

Department of Legislative Services
 Maryland General Assembly
 2006 Session

FISCAL AND POLICY NOTE

House Bill 594 (Delegate Moe, *et al.*)
 Economic Matters

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 \$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: None.

Analysis

Bill Summary: The bill prohibits a person that is not an authorized user of a computer from knowingly or through conscious avoidance of actual knowledge causing to be copied onto the computer of a consumer, software that: (1) modifies, through deceptive

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

A person may not 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, through deceptive means, remove, disable, or render inoperative a computer's security, anti-spyware, or anti-virus software.

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 software in a specified manner or disable software by falsely representing that the software has been disabled.

A person may not induce an authorized user to install a software component onto a consumer's computer by 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 software component in a way that violates the prohibition against inducing an authorized user to install a component as described above.

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 violation of the bill is a separate violation.

The bill does not apply to the monitoring of, or interaction with, an authorized user's Internet or other network connection or services, or a computer by the authorized user's Internet services provider, network connection service, telecommunications carrier, cable operator, computer hardware or software provider, information service provider, or interactive computer service provider under specified conditions. The bill also does not apply to a software provider or an interactive computer service provider that is

identifying, naming, removing, disabling, or otherwise affective software under specified conditions.

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

The Consumer Protection Division within the Office of the Attorney General is responsible for pursuing unfair and deceptive trade practice claims under the Maryland Consumer Protection Act. Upon receiving a complaint, the division must determine whether there are “reasonable grounds” to believe that a violation of the Act has occurred. Generally, if the division does find reasonable grounds that a violation has occurred, the division must seek to conciliate the complaint. The division may also issue cease and desist orders, or seek action in court, including an injunction or civil damages, to enforce the Act. Violators of the Act are subject to: (1) civil penalties of \$1,000 for the first violation and \$5,000 for subsequent violations; and (2) criminal sanction as a misdemeanor, with a fine of up to \$1,000 and/or up to one year’s imprisonment.

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>
Total FY 2007 State Expenditures	\$66,789

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.

Additional Information

Prior Introductions: Similar bills, SB 801, SB 492, HB 780, and HB 945, were introduced during the 2005 session. SB 492 and SB 801 received unfavorable reports from the Finance Committee. HB 780 and HB 945 received unfavorable reports from the Economic Matters Committee.

Cross File: SB 433 (Senator Teitelbaum, *et al.*) – Finance.

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

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ncs/jr

Analysis by: T. Ryan Wilson

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