

SB0225S01 compared with SB0225

~~text~~ shows text that was in SB0225 but was deleted in SB0225S01.

text shows text that was not in SB0225 but was inserted into SB0225S01.

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Senator Kirk A. Cullimore proposes the following substitute bill:

COMMERCIAL EMAIL ACT

2023 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Kirk A. Cullimore

House Sponsor: _____

LONG TITLE

General Description:

This bill enacts the Utah Commercial Email Act.

Highlighted Provisions:

This bill:

- ▶ enacts the Utah Commercial Email Act that (act):
 - prohibits an advertiser or a person initiating an email from sending unauthorized or misleading commercial emails from this state or to an email address within this state;
 - creates a cause of action for the ~~Office of the Attorney General, the~~ electronic mail service provider, the recipient of the unsolicited commercial email, and any person whose brand, trademark, email address, or domain name is used without permission to recover damages related to unauthorized or misleading

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commercial emails;

- provides for enforcement of the act by the Division of Consumer Protection; and
 - permits the prevailing party to recover attorney fees and costs in an action related to unauthorized or misleading commercial emails;~~{and}~~
- ▶ defines terms~~{.}~~; and
 - ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

~~{None}~~ This bill provides a special effective date.

Utah Code Sections Affected:

AMENDS:

13-2-1 (Superseded 12/31/23), as last amended by Laws of Utah 2022, Chapter 201

13-2-1 (Effective 12/31/23), as last amended by Laws of Utah 2022, Chapters 201, 462

ENACTS:

13-63-101, Utah Code Annotated 1953

13-63-201, Utah Code Annotated 1953

13-63-202, Utah Code Annotated 1953

13-63-203, Utah Code Annotated 1953

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

Section 1. Section 13-2-1 (Superseded 12/31/23) is amended to read:

13-2-1 (Superseded 12/31/23). Consumer protection division established --

Functions.

(1) There is established within the Department of Commerce the Division of Consumer Protection.

(2) The division shall administer and enforce the following:

(a) Chapter 5, Unfair Practices Act;

(b) Chapter 10a, Music Licensing Practices Act;

(c) Chapter 11, Utah Consumer Sales Practices Act;

(d) Chapter 15, Business Opportunity Disclosure Act;

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- (e) Chapter 20, New Motor Vehicle Warranties Act;
- (f) Chapter 21, Credit Services Organizations Act;
- (g) Chapter 22, Charitable Solicitations Act;
- (h) Chapter 23, Health Spa Services Protection Act;
- (i) Chapter 25a, Telephone and Facsimile Solicitation Act;
- (j) Chapter 26, Telephone Fraud Prevention Act;
- (k) Chapter 28, Prize Notices Regulation Act;
- (l) Chapter 32a, Pawnshop, Secondhand Merchandise, and Catalytic Converter

Transaction Information Act;

- (m) Chapter 34, Utah Postsecondary Proprietary School Act;
- (n) Chapter 34a, Utah Postsecondary School State Authorization Act;
- (o) Chapter 41, Price Controls During Emergencies Act;
- (p) Chapter 42, Uniform Debt-Management Services Act;
- (q) Chapter 49, Immigration Consultants Registration Act;
- (r) Chapter 51, Transportation Network Company Registration Act;
- (s) Chapter 52, Residential Solar Energy Disclosure Act;
- (t) Chapter 53, Residential, Vocational and Life Skills Program Act;
- (u) Chapter 54, Ticket Website Sales Act;
- (v) Chapter 56, Ticket Transferability Act; [and]
- (w) Chapter 57, Maintenance Funding Practices Act[-];
- (x) Chapter 63, Utah Commercial Email Act.

Section 2. Section 13-2-1 (Effective 12/31/23) is amended to read:

13-2-1 (Effective 12/31/23). Consumer protection division established --

Functions.

(1) There is established within the Department of Commerce the Division of Consumer Protection.

(2) The division shall administer and enforce the following:

- (a) Chapter 5, Unfair Practices Act;
- (b) Chapter 10a, Music Licensing Practices Act;
- (c) Chapter 11, Utah Consumer Sales Practices Act;
- (d) Chapter 15, Business Opportunity Disclosure Act;

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- (e) Chapter 20, New Motor Vehicle Warranties Act;
- (f) Chapter 21, Credit Services Organizations Act;
- (g) Chapter 22, Charitable Solicitations Act;
- (h) Chapter 23, Health Spa Services Protection Act;
- (i) Chapter 25a, Telephone and Facsimile Solicitation Act;
- (j) Chapter 26, Telephone Fraud Prevention Act;
- (k) Chapter 28, Prize Notices Regulation Act;
- (l) Chapter 32a, Pawnshop, Secondhand Merchandise, and Catalytic Converter

Transaction Information Act;

- (m) Chapter 34, Utah Postsecondary Proprietary School Act;
- (n) Chapter 34a, Utah Postsecondary School State Authorization Act;
- (o) Chapter 41, Price Controls During Emergencies Act;
- (p) Chapter 42, Uniform Debt-Management Services Act;
- (q) Chapter 49, Immigration Consultants Registration Act;
- (r) Chapter 51, Transportation Network Company Registration Act;
- (s) Chapter 52, Residential Solar Energy Disclosure Act;
- (t) Chapter 53, Residential, Vocational and Life Skills Program Act;
- (u) Chapter 54, Ticket Website Sales Act;
- (v) Chapter 56, Ticket Transferability Act;
- (w) Chapter 57, Maintenance Funding Practices Act; [and]
- (x) Chapter 61, Utah Consumer Privacy Act[-]; and
- (y) Chapter 63, Utah Commercial Email Act.

Section ~~{1}~~3. Section **13-63-101** is enacted to read:

CHAPTER 63. UTAH COMMERCIAL EMAIL ACT

Part 1. General Provisions

13-63-101. Definitions.

As used in this chapter:

(1) "Advertiser" means a person who advertises the person's product, service, or website through the use of commercial email.

(2) "Commercial email" means an email used primarily to:

(a) advertise or promote a commercial website, product, or service; or

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(b) solicit money, property, or personal information.

(3) "Division" means the Division of Consumer Protection.

(~~3~~4) "Domain name" means any alphanumeric designation that is registered with or assigned by any domain name registrar, domain name registry, or other domain name registration authority as part of an electronic address on the Internet.

(~~4~~5) "Electronic mail service provider" means a company or a service that provides routing, relaying, handling, storage, or support for email addresses and email inboxes.

(~~5~~6) "Header information" means information attached to an email, including:

(a) the originating domain name;

(b) the originating email address;

(c) the destination;

(d) the routing information; and

(e) any other information that appears in the header line identifying, or purporting to identify, a person initiating the message.

(~~6~~7) "Initiate" means an act of:

(a) originating, transmitting, or sending commercial email; or

(b) promising, paying, or providing other consideration for another person to originate, transmit, or send a commercial email.

(~~7~~8) (a) "Initiator" means a person who:

(i) originates, transmits, or sends commercial email; or

(ii) promises, pays, or provides other consideration for another person to originate, transmit, or send a commercial email.

(b) "Initiator" does not include a person whose activities are a routine conveyance.

(~~8~~9) "Preexisting or current business relationship" means a situation where the recipient has:

(a) made an inquiry and provided an email address; or

(b) made an application, a purchase, or a transaction, with or without consideration, related to a product or a service offered by the advertiser.

(~~9~~10) "Recipient" means an addressee of an unsolicited email.

(~~10~~11) "Routine conveyance" means ~~the transmission,~~ an Internet service provider's or email provider's automatic electronic mail message processes, including routing,

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relaying, handling, or storing ~~{1}~~ through an automatic technical process ~~{of an}~~, for which a person other than the Internet service provider or email provider has identified the electronic mail message ~~{for which another person has identified the }~~ recipients ~~{or}~~ and provided the recipients' addresses.

~~{11}~~12) "Unsolicited commercial email" means a commercial email sent by an advertiser to a recipient that:

(a) has not provided direct consent to the advertiser to receive the commercial email; and

(b) does not have a preexisting or current relationship with the advertiser.

~~{12}~~13) "Utah email address" means an email address that is:

(a) provided by an electronic mail service provider that sends bills for providing and maintaining that email address to a mailing address in this state;

(b) ordinarily accessed from a computer located in this state; or

(c) provided to an individual who is currently a resident of this state.

Section ~~{2}~~4. Section 13-63-201 is enacted to read:

Part 2. Restrictions on Commercial Email

13-63-201. Prohibited uses of email.

An advertiser or an initiator may not knowingly initiate or advertise in a commercial email sent from this state or sent to a Utah email address if:

(1) the commercial email contains or is accompanied by a third party's domain name without the permission of the third party;

(2) the commercial email contains or is accompanied by false, misrepresented, or forged header information, even if the commercial email contains truthful identifying information for the advertiser in the body of the email; or

(3) the commercial email has a subject line that is likely to mislead a recipient, acting reasonably under the circumstances, about a material fact regarding the identity of the advertiser, the contents, or the subject matter of the commercial email.

Section ~~{3}~~5. Section 13-63-202 is enacted to read:

13-63-202. Cause of action.

(1) (a) The following persons may bring a claim against an advertiser or initiator who violates Section 13-63-201:

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~~{ (i) the attorney general;~~

~~{ (iii)i}~~ an electronic mail service provider;

~~{(iii)ii}~~ a recipient of an unsolicited commercial email; or

~~{(iv)iii}~~ a person whose brand, trademark, email address, or domain name an advertiser or initiator uses, without authorization, in the header information.

(b) ~~{(i)}~~ There is a rebuttable presumption that a commercial email that violates Section 13-63-201 is an unsolicited commercial email.

~~{(ii)c}~~ The burden of proving that a commercial email is not an unsolicited commercial email is on the defendant.

(2) (a) A person described in ~~{Subsections}~~ Subsection (1)(a)(i) ~~{through}~~ or ~~{(iii)ii}~~ may recover:

(i) actual damages; and

(ii) except as provided in Subsection (2)(c), liquidated damages of \$1,000 for each unsolicited commercial email transmitted in violation of Section 13-63-201.

(b) If an addressee of an unsolicited commercial email has more than one email address to which an advertiser or an initiator sends an unsolicited commercial email, the addressee is considered a separate recipient for each email address to which the advertiser or the initiator sends the unsolicited commercial email.

(c) If a court finds that an advertiser or an initiator used due diligence to establish and implement practices and procedures to effectively prevent unsolicited commercial emails in violation of this chapter, the court shall reduce the liquidated damages to \$100 for each unsolicited commercial email transmitted in violation of Section 13-63-201.

(3) A person described in Subsection (1)(a) ~~{(i) or (iv)iii}~~ may recover:

(a) actual damages; and

(b) liquidated damages in an amount equal to the lesser of:

(i) \$1,000 for each commercial email transmitted in violation of this chapter that uses, without authorization, a person's brand, trademark, email address, or domain name in the header information; and

(ii) \$2,000,000.

(4) The prevailing party in an action brought under this section may recover reasonable attorney fees and costs.

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(5) (a) Defendants in an action under this section are jointly and severally liable.

(b) There is no cause of action under this section against an electronic mail service provider who is involved only in the routine {transmission or } conveyance of commercial email over the email service provider's computer network.

Section 6. Section 13-63-203 is enacted to read:

13-63-203. Enforcement.

(1) The division shall administer and enforce the provisions of this chapter in accordance with Chapter 2, Division of Consumer Protection.

(2) The attorney general, upon request, shall give legal advice to, and act as counsel for, the division in the exercise of the division's responsibilities under this chapter.

(3) (a) In addition to the division's enforcement powers under Chapter 2, Division of Consumer Protection:

(i) the division director may impose an administrative fine of up to \$2,500 for each violation of this chapter; and

(ii) the division may bring an action in a court of competent jurisdiction to enforce a provision of this chapter.

(b) In a court action by the division to enforce a provision of this chapter, the court may:

(i) declare that an act or practice violates a provision of this chapter;

(ii) issue an injunction for a violation of this chapter;

(iii) order disgorgement of any money received in violation of this chapter;

(iv) order payment of disgorged money to an injured purchaser or consumer;

(v) impose a fine of up to \$2,500 for each violation of this chapter; or

(vi) award any other relief that the court deems reasonable and necessary.

(4) If a court of competent jurisdiction grants judgment or injunctive relief to the division, the court shall award the division:

(a) reasonable attorney fees;

(b) court costs; and

(c) investigative fees.

(5) (a) A person who violates an administrative or court order issued for a violation of this chapter is subject to a civil penalty of no more than \$5,000 for each violation.

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(b) A civil penalty authorized under this section may be imposed in any civil action brought by the attorney general on behalf of the division.

(6) All money received for the payment of a fine or civil penalty imposed under this section shall be deposited into the Consumer Protection Education and Training Fund created in Section 13-2-8.

Section 7. **Effective date.**

This bill takes effect on May 3, 2023, with the exception of Section 13-2-1 (Effective 12/31/23), which takes effect on December 31, 2023.