

Department of Legislative Services  
 Maryland General Assembly  
 2005 Session

FISCAL AND POLICY NOTE

House Bill 945 (Delegate Lee, *et al.*)  
 Economic Matters

Consumer Protection - Unauthorized Computer Software Prevention Act

This bill establishes the Unauthorized Computer Software Prevention 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     | -          | -          | -          | -          | -          |
| GF Expenditure | 27,500     | 30,400     | 32,200     | 34,100     | 36,200     |
| Net Effect     | (\$27,500) | (\$30,400) | (\$32,200) | (\$34,100) | (\$36,200) |

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

**Local Effect:** None.

**Small Business Effect:** Minimal.

Analysis

**Bill Summary:** The bill prohibits a person who is not an authorized user from causing to be copied onto the computer of a consumer, with actual knowledge, with conscious

avoidance of actual knowledge, or willfully, 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 who is not an authorized user may not, with actual knowledge, conscious avoidance of actual knowledge, or willfully, 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. These provisions do not apply to the monitoring of or interaction with a consumer's computer or scanning and removal of computer software prohibited by the bill, for specified interactions, by the consumer's Internet service provider, network connection service, computer hardware or software provider, provider of information service, or provider of interactive computer service.

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. These provisions do not apply to the monitoring of or interaction with a consumer's computer or scanning and removal of computer software prohibited by the bill, for specified interactions, by the consumer's Internet service provider, network connection service, computer hardware or software provider, provider of information service, or provider of interactive computer service.

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 \$500 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>    |
| <b>Total FY 2006 State Expenditures</b> | <b>\$27,455</b> |

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.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

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

**Fiscal Note History:** First Reader - March 7, 2005  
mam/jr

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