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OHIO LEGISLATIVE SERVICE COMMISSION

Office of Research
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Office

H.B. 131
133rd General Assembly

Fiscal Note & Local Impact Statement

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Version: As Introduced

Primary Sponsor: Rep. Roemer

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 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).
- 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 appropriated resources. Revenue in the form of court costs, fees, and fines may offset those costs to some degree.

Detailed Analysis

The bill expands the definition of "debt adjusting," requires a debt adjustor to disclose to a debtor any creditor who is believed will not negotiate settlements, and establishes that a person compliant with federal law relating to debt adjusting is not subject to any conflicting requirement under Ohio's 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 Attorney General's Office. In 2016, six 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.

As a result of the bill's expanded "debt adjusting" 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 the annual costs of the additional review work for the Consumer Protection Section can be absorbed by existing staff and appropriated resources.

Enforcement

Civil remedies

For the failure to comply with certain provisions of the bill, two civil remedies are made available through the existing Consumer Sales Practice Law (CSPA). 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.

The number of additional civil actions likely to be filed in any affected common pleas, municipal, or county, 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 appropriated resources.

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 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. 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 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

Under current Debt Adjusting and CSPA Laws, depending upon the circumstances present, a violation is a third or second degree misdemeanor. The 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. As under current law, there is an additional fine of not more than \$1,000 for a violation of the auditing or insurance coverage requirements. Also, the bill makes a “reckless” violation of a new disclosure requirement, depending upon the circumstances present, similarly a third or second degree misdemeanor. All of the fines collected generally are credited to the county in when the violation(s) occurred.

Given that the number of violations 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. 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.