

Department of Legislative Services
Maryland General Assembly
2001 Session

FISCAL NOTE

Senate Bill 398 (Senator Teitelbaum, *et al.*)
(Chairman, Joint Technology Oversight Committee)

Finance

Economic Matters

**Maryland Uniform Computer Information Transactions Act - Implied Warranty
Exemption**

This bill exempts computer programs provided under a license that does not impose a license fee for the right to the source code, to make copies, to modify, and to distribute the computer program (open source software) from the implied warranty of merchantability applicable under the Maryland Uniform Computer Information Transactions Act (UCITA).

The bill takes effect June 1, 2001.

Fiscal Summary

State Effect: The bill would not directly affect governmental operations or finances.

Local Effect: None.

Small Business Effect: Meaningful.

Analysis

Current Law: The implied warranty of merchantability does not apply to computer information or programs provided for no fee, unless computer information or a computer program is provided in conjunction with the sale or lease of goods, services, or other computer information, another computer program, or computer information or programs

provided as beta tests or similar experimental versions of computer information or programs.

Under the implied warranty of merchantability, a merchant as licensor of a computer program warrants: (1) to the end user that the computer program is fit for the ordinary purposes for which the computer programs are used; (2) to the distributor that the program is adequately packaged and labeled and, in the case of multiple copies, that the copies are within the variations permitted by the licensing agreement; and (3) that the program conforms to any promises or affirmations made on the container or label. Unless disclaimed or modified, other implied warranties respecting computer programs may arise from a course of dealing or trade usage.

Background: UCITA is a commercial contract statute that provides substantive rules governing electronic commerce contracts and licenses for computer information or programs.

Open source software is non-proprietary software that is made available free of charge, i.e., without licensing fees, in source code to all who agree to a simple license agreement. Open source software typically contains warranty and damages disclaimers and, in some cases, may be produced and modified by many users and programmers, often over the Internet. Although no licensing fee is charged, some software developers and businesses hope to profit from open source software by selling, for example, trade manuals, technical support services, computers with pre-installed open source software, or application programs designed to run on open source software.

Small Business Effect: Small businesses that develop open source software or sell products or services relating to open source software would not be subject to costs related to the implied warranty of merchantability. To the extent that UCITA's implied warranty of merchantability discourages development of open source software, open source software developers and users would discontinue developing and using the software. This bill would encourage the development and use of open source software.

Additional Information

Prior Introductions: None.

Cross File: HB 520 (Delegate Barve, *et al.*) – Economic Matters.

Information Source(s): Office of the Attorney General, Department of Legislative Services

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ef/cr

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