

**Representative Stephen H. Urquhart** proposes the following substitute bill:

1                                   **AMENDMENTS TO UNSOLICITED**  
2                                   **COMMERCIAL AND SEXUALLY EXPLICIT**  
3                                   **EMAIL ACT**

4                                   2003 GENERAL SESSION

5                                   STATE OF UTAH

6                                   **Sponsor: Patrice M. Arent**

7   **This act modifies the Unsolicited Commercial and Sexually Explicit Email Act to apply**  
8   **the act only to unsolicited sexually explicit email and eliminate the restrictions on**  
9   **unsolicited commercial email. The act provides additional definitions, modifies certain**  
10 **information that must be provided by a sender of an unsolicited sexually explicit email,**  
11 **and eliminates the requirement for the sender of a sexually explicit email to provide a**  
12 **toll-free telephone number. The act modifies the requirements for a sender that receives**  
13 **notice from a recipient to discontinue sending email. The act changes the damages for a**  
14 **violation, modifies provisions related to costs and attorney fees, modifies certain defenses**  
15 **to an action under the chapter, and makes technical changes.**

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

17 AMENDS:

18       **13-36-101**, as enacted by Chapter 229, Laws of Utah 2002

19       **13-36-102**, as enacted by Chapter 229, Laws of Utah 2002

20       **13-36-103**, as enacted by Chapter 229, Laws of Utah 2002

21       **13-36-105**, as enacted by Chapter 229, Laws of Utah 2002

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

23       Section 1. Section **13-36-101** is amended to read:

24                   **CHAPTER 36. UNSOLICITED SEXUALLY EXPLICIT EMAIL ACT**

25       **13-36-101. Title.**



26 This chapter is known as the "Unsolicited [~~Commercial and~~] Sexually Explicit Email  
27 Act."

28 Section 2. Section **13-36-102** is amended to read:

29 **13-36-102. Definitions.**

30 As used in this chapter:

31 [~~(1)~~] ~~"Commercial" means for the purpose of promoting the sale, lease, or exchange of~~  
32 ~~goods, services, or real property.]~~

33 [~~(2)~~] (1) "Computer network" means two or more computers that are interconnected to  
34 exchange electronic messages, files, data, or other information.

35 [~~(3)~~] (2) (a) "Email" means an electronic message, file, data, or other information that  
36 is transmitted to an email address:

37 [~~(a)~~] (i) between two or more computers, computer networks, or electronic terminals;

38 or

39 [~~(b)~~] (ii) within a computer network.

40 (b) "Email" does not include an Internet based electronic advertisement that is not  
41 transmitted to a specific email address.

42 [~~(4)~~] (3) (a) "Email address" means a destination, commonly expressed as a string of  
43 characters, to which email may be sent or delivered.

44 (b) "Email address" does not include an Internet Protocol address.

45 [~~(5)~~] (4) "Email service provider" means a person that:

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

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

48 [~~(6)~~] (5) "Internet domain name" means a globally unique, hierarchical reference to an  
49 Internet host or service, assigned through centralized Internet authorities, comprising a series of  
50 character strings separated by periods, with the right-most string specifying the top of the  
51 hierarchy.

52 (6) (a) "Preexisting business relationship" means a relationship formed by voluntary  
53 two-way communication, with or without an exchange of consideration, if:

54 (i) the recipient has indicated a willingness to receive email from the sender;

55 (ii) the recipient has requested information, goods, or services from the sender; or

56 (iii) the recipient has entered into a financial transaction with the sender.

57 (b) "Preexisting business relationship" does not include a relationship in which:

58 (i) the recipient has provided to the sender the notice described in Subsection

59 13-36-103(3); and

60 (ii) a reasonable period of time has expired since the recipient has provided to the

61 sender the notice described in Subsection 13-36-103(3).

62 (7) "Sender" means a person that:

63 (a) sends an email:

64 (i) directly; or

65 (ii) through an intermediary;

66 (b) causes an email to be sent:

67 (i) directly; or

68 (ii) through an intermediary;

69 (c) is a subsidiary of a person described in Subsections (7)(a) or (b);

70 (d) owns or is owned by a person described in Subsection (7)(a) or (b); or

71 (e) has a relationship with a person described in Subsection (7)(a) or (b) under which

72 one person has the power to direct the management or policies of the other person.

73 ~~[(7)(a)]~~ (8) "Sexually explicit email" means an email that contains, promotes, or  
74 contains an electronic link to material that is harmful to minors, as defined in Section  
75 76-10-1201.

76 ~~[(b) An email is a "sexually explicit email" if it meets the definition in Subsection~~  
77 ~~(7)(a), even if the email also meets the definition of a commercial email.]~~

78 (9) "Transmitted accidentally" includes, but is not limited to, a situation where:

79 (a) the sender possesses a good faith belief that the recipient had given permission to  
80 receive an email; or

81 (b) the email was sent within a reasonable period of time after the recipient provided to  
82 the sender the notice described in Subsection 13-36-103(3).

83 ~~[(8)]~~ (10) (a) "Unsolicited" means without the recipient's express permission, except as  
84 provided in Subsection [(8)] (10)(b).

85 (b) A commercial email is not "unsolicited" if the sender has:

86 (i) a preexisting business [or] relationship with the recipient; or

87 (ii) a preexisting personal relationship with the recipient.

88 Section 3. Section **13-36-103** is amended to read:

89 **13-36-103. Unsolicited sexually explicit email -- Requirements.**

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

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

94 (i) legal name;

95 (ii) correct street address; and

96 (iii) valid Internet domain name, if the sender has a valid Internet domain name;

97 (b) include in the email a subject line that contains[~~:(i) for a commercial email,~~  
98 ~~"ADV:" as the first four characters; or (ii) for a sexually explicit email,]~~ "ADV:ADULT" as  
99 the first nine characters;

100 (c) provide the recipient a convenient, no-cost mechanism to notify the sender not to  
101 send any future email to the recipient, including[~~:(i)]~~ return email to a valid, functioning return  
102 [~~electronic~~] email address; and

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

105 (d) conspicuously provide in the text of the email a notice that[~~:(i)]~~ informs the  
106 recipient that the recipient may conveniently and at no cost be excluded from future  
107 [~~commercial or~~] sexually explicit email[~~, as the case may be, from the sender; and (ii) for a~~  
108 ~~sexually explicit email and if the sender has a toll-free telephone number, includes the sender's~~  
109 ~~valid, toll-free telephone number that the recipient may call to be excluded from future email]~~  
110 from the sender.

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

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

116 (b) misrepresent any information in identifying the [~~point of origin~~] sender or the  
117 transmission path of the email; or

118 (c) fail to include in the email the information necessary to identify the [~~point of origin~~]

119 sender of the email.

120 (3) If the recipient of an unsolicited [~~commercial email or an unsolicited~~] sexually  
121 explicit email notifies the sender that the recipient does not want to receive future [~~commercial~~  
122 ~~email or future~~] sexually explicit email[~~, respectively,~~] from the sender[~~;~~]:

123 (a) the sender may not, after a reasonable period of time:

124 (i) send that recipient a [~~commercial email or a~~] sexually explicit email[~~, as the case~~  
125 ~~may be, either directly or through a subsidiary or affiliate.~~]; or

126 (ii) sell, lease, exchange, license, or engage in any other transaction involving an email  
127 address list bearing the email address of the recipient; and

128 (b) the sender shall, within a reasonable period of time, delete or suppress the email  
129 address of that recipient from all email address lists owned or controlled by the sender.

130 Section 4. Section **13-36-105** is amended to read:

131 **13-36-105. Civil action for violation -- Election on damages -- Costs and attorney**  
132 **fees -- Defense.**

133 (1) For any violation of a provision of Section 13-36-103, an action may be brought by:

134 (a) a person who received the unsolicited [~~commercial email or unsolicited~~] sexually  
135 explicit email with respect to which the violation under Section 13-36-103 occurred; or

136 (b) an email service provider through whose facilities the unsolicited [~~commercial~~  
137 ~~email or unsolicited~~] sexually explicit email was transmitted.

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

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

140 (i) recover actual damages; or

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

142 (A) [~~\$10 per unsolicited commercial email or~~] \$75 per unsolicited sexually explicit  
143 email received by the recipient or transmitted through the email service provider; or

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

145 (b) each prevailing [~~recipient or email service provider~~] party shall be awarded costs  
146 [~~and reasonable attorney fees~~].

147 (3) An email service provider does not violate Section 13-36-103 solely by being an  
148 intermediary between the sender and recipient in the transmission of an email that violates that  
149 section.

150 (4) The violation of Section 13-36-103 by an employee does not subject the employee's  
151 employer to liability under that section if the employee's violation of Section 13-36-103 is also  
152 a violation of an established policy of the employer that requires compliance with the  
153 requirements of Section 13-36-103.

154 (5) It is a defense to an action brought against an individual under this section that the  
155 [~~unsolicited commercial email or~~] unsolicited sexually explicit email was transmitted  
156 accidentally.

157 (6) It is a defense to an action brought against an entity under this section that a sender  
158 can demonstrate by a preponderance of the evidence that:

159 (a) the sender at the time of the violation of this chapter had:

160 (i) maintained a list of recipients who have notified the sender not to send any  
161 subsequent sexually explicit email;

162 (ii) established and implemented, with due care, reasonable practices and procedures to  
163 effectively prevent sexually explicit email in violation of this chapter;

164 (iii) trained the personnel of the sender in the requirements of this chapter; and

165 (iv) maintained records demonstrating compliance with this chapter; and

166 (b) the unsolicited sexually explicit email was transmitted accidentally.