

1-1 By: McCall, et al. (Senate Sponsor - Duncan) H.B. No. 1282
1-2 (In the Senate - Received from the House April 7, 2003;
1-3 April 9, 2003, read first time and referred to Committee on
1-4 Business and Commerce; May 22, 2003, reported adversely, with
1-5 favorable Committee Substitute by the following vote: Yeas 5,
1-6 Nays 0; May 22, 2003, sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR H.B. No. 1282 By: Jackson

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to commercial electronic mail; providing penalties.
1-11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:
1-12 SECTION 1. Title 4, Business & Commerce Code, is amended by
1-13 adding Chapter 46 to read as follows:

1-14 CHAPTER 46. ELECTRONIC MAIL SOLICITATION

1-15 Sec. 46.001. DEFINITIONS. In this chapter:

1-16 (1) "Commercial electronic mail message" means an
1-17 electronic mail message that advertises, offers for sale or lease,
1-18 or promotes any goods, services, business opportunity, property, or
1-19 any other article, commodity, or thing of value.

1-20 (2) "Electronic mail" means a message, file, or other
1-21 information that is transmitted through a local, regional, or
1-22 global computer network, regardless of whether the message, file,
1-23 or other information is viewed, stored for retrieval at a later
1-24 time, printed, or filtered by a computer program that is designed or
1-25 intended to filter or screen those items.

1-26 (3) "Electronic mail service provider" means a person
1-27 that:

- 1-28 (A) is qualified to do business in this state;
- 1-29 (B) is an intermediary in sending or receiving
- 1-30 electronic mail; and
- 1-31 (C) provides an end user of an electronic mail
- 1-32 service the ability to send or receive electronic mail.

1-33 (4) "Established business relationship" means a prior
1-34 or existing relationship of a person formed by a voluntary two-way
1-35 communication between a person and another person, regardless of
1-36 whether consideration is exchanged, regarding products or services
1-37 offered by one of the persons, that has not been terminated by
1-38 either party.

1-39 (5) "Internet domain name" refers to a globally
1-40 unique, hierarchical reference to an Internet host or service,
1-41 assigned through a centralized Internet naming authority and
1-42 composed of a series of character strings separated by periods with
1-43 the right-most string specifying the top of the hierarchy.

1-44 (6) "Obscene" has the meaning assigned by Section
1-45 43.21, Penal Code.

1-46 (7) "Sender" means a person who initiates an
1-47 electronic mail message.

1-48 (8) "Sexual conduct" has the meaning assigned by
1-49 Section 43.25, Penal Code.

1-50 (9) "Unsolicited commercial electronic mail message"
1-51 means a commercial electronic mail message sent without the consent
1-52 of the recipient by a person with whom the recipient does not have
1-53 an established business relationship. The term does not include
1-54 electronic mail sent by an organization using electronic mail for
1-55 the purpose of communicating exclusively with members, employees,
1-56 or contractors of the organization.

1-57 Sec. 46.002. CERTAIN ELECTRONIC MAIL MESSAGES PROHIBITED.

1-58 (a) A person may not intentionally transmit a commercial
1-59 electronic mail message that:

1-60 (1) falsifies electronic mail transmission
1-61 information or other routing information for an unsolicited
1-62 commercial electronic mail message; or

1-63 (2) contains false, deceptive, or misleading

2-1 information in the subject line.

2-2 (b) A person may not intentionally send a commercial
2-3 electronic mail message that uses another person's Internet domain
2-4 name without the other person's consent.

2-5 Sec. 46.003. UNSOLICITED ELECTRONIC MAIL MESSAGES. (a) A
2-6 person may not intentionally take any action to send an unsolicited
2-7 commercial electronic mail message unless:

2-8 (1) "ADV:" is used as the first four characters in the
2-9 subject line of the message or, if the message contains any obscene
2-10 material or material depicting sexual conduct, "ADV: ADULT
2-11 ADVERTISEMENT" is used as the first word in the subject line of the
2-12 message; and

2-13 (2) the sender of the message or a person acting on
2-14 behalf of the sender provides a functioning return electronic mail
2-15 address to which a recipient may, at no cost to the recipient, send
2-16 a reply requesting the removal of the recipient's electronic mail
2-17 address from the sender's electronic mail list.

2-18 (b) A sender shall remove a person's electronic mail address
2-19 from the sender's electronic mail list not later than the 3rd day
2-20 after the date on which the sender receives a request for removal of
2-21 that address under Subsection (a)(2).

2-22 Sec. 46.004. SALE OR PROVISION OF ADDRESS ON ELECTRONIC
2-23 MAIL LIST PROHIBITED. A sender or a person acting on behalf of the
2-24 sender may not sell or otherwise provide the electronic mail
2-25 address of a person who requests the removal of that address from
2-26 the sender's electronic mail list under Section 46.003(a)(2),
2-27 except as required by other law.

2-28 Sec. 46.005. CRIMINAL PENALTY. A person commits an offense
2-29 if the person intentionally takes any action to send a message
2-30 containing obscene material or material depicting sexual conduct in
2-31 violation of Section 46.003(a)(1). An offense under this section
2-32 is a Class B misdemeanor.

2-33 Sec. 46.006. CIVIL PENALTY. (a) A person who violates
2-34 this chapter other than Section 46.009 is liable to the state for a
2-35 civil penalty in an amount not to exceed the lesser of:

2-36 (1) \$10 for each unlawful message or action; or
2-37 (2) \$25,000 for each day an unlawful message is
2-38 received or an action is taken.

2-39 (b) The attorney general or the prosecuting attorney in the
2-40 county in which the violation occurs may:

2-41 (1) bring suit to recover the civil penalty imposed
2-42 under Subsection (a); and

2-43 (2) seek an injunction to prevent or restrain a
2-44 violation of this chapter.

2-45 (c) The attorney general or the prosecuting attorney may
2-46 recover reasonable expenses incurred in obtaining a civil penalty
2-47 under this section, including court costs, reasonable attorney's
2-48 fees, investigative costs, witness fees, and deposition expenses.

2-49 Sec. 46.007. DECEPTIVE TRADE PRACTICES. A violation of
2-50 this chapter is a false, misleading, or deceptive act or practice
2-51 under Subchapter E, Chapter 17, and any public or private right or
2-52 remedy prescribed by that subchapter may be used to enforce this
2-53 chapter, except as provided by Section 46.008(d).

2-54 Sec. 46.008. CIVIL LIABILITY. (a) A person injured by a
2-55 violation of this chapter may bring an action to recover actual
2-56 damages, including lost profits. A person who prevails in the
2-57 action is entitled to reasonable attorney's fees and court costs.

2-58 (b) In lieu of actual damages, a person injured by a
2-59 violation of this chapter arising from the transmission of an
2-60 unsolicited or commercial electronic mail message, other than an
2-61 electronic mail service provider, may recover the lesser of:

2-62 (1) \$10 for each unlawful message; or
2-63 (2) \$25,000 for each day the unlawful message is
2-64 received.

2-65 (c) In lieu of actual damages, an electronic mail service
2-66 provider injured by a violation of this chapter arising from the
2-67 transmission of an unsolicited or commercial electronic mail
2-68 message may recover the greater of:

2-69 (1) \$10 for each unlawful message; or

3-1 (2) \$25,000 for each day the unlawful message is
3-2 received.

3-3 (d) A court may not certify an action brought under this
3-4 chapter as a class action.

3-5 (e) At the request of a party to any action brought under
3-6 this chapter, the court, in its discretion, may conduct a legal
3-7 proceeding in such a manner as to protect the secrecy and security
3-8 of the computer, computer network, computer data, computer program,
3-9 and computer software involved to prevent a possible recurrence of
3-10 the same or a similar act by another person and to protect any trade
3-11 secrets of a party to the action.

3-12 Sec. 46.009. NOTICE TO ATTORNEY GENERAL. (a) A person who
3-13 brings an action under Section 46.008 shall give notice of the
3-14 action to the attorney general by sending a copy of the petition by
3-15 registered or certified mail not later than the 30th day after the
3-16 date the petition was filed and at least 10 days before the date set
3-17 for a hearing on the action.

3-18 (b) The attorney general may intervene in the action by:

3-19 (1) filing a notice of intervention with the court in
3-20 which the action is pending; and

3-21 (2) serving each party to the action with a copy of the
3-22 notice of intervention.

3-23 (c) A person who violates Subsection (a) is liable to the
3-24 state for a civil penalty in an amount not to exceed \$200 for each
3-25 violation. The attorney general may bring suit to recover the civil
3-26 penalty imposed under this subsection in the court in which the
3-27 action is instituted.

3-28 Sec. 46.010. BLOCKING OF COMMERCIAL ELECTRONIC MAIL
3-29 MESSAGE. An electronic mail service provider may on its own
3-30 initiative block the receipt or transmission through its service of
3-31 any commercial electronic mail message that the provider reasonably
3-32 believes is or will be sent in violation of this chapter if the
3-33 provider:

3-34 (1) provides a process for the prompt, good faith
3-35 resolution of disputes related to the blocking with senders of
3-36 commercial electronic mail messages; and

3-37 (2) makes contact information publicly accessible on
3-38 its Internet website for the purpose of dispute resolution.

3-39 Sec. 46.011. QUALIFIED IMMUNITY. (a) In this section,
3-40 "telecommunications utility" has the meaning assigned by Section
3-41 51.002, Utilities Code.

3-42 (b) A telecommunications utility or an electronic mail
3-43 service provider may not be held liable under Section 46.002 or
3-44 46.003 and is not subject to the penalties provided under this
3-45 chapter.

3-46 (c) A person injured by a violation of this chapter does not
3-47 have a cause of action against a telecommunications utility or an
3-48 electronic mail service provider under this chapter solely because
3-49 the utility or provider:

3-50 (1) is an intermediary between the sender, or any
3-51 person acting on behalf of the sender, and the recipient in the
3-52 transmission of electronic mail that violates this chapter;

3-53 (2) provides transmission, routing, relaying,
3-54 handling, or storing, through an automatic technical process, of an
3-55 unsolicited commercial electronic mail message through the
3-56 utility's or provider's computer network or facilities; or

3-57 (3) provides telecommunications services, information
3-58 services, or other services used in the transmission of an
3-59 electronic mail message that violates this chapter.

3-60 (d) An electronic mail service provider that provides for a
3-61 dispute resolution process as described by Section 46.010 may not
3-62 be held liable for blocking the receipt or transmission through its
3-63 service of any commercial electronic mail message that the provider
3-64 reasonably believes is or will be sent in violation of this chapter.

3-65 (e) A person may not be held liable under this chapter for a
3-66 commercial electronic mail message that is sent as a result of an
3-67 error or accidental transmission.

3-68 (f) A sender may not be held liable for the transmission of
3-69 an electronic mail message that violates this chapter if the

4-1 sender:

4-2 (1) contracts in good faith with an electronic mail
4-3 service provider to transmit electronic mail messages for the
4-4 sender; and

4-5 (2) has no reason to believe the electronic mail
4-6 service provider will transmit any of the sender's messages in a
4-7 manner that violates this chapter.

4-8 SECTION 2. This Act takes effect September 1, 2003, and
4-9 applies only to an electronic mail message that is sent on or after
4-10 that date.

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