

LEGISLATIVE SERVICES AGENCY
OFFICE OF FISCAL AND MANAGEMENT ANALYSIS

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FISCAL IMPACT STATEMENT

LS 6886

BILL NUMBER: HB 1222

NOTE PREPARED: Feb 28, 2012

BILL AMENDED: Feb 23, 2012

SUBJECT: Dealer Services Division of the Secretary of State.

FIRST AUTHOR: Rep. Yarde

FIRST SPONSOR: Sen. Wyss

BILL STATUS: 2nd Reading - 2nd House

FUNDS AFFECTED: **GENERAL**
 DEDICATED
 FEDERAL

IMPACT: State & Local

Summary of Legislation: (Amended) This bill has the following provisions:

- (1) Establishes a Dealer Services Division within the Office of the Secretary of State (SOS), and provides that the Division administers and has jurisdiction over vehicle dealer services.
- (2) Establishes procedures: (a) for administration of the Division; and (b) for judicial action concerning the Division.
- (3) Provides that a person who violates statutes or rules pertaining to services or an order issued by the Secretary of State pertaining to services is subject to a civil penalty of up to \$10,000 for each violation.
- (4) Establishes the Dealer Enforcement Account to be used to support the Division.
- (5) Provides for criminal penalties for certain violations pertaining to services.
- (6) Establishes the Motor Vehicle Sales Advisory Board.
- (7) Specifies that a transfer dealer is not considered a dealer.
- (8) Repeals and relocates language concerning dealer services and adds language concerning the requirements for a license for a wholesale dealer.
- (9) Provides that an auto auctioneer is a person providing a place of business or facilities for the purchase and sale of more than six motor vehicles a year. (Under current law the threshold is one motor vehicle a year.)
- (10) Provides that the 30-business-day period for purposes of determining whether a reasonable number of attempts have been made to correct a nonconformity is extended by any period of time during which repair services are unavailable due to civil unrest, fire, natural disasters, terrorist attacks, or acts of God or war. (Current law extends the time period only when repair services are unavailable due to a strike.)
- (11) Provides that a dealer who fails to deliver a certificate of title within a certain timeframe is subject to certain civil penalties for violations that occur within a calendar year.

(12) Requires a dealer to make payment to a third party to satisfy any obligation secured by the vehicle within 10 days after the date of sale.

(13) Makes it a Class D felony for a disposal facility, a scrap metal processor, or an agent of a disposal facility or scrap metal processor to knowingly, intentionally, or recklessly buy a motor vehicle that is less than 15 model years old without a certificate of title for the motor vehicle.

(14) Makes it a Class A misdemeanor for a dealer or another person who sells, exchanges, or transfers at least five vehicles each year to sell, exchange, or transfer a rebuilt vehicle without disclosing in writing to the purchaser, customer, or transferee, before consummating the sale, exchange, or transfer, the fact that the vehicle is a rebuilt vehicle if the dealer or other person knows or should reasonably know the vehicle is a rebuilt vehicle.

(15) Permits the SOS to commence a proceeding to administratively dissolve a corporation if the SOS receives credible evidence that the corporation is engaged in illegal activity or activity not authorized by the corporation's articles of incorporation.

(16) Makes conforming amendments, technical corrections, and an appropriation.

Effective Date: (Amended) Upon passage; July 1, 2012.

Explanation of State Expenditures: *Summary:* This bill will change state expenditures for the enforcement of new, enhanced, reduced, and deleted penalty provisions governing licensed dealers in the state. The actual change in state expenditures is unknown.

The bill will increase the workload of the Secretary of State Dealer Services Division by allowing the Dealer Services Division to enforce, through police powers, regulations governing licensed dealers in the state. The expenses of administering and enforcing these provisions are expected to be provided from revenue generated to the Dealer Enforcement Account (also created by the bill).

The bill may also decrease workload of the Secretary of State to the extent new regulations for wholesale dealers decreases the number of dealer licenses issued in the state. Actual decreases are unknown.

Additional Information:

Motor Vehicle Sales Advisory Board: The bill reestablishes the Motor Vehicle Sales Advisory Board that was previously repealed under P.L. 197-2011. Members of the Board are entitled to per diem and reimbursement for expenses which, under the bill, would be provided by the Secretary of State. This bill will result in new state expenditures for member per diem and reimbursement expenses for the Board beginning in FY 2013. Actual state expenditures will depend on how often the Board meets and how many Board members attend meetings and request per diem and reimbursement payments.

Regulation of Wholesale Dealers: The Secretary of State also reports the bill may decrease the number of out-of-state wholesale dealers who establish temporary wholesale dealer businesses in the state by requiring dealers to maintain physical offices in the state. Actual decreases in workload are unknown but expected to be small.

Dealer Enforcement Provisions: This bill transfers provisions of currently existing statute pertaining to the Dealer Services Division of the Secretary of State to a new section in Indiana Code. The former provisions that pertained to the Dealer Services Division are also repealed by the bill.

The implementation of these provisions are expected to increase the workload of the SOS to provide enforcement, but would have no additional fiscal impact on the SOS Dealer Services Division. Currently, the Division operates on an annual budget of approximately \$900,000. The Dealer Services Division operations are self-sustaining from the collection of civil penalties, user fees, and daily transactions completed by the Division.

However, the bill makes changes to penalty provisions in current statute and also creates new penalty provisions (where before, violations did not carry a penalty). The penalty provision changes in this bill are included in the table below.

Subject Matter	Language in Current Law and Current Penalty	Similar Language in Bill and Penalty As Proposed	Analysis
Disclosure of Rebuilt Motor Vehicle (IC 9-22-3-18.5)	IC 9-22-5-16: No current penalty for violation of this provision in current law.	IC 9-22-3-18.5: Class A misdemeanor.	Because the notification requirement does not currently carry criminal penalty, if an individual fails to provide the notification required under the bill, the number of Class A misdemeanor convictions in the state may increase.
Regulation of Disposal Facilities and Scrap Metal Processors (IC 9-22-5-18)	No current language in Indiana Code.	Violation of IC 9-22-5-18 is considered a Class D felony.	The bill adds new criminal penalties for regulation of disposal facilities and scrap metal processors. As a result, the number of Class D felony convictions in the state may increase.

Subject Matter	Language in Current Law and Current Penalty	Similar Language in Bill and Penalty As Proposed	Analysis
<p>Expiration, Replacement, and Transfer of Certificate of Title (IC 9-32-3)</p>	<p>IC 9-17-3-7: Violation of IC 9-17-3 is punishable as a Class C infraction.</p> <p>Violation of IC 9-17-3-3 subsections (a)(1), (a)(2), (a)(4), (a)(5), and (d) is a Class B misdemeanor.</p> <p>Violating IC 9-17-3-3(a)(3) is considered a Class A misdemeanor for a first offense and a Class D felony for a subsequent offense.</p>	<p>IC 9-32-16-2: Violation of IC 9-23-3 is punishable as a Class C infraction.</p> <p>Violation of IC 9-32-3-1 subsections (a)(1), (a)(2), (a)(4), (a)(5), and (d) is a Class B misdemeanor.</p> <p>Violating IC 9-32-3-1(a)(3) is considered a Class A misdemeanor for a first offense and a Class D felony for a subsequent offense.</p> <p>IC 9-32-16-8: Violation of IC 9-32-3-1(c) is punishable with a civil penalty of \$100 (first offense in a CY), \$250 (second offense in a CY), or \$500 (subsequent offense in a CY). Revenue deposited in Dealer Enforcement Account.</p>	<p><u>Summary:</u> No change in criminal penalties. May increase civil penalty revenue.</p> <p>Adds civil penalty provisions to IC 9-32-3-1(c) that will increase revenue to the Dealer Enforcement Account.</p> <p>All other violations [excluding IC 9-32-3-1(c)] are also subject to a maximum civil penalty of \$10,000 (IC 9-32-16-1). This revenue is deposited in the Dealer Enforcement Account.</p>
<p>Manufacturers, Converter Manufacturers, and Dealers; Manufacturers' Certificate of Origin (IC 9-32-4)</p>	<p>IC 9-17-8-9: Violation of IC 9-17-8 is a Class C infraction.</p> <p>Maximum judgement for a Class C infraction is \$500, which is deposited in the General Fund.</p>	<p>IC 9-32-16-8: Violation of IC 9-32-4-2 and IC 9-32-4-8 is punishable with a civil penalty of \$100 (first offense in a CY), \$250 (second offense in a CY), or \$500 (subsequent offense in a CY). Revenue deposited in Dealer Enforcement Account.</p>	<p><u>Summary:</u> Expected to decrease revenue to the General Fund by designating fines for the Dealer Enforcement Account.</p> <p>All other violations (excluding IC 9-32-4 sections 2 and 8) are also subject to a maximum civil penalty of \$10,000 (IC 9-32-16-1). This revenue is deposited in the Dealer Enforcement Account.</p>

Subject Matter	Language in Current Law and Current Penalty	Similar Language in Bill and Penalty As Proposed	Analysis
<p>Dealer License Plates (IC 9-32-5)</p>	<p>IC 9-18-26-11: Violation of IC 9-18-11 is considered Class B misdemeanor.</p> <p>IC 9-18-26-12: Violation is considered a Class A infraction.</p> <p>IC 9-18-26-13: Violation is considered a Class C misdemeanor.</p> <p>IC 9-18-26-14: Violation subject to civil penalty between \$50 and \$1,000 per day in violation (paid to the General Fund).</p>	<p>IC 9-32-16-3: A violation of IC 9-32-5-7, IC 9-32-5-10, IC 9-32-5-11(d), or IC 9-32-5-12 is considered a Class A misdemeanor.</p> <p>A violation of IC 9-32-5-13 is a Class C misdemeanor.</p>	<p>The following penalty provisions from current law were not included in the bill.</p> <p>(1) IC 9-18-26-12: Class A infraction.</p> <p>(2) IC 9-18-26-14: Violation subject to civil penalty between \$50 and \$1,000 per day in violation (paid to the state General Fund). This will decrease General Fund revenue.</p> <p>All other violations are also subject to a maximum civil penalty of \$10,000 (IC 9-32-16-1). This revenue is deposited in the Dealer Enforcement Account.</p>
<p>Licensing of Vehicle Salvaging (IC 9-32-8)</p>	<p>IC 9-22-4-1: Violation is a Class C infraction.</p> <p>(Only section in IC 9-22-4 to carry a penalty provision.)</p>	<p>IC 9-32-16-4: A violation of IC 9-32-8-1, IC 9-32-8-2, or IC 9-32-8-10 is considered a Class B misdemeanor.</p>	<p>Enhances penalty of IC 9-22-4-1 from a Class C infraction to a Class B misdemeanor and relocates to IC 9-32-8-1.</p> <p>Creates Class B misdemeanor penalty for IC 9-32-8-10 of the bill (which exists in IC 9-22-4-9 of current law).</p> <p>All other violations are also subject to a maximum civil penalty of \$10,000 (IC 9-32-16-1). This revenue is deposited in the Dealer Enforcement Account.</p>

Subject Matter	Language in Current Law and Current Penalty	Similar Language in Bill and Penalty As Proposed	Analysis
Regulation of Vehicle Merchandising (IC 9-32-10)	IC 9-23-6-1: Any violation of IC 9-23 is considered a Class B misdemeanor.	IC 9-32-16-5: Violations of IC 9-32-10-1 and IC 9-32-10-12 are both considered Class A misdemeanors in the bill. Language in IC 9-32-10 is transferred from IC 9-23 of current law.	Enhances penalty of IC 9-32-10 and 12 from a Class B misdemeanor to a Class A misdemeanor and relocates to IC 9-32-10-1 and 12. All other violations are also subject to a maximum civil penalty of \$10,000 (IC 9-32-16-1). This revenue is deposited in the Dealer Enforcement Account.
Disclosures Required in Motor Vehicle Leases (IC 9-32-11)	IC 9-23-2.5-10: Failing to comply with IC 9-23-2.5 can result in a maximum civil penalty of \$1,000. Total recovery of damages cannot exceed \$100,000. IC 9-23-6-1: Any violation of IC 9-23 is considered a Class B misdemeanor.	IC 9-32-16-9: Failing to comply with IC 9-32-11 can result in a maximum civil penalty of \$1,000. Language in IC 9-32-11 is transferred from IC 9-23 of current law.	The bill removes language pertaining to the maximum recovery of damages. This is expected to have no fiscal impact. All other violations are also subject to a maximum civil penalty of \$10,000 (IC 9-32-16-1). This revenue is deposited in the Dealer Enforcement Account.
Unfair Practices (IC 9-32-12)	IC 9-23-6-1: Any violation of IC 9-23 is considered a Class B misdemeanor.	IC 9-32-16-6: Violation of IC 9-32-12 sections 25 and 26 are punishable as Class A misdemeanors. Language in IC 9-32-12 is transferred from IC 9-23 of current law.	IC 9-32-12 sections 25 and 26 of the bill exist in current law as Class B misdemeanors. The bill enhances these crimes to Class A misdemeanors. All other violations of IC 9-32-12 would be Class B misdemeanors (current). All other violations are also subject to a maximum civil penalty of \$10,000 (IC 9-32-16-1). This revenue is deposited in the Dealer Enforcement Account.

Subject Matter	Language in Current Law and Current Penalty	Similar Language in Bill and Penalty As Proposed	Analysis
Administration and Judicial Review (IC 9-32-15)	Language in IC 9-32-15 of the bill does not exist in current law as it pertains to the Secretary of State.	Violation of IC 9-32-15-13 is considered a Class D felony.	This may increase convictions of Class D felonies in the state. All other violations are also subject to a maximum civil penalty of \$10,000 (IC 9-32-16-1). This revenue is deposited in the Dealer Enforcement Account.

The bill adds new penalties (see *Administration and Judicial Review* in the above chart) that are punishable as Class D felonies. A Class D felony is punishable by a prison term ranging from six months to three years or reduction to Class A misdemeanor depending upon mitigating and aggravating circumstances. Assuming offenders can be housed in existing facilities with no additional staff, the marginal cost for medical care, food, and clothing is approximately \$3,318 annually, or \$9.09 daily, per prisoner. However, any additional expenditures are likely to be small. The average length of stay in Department of Correction (DOC) facilities for all Class D felony offenders is approximately ten months.

However, this bill potentially reduces costs to the state if an offender is convicted of a misdemeanor rather than a felony. However, any cost reduction is likely to be small. Offenders convicted of a misdemeanor who are given a prison term are incarcerated in county jails.

Explanation of State Revenues: Summary: This bill is expected to increase revenue from national criminal history background check fees as well as revenue collected from civil penalties prescribed by the SOS and fees and funds received from the administration of the Dealer Services Division. Increases in revenue to the Dealer Enforcement Account are indeterminable. The bill will generate an estimated \$112,000 in additional revenue to the General Fund by requiring applicants, as a condition of receiving dealer licensure, to obtain a national criminal history background check (at the expense of the applicant).

The bill may also decrease revenue the state receives from wholesale dealer license fees and dealer license plate fees. Any decrease in state revenue is unknown, but if there is a reduction in revenue from these fees, the affected funds will be the Secretary of State Dealer Compliance Account, Indiana State Police Odometer Fund, the Motor Vehicle Highway Account, and revenue provided to the Attorney General to enforce odometer laws.

Additional Information:

National Criminal History Background Checks: The bill will require applicants for dealer licenses to undergo a national criminal history background check. A national criminal history background check requires a search of the criminal history record system maintained by the Federal Bureau of Investigation based on fingerprint identification or any other method of positive identification. A national criminal history background check is obtained through the ISP. For every national criminal history background check performed in the state, \$15 is forwarded to the General Fund.

The SOS reports that as of December 2011, there were 7,462 licensed dealers in the state. Licensure is required to be renewed annually. This bill is expected to increase state revenue by approximately \$112,000 per year from the state fee portion for national criminal history background checks.

Regulation of Wholesale Dealers: Because this bill may reduce the number of wholesale dealers in the state, the bill may also decrease revenue received from wholesale dealer licenses and dealer license plates. To the extent this bill decreases the number of wholesale dealers in the state, the Motor Vehicle Highway Account (MVHA), Secretary of State Dealer Compliance Account, Indiana State Police Odometer Fund, and the Attorney General will see a decrease in revenue. Actual decreases are unknown but expected to be small.

The fee for a wholesale dealer license is \$30 for the first place of business and \$10 for each location not immediately adjacent to the first place of business. Revenue collected from wholesale dealer licenses is required to be distributed as follows: 30% to the Secretary of State Dealer Compliance Account, 40% to the MVHA, 20% to the ISP Odometer Fund, and 10% to the Attorney General to enforce odometer laws.

The fee for the first two sets of dealer license plates is \$40. Revenue collected from dealer license plates are required to be deposited as follows: 30% to the Secretary of State Dealer Compliance Account and 70% to the MVHA.

The MVHA may be used for road construction, reconstruction, and maintenance for cities, towns, and counties. The MVHA also supports entirely the operation of the Bureau of Motor Vehicles, a significant part of the operation of the Department of Transportation, about 61% of the operation of the State Police, and part of the operation of the Department of State Revenue.

Dealer Enforcement Account Revenue: The bill creates the Dealer Enforcement Account which is used to finance the administration of the Dealer Services Division. The fund consists of revenue collected from (1) civil penalties prescribed by the SOS and (2) fees and funds of any kind received from the administration of the Dealer Services Division. With the exception of a select few civil penalties assessed in the bill, all violations of 9-32 will be subject to a maximum civil penalty of \$10,000 per violation in addition to any criminal penalty.

Penalty Provision Changes: The bill changes several criminal penalty provisions. However, any change in revenue is likely to be small. Specific provisions are listed below.

The bill creates a Class D felony for violation of provisions regulating disposal facilities and scrap metal processors. If additional court cases occur and fines are collected, revenue to both the Common School Fund (from criminal fines) and the state General Fund (from court fees) would increase. The maximum fine for a Class D felony is \$10,000. However, any additional revenues would likely be small.

The bill adds penalties that are punishable under the following penalty classifications: Class C misdemeanor (see *Regulation of Vehicle Merchandising* in above chart), Class B misdemeanor (see *Licensing of Vehicle Salvaging* in above chart), and Class A misdemeanor (see *Disclosure of Rebuilt Motor Vehicle* in above chart). If additional court cases occur and fines are collected, revenue to both the Common School Fund (from fines) and the state General Fund (from court fees) would increase. The maximum fine for a Class C misdemeanor is \$500, for a Class B misdemeanor is \$1,000, and for a Class A misdemeanor is \$5,000.

The bill also removes a Class A infraction (see *Dealer License Plates* in above chart). The maximum judgment for a Class A infraction is \$10,000, which would be deposited in the state General Fund.

By reducing the Class D felonies in current law to Class B misdemeanors (see *Salvage Motor Vehicles* in the above chart), this bill potentially reduces the revenue to the Common School Fund if additional court cases occur and a fine is assessed. The maximum fine for a Class B misdemeanor is \$1,000, while the maximum fine for a Class D felony is \$10,000. Court fees for both misdemeanors and felonies are the same.

Enhancing a Class C infraction to a Class B misdemeanors (see *Licensing of Vehicle Salvaging* column in the above chart) may increase revenue to the Common School Fund, but could reduce revenue that is deposited in the state General Fund. Currently, the maximum judgment for a Class C infraction is \$500, which is deposited into the state General Fund, while the maximum fine for a Class B misdemeanor is \$1,000, which is deposited into the Common School Fund. The state General Fund may receive additional court fee revenue.

Penalty Provision: If additional court cases occur and fines are collected, revenue to both the Common School Fund (from criminal fines) and the state General Fund (from court fees) would increase. The maximum fine for a Class D felony is \$10,000.

Enhancing a Class B misdemeanor to a Class A misdemeanors (see *Regulation of Vehicle Merchandising and Unfair Practices* in the above chart) may increase revenue to the Common School Fund if a person is sentenced for a Class A misdemeanor rather than for a Class B misdemeanor. The maximum fine for a Class B misdemeanor is \$1,000, while the maximum fine for a Class A misdemeanor is \$5,000. Court fees would remain unchanged.

Explanation of Local Expenditures: The bill (1) enhances violations which are currently Class B misdemeanors to Class A misdemeanors, (2) reduces violations that are currently Class A misdemeanors to Class B misdemeanors, (3) reduces Class D felonies to Class B misdemeanors, (4) creates new Class D felonies, (5) creates a new Class C misdemeanor, (6) creates new Class B misdemeanors, (7) enhances a Class C infraction to a Class B misdemeanor, and (8) creates a new class A misdemeanor. This may change local expenditures to house offenders. However, any changes are likely to be small.

The maximum term of imprisonment for a Class B misdemeanor is up to 180 days, while the maximum term for a Class A misdemeanor is up to one year. Additionally, a Class C misdemeanor is punishable by up to 60 days in jail.

By enhancing a Class C infraction to a Class B misdemeanor, local expenditures could increase if offenders are incarcerated in local jails instead of being only fined. A Class B misdemeanor is punishable by up to 180 days in jail.

By creating a new Class D felony, more defendants are likely to be detained in county jails prior to their court hearings. To the extent this occurs, local expenditures for jail operations may increase.

Explanation of Local Revenues: Local governments could receive additional revenues from any court fees that are collected for cases that were infractions and are now misdemeanors.

State Agencies Affected: Secretary of State, Indiana State Police; Department of Correction; Attorney General.

Local Agencies Affected: Trial courts; local law enforcement agencies; recipients of Motor Vehicle Highway Account funds.

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