Department of Legislative Services

Maryland General Assembly
2002 Session

FISCAL NOTE

House Bill 280 (Delegates Doory and Bohanan)
Judiciary

Crimes - Commercial Electronic Mail - Fraudulent Information

This bill prohibits a person from initiating, conspiring in, or assisting in the transmission of commercial electronic mail (e-mail) that contains unauthorized, misleading, or false information from a computer in the State or to an e-mail address held by a resident of the State. A violation is an unfair and deceptive trade practice and a misdemeanor. Misdemeanor penalties are a maximum term of imprisonment of one year or a maximum fine of $500 or both.

An interactive computer service provider may, in good faith, block receipt or transmission of commercial e-mail violating the bill's prohibitions without civil liability.

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 expenditures due to the bill's incarceration penalty provisions.

Small Business Effect: Potential meaningful.

Analysis

Current Law: Transmitting or assisting in the transmission of commercial e-mail that contains false or misleading information about its origin or subject matter is not a crime. The law does not explicitly provide civil immunity to an internet service provider (ISP)

that chooses to block transmission of commercial e-mail believed to be false, fraudulent, or misleading. It is unlawful, however, to use e-mail to harass others. An e-mail communication made with the intent to harass one or more persons by sending lewd, lascivious, or obscene material is harassing. A person who transmits e-mail with the intent to harass is guilty of a misdemeanor and subject to a maximum fine of $500, maximum imprisonment of one year, or both.

A person aggrieved by unfair or deceptive trade practice may file a complaint with the Consumer Protection Division of the Office of the Attorney General (CPD). The CPD may issue a temporary cease and desist order, subpoena records and other documents, and seek an injunction in court. The CPD is entitled to cost recovery when it prevails in unfair and deceptive trade practice actions. An aggrieved person may also bring a civil action for damages for injury or loss, including reasonable attorney's fees. Those who commit unfair or deceptive trade practices are also subject to civil fines and criminal penalties.

Background: Unsolicited commercial e-mail or "spam" is similar in some ways to telemarketing or other commercial solicitation. Senders of spam or "spammers" can send a single message to hundreds or thousands of e-mail addresses with a single mouse click, thus tying up an ISP's bandwidth and a recipient's drive space.

Spam may contain fraudulent information about the products or services advertised. ISPs often provide their customers with the ability to block messages from undesirable senders. To counteract this, spammers will subvert their identity through forged mail headers and find other ways to subvert the filters intended to block unwanted e-mail. Spam may include advertisements for sexually explicit materials or services that are not appropriate for children and are offensive to others.

In testimony before the Senate Commerce, Science and Transportation Subcommittee on Communications, in April 2001, the Federal Trade Commission (FTC) expressed support for federal legislation to limit unsolicited commercial e-mail. The commission noted that fraudulent operators are able to reach millions of individuals at little cost and can use technology to conceal their identities. As of 2001, the FTC has initiated 30 fraud cases in which spam was an essential element. In some cases, cease and desist orders have been issued. To date, no federal law has been passed, but there are several bills pending in Congress that would limit or eliminate unsolicited commercial e-mail. One bill, H.R. 718, is currently scheduled for floor debate in the House of Representatives.

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

State Expenditures: General fund expenditures could increase minimally as a result of the bill's incarceration penalties 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.

Generally, 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 2003 are estimated to range from $10 to $61 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 $1,850 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 $300 per month.

It is anticipated that the CPD could handle any additional work resulting from the bill within existing resources.

Local Expenditures: Expenditures could increase as a result of the bill's incarceration penalties. 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 $20 to $84 per inmate in fiscal 2003.

Small Business Effect: To the extent that the bill is able to reduce unsolicited commercial e-mail, small ISPs may benefit. It has been estimated that as much as 30% of all transmitted e-mail messages 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 to minimize bandwidth waste and customer inconvenience.

Additional Information

Prior Introductions: A similar bill, SB 177, was introduced in the 2000 session. The bill passed the Senate and received an unfavorable report from the House Judiciary Committee. Another similar bill, HB 745, was introduced in the 1999 session. It passed the House and was referred to the Senate Judicial Proceedings Committee, where it received no action.

Cross File: None.

Information Source(s): Office of the Attorney General, Department of Public Safety and Correctional Services, Federal Trade Commission, Department of Legislative Services

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