for use of the system or for registration per vehicle.

SIGNIFICANT LEGAL ISSUES

HB 8 raises issues of potential anti-competitive practices when it restricts sales of salvage vehicles to the general public by sellers of salvage vehicles. The bill may therefore be vulnerable to challenges on anti-trust grounds to the extent the licensing requirements it imposes results in fewer salvage vehicles being available for direct sale to the general public. It should be pointed out, however, that such challenges may not succeed if the new law enacted is deemed to fall within the “state action” exception in antitrust law. However, simply regulating salvage sellers as dealers may not be sufficient to satisfy the active supervision requirement that must be met to extend the state action exemption to private actors. The clarity by which the Legislature must exempt conduct from federal anti-trust laws is currently before the U.S. Supreme Court in the case of *Federal Trade Comm'n v. Phoebe Putney Health System, Inc.*, No. 11-12906.

HB 8 may reduce the available inventory of salvage vehicles for resale to the public, thereby limiting viable options for individuals who have limited financial resources when purchasing vehicles. This may present consumer protection concerns about the bill’s impact.

PERFORMANCE IMPLICATIONS WITH ENACTING THIS BILL

ADMINISTRATIVE IMPLICATIONS WITH ENACTING THIS BILL

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP WITH BILLS INTRODUCED THIS SESSION

TECHNICAL ISSUES OR DRAFTING ERROR

Section 3 paragraph B is ambiguous in its application. If the paragraph is read as restricting sales by the seller of salvage vehicles to only three vehicles a year to the general public, then concerns are raised about the impact upon the public having access to affordable cars sold by sellers of salvage vehicles. Presumably the cost of salvage vehicles would increase due to the increased cost of operations incurred by dealership lots that are not generally borne by sellers of salvage vehicles. This could adversely affect the ability of relatively poorer purchasers from obtaining affordable transportation.

However, if Section 3 paragraph B is read as restricting sales of salvage vehicles by the seller of salvage vehicles to three vehicles a year per individual purchaser, this provision should only minimally impact the public’s ability to purchase salvage vehicles.

OTHER SUBSTANTIVE LEGAL ISSUES

Seller is defined as a person selling on behalf of particular entities or persons. It appears that financial institutions, companies or banks, that are not required to be licensed as a dealer when selling repossessed vehicles, are therefore not subject to these registration requirements unless the entity or person contracts with a third party seller to sell the vehicles on their behalf.

ALTERNATIVES TO ENACTING THIS BILL

Currently, insurance companies are required to report salvage vehicles to the NICB, and the issue of failing to report salvage vehicles may be adequately addressed with enforcement of existing laws. However, stronger enforcement efforts would require additional funding for MVD.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Licensed dealers are currently required by law to disclose to purchasers that the vehicle is salvaged prior to the sale.

AMENDMENTS NEEDED TO IMPROVE THIS BILL

No clear consistent guidelines are provided concerning how sellers of salvage vehicles, private owners, leasing companies, insurance companies or financial institutions shall determine whether the vehicle is salvage as defined by NMSA 1978, § 66-1-4.16(C). It appears that even vehicles with minimal or cosmetic damage could be declared uneconomical to repair if the owner chooses not to have the repairs performed. Failure to have the repairs performed may be sufficient to trigger the requirement that the vehicle be branded salvage even if the costs for repairs are substantially below the wholesale market value for the vehicle. An amendment to provide a more objective, uniform standard for what constitutes a salvage vehicle might therefore be helpful.

When vehicles are identified as salvage vehicles, it generally means that an insurance company determined that the repairs to the vehicles are uneconomical. NMSA 1978, § 66-1-4.1(C)(2). Despite the determination by the insurance company that the vehicle is uneconomical to repair, some salvage vehicles may have only costly cosmetic damage and may be safely repaired to statutorily required standards. Perhaps the bill could be improved by addressing those circumstances.