



# OHIO LEGISLATIVE SERVICE COMMISSION

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## Fiscal Note & Local Impact Statement

**Bill:** H.B. 597 of the 132nd G.A.

**Status:** As Introduced

**Sponsor:** Reps. Faber and Dever

**Local Impact Statement Procedure Required:** No

**Subject:** Deceptive practices involving caller ID services

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### State & Local 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).
- As a result of the bill's criminal penalties, there could be a very small number of additional offenders sentenced to a state prison, which would result in a minimal annual increase in the institutional operating expenses of the Department of Rehabilitation and Correction.
- 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 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.
- The Attorney General and local justice systems should be able to absorb the work and related costs noted above utilizing existing personnel and appropriated resources.

### Detailed Fiscal Analysis

The bill creates two new criminal offenses that generally prohibit certain deceptive practices involving the use of false, misleading, or inaccurate caller identification information. It also provides civil remedies for individuals injured by those prohibited practices under the Ohio Consumer Sales Practices Act (CSPA), which are enforceable by the individual or the Attorney General.

## Criminal penalties

Violations of the bill's prohibitions are most likely to be applicable in circumstances where, under current law, an individual may already be charged with identity fraud or telecommunications fraud. Depending upon the circumstances present, a violation of either of these existing offenses is a felony of the fifth, fourth, third, second, or first degree.

The bill may make it easier for prosecutors to file charges and secure convictions for conduct involving the transmission of false information regarding a telephone number or exchange or caller identification than otherwise might have been the case under current law. In addition, offenders could be subject to more serious sanctions.

Conversations with the Ohio Prosecuting Attorneys Association indicate that violations of the bill's prohibitions will create few, if any, new criminal cases. This suggests that any additional costs that counties may incur annually to investigate, prosecute, and sanction violations will largely be absorbed by existing staff and budgetary resources. Related revenues in the form of fines, fees, and court costs collected from offenders will be minimal annually.

Any increase in costs incurred by the Department of Rehabilitation and Correction (DRC) would be a result of: (1) certain offenders being sentenced to a prison term that might otherwise not have been arrested, successfully prosecuted, and so sentenced, and (2) certain offenders that may have been sentenced to a prison term for similar conduct under existing law and practice being sentenced to a longer prison term under the bill. It would appear, however, that the number of offenders that could be affected annually by these changes should be relatively small, and that any resulting increase in DRC's annual GRF incarceration costs would be unlikely to exceed minimal. The marginal cost for DRC to incarcerate a few additional offenders is around \$3,600 per year per offender.

At the state level, the Victims of Crime/Reparations Fund (Fund 4020) and the Indigent Defense Support Fund (Fund 5DY0) may experience a negligible annual gain in court cost revenue. The state court costs total \$60 for a felony divided as follows: \$30 to Fund 5DY0 and \$30 to Fund 4020.

The table below lists the new offenses created by the bill, including the potential fine and term of incarceration.

<b>Sentences and Fines for Bill's New Criminal Offenses</b>			
<b>Offense</b>	<b>Offense Level</b>	<b>Possible Fine</b>	<b>Possible Term of Incarceration</b>
Theft or conversion of a telephone number or exchange	5th Degree Felony	Up to \$2,500	6, 7, 8, 9, 10, 11, 12 months definite prison term
Theft or conversion of a telephone number or exchange against a person in a protected class	4th Degree Felony	Up to \$5,000	6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18 months definite prison term
Providing misleading caller identification information	4th Degree Felony	Up to \$5,000	6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18 months definite prison term
Providing misleading caller identification information against a person in a protected class	3rd Degree Felony	Up to \$10,000	1, 2, 3, 4, 5 years definite prison term

## **Exemption**

Under the bill, an individual who uses a telephone number that is identified as "unknown" or "blocked" or if they leave a message that includes their identity is exempt from the new offenses created by the bill.

## **Civil remedies**

Currently, there are two remedies available for handling CSPA violations. 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.

It is uncertain how many consumers will elect to pursue a civil remedy without the assistance of the Attorney General, but the number is assumed to be small, as these consumers would, most likely, report a complaint to the Attorney General's Office initially and then allow the Consumer Protection Section, funded with money appropriated from the Consumer Protection Enforcement Fund (Fund 6310) and the GRF, to seek a resolution to the complaint. However, the actual number of cases would most likely be relatively small as, under current practice, the Attorney General would try to settle the issues surrounding violations prior to seeking any formal legal action. For example, the violators could simply agree to cease their conduct, and assuming they do so, the Attorney General's Office would stop incurring 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. The additional costs for the Attorney General, if any, are likely to be no more than minimal annually.

Assuming a less formal negotiating strategy does not work, the Attorney General's Office could bring an action. 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 that the act or practice is a violation, (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 will be distributed as follows: 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.

The number of civil violations requiring investigation and enforcement by the Attorney General's Consumer Protection Section, and subsequent adjudication by a court of common pleas is expected to be relatively small in the context of their workloads. This suggests that both the Attorney General and courts of common pleas can absorb any additional work and related costs created by the bill utilizing existing personnel and appropriated resources.