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OHIO LEGISLATIVE SERVICE COMMISSION

Office of Research
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Office

S.B. 79
136th General Assembly

Fiscal Note & Local Impact Statement

[Click here for S.B. 79's Bill Analysis](#)

Version: As Introduced

Primary Sponsors: Sens. Blessing and Blackshear

Local Impact Statement Procedure Required: No

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Highlights

- The costs for the Attorney General's (AGO) Antitrust Section and Consumer Protection Section will depend on the number of complaints filed/reported, investigations performed, and enforcement actions taken. If certain antitrust or consumer protection cases are successful under the bill, the AGO may receive (1) 10% of all court-awarded settlements in antitrust cases credited to the Attorney General Antitrust Fund (Fund 4200) and (2) certain civil penalties credited to the Consumer Protection Enforcement Fund (Fund 6310). It is also possible that monetary penalties may also be assessed and credited to the GRF, although this is rare.
- In the near term, the bill is expected to affect only a very small number of cases within any given local civil justice system. Although the magnitude of any increase in case filings will, in part, depend on the evolving development and use of artificial intelligence, it is expected to be minimal and largely absorbed through existing staff and resources.

Detailed Analysis

The bill regulates the use of pricing algorithms by making certain uses and violations part of Ohio's antitrust law. The bill further provides guidelines for courts when deciding these cases and requires certain disclosures by those owning or operating a related commercial enterprise with \$5 million or more in gross receipts.

The bill defines a "pricing algorithm" as any computational process, including one derived from machine learning or other artificial intelligence techniques, that processes data to recommend or set a price or commercial term that is in or affecting commerce in Ohio. "Nonpublic competitor data" means nonpublic data that is derived from or otherwise provided by another person that competes in the same market as a person, or a related market.

Violations of the bill's prohibition are considered conspiracies against trade, making them illegal under Ohio's antitrust law. Penalties can include both civil and criminal actions. Specific consequences will depend on the nature and severity of the violation. Failure to comply with the disclosure requirement constitutes an unfair or deceptive practice under the Consumer Sales Practices Act.

Antitrust

The bill may slightly increase the number of cases involving a violation of the antitrust law. Currently, the Attorney General or a prosecuting attorney may bring action against any corporation, partnership, person, or association found in violation of Ohio's antitrust law. For each day the violation continues after notification by the Attorney General or prosecuting attorney, the individual or organization must forfeit \$500 per day to the state General Revenue Fund (GRF). The Attorney General or the prosecuting attorney is required to prosecute the offender for the recovery of the money forfeited. The Attorney General has traditionally not brought criminal charges against individuals or organizations for antitrust violations, opting for civil remedies by seeking restitution for the affected consumers by way of damage action. Thus, there would likely be no effect on the GRF. The Attorney General receives 10% of all court-awarded settlements in antitrust cases, pursuant to R.C. 109.82. These funds are deposited into the Attorney General Antitrust Fund (Fund 4200) and used for the operational expenses of their antitrust section.

Consumer Sales Practices Act

A violation of the bill's disclosure requirement is deemed 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 \$5,000 up to \$15,000 for each day of violation of a temporary restraining order, preliminary injunction, or permanent injunction and an additional amount of not more than \$25,000 if the violation is an act or practice that was declared to be unfair, deceptive, or unconscionable. 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 Attorney General's action is brought. The timing and magnitude of this potential revenue stream is uncertain. Typically, the Attorney General will try to negotiate a settlement and only 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 supplier to rescind the transaction or to recover the consumer's actual economic damages plus up to \$5,000 in noneconomic damages. If the supplier's violation is an act or practice that has already been declared deceptive or unconscionable by the Attorney General or by a court, then the consumer may sue to rescind the transaction or recover three times the amount of the consumer's actual economic damages.

Overall, the number of additional Attorney General 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.