

Fiscal Note & Local Impact Statement

127th General Assembly of Ohio

Ohio Legislative Service Commission
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BILL: **Am. Sub. S.B. 275** DATE: **November 19, 2008**
STATUS: **As Passed by the Senate** SPONSOR: **Sen. Spada**
LOCAL IMPACT STATEMENT REQUIRED: **No — Minimal cost**
CONTENTS: **Regulating home improvement contractors**

State Fiscal Highlights

STATE FUND	FY 2009 – FUTURE YEARS
General Revenue Fund (GRF)	
Revenues	Potential, likely no more than negligible, annual gain in court cost revenues
Expenditures	Potential minimal annual increase related to Attorney General's regulatory duties
Consumer Protection Enforcement Fund (Fund 6310) – Attorney General	
Revenues	Potential gain in civil penalties, timing and magnitude uncertain
Expenditures	Potential minimal annual increase related to Attorney General's regulatory duties

Note: The state fiscal year is July 1 through June 30. For example, FY 2009 is July 1, 2008 – June 30, 2009.

- **Office of the Attorney General workload.** This bill creates specific requirements and prohibitions governing the conduct of home improvement contractors, the violations of which would also be subject to the Consumer Sales Practices Act (CSPA). The administrative, investigative, enforcement, and prosecutorial duties assigned to the Office of the Attorney General under the bill would most likely be performed by its Consumer Protection Section, whose funding is split between the Consumer Protection Enforcement Fund (Fund 6310) and the General Revenue Fund (GRF). Presumably, any additional annual operating expenses generated (which are likely to be minimal) as a result of performing these administrative, investigative, and enforcement duties might be offset by additional revenues that could be collected and deposited in Fund 6310, which is funded by three-fourths of the amount of civil penalties ordered and paid pursuant to the CSPA and all costs awarded to the Attorney General. The timing and magnitude of this potential revenue stream is uncertain.

Local Fiscal Highlights

LOCAL GOVERNMENT	FY 2009 – FUTURE YEARS
Counties and Municipalities	
Revenues	(1) Potential gain in court cost and filing fee revenues likely to be minimal at most annually; (2) Potential gain in civil penalties and criminal forfeitures for county treasury, timing and magnitude uncertain
Expenditures	Potential increase to adjudicate civil and forfeiture actions, ongoing annual cost appears likely to be no more than minimal

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



- **Attorney General-initiated civil actions.** It appears unlikely that the bill will generate a costly new burden for courts of common pleas in the form of a large number of additional civil cases requiring adjudication brought about by the Office of the Attorney General's pursuit of civil remedies. Depending upon the civil remedy that the Attorney General brings, a portion of the penalty that could be assessed against a violator by the court might go to the treasury of the county where the case took place. The timing and magnitude of this potential revenue stream is uncertain.
 - **Consumer-initiated civil actions.** It is uncertain as to the number of additional consumers that will elect to pursue a civil remedy, but LSC fiscal staff's research suggests that the number would be relatively small in the context of any given court's total caseload. Assuming this is true, then the annual fiscal effect on local revenues collected in the form of court costs and fees and moneys expended will likely be no more than minimal.
 - **Criminal forfeiture actions.** As a result of the bill, a local prosecutor may file, and the appropriate local court would then be required to adjudicate, additional criminal forfeiture actions. The associated prosecution and adjudication expenses for any affected local jurisdiction are uncertain, but presumably the filing of such actions will be relatively infrequent in comparison to the ongoing and relatively large criminal caseload generated by individuals who commit drug, robbery, sex, burglary, and assault offenses.
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Detailed Fiscal Analysis

Overview

Most notably for the purposes of this fiscal analysis, the bill:

- Prohibits contractors from performing home improvements, in excess of \$1,000 in value, without first establishing a contract with the homeowner that contains certain specified information.
- Allows an owner to initiate a civil action in a court of common pleas for damages due to any breach of contract or for breach of any duty the bill imposes.
- Requires home improvement contractors to maintain adequate general liability insurance coverage.
- Prohibits home improvement contractors from engaging in certain specified practices.
- Provides a homeowner with a civil remedy to recover damages and also makes a violation of the provisions subject to the existing Consumer Sales Practices Act (CSPA).
- Provides that any home improvement contractor convicted of an offense in connection with a home improvement project is subject to the forfeiture provisions of the Criminal Forfeiture Law.

Department of Commerce staff has indicated to LSC fiscal staff that these new duties can be absorbed within its current manner of doing business, and that any additional operating expenses can be drawn, as necessary, from its Industrial Compliance Fund (Fund 5560). The fees to be collected in connection with the licensing of home improvement contractors would presumably offset, or at least defray, any additional annual operating expenses.

Attorney General

The bill makes a violation of its prohibitions subject to the penalties and remedies outlined in the CSPA. Under current law, the services of home improvement contractors are already subject to the CSPA. The Attorney General's staff reported to LSC fiscal staff that, in 2007, the office received nearly 2,000 complaints involving the delivery of home improvement type services around the state. The bill creates certain requirements that must be followed by home improvement contractors and establishes a list of prohibited conduct.

There are two civil remedies currently available for handling violations of the CSPA. 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 second remedy permits a private individual to initiate a civil action. Based on a conversation with Attorney General staff familiar with this area of law, it does not appear, from LSC fiscal staff's perspective at least, that either of these remedies would be more frequently utilized as a result of the bill since it appears that the Attorney General can already successfully pursue CSPA cases involving home improvement contractors under current law and practice.

Attorney General-initiated remedy

Under current practice, the Attorney General's Consumer Protection Section handles the investigative and legal work associated with the CSPA. The state's administrative, investigative, and enforcement duties relative to the regulation of home improvement contractors would be assigned to the Consumer Protection Section, whose funding is split between the Consumer Protection Enforcement Fund (Fund 6310) and the General Revenue Fund (GRF).

However, it seems likely that the Attorney General would try to settle the issues surrounding any alleged violations of the bill's prohibitions prior to initiating any formal legal action. For example, a contractor could simply agree to cease their conduct, and assuming they did so, the Attorney General would stop incurring any related investigative and legal expenses. Similar to the procedures taken under the CSPA, the Attorney General would seek court action against a contractor as a last resort if they perceive that the contractor is receiving a pattern of consumer complaints. Assuming a less formal negotiating strategy does not work, the Attorney General could request that a court of common pleas issue a declaratory judgment, a temporary restraining order, or an injunction in order to persuade the contractor to cease their offending behavior. From LSC fiscal staff's perspective, it appears that the bill may provide the Attorney General with an additional enforcement tool relative to protecting consumers, but the associated additional costs, if any, are likely to be no more than minimal annually.

If, on the other hand, the Attorney General successfully pursues a civil remedy under the CSPA, the court adjudicating the matter can award the Attorney General all costs and expenses associated with their investigation, in addition to reasonable attorney's fees. The court may also order civil penalties up to \$25,000. Three-quarters of this civil penalty (as much as \$18,750 if the maximum \$25,000 possible fine is assessed), as well as the investigative costs and attorney's fees, would be credited to the state's Consumer Protection Enforcement Fund (Fund 6310). The remaining one-quarter of the civil penalty that violators could be ordered to pay would go to the treasury of the county where the case took place (as much as \$6,250 if the \$25,000 maximum possible fine is assessed). According to staff of the Attorney General, the collection of these penalties remains one of the more problematic areas in cases involving home improvement contractors. The timing and magnitude of this potential revenue stream is uncertain.

Consumer-initiated remedy

The bill essentially provides a homeowner with two avenues for seeking damages stemming from a contractor's actions as follows: (1) a civil action brought under the Ohio Home Improvement Contractor Law, and (2) a civil action brought under the existing CSPA.

Courts of common pleas

If the bill's provisions are violated, then a homeowner or the Attorney General may file additional civil actions in the appropriate court of common pleas that might otherwise have been filed under the CSPA. Such an outcome would presumably generate local revenues in the form of fees and court costs and require the court to expend some amount of time and effort to adjudicate the matter. LSC fiscal staff's research suggests that the number of additional civil actions likely to be filed in any affected court will be relatively small in the context of that court's total caseload. Assuming this is true, then the annual fiscal effect on local revenues collected and moneys expended will likely be no more than minimal.

Criminal forfeiture

The bill does not create any new criminal penalties, however, it does specify that any home improvement contractor convicted of an offense in connection with a home improvement project is subject to the forfeiture provisions of the Criminal Forfeiture Law. This provision may or may not produce some increase in the number of criminal forfeiture actions brought before the court in cases where contractors have violated a particular criminal provision. It is difficult to determine the precise magnitude of any such increase, or ascribe a specific cost to such potential increases in courtroom-related activities. Prosecutors and local law enforcement agencies may also realize some additional gain in revenues and/or other property resulting from successful forfeiture actions stemming from the bill.

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