

Department of Legislative Services  
 Maryland General Assembly  
 2006 Session

**FISCAL AND POLICY NOTE**

Senate Bill 180 (Senator Greenip, *et al.*)  
 Finance

**Consumer Protection - Maryland Unauthorized Computer Software Act**

This bill establishes the Maryland Unauthorized Computer Software 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 \$66,800 in FY 2007 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 2007	FY 2008	FY 2009	FY 2010	FY 2011
GF Revenue	-	-	-	-	-
GF Expenditure	66,800	77,000	81,200	85,700	90,500
Net Effect	(\$66,800)	(\$77,000)	(\$81,200)	(\$85,700)	(\$90,500)

*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 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 intentionally 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 user's 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 by the consumer's Internet service provider, network connection service, telecommunications carrier, cable operator, computer hardware or software provider, provider of information service, or provider of interactive computer service regarding specified interactions.

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 by the consumer's Internet service provider, network connection service, telecommunications carrier, cable operator, computer hardware or software provider, provider of information service, or provider of interactive computer service regarding specified interactions.

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, antispayware, 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:** Several 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. Some of the bills contain broad preemption of similar state laws and state enforcement actions based on a violation of federal law. Others contain narrower preemptions and allow states to enforce their provisions in state or federal court.

**State Expenditures:** General fund expenditures could increase by an estimated \$66,789 in fiscal 2007, which accounts for the bill's October 1, 2006 effective date. This estimate reflects the cost of hiring one forensic investigator to investigate the technical components of complaints brought under the bill, which are assumed to be complicated and labor-intensive. It includes a salary, fringe benefits, one-time start-up costs, programming the Consumer Protection Division's computer system to perform investigative calculations, in-State travel to investigate complaints, and other ongoing operating expenses.

Salary and Fringe Benefits	\$55,334
Computer Programming Costs	5,000
Start-up and Other Operating Expenses	<u>6,455</u>
<b>Total FY 2007 State Expenditures</b>	<b>\$66,789</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 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:** An identical bill, SB 492, was introduced during the 2005 session and received an unfavorable report from the Finance Committee. Similar bills, SB 801,

HB 780, and HB 945, were also introduced during the 2005 session. SB 801 received an unfavorable report from the Finance Committee. HB 780 and HB 945 received unfavorable reports from the Economic Matters Committee.

**Cross File:** None.

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

**Fiscal Note History:** First Reader - January 30, 2006  
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Analysis by: T. Ryan Wilson

Direct Inquiries to:  
(410) 946-5510  
(301) 970-5510