

H.B. 143

RESTRICTIONS ON SEXUALLY EXPLICIT EMAIL

Senator Carlene Walker proposes the following amendments:

1. Page 1, Line 9: After "**requirements.**" insert "**This act provides a coordination clause.**"

2. Page 4, Line 101: After line 101 insert:

"(4) The violation of Section 13-34-103 by an employee does not subject the employee's employer to liability under that section if the employee's violation of Section 13-34-103 is also a violation of an established policy of the employer that requires compliance with the requirements of Section 13-34-103.

Section 6. Coordination clause.

If this bill and 3rd Substitute H.B. 80, Unsolicited Commercial Email, both pass, it is the intent of the Legislature that the provisions enacted under both bills be combined into Title 13, Chapter 34 to read as follows:

"Section **13-34-101** is enacted to read:

CHAPTER 34. UNSOLICITED COMMERCIAL AND SEXUALLY EXPLICIT EMAIL ACT

13-34-101. Title.

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

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

13-34-102. Definitions.

As used in this chapter:

 - (1) "Commercial" means for the purpose of promoting the sale, lease, or exchange of goods, services, or real property.
 - (2) "Computer network" means two or more computers that are interconnected to exchange electronic messages, files, data, or other information.
 - (3) "Email" means an electronic message, file, data, or other information that is transmitted:
 - (a) between two or more computers, computer networks, or electronic terminals; or

(b) within a computer network.

(4) "Email address" means a destination, commonly expressed as a string of characters, to which email may be sent or delivered.

(5) "Email service provider" means a person that:

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

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

(6) "Internet domain name" means a globally unique, hierarchical reference to an Internet host or service, assigned through centralized Internet authorities, comprising a series of character strings separated by periods, with the right-most string specifying the top of the hierarchy.

(7) (a) "Sexually explicit email" means an email that contains, promotes, or contains an electronic link to material that is harmful to minors, as defined in Section 76-10-1201.

(b) An email is a sexually explicit email if it meets the definition in Subsection (7)(a), even if the email also meets the definition of a commercial email.

(8) (a) "Unsolicited" means without the recipient's express permission, except as provided in Subsection (8)(b).

(b) A commercial email is not "unsolicited" if the sender has a preexisting business or personal relationship with the recipient.

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

13-34-103. Unsolicited commercial or adult email -- Requirements.

(1) Each person who sends or causes to be sent an unsolicited commercial email or an unsolicited sexually explicit email through the intermediary of an email service provider located in the state or to an email address held by a resident of the state shall:

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

(i) legal name;

(ii) correct street address; and

(iii) valid Internet domain name;

(b) include in the email a subject line that contains:

(i) for a commercial email, "ADV:" as the first four characters; or

(ii) for a sexually explicit email, "ADV:ADULT" as the first nine characters;

(c) provide the recipient a convenient, no-cost mechanism to

notify the sender not to send any future email to the recipient, including:

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

(ii) for a sexually explicit email and if the sender has a toll-free telephone number, the sender's toll-free telephone number; and

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

(i) informs the recipient that the recipient may conveniently and at no cost be excluded from future commercial or sexually explicit email, as the case may be, from the sender; and

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

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

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

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

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

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

Section **13-34-104** is enacted to read:

13-34-104. Criminal penalty.

(1) A person who violates any requirement of Section 13-34-103 with respect to an unsolicited sexually explicit email is guilty of a class B misdemeanor.

(2) A criminal conviction or a penalty assessed as a result of a criminal conviction under Subsection (1) does not relieve the

person convicted or assessed from civil liability in an action under Section 13-34-105.

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

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

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

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

(b) an email service provider through whose facilities the unsolicited commercial email or unsolicited sexually explicit email was transmitted.

(2) In each action under Subsection (1):

(a) a recipient or email service provider may:

(i) recover actual damages; or

(ii) elect, in lieu of actual damages, to recover the lesser of:

(A) \$10 per unsolicited commercial email or unsolicited sexually explicit email received by the recipient or transmitted through the email service provider; or

(B) \$25,000 per day that the violation occurs; and

(b) each prevailing recipient or email service provider shall be awarded costs and reasonable attorney fees.

(3) An email service provider does not violate Section 11-13-103 solely by being an intermediary between the sender and recipient in the transmission of an email that violates that section.

(4) The violation of Section 13-34-103 by an employee does not subject the employee's employer to liability under that section if the employee's violation of Section 13-34-103 is also a violation of an established policy of the employer that requires compliance with the requirements of Section 13-34-103.

(5) It is a defense to an action brought under this section that the unsolicited commercial email or unsolicited sexually explicit email was transmitted accidentally."''