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OHIO LEGISLATIVE SERVICE COMMISSION

Office of Research
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Legislative Budget
Office

S.B. 98
135th General Assembly

Fiscal Note & Local Impact Statement

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Version: As Introduced

Primary Sponsor: Sen. Rulli

Local Impact Statement Procedure Required: No

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Highlights

- The bill requires the Secretary of State (SOS) to receive and review fraudulent business filing complaints and refer likely violations to the Office of the Attorney General (AGO). Any additional costs associated with investigating these complaints would be paid from the Business Services Operating Fund (Fund 5990).
- The costs for the AGO's Consumer Protection Section to investigate and enforce new violations of the Consumer Sales Practices Act will depend on the number of complaints filed/reported, investigations performed, and enforcement actions taken. To some degree, any related increase in operating costs might be offset by the collection of civil penalties credited to the Consumer Protection Enforcement Fund (Fund 6310).
- Any increase in the annual operating costs of courts to adjudicate resulting in AGO- and consumer-initiated civil actions will likely be no more than minimal and absorbed by existing staff and resources.

Detailed Analysis

Overview

The bill prohibits business filings that include the name or address of another person without their consent or filings that are submitted by a person that lacks the authority to make such filings. It deems these submissions to be fraudulent filings. The bill allows any individual that believes he or she has been impacted by such a filing to submit a complaint with the Secretary of State (SOS). Upon reviewing the complaint, the SOS must forward any likely violations to the Office of the Attorney General (AGO) for further investigation and action. Both the SOS and AGO would incur some additional investigatory costs as a result.

Fraudulent business filing complaints (SOS)

The bill requires the SOS to review any complaints submitted to the agency pertaining to potential fraudulent business filings. A list of such prohibitions in the bill can be found in the LSC bill analysis. The bill specifies the information that must be submitted in a complaint to the SOS, and requires the SOS to create a form for the submission of this information. Upon receiving the complaint, the SOS is required to review and evaluate the complaint, and after this review, refer the complaints to the AGO for further action if the SOS determines the filing in question is likely fraudulent.

The SOS would incur additional investigatory costs under the bill. The magnitude of these additional costs will depend on the number of complaints received by the SOS. Any such new expenses will be paid from the Business Services Operating Fund (Fund 5990). In calendar year 2022, the SOS received and processed 179,636 new business filings. There were just over 198,000 such filings in calendar year 2021.

Fraudulent filing penalties (AGO)

A fraudulent filing violation is deemed a deceptive act or practice under the Consumer Sales Practices Act (CSPA). The AGO has broad authority to enforce the CSPA, including suing for injunctive relief and civil penalties. 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 existing Consumer Protection Enforcement Fund (Fund 6310) and one-fourth, or 25%, to the treasury of the county where the AGO's action is brought. The timing and magnitude of this potential revenue stream is uncertain. Typically, the AGO will try to negotiate a settlement and take a matter to trial as a last resort.

Under the bill and the CSPA, a consumer has a private right of action and can sue the alleged violator to recover the consumer's actual economic damages plus up to \$5,000 in noneconomic damages. If the violation is an act or practice that has already been declared deceptive or unconscionable by the AGO or by a court, then the consumer may sue to recover three times the amount of the consumer's actual economic damages.

Overall, the number of additional AGO- or consumer-initiated civil actions is expected to be relatively small in the context of a court's total caseload, with associated costs minimal at most. Any costs would be absorbed utilizing existing staff and appropriated resources and partially offset if any civil penalties are assessed and recouped.