



CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

December 9, 2005

S. 687

A bill to regulate the unauthorized installation of computer software, to require clear disclosure to computer users of certain computer software features that may pose a threat to user privacy, and for other purposes

*As ordered reported by the Senate Committee on Commerce, Science, and Transportation
on November 17, 2005*

SUMMARY

S. 687 would prohibit the use of computer software (known as spyware) to collect personal information and to monitor the behavior of computer users without a user's consent. The Federal Trade Commission (FTC) would be directed to enforce this bill's provisions relating to spyware. S. 687 also would direct the FTC to assess and collect civil penalties for violations of laws relating to spyware and for unfair or deceptive business practices committed during designated emergency periods. (Civil penalties are recorded in the federal budget as revenues.) Finally, S. 687 would establish criminal penalties for certain unauthorized uses of a computer. (Collections of criminal fines are recorded in the budget as revenues, deposited in the Crime Victims Fund, and spent in subsequent years.)

Based on information provided by the FTC, CBO estimates that enacting S. 687 would not have a significant effect on revenues or direct spending. Assuming appropriation of the necessary amounts, CBO estimates that implementing the bill would cost about \$1 million in 2006 and about \$7 million over the 2006-2010 period.

S. 687 contains intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA), but CBO estimates that the resulting costs for state, local, and tribal governments would be minimal and would not exceed the threshold established in UMRA (\$62 million in 2005, adjusted annually for inflation).

S. 687 would impose private-sector mandates, as defined in UMRA, on persons who cause the installation of certain software on computers owned by another person. Based on information from the industry and the FTC, CBO expects that the aggregate direct cost to comply with those mandates would be small and fall below the annual threshold established

by UMRA for private-sector mandates (\$123 million in 2005, adjusted annually for inflation).

ESTIMATED COST TO THE FEDERAL GOVERNMENT

The estimated budgetary impact of S. 687 is shown in the following table. The costs of this legislation fall within budget function 370 (commerce and housing credit).

	By Fiscal Year, in Millions of Dollars				
	2006	2007	2008	2009	2010
CHANGES IN SPENDING SUBJECT TO APPROPRIATION					
Estimated Authorization Level	1	1	1	2	2
Estimated Outlays	1	1	1	2	2

BASIS OF ESTIMATE

For this estimate, CBO assumes that the bill will be enacted in 2006. We also assume that amounts needed to implement S. 687 will be appropriated for each year and that outlays will follow historical trends for similar programs. Implementing the bill would increase spending by the FTC for enforcing the bill’s provisions related to spyware, subject to the availability of appropriated funds. Based on information from the agency, CBO estimates that such activities would cost about \$1 million 2006 and about \$7 million over the 2006-2010 period.

Enacting S. 687 could increase federal revenues from civil penalties assessed for violating laws related to spyware and from increasing penalties assessed for unfair or deceptive business practices committed during designated emergency periods. Collections of civil fines are recorded in the budget as revenues. Based on information provided by the FTC, CBO estimates that any new collections would be less than \$500,000 a year.

Enacting S. 687 also could increase federal revenues as a result of increasing the maximum civil penalty assessed for certain unauthorized uses of computers. Collections of criminal fines are recorded in the budget as revenues, deposited in the Crime Victims Fund, and spent in subsequent years. Based on information provided by the FTC, CBO expects that under S. 687 any additional receipts and direct spending would total less than \$500,000 each year.

ESTIMATED IMPACT ON STATE, LOCAL, AND TRIBAL GOVERNMENTS

S. 687 contains intergovernmental mandates as defined in UMRA, but CBO estimates that any costs to state, local, or tribal governments would be insignificant and would fall significantly below the threshold established in UMRA (\$62 million in 2005, adjusted annually for inflation).

Section 109 would require the Attorney General of a state who files a civil suit to notify the FTC and would grant the FTC the right to intervene in such a suit. This requirement on the officers of a state constitutes a mandate as defined in UMRA.

Section 11(b) would preempt state laws that prohibit the use of certain types of computer software and would establish penalties for violators. Section 110(b) would prohibit states from creating civil penalties that specifically reference the statute. These preemptions and prohibitions, while mandates as defined in UMRA, are narrow and would specifically preserve state authority to pursue fraud, trespass, contract, and tort cases under state law. They also would not prohibit states from passing similar criminal and civil statutes.

ESTIMATED IMPACT ON THE PRIVATE SECTOR

S. 687 would impose private-sector mandates, as defined in UMRA, on persons who cause the installation of certain software on computers owned by another person. Based on information from the industry and the FTC, CBO expects that the aggregate direct cost to comply with those mandates would be small and fall below the annual threshold established by UMRA for private-sector mandates (\$123 million in 2005, adjusted annually for inflation).

The bill would impose mandates on persons who cause the installation of software that can be used to collect information from or take control of a computer without the consent of the authorized user. Currently, the FTC is prosecuting various cases against persons who cause the unauthorized installation of software on another person's computer under the unfair or deceptive practices provisions of the Federal Trade Commission Act. The bill would impose new private-sector mandates on persons to the extent that its provisions would prohibit activities allowed under current law. According to the FTC, the requirements contained in this bill represent only marginal changes to current law, if any. Based on information from the industry and the FTC, CBO expects that the aggregate direct cost to comply with any incremental requirements in the bill would be small and fall below UMRA's annual threshold for private-sector mandates.

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