

Representative Patrice M. Arent proposes the following substitute bill:

1                   **UNSOLICITED COMMERCIAL EMAIL**

2                   2002 GENERAL SESSION

3                   STATE OF UTAH

4                   **Sponsor: Patrice M. Arent**

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.**

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  
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, hierachial 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; 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            (i) 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) includes the sender's 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; or

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

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.

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

73            **63D-2-104. Civil action for violation -- Election on damages -- Costs and 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.