

RESTRICTIONS ON SEXUALLY EXPLICIT

EMAIL

2002 GENERAL SESSION

STATE OF UTAH

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This act enacts provisions imposing requirements on persons who send unsolicited sexually explicit email. The act provides for a cause of action in favor of those who receive an unsolicited sexually explicit email that violates those requirements. The act provides a criminal penalty for a violation of those requirements.

This act affects sections of Utah Code Annotated 1953 as follows:

ENACTS:

13-34-101, Utah Code Annotated 1953

13-34-102, Utah Code Annotated 1953

13-34-103, Utah Code Annotated 1953

13-34-104, Utah Code Annotated 1953

13-34-105, Utah Code Annotated 1953

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **13-34-101** is enacted to read:

CHAPTER 34. UNSOLICITED SEXUALLY EXPLICIT EMAIL ACT

13-34-101. Title.

This chapter is known as the "Unsolicited Sexually Explicit Email Act."

Section 2. Section **13-34-102** is enacted to read:

13-34-102. Definitions.

As used in this chapter:

(1) "Computer network" means two or more computers that are interconnected to exchange electronic messages, files, data, or other information.

(2) "Email" means an electronic message, file, data, or other information that is



28 transmitted:

29 (a) between two or more computers, computer networks, or electronic terminals; or

30 (b) within a computer network.

31 (3) "Email address" means a destination, commonly expressed as a string of characters,

32 to which email may be sent or delivered.

33 (4) "Email service provider" means a person that:

34 (a) is an intermediary in the transmission of email from the sender to the recipient; or

35 (b) provides to end users of email service the ability to send and receive email.

36 (5) "Internet domain name" means a globally unique, hierarchical reference to an Internet

37 host or service, assigned through centralized Internet authorities, comprising a series of character

38 strings separated by periods, with the right-most string specifying the top of the hierarchy.

39 (6) "Sexually explicit email" means an email that contains, promotes, or contains an

40 electronic link to material that is harmful to minors, as defined in Section 76-10-1201.

41 (7) "Unsolicited" means without the recipient's express permission.

42 Section 3. Section **13-34-103** is enacted to read:

43 **13-34-103. Unsolicited sexually explicit email -- Requirements.**

44 (1) Each person who sends or causes to be sent an unsolicited sexually explicit email

45 through the intermediary of an email service provider located in the state or to an email address

46 held by a resident of the state shall:

47 (a) conspicuously state in the email the sender's:

48 (i) legal name;

49 (ii) correct street address; and

50 (iii) valid Internet domain name;

51 (b) include in the email a subject line that contains "ADV:ADULT" as the first nine

52 characters;

53 (c) provide the recipient a convenient, no-cost mechanism to notify the sender not to send

54 any future email to the recipient, including:

55 (i) return email to a valid, functioning return electronic address; and

56 (ii) if the sender has a toll-free telephone number, the sender's toll-free telephone number;

57 and

58 (d) conspicuously provide in the text of the email a notice that:

59 (i) informs the recipient that the recipient may conveniently and at no cost be excluded
60 from future sexually explicit email from the sender; and

61 (ii) if the sender has a toll-free telephone number, includes the sender's valid, toll-free
62 telephone number that the recipient may call to be excluded from future email from the sender.

63 (2) A person who sends or causes to be sent an unsolicited sexually explicit email through
64 the intermediary of an email service provider located in the state or to an email address held by a
65 resident of the state may not:

66 (a) use a third party's Internet domain name in identifying the point of origin or in stating
67 the transmission path of the email without the third party's consent;

68 (b) misrepresent any information in identifying the point of origin or the transmission path
69 of the email; or

70 (c) fail to include in the email the information necessary to identify the point of origin of
71 the email.

72 (3) If the recipient of an unsolicited sexually explicit email notifies the sender that the
73 recipient does not want to receive future sexually explicit email from the sender, the sender may
74 not send that recipient a sexually explicit email either directly or through a subsidiary or affiliate.

75 (4) An email service provider does not violate this section solely by being an intermediary
76 between the sender and recipient in the transmission of an email that violates this section.

77 Section 4. Section **13-34-104** is enacted to read:

78 **13-34-104. Criminal penalty.**

79 (1) A person who violates any requirement of Section 13-34-103 is guilty of a class C
80 misdemeanor.

81 (2) A criminal conviction or a penalty assessed as a result of a criminal conviction under
82 Subsection (1) does not relieve the person convicted or assessed from civil liability in an action
83 under Section 13-34-105.

84 Section 5. Section **13-34-105** is enacted to read:

85 **13-34-105. Civil action for violation -- Election on damages -- Costs and attorney fees.**

86 (1) For any violation of a provision of Section 13-34-103, an action may be brought by:

87 (a) a person who received the unsolicited sexually explicit email with respect to which the
88 violation under Section 13-34-103 occurred; or

89 (b) an email service provider through whose facilities the unsolicited sexually explicit

90 email was transmitted.
91 (2) In each action under Subsection (1):
92 (a) a recipient or email service provider may:
93 (i) recover actual damages; or
94 (ii) elect, in lieu of actual damages, to recover the lesser of:
95 (A) \$10 per unsolicited sexually explicit email received by the recipient or transmitted
96 through the email service provider; or
97 (B) \$25,000 per day that the violation occurs; and
98 (b) each prevailing recipient or email service provider shall be awarded costs and
99 reasonable attorney fees.
100 (3) It is a defense to an action brought under this section that the unsolicited sexually
101 explicit email was transmitted accidentally.

Legislative Review Note
as of 1-30-02 12:44 PM

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel