

Department of Legislative Services
Maryland General Assembly
2004 Session

FISCAL AND POLICY NOTE
Revised

Senate Bill 604

(Senator Garagiola, *et al.*)

Judicial Proceedings

Judiciary

Maryland Spam Deterrence Act

This bill prohibits a person from sending multiple commercial electronic mail (e-mail) messages under specified circumstances from a protected computer. Violators are subject to criminal and 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 revenues and expenditures due to the bill's penalty provisions.

Small Business Effect: None.

Analysis

Bill Summary: The bill prohibits a person from conspiring to or knowingly: (1) using a protected computer of another to relay or retransmit multiple commercial e-mail messages with the intent to deceive or mislead recipients or an e-mail service provider as to the message's origin; (2) materially falsifying header information in multiple commercial e-mail messages and intentionally initiating the transmission of the messages; (3) registering, using false information, for 15 or more e-mail accounts or online user accounts or two or more domain names and intentionally initiating the transmission of multiple commercial e-mail messages from one or any combination of accounts or domain names; (4) falsely representing the right to use five or more Internet

protocol addresses and intentionally initiating the transmission of multiple commercial e-mail messages from the Internet protocol addresses; (5) accessing a protected computer without authorization and intentionally initiating the transmission of multiple e-mail advertisements from or through it; or (6) violating the bill's provisions by providing or selecting e-mail addresses by certain automated means (commonly known as harvesting).

Violation of the bill's provisions is generally a misdemeanor with maximum penalties ranging from one year's imprisonment and/or a \$5,000 fine to five years' imprisonment and/or a \$10,000 fine. Violation of provisions other than the harvesting provisions in furtherance of a felony or by a person who has previously been convicted of an offense involving the transmission of multiple commercial e-mail messages is a felony subject to maximum penalties of 10 years imprisonment and/or a \$25,000 fine. The Attorney General may enforce criminal provisions of the bill in a circuit court or the District Court.

In addition, the court may direct a person convicted of violating the bill to forfeit to the State: (1) any money and other income received as a result of the person's violation; and (2) all computer equipment, software, and other personal property used in connection with a violation.

The Attorney General may institute a civil action against a violator to recover for the State a civil penalty of up to: (1) \$25,000 per day of the violation; or (2) from \$2 to \$8 per commercial e-mail message initiated in violation of the bill. The Attorney General may also seek an injunction to prohibit further violation of the bill. A civil action must be brought within two years after the commission of the violation.

Under the bill, "multiple" means: (1) more than 10 commercial e-mail messages during a 24-hour period; (2) more than 100 commercial e-mail messages during a 30-day period; or (3) more than 1,000 commercial e-mail messages during a one-year period. A "protected computer" means a computer used in intrastate or interstate communication.

Current Law: A person may not initiate, conspire with another person to initiate, or assist in the transmission of an e-mail message that: (1) uses a third party's Internet domain name or e-mail address without permission; (2) misrepresents or obscures any information relating to the point of origin or transmission path of the message; or (3) contains false or misleading information in the subject line. The prohibition applies to commercial e-mail messages that are sent from a computer located in Maryland or to an e-mail address that the sender knows or has reason to know is held by a resident of the State. Violators are liable to a recipient of the e-mail or a third party without whose permission the third party's domain name or e-mail address was used for attorney's fees and the greater of \$500 or actual damages. Violators are liable to an interactive service provider for attorney's fees and the greater of \$1,000 or actual damages.

Using e-mail with the intent to harass one or more persons or by sending lewd, lascivious, or obscene material is a misdemeanor, punishable by imprisonment of up to one year and/or a fine of up to \$500.

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 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 18 months are incarcerated in DOC facilities. Currently, the 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 \$350 per month. Excluding medical care, the average variable costs total \$120 per month.

Persons serving a sentence of one year or less in a jurisdiction other than Baltimore City are sentenced to local detention facilities. For persons sentenced to a term of between 12 and 18 months, the sentencing judge has the discretion to order that the sentence be served at a local facility or DOC. 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 2005 are estimated to range from \$14 to \$58 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 Revenues: Revenues could increase minimally as a result of the bill's monetary penalty provisions from cases heard in the circuit courts.

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 \$29 to \$97 per inmate in fiscal 2005.

Additional Information

Prior Introductions: None.

Cross File: Although identified as a cross file, HB 1320 is not identical.

Information Source(s): Department of Labor, Licensing, and Regulation; Department of Budget and Management; Department of Public Safety and Correctional Services; Department of Legislative Services

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