

Department of Legislative Services
Maryland General Assembly
2004 Session

FISCAL AND POLICY NOTE

House Bill 67
Judiciary

(Delegate Lee)

Crimes - Computers - Internet Auction Fraud

This bill establishes the crime of using an Internet auction listing service or an interactive computer service with the intent to defraud an individual of property, services, or anything of value.

Fiscal Summary

State Effect: Potential minimal increase in general fund revenues and expenditures due to the bill's penalty provisions. The State Police and District Court could handle the bill's requirements using existing budgeted resources.

Local Effect: Potential minimal increase in revenues and expenditures due to the bill's penalty provisions. Law enforcement agencies and the circuit courts could handle the bill's requirements using existing budgeted resources.

Small Business Effect: None.

Analysis

Bill Summary: This bill prohibits a person from knowingly and willfully using electronic communication through an Internet auction listing service or an interactive computer service: (1) with an intent to defraud an individual of money, goods, services, or anything of value; or (2) to exert control over or obtain an individual's money, goods, services, or anything of value by means of deception.

If the value of the things taken in violation of the bill exceeds \$500, the violation is a felony with a penalty of up to 15 years imprisonment, a maximum fine of \$10,000, or both. If the value of the things taken does not exceed \$500, the violation is a misdemeanor with a penalty of up to 18 months imprisonment, a maximum fine of \$500, or both. A violator may be prosecuted, indicted, tried, and convicted in any county or state in which the electronic communication originated or terminated.

The bill does not apply to the person providing the Internet auction listing service if that person does not examine, set the price, or prepare the description of the property or service to be offered. However, a person providing an Internet auction listing service must require a seller or bidder to register with the web site and provide a seller's or bidder's name, address, telephone number, and electronic mail address. The service provider must retain a seller's or bidder's registration information for at least two years and have a mechanism to receive complaints or inquiries from a seller or bidder. The provider must also have a mechanism to make a seller's or bidder's registration information available to another seller or bidder who alleges fraud or deception in an auction transaction.

Current Law: A person may not obtain control over property by willfully or knowingly using deception, if the person: (1) intends to deprive the owner of the property; (2) willfully or knowingly uses, conceals, or abandons the property in a manner that deprives, or will deprive, the owner of the property. If the value of the things taken exceeds \$500, the violation is a felony with a penalty of up to 15 years imprisonment, a maximum fine of \$25,000, or both. If the value of the things taken does not exceed \$500, the violation is a misdemeanor with a penalty of up to 18 months imprisonment, a maximum fine of \$500, or both. Upon conviction of a third misdemeanor, a violator is subject to a penalty of up to five years imprisonment, a maximum fine of \$500, or both, if the State's Attorney serves proper notice on the defendant or the defendant's counsel. In addition to any fine or incarceration, a violator must restore the property taken or pay the owner the value of the property or services.

Background: In *State v. Cain*, 360 Md. 205 (2000), the Court of Appeals held that Maryland courts may assert territorial jurisdiction in a case of theft by deception involving an Internet auction seller located outside the State. In *Cain*, the defendant delivered collectable dolls that did not conform to the buyer's expectations. The *Cain* court held that the defendant obtained control of the property through the agency of the U.S. Postal Service when the victim deposited the check in the mail. The court stated that the State may prove the necessary jurisdictional fact if it proves that the check was posted in Maryland.

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. However, a substantially similar bill, HB 730 of the 2003 session, passed the House and was referred to the Senate Judicial Proceedings Committee, which took no further action.

Cross File: None.

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

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