1	COMMERCIAL EMAIL ACT
2	2023 GENERAL SESSION
3	STATE OF UTAH
4	Chief Sponsor: Kirk A. Cullimore
5	House Sponsor: Brady Brammer
6 7	LONG TITLE
8	General Description:
9	This bill enacts the Utah Commercial Email Act.
10	Highlighted Provisions:
11	This bill:
12	 enacts the Utah Commercial Email Act (act) that:
13	• prohibits an advertiser or a person initiating an email from sending unauthorized
14	or misleading commercial emails from this state or to an email address within
15	this state;
16	• creates a cause of action for the electronic mail service provider, the recipient of
17	the unsolicited commercial email, and any person whose brand, trademark,
18	email address, or domain name is used without permission to recover damages
19	related to unauthorized or misleading commercial emails;
20	• provides for enforcement of the act by the Division of Consumer Protection; and
21	• permits the prevailing party to recover attorney fees and costs in an action
22	related to unauthorized or misleading commercial emails;
23	 defines terms; and
24	 makes technical and conforming changes.
25	Money Appropriated in this Bill:
26	None
27	Other Special Clauses:
28	This bill provides a special effective date.

29	Utah Code Sections Affected:
30	AMENDS:
31	13-2-1 (Superseded 12/31/23), as last amended by Laws of Utah 2022, Chapter 201
32	13-2-1 (Effective 12/31/23), as last amended by Laws of Utah 2022, Chapters 201, 462
33	ENACTS:
34	13-63-101, Utah Code Annotated 1953
35	13-63-201, Utah Code Annotated 1953
36	13-63-202, Utah Code Annotated 1953
37	13-63-203, Utah Code Annotated 1953
38	
39	Be it enacted by the Legislature of the state of Utah:
40	Section 1. Section 13-2-1 (Superseded 12/31/23) is amended to read:
41	13-2-1 (Superseded 12/31/23). Consumer protection division established
42	Functions.
43	(1) There is established within the Department of Commerce the Division of Consumer
44	Protection.
45	(2) The division shall administer and enforce the following:
46	(a) Chapter 5, Unfair Practices Act;
47	(b) Chapter 10a, Music Licensing Practices Act;
48	(c) Chapter 11, Utah Consumer Sales Practices Act;
49	(d) Chapter 15, Business Opportunity Disclosure Act;
50	(e) Chapter 20, New Motor Vehicle Warranties Act;
51	(f) Chapter 21, Credit Services Organizations Act;
52	(g) Chapter 22, Charitable Solicitations Act;
53	(h) Chapter 23, Health Spa Services Protection Act;
54	(i) Chapter 25a, Telephone and Facsimile Solicitation Act;
55	(j) Chapter 26, Telephone Fraud Prevention Act;

56	(k) Chapter 28, Prize Notices Regulation Act;
57	(1) Chapter 32a, Pawnshop, Secondhand Merchandise, and Catalytic Converter
58	Transaction Information Act;
59	(m) Chapter 34, Utah Postsecondary Proprietary School Act;
60	(n) Chapter 34a, Utah Postsecondary School State Authorization Act;
61	(o) Chapter 41, Price Controls During Emergencies Act;
62	(p) Chapter 42, Uniform Debt-Management Services Act;
63	(q) Chapter 49, Immigration Consultants Registration Act;
64	(r) Chapter 51, Transportation Network Company Registration Act;
65	(s) Chapter 52, Residential Solar Energy Disclosure Act;
66	(t) Chapter 53, Residential, Vocational and Life Skills Program Act;
67	(u) Chapter 54, Ticket Website Sales Act;
68	(v) Chapter 56, Ticket Transferability Act; [and]
69	(w) Chapter 57, Maintenance Funding Practices Act[-];
70	(x) Chapter 63, Utah Commercial Email Act.
71	Section 2. Section 13-2-1 (Effective 12/31/23) is amended to read:
72	13-2-1 (Effective 12/31/23). Consumer protection division established
73	Functions.
74	(1) There is established within the Department of Commerce the Division of Consumer
75	Protection.
76	(2) The division shall administer and enforce the following:
77	(a) Chapter 5, Unfair Practices Act;
78	(b) Chapter 10a, Music Licensing Practices Act;
79	(c) Chapter 11, Utah Consumer Sales Practices Act;
80	(d) Chapter 15, Business Opportunity Disclosure Act;
81	(e) Chapter 20, New Motor Vehicle Warranties Act;
82	(f) Chapter 21 Credit Services Organizations Act.

82 (f) Chapter 21, Credit Services Organizations Act;

S.B. 225

83	(g) Chapter 22, Charitable Solicitations Act;
84	(h) Chapter 23, Health Spa Services Protection Act;
85	(i) Chapter 25a, Telephone and Facsimile Solicitation Act;
86	(j) Chapter 26, Telephone Fraud Prevention Act;
87	(k) Chapter 28, Prize Notices Regulation Act;
88	(1) Chapter 32a, Pawnshop, Secondhand Merchandise, and Catalytic Converter
89	Transaction Information Act;
90	(m) Chapter 34, Utah Postsecondary Proprietary School Act;
91	(n) Chapter 34a, Utah Postsecondary School State Authorization Act;
92	(o) Chapter 41, Price Controls During Emergencies Act;
93	(p) Chapter 42, Uniform Debt-Management Services Act;
94	(q) Chapter 49, Immigration Consultants Registration Act;
95	(r) Chapter 51, Transportation Network Company Registration Act;
96	(s) Chapter 52, Residential Solar Energy Disclosure Act;
97	(t) Chapter 53, Residential, Vocational and Life Skills Program Act;
98	(u) Chapter 54, Ticket Website Sales Act;
99	(v) Chapter 56, Ticket Transferability Act;
100	(w) Chapter 57, Maintenance Funding Practices Act; [and]
101	(x) Chapter 61, Utah Consumer Privacy Act[:]; and
102	(y) Chapter 63, Utah Commercial Email Act.
103	Section 3. Section 13-63-101 is enacted to read:
104	CHAPTER 63. UTAH COMMERCIAL EMAIL ACT
105	Part 1. General Provisions
106	<u>13-63-101.</u> Definitions.
107	As used in this chapter:
108	(1) "Advertiser" means a person who advertises the person's product, service, or
109	website through the use of commercial email.

110	(2) "Commercial email" means an email used primarily to:
111	(a) advertise or promote a commercial website, product, or service; or
112	(b) solicit money, property, or personal information.
113	(3) "Division" means the Division of Consumer Protection.
114	(4) "Domain name" means any alphanumeric designation that is registered with or
115	assigned by any domain name registrar, domain name registry, or other domain name
116	registration authority as part of an electronic address on the Internet.
117	(5) "Electronic mail service provider" means a company or a service that provides
118	routing, relaying, handling, storage, or support for email addresses and email inboxes.
119	(6) "Header information" means information attached to an email, including:
120	(a) the originating domain name;
121	(b) the originating email address;
122	(c) the destination;
123	(d) the routing information; and
124	(e) any other information that appears in the header line identifying, or purporting to
125	identify, a person initiating the message.
126	(7) "Initiate" means an act of:
127	(a) originating, transmitting, or sending commercial email; or
128	(b) promising, paying, or providing other consideration for another person to originate,
129	transmit, or send a commercial email.
130	(8) (a) "Initiator" means a person who:
131	(i) originates, transmits, or sends commercial email; or
132	(ii) promises, pays, or provides other consideration for another person to originate,
133	transmit, or send a commercial email.
134	(b) "Initiator" does not include a person whose activities are a routine conveyance.
135	(9) "Preexisting or current business relationship" means a situation where the recipient
136	<u>has:</u>

S.B. 225

137	(a) made an inquiry and provided an email address; or
138	(b) made an application, a purchase, or a transaction, with or without consideration,
139	related to a product or a service offered by the advertiser.
140	(10) "Recipient" means an addressee of an unsolicited email.
141	(11) "Routine conveyance" means an Internet service provider's or email provider's
142	automatic electronic mail message processes, including routing, relaying, handling, or storing
143	through an automatic technical process, for which a person other than the Internet service
144	provider or email provider has identified the electronic mail message recipients and provided
145	the recipients' addresses.
146	(12) "Unsolicited commercial email" means a commercial email sent by an advertiser
147	to a recipient that:
148	(a) has not provided direct consent to the advertiser to receive the commercial email;
149	and
150	(b) does not have a preexisting or current relationship with the advertiser.
151	(13) "Utah email address" means an email address that is:
152	(a) provided by an electronic mail service provider that sends bills for providing and
153	maintaining that email address to a mailing address in this state;
154	(b) ordinarily accessed from a computer located in this state; or
155	(c) provided to an individual who is currently a resident of this state.
156	Section 4. Section 13-63-201 is enacted to read:
157	Part 2. Restrictions on Commercial Email
158	<u>13-63-201.</u> Prohibited uses of email.
159	An advertiser or an initiator may not knowingly initiate or advertise in a commercial
160	email sent from this state or sent to a Utah email address if:
161	(1) the commercial email contains or is accompanied by a third party's domain name
162	without the permission of the third party;
163	(2) the commercial email contains or is accompanied by false, misrepresented, or

164	forged header information, even if the commercial email contains truthful identifying
165	information for the advertiser in the body of the email; or
166	(3) the commercial email has a subject line that is likely to mislead a recipient, acting
167	reasonably under the circumstances, about a material fact regarding the identity of the
168	advertiser, the contents, or the subject matter of the commercial email.
169	Section 5. Section 13-63-202 is enacted to read:
170	<u>13-63-202.</u> Cause of action.
171	(1) (a) The following persons may bring a claim against an advertiser or initiator who
172	violates Section 13-63-201:
173	(i) an electronic mail service provider;
174	(ii) a recipient of an unsolicited commercial email; or
175	(iii) a person whose brand, trademark, email address, or domain name an advertiser or
176	initiator uses, without authorization, in the header information.
177	(b) There is a rebuttable presumption that a commercial email that violates Section
178	13-63-201 is an unsolicited commercial email.
179	(c) The burden of proving that a commercial email is not an unsolicited commercial
180	email is on the defendant.
181	(2) (a) A person described in Subsection (1)(a)(i) or (ii) may recover:
182	(i) actual damages; and
183	(ii) except as provided in Subsection (2)(c), liquidated damages of \$1,000 for each
184	unsolicited commercial email transmitted in violation of Section 13-63-201.
185	(b) If an addressee of an unsolicited commercial email has more than one email address
186	to which an advertiser or an initiator sends an unsolicited commercial email, the addressee is
187	considered a separate recipient for each email address to which the advertiser or the initiator
188	sends the unsolicited commercial email.
189	(c) If a court finds that an advertiser or an initiator used due diligence to establish and
190	implement practices and procedures to effectively prevent unsolicited commercial emails in

S.B. 225

191	violation of this chapter, the court shall reduce the liquidated damages to \$100 for each
192	unsolicited commercial email transmitted in violation of Section 13-63-201.
193	(3) A person described in Subsection (1)(a)(iii) may recover:
194	(a) actual damages; and
195	(b) liquidated damages in an amount equal to the lesser of:
196	(i) \$1,000 for each commercial email transmitted in violation of this chapter that uses,
197	without authorization, a person's brand, trademark, email address, or domain name in the
198	header information; and
199	<u>(ii)</u> \$2,000,000.
200	(4) The prevailing party in an action brought under this section may recover reasonable
201	attorney fees and costs.
202	(5) (a) Defendants in an action under this section are jointly and severally liable.
203	(b) There is no cause of action under this section against an electronic mail service
204	provider who is involved only in the routine conveyance of commercial email over the email
205	service provider's computer network.
206	Section 6. Section 13-63-203 is enacted to read:
207	<u>13-63-203.</u> Enforcement.
208	(1) The division shall administer and enforce the provisions of this chapter in
209	accordance with Chapter 2, Division of Consumer Protection.
210	(2) The attorney general, upon request, shall give legal advice to, and act as counsel
211	for, the division in the exercise of the division's responsibilities under this chapter.
212	(3) (a) In addition to the division's enforcement powers under Chapter 2, Division of
213	Consumer Protection:
214	(i) the division director may impose an administrative fine of up to \$2,500 for each
215	violation of this chapter; and
216	(ii) the division may bring an action in a court of competent jurisdiction to enforce a
217	provision of this chapter.

218	(b) In a court action by the division to enforce a provision of this chapter, the court
219	<u>may:</u>
220	(i) declare that an act or practice violates a provision of this chapter;
221	(ii) issue an injunction for a violation of this chapter;
222	(iii) order disgorgement of any money received in violation of this chapter;
223	(iv) order payment of disgorged money to an injured purchaser or consumer;
224	(v) impose a fine of up to \$2,500 for each violation of this chapter; or
225	(vi) award any other relief that the court deems reasonable and necessary.
226	(4) If a court of competent jurisdiction grants judgment or injunctive relief to the
227	division, the court shall award the division:
228	(a) reasonable attorney fees;
229	(b) court costs; and
230	(c) investigative fees.
231	(5) (a) A person who violates an administrative or court order issued for a violation of
232	this chapter is subject to a civil penalty of no more than \$5,000 for each violation.
233	(b) A civil penalty authorized under this section may be imposed in any civil action
234	brought by the attorney general on behalf of the division.
235	(6) All money received for the payment of a fine or civil penalty imposed under this
236	section shall be deposited into the Consumer Protection Education and Training Fund created
237	<u>in Section 13-2-8.</u>
238	Section 7. Effective date.
239	This bill takes effect on May 3, 2023, with the exception of Section 13-2-1 (Effective
240	12/31/23), which takes effect on December 31, 2023.