

Department of Legislative Services
Maryland General Assembly
2001 Session

FISCAL NOTE
Revised

Senate Bill 379 (Senator Baker)

Judicial Proceedings

Judiciary

Fraud - Telecommunication Service Providers

This bill prohibits the possession, use, or transfer of unlawful telecommunications devices and access devices, and the theft of telecommunication service.

Fiscal Summary

State Effect: Minimal increase in general fund revenues and expenditures due to the bill's penalty provisions and the exclusive jurisdiction of the District Court.

Local Effect: Minimal increase in expenditures due to the bill's penalty provisions. Revenues would not be affected.

Small Business Effect: Minimal.

Analysis

Bill Summary: Specifically, this bill prohibits the knowing possession, use, manufacture, transfer, sale, promotion, or advertising of an unlawful telecommunication device, and the knowing modification, alteration, or programming of a telecommunication device to: (1) commit theft of "telecommunication service" or to receive, transmit, disrupt, or decrypt "telecommunication service" without consent of the service provider; or (2) conceal the existence, origin, or destination of a telecommunication from a "telecommunication service" provider or a lawful authority. The bill also prohibits the knowing possession, use, manufacture, transfer, sale, promotion, or advertising of an "unlawful access device." It further prohibits the possession and distribution of equipment with knowledge that the equipment is intended to violate this section.

In general, a person who violates the bill is guilty of a misdemeanor and subject to maximum penalties of imprisonment for three years and/or a fine of \$2,500. If the violation involves more than 100 unlawful telecommunication devices or access devices, the violation is a felony subject to maximum penalties of imprisonment for ten years and/or a fine of \$10,000. Restitution is authorized in accordance with the Criminal Procedure Article, and a court may require a convicted defendant to forfeit any unlawful telecommunication device or access device involved in the violation. A crime may be treated as occurring in the place of manufacture or assembly of an unlawful telecommunication device or access device, or at the place of sale or delivery.

The bill grants exclusive original jurisdiction for such criminal cases to the District Court, whether a misdemeanor or a felony has been charged.

In addition to criminal sanctions, the bill authorizes “any person aggrieved” by a violation to bring a civil action, seeking injunction, impounding and destruction of equipment, and damages. The court may assess actual damages suffered by the complaining party, plus profits of the violator that are not otherwise included in the actual damages. In proving the violator’s profits, the complaining party need only prove the violator’s gross revenues. The burden is on the violator to prove deductible expenses and profits attributable to another enterprise.

The bill excludes liability for law enforcement officers in the course of duty, “telecommunication service” providers acting in that capacity, and authorized manufacturers and distributors of telecommunication devices and access devices.

The bill also repeals the existing “Telecommunications Act” under Maryland’s criminal code.

Current Law: Under the *Telecommunications Act*, a person is prohibited from knowingly obtaining or attempting to obtain telecommunications service through a telecommunications device with the intent to avoid any lawful fee for the service without the consent of the owner, subscriber, or lawful holder of the telecommunications access device. The Act prohibits the use of a counterfeit access device, as well as the possession of electronic serial numbers and mobile identification numbers, useful for fraudulent access to cellular telephone service. Each violation is a misdemeanor subject to maximum penalties of a fine of \$2,500 and/or imprisonment for three years. Selling a counterfeit access device, and possessing electronic serial numbers and mobile identification numbers with an intent to distribute, are misdemeanors subject to maximum penalties of a fine of \$10,000 and/or imprisonment for five years. Law enforcement officers, telecommunications service providers, and authorized manufacturers and distributors are excluded from liability under the *Telecommunications Act*.

The misdemeanor of *Fraud - Upon Cable Television Companies* generally prohibits theft of cable television service and related acts of interference with the equipment of a franchised cable television company or private cable television company with the intent to receive their services without payment. First-time violators are subject to maximum penalties of a fine of \$1,000 and/or imprisonment for six months. A subsequent violation subjects the person to maximum penalties of a fine of \$2,500 and/or imprisonment for one year. If performed for payment or promise of payment, a violation is subject to maximum penalties of a fine of \$5,000 and/or imprisonment for five years. Civil damages and injunctive relief are available to the cable television company in addition to the assessment of fines. Material and equipment used in the violation may be seized and forfeited to the State.

Background: This bill is loosely based on two Pennsylvania statutes that deal with theft of telecommunication services.

State Revenues: General fund revenues could increase minimally as a result of the bill's monetary penalty provisions and the exclusive original jurisdiction of the District Court over these provisions.

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

Persons serving a sentence longer than one year are incarcerated in DOC facilities. Currently, the 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. Excluding overhead, the average cost of housing a new DOC inmate (including medical care and variable costs) is \$288 per month.

Persons serving a sentence of one year or less in a jurisdiction other than Baltimore City are sentenced to local detention facilities. 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 2002 are estimated to range from \$9 to \$52 per inmate depending upon the jurisdiction. Persons sentenced to such a term in Baltimore City are generally incarcerated in DOC facilities. The Baltimore City Detention Center, a State-operated facility, is used primarily for pretrial detentions.

Local Expenditures: Expenditures could increase minimally as a result of the bill's incarceration penalties. Counties pay the full cost of incarceration for people in their

facilities 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 \$17 to \$77 per inmate in fiscal 2002.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Judiciary (Administrative Office of the Courts), Department of Public Safety and Correctional Services (Division of Correction), Department of Legislative Services

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