

## **BILL ANALYSIS**

H.B. 1282  
By: McCall  
Economic Development  
Committee Report (Unamended)

### **BACKGROUND AND PURPOSE**

Unsolicited commercial electronic mail, commonly known as “Spam,” has become a growing issue among users of the internet. One recent study predicts e-mail traffic will grow to 37.3 billion emails per day. A study done by Ferris Research, out of San Francisco, shows that 30% of that email is “Spam.” The same study also predicts “Spam” will cost the US economy upwards of \$10 billion in 2003. HB1282 provides a legal option for industry and consumers to challenge those that send unsolicited commercial electronic mail.

### **RULEMAKING AUTHORITY**

It is the committee’s opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

### **ANALYSIS**

HB 1282 amends the Business and Commerce Code to add Chapter 46, relating to electronic mail.

HB 1282 prohibits sending commercial electronic mail that: falsifies transmission or routing information (if the electronic mail is unsolicited), contains false information in the subject line, or uses another’s Internet domain name without consent. (Sec. 46.002)

HB 1282 requires that “ADV:” be used as the first four characters of the subject line, or if the unsolicited commercial electronic mail is of a sexual nature, that “ADULT-ADVERTISEMENT” is the first word of the subject line. HB 1282 requires that the sender of the unsolicited commercial mail provide a return address that the recipient can reply to, requesting that their address be removed from the senders mailing list. The sender shall remove the address within 90 days. (Sec. 46.003)

HB 1282 prohibits selling or providing the email address of a person that requests the removal of their name from the sender’s mailing list. (Sec. 46.004)

HB 1282 provides that the sending of unsolicited commercial electronic mail containing obscene material or that depicts sexual conduct is a Class B misdemeanor. (Sec. 46.005)

HB 1282 provide that the sender is liable to the state for a civil penalty not to exceed the lesser of \$10 for each message or \$25,000 for each day an unlawful message is received. HB 1282 allows the Attorney General, or the prosecuting county attorney, to bring suit to recover such civil penalty and to seek an injunction to prevent a violation of this chapter. (Sec. 46.006)

HB 1282 provides that a violation of this chapter is a deceptive trade practice under Subchapter E, Chapter 17 and any right or remedy under that subchapter may be used to enforce this chapter. (Sec. 46.007)

HB 1282 authorizes a person injured by a violation of this chapter to bring suit for actual damages, or, in lieu of actual damages, the lesser of \$10 for each message or \$25,000 for each day the unlawful message

is received. HB 1282 authorizes an electronic mail service provider to bring suit for actual damages, or, in lieu of actual damages, the greater of \$10 for each message or \$25,000 for each day the unlawful message is received. HB 1282 authorizes a court, at the request of a party in the suit, to conduct a legal proceeding in such a manner as to protect the secrecy and security of the computer, network, data, program, software, to prevent a possible recurrence of the act and protect any trade secrets. (Sec. 46.008)

HB 1282 requires a person bringing action under this chapter to notify the attorney general within 30 days of filing the petition and at least 10 days before the hearing date. HB 1282 authorizes the attorney general to intervene in such action. HB 1282 provides that a person who does not give notice to the attorney general is liable to the state for a civil penalty not to exceed \$200 per violation. (Sec. 46.009)

HB 1282 authorizes an electronic mail service provider to block the receipt or transmission of any commercialelectronic mail that the provider believes is being sent in violation of this chapter. (Sec. 46.010)

HB 1282 provides that an electronic mail service provider does not commit a violation of Section 46.002 or 46.003 because that provider is an intermediary or provides transmission through the provider's network or facilities. HB 1282 provides that an electronic mail provider is not liable for action taken in good faith under Section 46.010. (Sec. 46.011)

#### **EFFECTIVE DATE**

September 1, 2003.