



Ohio Legislative Service Commission

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Fiscal Note & Local Impact Statement

Bill: H.B. 172 of the 131st G.A.

Date: May 19, 2015

Status: As Introduced

Sponsor: Rep. Barnes

Local Impact Statement Procedure Required: No

Contents: Publishing of criminal record information

State Fiscal Highlights

- Civil actions filed by the Attorney General will likely be performed by the Consumer Protection Section, whose funding is split between the Consumer Protection Enforcement Fund (Fund 6310) and the General Revenue Fund (GRF). Any additional annual operating expenses generated (which are likely to be minimal) as a result of performing this new duty may be offset to some degree by the recovery of reasonable expenses, including court costs and attorney's fees.
- The state's General Revenue Fund (GRF) may gain money from civil penalties collected from businesses that a court has found to have been violating their obligations under the bill.

Local Fiscal Highlights

- Courts of common pleas, municipal courts, and county courts are expected to absorb any additional civil actions filed alleging a violation of the bill's provisions with little, if any, discernible effect on their daily cost of operations.
- The cost of any additional civil actions undertaken by local prosecutors is expected to be minimal in terms of time and effort, with the associated costs potentially offset to some degree by the recovery of reasonable expenses, including court costs and attorney's fees.

Detailed Fiscal Analysis

The bill requires business entities that publish criminal record information to be complete and accurate, provides a procedure by which an individual can request inaccurate information be corrected, and provides a civil cause of action through which an individual, the Attorney General, or a local prosecuting attorney can seek a remedy for the failure of a business to perform its obligations.

The business entities affected by the bill generally are: (1) newspapers who do nothing but download and print peoples' mug shots from sheriffs' office websites, and whose business model often involves owning several newspapers under different names so that a person has to pay several times to get a mug shot removed from several separate newspapers, and (2) legitimate background check websites that do not necessarily know that a record has been sealed or are not quick enough to update the data and may charge a person to have the data removed. The number of business entities that will be affected by the bill's requirements is uncertain.

Under the bill, there are three civil remedies available for handling alleged violations of the bill's requirements. The first remedy is available to the Attorney General, who is authorized to bring a civil action to restrain or enjoin a violation or threatened violation, to sue for the collection of a civil penalty. The second remedy permits the appropriate local prosecuting attorney to take the same actions. The third remedy permits a private individual to initiate a civil action.

Attorney General-initiated remedy

Under current practice, the Attorney General's Consumer Protection Section typically handles the consumer practices matters addressed by the bill. Its funding is split between the Consumer Protection Enforcement Fund (Fund 6310) and the General Revenue Fund (GRF).

It is likely that the Attorney General would try to settle the issues surrounding violations of the bill's requirements prior to initiating any formal legal action. For example, a business entity could simply agree to cease their conduct, and assuming they do so, the Attorney General would stop incurring any related investigative and legal expenses. Similar to the procedures taken under the state's existing Consumer Sales Practices Act (CSPA), the Attorney General would seek court action against a business entity as a last resort if they perceive that the business is receiving a pattern of consumer complaints. Assuming a less formal negotiating strategy does not work, the Attorney General is permitted to bring an action in court. The bill requires the Attorney General to file such an action in the Franklin County Court of Common Pleas. Since this new mechanism relies on the same powers and remedies as those used to enforce the CSPA, and will largely involve the same personnel, additional costs, if any, are likely to be no more than minimal annually. The bill also entitles the Attorney General to recover reasonable expenses, including court costs and attorney's fees.

Local prosecuting attorney-initiated remedy

The bill permits a local prosecuting attorney to file a civil action against a business entity that violates the bill's requirements, and requires the action be brought in the court of common pleas in which the person who is the subject of the criminal records resides or the county in which the business entity is located. The degree to which any given local prosecuting attorney will utilize this authority is uncertain, however, the bill does permit that prosecutor to recover reasonable expenses, including court costs and attorney's fees.

Individual-initiated remedy

The bill permits an individual to file a civil action seeking damages and injunctive relief against a business entity that violates the bill's requirements relative to that individual's criminal record information. Depending upon the amount of money involved, the action would be filed in a court of common pleas, municipal court, or county court. A court of common pleas has original jurisdiction where the amount is more than \$15,000. A municipal or county court may hear an action where the amount of money does not exceed \$15,000. The number of individual civil actions that may be filed is uncertain.

Local courts

Although the number of resulting civil actions that will or could be filed is uncertain, it is expected that common pleas, municipal, and county courts will be able to absorb any additional filings into their respective caseloads with little, if any, discernible effect on annual operating expenses.

Civil penalty

The Attorney General or an appropriate prosecuting attorney is permitted to sue to collect a civil penalty from a business entity that violates the bill's requirements. The civil penalty cannot exceed \$500 for each separate violation, and in the case of a continuing violation, an amount not to exceed \$500 for each day on which the violation occurs. The bill directs the civil penalty for deposit in the state's General Revenue Fund (GRF).