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Office of Research and Drafting

Legislative Budget Office

H.B. 287
136th General Assembly

Fiscal Note & Local Impact Statement

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Version: As Introduced

Primary Sponsors: Reps. John and Williams

Local Impact Statement Procedure Required: No

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Highlights

- **Attorney General.** The bill could lead to an increase in enforcement actions, including civil actions, taken by the Attorney General (AGO) against real estate wholesalers who fail to make required disclosures to property owners as part of a residential sales transaction. Costs that the AGO incurs would be offset by civil penalties collected and deposited into the Consumer Protection Enforcement Fund (Fund 6310).
- **Department of Commerce.** The bill expands the disciplinary authority of the Division of Real Estate and Professional Licensing to cover real estate professionals who are acting as wholesalers and who fail to make the mandatory disclosures. Investigative and enforcement costs would be paid from the Division of Real Estate Operating Fund (Fund 5490). This fund would also collect administrative penalties imposed under the bill.

Detailed Analysis

Overview

The bill generally defines a real estate wholesaler as a person or entity who, for a negotiated amount, enters into a purchase contract for residential real property and subsequently assigns that contract to another person or entity. The bill requires wholesalers to provide a mandatory disclosure, as prescribed in the bill, before entering contracts to transfer residential real estate. It makes violations of these provisions unfair and deceptive practices under the Consumer Sales Practices Act (CSPA) that are prosecutable by the Attorney General. The bill also gives the Division of Real Estate and Professional Licensing within the Department of Commerce authority to discipline real estate professionals acting as residential real estate wholesalers and who fail to comply with the disclosure requirements.

Enforcement and penalties

Attorney General enforcement

The bill contains various enforcement provisions resulting from a failure of a real estate wholesaler to provide the required disclosures to a property owner as part of a residential real estate transaction. The bill specifies that a violation of these disclosure provisions constitutes a violation of the CSPA. The CSPA allows consumers, through a private lawsuit, to recover actual economic damages plus an amount of up to $5,000. Overall, the magnitude of work involved for the Attorney General's Consumer Protection Section to enforce the nonrecourse civil litigation as could occur for CSPA violations under the bill, will depend on the number of complaints filed/reported, investigations performed, and enforcement actions taken.

Depending on the facts of the case and pattern of conduct, the Attorney General's Office would generally seek court action against a violator if a pattern of complaints is observed or when less formal negotiating strategies are unsuccessful. In that scenario, the Attorney General's Office could request that a court of common pleas issue a declaratory judgment, a temporary restraining order, or an injunction to persuade violators to cease their offending behavior. If a civil remedy is pursued and the court determines that a violation has occurred, the court adjudicating the matter can award the Attorney General all costs and expenses associated with its investigation, in addition to reasonable attorney's fees.

The court may impose a civil penalty of: (1) not more than $5,000 for each day of violation of a temporary restraining order, preliminary injunction, or a permanent injunction, and (2) not more than $25,000 for each violation of the CSPA. The civil penalties are distributed in the following amounts: 75% to the state's Consumer Protection Enforcement Fund (Fund 6310) and 25% to the treasury of the county where the Attorney General's action is brought. The timing and magnitude of this revenue stream will be sporadic and unpredictable. Any additional operating expenses incurred may be offset by additional penalty money credited to Fund 6310.

Department of Commerce – Division of Real Estate and Professional Licensing (REPL)

The bill authorizes REPL to impose administrative penalties against a real estate professional acting as a wholesaler who violates the disclosure requirements of the bill. This can involve revoking or suspending a license, imposing a fine of no more than $2,500 per violation, or issuing a public reprimand. Any costs the Enforcement Section within REPL incurs for investigating violations of the bill would be paid from the Division of Real Estate Operating Fund (Fund 5490). Any administrative fine revenue resulting from these violations would likewise be deposited into Fund 5490. Presumably, there would be few such disclosure violations under the bill. In FY 2024, the Division oversaw more than 50,600 real estate and professional licenses and opened more than 500 complaint investigations.

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