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REFERENCE TITLE: **unlawful acts; commercial electronic mail**

State of Arizona  
House of Representatives  
Forty-sixth Legislature  
First Regular Session  
2003

## **HB 2107**

Introduced by  
Representatives Tully: Hubbs

**AN ACT**

**AMENDING TITLE 44, CHAPTER 9, ARIZONA REVISED STATUTES, BY ADDING ARTICLE 16;  
RELATING TO COMMERCIAL ELECTRONIC MAIL MESSAGES.**

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Title 44, chapter 9, Arizona Revised Statutes, is amended  
3 by adding article 16, to read:

4 ARTICLE 16. COMMERCIAL ELECTRONIC MAIL MESSAGES

5 44-1372. Definitions

6 IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:

7 1. "COMMERCIAL ELECTRONIC MAIL MESSAGE" MEANS AN ELECTRONIC MAIL  
8 MESSAGE SENT FOR THE PURPOSE OF PROMOTING REAL PROPERTY, GOODS OR SERVICES  
9 FOR SALE OR LEASE.

10 2. "INTERACTIVE COMPUTER SERVICE" MEANS ANY INFORMATION SERVICE,  
11 SYSTEM OR ACCESS SOFTWARE PROVIDER THAT PROVIDES OR ENABLES COMPUTER ACCESS  
12 BY MULTIPLE USERS TO A COMPUTER SERVER, INCLUDING A SERVICE OR SYSTEM THAT  
13 PROVIDES ACCESS TO THE INTERNET AND SYSTEMS OPERATED OR SERVICES OFFERED BY  
14 LIBRARIES OR EDUCATIONAL INSTITUTIONS.

15 3. "INTERNET DOMAIN NAME" MEANS A GLOBALLY UNIQUE, HIERARCHICAL  
16 REFERENCE TO AN INTERNET HOST OR SERVICE THAT IS ASSIGNED THROUGH CENTRALIZED  
17 INTERNET NAMING AUTHORITIES AND THAT CONSISTS OF A SERIES OF CHARACTER  
18 STRINGS SEPARATED BY PERIODS WITH THE LAST STRING SPECIFYING THE TOP OF THE  
19 HIERARCHY.

20 4. "PERSON" MEANS:

21 (a) A NATURAL PERSON OR THE PERSON'S LEGAL REPRESENTATIVE.

22 (b) A PARTNERSHIP, A LIMITED LIABILITY COMPANY, A LIMITED LIABILITY  
23 PARTNERSHIP OR A DOMESTIC OR FOREIGN CORPORATION.

24 (c) A COMPANY, TRUST, BUSINESS ENTITY OR ASSOCIATION.

25 (d) AN AGENT, EMPLOYEE, SALES PERSON, PARTNER, OFFICER, DIRECTOR,  
26 MEMBER, STOCKHOLDER, ASSOCIATE OR TRUSTEE.

27 (e) ANY OTHER LEGAL ENTITY OR ANY GROUP ASSOCIATED IN FACT ALTHOUGH  
28 NOT A LEGAL ENTITY.

29 44-1372.01. Unlawful practice; powers of attorney general;  
30 cumulative remedies

31 A. IT IS AN UNLAWFUL PRACTICE PURSUANT TO SECTION 44-1522 FOR A PERSON  
32 TO SEND, CONSPIRE WITH ANOTHER TO SEND OR ASSIST IN SENDING A COMMERCIAL  
33 ELECTRONIC MAIL MESSAGE FROM A COMPUTER LOCATED IN THIS STATE OR TO AN  
34 ELECTRONIC MAIL ADDRESS THAT THE PERSON KNOWS OR HAS REASON TO KNOW IS HELD  
35 BY A PERSON IN THIS STATE IF THE MESSAGE DOES ANY OF THE FOLLOWING:

36 1. USES A THIRD PARTY'S INTERNET DOMAIN NAME WITHOUT THE THIRD PARTY'S  
37 PERMISSION.

38 2. MISREPRESENTS OR OBSCURES ANY INFORMATION IN IDENTIFYING THE POINT  
39 OF ORIGIN OR THE TRANSMISSION PATH OF THE MESSAGE.

40 3. CONTAINS FALSE OR MISLEADING INFORMATION IN THE SUBJECT LINE.

41 B. IT IS AN UNLAWFUL PRACTICE PURSUANT TO SECTION 44-1522 FOR A PERSON  
42 TO SEND, CONSPIRE WITH ANOTHER TO SEND OR ASSIST IN SENDING A COMMERCIAL  
43 ELECTRONIC MAIL MESSAGE FROM A COMPUTER LOCATED IN THIS STATE OR TO AN  
44 ELECTRONIC MAIL ADDRESS THAT THE PERSON KNOWS OR HAS REASON TO KNOW IS HELD  
45 BY A PERSON IN THIS STATE IF THE RECIPIENT OF THE MESSAGE HAS PREVIOUSLY  
46 STATED A DESIRE NOT TO RECEIVE COMMERCIAL ELECTRONIC MAIL MESSAGES MADE BY OR

1 ON BEHALF OF THE PERSON WHOSE GOODS OR SERVICES ARE BEING OFFERED. A PERSON  
2 IS NOT LIABLE UNDER THIS SUBSECTION IF ALL OF THE FOLLOWING APPLY:

3 1. THE PERSON HAS ESTABLISHED AND IMPLEMENTED WRITTEN PROCEDURES TO  
4 COMPLY WITH THIS SUBSECTION.

5 2. THE PERSON HAS TRAINED THE PERSON'S PERSONNEL ACCORDING TO THE  
6 WRITTEN PROCEDURES PRESCRIBED IN PARAGRAPH 1 OF THIS SUBSECTION.

7 3. THE PERSON OR SOMEONE ACTING ON THE PERSON'S BEHALF ESTABLISHES AND  
8 MAINTAINS A COMMERCIAL ELECTRONIC MAIL MESSAGE LIST COMPRISED OF ALL PERSONS  
9 WHO REQUEST NOT TO BE CONTACTED AND KEEPS ALL REQUESTS NOT TO SEND ELECTRONIC  
10 MAIL FOR AT LEAST TEN YEARS.

11 4. THE COMMERCIAL ELECTRONIC MAIL MESSAGE IS THE RESULT OF AN ERROR.

12 C. SUBSECTIONS A AND B OF THIS SECTION DO NOT APPLY TO AN INTERACTIVE  
13 COMPUTER SERVICE THAT MAY HANDLE OR RETRANSMIT THE MESSAGE UNLESS THE  
14 INTERACTIVE COMPUTER SERVICE ASSISTS IN SENDING A COMMERCIAL ELECTRONIC MAIL  
15 MESSAGE WHEN IT KNOWS THAT THE PERSON SENDING THE MESSAGE IS ENGAGED OR  
16 INTENDS TO ENGAGE IN ANY ACT OR PRACTICE THAT VIOLATES SECTION 44-1522.

17 D. FOR THE PURPOSES OF THIS SECTION, A PERSON KNOWS THAT AN ELECTRONIC  
18 MAIL ADDRESS IS HELD BY A PERSON IN THIS STATE IF THE INFORMATION IS  
19 AVAILABLE, ON REQUEST, FROM THE REGISTRANT OF THE INTERNET DOMAIN NAME  
20 CONTAINED IN THE RECIPIENT'S ELECTRONIC MAIL ADDRESS.

21 E. THIS SECTION DOES NOT APPLY TO AN ELECTRONIC MAIL MESSAGE TO WHICH  
22 AN INTERACTIVE COMPUTER SERVICE PROVIDER HAS ATTACHED AN ADVERTISEMENT IN  
23 EXCHANGE FOR FREE USE OF AN ELECTRONIC MAIL ACCOUNT IF THE SENDER HAS AGREED  
24 TO THE ARRANGEMENT.

25 F. FAILURE TO COMPLY WITH THIS ARTICLE IS AN UNLAWFUL PRACTICE  
26 PURSUANT TO SECTION 44-1522. THE ATTORNEY GENERAL MAY INVESTIGATE AND TAKE  
27 APPROPRIATE ACTION AS PRESCRIBED BY CHAPTER 10, ARTICLE 7 OF THIS TITLE.

28 G. THIS ARTICLE IS IN ADDITION TO ALL OTHER CAUSES OF ACTION, REMEDIES  
29 AND PENALTIES AVAILABLE TO THIS STATE.

30 44-1372.02. Blocking messages; immunity from liability

31 A. AN INTERACTIVE COMPUTER SERVICE MAY BLOCK THE RECEIPT OR  
32 TRANSMISSION THROUGH ITS SERVICE OF ANY COMMERCIAL ELECTRONIC MAIL MESSAGE  
33 THAT IT REASONABLY BELIEVES IS, OR WILL BE, SENT IN VIOLATION OF THIS  
34 ARTICLE.

35 B. NO INTERACTIVE COMPUTER SERVICE MAY BE HELD LIABLE FOR ANY ACTION  
36 VOLUNTARILY TAKEN IN GOOD FAITH TO BLOCK THE RECEIPT OR TRANSMISSION THROUGH  
37 ITS SERVICE OF ANY COMMERCIAL ELECTRONIC MAIL MESSAGE THAT IT REASONABLY  
38 BELIEVES IS OR WILL BE SENT IN VIOLATION OF THIS ARTICLE.

39 44-1372.03. Damages

40 A. DAMAGES TO THE RECIPIENT OF A COMMERCIAL ELECTRONIC MAIL MESSAGE  
41 SENT IN VIOLATION OF THIS CHAPTER ARE FIVE HUNDRED DOLLARS OR ACTUAL DAMAGES,  
42 WHICHEVER IS GREATER.

43 B. DAMAGES TO AN INTERACTIVE COMPUTER SERVICE RESULTING FROM A  
44 VIOLATION OF THIS CHAPTER ARE ONE THOUSAND DOLLARS OR ACTUAL DAMAGES,  
45 WHICHEVER IS GREATER.