

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:

• 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 commercial emails; and

• permits the prevailing party to recover attorney fees and costs in an action related to unauthorized or misleading commercial emails; and

▶ defines terms.

Money Appropriated in this Bill:

None

Other Special Clauses:

None



28 **Utah Code Sections Affected:**

29 ENACTS:

30 **13-63-101**, Utah Code Annotated 1953

31 **13-63-201**, Utah Code Annotated 1953

32 **13-63-202**, Utah Code Annotated 1953



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

35 Section 1. Section **13-63-101** is enacted to read:

36 **CHAPTER 63. UTAH COMMERCIAL EMAIL ACT**

37 **Part 1. General Provisions**

38 **13-63-101. Definitions.**

39 As used in this chapter:

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

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

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

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

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

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

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

51 (a) the originating domain name;

52 (b) the originating email address;

53 (c) the destination;

54 (d) the routing information; and

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

57 (6) "Initiate" means an act of:

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

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

61 (7) (a) "Initiator" means a person who:

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

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

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

66 (8) "Preexisting or current business relationship" means a situation where the recipient

67 has:

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

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

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

72 (10) "Routine conveyance" means the transmission, routing, relaying, handling, or
73 storing, through an automatic technical process of an electronic mail message for which
74 another person has identified the recipients or provided the recipients' addresses.

75 (11) "Unsolicited commercial email" means a commercial email sent by an advertiser
76 to a recipient that:

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

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

80 (12) "Utah email address" means an email address that is:

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

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

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

85 Section 2. Section **13-63-201** is enacted to read:

86 **Part 2. Restrictions on Commercial Email**

87 **13-63-201. Prohibited uses of email.**

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

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

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

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

98 Section 3. Section **13-63-202** is enacted to read:

99 **13-63-202. Cause of action.**

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

102 (i) the attorney general;

103 (ii) an electronic mail service provider;

104 (iii) a recipient of an unsolicited commercial email; or

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

107 (b) (i) There is a rebuttable presumption that a commercial email that violates Section
108 [13-63-201](#) is an unsolicited commercial email.

109 (ii) The burden of proving that a commercial email is not an unsolicited commercial
110 email is on the defendant.

111 (2) (a) A person described in Subsections (1)(a)(i) through (iii) may recover:

112 (i) actual damages; and

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

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

119 (c) If a court finds that an advertiser or an initiator used due diligence to establish and
120 implement practices and procedures to effectively prevent unsolicited commercial emails in

121 violation of this chapter, the court shall reduce the liquidated damages to \$100 for each
122 unsolicited commercial email transmitted in violation of Section [13-63-201](#).

123 (3) A person described in Subsection (1)(a)(i) or (iv) may recover:

124 (a) actual damages; and

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

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

129 (ii) \$2,000,000.

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

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

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