

BILL ANALYSIS

Senate Research Center

H.B. 1098
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Criminal Justice
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Engrossed

AUTHOR'S/SPONSOR'S STATEMENT OF INTENT

Phishing is the use of false e-mail and fraudulent websites intended to dupe recipients into providing personal information, including credit card numbers, social security numbers, and user names and passwords. By posing as a well-known financial institution or credible, established business, phishers are able to persuade some recipients to divulge personal information. The advances in technology have made current law insufficient to combat acts of phishing.

As proposed, H.B. 1098 creates an offense and penalty that clearly prohibit acts of phishing.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Title 4, Business & Commerce Code, by adding Chapter 48, as follows:

CHAPTER 48. INTERNET FRAUD

Sec. 48.001. SHORT TITLE. Authorizes this chapter to be cited as the Anti-Phishing Act.

Sec. 48.002. DEFINITIONS. Defines "electronic mail," "electronic mail address," "identifying information," "Internet domain name," and "web page."

Sec. 48.003. CREATION OF WEB PAGE OR DOMAIN NAME FOR FRAUDULENT PURPOSES. Prohibits a person from creating and using certain fraudulent web pages or Internet domain names with the intent to engage in conduct involving the fraudulent use or possession of another person's identifying information.

Sec. 48.004. ELECTRONIC MAIL FRAUD. Prohibits a person, with the intent to engage in conduct involving the fraudulent use or possession of identifying information, from sending or causing to be sent to an electronic mail address held by a resident of this state an electronic mail message that makes certain false representations.

Sec. 48.005. CIVIL RELIEF. (a) Sets forth persons who are authorized to bring a civil action against a person who violates this chapter.

(b) Authorizes a person bringing an action under this section to seek injunctive relief to restrain the violator from continuing the violation, recover financial damages, or both.

(c) Authorizes the court to 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) Entitles a plaintiff who prevails in an action filed under this section to recover reasonable attorney's fees and court costs.

(e) Provides that, for the 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.

Sec. 48.006. CRIMINAL PENALTY. (a) Provides that a person commits an offense upon violation of this chapter.

(b) Provides that an offense under this section is a state jail felony, except as provided by Subsection (c).

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

SECTION 2. Makes application of Section 48.004, Business & Commerce Code, as added by this Act, prospective.

SECTION 3. Effective date: September 1, 2005.