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S.B. 54
134th General Assembly

Fiscal Note & Local Impact Statement

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Version: As Introduced

Primary Sponsor: Sen. Gavarone

Local Impact Statement Procedure Required: No

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Highlights

- It is likely that local criminal and civil justice systems generally will experience some increase in their annual operating costs. Although such a cost increase is not readily quantifiable, it should be minimal and more or less absorbed by utilizing existing staff and resources. Revenue in the form of court costs, fees, and fines may offset those costs to some degree.
- The bill's expansion of the felony offense of telecommunications fraud may result in a marginal increase in the size of the prison population that the Department of Rehabilitation and Correction (DRC) will likely absorb by utilizing existing staff and resources.
- The costs for the Office of the Attorney General's Consumer Protection Section to investigate and enforce civil violations of federal telemarketing laws are likely to be minimal at most annually and potentially offset to some degree by the collection of civil penalties credited to either the Telemarketing Fraud Enforcement Fund (Fund 5A90) or Consumer Protection Enforcement Fund (Fund 6310), depending on the nature of the violation.

Detailed Analysis

The bill modifies the existing criminal offense of telecommunications fraud by: (1) adding "voice over internet protocol service" to the list of specified means by which, generally, communications cannot be knowingly disseminated or transmitted by a person with the purpose to execute or further a scheme of fraud, and (2) prohibiting the knowing use of misleading or inaccurate caller identification information by a person with the intent to defraud, cause harm, or wrongfully obtain anything of value. The bill also modifies existing law relative to a

telemarketer engaging in any act or practice in violation of federal law by including “a person, entity, or merchant” and by prohibiting a person from providing “substantial assistance or support.”

Telecommunications fraud

LBO has not collected any evidence suggesting that the bill will have a significant effect on county criminal justice systems. The bill’s expansion of the offense of telecommunications fraud will create few, if any, new criminal cases. It appears that much of the conduct addressed by the bill is prosecutable under current law, as violations of the offenses of telecommunications fraud or identity fraud. The bill can be seen, at least in part, as addressing conduct that, given rapidly changing technology, may not explicitly, or unambiguously, violate an existing prohibition. Under the bill, such conduct may be more prosecutable.

Assuming there are new cases, the increase in expenditures related to the processing of those additional cases will be, at least partially, offset by locally retained revenue from court costs and fees, and fines. There might also be a negligible annual increase in locally collected state court costs credited to the Indigent Defense Support Fund (Fund 5DY0) and the Victims of Crime/Reparations Fund (Fund 4020).

Under current law, the Attorney General may criminally investigate violations of telecommunications fraud, or the unauthorized use of property, computer, cable, or telecommunications property. The bill allows the Attorney General to prosecute a case stemming from an investigation if, after 45 days of presenting written evidence of a violation, the county prosecutor has not presented the case to a grand jury.

Penalties

Depending upon the value involved, a violation of either telecommunications fraud is a felony of the fifth, fourth, third, second, or first degree. The bill specifies that if the victim is an elderly person, disabled adult, active duty service member, or spouse of an active duty service member, telecommunications fraud is a fourth degree felony.

It is possible that additional offenders will be sentenced to prison that might otherwise not have been arrested, successfully prosecuted, and so sentenced, or that some offenders will be sentenced to prison for a longer stay than would have occurred under current law. The result may be a marginal increase in the size of the prison population that the Department of Rehabilitation and Correction (DRC) will likely absorb by utilizing existing staff and resources. The annual marginal cost for adding an additional offender to the prison system is about \$4,000 per offender.

The table below notes the degrees of the offense of telecommunications fraud, the amount of the fine, and the length of the potential prison term. The fines and terms of incarceration reflect current law, which is unchanged by the bill. In the case of fourth and fifth degree felonies, there is a presumption generally in favor of a community control rather than the imposition of a prison term. In the case of a third degree felony generally, there is no presumption for a prison term versus community control. As noted, the bill does not change the existing penalty structure, except for the enhancement to a fourth degree if the victim is a member of a protected class.

Sentences and Fines for Telecommunications Fraud Under the Bill			
Monetary Value of Fraud	Offense Level	Fines	Term of Incarceration
Under \$1,000	5 th degree felony	Up to \$2,500	6, 7, 8, 9, 10, 11, or 12 months definite prison
\$1,000-\$7,499	4 th degree felony	Up to \$5,000	6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, or 18 months definite prison
\$7,500-\$149,999	3 rd degree felony	Up to \$10,000	9, 12, 18, 24, 30, or 36 months definite prison term
\$150,000-\$999,999	2 nd degree felony	Up to \$15,000	Indefinite prison term consisting of a minimum term selected by the sentencing judge from the range of terms authorized for a second degree felony (2, 3, 4, 5, 6, 7, or 8 years), and a maximum term set by statute and based on the minimum selected
\$1 million or more	1 st degree felony	Up to \$20,000	Indefinite prison term consisting of a minimum term selected by the sentencing judge from the range of terms authorized for a first degree felony (3, 4, 5, 6, 7, 8, 9, 10, or 11 years), and a maximum term set by statute and based on the minimum selected

Federal telemarketing laws

Ohio law specifically prohibits any seller or telemarketer from engaging in any act or practice in violation of a federal telemarketing act or rule. The bill expands the prohibition to include “a person, entity, or merchant.” Further, the bill prohibits a third party from providing substantial assistance or support to those acting in violation. Unchanged by the bill, violations are not criminal, but the Attorney General is authorized to bring, in either the appropriate Ohio court of common pleas or in the appropriate district court of the United States, a civil action against an alleged violator.

The investigation and enforcement of violations are assigned to the Ohio Attorney General’s Consumer Protection Section, with funding split primarily between the Consumer Protection Enforcement Fund (Fund 6310) and the GRF. The bill’s expanded and new prohibition clarify the Attorney General’s enforcement authority in cases involving these specific circumstances, the result of which may be an increase in the number of civil actions filed by the Attorney General in the courts of common pleas. Any related cost increases for the Attorney General or county criminal justice systems will be minimal at most, with cases, especially those filed in courts of common pleas, remaining relatively infrequent.

The bill provides the express civil penalty of \$500 for each violation of a federal telemarketing act or rule (the maximum penalty allowed for under current law) and an enhanced civil penalty of up to \$1,500 if the court finds the defendant willfully or knowingly committed the

violation. These penalty changes may generate a revenue gain for the Attorney General's Telemarketing Fraud Enforcement Fund (Fund 5A90), also used by the Consumer Protection Section to the extent funds are available. Unchanged by the bill, the timing and magnitude of this revenue stream is variable, and receipts are very small.

Consumer transactions

Under the bill, engaging in any act or practice in violation of federal law that involves a consumer transaction is considered an unfair or deceptive act or practice in violation of the Ohio Consumer Sales Practices (CSP) Law. The number of civil actions brought annually in any given court of common pleas will not significantly increase, but rather some violations of federal telemarketing laws may instead be addressed under the Attorney General's CSP enforcement authority.

There are two remedies available for handling violations of the CSP Law. The first such remedy is available to the Attorney General, who is authorized to investigate violations; seek a declaratory judgment, an injunction, or other equitable relief; or organize and bring a class action. The Attorney General typically, depending on the facts of the case and pattern of conduct, attempts to settle issues surrounding CSP violations prior to initiating any formal legal action. Any additional operating expenses incurred may be offset by additional penalty money credited to Fund 6310. 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 CSP Law. The civil penalties will be distributed in the following amounts: three-fourths, or 75%, to the state's Fund 6310, and one-fourth, or 25%, to the treasury of the county where the Attorney General's action is brought. Unchanged by the bill, the timing and magnitude of this revenue stream is variable.

The second remedy permits a private individual to initiate a civil action. It appears unlikely that many consumers will elect to pursue a civil remedy without the assistance of the Attorney General. It is most likely that consumers generally will report a complaint to the Attorney General's Office and then allow the Consumer Protection Section to seek a resolution to the complaint.