

Fiscal Note & Local Impact Statement

127th General Assembly of Ohio

Ohio Legislative Service Commission
77 South High Street, 9th Floor, Columbus, OH 43215-6136 ✧ Phone: (614) 466-3615
✧ Internet Web Site: <http://www.lsc.state.oh.us/>

BILL: **S.B. 269** DATE: **December 16, 2008**

STATUS: **As Reported by House Civil and Commercial Law** SPONSOR: **Sen. Schuler**

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

CONTENTS: **Live musical performance or production prohibition**

State Fiscal Highlights

STATE FUND	FY 2009 – FUTURE YEARS
General Revenue Fund (GRF)	
Revenues	- 0 -
Expenditures	Potential, likely no more than minimal, annual increase in Attorney General's investigative and enforcement costs
Consumer Protection Enforcement Fund (Fund 6310)	
Revenues	Potential gain from civil penalties, likely to be infrequent and of uncertain magnitude
Expenditures	Potential, likely no more than minimal, annual increase in Attorney General's investigative and enforcement costs

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

- **Expenditures.** The Attorney General's Consumer Protection Section will likely oversee the investigation and enforcement of any alleged violations of the bill's prohibition. However, based on the likelihood that such violations, subsequent to the bill's enactment, will be relatively rare, any increase in this Section's annual workload and related annual operating expense is likely to be no more than minimal.
- **Revenues.** The bill directs that all civil penalties collected pursuant to a violation of the bill's prohibition be deposited in the state treasury to the credit of the Attorney General's Fund 6310. The magnitude of the civil penalty revenue that might be generated annually is rather problematic to estimate. That being said, however, it seems probable that, subsequent to the bill's enactment, such violations would be relatively rare and infrequent.



Local Fiscal Highlights

LOCAL GOVERNMENT	FY 2009 – FUTURE YEARS
Counties (courts of common pleas)	
Revenues	Potential gain from court costs and filing fees, likely to be minimal annually
Expenditures	Potential increase in civil justice system adjudication expenses, likely to be minimal annually

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

Courts of common pleas. Based on the likelihood that, subsequent to the bill's enactment, the bringing of an action by the Attorney General in a court of common pleas for violating the live musical performance or production prohibition will be relatively rare, any increase in the workload and related operating expenses of any affected court is likely to be no more than minimal annually. Some of these costs could presumably be offset to some degree by the collection of court costs and filing fees.

Detailed Fiscal Analysis

Overview

For the purposes of this fiscal analysis, the bill most notably:

- Prohibits a person from advertising or conducting a live musical performance or production in Ohio through the use of a false, deceptive, or misleading affiliation, connection, or association between a performing group or a recording group.
- Permits the Attorney General to investigate any person who allegedly violates this prohibition.
- Permits the Attorney General to assess a civil penalty of not less than \$5,000 and not more than \$15,000 if the Attorney General finds that a violation of this prohibition occurred.
- Permits the Attorney General to bring an action against the violator in the appropriate court of common pleas to restrain the activity.

State fiscal effects

Office of the Attorney General

Expenditures. The Attorney General's Consumer Protection Section will likely oversee the investigation and enforcement of any alleged violations of the bill's prohibition. However, based on the likelihood that such violations, subsequent to the bill's enactment, will be relatively rare, any increase in this Section's annual workload and related annual operating expense is likely to be no more than minimal. Under current law and budgeting practice, a mix of moneys appropriated from the GRF and the Attorney General's Consumer Protection Enforcement Fund (Fund 6310) are used to finance the Section's duties and responsibilities.

Revenues. Under the bill, if the Attorney General finds, pursuant to a hearing, that a violation has occurred, the Attorney General is permitted to assess a civil penalty of not less than \$5,000 nor more than \$15,000 per violation. Each performance or production performed in violation of the prohibition constitutes a separate offense. The bill directs that all such civil penalties be deposited in the state treasury to the credit of the Attorney General's Fund 6310.

The magnitude of the civil penalty revenue that might be generated annually is rather problematic to estimate, as it requires one to predict if and when a person would violate the bill's prohibition. That being said, however, it seems probable that, subsequent to the bill's enactment, such violations would be relatively rare and infrequent.

Local fiscal effects

Courts of common pleas

In addition to any other action the Attorney General takes pursuant to the procedures described above, if the Attorney General has reason to believe that any person is violating or is about to violate the bill's prohibition and that proceedings would be in the public interest, the Attorney General may bring an action in the name of the state against the person in the court of common pleas in the county where the violation is occurring or is about to occur to restrain by temporary or permanent injunction the activity that results in the person violating the prohibition.

Whenever a court issues a permanent injunction to restrain and prevent a violation of the above-described prohibition, the court may, in its discretion, direct that the defendant restore to any person in interest any moneys or property, real or personal, that may have been acquired by means of any violation of the above-described prohibition, under terms and conditions established by the court.

As a result of this provision, the bill may increase the number of civil actions filed in certain jurisdictions. Affected parties may already litigate the behavior addressed by the bill under current law. However, by allowing the Attorney General to bring an action, it may make it easier for parties to follow through with such civil actions. The number of new cases will depend on the frequency that such false artists/groups are performing within the state and whether the Attorney General is made aware of such performances in time to file legal action against the group or artist.

However, based on the likelihood that such violations, subsequent to the bill's enactment, will be relatively rare, any increase in the annual workload and related operating expenses of any affected court is likely to be no more than minimal. Some of these costs could presumably be offset to some degree by the collection of court costs and filing fees.

LSC fiscal staff: Jamie L. Doskocil, Senior Budget Analyst

SB0269HR.doc/sle