

BILL ANALYSIS

Senate Research Center
76R1268 DWS-F

S.B. 106
By: Truan
Technology & Business Growth
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As Filed

DIGEST

Currently, under Texas law, there is no criminal penalty for the distribution of unsolicited telecommunications. This bill creates a criminal offense for the initiation of a telecommunication to deliver an advertisement which causes the recipient or a service provider who stores or transfers the advertisement to incur any fee. The bill also creates a criminal offense for providing false information on the point of origin or routing of a telecommunication for the delivery of an advertisement.

PURPOSE

As proposed, S.B. 106 creates a criminal offense for the initiation of a telecommunication to deliver an advertisement which causes the recipient or a service provider who stores or transfers the advertisement to incur any fee, and creates a criminal offense for providing false information on the point of origin or routing of a telecommunication for the delivery of an advertisement.

RULEMAKING AUTHORITY

This bill does not grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Title 4, Business & Commerce Code, by adding Chapter 42, as follows:

CHAPTER 42. ADVERTISEMENT DELIVERED BY TELECOMMUNICATION

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 42.001. DEFINITIONS. Defines "advertisement," "internet," and "telecommunication."

SUBCHAPTER B. DELIVERY OF ADVERTISEMENT BY TELECOMMUNICATION

Sec. 42.011. CERTAIN ADVERTISEMENTS PROHIBITED. Prohibits a person from initiating a telecommunication to deliver an advertisement if the delivery causes the recipient or a service provider who stores or transfers the advertisement to incur any fee. Sets forth a defense to an action under this subchapter that the plaintiff requests or consents to the telecommunication, either in writing or electronic format.

Sec. 42.012. CIVIL ACTION. Provides certain remedies for an action brought under this subchapter.

Sec. 42.013. AMOUNT OF DAMAGES. Entitles a plaintiff prevailing in an action for damages under this subchapter to the greater of \$500 for each violation or the person's actual damages, with exceptions allowing greater damages.

Sec. 42.014. GROUNDLESS ACTION; HARASSMENT. Provides that if the court finds an action brought under this subchapter is groundless or for the purpose of harassment, the defendant is entitled to recover court costs and reasonable attorney's fees.

Sec. 42.015. FAILURE TO SATISFY JUDGMENT. Provides that upon the failure of a defendant to satisfy a judgment under this subchapter within three months after the final

judgment date the defendant's license or authority to do business in this state may be revoked or a receiver may be appointed. Requires the revocation or appointment to be made by an agency authorized to take such an action or the court, if there is no agency with such authority. Requires the cost of receivership to be paid by the defendant.

Sec. 42.016. JURISDICTION. Provides that this subchapter applies to a telecommunication for the delivery of an advertisement if the initiator of the telecommunication knows or with reasonable diligence should know that the recipient of the advertisement or a service provider storing or transferring the advertisement is a resident of the state, regardless of the location of the initiator or where the telecommunication was initiated.

Sec. 42.017. VENUE. Authorizes an action under this subchapter to be brought in the county in which the plaintiff resides or the telecommunication is initiated as well as any other venue provided by law.

SUBCHAPTER C. INFORMATION CONCERNING ORIGIN OR ROUTING OF TELECOMMUNICATION

Sec. 42.031. PROVIDING FALSE INFORMATION ON POINT OF ORIGIN OR ROUTING. Creates an offense for providing false information on the point of origin or routing of a telecommunication for the delivery of an advertisement.

Sec. 42.032. CRIMINAL PENALTY. Provides that an offense under Section 42.031 is a Class B misdemeanor, except if the offense is committed knowingly, and then the offense is a Class A misdemeanor.

SECTION 2. Repealer: Section 35.47, Business & Commerce Code (Certain Electronic Communications Made for Purpose of Sales).

SECTION 3. Effective date: September 1, 1999.

SECTION 4. Emergency clause.