

By: Giddings

H.B. No. 3173

Substitute the following for H.B. No. 3173:

By: Darby

C.S.H.B. No. 3173

A BILL TO BE ENTITLED

AN ACT

1
2 relating to the transmission of an unsolicited commercial
3 electronic mail message.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

5 SECTION 1. Section 48.002, Business & Commerce Code, as
6 added by Chapter 298, Acts of the 79th Legislature, Regular
7 Session, 2005, is amended by adding Subdivisions (1-a), (10), and
8 (11) to read as follows:

9 (1-a) "Botnet" means a collection of zombies.

10 (10) "Unsolicited commercial electronic mail message"
11 has the meaning assigned by Section 46.001.

12 (11) "Zombie" means a computer that, without the
13 knowledge and consent of the computer's owner or operator, has been
14 compromised to give access or control to a program or person other
15 than the computer's owner or operator.

16 SECTION 2. Section 48.054, Business & Commerce Code, as
17 added by Chapter 298, Acts of the 79th Legislature, Regular
18 Session, 2005, is amended to read as follows:

19 Sec. 48.054. KNOWING VIOLATION. A person knowingly
20 violates Section 48.051, 48.052, [~~or~~] 48.053, or 48.057 if the
21 person:

22 (1) acts with actual knowledge of the facts that
23 constitute the violation; or

24 (2) consciously avoids information that would

1 establish actual knowledge of those facts.

2 SECTION 3. Subchapter B, Chapter 48, Business & Commerce
3 Code, as added by Chapter 298, Acts of the 79th Legislature, Regular
4 Session, 2005, is amended by adding Section 48.057 to read as
5 follows:

6 Sec. 48.057. UNAUTHORIZED CREATION OR USE OF ZOMBIES OR
7 BOTNETS. (a) If a person is not the owner or operator of the
8 computer, the person may not knowingly cause or offer to cause the
9 computer to become a zombie or part of a botnet for purposes of
10 sending an unsolicited commercial electronic mail message.

11 (b) A person may not knowingly create, have created, use, or
12 offer to use a zombie or botnet to send an unsolicited commercial
13 electronic mail message.

14 (c) A person may not for purposes of sending an unsolicited
15 commercial electronic mail message:

16 (1) purchase, rent, or otherwise gain control of a
17 zombie or botnet created by another person; or

18 (2) sell, lease, offer for sale or lease, or otherwise
19 provide to another person access to or use of a zombie or botnet.

20 SECTION 4. The changes in law made by this Act apply only to
21 conduct that occurs on or after the effective date of this Act.
22 Conduct that occurs before the effective date of this Act is
23 governed by the law in effect at the time the conduct occurred, and
24 that law is continued in effect for that purpose.

25 SECTION 5. This Act takes effect September 1, 2007.