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OHIO LEGISLATIVE SERVICE COMMISSION

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Office

S.B. 98
135th General Assembly

Fiscal Note & Local Impact Statement

[Click here for S.B. 98's Bill Analysis](#)

Version: As Reported by Senate Judiciary

Primary Sponsor: Sen. Rulli

Local Impact Statement Procedure Required: No

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Highlights

- The bill requires the Secretary of State (SOS) to receive and review fraudulent business filing complaints, determine their validity, and refer cases to a county prosecutor if necessary. Any additional costs associated with investigating these complaints would be paid from the Business Services Operating Fund (Fund 5990).
- The costs for the Office of the Attorney General's (AGO) 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 fraudulent filing complaints will likely be no more than minimal and absorbed by existing staff and resources.

Detailed Analysis

Secretary of State

Investigating fraudulent filings

The bill prohibits business filings that include the name or address of another person without their consent or filings that are submitted by a person that lacks the authority to make such filings. It deems these submissions to be fraudulent filings. The bill allows any individual that believes he or she has been impacted by such a filing to submit a complaint with the Secretary of State (SOS). Upon reviewing the complaint, the SOS must determine its validity, send notice to the applicable parties, and take additional actions based on this determination. The SOS would

incur some additional investigatory costs, based primarily on the number of complaints that arise under the bill. Any new costs the SOS incurs for investigating complaints under the bill will be paid from the Business Services Operating Fund (Fund 5990). Overall, in calendar year 2022 the SOS received and processed 179,636 new business filings. There were just over 198,000 such filings in calendar year 2021.

Specifically, the bill requires an individual named in the complaint to respond within 21 days after the SOS sends notice. After a review of the response, if the SOS determines the complaint to be valid, then the SOS must take actions based on the type of violation. If the unauthorized filing was made on behalf of a legitimate entity, then the SOS must cancel all filings, and redact the personal information contained in the filing. If the entity was created for fraudulent purposes, the SOS must cancel the business record in question, redact any personal information contained in the filing, and disable any further filing functionality for that entity. The SOS may also forward this information to the applicable county prosecutor related to filings of a fraudulent entity to determine if damages can be recovered.

There may be some additional costs to county prosecutors, and potentially common pleas courts, related to any potential actions taken to recover damages related to either civil or criminal identity fraud. These total costs would ultimately depend on the number of such cases and the actions taken by county prosecutors. It would appear that the number of cases at the county court level resulting from the bill would be relatively small.

The bill also modifies the law governing appointment of statutory agents by corporations and other legal entities, changes that do not appear to have any direct fiscal effect on the SOS.

Attorney General

Solicitations related to public records

The bill establishes new regulations for commercial solicitations related to filing or retrieving public records. A violation of the bill's solicitation requirements constitutes a deceptive act or practice under the Consumer Sales Practices Act (CSPA). The AGO 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 AGO's action is brought. The timing and magnitude of this potential revenue stream is uncertain. Typically, the AGO 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 alleged violator to recover the consumer's actual economic damages plus up to \$5,000 in noneconomic damages. If the violation is an act or practice that has already been declared deceptive or unconscionable by the AGO or by a court, then the consumer may sue to recover three times the amount of the consumer's actual economic damages.

Overall, the number of additional AGO or consumer-initiated 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.