

SENATE APPROPRIATIONS COMMITTEE FISCAL NOTE

BILL NO.

Senate Bill 123

PRINTER'S NO.

96

AMOUNT

\$250,054 – first year costs

FUND

General

DATE INTRODUCED

Jan. 30, 2009

PRIME SPONSOR

Senator Gordner

HISTORY OF BILL

Referred to COMMUNICATIONS & TECHNOLOGY, Jan. 30, 2009

Reported as committed, March 18, 2009

First consideration, March 18, 2009

Re-reported to APPROPRIATIONS, March 23, 2009

Re-reported as committed, March 30, 2009

DESCRIPTION AND PURPOSE OF BILL

An Act providing for the protection of consumers from having spyware deceptively installed on their computers and for criminal and civil enforcement.

This legislation is the Consumer Protection Against Computer Spyware Act.

The legislation would prohibit a person or entity that is not an authorized user from causing computer software (spyware) to be copied onto the computer of an authorized user in order to:

- Modify the computer's settings related to the computer's access to or use of the internet;
- Collect through deceptive means personally identifiable information;

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- Prevent an authorized user's efforts to block the installation of or the disabling of spyware;
- Remove, disable or render inoperative anti-virus or anti-spyware software;
- Take control of the authorized user's computer for the purpose of
 - Transmitting commercial messages or computer viruses from the authorized user's computer.
 - Using the authorized user's modem or internet service in order to cause damage to the user's computer or causing the user to incur charges for unauthorized services.
 - Launching denial of service attacks or opening a series of pop-up messages which the authorized user cannot turn off.
- Modify an authorized user's security or other settings for the purpose of stealing personal information or causing damage to the computer.

In addition, a person or entity that is not an authorized user would be prohibited from

- Inducing an authorized user to install a software component onto his or her computer by intentionally misrepresenting that the installation is necessary for security or privacy reasons or necessary to open, view or play a particular type of content; or
- Deceptively causing the copying and execution of a computer software component with the intent of causing an authorized user to use the component in a manner that violates the act.

Section 6 (Non-applicability) provides that the Act would not apply to the monitoring or interaction with a user's Internet or other network connection or service or a protected computer by various enumerated entities including, but not limited to, a cable operator, hardware provider or software provider for network or computer security purposes, diagnostics, technical support, repair, authorized updates of software or system firmware, network management or maintenance, or authorized remote system management. The section also allows, in

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place of the user agreement, the prevention of unauthorized use of or fraudulent or other illegal activities in connection with a network, service or computer software.

The legislation provides that the Attorney General and the District Attorneys of the various counties would have authority to investigate violations of the act and to institute criminal proceedings.

A violation of the enumerated provisions of the Act would constitute a second-degree felony and could be punished by a prison term ranging from one to ten years and a fine of up to \$25,000.

The act provides for civil relief and provides that a person bringing an action under Section 9 (relating to civil relief) may seek injunctive relief and may recover actual damages or an amount of up to \$100,000 for each violation as the court may consider just. A plaintiff may seek to recover reasonable attorney fees and court costs.

FISCAL IMPACT:

First year costs to the Office of Attorney General to carry out its duties under this act are estimated at \$250,054. This amount includes \$170,000 for salary and benefits for two OAG special agents and \$80,000 in non-recurring operating and fixed asset costs, including training and specialized software and work stations.

It is expected that any actions brought under the Unfair Trade Practices and Consumer Protection law would be investigated and prosecuted by existing personnel within the Consumer Protection Bureau.

No estimate of revenue accruing from the fines prescribed by the bill is available at this time because the number of convictions and the amount of fines that may be imposed cannot be quantified.