



HOUSE COMMITTEE ON APPROPRIATIONS
2009-10 Legislative Session

FISCAL NOTE

SENATE BILL: 123 PRINTER'S NO: 884 PRIME SPONSOR: Gordner

| FISCAL IMPACT SUMMARY | FY 20010/11 | FY 2011/12 |
|---|--------------------|-------------------|
| Expenditure Increase/(Decrease): | | |
| General Fund | \$49,000 | \$740,000 |

OVERVIEW:

Senate Bill 123 creates a freestanding act, "Consumer Protection Against Spyware Act", which prohibits the transmission and use of computer spyware. This legislation also provides for criminal and civil enforcement of the act.

Under this bill, a person or entity that is not an authorized user shall not, with actual knowledge, with conscious avoidance of actual knowledge or willfully, cause computer software to be copied or procure the copying onto the computer of an authorized user in this Commonwealth in order to:

1. Modify through deceptive means any setting related to the computer's access.
2. Collect through deceptive means personally identifiable information
3. Prevent through deceptive means an authorized user's reasonable efforts to block the installation of or to disable software by causing software that the user has removed or disabled to automatically reinstall or reactivate on the computer.
4. Misrepresent that software will be uninstalled or disabled by a user's action with knowledge that the software will not be so uninstalled or disabled.
5. Through deceptive means, remove, disable, or render inoperative security, antispyware, or antivirus software installed on the computer.

Senate Bill 123 also prohibits an individual to take control of a user's computer or to modify settings related to the computer's access to or use of the Internet.

Nothing in this act shall apply to any monitoring of or interaction with a user's Internet or other network connection or service, or a protected computer, by a cable operator, computer hardware or software provider or provider of information service or interactive computer service for network or computer security purposes, diagnostics, technical support, repair, authorized updates of software or system firmware, network management or maintenance, authorized remote system management or detection or prevention of unauthorized use of or fraudulent or illegal activities in connection with a network, service, or computer software, including scanning for and removing software.

Both district attorneys and the Attorney General shall have the authority to investigate and institute criminal proceedings for any violation of this act, which is a second degree felony.

The act also provides for consumers to bring a civil action and recover damages in an amount up to \$10,000 per violation. The court may increase an award of actual damages in an action brought under this act to an amount not to exceed three times the actual amount of damages sustained if the court finds that the violations have occurred with a frequency with respect to a group of victims as to constitute a pattern or practice.

Communications providers who incur costs from the unauthorized use of a customer's modem may also file a civil action against the violator to recover costs.

This act shall take effect in 60 days.

ANALYSIS:

According to the Office of Attorney General (OAG), the enactment of Senate Bill 123 would require the hiring of five additional staff (2 special agents, 1 deputy attorney general, 1 consumer protection agent, and one clerk typist). The full year costs for these employees totals \$418,000 and includes overtime for the special agent. Operating costs for these employees for a full year is approximately \$49,000.

Program needs for OAG under this legislation includes extensive training, office equipment, computer forensic experts, customized forensic work stations, specialized software, server storage, and real estate rental totaling about \$273,000.

For FY 2010/11, this fiscal note assumes costs for eight months at approximately \$493,000. For the entire FY of 2011/12, OAG costs can be expected to be about \$740,000.

PREPARED BY: Rayko Pacana, Budget Analyst
House Appropriations Committee, (D)

DATE: September 29, 2010

General Note and Disclaimer: *This Fiscal Note was prepared pursuant to House Rule 19(a), and the elements considered and reported above are required by Section 5 of the rule. Estimates are calculated using the best information available. Actual costs and revenue impact incurred may vary from estimates.*