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OHIO LEGISLATIVE SERVICE COMMISSION

Office of Research
and Drafting

Legislative Budget
Office

S.B. 38
135th General Assembly

Fiscal Note & Local Impact Statement

[Click here for S.B. 38's Bill Analysis](#)

Version: As Introduced

Primary Sponsors: Sens. Blessing and Ingram

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 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 Attorney General and consumer-initiated civil actions will be no more than minimal and absorbed by utilizing existing staff and resources.
- Available evidence suggests that a very small number of Ohio businesses have or had cashless policies in recent years. The bill appears to be largely preemptive.

Detailed Analysis

To date, there is no federal law mandating that a private business accept coins and currency (cash) as payment for goods or services. Private businesses are free to develop their own policies on whether to take cash absent state law requiring them to give consumers the option to pay in cash. The bill prohibits a person selling or offering for sale goods or services "at retail" to require a buyer to pay via credit or prohibit payment via cash. It also requires the seller to accept cash when offered as payment. The term "at retail" includes any retail transaction conducted in person and excludes any telephone, mail, or internet-based transaction. Additional exclusions are made for several businesses, notably sports and entertainment venues with a seating capacity of at least 10,000, municipal parking facilities, and retail establishments that convert consumer cash into a prepaid card under certain conditions.

Finding specific data to estimate the number of private businesses operating in Ohio that are strictly cashless is difficult. Both the Attorney General's Office and the Ohio Chamber of Commerce suggest that such businesses are likely in the minority. LBO performed an internet search which revealed a very small number of businesses that have or had cashless policies in recent years. Thus, it appears that the bill is largely preemptive. According to the Ohio Chamber of Commerce, more businesses have moved toward cashless policies in response to the COVID-19 pandemic, and this may become more of a trend in future years.

Enforcement

A violation of the bill's provisions 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 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 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 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.