

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 PROVIDES A COORDINATION CLAUSE. §

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

79a â [€] B â

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.

101a **§ (4) THE VIOLATION OF SECTION 13-34-103 BY AN EMPLOYEE DOES NOT SUBJECT THE**
101b **EMPLOYEE'S EMPLOYER TO LIABILITY UNDER THAT SECTION IF THE EMPLOYEE'S VIOLATION OF**
101c **SECTION 13-34-103 IS ALSO A VIOLATION OF AN ESTABLISHED POLICY OF THE EMPLOYER THAT**
101d **REQUIRES COMPLIANCE WITH THE REQUIREMENTS OF SECTION 13-34-103.**

101e **Section 6. Coordination clause.**

101f **IF THIS BILL AND 3rd SUBSTITUTE H.B. 80, UNSOLICITED COMMERCIAL EMAIL, BOTH PASS,**
101g **IT IS THE INTENT OF THE LEGISLATURE THAT THE PROVISIONS ENACTED UNDER BOTH BILLS BE**
101h **COMBINED INTO TITLE 13, CHAPTER 34 TO READ AS FOLLOWS:**

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

101j **CHAPTER 34. UNSOLICITED COMMERCIAL AND SEXUALLY EXPLICIT EMAIL ACT**

101k **13-34-101. Title.**

101l **THIS CHAPTER IS KNOWN AS THE "UNSOLICITED COMMERCIAL AND SEXUALLY EXPLICIT**
101m **EMAIL ACT."**

101n **Section 2. Section 13-34-102 is enacted to read:**

101o **13-34-102. Definitions.**

101p **AS USED IN THIS CHAPTER:**

101q **(1) "COMMERCIAL" MEANS FOR THE PURPOSE OF PROMOTING THE SALE, LEASE, OR**
101r **EXCHANGE OF GOODS, SERVICES, OR REAL PROPERTY.**

101s **(2) "COMPUTER NETWORK" MEANS TWO OR MORE COMPUTERS THAT ARE**
101t **INTERCONNECTED TO EXCHANGE ELECTRONIC MESSAGES, FILES, DATA, OR OTHER**
101u **INFORMATION.**

101v **(3) "EMAIL" MEANS AN ELECTRONIC MESSAGE, FILE, DATA, OR OTHER INFORMATION THAT**
101w **IS TRANSMITTED:**

101x **(a) BETWEEN TWO OR MORE COMPUTERS, COMPUTER NETWORKS, OR ELECTRONIC**
101y **TERMINALS; OR**

101z **(b) WITHIN A COMPUTER NETWORK. §**

- 101aa § (4) "EMAIL ADDRESS" MEANS A DESTINATION, COMMONLY EXPRESSED AS A STRING OF
 101ab CHARACTERS, TO WHICH EMAIL MAY BE SENT OR DELIVERED.
- 101ac (5) "EMAIL SERVICE PROVIDER" MEANS A PERSON THAT:
 101ad (a) IS AN INTERMEDIARY IN THE TRANSMISSION OF EMAIL FROM THE SENDER TO THE
 101ae RECIPIENT; OR
 101af (b) PROVIDES TO END USERS OF EMAIL SERVICE THE ABILITY TO SEND AND RECEIVE
 101ag EMAIL.
- 101ah (6) "INTERNET DOMAIN NAME" MEANS A GLOBALLY UNIQUE, HIERARCHICAL REFERENCE
 101ai TO AN INTERNET HOST OR SERVICE, ASSIGNED THROUGH CENTRALIZED INTERNET AUTHORITIES,
 101aj COMPRISING A SERIES OF CHARACTER STRINGS SEPARATED BY PERIODS, WITH THE RIGHT-MOST
 101ak STRING SPECIFYING THE TOP OF THE HIERARCHY.
- 101al (7) (a) "SEXUALLY EXPLICIT EMAIL" MEANS AN EMAIL THAT CONTAINS, PROMOTES, OR
 101am CONTAINS AN ELECTRONIC LINK TO MATERIAL THAT IS HARMFUL TO MINORS, AS DEFINED IN
 101an SECTION 76-10-1201.
- 101ao (b) AN EMAIL IS A SEXUALLY EXPLICIT EMAIL IF IT MEETS THE DEFINITION IN SUBSECTION
 101ap (7)(a), EVEN IF THE EMAIL ALSO MEETS THE DEFINITION OF A COMMERCIAL EMAIL.
- 101aq (8) (a) "UNSOLICITED" MEANS WITHOUT THE RECIPIENT'S EXPRESS PERMISSION, EXCEPT
 101ar AS PROVIDED IN SUBSECTION (8)(b).
- 101as (b) A COMMERCIAL EMAIL IS NOT "UNSOLICITED" IF THE SENDER HAS A PREEXISTING
 101at BUSINESS OR PERSONAL RELATIONSHIP WITH THE RECIPIENT.
- 101au Section 3. Section 13-34-103 is enacted to read:
 101av 13-34-103. Unsolicited commercial or adult email -- Requirements.
- 101aw (1) EACH PERSON WHO SENDS OR CAUSES TO BE SENT AN UNSOLICITED COMMERCIAL
 101ax EMAIL OR AN UNSOLICITED SEXUALLY EXPLICIT EMAIL THROUGH THE INTERMEDIARY OF AN
 101ay EMAIL SERVICE PROVIDER LOCATED IN THE STATE OR TO AN EMAIL ADDRESS HELD BY A
 101az RESIDENT OF THE STATE SHALL:
- 101ba (a) CONSPICUOUSLY STATE IN THE EMAIL THE SENDER'S:
 101bb (i) LEGAL NAME;
 101bc (ii) CORRECT STREET ADDRESS; AND
 101bd (iii) VALID INTERNET DOMAIN NAME;
- 101be (b) INCLUDE IN THE EMAIL A SUBJECT LINE THAT CONTAINS:
 101bf (i) FOR A COMMERCIAL EMAIL, "ADV:" AS THE FIRST FOUR CHARACTERS; OR
 101bg (ii) FOR A SEXUALLY EXPLICIT EMAIL, "ADV:ADULT" AS THE FIRST NINE CHARACTERS;
 101bh (c) PROVIDE THE RECIPIENT A CONVENIENT, NO-COST MECHANISM TO NOTIFY THE
 101bi SENDER NOT TO SEND ANY FUTURE EMAIL TO THE RECIPIENT, INCLUDING:
 101bj (i) RETURN EMAIL TO A VALID, FUNCTIONING RETURN ELECTRONIC ADDRESS; AND
 101bk (ii) FOR A SEXUALLY EXPLICIT EMAIL AND IF THE SENDER HAS A TOLL-FREE TELEPHONE
 101bl NUMBER, THE SENDER'S TOLL-FREE TELEPHONE NUMBER; AND
- 101bm (d) CONSPICUOUSLY PROVIDE IN THE TEXT OF THE EMAIL A NOTICE THAT:
 101bn (i) INFORMS THE RECIPIENT THAT THE RECIPIENT MAY CONVENIENTLY AND AT NO COST §

101bo § BE EXCLUDED FROM FUTURE COMMERCIAL OR SEXUALLY EXPLICIT EMAIL, AS THE CASE MAY
101bp BE, FROM THE SENDER; AND

101bq (ii) FOR A SEXUALLY EXPLICIT EMAIL AND IF THE SENDER HAS A TOLL-FREE TELEPHONE
101br NUMBER, INCLUDES THE SENDER'S VALID, TOLL-FREE TELEPHONE NUMBER THAT THE RECIPIENT
101bs MAY CALL TO BE EXCLUDED FROM FUTURE EMAIL FROM THE SENDER.

101bt (2) A PERSON WHO SENDS OR CAUSES TO BE SENT AN UNSOLICITED COMMERCIAL EMAIL
101bu OR AN UNSOLICITED SEXUALLY EXPLICIT EMAIL THROUGH THE INTERMEDIARY OF AN EMAIL
101bv SERVICE PROVIDER LOCATED IN THE STATE OR TO AN EMAIL ADDRESS HELD BY A RESIDENT OF
101bw THE STATE MAY NOT:

101bx (a) USE A THIRD PARTY'S INTERNET DOMAIN NAME IN IDENTIFYING THE POINT OF ORIGIN
101by OR IN STATING THE TRANSMISSION PATH OF THE EMAIL WITHOUT THE THIRD PARTY'S CONSENT;

101bz (b) MISREPRESENT ANY INFORMATION IN IDENTIFYING THE POINT OF ORIGIN OR THE
101ca TRANSMISSION PATH OF THE EMAIL; OR

101cb (c) FAIL TO INCLUDE IN THE EMAIL THE INFORMATION NECESSARY TO IDENTIFY THE POINT
101cc OF ORIGIN OF THE EMAIL.

101cd (3) IF THE RECIPIENT OF AN UNSOLICITED COMMERCIAL EMAIL OR AN UNSOLICITED
101ce SEXUALLY EXPLICIT EMAIL NOTIFIES THE SENDER THAT THE RECIPIENT DOES NOT WANT TO
101cf RECEIVE FUTURE COMMERCIAL EMAIL OR FUTURE SEXUALLY EXPLICIT EMAIL, RESPECTIVELY,
101cg FROM THE SENDER, THE SENDER MAY NOT SEND THAT RECIPIENT A COMMERCIAL EMAIL OR A
101ch SEXUALLY EXPLICIT EMAIL, AS THE CASE MAY BE, EITHER DIRECTLY OR THROUGH A SUBSIDIARY
101ci OR AFFILIATE.

101cj Section 1 3-34-104 is enacted to read:

101ck 13-34-104. Criminal penalty.

101cl (1) A PERSON WHO VIOLATES ANY REQUIREMENT OF SECTION 13-34-103 WITH RESPECT TO
101cm AN UNSOLICITED SEXUALLY EXPLICIT EMAIL IS GUILTY OF A CLASS B MISDEMEANOR.

101cn (2) A CRIMINAL CONVICTION OR A PENALTY ASSESSED AS A RESULT OF A CRIMINAL
101co CONVICTION UNDER SUBSECTION (1) DOES NOT RELIEVE THE PERSON CONVICTED OR ASSESSED
101cp FROM CIVIL LIABILITY IN AN ACTION UNDER SECTION 13-34-105.

101cq Section 5. Section 13-34-105 is enacted to read:

101cr 13-34-105. Civil action for violation -- Election on damages -- Costs and attorney fees --
101cs Defense.

101ct (1) FOR ANY VIOLATION OF A PROVISION OF SECTION 13-34-103, AN ACTION MAY BE
101cu BROUGHT BY:

101cv (a) A PERSON WHO RECEIVED THE UNSOLICITED COMMERCIAL EMAIL OR UNSOLICITED
101cw SEXUALLY EXPLICIT EMAIL WITH RESPECT TO WHICH THE VIOLATION UNDER SECTION 13-34-103
101cx OCCURRED; OR

101cy (b) AN EMAIL SERVICE PROVIDER THROUGH WHOSE FACILITIES THE UNSOLICITED
101cz COMMERCIAL EMAIL OR UNSOLICITED SEXUALLY EXPLICIT EMAIL WAS TRANSMITTED.

101da (2) IN EACH ACTION UNDER SUBSECTION (1):

101db (a) A RECIPIENT OR EMAIL SERVICE PROVIDER MAY:

101dc (i) RECOVER ACTUAL DAMAGES; OR §

101dd § (ii) ELECT, IN LIEU OF ACTUAL DAMAGES, TO RECOVER THE LESSER OF:
 101de (A) \$10 PER UNSOLICITED COMMERCIAL EMAIL OR UNSOLICITED SEXUALLY EXPLICIT
 101df EMAIL RECEIVED BY THE RECIPIENT OR TRANSMITTED THROUGH THE EMAIL SERVICE PROVIDER;
 101dg OR
 101dh (B) \$25,000 PER DAY THAT THE VIOLATION OCCURS; AND
 101di (b) EACH PREVAILING RECIPIENT OR EMAIL SERVICE PROVIDER SHALL BE AWARDED
 101dj COSTS AND REASONABLE ATTORNEY FEES.
 101dk (3) AN EMAIL SERVICE PROVIDER DOES NOT VIOLATE SECTION 11-13-103 SOLELY BY BEING
 101dl AN INTERMEDIARY BETWEEN THE SENDER AND RECIPIENT IN THE TRANSMISSION OF AN EMAIL
 101dm THAT VIOLATES THAT SECTION.
 101dn (4) THE VIOLATION OF SECTION 13-34-103 BY AN EMPLOYEE DOES NOT SUBJECT THE
 101do EMPLOYEE'S EMPLOYER TO LIABILITY UNDER THAT SECTION IF THE EMPLOYEE'S VIOLATION OF
 101dp SECTION 13-34-103 IS ALSO A VIOLATION OF AN ESTABLISHED POLICY OF THE EMPLOYER THAT
 101dq REQUIRES COMPLIANCE WITH THE REQUIREMENTS OF SECTION 13-34-103.
 101dr (5) IT IS A DEFENSE TO AN ACTION BROUGHT UNDER THIS SECTION THAT THE
 101ds UNSOLICITED COMMERCIAL EMAIL OR UNSOLICITED SEXUALLY EXPLICIT EMAIL WAS
 101dt 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