

By: McCall

H.B. No. 1098

A BILL TO BE ENTITLED

AN ACT

relating to using the Internet to obtain identifying information of another person for a fraudulent purpose; 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 48 to read as follows:

CHAPTER 48. INTERNET FRAUD

Sec. 48.001. SHORT TITLE. This chapter may be cited as the Anti-Phishing Act.

Sec. 48.002. DEFINITIONS. In this chapter:

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

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

(3) "Identifying information" has the meaning assigned by Section 32.51, Penal Code.

(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

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

3 (5) "Web page" means a location that has a single
4 uniform resource locator (URL) with respect to the world wide web or
5 another location that can be accessed on the Internet.

6 Sec. 48.003. CREATION OF WEB PAGE OR DOMAIN NAME FOR
7 FRAUDULENT PURPOSES. A person may not, with the intent to engage in
8 conduct involving the fraudulent use or possession of another
9 person's identifying information:

10 (1) create a web page or Internet domain name that is
11 represented as a legitimate online business without the express
12 authority of the registered owner of the business; and

13 (2) use that web page or a link to the web page, that
14 domain name, or another site on the Internet to induce, request, or
15 solicit another person to provide identifying information for a
16 purpose that the other person believes is legitimate.

17 Sec. 48.004. ELECTRONIC MAIL FRAUD. A person may not, with
18 the intent to engage in conduct involving the fraudulent use or
19 possession of identifying information, send or cause to be sent to
20 an electronic mail address held by a resident of this state an
21 electronic mail message that:

22 (1) is falsely represented as being sent by a
23 legitimate online business;

24 (2) refers or links the recipient of the message to a
25 web page that is represented as being associated with the
26 legitimate online business; and

27 (3) directly or indirectly induces, requests, or

1 solicits the recipient of the electronic mail message to provide
2 identifying information for a purpose that the recipient believes
3 is legitimate.

4 Sec. 48.005. CIVIL RELIEF. (a) The following persons may
5 bring a civil action against a person who violates this chapter:

6 (1) a person engaged in the business of providing
7 Internet access service to the public who is adversely affected by
8 the violation;

9 (2) an owner of a web page or trademark who is
10 adversely affected by the violation; or

11 (3) the attorney general.

12 (b) A person bringing an action under this section may:

13 (1) seek injunctive relief to restrain the violator
14 from continuing the violation;

15 (2) recover damages in an amount equal to the greater
16 of:

17 (A) actual damages arising from the violation; or

18 (B) \$500,000 for each violation of the same
19 nature; or

20 (3) both seek injunctive relief and recover damages as
21 provided by this subsection.

22 (c) The court may increase an award of actual damages in an
23 action brought under this section to an amount not to exceed three
24 times the actual damages sustained if the court finds that the
25 violations have occurred with a frequency as to constitute a
26 pattern or practice.

27 (d) A plaintiff who prevails in an action filed under this

1 section is entitled to recover reasonable attorney's fees and court
2 costs.

3 (e) For purposes of this section, violations are of the same
4 nature if the violations consist of the same course of conduct or
5 action, regardless of the number of times the conduct or act
6 occurred.

7 Sec. 48.006. CRIMINAL PENALTY. (a) A person commits an
8 offense if the person violates this chapter.

9 (b) Except as provided by Subsection (c), an offense under
10 this section is a state jail felony.

11 (c) An offense under this section is a felony of the third
12 degree if it is shown on the trial of the offense that the defendant
13 has been previously convicted under this section.

14 SECTION 2. Section 48.004, Business & Commerce Code, as
15 added by this Act, applies only to an electronic mail message that
16 is sent on or after September 1, 2005.

17 SECTION 3. This Act takes effect September 1, 2005.