

1-1 By: Zaffirini S.B. No. 326  
1-2 (In the Senate - Filed February 2, 2005; February 7, 2005,  
1-3 read first time and referred to Committee on Criminal Justice;  
1-4 April 11, 2005, reported adversely, with favorable Committee  
1-5 Substitute by the following vote: Yeas 5, Nays 0; April 11, 2005,  
1-6 sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 326 By: Hinojosa  
1-8 A BILL TO BE ENTITLED  
1-9 AN ACT

1-10 relating to using the Internet to obtain identifying information of  
1-11 another person for a fraudulent purpose; providing a penalty.

1-12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-13 SECTION 1. Title 4, Business & Commerce Code, is amended by  
1-14 adding Chapter 48 to read as follows:

1-15 CHAPTER 48. INTERNET FRAUD

1-16 Sec. 48.001. SHORT TITLE. This chapter may be cited as the  
1-17 Anti-Phishing Act.

1-18 Sec. 48.002. DEFINITIONS. In this chapter:

1-19 (1) "Electronic mail" means a message, file, or other  
1-20 information that is transmitted through a local, regional, or  
1-21 global computer network, regardless of whether the message, file,  
1-22 or other information is viewed, stored for retrieval at a later  
1-23 time, printed, or filtered by a computer program that is designed or  
1-24 intended to filter or screen those items.

1-25 (2) "Electronic mail address" means a destination,  
1-26 commonly expressed as a string of characters, to which electronic  
1-27 mail may be sent or delivered.

1-28 (3) "Identifying information" has the meaning  
1-29 assigned by Section 32.51, Penal Code.

1-30 (4) "Internet domain name" refers to a globally  
1-31 unique, hierarchical reference to an Internet host or service,  
1-32 assigned through a centralized Internet naming authority and  
1-33 composed of a series of character strings separated by periods with  
1-34 the right-most string specifying the top of the hierarchy.

1-35 (5) "Web page" means a location that has a single  
1-36 uniform resource locator (URL) with respect to the world wide web or  
1-37 another location that can be accessed on the Internet.

1-38 Sec. 48.003. CREATION OF WEB PAGE OR DOMAIN NAME FOR  
1-39 FRAUDULENT PURPOSES. A person may not, with the intent to engage in  
1-40 conduct involving the fraudulent use or possession of another  
1-41 person's identifying information:

1-42 (1) create a web page or Internet domain name that is  
1-43 represented as a legitimate online business without the express  
1-44 authority of the registered owner of the business; and

1-45 (2) use that web page or a link to the web page, that  
1-46 domain name, or another site on the Internet to induce, request, or  
1-47 solicit another person to provide identifying information for a  
1-48 purpose that the other person believes is legitimate.

1-49 Sec. 48.004. ELECTRONIC MAIL FRAUD. A person may not, with  
1-50 the intent to engage in conduct involving the fraudulent use or  
1-51 possession of identifying information, send or cause to be sent to  
1-52 an electronic mail address held by a resident of this state an  
1-53 electronic mail message that:

1-54 (1) is falsely represented as being sent by a  
1-55 legitimate online business;

1-56 (2) refers or links the recipient of the message to a  
1-57 web page that is represented as being associated with the  
1-58 legitimate online business; and

1-59 (3) directly or indirectly induces, requests, or  
1-60 solicits the recipient of the electronic mail message to provide  
1-61 identifying information for a purpose that the recipient believes  
1-62 is legitimate.

1-63 Sec. 48.005. CIVIL RELIEF. (a) The following persons may

bring a civil action against a person who violates this chapter:  
(1) a person engaged in the business of providing Internet access service to the public who is adversely affected by the violation;

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

(3) the attorney general.

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

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

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

(A) actual damages arising from the violation; or

(B) \$100,000 for each violation of the same

nature; or

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

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

(d) A plaintiff who prevails in an action filed under this section is entitled to recover reasonable attorney's fees and court costs.

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

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

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

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