

December 10, 2013

Hon. Kamala D. Harris
Attorney General
1300 I Street, 17th Floor
Sacramento, California 95814

Attention: Ms. Ashley Johansson
Initiative Coordinator

Dear Attorney General Harris:

Pursuant to Elections Code Section 9005, we have reviewed the proposed statutory initiative regarding vehicle-related consumer protection laws (A.G. File No. 13-0036).

Background

Vehicle-Related Consumer Protection Laws. Current federal law specifies when and how manufacturers must provide notification to vehicle owners, dealers, and distributors about safety recalls. Beginning in August 2014, major vehicle manufacturers will be required to regularly post information on their websites regarding safety recalls. Additionally, federal law requires manufacturers to pay for repairs related to safety recalls on vehicles that are no more than ten years old on the date the defect is determined.

Current federal rules require organizations such as financial institutions and car dealers to implement identity theft prevention programs designed to detect identity theft. Current federal and state law also provide certain remedies and penalties related to identity theft. In addition, the Department of Motor Vehicles (DMV) investigates consumer complaints against car dealers.

Taxes Associated With Vehicle Sales. The sale of vehicles directly or indirectly affects state and local tax revenues. In particular, the sales tax and vehicle license fee are collected on the sale price or market value of vehicles. In addition, the profits of car dealers and financial institutions affect the state's income and corporation tax revenues. As a result, changes to the vehicle industry can have a significant effect on state and local government revenues. For example, in 2011, new and used car dealers generated \$39 billion and \$6 billion in taxable sales, respectively. Together, these dealers produced roughly \$4 billion in sales tax revenues for state and local governments. The vehicle industry's contributions to other state and local revenue sources are significant but difficult to quantify.

Proposal

This measure has provisions that generally increase vehicle-related consumer protection.

Requires Safety Recall Repairs. The measure prohibits car dealers and rental car companies from selling or leasing a used vehicle if they knew or should have known that the vehicle was subject to a manufacturer's safety recall without first making the repair. This provision does not apply to the sale of used vehicles by private sellers or between car dealers, rental companies, or manufacturers.

Provides the Ability to File Lawsuits Related to Identity Theft. The measure allows a person whose identity has been stolen and used to purchase a vehicle to sue the dealer that sold the vehicle or the entity attempting to collect a debt related to the sale. The provision applies even if the dealer has transferred the loan to a third party. The measure allows the victim of identity theft to seek damages of up to \$60,000 in addition to any actual damages or attorney fees resulting from the identity theft and vehicle sale.

Requires Employee Background Checks. The measure requires a car dealer to check the criminal records of an employee who will have access to personal identifying information of customers purchasing or leasing a vehicle or applying for credit. The measure also prohibits a dealer from employing anyone in a position with access to the personal identifying information of these customers if the dealer knew or should have known that the employee was convicted of identity theft, false impersonation, fraud, or forgery.

Fiscal Effects

This measure would likely have various fiscal effects on state and local governments, many of which are subject to substantial uncertainty.

Effect on Taxes Associated With Vehicles. This measure could affect dealers' profits, dealers' employees' incomes, and prices and quantities of vehicles sold, and, therefore, the amount of tax revenue collected by state and local governments. However, the total effect on government revenues is unclear, as is whether the net result would be increased or decreased tax revenues. This uncertainty is because the measure could have different effects, in part, depending on how the industry and consumers respond.

For example, the requirement to perform safety recall repairs would result in additional costs to car dealers associated with tasks such as checking for recalls and transporting vehicles to dealers for the necessary repairs. At least some of these additional costs would likely be passed on to customers in the form of higher prices, which would increase sales tax revenues associated with these sales. Increased prices, however, would lead some customers to change their buying decisions such as by purchasing fewer cars, which would reduce sales tax revenues. Customers could also purchase more used cars from private parties rather than dealers, which could reduce sales tax revenues because private party transaction prices tend to be lower and potentially easier to underreport. On the other hand, to the degree that consumers value safety recall repairs, improved consumer confidence could increase, offsetting the reduction in car sales and associated taxes from dealerships. Furthermore, these provisions could also affect revenue from a variety of other taxes.

Effect on Enforcement and Adjudication Costs. The measure creates new legal requirements for car dealers. Consequently, state courts would likely experience some additional caseload associated with hearing civil cases brought by consumers alleging violations by dealers. Also, the DMV could experience some additional workload associated with conducting investigations and enforcement actions related to allegations of violations of these requirements. These court and DMV costs will likely not be significant.

Summary of Fiscal Effects. This measure would have the following fiscal effect:

- Unknown but probably not significant net effect on overall state and local government revenues resulting from changes affecting the sale of vehicles.

Sincerely,

Mac Taylor
Legislative Analyst

Michael Cohen
Director of Finance