

TENNESSEE GENERAL ASSEMBLY  
FISCAL REVIEW COMMITTEE



FISCAL MEMORANDUM

SB 352 - HB 352

March 5, 2019

**SUMMARY OF ORIGINAL BILL:** Expands the *Tennessee Consumer Protection Act of 1977 (the Act)* to regulate legal advertisements soliciting clients to claim injury from a prescription drug or medical device approved by the United States Food and Drug Administration. Establishes violation for the use, sale, transfer, or disclosure of protected health information, without written consent from the subject individual, for the purpose of soliciting legal services.

FISCAL IMPACT OF ORIGINAL BILL:

NOT SIGNIFICANT

IMPACT TO COMMERCE OF ORIGINAL BILL:

Other Commerce Impact – Due to multiple unknown factors, an impact to commerce or jobs in Tennessee cannot be determined.

**SUMMARY OF AMENDMENT (005125):** Deletes and rewrites provision of the bill such that the only substantive change is clarifying that a licensed broadcaster or a cable operator will not be liable for any violations of the proposed legislation.

**FISCAL IMPACT OF BILL WITH PROPOSED AMENDMENT:**

**Unchanged from the original fiscal note.**

Assumptions for the bill as amended:

- The proposed legislation establishes that disclosure of protected health information for the purpose of soliciting legal services is an unfair or deceptive practice, and subjects any person who submits such information to a Class A misdemeanor offense and a \$1,000 fine, or a Class C felony offense and \$250,000 fine in the case of intent of financial gain. These charges would be in addition to any other remedies under *the Act* or remedies otherwise available under any other applicable law
- There will not be a sufficient number of misdemeanor offenses for state or local government to experience any significant increase in fine revenue or expenditures.

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- There could be an increase in incarceration costs as a result of this legislation pursuant to the proposed Class A felony offense; however, any such number of convictions is estimated to be not significant, and thus, any increase in incarceration costs is estimated to be not significant. Further, any increase in penalty revenue that would otherwise be associated with the proposed felony conviction is estimated to be not significant.
- The proposed legislation may result in an increase in formal complaints; however, any such increase can be handled by the Division of Consumer Affairs within existing resources.

## **IMPACT TO COMMERCE WITH PROPOSED AMENDMENT:**

### **Unchanged from the original fiscal note.**

Assumptions for the bill as amended:

- The proposed amendment prohibits any licensed over-the-air broadcaster or cable operator from being liable for an advertisement found to be in violation of *the Act*; it is presumed that any liability or prosecution would be brought upon the person or business originating the advertisement.
- The impact to commerce and jobs in Tennessee as a direct result of passage of this legislation is dependent upon several unknown factors, including but not limited to, the extent to which these practices occur under current law, the extent to which they would occur under the provisions of this legislation, the extent to which the provisions of this legislation would be enforced, the extent of compliance, the extent of economic activity generated by such practices under current law, and the extent of economic activity that would be generated by such practices after enactment of this legislation. Given the extent of unknowns, an impact to commerce and jobs in Tennessee cannot be determined.

## **CERTIFICATION:**

The information contained herein is true and correct to the best of my knowledge.



Krista Lee Carsner, Executive Director

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