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S.B. 68
135th General Assembly

Fiscal Note & Local Impact Statement

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Version: As Introduced

Primary Sponsor: Sen. Hackett

Local Impact Statement Procedure Required: No

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Highlights

- It does not appear that the bill's registration duties will generate significant ongoing work for the Attorney General's Consumer Protection Section that currently has authority over consumer sales practices. Related biennial registration fees and civil penalties may offset those costs to some degree.
- Violations of the Debt Adjusters Law for county and municipal criminal and civil justice systems to adjudicate are expected to be relatively infrequent with any additional costs likely to be absorbed by utilizing existing staff and appropriated resources.
- Civil penalties may be collected for violations of the Consumer Sales Practices Act and distributed between the state and counties as specified under current law. The timing and magnitude of this potential revenue stream is uncertain.

Detailed Analysis

Definition of "debt adjusting"

The bill expands the definition of "debt adjusting" to include providing services to debtors in the reduction or elimination of the amount or repayment terms of their debts, among other changes to the definition. As a result, there may be a relatively small increase in the number of businesses that are required to file the results of an annual audit, conducted by an independent certified public accountant, with the Attorney General's Office. Historically, no more than ten debt adjusting businesses submit audits to the Attorney General's Office for review by its Consumer Protection Section each year. The annual costs of the additional review work can be absorbed by existing staff and appropriated resources.

Registration of debt adjusters

The bill requires persons engaged in “debt adjusting” to register with the Attorney General. Estimating the number of debt adjusters operating in Ohio that will be subject to registration under the bill is difficult.¹ Individuals, partnerships, associations, corporations, trusts, and other legal entities may offer debt adjusting, budget counseling, debt management, debt pooling, or other services that affect the adjustment of a debt or disburse money from a debtor to the debtor’s creditor, and therefore be considered a debt adjustor subject to regulation.

The Ohio Attorney General Public Inspection File (OPIF) database provides some indication of the magnitude of debt adjusters doing business in Ohio. The database includes final decisions in cases where the courts have ruled a specific act or practice violates the Consumer Sales Practices Act (CSPA). A search of the database finds nine cases entered from 2013 to 2018, with no cases entered in subsequent years. The number of registrants in other states with registration requirements also suggests that the number will likely be small. For instance, Connecticut and New Jersey each have under 50 registered debt adjusters.

Under the bill, the Ohio Attorney General is responsible for adopting rules relating to the registration, oversight, and enforcement of the Debt Adjusting Law, including biennial registration fees and civil penalties for violating the Law. It is unclear as to whether the fees and penalties will be credited to the existing Consumer Protection Enforcement Fund (Fund 6310), as the bill is silent on the matter.

The application for registration and renewal is required to include an unexpired certificate from the Tax Commissioner verifying that the applicant is not subject to any assessment or enforcement action for unpaid commercial activity tax, interest, or penalties. The Department of Taxation should be able to absorb the occasional work associated with providing the required certificates with no discernible ongoing effect on its annual operating expenses.

The Attorney General is required to evaluate an applicant’s financial responsibility and fitness prior to registration, to provide a written decision to an applicant within 20 days of a denial, and to suspend, revoke, or deny renewal of a registration under certain conditions. Not later than 30 days after the date of the notice, the applicant may appeal the denial pursuant to the Ohio Administrative Procedure Act.

Except for enforcement actions taken with respect to an application or denial of registration, a person subject to an enforcement action by the Attorney General under the Debt Adjusting Law may appeal the decision to the court of common pleas of the county in which the registrant’s place of business is located or the county in which the registrant is a resident.

The bill’s registration duties appear unlikely to generate significant ongoing work and related operating expenses for the Attorney General’s Consumer Protection Section that currently has authority over consumer sales practices.

¹ The Bureau of Labor Statistics’ (BLS) State Occupational Employment Estimates does not provide data for the industry of debt adjusting. To some degree the lack of data may be attributed to the fact that debt adjusting is more of a service than an occupation.

Failure to comply with federal law

The bill explicitly requires a person engaged in debt adjusting to comply with federal laws relating to debt adjusting and the federal Telemarketing Sales Rule. Recklessly failing to comply is a third degree misdemeanor for a first offense and a second degree misdemeanor for any subsequent offense. Under current law, unchanged by the bill, the penalty for a third degree misdemeanor is a jail stay of not more than 60 days, a fine of up to \$500, or both; the penalty for a second degree misdemeanor is a jail stay of not more than 90 days, a fine of up to \$750, or both. As violations are expected to be relatively infrequent, this penalty provision is unlikely to generate any discernible ongoing fiscal effect on the state² or political subdivisions.

Restrictions on interest

The bill allows a debt adjuster to contract for and receive a fee or fees at a rate or rates up to 28% per year of the total debt enrolled in a debt adjusting program. Recklessly charging a fee above the cap is a third degree misdemeanor for a first offense and a second degree misdemeanor for any subsequent offense. The penalty structure is the same as failure to comply with federal law, described above, and violations are also unlikely to result in any discernible ongoing fiscal effect on the state or political subdivisions.

Cease and desist letters

The bill adds to the existing regulations on the practices of debt adjusters by prohibiting adjusters from sending a cease and desist letter or a similar letter to any creditor on behalf of a debtor. A violation of this prohibition is deemed an unfair or deceptive act or practice under the 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 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.

Additionally, 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

² State court costs are imposed at the time of sentencing. For a misdemeanor, court costs total \$29, of which the Indigent Defense Support Fund (Fund 5DY0) receives \$20 and the Victims of Crime/Reparations Fund (Fund 4020) receives \$9.

minimal at most. Any costs would be absorbed utilizing existing staff and appropriated resources.³

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³ A civil action could be commenced in a municipal and county court, both of which have jurisdiction on matters in which the amount of money in dispute is \$15,000 or less, or in a common pleas court, which has jurisdiction in actions with amounts over \$15,000.