

By: Shapleigh

S.B. No. 1033

A BILL TO BE ENTITLED

AN ACT

relating to unsolicited commercial electronic mail.

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. The term does not include an electronic mail message to which an interactive computer service provider has attached an advertisement in exchange for use of an electronic mail account if the account holder has agreed to such an arrangement.

(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, composed of a series of character strings separated by periods with the right-most string specifying the top of the hierarchy.

Sec. 46.002. CERTAIN ELECTRONIC MAIL MESSAGES

1 PROHIBITED. (a) A person may not take any action to send to an  
2 electronic mail address that the sender knows, or has reason to  
3 know, is held by a resident of this state a commercial electronic  
4 mail message that:

5 (1) uses another person's Internet domain name without  
6 that person's permission or otherwise misrepresents any  
7 information in identifying the point of origin or the transmission  
8 path of the message; or

9 (2) contains false or misleading information in the  
10 subject line.

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

16 (c) Subsection (a) does not apply to an action by an  
17 intervening interactive computer service that handles or  
18 retransmits the message, unless the service assists in transmitting  
19 an electronic mail message when the service knows or is consciously  
20 indifferent to the fact that the person sending the message is  
21 engaged or intends to engage in an act or practice that violates  
22 this section.

23 Sec. 46.003. DECEPTIVE TRADE PRACTICES. (a) A violation  
24 of Section 46.002 is a deceptive trade practice actionable under  
25 Subchapter E, Chapter 17.

26 (b) For purposes of Subchapter E, Chapter 17:

27 (1) each occurrence in which a person who is a resident

1 of this state receives a commercial electronic mail message that  
2 violates Section 46.002 is a separate violation; and

3 (2) each person who is a resident of this state who  
4 receives a commercial electronic mail message that violates Section  
5 46.002 is considered to have suffered economic damages of \$500.

6 Sec. 46.004. BLOCKING OF COMMERCIAL ELECTRONIC MAIL MESSAGE  
7 BY INTERACTIVE COMPUTER SERVICE; IMMUNITY FROM LIABILITY. (a) An  
8 interactive computer service may on its own initiative block the  
9 receipt or transmission through its service of any commercial  
10 electronic mail message that the service reasonably believes is or  
11 will be sent in violation of Section 46.002.

12 (b) An interactive computer service may not be held liable  
13 for an action taken in good faith under Subsection (a).

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

15 SECTION 3. Chapter 46, Business & Commerce Code, as added  
16 by this Act, applies only to a commercial electronic mail message  
17 that is sent on or after September 1, 2003.