

Department of Legislative Services
Maryland General Assembly
2011 Session

FISCAL AND POLICY NOTE

Senate Bill 666 (Senator Muse)
Judicial Proceedings

Criminal Law - Fraud - Fraudulent Misrepresentation Made to a Nonprofit Organization Concerning a Lease or Contract

This bill prohibits a person from obtaining or attempting to obtain money or valuable consideration from a “nonprofit organization” by (1) making false or fraudulent pretenses, representations, or promises in or about a leasing transaction or contract; or (2) falsely representing to the nonprofit organization that a third party will compensate the nonprofit organization for the valuable consideration paid by the organization to the person for the leased goods or things of value. The bill establishes a new misdemeanor offense for violation of its provisions and requires an offender to make full restitution.

Fiscal Summary

State Effect: Potential minimal increase in general fund revenues from monetary penalties imposed in District Court cases. Potential minimal increase in general fund expenditures if defendants in Baltimore City are incarcerated for the offense created by this bill.

Local Effect: Potential minimal increase in local revenues from monetary penalties imposed in circuit court cases. Potential minimal increase in local expenditures as a result of the bill’s incarceration penalty.

Small Business Effect: None.

Analysis

Bill Summary: The prohibition applies to a written contract or written lease made with a nonprofit organization for a leased or rented good or thing of value with a minimum

value of \$1,500, regardless of whether or not the contract or lease contains an option to purchase the item. A “nonprofit organization” is a tax-exempt organization under § 501(c)(3) of the Internal Revenue Code, including a religious organization. “Fraudulent” includes a false statement or a false representation that is knowingly and willfully made.

A violator is guilty of a misdemeanor and is subject to maximum penalties of 60 days imprisonment and/or a \$5,000 fine. A person convicted of this offense must make full restitution to the organization for the money or valuable consideration that is the basis of the offense after receiving notice and being given an opportunity to be heard regarding the amount and method of payment of the restitution.

A prosecution for this offense does not preclude a prosecution for general theft. However, if a person is convicted of this offense and general theft for the same act or transaction, the conviction for the fraudulent misrepresentation must merge with the theft conviction for sentencing purposes.

Current Law: Among other things, the criminal theft provisions prohibit a person from obtaining control over property by willfully or knowingly using deception, if the person (1) intends to deprive the owner of the property; (2) willfully or knowingly uses, conceals, or abandons the property in a manner that deprives the owner of the property; or (3) uses, conceals, or abandons the property knowing the use, concealment, or abandonment probably will deprive the owner of the property.

A person convicted of theft of property or services valued at less than \$100 is guilty of a misdemeanor and is subject to maximum penalties of imprisonment of 90 days and/or a \$500 fine. A person convicted of theft of property with a value of less than \$1,000 is guilty of a misdemeanor and subject to maximum penalties of imprisonment for 18 months and/or a fine of \$500.

Chapter 655 of 2009 increased the maximum property value for misdemeanor theft from \$500 to \$1,000 and created the three tiers of felony theft listed below:

<u>Value of Property and/or Services</u>	<u>Maximum Penalty</u>
Between \$1,000 and \$10,000	10 years imprisonment and/or a \$10,000 fine
Between \$10,000 and \$100,000	15 years imprisonment and/or a \$15,000 fine
\$100,000 or more	25 years imprisonment and/or a \$25,000 fine

A person who has two or more theft convictions who is convicted of theft of property or services valued at less than \$1,000 is guilty of misdemeanor theft and subject to enhanced maximum penalties of five years imprisonment and/or a \$5,000 fine. Regardless of

value, a person convicted of theft must restore the owner's property or pay the owner for the value of the property.

Fraudulent misrepresentation occurs when (1) a person makes a false statement knowing that the statement was false or with such reckless indifference to the truth that the person is credited with having knowledge of the statement's falsity; (2) the statement was made for the purpose of defrauding the recipient of the statement; (3) the recipient relied upon the statement believing it to be true and would not have acted accordingly had the statement not been made; and (4) the recipient suffered damages as a direct result of the statement.

Background: In April 2009, the District of Columbia filed a lawsuit against five companies for fraudulently inducing approximately 30 area churches to accept computer kiosks on the representation that the kiosks were free of charge. The churches were told that the computer kiosks would be placed in the churches at no cost, would facilitate communication among congregation members, and could be used to post announcements, employment opportunities, etc. The churches were also told that the kiosks would generate revenue, since sponsors would pay to advertise on them. The lawsuit alleges that instead of receiving free computer kiosks, the churches were induced to sign leases worth tens of thousands of dollars for faulty equipment. The DC Attorney General's office reached a settlement with one of the defendants in August 2010, but is still pursuing action against the remaining defendants.

State Revenues: Potential minimal increase in general fund revenues as a result of the bill's monetary penalty provision from cases heard in the District Court.

State Expenditures: Potential minimal increase in general fund expenditures as a result of the bill's incarceration penalty due to more people being committed to Division of Correction facilities for convictions in Baltimore City. The number of people convicted of this proposed crime is expected to be minimal.

Generally, persons serving a sentence of one year or less in a jurisdiction other than Baltimore City are sentenced to a local detention facility. The Baltimore City Detention Center, a State-operated facility, is used primarily for pretrial detentions.

Local Revenues: Potential minimal increase in local revenues as a result of the bill's monetary penalty provision from cases heard in the circuit courts.

Local Expenditures: Expenditures may increase as a result of the bill's incarceration penalty. Counties pay the full cost of incarceration for people in their facilities for the first 12 months of the sentence. Per diem operating costs of local detention facilities are expected to range from \$57 to \$157 per inmate in recent years.

Additional Information

Prior Introductions: SB 1126 of 2010 was referred to the Senate Rules Committee. No further action was taken.

Cross File: None.

Information Source(s): Baltimore, Carroll, Cecil, Harford, Montgomery, and St. Mary's counties; Commission on Criminal Sentencing Policy; Judiciary (Administrative Office of the Courts); Department of State Police; Office of the Public Defender; Department of Public Safety and Correctional Services; State's Attorneys' Association; Office of the Attorney General for Washington, DC; *The Washington Post*; Department of Legislative Services

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