

Representative Patrice M. Arent proposes the following substitute bill:

UNSOLICITED COMMERCIAL EMAIL

2002 GENERAL SESSION

STATE OF UTAH

Sponsor: Patrice M. Arent

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5 **This act enacts provisions imposing requirements on persons who send unsolicited**
6 **commercial email. The act provides for a cause of action in favor of those who receive an**
7 **unsolicited commercial email that violates those requirements. § ~~1~~ ~~The act provides a criminal~~**
7a **penalty for a violation of those requirements. ~~1~~ §**

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

9 ENACTS:

10 **63D-2-101**, Utah Code Annotated 1953

11 **63D-2-102**, Utah Code Annotated 1953

12 **63D-2-103**, Utah Code Annotated 1953

13 **63D-2-104**, Utah Code Annotated 1953

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

15 Section 1. Section **63D-2-101** is enacted to read:

16 **CHAPTER 2. UNSOLICITED COMMERCIAL EMAIL ACT**

17 **63D-2-101. Title.**

18 This chapter is known as the "Unsolicited Commercial Email Act."

19 Section 2. Section **63D-2-102** is enacted to read:

20 **63D-2-102. Definitions.**

21 As used in this chapter:

22 (1) "Commercial" means for the purpose of promoting the sale, lease, or exchange of
23 goods, services, or real property.

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



26 (3) "Email" means an electronic message, file, data, or other information that is
27 transmitted:

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

29 (b) within a computer network.

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

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

33 (a) is an intermediary in the transmission of email from the sender to the recipient; § [and] OR §

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

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

38 (7) (a) "Unsolicited" means without the recipient's express permission, except as provided
39 in Subsection (7)(b).

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

42 Section 3. Section **63D-2-103** is enacted to read:

43 **63D-2-103. Unsolicited commercial email -- Requirements.**

44 (1) Each person who sends or causes to be sent an unsolicited commercial email through
45 the intermediary of an email service provider located in the state or to an email address held by a
46 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:" as the first four characters;

52 (c) provide the recipient a convenient, no-cost mechanism to notify the sender not to send
53 any future email to the recipient, including § [:

54 —(i) § return email **h TO A VALID, FUNCTIONING RETURN ELECTRONIC ADDRESS h** ; and

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

56 and] §

57 (d) conspicuously provide in the text of the email a notice that § [:
 58 ——(f) § informs the recipient that the recipient may conveniently and at no cost be excluded
 59 from future commercial emails from the sender § [;and] .

60 ~~[(ii) h IF THE SENDER HAS A TOLL-FREE TELEPHONE NUMBER, h includes the sender's~~
 60a ~~valid, toll-free telephone number that the recipient may call to be~~
 61 ~~excluded from future emails from the sender.] §~~

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

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

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

68a (c) FAIL TO INCLUDE IN THE EMAIL THE INFORMATION NECESSARY TO IDENTIFY THE
 68b POINT OF ORIGIN OF THE EMAIL h .

69 (3) If the recipient of an unsolicited commercial email notifies the sender that the recipient
 70 does not want to receive future commercial emails from the sender, the sender may not send that
 71 recipient a commercial email, either directly or through a subsidiary or affiliate.

71a § (4) AN EMAIL SERVICE PROVIDER DOES NOT VIOLATE THIS SECTION SOLELY BY BEING AN
 71b INTERMEDIARY BETWEEN THE SENDER AND RECIPIENT IN THE TRANSMISSION OF AN EMAIL
 71c THAT VIOLATES THIS SECTION.

72 [Section 4. Section 63D-2-104 is enacted to read:

72a ——h 63D-2-104. Criminal penalty:

72b ——(1) A PERSON WHO VIOLATES ANY REQUIREMENT OF SECTION 63D-2-103 IS GUILTY OF A
 72c CLASS C MISDEMEANOR.

72d ——(2) A CRIMINAL CONVICTION OR A PENALTY ASSESSED AS A RESULT OF A CRIMINAL
 72e CONVICTION UNDER SUBSECTION (1) DOES NOT RELIEVE THE PERSON CONVICTED OR

72f ASSESSED FROM CIVIL LIABILITY IN AN ACTION UNDER SECTION 63D-2-105.] §

72g Section § [-5] 4 § . Section § [63D-2-105] 63D-2-104 § is enacted to read: h

73 § [h+] § 63D-2-104. [+] [63D-2-105. h] § Civil action for violation -- Election on damages -- Costs and
 73a attorney
 74 fees.

75 (1) For any violation of a provision of Section 63D-2-103, an action may be brought by:

76 (a) a person who received the unsolicited commercial email with respect to which the
 77 violation under Section 63D-2-103 occurred; or

78 (b) an email service provider through whose facilities the unsolicited commercial email
 79 was transmitted.

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

- 81 (a) a recipient or email service provider may:
82 (i) recover actual damages; or
83 (ii) elect, in lieu of actual damages, to recover the lesser of:
84 (A) \$10 per unsolicited commercial email received by the recipient or transmitted through
85 the email service provider; or
86 (B) \$25,000 per day that the violation occurs; and
87 (b) each prevailing recipient or email service provider shall be awarded costs and

88 reasonable attorney fees.

89 (3) It is a defense to an action brought under this section that the unsolicited commercial
90 email was transmitted accidentally.

90a **h Section 5. Revisors instructions.**

90b **IT IS THE INTENT OF THE LEGISLATURE THAT, IN PREPARING THE UTAH CODE DATABASE FOR**
90c **PUBLICATION, THE OFFICE OF LEGISLATIVE RESEARCH AND GENERAL COUNSEL SHALL**
90d **CHANGE THE NUMBERING OF THE SECTIONS ENACTED BY THIS BILL FROM TITLE 63D, CHAPTER**
90e **2 TO TITLE 13, CHAPTER 34.** h