

By: Menendez

H.B. No. 519

A BILL TO BE ENTITLED

AN ACT

relating to unsolicited commercial electronic mail; providing penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Title 4, Business & Commerce Code, is amended by adding Chapter 46 to read as follows:

CHAPTER 46. COMMERCIAL ELECTRONIC MAIL MESSAGES

Sec. 46.001. DEFINITIONS. In this chapter:

(1) "Commercial electronic mail message" means an electronic mail message sent to promote property or services for sale or lease.

(2) "Electronic mail address" means a destination, commonly expressed as a string of characters, to which electronic mail may be sent or delivered.

(3) "Interactive computer service" has the meaning assigned by Section 35.101.

(4) "Internet domain name" refers to a globally unique, hierarchical reference to an Internet host or service, assigned through a centralized Internet naming authority and composed of a series of character strings separated by periods with the right-most string specifying the top of the hierarchy.

(5) "Sexual conduct" has the meaning assigned by Section 43.25, Penal Code.

(6) "Unsolicited commercial electronic mail message"

1 means a commercial electronic mail message that is addressed to a
2 recipient with whom the initiator does not have an existing
3 business or personal relationship and that is not sent at the
4 request of or with the consent of the recipient.

5 Sec. 46.002. CERTAIN ELECTRONIC MAIL MESSAGES PROHIBITED.

6 (a) A person may not take any action to send to an electronic mail
7 address that the sender knows, or has reason to know, is held by a
8 resident of this state a commercial electronic mail message that:

9 (1) uses another person's Internet domain name without
10 that person's permission or otherwise misrepresents any
11 information in identifying the point of origin or the transmission
12 path of the message; or

13 (2) contains false or misleading information in the
14 subject line.

15 (b) For purposes of this section, a person knows that the
16 intended recipient of a commercial electronic mail message is a
17 resident of this state if that information is available, on
18 request, from the registrant of the Internet domain name contained
19 in the recipient's electronic mail address.

20 Sec. 46.003. UNSOLICITED ELECTRONIC MAIL MESSAGES. (a) A
21 person may not take any action to send an unsolicited commercial
22 electronic mail message unless:

23 (1) "ADV" or "ADVERTISEMENT" is used as the first word
24 on the subject line or, if the message contains material depicting
25 sexual conduct, "ADV-ADULT" or "ADVERTISEMENT-ADULT" is used as the
26 first word on the subject line; and

27 (2) the name, the address, and a toll-free telephone

1 number or valid electronic mail address of the initiator appears in
2 the body of the message, enabling the recipient to contact and
3 request removal from the initiator's electronic mail list.

4 (b) A person who initiates a commercial electronic mail
5 message or a person acting on behalf of the initiator may not send a
6 commercial electronic mail message to a recipient who has requested
7 removal from the initiator's electronic mail list.

8 Sec. 46.004. APPLICABILITY. Sections 46.002 and 46.003 do
9 not apply to an action by an intervening interactive computer
10 service that handles or retransmits the message, unless the service
11 assists in transmitting an electronic mail message when the service
12 knows or is consciously indifferent to the fact that the person
13 sending the message is engaged or intends to engage in an act or
14 practice that violates this chapter.

15 Sec. 46.005. CIVIL PENALTY. (a) A person who violates
16 Section 46.002 or 46.003 is liable to the state for a civil penalty
17 in an amount not to exceed \$500 for each violation. For purposes of
18 imposing the penalty, each occurrence in which a person who is a
19 resident of this state receives an electronic mail message that
20 violates the applicable section is a separate violation.

21 (b) The attorney general or the prosecuting attorney in the
22 county in which the violation occurs may bring suit to recover the
23 civil penalty imposed under Subsection (a).

24 Sec. 46.006. CRIMINAL PENALTY. (a) A person commits an
25 offense if the person:

26 (1) has been assessed a civil penalty for a violation
27 of Section 46.002 or 46.003; and

1 (2) subsequently violates either one of those
2 sections.

3 (b) An offense under Subsection (a) is a Class B
4 misdemeanor.

5 SECTION 2. This Act takes effect September 1, 2003.

6 SECTION 3. Chapter 46, Business & Commerce Code, as added by
7 this Act, applies only to an electronic mail message that is sent on
8 or after September 1, 2003.