

Department of Legislative Services
 Maryland General Assembly
 2005 Session

FISCAL AND POLICY NOTE

Senate Bill 801 (Senator Teitelbaum, *et al.*)
 (Chair, Joint Technology Oversight Committee)

Finance

Consumer Protection - Maryland Computer User Protection Act

This bill establishes the Maryland Computer User Protection Act. The bill prohibits the installation of various types of computer software on a consumer’s computer without the consent of an authorized user.

Fiscal Summary

State Effect: General fund expenditures could increase by at least \$27,500 in FY 2006 to cover the cost of investigating complaints brought with the Consumer Protection Division under the bill. Additional expenditures could be required if warranted by a large number of complaints. Any cost recovery resulting from actions brought under the Consumer Protection Act cannot be quantified beforehand.

(in dollars)	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
GF Revenue	-	-	-	-	-
Expenditure	27,500	30,400	31,200	34,100	36,200
Net Effect	(\$27,500)	(\$30,400)	(\$31,200)	(\$34,100)	(\$36,200)

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

Local Effect: None.

Small Business Effect: None.

Analysis

Bill Summary: The bill prohibits a person from causing to be copied onto the computer of a consumer, software that: (1) modifies, through intentionally deceptive means, the

computer's access to or use of the Internet; (2) collects, through intentionally deceptive means, specified information about an authorized user; (3) prevents, through intentional deceptive means, an authorized user's reasonable efforts to block the installation of computer software that the authorized user has properly removed by specified means; or (4) prevents, through intentionally deceptive means, an authorized user's reasonable efforts to disable computer software under specified circumstances.

A person may not intentionally misrepresent that computer software will be uninstalled or disabled by an authorized user's action with knowledge that the software will not be uninstalled or disabled.

A person may not cause computer software to be copied onto a consumer's computer and use the software to: (1) take control of the consumer's computer by specified means; (2) modify an authorized user's security or other specified settings for the purpose of obtaining the user's personal information; (3) modify the security settings of the computer for the purpose of causing damage to one or more computers; or (4) prevent, without the consent of an authorized user, an authorized users reasonable efforts to block the installation of computer software in a specified manner or disable computer software by falsely representing that the software has been disabled.

A person may not induce an authorized user to install a computer software component onto a consumer's computer by intentionally misrepresenting that installing the software is necessary for specified purposes. A person may not deceptively cause the copying and execution on the computer of a computer software component in a way that violates the prohibition against inducing an authorized user to install a component as described above. However, a software provider may collect an authorized user's browsing history of its web sites.

Violation of the bill is an unfair or deceptive trade practice under the Maryland Consumer Protection Act.

In addition to the penalties available under the Consumer Protection Act, an authorized user who is injured by a violation of the bill may bring a private action against the person that committed the violation to recover: (1) reasonable attorney's fees; and (2) damages equaling the greater of \$1,000 for each violation or actual damages. Each instance of the following is a separate violation: (1) prohibiting copying and execution of computer software; (2) intentional misrepresentation of the outcome of an authorized user's action; (3) removing, disabling, or rendering inoperative any security, antispyware, or antivirus software; (4) inducement to install a computer software component through intentional misrepresentation; and (5) deceptive copying and execution of a computer software component.

Current Law: The State does not currently regulate the installation of the type of software regulated by the bill.

Background: At least two bills have been introduced in Congress that would prohibit various acts commonly referred to as computer spyware, which include the acts prohibited by this bill. H.R. 29, the Securely Protect Yourself Against Cyber Trespass Act (SPY ACT), contains broad preemption of similar state laws and state enforcement actions based on a violation of its prohibitions. Enforcement by the Federal Trade Commission would be the exclusive remedy for enforcement under H.R. 29. H.R. 744, the Internet Spyware Prevention Act of 2005 (I-SPY), establishes criminal penalties for intentional unauthorized access to a protected computer. H.R. 744 preempts civil actions brought under the law of any state premised on a violation of its prohibitions.

State Expenditures: General fund expenditures could increase by an estimated \$27,455 in fiscal 2006, which accounts for the bill's October 1, 2005 effective date. This estimate reflects the cost of hiring one half-time forensic investigator to investigate the technical components of complaints brought under the bill. It includes a salary, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Salary and Fringe Benefits	\$21,949
Startup and Other Operating Expenses	<u>5,506</u>
Total FY 2006 State Expenditures	\$27,455

Future year expenditures reflect: (1) full salaries with 4.6% annual increases and 3% employee turnover; and (2) 1% annual increases in ongoing operating expenses.

Additional expenditures could be required to make the investigator a full-time position and to hire an additional assistant attorney general if the number of complaints filed under the bill is sufficiently large.

Additional Information

Prior Introductions: None.

Cross File: HB 780 (Delegate Moe) (Chairman, Joint Technology Oversight Committee) – Economic Matters.

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

Fiscal Note History: First Reader - March 7, 2005
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