

Department of Legislative Services
Maryland General Assembly
2017 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 287 (Senator Lee)
Judicial Proceedings

Civil Action - Unauthorized Access to Computers and Data

This bill authorizes a person who has suffered a specific and direct injury because of a violation of the State's criminal prohibition on unauthorized access to computers and related material under § 7-302 of the Criminal Law Article to bring a civil action for damages in a court of competent jurisdiction. The court may award actual damages, reasonable attorney's fees, and court costs. A conviction for an offense under § 7-302 of the Criminal Law Article is not a prerequisite for maintenance of the civil action authorized under the bill.

The bill applies prospectively to causes of action arising on or after the bill's October 1, 2017 effective date.

Fiscal Summary

State Effect: None. The bill is not expected to materially affect State finances or District Court operations.

Local Effect: None. The bill is not expected to materially affect circuit court expenditures or operations.

Small Business Effect: None.

Analysis

Current Law: Under § 7-302 of the Criminal Law Article, a person may not intentionally, willfully, and without authorization, access or attempt to access, cause to be accessed, or

exceed the person's authorized access to all or part of a computer or a computer network, language, software, system, service, or database. Also, a person may not intentionally, willfully, and without authorization, copy, attempt to copy, possess, or attempt to possess the contents of all or part of a computer database that was unlawfully accessed. A violation of these provisions is a misdemeanor and the violator is subject to maximum penalties of imprisonment for three years and/or a fine of \$1,000.

A person may not intentionally, willfully, and without authorization, commit unlawful access or attempted access, as specified, with the intent to (1) cause the malfunction or interruption of any or all parts of a computer, network, language, software, service, or data; (2) alter, damage, or destroy all or any part of data or a program stored, maintained, or produced by a computer, network, software, system, service, or database; or (3) possess, identify, or attempt to identify a valid access code or publicize or distribute a valid access code to an unauthorized person.

If the aggregate amount of the loss is \$10,000 or more, the violator is guilty of a felony and is subject to maximum penalties of imprisonment for 10 years and/or a fine of \$10,000. If the aggregate loss is less than \$10,000, the violator is guilty of a misdemeanor and is subject to maximum penalties of imprisonment for 5 years and/or a fine of \$5,000.

A person may not gain or attempt to gain unauthorized access to computer services with the intent to interrupt or impair the functioning of (1) State government; (2) a service provided in the State by a public service company; or (3) a natural gas or electric service, device, or system provided in the State by someone other than a public service company.

If the aggregate amount of the loss associated with this prohibition is \$50,000 or more, a violator is guilty of a felony and subject to maximum penalties of 10 years imprisonment and/or a \$25,000 fine. If the aggregate loss is less than \$50,000, a violator is guilty of a misdemeanor and is subject to maximum penalties of 5 years imprisonment and/or a \$25,000 fine.

Access achieved in a prohibited manner under a single scheme or a continuing course of conduct may be considered one violation. A defendant may be tried in any county in Maryland where the act was performed or the accessed computer was located.

Background: The Judiciary advises that in fiscal 2016, there were approximately 42 violations in the District Court and 11 violations in the circuit courts (not including Baltimore City, Montgomery County, and Prince George's County circuit courts, as their data was not yet available) of § 7-302 of the Criminal Law Article.

According to the Maryland Judiciary's *Annual Statistical Abstract – FY 2015*, 267,261 civil (general) cases were filed in the State's circuit courts and 291,219 civil cases were filed in the District Court during fiscal 2015.

Additional Information

Prior Introductions: None.

Cross File: HB 772 (Delegates Lisanti and Carey) - Judiciary.

Information Source(s): Judiciary (Administrative Office of the Courts); Department of Legislative Services

Fiscal Note History: First Reader - February 7, 2017
fn/kdm

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