



## CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

July 8, 2004

### **H.R. 2929**

### **Securely Protect Yourself Against Cyber Trespass Act**

*As ordered reported by the House Committee on Energy and Commerce on June 24, 2004*

#### **SUMMARY**

H.R. 2929 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, including assessing and collecting civil penalties for unfair or deceptive business practices. (Civil penalties are recorded in the federal budget as revenues.) Based on information provided by the FTC, CBO estimates that implementing H.R. 2929 would not have a significant effect on revenues or spending subject to appropriation. Enacting the bill would not affect direct spending.

H.R. 2929 contains both an intergovernmental mandate and private-sector mandates, as defined in the Unfunded Mandates Reform Act (UMRA). CBO estimates that the cost of the mandates would fall below the annual thresholds established by UMRA: \$60 million in 2004 for intergovernmental mandates, and \$120 million in 2004 for private-sector mandates. (Both thresholds are adjusted annually for inflation.)

#### **ESTIMATED COST TO THE FEDERAL GOVERNMENT**

Enacting H.R. 2929 could increase federal revenues from civil penalties assessed for committing unfair or deceptive acts or practices in commerce, but CBO estimates that any new collections would be less than \$500,000 a year.

Implementing the bill also could increase spending by the FTC for law enforcement, subject to the availability of appropriated funds. Based on information from the agency, CBO expects that any such increase would be insignificant.

## **ESTIMATED IMPACT ON STATE, LOCAL, AND TRIBAL GOVERNMENTS**

Section 6 would preempt state laws that prohibit the use of certain types of computer software and establish penalties for violators. This preemption constitutes a mandate as defined in UMRA. Utah has already passed legislation that this bill would preempt, and California, Iowa, and New York have bills pending before their state legislatures. However, the preemption is narrow and the bill would specifically preserve state authority to pursue fraud, trespass, contract, and tort cases under state law. CBO estimates that any costs to state, local, or tribal governments would be minimal and would fall significantly below the threshold established in UMRA (\$60 million in 2004, adjusted annually for inflation).

## **ESTIMATED IMPACT ON THE PRIVATE SECTOR**

H.R. 2929 would impose private-sector mandates, as defined in UMRA, on persons who use computer programs to collect certain information from another person's computer. Based on information provided by industry and government sources, CBO expects that the direct costs of complying with those mandates would fall below the annual threshold established by UMRA for private-sector mandates (\$120 million in 2004, adjusted annually for inflation).

The bill would require a person who transmits or executes an information collection program on someone's computer to receive prior consent from the owner or authorized user of that computer. An information collection program is defined in the legislation as computer software that collects personally identifiable information and sends the information to someone else or collects Web tracking information and uses such information for advertising purposes. The bill would require the Federal Trade Commission to provide the manner and form of the notice to obtain consent. In addition, the bill would require an information collection program installed on someone's computer to be easily identifiable and removable.

## **ESTIMATE PREPARED BY:**

Federal Costs: Melissa E. Zimmerman

Impact on State, Local, and Tribal Governments: Sarah Puro

Impact on the Private Sector: Paige Piper/Bach

## **ESTIMATE APPROVED BY:**

Peter H. Fontaine

Deputy Assistant Director for Budget Analysis