

**LEGISLATIVE SERVICES AGENCY
OFFICE OF FISCAL AND MANAGEMENT ANALYSIS**

301 State House
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FISCAL IMPACT STATEMENT

LS 6856

BILL NUMBER: HB 1398

DATE PREPARED: Jan 31, 2000

BILL AMENDED: Jan 31, 2000

SUBJECT: Promotions, Wireless Emergency Telephone System Fund, and distance learning.

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**FUNDS AFFECTED: GENERAL
 DEDICATED
 FEDERAL**

IMPACT: State & Local

Summary of Legislation: (Amended) (A) This bill provides that any money appropriated by the Ohio River Greenway Development Commission but remaining unexpended or unencumbered at the end of the year may become part of a nonreverting cumulative fund to be held in the name of the Commission. (Current law requires any unexpended or unencumbered money to become part of a nonreverting cumulative fund held by the Commission.) It clarifies that unbudgeted expenditures of the Commission are to come from the nonreverting cumulative fund.

(B) It adds sweepstakes, contests, and prize giveaways to the definition of "promotion". It requires disclaimers of actual winning odds for promotions that make certain representations to the person receiving the promotion. It provides for disclaimer statements for promotions that do not require a purchase. It provides for disclaimer statements for promotions for which a purchase does not increase the likelihood of winning. It repeals a provision exempting certain types of promotions from certain notice requirements.

(C) It requires a licensed auctioneer to conspicuously disclose at the physical site of an auction all charges that may be imposed on the buyer of an item at the auction. It requires all advertisements of auctions to conspicuously disclose all charges that may be imposed on the buyer of an item at the auction.

(D) It allows the transfer of money between and among the accounts of the wireless emergency telephone system fund. It provides procedures for the transfers. It requires that transfers be approved by the affirmative vote of at least eight members of the wireless enhanced 911 advisory board.

(E) It requires the Regulatory Flexibility Commission to study the possibility of requiring a board or agency that: (1) regulates a specified profession; and (2) requires continuing education as a condition of registration, certification, or licensure; to allow not less than one-half of the continuing education requirements to be earned from distance learning courses.

Effective Date: (Amended) Upon passage; July 1, 2000.

Explanation of State Expenditures: (Revised) *Provision B - Promotions:* This bill makes certain provisions regarding promotions and disclaimer statements. The bill establishes sweepstakes, contests and prize giveaways as promotions and also requires the following:

- (1) Disclaimers of actual winning odds for promotions that make certain representations;
- (2) disclaimer statements for promotions that do not require a purchase; and
- (3) disclaimer statements for promotions for which a purchase does not increase the likelihood of winning.

Current law provides that a person who knowingly or intentionally violates the laws regarding promotions commits a Class D felony. A sponsor or promoter in violation of this bill's provisions would commit a Class D felony and would also be liable to an aggrieved person for either twice the actual damages sustained or \$500, whichever is greater. In addition, a violator may be subject to action by the Attorney General and further penalties under the Deceptive Consumer Sales statute.

A Class D felony is punishable by a prison term ranging from six months to three years or reduction to Class A misdemeanor depending upon mitigating and aggravating circumstances. The average length of stay in DOC facilities for all Class D felony offenders is approximately ten and a half months. The average expenditure to house an adult offender was \$17,500 in FY 1998.

Provision D - Wireless Emergency Telephone System Fund: The provisions regarding the Wireless Emergency Telephone System Fund and the Wireless Enhanced 911 Advisory Board would not have a fiscal impact.

Provision E - Regulatory Flexibility Committee: The provision assigning the study of continuing education requirements earned through distance learning courses to the Regulatory Flexibility Committee would not have a fiscal impact. A list of the agencies and the professions or occupations requiring continuing education for renewal purposes are shown below:

Department of Insurance: Insurance Agents.

Department of Health: Primary Radon Tester, Radon Laboratory Tester, Radon Mitigators, Secondary Radon Tester.

State Emergency Management Agency: Advanced Emergency Medical Technicians, Emergency Medical Services Primary Instructor, Emergency Medical Technician, First Responders, Paramedic.

Health Professions Bureau: Advanced Practice Nurses, Dental Hygienists, Dentists, Health Facility Administrators, Marriage and Family Therapists, Mental Health Counselors, Optometrists, Pharmacists, Podiatrists, Psychologists, Social Workers, Veterinarian Technicians, Veterinarians.

Officer of the State Fire Marshall: Fire Service Instructors I, II, III, IV.

Professional Licensing Agency: Auctioneers, Certified Public Accountants, Cosmetologists, Funeral Directors, Land Surveyors, Real Estate Salespersons and Brokers, Real Estate Appraisers.

Explanation of State Revenues: (Revised) *Provision B - Promotions and Provision C - Auctioneers:* Violation of Provision B would be a Class D felony while violation of Provision C would be a Class A

Misdemeanor. The maximum fine for a Class D felony is \$10,000. The maximum fine for a Class A misdemeanor is \$5,000. Criminal fines are deposited in the Common School Fund. If the case is filed in a circuit, superior or county court, 70% of the \$120 court fee that is assessed and collected when a guilty verdict is entered would be deposited in the state General Fund. If the case is filed in a city or town court, 55% of the fee would be deposited in the state General Fund.

Explanation of Local Expenditures: (Revised) *Provision C - Auctioneers:* A Class A misdemeanor is punishable by up to one year in jail. The average daily cost to incarcerate a prisoner in a county jail is approximately \$44.

Explanation of Local Revenues: (Revised) *Provision A - Ohio River Greenway Development Commission:* Whether unbudgeted expenditures become part of the nonreverting cumulative fund would depend on the decisions of the Commission members. The Commission operates on a budget of approximately \$60,000 per year. Jeffersonville, Clarksville, and New Albany contribute \$20,000 annually for the Commission.

Provision B - Promotions and Provision C - Auctioneers: The court fee for either a Class D felony or a Class A misdemeanor is \$120. If additional court actions occur and a guilty verdict is entered, local governments would receive revenue from the following sources: (1) The county general fund would receive 27% of the \$120 court fee that is assessed in a court of record. Cities and towns maintaining a law enforcement agency that prosecutes at least 50% of its ordinance violations in a court of record may receive 3% of court fees. If the case is filed in a city or town court, 20% of the court fee would be deposited in the county general fund and 25% would be deposited in the city or town general fund. (2) A \$3 fee would be assessed, and if collected would be deposited into the county law enforcement continuing education fund. (3) A \$2 jury fee is assessed, and if collected, would be deposited into the county user fee fund to supplement the compensation of jury members.

State Agencies Affected: Department of Correction; Regulatory Flexibility Committee, Legislative Services Agency.

Local Agencies Affected: Ohio River Greenway Development Commission, Trial courts, Local Law Enforcement Agencies.

Information Sources: Barb McNutt, Health Professions Bureau; Charles Hear, Professional Licensing Agency; Indiana Sheriffs Association; Department of Correction.