Fiscal Note & Local Impact Statement

127 th General Assembly of Ohio

Ohio Legislative Service Commission
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BILL:	**H.B. 367**	DATE:	**January 22, 2008**
STATUS:	**As Introduced**	SPONSOR:	**Rep. Blessing**

LOCAL IMPACT STATEMENT REQUIRED: **No — Minimal cost**

CONTENTS: **Debt settlement provider regulation**

State Fiscal Highlights

STATE FUND	FY 2008	FY 2009	FUTURE YEARS
General Revenue Fund (GRF)			
Revenues	- 0 -	Potential gain in court judgments and civil penalties, timing and magnitude uncertain	Potential gain in court judgments and civil penalties, timing and magnitude uncertain
Expenditures	- 0 -	Potential minimal enforcement cost increase	Potential minimal enforcement cost increase
Consumer Protection Enforcement Fund (Fund 631)			
Revenues	- 0 -	- 0 -	- 0 -
Expenditures	- 0 -	Potential minimal enforcement cost increase	Potential minimal enforcement cost increase

Note: The state fiscal year is July 1 through June 30. For example, FY 2008 is July 1, 2007 – June 30, 2008.

- ***Office of the Attorney General workload.*** The administrative, investigative, and enforcement duties assigned to the Office of the Attorney General under the bill would most likely be done by its Consumer Protection Section, whose funding is split between the Consumer Protection Enforcement Fund (Fund 631) and the General Revenue Fund (GRF). Presumably, any additional annual operating expenses that could be generated as a result of performing these administrative, investigative, and enforcement duties might be offset by additional revenues that could be collected and deposited in the GRF. However, the Office of the Attorney General is uncertain if future revenues will adequately cover the potential costs created by the bill.

- ***GRF revenues.*** The bill may generate additional state revenues from two sources: (1) court-awarded reasonable attorney's fees and costs of investigation and litigation, and (2) civil penalties of no more than $10,000 for each violation of an assurance of discontinuance. The timing and magnitude of these potential sources of revenue are uncertain. As the bill does not contain any special crediting provisions, such revenues, if collected, would be deposited in the state treasury to the credit of the GRF.

Local Fiscal Highlights

LOCAL GOVERNMENT	FY 2008	FY 2009	FUTURE YEARS
Counties			
Revenues	(1) Potential gain in court judgments, timing and magnitude uncertain; (2) Potential minimal gain in court filing fee and services costs	(1) Potential gain in court judgments, timing and magnitude uncertain; (2) Potential minimal gain in court filing fee and services costs	(1) Potential gain in court judgments, timing and magnitude uncertain; (2) Potential minimal gain in court filing fee and services costs
Expenditures	Potential prosecution and adjudication cost increase, not likely to exceed minimal on an ongoing basis	Potential prosecution and adjudication cost increase, not likely to exceed minimal on an ongoing basis	Potential prosecution and adjudication cost increase, not likely to exceed minimal on an ongoing basis

Note: For most local governments, the fiscal year is the calendar year. The school district fiscal year is July 1 through June 30.

- ***Civil actions*.** It is possible that the bill's civil action remedy will generate additional work for county prosecutors and courts of common pleas. The former would be permitted to bring certain civil actions; the latter would have subject matter jurisdiction over any such actions brought by a county prosecutor or the Attorney General. As of this writing, LSC fiscal staff has not collected any information suggesting that the bill will generate a large number of new civil actions for any given county prosecutor or associated court of common pleas.

- ***County revenues*.** The bill may generate additional county revenues from: (1) court-awarded reasonable attorney's fees and costs of investigation and litigation, the timing and magnitude of which is uncertain, and (2) filing fee and service costs collected by courts of common pleas adjudicating civil actions brought against violators, likely to be minimal at most on an ongoing basis.

Detailed Fiscal Analysis

The bill makes changes to Ohio's current Debt Adjusting Law. Specifically, the bill distinguishes between "debt adjusting" and "debt settlement service," establishes a distinct set of regulations for debt settlement service providers, and authorizes the Attorney General or a county prosecutor to bring a civil action to enforce the bill's debt settlement regulations. Existing regulations and remedies associated with "debt adjusting" are unchanged by the bill.

State fiscal effects

Office of the Attorney General

Under current law, a person injured by a violation of the Debt Adjusting Law has a cause of action and is entitled to the same private remedies available to a consumer under the Consumer Sales Protection Act. Under that Act, the Office of the Attorney General also has enforcement power and the authority to bring such actions on behalf of the aggrieved parties. By making the distinction between "debt adjusting" and "debt settlement service," a new and different enforcement remedy would be available to the Attorney General or a county prosecutor relative to regulating those engaged in "debt settlement service," as defined by the bill.[1] The bill also requires a debt settlement service provider to file a financial statement annually with the Attorney General's Consumer Protection Section.

Workload and expenditures

The state's administrative, investigative, and enforcement duties relative to the regulation of debt settlement providers would be assigned to the Attorney General's Consumer Protection Section, whose funding is split between the Consumer Protection Enforcement Fund (Fund 631) and the General Revenue Fund (GRF). At the time of this writing, it appears that the Office of the Attorney General is uncertain as to how, if at all, the bill's debt settlement provider regulations will affect its annual consumer protection enforcement workload and related operating costs. That said, the Attorney General's staff has indicated some concern relative to the duty and cost of handling annual financial statements.

From LSC fiscal staff's perspective, the bill may only minimally affect the Consumer Protection Section's workload. In fact, the bill could be interpreted as being clarifying in nature. While it is possible that some existing cases may no longer be prosecuted utilizing the enforcement guidelines of the Consumer Sales Protection Act, these cases would instead be prosecuted under the guidelines set forth in the bill. As such, it is doubtful that the bill would generate many new cases, if any. In fact, it may make it easier to enforce regulatory matters as they relate to the actions of debt settlement service providers.

[1] Debt settlement service, as defined by the bill, means the negotiation, adjustment, or settlement of a consumer's debt without holding, receiving, or disbursing the debtor's funds.

Revenues

The bill may generate additional state revenues from two sources: (1) court-awarded reasonable attorney's fees and costs of investigation and litigation, and (2) civil penalties of no more than $10,000 for each violation of an assurance of discontinuance. The timing and magnitude of these potential sources of revenue are uncertain. As the bill does not contain any special crediting provisions, such revenues, if collected, would be deposited in the state treasury to the credit of the GRF.

Local fiscal effects

Counties

Expenditures. It is possible that the bill's civil action remedy will generate additional work for county prosecutors and courts of common pleas. The former would be permitted to bring certain civil actions; the latter would have subject matter jurisdiction over any such actions brought by a county prosecutor or the Attorney General. As of this writing, LSC fiscal staff has not collected any information suggesting that the bill will generate a large number of new civil actions for any given county prosecutor or associated court of common pleas.

The bill's impact could arguably be minimized as it appears to be the case that debt settlement service providers currently fall under the existing Debt Adjusting Law and its associated civil and criminal remedies. Thus, the bill may not create new cases, but instead provide an alternative civil remedy.

Revenues. The bill may generate additional county revenues from: (1) court-awarded reasonable attorney's fees and costs of investigation and litigation, the timing and magnitude of which is uncertain, and (2) filing fee and service costs collected by courts of common pleas adjudicating civil actions brought against violators, likely to be minimal at most on an ongoing basis.

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