

**LEGISLATIVE SERVICES AGENCY
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FISCAL IMPACT STATEMENT

LS 6247

BILL NUMBER: SB 117

NOTE PREPARED: Feb 22, 2010

BILL AMENDED: Feb 22, 2010

SUBJECT: Unfair Practices of Vehicle Dealers' Franchises.

FIRST AUTHOR: Sen. Head

FIRST SPONSOR: Rep. Austsin

BILL STATUS: 2nd Reading - 2nd House

FUNDS AFFECTED: X GENERAL
X DEDICATED
FEDERAL

IMPACT: State & Local

Summary of Legislation: (Amended) This bill provides that it is an unfair practice for a vehicle manufacturer or distributor to enter into an agreement in which a vehicle dealer is required to waive certain provisions dealing with unfair practices in the vehicle sales profession or franchise practices. It establishes an exception for voluntary agreements in which separate consideration is offered and accepted. The bill exempts certain persons that buy or sell motor vehicles from the requirement of maintaining a bond satisfactory to the Secretary of State.

Effective Date: July 1, 2010.

Explanation of State Expenditures:

Explanation of State Revenues: Current statute provides for the following penalties and remedies for committing an unfair practice. The number of future violations is not known.

Class B Misdemeanor: IC 9-23-6-1 provides for a Class B misdemeanor. If additional court cases occur and fines are collected, revenue to both the Common School Fund and the state General Fund would increase. The maximum fine for a Class B misdemeanor is \$1,000. Criminal fines are deposited in the Common School Fund.

If the case is filed in a circuit, superior, or county court, 70% of the \$120 court fee that is assessed and collected when a guilty verdict is entered would be deposited in the state General Fund. If the case is filed in a city or town court, 55% of the fee would be deposited in the state General Fund. In addition, some or all of the document storage fee (\$2), automated record keeping fee (\$7), judicial salaries fee (\$18), public defense administration fee (\$3), court administration fee (\$5), judicial insurance adjustment fee (\$1), and

the DNA sample processing fee (\$1) are deposited into the state General Fund.

Civil Penalty: IC 9-23-6-4 provides for a civil penalty of not less than \$50 and not more than \$1,000 for each day of violation and for each violation, as determined by the court. All civil penalties recovered are to be paid to the state and deposited into the Securities Division Enforcement Account of the Secretary of State.

Explanation of Local Expenditures: *Penalty Provisions:* A Class B misdemeanor is punishable by up to 180 days in jail. The average daily cost to incarcerate a prisoner in a county jail is approximately \$44.

Explanation of Local Revenues: *Penalty Provisions:* If additional court actions occur and a guilty verdict is entered, local governments would receive revenue from the following sources: The county general fund would receive 27% of the \$120 court fee that is assessed in a court of record. Cities and towns maintaining a law enforcement agency that prosecutes at least 50% of its ordinance violations in a court of record may receive 3% of court fees. If the case is filed in a city or town court, 20% of the court fee would be deposited in the county general fund and 25% would be deposited in the city or town general fund. In addition, several additional fees may be collected at the discretion of the judge and depending upon the particular type of criminal case.

Background Information: A dealer who is injured by an unfair practice may sue for relief in court and may recover damages or may receive injunctive relief, or both, and may recover the cost of the suit, including reasonable attorney's fees. Also, if a manufacturer, converter manufacturer, or dealer violates or causes a violation of IC 9-23-6-6, the manufacturer's or dealer's license may be suspended or revoked.

State Agencies Affected: Secretary of State.

Local Agencies Affected: Trial courts, local law enforcement agencies.

Information Sources:

Fiscal Analyst: James Sperlik, 317-232-9866.