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FISCAL IMPACT REPORT

ORIGINAL DATE 02/25/11

SPONSOR Maestas LAST UPDATED _____ HB 509

SHORT TITLE Civil Penalties for No Car Insurance SB _____

ANALYST Lucero

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY11	FY12	FY13	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
		\$800.0	\$800.0	\$1,600.0	Recurring	MVD – operational fund
		\$61.0	\$61.0	\$61.0	Non-Recurring	MVD – operational fund
		(Unknown)	(Unknown)	(Unknown)	Recurring	Courts - General Fund
		Unknown	Unknown	Unknown	Recurring	TRD/ Ofc of the Sec. - General Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)
Taxation and Revenue Department (TRD)

SUMMARY

Synopsis of Bill

House Bill 509 amends the Motor Vehicle Code to remove the criminal misdemeanor penalty and \$300 fine for a violation of the Mandatory Financial Responsibility Act for operating an uninsured vehicle.

The bill replaces the criminal penalty with an equal \$300 civil penalty and suspension of motor vehicle registration. TRD is required to mail a notice of the violation to the person that specifies the name of the vehicle owner, the registration number, and a description of the vehicle in violation of the act and the amount of the civil penalty and process to remedy the violation.

The bill allows the vehicle owner to:

1. submit within 20 days of the mailing evidence of insurance in effect at the time of the violation then there will be no further action by TRD;
2. submit within 20 days the \$300 civil penalty and evidence of insurance currently in place then there will be no further action by TRD. However, the payment of the civil penalty admits guilt;
3. request with 20 days of the notice an administrative hearing by TRD to determine whether the violation is indeed valid. TRD shall take no action until a hearing decision has been made.
 - a. If the violation is upheld, then the vehicle owner is required to pay the \$300 civil penalty and provide evidence of insurance currently in place;
 - b. If the violation is upheld and the owner does not pay the penalty and show evidence of insurance, then TRD shall suspend the vehicle registration for up to a year and may submit the penalty for collection.
4. if there is no response from the driver within 20 days of the notice, then TRD may
 - a. suspend the vehicle registration
 - b. submit the penalty for collection

The bill allows TRD to establish a compliance program in conjunction with the Department of Public Safety, other law enforcement agencies, and private sector companies to develop any pertinent technology to assist law enforcement officers and TRD with insurance verification.

FISCAL IMPLICATIONS

By transferring the function from the Courts to TRD, there could be a caseload reduction; however, there would be an increase in administrative hearings at TRD. It is not known if there would be an equal offset of costs associated with the transferred function. Ideally, it would seem that there may be a savings associated by eliminating the need from some hearings.

Theoretically, there wouldn't be a reduction in the amount of penalties paid; however, a penalty assessment may not have the same effect as a misdemeanor.

The revenue derived from the penalties may shift from the Courts to TRD. The bill does not identify the disposition of the penalty revenue. Presumably the fine would be distributed to the State General Fund pursuant to Article XII, Section 4 of the Constitution of the State of New Mexico.

SIGNIFICANT ISSUES

Changing violation of the Mandatory Financial Responsibility Act from a criminal misdemeanor to a civil penalty will remove the courts from the initial phase of a violation, making it an administrative violation handled by the motor vehicle department rather than a court-involved criminal case.

Removing the criminal penalty for driving without car insurance may lead to more uninsured drivers on the road, as offenders may be less likely to respond to a fine assessment received in the mail than to a court date or warrant for failure to appear.

ADMINISTRATIVE IMPLICATIONS

MVD will have increased mailing costs, and high implementation costs. There is no provision in

the bill to augment the MVD budget, and no portion of the revenue generated from the \$300 fine could be retained by the MVD to defray the costs of implementing the provisions in this bill.

If the administration of the on-going program is managed entirely by TRD-MVD employees, it is estimated that an additional 20 FTEs would be required at average annual cost of \$40,000 per FTE for a total of \$800,000. If administration was some type of contract for services, it is unclear how the contractor could be reimbursed.

The cost of electronic imaging technology is unknown, but would presumably be substantial. Contracting the entire program out to an agent, though it might produce a different net result, would also likely require a competitive-bid request for proposals (RFP) process managed jointly by TRD and DPS, without which it is difficult to estimate actual expense and net revenue results.

Details of the non-recurring TRD-ITD operating budget impact include:

- The department shall mail a penalty notice based on the duplicate sticker issued by the law enforcement officer: 460 hrs;
- The department shall mail a penalty notice within 10 days of notification by the insurance carrier of a termination or cancellation: 60 hours;
- To comply with the provisions regarding penalty notices and the \$300 fine: 210 hours;
- The bill is not clear about “the use of electronic imaging technology.” This will probably involve a new system or interface: probably around 500 hours.

Total hours: 1,230 at \$50/hour = \$61,500

The Administrative Office of the Courts (AOC) reports that his bill should result in a court caseload reduction. The bill would still allow, as is currently the case, for an appeal of the TRD administrative hearing decision to District Court. The AOC did not provide a cost estimate of the savings that may occur by shifting initial proceedings to TRD.

There will be a minimal administrative cost for statewide update, distribution and documentation of statutory changes.

OTHER SUBSTANTIVE ISSUES

TRD submits the following information:

The bill proposes a zero-tolerance standard for MFRA compliance, with substantial revenue-raising potential. If a vehicle is correctly found by law enforcement or the department or its agent to be operating on the roads of New Mexico without insurance, the \$300 penalty would be imposed without delay. The bill’s provision that allows the department and DPS to use electronic imaging (camera surveillance) technology could substantially increase the likelihood that an even temporarily uninsured vehicle would be quickly identified and the \$300 penalty imposed.

Current law provides for a court-imposed fine of up to \$300, and suspension of the registration. The majority of suspensions are generated by MVD through automated insurance cross-checking without the court-imposed fine. TRD-MVD collects \$30.00 to reinstate a suspended vehicle registration (\$25 reinstatement fee plus administrative and transaction fees). The current system is designed to require and encourage compliance with the MFRA, not as a punishment or revenue-raising process. However, in part because that \$30 penalty has limited effect, TRD supported legislation in 2009 (see Possible Alternatives, on page 3) that would

have added \$75 to the reinstatement fee in an attempt to facilitate increasingly effective enforcement of the MFRA. That approach might be far less punitive and more customer-friendly than the aggressive penalty collection methodology proposed by HB-509.

An officer would no longer issue a citation for not having proof of insurance. Current statute provides that a person who violates the provisions of the MFRA is guilty of a misdemeanor and is subject upon conviction to a court-imposed fine of up to \$300. Under this bill, there is no court process. Instead, MVD will be required to mail penalty notices.

HB-509 appears geared to encourage (although not absolutely require) TRD or TRD and DPS jointly to contract with a “provider of pertinent technology” to act as the department’s agent in identifying uninsured vehicles and aggressively pursuing \$300 penalty collections from the vehicles’ owners. It is not clear whether one or more such providers are capable of fully implementing this process, or whether a competitive request for proposals process would be practical and productive. Nor is it clear how such an agent would be compensated, given that no part of the \$300 penalty would be retained by the department.

Like the red-light camera project, the aggressive enforcement coupled with camera surveillance that is envisioned by this bill is likely to generate controversy. If aggressively pursued and enforced, however, the program should (in the short term at least) be a substantial source of revenue and a highly visible disincentive to going without vehicle insurance. TRD-MVD’s understanding is that no state has pursued such a program over the period of years that would be required before the long-term revenue and enforcement results can be known. However, it is reasonable to assume that revenues would drop off over time, with effective implementation and increasing public awareness of the program and the consequences of being uninsured.

The majority of MFRA violations are identified through the TRD-MVD automated cross-check with insurers. Upon suspension, the state collects \$30 (\$25 statutory reinstatement fee + \$2 administrative fee + \$3 vehicle transaction fee) for each reinstatement of a registration that was suspended under the MFRA. However, the suspension only occurs after a sequence that includes:

1. The first letter is not sent until 60 days after the first indication of being uninsured, to avoid sending letters to vehicle owners who were merely in the process of switching from one insurance carrier to another, or moving insurance from one vehicle to another. This letter requires the owner to provide proof of insurance within 30 days.
2. A second letter is then (after 30 days) sent to those who did not respond to the first letter giving them 20 days to respond or face suspension.
3. After that 20 days (now a total of 110 days from the first indication that the vehicle may not be insured), if no satisfactory response is received with proof of insurance, the vehicle’s registration is suspended.
4. The vehicle’s owner may then reinstate the registration by providing proof of current insurance and payment of the \$30.00 total reinstatement fee.

That extended process effectively protects the vehicle owner who is, or is attempting to be, compliant with the MFRA from excessive and unnecessary threatening letters and from having to pay inappropriate and burdensome fees. And the process has been effective in bringing New Mexico’s uninsured vehicles rate down and keeping it down, in the vicinity of 10% or less.

However, the extended process also allows some vehicle owners to “game” the system by staying uninsured until the last moment, then reacquiring coverage just in time and just long enough to appear to be in compliance so as to avoid actual suspension of their vehicle registration. As noted above, the current system is designed to require and encourage compliance with the MFRA, not as a punishment or revenue-raising process.

ALTERNATIVES

TRD suggests an alternative model might be legislation that was proposed in 2009 (as the HTRC substitute for HB-29) that would have imposed an additional reinstatement fee of \$75 if the registration for a vehicle was suspended for failure to comply with the Mandatory Financial Responsibility Act (MFRA), with the additional fee appropriated to the Motor Vehicle Division (MVD) for the purpose of enforcing the MFRA. That bill would also have changed the penalty for uninsured motor vehicles from a misdemeanor with a court-imposed fine not to exceed \$300 to a “penalty assessment” misdemeanor with a mandatory \$75 fine. Both provisions were geared to improving the ability of the division to enforce compliance with the MFRA without imposing an unreasonable burden on vehicle owners. The bill passed the House and received a “do pass” recommendation from two Senate committees, but did not receive a Senate floor vote.

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