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OHIO LEGISLATIVE SERVICE COMMISSION

Office of Research
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Office

S.B. 112
133rd General Assembly

Fiscal Note & Local Impact Statement

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Version: As Introduced

Primary Sponsor: Sen. Eklund

Local Impact Statement Procedure Required: No

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Highlights

- The costs for the Office of the Attorney General's Consumer Protection Section to review audits and to investigate and enforce civil violations are likely to be minimal at most annually and potentially absorbed by utilizing existing staff and resources. Additional revenue may be collected in the form of civil penalties credited to the Consumer Protection Enforcement Fund (Fund 6310).
- There may be a negligible annual increase in locally collected state court costs credited to the Indigent Defense Support Fund (Fund 5DY0) and the Victims of Crime/Reparations Fund (Fund 4020).
- The number of violations for county and municipal criminal and civil justice systems to adjudicate is likely to be relatively small with any additional costs minimal at most annually and potentially absorbed by utilizing existing staff and resources. Revenue in the form of court costs, fees, and fines may offset those costs to some degree.

Detailed Analysis

The bill: (1) expands the definition of "debt adjusting," (2) establishes that a person in compliance with federal law relating to debt adjusting is not subject to any conflicting requirement under Ohio's Debt Adjusting Law, (3) requires a debt adjuster to disclose any creditor who is believed will not negotiate settlements, and (4) assigns the express culpable mental state of "recklessly" to the prohibitions against violating the Debt Adjusting Law.

Audits

By expanding the definition of debt adjusting, there may be a relatively small increase in the number of businesses that, under current law, are required to file the results of an annual audit, conducted by an independent certified public accountant, with the Attorney General's

Office. In 2018, seven debt adjusting businesses submitted audits to the Attorney General's Office for review by its Consumer Protection Section, which is funded with money appropriated from the Consumer Protection Enforcement Fund (Fund 6310) and the GRF.

Because of the expanded definition, there will likely be a relatively small increase in the number of such audits submitted to the Attorney General's Office annually. It appears that existing staff and resources can absorb the annual costs of the additional review work for the Consumer Protection Section.

Enforcement

Civil remedies

Two civil remedies are available through the existing Consumer Sales Practice Act (CSPA). The first such remedy is available to the Attorney General; the second remedy permits a private individual to initiate a civil action. The number of additional civil actions likely to be filed in any affected common pleas, municipal, or county court, is expected to be relatively small in the context of the court's total caseload, the associated costs minimal at most, and potentially absorbed utilizing existing staff and resources.

Attorney General-initiated remedy

The Attorney General's Consumer Protection Section handles the investigative and legal work associated with the CSPA.

It is likely that the Attorney General would try to settle the issues surrounding alleged violations of the bill's prohibitions prior to initiating any formal legal action. For example, a violator could simply agree to cease their conduct, and assuming they do so, the Attorney General would stop incurring any related investigative and legal expenses. The Attorney General would seek court action against a violator as a last resort if they perceive that the violator is receiving a pattern of consumer complaints. If a less formal negotiating strategy does not work, the Attorney General will bring an action in court. The additional costs for the Attorney General, if any, are likely to be no more than minimal annually.

Under current law, the civil remedies available to the Attorney General include bringing any of the following: (1) an action to obtain a declaratory judgment, (2) an action to obtain a temporary restraining order, preliminary injunction, or permanent injunction to restrain the act or practice, and (3) a class action on behalf of consumers. Depending upon the nature of the violation, the court is permitted to impose a civil penalty of up to between \$5,000 and \$25,000. Pursuant to current law, the civil penalties are distributed as follows: three-fourths, or 75%, to the state's Consumer Protection Enforcement Fund (Fund 6310) and one-fourth, or 25%, to the treasury of the county where the Attorney General's action is brought. The timing and magnitude of this potential revenue stream is uncertain.

Consumer-initiated remedy

The bill allows a consumer to sue for damages and other relief from the violator under the CSPA. The number of additional civil actions likely to be filed in any affected court will be relatively small in the context of that court's total caseload. Thus, any additional cost for the court to adjudicate these matters and any related gain in court cost and fee revenues will be no more than minimal annually.

Criminal penalties

The bill makes certain “reckless” violations of the Debt Adjusting Law generally a third degree misdemeanor, but a second degree misdemeanor on any subsequent offense. The possible penalty for a third degree misdemeanor is a jail stay of not more than 60 days, a fine of up to \$500, or both. The penalty for a second degree misdemeanor is a jail stay of not more than 90 days, a fine of up to \$750, or both.

The number of violations resulting in a criminal case is expected to be relatively small. Any additional costs for county or municipal criminal justice systems to prosecute, adjudicate, and sanction offenders is likely to be minimal at most annually, and potentially absorbed by utilizing existing staff and resources. Money collected from violators (fines, court costs, and fees) may offset those costs to some degree. The state may also gain a negligible amount of court cost revenue annually. In the case of a misdemeanor, the state collects a \$29 court cost from the violator divided as follows: \$20 to the Indigent Defense Support Fund (Fund 5DY0) and \$9 to the Victims of Crime/Reparations Fund (Fund 4020).