



Colorado Legislative Council Staff Fiscal Note
**STATE and LOCAL
 FISCAL IMPACT**

Drafting Number: LLS 11-0510

Date: February 22, 2011

Prime Sponsor(s): Rep. Pabon

Bill Status: House Judiciary

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TITLE: CONCERNING LEGAL ACTIONS ADDRESSING BREACHES OF DATA SECURITY THAT INVOLVE PERSONAL INFORMATION.

Fiscal Impact Summary	FY 2011-2012	FY 2012-2013
State Revenue		
Cash Funds		
Fines Collection Cash Fund	<\$5,000	<\$5,000
State Expenditures		
General Fund	potential increase	
FTE Position Change		
Effective Date: July 1, 2011.		
Appropriation Summary for FY 2011-2012: None required.		
Local Government Impact: See Local Government Impact section.		

Summary of Legislation

This bill establishes policies and procedures relating to liability for computer crime and data security.

Under the bill, the Governor's Office of Information Technology (OIT) must post on its website the name and address of an organization that will compile and update a list of data security associations. The organization designated by OIT will also compile and regularly update a list of data security best practices.

Individuals and business are immune from liability if an unauthorized third party breaches data security after a best practices audit. These custodians of computer data will be presumed not to be negligent if they are in compliance with the standards listed by the OIT data security organization. Individuals may petition a court for a subpoena for production of information, and a court may issue the subpoena, based on findings that:

- the petitioner is a victim of computer crime or has suffered a breach of data security; and
- the individual or business to be subpoenaed has information that is needed to prosecute computer crime.

The subpoena process authorizes courts to consider petitions under seal, motions to quash, and to grant immunity to individuals and businesses that provide information under subpoena in good faith.

The existing class 1 misdemeanor offense of computer crime is expanded to prohibit receiving property, including electronic data, stolen using a computer and:

- depriving the owner of its use;
- using the property to commit another crime; or
- using the property to damage the reputation of its owner.

State Revenue

The bill may increase state revenue from fines, although less than \$5,000 in new state revenue is expected per year. According to Section 18-1.3-501, C.R.S., the penalty for a class 1 misdemeanor is 6 to 18 months imprisonment in a county jail, a fine of \$500 to \$5,000, or both. Fine revenue that is not otherwise appropriated is deposited into the Fines Collection Cash Fund. Because the courts have the discretion of incarceration, imposing a fine, or both, the impact to state revenue cannot be determined.

State Expenditures

Judicial Branch. Costs to the Judicial Branch will increase by an unknown and potentially significant amount. Breaches of electronic data security may involve small numbers of affected records or potentially thousands of victims. The bill grants each victim the right to file a civil case, in which a hearing may be necessary to hear expert testimony on best practices and industry standards related to data security. Hearings will also be required when a party subpoenaed under the bill files a motion to quash the subpoena. The increase in workload for civil trial courts cannot be quantified at this time.

Based on existing caseload information for computer crimes, the addition of a new class 1 misdemeanor will produce a slight increase in workload for criminal trial courts, as well as the Office of the Public Defender. Any cost increases due to the new misdemeanor will be absorbed within existing resources.

Governor's Office of Information Technology. Costs are minimal for OIT to identify an expert for statewide data security standards. This expenditure will also be absorbed within existing resources.

State Agencies Generally. If sensitive records of state agencies are breached after the bill takes effect, damage claims may target state agencies rather than their vendors due to the qualified immunity enjoyed by vendors. The fiscal note assumes that state agencies will appropriately manage risk and seek indemnification or other remedial measures when negotiating contracts with IT vendors.

Local Government Impact

The penalty for a class 1 misdemeanor is 6 to 18 months imprisonment in a county jail, a fine of \$500 to \$5,000, or both. Because the courts have the discretion of incarceration or imposing a fine, the impact at the local level cannot be determined. The cost to house an offender in county jails varies from \$45 to \$50 per day in smaller rural jails to \$62 to \$65 per day for larger Denver-metro area jails. For the current fiscal year, the state reimburses county jails a daily rate of \$50.44 to house state inmates. It is assumed that the impact of this new misdemeanor will be minimal and will not create the need for additional county jail space.

Departments Contacted

Judicial
Law

Corrections
Public Safety

Office of Information Technology