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H.B. 226
(1_136_1246-3)
136th General Assembly

Fiscal Note & Local Impact Statement

[Click here for H.B. 226's Bill Analysis](#)

Version: In House Judiciary

Primary Sponsor: Rep. M. Miller

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 investigate matters related to misrepresentation of information in a parental consent disclosure 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).
- The bill provides that a minor or the parent of a minor harmed by an application store or developer failing to comply with the bill has a cause of action against that party. The number of additional civil actions is expected to be relatively small in the context of a court's total caseload. Any costs, likely minimal, would be absorbed utilizing existing staff and resources and partially offset if any civil penalties are assessed and recouped.

Detailed Analysis

The bill implements the App Store Accountability Act, which will require application stores to obtain consent from and disclose certain information to parents before permitting minors to download certain applications. It also requires application developers to verify through the application store the user's age category and for a minor account (an account where the primary user is under 18 years of age) whether parental consent has been obtained by minor users. The processes and means by which an application store may verify whether an account holder is a minor will be established by rules adopted by the Director of Commerce. The bill's specific requirements related to parental consent, notification, and data collection and retention limitations are detailed in the [LSC bill analysis](#) and [substitute comparative synopsis](#).

The bill specifies that an application developer or a manufacturer of a device, operating system, or application store is not required to implement new account controls or safety settings if its existing controls and settings are sufficient to comply with the bill. It appears that some application stores already have some manner of parental control systems in place. For example, “Ask to Buy” is an Apple App Store feature that requires parent or guardian approval before a child can make an eligible purchase or download. Whether these current systems would meet the standards set forth by the bill or the future rules established by the Department of Commerce is uncertain.

Enforcement

Under the bill, a developer or application store that knowingly misrepresents information in a parental consent disclosure commits an unfair or deceptive act or practice under the Consumer Sales Practices Act (CSPA).

The Attorney General 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 action is brought.

Any civil penalties assessed and recouped would partially offset enforcement costs. The amount and timing of any enforcement costs depends on the compliance of businesses, the Attorney General’s discretion on pursuing enforcement, and the outcomes of any civil actions brought. Presumably, the Consumer Protection Section will review complaints under the bill and prioritize investigations as necessary within the overall number of deceptive practice complaints and available resources. Typically, there is an attempt to try to negotiate a settlement and taking a matter to trial is a last resort.

Additionally, the bill provides a civil remedy limited to a minor or the parent of a minor harmed by an application store or developer failing to comply with the bill’s prohibitions against (1) enforcing a contract or terms of service against a minor unless the application store provider has obtained verifiable parental consent, (2) knowingly misrepresenting information in a parental consent disclosure, or (3) sharing personal age verification data except to a developer, as required by the bill, or as otherwise required by law. In the event a minor or parent prevails, the court must award actual damages, or \$1,000 per violation, whichever is greater, reasonable attorney’s fees, and litigation costs.

The number of new civil case filings, either from individuals or the Attorney General, that may result is uncertain but likely will be minimal for any single jurisdiction and court. The costs related to these new filings will be at least partially offset by the collection of a filing fee.

Synopsis of Fiscal Effect Changes

The substitute bill, I_136_1246-3, modifies the bill’s enforcement. The As Introduced bill authorized the Attorney General to file suit against violators 45 days after providing written notice, but did not provide for a private cause of action. The substitute bill instead designates violations of a new prohibition – knowingly misrepresenting information in a parental disclosure – as an unfair or deceptive act or practice under the Consumer Sales Practices Act (CSPA), making

violations enforceable by the Attorney General. Generally, the bill's other requirements would be enforced by private lawsuits filed by a minor or the parent of a minor harmed by an application store or developer failing to comply with the bill. These changes appear to limit the scope of new regulatory work for the Attorney General related to the bill, which presumably lessens the related costs compared to the As Introduced bill. Under the CSPA, costs associated with any civil action brought by the Attorney General will be partially offset by civil penalties directed to the Consumer Protection Enforcement Fund (Fund 6310).

The substitute bill also implements various other changes, including specific requirements for application developers and application stores, which are not expected to significantly impact the number of violations or increase the likelihood that a civil action would be filed. Under both versions of the bill, the number of additional civil actions is expected to be relatively small in the context of any given court's total caseload, with associated costs being minimal at most and, most likely, absorbable using existing staff and appropriated resources.