

Senator David H. Steele proposes the following substitute bill:

UNSOLICITED COMMERCIAL EMAIL

2002 GENERAL SESSION

STATE OF UTAH

Sponsor: Patrice M. Arent

This act enacts provisions imposing requirements on persons who send unsolicited commercial email. The act provides for a cause of action in favor of those who receive an unsolicited commercial email that violates those requirements and provides a defense to an action.

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

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

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

CHAPTER 34. UNSOLICITED COMMERCIAL EMAIL ACT

13-34-101. Title.

This chapter is known as the "Unsolicited Commercial 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



26 electronic messages, files, data, or other information.

27 (3) "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 (4) "Email address" means a destination, commonly expressed as a string of characters,
32 to which email may be sent or delivered.

33 (5) "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 (6) "Internet domain name" means a globally unique, hierarchal 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 (7) (a) "Unsolicited" means without the recipient's express permission, except as provided
40 in Subsection (7)(b).

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

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

44 **13-34-103. Unsolicited commercial email -- Requirements.**

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

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

49 (i) legal name;

50 (ii) correct street address; and

51 (iii) valid Internet domain name;

52 (b) include in the email a subject line that contains "ADV:" as the first four 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 return email to a valid, functioning return electronic
55 address; and

56 (d) conspicuously provide in the text of the email a notice that informs the recipient that

57 the recipient may conveniently and at no cost be excluded from future commercial email from the
58 sender.

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

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

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

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

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

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

72 **13-34-104. Civil action for violation -- Election on damages -- Costs and attorney fees**
73 **-- Defense.**

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

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

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

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

80 (a) a recipient or email service provider may:

81 (i) recover actual damages; or

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

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

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

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

88 (3) An email service provider does not violate Section 13-34-103 solely by being an
89 intermediary between the sender and recipient in the transmission of an email that violates that
90 section.

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

95 (5) It is a defense to an action brought under this section that the unsolicited commercial
96 email was transmitted accidentally.