

Department of Legislative Services  
Maryland General Assembly  
2006 Session

FISCAL AND POLICY NOTE

House Bill 1099  
Economic Matters

(Delegate McComas, *et al.*)

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Consumer Protection - Commercial Electronic Mail - Prohibition on Obtaining  
Personally Identifying Information by Misrepresentation

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This bill prohibits a person, under the State's consumer protection provisions governing commercial electronic mail (e-mail), from initiating the transmission, conspiring with another person to initiate the transmission, or assisting in the transmission of commercial e-mail that solicits, requests, or induces the recipient to provide personally identifying information by misrepresenting the identity of the person initiating the transmission. For purposes of the bill, "personally identifying information" means information that can be used to access an individual's financial accounts or to obtain goods or services.

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Fiscal Summary

**State Effect:** Assuming that the Consumer Protection Division receives fewer than 50 complaints per year stemming from this bill, any additional workload could be handled with existing resources.

**Local Effect:** None.

**Small Business Effect:** None.

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Analysis

**Current Law:** Under the State's consumer protection provisions governing e-mail, a person may not initiate, conspire with another person to initiate, or assist in the transmission of an e-mail message that: (1) misrepresents or obscures any information relating to the point of origin or transmission path of the message; or (2) contains false or

misleading information in the subject line. The provisions apply to commercial e-mail messages that are sent from a computer located in Maryland or to an electronic mail address that the sender knows or has reason to know is held by a resident of the State. A person is presumed to know that the intended recipient is a resident of the State if the information is available on request from the registrant of the Internet domain name contained in the recipient's e-mail address.

An interactive computer service provider: (1) may block the receipt or transmission through its interactive computer service of commercial e-mail that it reasonably believes is or will be sent in apparent violation of these provisions; and (2) may not be held liable for a blocking action taken in good faith.

Violators are liable to a recipient of the e-mail or a third party without whose permission the third party's domain name or e-mail address was used for attorney's fees and the greater of \$500 or actual damages. Violators are liable to an interactive service provider for attorney's fees and the greater of \$1,000 or actual damages.

**Background:** In *MaryCLE, LLC v. First Choice, LLC, No. 2321, Sept. 2004 Term (slip opinion filed January 26, 2006)*, the Court of Special Appeals found that the State's consumer protection provisions governing e-mail could validly apply personal jurisdiction to an out-of-state defendant who sent mass e-mail advertisements to Maryland. The court then remanded the case to the circuit court for further determination as to whether liability was appropriate under the facts of the case.

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### Additional Information

**Prior Introductions:** None.

**Cross File:** None.

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

**Fiscal Note History:** First Reader - February 27, 2006  
ncs/jr

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