

Department of Legislative Services
Maryland General Assembly
2021 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

Senate Bill 623

(Senator Lee)

Judicial Proceedings

Judiciary

Criminal Law - Crimes Involving Computers

This bill prohibits a person from knowingly possessing “ransomware” with the intent to use it for specified purposes and establishes criminal penalties for violations. The bill further prohibits committing a ransomware offense – or other prohibited acts, as currently specified – with the intent to interrupt or impair the functioning of a health care facility or a public school. Finally, the bill alters existing monetary penalties for specified computer-related offenses. **The bill applies prospectively to any cause of action arising on or after the bill’s October 1, 2021 effective date.**

Fiscal Summary

State Effect: The bill is not expected to materially affect State finances or operations, as discussed below.

Local Effect: The bill is not expected to materially affect local finances or operations, as discussed below.

Small Business Effect: None.

Analysis

Bill Summary/Current Law:

Ransomware

Under the bill, “ransomware” means a computer or data contaminant, encryption, or lock that (1) is placed or introduced without authorization into a computer, a computer network,

or a computer system, and (2) restricts access by an authorized person to a computer, computer data, a computer network, or a computer system in a manner that results in the person responsible for the placement or introduction of the contaminant, encryption, or lock demanding payment of money or other consideration to remove the containment, encryption, or lock.

Except for a person who has a *bona fide* scientific, educational, governmental, testing, news, or other similar justification for possessing ransomware, the bill prohibits a person from knowingly possessing “ransomware” with the intent to use the ransomware for the purpose of introduction into the computer, computer network, or computer system of another person without the authorization of the other person. Violators are guilty of a misdemeanor, punishable by imprisonment for up to two years and/or a maximum fine of \$5,000.

Computer-related Offenses

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, control language, software, system, service, or database. 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. Violators are guilty of a misdemeanor and are subject to imprisonment for up to three years and/or a maximum fine of \$1,000. The bill does not alter these prohibitions or this penalty.

Under current law, a person may not commit the prohibited acts described above with the intent to (1) cause the malfunction or interruption of any or all parts of a computer, network, language, software, system, service, or data or (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. A person is also prohibited from intentionally, willfully, and without authorization (1) possessing, identifying, or attempting to identify a valid access code or (2) publicizing or distributing a valid access code to an unauthorized person. If the aggregate amount of the loss is \$10,000 or more, a violator is guilty of a felony, punishable by imprisonment for up to 10 years and/or a maximum fine of \$10,000. If the aggregate amount of the loss is less than \$10,000, a violator is guilty of a misdemeanor, punishable by imprisonment for up to 5 years and/or a maximum fine of \$5,000. The bill does not alter these offenses or penalties.

Under current law, a person may not commit any of these computer-related offenses with the intent to interrupt or impair the functioning of (1) the State government; (2) a natural gas or electric service, device, or system owned, operated, or controlled in the State by a person other than a public service company; or (3) a service provided in the State by a

public service company. The bill prohibits a person from committing a ransomware offense against these entities or services and adds a “health care facility” and a “public school” to the list of protected entities. A “health care facility” is a facility or office where health or medical care is provided to patients by a health care provider, as specified. “Public school” means the schools in the public elementary and secondary education system of the State.

Under current law, if the aggregate amount of the loss associated with a violation of this prohibition is \$50,000 or more, a violator is guilty of a felony, punishable by imprisonment for up to 10 years and/or a maximum fine of \$25,000. If the aggregate amount of the loss is less than \$50,000, a violator is guilty of a misdemeanor, punishable by imprisonment for up to 5 years and/or a maximum fine of \$25,000. The bill alters the threshold amounts and monetary penalties for these violations. Under the bill, if the aggregate amount of the loss is *\$10,000* or more, a violator is guilty of a felony, punishable by imprisonment for up to 10 years and/or a maximum fine of *\$100,000*. The bill applies the existing misdemeanor penalty to a violation involving an aggregate loss of less than *\$10,000*.

Under current law, prohibited access 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. The bill does not alter these provisions.

Under the bill, a person who has suffered a specific and direct injury as a result of any act prohibited under the bill may bring a civil action in a court of competent jurisdiction, and maintaining a civil action is not dependent upon a criminal conviction against the defendant. A court may award actual damages and reasonable attorney’s fees and court costs.

State/Local Fiscal Effect: The bill is not expected to materially affect State or local finances, operations, or court caseloads.

The Maryland State Commission on Criminal Sentencing Policy notes that in fiscal 2020, it received no information about any individuals sentenced in the circuit courts for any counts of unauthorized computer access for the purposes of interfering with the State government, public utilities, or other energy infrastructure, as currently penalized. The Division of Parole and Probation estimates that during fiscal 2020, it received probation sentences for two individuals whose underlying offense was a violation of § 7-302 of the Criminal Law Article.

Additional Information

Prior Introductions: Similar bills have been introduced during previous legislative sessions. SB 30 of 2020 received a hearing in the Senate Judicial Proceedings Committee, but no further action was taken. Its cross file, HB 215, received a hearing in the House Judiciary Committee, but no further action was taken. HB 635 of 2020 received a hearing in the House Judiciary Committee, but no further action was taken. SB 151 of 2019 received a hearing in the Senate Judicial Proceedings Committee, but no further action was taken. Its cross file, HB 211, received a hearing in the House Judiciary Committee, but no further action was taken.

Designated Cross File: HB 425 (Delegate Barron) - Judiciary.

Information Source(s): Montgomery and Prince George's counties; Maryland State Commission on Criminal Sentencing Policy; Judiciary (Administrative Office of the Courts); Office of the Public Defender; Maryland State's Attorneys' Association; Maryland State Department of Education; Department of Public Safety and Correctional Services; Department of State Police; Baltimore City Public Schools; Montgomery County Public Schools; Prince George's County Public Schools; Department of Legislative Services

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