

DEPARTMENT OF FINANCE BILL ANALYSIS

AMENDMENT DATE: April 14, 2009
POSITION: Oppose
SPONSOR: Consumers for Auto Reliability and Safety

BILL NUMBER: SB 95
AUTHOR: E. Corbett

BILL SUMMARY: Car Buyers' Protection Act of 2009

This bill would: 1) increase the required surety bond for motor vehicle dealers to \$100,000; 2) require motor vehicle dealers to submit to the Department of Motor Vehicles (DMV) notarized receipts from secured parties that the full account balance for used vehicles acquired by the dealers has been satisfied prior to selling or transferring used vehicles; 3) increase the amount of damages that could be recovered for fraud committed by licensed motor vehicle dealers and salespersons; and 4) eliminate the consumer dispute resolution function of the New Motor Vehicle Board.

FISCAL SUMMARY

The DMV estimates this bill could result in increased costs in the range of several million dollars for increased investigation activities, establishment and maintenance of a new system to receive and track notarized receipts, increased time handling complaints and increased transaction times.

COMMENTS

The Department of Finance (Finance) opposes this bill because of the following reasons:

- There already are consumer protections in the retail auto industry in existing law, including a dispute resolution process for consumers through the New Motor Vehicle Board and the Consumer Motor Vehicle Recovery Fund which provides funds to consumers for eligible claims against licensed auto dealers.
The bill would further deplete funding from the Motor Vehicle Account for which fees have already been raised to support other high priority activities. Increased pressure on the Motor Vehicle Account could affect the long term stability of the fund.
This bill could have a negative effect on the solvency of auto dealers in the state. Due to the recession, and decrease in annual vehicle sales, a large number of new and used dealers have already gone out of business in the state. Placing additional financial burdens on motor vehicle dealers may force additional dealers out of the market, or may prevent new dealers from entering.

Analyst/Principal (0744) E. Harper Date Program Budget Manager Mark Hill Date

Department Deputy Director Date

Governor's Office: By: Date: Position Approved Position Disapproved

BILL ANALYSIS Form DF-43 (Rev 03/95 Buff)

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ANALYSIS

A. Programmatic Analysis

Existing law:

- Establishes the Consumer Motor Vehicle Recovery Fund to provide funds to consumers for eligible claims against motor vehicle dealers. The Consumer Motor Vehicle Recovery Fund is funded by a \$1 fee charged to motor vehicle dealers for each motor vehicle sale, not to exceed \$2,500 per dealer in a calendar year.
- Establishes the New Motor Vehicle Board, within the Department of Motor Vehicles (DMV), which is authorized to settle disputes between members of the public and new motor vehicle commercial licensees through mediation, arbitration or other dispute resolution methods.
- Requires motor vehicle dealers to obtain a surety bond in the amount of \$50,000, except for dealers that deal exclusively in motorcycle or all-terrain-vehicles for which the required surety bond amount is \$10,000.
- Provides that individuals who suffer loss or damage by reason of fraud on behalf of a licensed vehicle dealer or salesperson shall have a right of action against the dealer, salesperson and the dealer's surety bond in an amount not to exceed the value of the vehicle purchased or sold to the dealer. Any damages suffered by the state due to dealer or salesperson fraud are to be satisfied first, with claims made by non-licensees entitled to second preference.

This bill would:

- Eliminate the consumer dispute resolution function of the New Motor Vehicle Board.
- Require dealers, when acquiring vehicles with a balance due to a secured party, to submit to the DMV a notarized receipt from the secured party that the dealer has paid off the entire balance prior to sale or transfer of the vehicle
- Require motor vehicle dealers to obtain a surety bond in the amount of \$100,000, except for dealers that deal exclusively in motorcycle or all-terrain-vehicles for which the required surety bond amount would be \$10,000.
- Provide that individuals who suffer loss or damage by reason of fraud on behalf of a licensed vehicle dealer or salesperson shall have a right of action against the dealer, salesperson and the dealer's surety bond in an amount equal to the actual damages plus any incidental or consequential damages.
- Require claims of individuals who purchased or leased a motor vehicle at retail to take precedence over the claims of a financing entity or other persons or entities, except those claims made by the state.

Discussion: While this bill attempts to increase consumer protections in the retail auto industry, it imposes several new requirements on auto dealers that may make it unaffordable for some dealers to continue to operate. Increasing the surety bond requirement for dealers from \$50,000 to \$100,000 would be a direct cost to dealers. Additionally, increasing dealer liability for incidental or consequential damage recoveries could significantly impact dealers financially. Also, the requirement

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for dealers to submit notarized receipts from secured parties prior to selling or transferring trade-in vehicles could impact the prompt sale of vehicle trade-ins and negatively impact auto dealer sales. Due to the recession and the downturn in motor vehicle demand by consumers, many auto dealers have already gone out of business. In 2008, 120 new car dealerships and 400 used car dealerships went out of business, with a similar trend projected for 2009. Given the current downturn in the retail auto industry, enacting further financial requirements and liabilities on auto dealers may exacerbate the existing situation.

Finance also notes that there are existing consumer protections available for consumers that suffer losses due to auto dealer fraud. The New Motor Vehicle Board settles disputes between consumers and new auto dealers through mediation or arbitration. According to the DMV, this has successfully settled a number of consumer disputes. Additionally, Chapter 437, Statutes of 2008 (SB 729, Padilla), created the Consumer Motor Vehicle Recovery Fund which can be used to provide consumers recovery funds for eligible claims against auto dealers.

B. Fiscal Analysis

The DMV estimates this bill could result in increased costs in the range of several million dollars for increased investigation activities, establishment and maintenance of a new system to receive and track notarized receipts, increased time handling complaints and increased transaction times. These increased costs could negatively impact the Motor Vehicle Account for which fees have already been raised to support other high priority activities. Increased pressure on the Motor Vehicle Account could affect the long term stability of the fund.

Code/Department Agency or Revenue Type	SO	(Fiscal Impact by Fiscal Year)							Fund Code
	LA	(Dollars in Thousands)							
	CO	PROP							
	RV	98	FC	2008-2009	FC	2009-2010	FC	2010-2011	
2740/DMV	SO	No		-----	See Fiscal Analysis	-----			0044
<u>Fund Code</u>	<u>Title</u>								
0044	Motor Vehicle Account, STF								