

BILL ANALYSIS

Senate Research Center

H.B. 1282
By: McCall (Duncan)
Business & Commerce
5/5/2003
Engrossed

DIGEST AND PURPOSE

Unsolicited commercial electronic mail is a growing concern among Internet users. Recent studies indicate an increase in e-mail traffic and a corresponding increase in unsolicited commercial electronic mail. H.B. 1282 provides a legal option for industry and consumers to challenge entities that send unsolicited commercial electronic mail.

RULEMAKING AUTHORITY

This bill does not expressly 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 46, as follows:

CHAPTER 46. ELECTRONIC MAIL SOLICITATION

Sec. 46.001. DEFINITIONS. Defines “commercial electronic mail message,” “electronic mail,” “electronic mail service provider,” “established business relationship,” “Internet domain name,” “obscene,” “sender,” “sexual conduct,” and “unsolicited commercial electronic mail message.”

Sec. 46.002. CERTAIN ELECTRONIC MAIL MESSAGES PROHIBITED. (a) Prohibits a person from transmitting a commercial electronic mail message that meets certain criteria.

(b) Prohibits a person from sending a commercial electronic message that uses another person’s Internet domain name without that person’s consent.

Sec. 46.003. UNSOLICITED ELECTRONIC MAIL MESSAGES. (a) Prohibits a person from intentionally taking any action to send an unsolicited commercial electronic mail unless it is clearly marked adult-advertisement or ADV if it contains obscene material or material depicting sexual conduct, and the sender provides a functioning return electronic mail address through which a recipient can request, at no cost to the recipient, removal from the sender’s electronic mail list.

(b) Requires a sender to remove a person’s electronic mail address from the sender’s list not later than the 90th day after receiving a request for removal under Subsection (a)(2).

Sec. 46.004. SALE OR PROVISION OF ADDRESS ON ELECTRONIC MAIL LIST PROHIBITED. Prohibits the sender, or a person acting on the sender’s behalf, from selling or otherwise providing the electronic mail address of a person who has requested removal from the sender’s list, except as required by law.

Sec. 46.005. CRIMINAL PENALTY. Establishes what constitutes an offense under this section and provides that such an offense qualifies as a Class B misdemeanor.

Sec. 46.006. CIVIL PENALTY. (a) Provides that a person who violates this chapter,

other than Section 46.009 (Notice to Attorney General), is liable for a civil penalty not to exceed the lesser of \$10 per unlawful message or \$25,000 each day an unlawful message is received or an action is taken.

(b) Authorizes the attorney general or prosecuting attorney in the county in which the violation occurs to bring suit to recover the penalty or seek an injunction to prevent or restrain a violation of this chapter.

(c) Authorizes the attorney general or prosecuting attorney in the county in which the violation occurs to recover reasonable expenses incurred in obtaining a civil penalty under this section.

Sec. 46.007. **DECEPTIVE TRADE PRACTICES.** Defines what constitutes a violation of this chapter and authorizes any public or private right remedy prescribed under Subchapter E, Chapter 17 (Deceptive Trade Practices and Consumer Protection) to enforce this chapter.

Sec. 46.008. **CIVIL LIABILITY.** (a) Authorizes a person injured by a violation of this chapter to bring an action to recover actual damages, including lost profits, and provides that a person who prevails is entitled to reasonable attorney's fees and court costs.

(b) Authorizes a person injured by a violation of this chapter from unsolicited or commercial electronic mail transmission, other than an electronic e-mail provider, to recover the lesser of \$10 per unlawful message or \$25,000 each day an unlawful message is received, in lieu of actual damages.

(c) Authorizes an electronic mail service provider injured by a violation of this chapter from unsolicited or commercial electronic mail transmission to recover the greater of \$10 per unlawful message or \$25,000 each day an unlawful message is received, in lieu of actual damages.

(d) Authorizes the court, at the request of a party to any action brought under this chapter, to conduct legal proceedings in a way that protects the secrecy and security of the computer and related items to prevent a recurrence of violation and protect trade secrets.

Sec. 46.009. **NOTICE TO ATTORNEY GENERAL.** (a) Requires a person who brings action under Section 46.008 (Civil Liability) to notify the attorney general with a copy of the petition by registered or certified mail not later than 30th day after the petition was filed and at least ten days before the hearing date.

(b) Authorizes the attorney general to intervene in the action by filing a notice of intervention and serving each party with a copy of the notice.

(c) Provides that a person who violates Subsection (a) is liable to the state for a civil penalty not to exceed \$200 per violation. Authorizes the attorney general to bring suit to recover the civil penalty.

Sec. 46.010. **BLOCKING OF COMMERCIAL ELECTRONIC MAIL MESSAGE.** Authorizes an electronic mail service provider on its own initiative to block the receipt or transmission through its service any commercial electronic mail message it reasonably believes will be sent in violation of this chapter.

Sec. 46.011. **IMMUNITY FROM LIABILITY.** (a) Defines "telecommunications utility."

(b) Prohibits a telecommunications utility or an electronic mail service provider from being held liable under Section 46.002 or 46.003 and provides that a telecommunications utility or an electronic mail service provider is not subject to

the penalties provided under this chapter.

(c) Provides that a person injured by a violation of this chapter does not have cause of action against a telecommunications utility or an electronic mail service provider under this chapter solely under certain circumstances.

(d) Prohibits an electronic mail service provider from being held liable for an action taken in good faith under Section 46.010.

(e) Prohibits a person from being held liable under this chapter for a commercial electronic mail message that is sent as a result of an error or accidental transmission.

SECTION 2. Effective date: September 1, 2003.

Makes application of this Act prospective.