Department of Legislative Services
Maryland General Assembly
2000 Session

FISCAL NOTE

Senate Bill 177   (Senator Miller. *et al.*)

Judicial Proceedings

Crimes - Unsolicited Commercial Electronic Mail - Fraudulent Information

This bill criminalizes the act of knowingly sending falsified or forged unsolicited commercial electronic mail. In addition, it criminalizes the sale or distribution, including possession with the intent to sell or distribute, of software that is designed or produced to facilitate the falsification of electronic mail transmission information. An individual found guilty of violating the bill's provisions is guilty of a misdemeanor and on conviction is subject to a $500 fine or imprisonment for one year or both. An individual who is injured by a violation of the bill's provisions is subject to specified civil damages. Likewise, the individual's electronic mail service provider may also be awarded specified civil damages.

Fiscal Summary

State Effect: Potential minimal increase in general fund revenues and expenditures due to the bill's penalty provisions.

Local Effect: Potential minimal increase in revenues and expenditures due to the bill's penalty provisions.

Small Business Effect: Potential meaningful.

Analysis

Current Law: Sending fraudulent or forged commercial electronic mail is not a crime, and no laws provide for the award of civil damages in the specific case of fraudulent commercial electronic mail. It is, however, a crime to use electronic mail with the intent to harass.

Background: With the increasing use of electronic mail (email) and Maryland's desire to be at the forefront of electronic commerce, the regulation of unsolicited commercial email, often called "spam," has become an increasingly significant issue. Spam is similar in some ways to

commercial solicitation by phone or mail, except that the cost of the solicitation is mainly assumed by the recipient and the Internet service provider (ISP) that the recipient uses. The senders, or spammers, bear little cost as they can send a single message to hundreds or thousands of email addresses with a single mouse click, thus tying up an ISP's bandwidth and recipients' drive space.

On top of these issues, spam frequently contains fraudulent information about the products and services advertised. Because ISPs often provide their customers with the ability to block messages from undesirable senders, spammers will sometimes attempt to hide their identity through forged email headers. Spam may also include advertisements for sexually explicit materials or services that are inappropriate for younger recipients and offensive to others.

The federal government has introduced several bills to regulate fraudulent or unwanted commercial email in each of the last couple of years, but none of the bills have passed. Opponents of regulation argue freedom of speech and suggest that governments allow new technologies to advance without regulation that may stifle their growth. There are also concerns that spammers will simply move offshore to avoid U.S. penalties. Proponents advise that, aside from being costly, annoying, invasive, and sometimes offensive, fraudulent commercial mail will erode consumer confidence in legitimate electronic commerce.

State Revenues: As a result of the bill's monetary penalty provisions, general fund revenues could increase minimally from cases heard in the District Court.

State Expenditures: General fund expenditures could increase minimally as a result of the bill's incarceration penalty due to increased payments to counties for reimbursement of inmate costs and more people being committed to Division of Correction (DOC) facilities. The number of people convicted of this proposed crime is expected to be minimal.

Persons serving a sentence of one year or less in a jurisdiction other than Baltimore City are sentenced to a local detention facility. The State reimburses counties for part of their incarceration costs, on a per diem basis, after a person has served 90 days. State per diem reimbursements for fiscal 2001 are estimated to range from $11 to $54 per inmate depending upon the jurisdiction. Persons sentenced to such a term in Baltimore City are generally incarcerated in a DOC facility. Currently, the DOC average total cost per inmate, including overhead, is estimated at $1,700 per month. This bill alone, however, should not create the need for additional beds, personnel, or facilities. The average variable cost of housing a new DOC inmate (food, medical care, etc.), excluding overhead, is $260 per month.

Local Revenues: As a result of the bill's monetary penalty provisions, revenues could increase minimally from cases heard in the circuit courts.

Local Expenditures: Expenditures could increase as a result of the bill's incarceration penalty. Counties pay the full cost of incarceration for the first 90 days of the sentence, plus part of the per diem cost after 90 days. Per diem operating costs of local detention facilities are expected to range from $22 to $83 per inmate in fiscal 2001.

Small Business Effect: To the extent that the bill is able to reduce unsolicited commercial email, small ISPs may benefit. It has been estimated that as much as 30% of all email messages sent can be classified as spam. This ties up a significant portion of an ISP's resources, often requiring ISPs to purchase additional bandwidth to keep up with the demand. In addition, ISPs are forced to utilize expensive and capacity-draining filter systems to weed out as much spam as possible in order to keep customers happy and minimize bandwidth waste.

Additional Information

Prior Introductions: A similar bill was introduced in the 1999 session as HB 745. The bill passed in the House but eventually failed in the Senate.

Cross File: None.

Information Source(s): Judiciary (Administrative Office of the Courts, District Court of Maryland), Department of Legislative Services

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