



OHIO LEGISLATIVE SERVICE COMMISSION

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Fiscal Note & Local Impact Statement

Bill: S.B. 336 of the 131st G.A.

Date: December 5, 2016

Status: As Introduced

Sponsor: Sens. Hite and LaRose

Local Impact Statement Procedure Required: No

Contents: Unsafe used tires

State Fiscal Highlights

- The costs for the Office of the Attorney General's Consumer Protection Section to investigate and enforce civil violations are likely to be minimal at most annually and potentially offset to some degree by the collection 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).

Local Fiscal Highlights

- The number of violations for local criminal and civil justice systems to adjudicate is likely to be relatively small with any additional costs minimal at most annually. Revenue in the form of court costs, fees, and fines may offset those costs to some degree.

Detailed Fiscal Analysis

The bill prohibits the installation of unsafe used tires on specified vehicles, and makes a violation enforceable both as a civil matter under the Ohio Consumer Sales Practices Act (CSPA) and a criminal matter as an unclassified misdemeanor.

The likely number of new cases involving the installation of unsafe used tires stemming from violations of the prohibition is difficult to estimate for several reasons. First, there are no statewide sales records or data resources that track the sale of used tires. There are approximately five million passenger vehicles registered in the state of Ohio; however, the percentage of these operating on used tires is unclear. Given this large number of vehicles in the state, it would seem reasonable to estimate that of the tens or even hundreds of thousands of used tires sold each year, some unspecified percentage of these are likely to be deemed unsafe.

A second difficulty in creating a reliable estimate involves issues of detection and enforcement. Used tires, at the point of sale to consumers, do not require licenses or inspections. It seems likely that the discovery of unsafe used tires would occur during the investigation of an accident or some other safety-related inspection. Upon the discovery of the unsafe used tire, and depending on the time elapsed since purchase, it may be difficult for prosecutors to prove their condition at the time of purchase.

While the two above-noted factors make it difficult to estimate the likely number of new cases involving the sale of used tires, there undoubtedly will be some violations discovered and enforced. Presumably, most businesses will comply with the prohibition, which means the number of violations enforced through local criminal and civil justice systems generally will be relatively small.

Enforcement

Under the bill, there are two civil remedies for handling alleged violations of the bill's prohibition. The first such remedy is available to the Attorney General, who is authorized to investigate violations, seek a declaratory judgment, an injunction or other equitable relief, or organize and bring a class action. The second remedy permits a private individual to initiate a civil action.

Attorney General-initiated remedy

Under current practice, the Attorney General's Consumer Protection Section handles the investigative and legal work associated with the CSPA and is funded with money appropriated from 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 prohibition 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. Assuming a less formal negotiating strategy does not work, the Attorney General is permitted to bring an action in court to obtain a declaratory judgment, a temporary restraining order, preliminary injunction, or a permanent injunction. The additional costs for the Attorney General, if any, are likely to be no more than minimal annually.

The remedies available when the Attorney General brings an action include permitting the court to impose a civil penalty of: (1) not more than \$5,000 for each day of violation of a temporary restraining order, preliminary injunction, or a permanent injunction, and (2) not more than \$25,000 for each violation of the CSPA. The civil penalties will be distributed in the following amounts: three-fourths, or 75%, to the state's 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 penalty

The bill makes a violation a strict liability offense that is punishable by a fine of no more than \$1,000. Given that the discovery and enforcement of violations is expected to be relatively small, any additional costs for a local criminal justice system to prosecute and adjudicate such cases is likely to be minimal at most annually. Money collected from violators (fines, court costs, and fees) may offset those costs to some degree.

In the case of a misdemeanor conviction, 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). The potential gain in annual court cost revenue for the state will be negligible.