

**LEGISLATIVE SERVICES AGENCY
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FISCAL IMPACT STATEMENT

LS 7464
BILL NUMBER: SB 494

NOTE PREPARED: Apr 8, 2011
BILL AMENDED: Feb 15, 2011

SUBJECT: Vehicle Manufacturers and Distributors.

FIRST AUTHOR: Sen. Merritt
FIRST SPONSOR: Rep. Torr

BILL STATUS: CR Adopted - 2nd House

FUNDS AFFECTED: **GENERAL**
 DEDICATED
 FEDERAL

IMPACT: State & Local

Summary of Legislation: (Amended) This bill provides that it is an unfair practice for an automotive manufacturer or distributor to fail to pay all claims made by an automotive dealer (dealer) for compensation for incentive payments within 30 days after approval. The bill authorizes an automotive manufacturer or distributor to: (1) audit claims made by a dealer for warranty work or incentive payments for up to one year after the date on which a claim is paid; or (2) charge back to a dealer any amounts paid on false or materially unsubstantiated claims for warranty work or incentive payments.

Effective Date: July 1, 2011.

Explanation of State Expenditures:

Explanation of State Revenues: This bill adds that it is an unfair practice for a manufacturer or distributor to fail to pay incentive payment claims made by dealers. Under Indiana law, a dealer who is the victim of an unfair act may seek redress in civil court. By adding failure to make incentive payments to the definition of an unfair practice, this bill may increase civil and criminal court actions in the state.

Civil Court Fee Revenue: If additional civil actions occur and court fees are collected, revenue to the state General Fund may increase. A civil costs fee of \$100 would be assessed when a civil case is filed, 70% of which would be deposited in the state General Fund if the case is filed in a court of record or 55% if the case is filed in a city or town court. 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), and the judicial insurance adjustment fee (\$1) are deposited into the state General Fund. Additional fees may be collected at the discretion of the judge and depending upon the particular type of case.

Penalty Provision: 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 B misdemeanor is \$1,000. However, any additional revenue would likely be small.

Additional Information: The Indiana Secretary of State (SOS) reports that if a dealer believes a manufacturer has engaged in an unfair practice, the dealer is able to file a complaint against the manufacturer with the Dealer Services Division of the SOS. The Division will then conduct an investigation of the identified manufacturer regarding the violation in question. If it is determined a violation did occur, the Division may file an administrative complaint against the manufacturer. As a result, the manufacturer will likely be subject to civil penalty.

If the manufacturer refuses to comply with the order of the Division, the Division may elect to submit the case to the Attorney General to pursue civil court action.

If a dealer's claim against a manufacturer is found to be legitimate, the manufacturer has committed a Class B misdemeanor. The Division would be responsible for submitting the case to the local prosecuting attorney in the county in which the violation occurred.

Explanation of Local Expenditures: *Penalty Provision:* A Class B misdemeanor is punishable by up to 180 days in jail.

Explanation of Local Revenues: *Civil Court Fee Revenue:* If additional civil actions occur, local governments would receive revenue from the following sources. The county general fund would receive 27% of the \$100 civil costs 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. Additional fees may be collected at the discretion of the judge and depending upon the particular type of case.

Penalty Provision: If additional court actions occur and a guilty verdict is entered, local governments would receive revenue from court fees. However, any change in revenue would likely be small.

State Agencies Affected: Secretary of State; Office of the Attorney General.

Local Agencies Affected: Trial courts, city and town courts, local prosecuting attorney, local law enforcement agencies.

Information Sources: Ashley Humphries, Indiana Secretary of State.

Fiscal Analyst: Bill Brumbach, 232-9559.