

BILL ANALYSIS

C.S.H.B. 3173
By: Giddings
Business & Industry
Committee Report (Substituted)

BACKGROUND AND PURPOSE

The continuing, exponential proliferation of email spam has become a serious problem. Lost productivity costs in Texas because of spam have reached \$1.15 billion. The drain on information technology resources such as cable costs and storage space is immense. While many Texas companies purchase and use filtering software, they can barely keep up with the problem, while the expense escalates.

Although many states (including Texas) and the federal government have passed anti-spam legislation, the amount of spam continues to grow. Statistics available for 2007 indicate that 90% of all email sent is now spam. Over the past 3 years, the amount of spam (worldwide) has continued to increase at surprising rates, with the volume doubling just from last year. Part of the increase is due to the way in which the spam is now being distributed.

Spammers have adopted new technologies to circumvent the provisions of the anti-spam statutes. Instead of sending the spam themselves, spammers infect thousands of personal computers (called "zombies") with malevolent software (called "worms" or "trojans"). Spammers then "herd" the zombies into groups called "botnets." Once in the botnet, zombies can be commanded to spew spam to thousands of individuals and companies. Currently, botnets are the source of 70% of all spam.

Not only is spam an expensive nuisance, but the use of spam botnets often leads to worse offenses such as fraud, extortion (denial of service attacks on businesses), identity theft, illegal product sales, prescription drug abuse, stock price manipulation, and "phishing" schemes.

Now that spammers have switched to botnets, there is no adequate remedy in Texas law for businesses, including Internet Service Providers ("ISPs"), and individuals, who desire to pursue email spammers.

C.S.H.B. 3173 addresses the issue by providing civil remedies. The bill gives businesses, individuals, and the Texas Attorney General, a civil cause of action to attack the source of the problem -- the malevolent software, zombies, and botnets infecting Texas computers and the spammers who create and use them. ISPs are particularly well positioned to trace spam to its source, and the bill gives ISPs financial incentives to sue and seek redress against these spammers.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

SECTION 1: Amends Section 48.002, Business & Commerce Code, to define "botnet", "unsolicited commercial electronic mail message", and "zombie".

SECTION 2: Amends Section 48.054, Business & Commerce Code, to include new Section 48.057 for purposes of defining a knowing violation.

SECTION 3: Adds new Section 48.057, Business & Commerce Code, to prohibit persons from causing, creating, using, offering to cause or use, gain control of, or provide access to zombies or

botnets to send unsolicited commercial electronic mail messages. Violation of this section invokes civil remedies available in Subchapter C, Chapter 48, Business & Commerce Code.

SECTION 4. Makes application of this Act prospective.

SECTION 5. Effective date: September 1, 2007.

EFFECTIVE DATE

September 1, 2007.

COMPARISON OF ORIGINAL TO SUBSTITUTE

The substitute differs from the original by adding express definitions for “zombie,” “unsolicited commercial electronic mail message” and “botnet”. The substitute reorganizes the operative language in a new Section 48.057, Business & Commerce Code, to more precisely describe the prohibited conduct.