

# ARIZONA

Sections 44-1372 and 44-1372.01 through 44-1372.05 of the *Arizona Revised Statutes Annotated* govern the transmission of unsolicited commercial electronic mail. Those code sections:

- Apply to email transmitted from a computer located in Arizona, to a person the sender knows or has reason to know is an Arizona resident, or to a service provider with equipment or a principal place of business in Arizona;
- Require the sender to put a label on the subject line of a commercial email;
- Forbid a sender to falsify an email's routing information or subject line, or to identify some other person as the sender;
- Make it illegal to use another person's email address or domain name without permission;
- Require a sender to establish a mechanism by which a recipient either can ask not to be contacted or can restrict the future sale or transfer of his or her email address;
- Entitle a victim to sue a violator for damages and costs, and in the case of an intentional violation, for attorney's fees;
- Classify violations as unfair trade practices; and
- Impose criminal penalties on violators.

## **Ariz. Rev. Stat. Ann.**

### **§44-1372. Definitions Pertaining to Commercial Electronic Mail**

In this article [§§44-1372 and 44-1372.01 - 44-1372.05], unless the context otherwise requires:

1. "Commercial electronic mail" means electronic mail sent for the purpose of encouraging the purchase or rental of, or investment in, property, goods or services.
2. "Electronic mail" means an electronic message, executable program or computer file containing an image of a message that is transmitted between two or more computers or electronic terminals and includes electronic messages that are transmitted within or between computer networks.
3. "Electronic mail service provider" means any person who is an intermediary in sending or receiving electronic mail and who provides to end users of electronic mail services the ability to send or receive electronic mail.
4. "Established business relationship" means a prior or existing relationship formed by a voluntary communication between a person or entity and the recipient, with or without an exchange of consideration, on the basis of an inquiry, application, purchase or use by the recipient regarding products or services offered by the person or entity.
5. "Sender" means a person who initiates an unsolicited commercial electronic mail.
6. "Unsolicited commercial electronic mail" means a commercial electronic mail message sent, without the consent of the recipient, by a person with whom the recipient does not have an established business relationship.

*Created by Chapter 229, §2, Session Laws of 2003, effective September 18, 2003.*

#### **§44-1372.01. Prohibited Acts Involving Commercial Electronic Mail**

A. A person shall not knowingly transmit commercial electronic mail if any of the following apply:

- A.1. The person falsifies electronic mail transmission information or other routing information for unsolicited commercial electronic mail.
- A.2. The mail contains false or misleading information in the subject line.
- A.3. The person uses a third party's Internet address or domain name without the third party's consent for the purpose of transmitting electronic mail in a way that makes it appear that the third party was the sender of the mail.

B. If a person sends unsolicited commercial electronic mail or maintains a database for the purpose of sending unsolicited commercial electronic mail, the person shall do the following:

- B.1. Use the exact characters "adv:" as the first four characters in the subject line of the unsolicited commercial electronic mail.
- B.2. Provide a procedure that allows recipients, at no cost to the recipients, to easily do both of the following:
  - B.2.(a) Remove themselves from the sender's electronic mail address lists so the recipients are not included in future electronic mailings from the sender. The sender shall have three business days to remove the recipient's electronic mail address from the sender's electronic mail address lists so the recipients are not included in future electronic mailings from the sender.
  - B.2.(b) Restrict the future sale or transfer of the recipient's electronic mail address information to another person or organization for the purpose of sending commercial electronic mail.

C. Failure to comply with this article is an unlawful practice pursuant to §44-1522 [*which generally prohibits unfair or deceptive conduct*]. The attorney general may investigate and take appropriate action as prescribed by Title 44, Chapter 10, Article 7 [§§44-1521 - 44-1534, *which deal with consumer fraud*].

D. This article is in addition to all other causes of action, remedies and penalties available to this state.

E. The prohibitions in this section shall apply to any person doing business in this state and to any person who transmits a commercial electronic mail message by any of the following:

- E.1. From a computer located in this state.
- E.2. To an electronic mail address that the sender knows, or has reason to know, is held by a resident of this state.
- E.3. To an interactive computer service with equipment or its principal place of business in this state.

*Created by Chapter 229, §2, Session Laws of 2003, effective September 18, 2003.*

#### **§44-1372.02. Recipient's and Service Provider's Remedies**

A. A person whose property or person is injured because of a violation of this article may recover for any damages sustained, including loss of profits, and the costs incurred from the suit.

B. If an injury results from the intentional transmission of unsolicited commercial electronic mail, the injured person may recover attorney fees and costs and may choose, instead of receiving actual damages, to recover \$10 for each unsolicited commercial electronic mail

message transmitted in violation of this article or \$25,000, whichever is less. This subsection does not apply to an electronic mail service provider.

C. Nothing in this article creates a cause of action or a right to bring an action against the electronic mail service provider for transmitting unsolicited commercial electronic mail over the computer network.

D. If an injury results from the intentional transmission of unsolicited commercial electronic mail, an injured electronic mail service provider may recover attorney fees and costs and may choose, instead of receiving actual damages, to recover \$10 for each unsolicited commercial electronic mail message transmitted in violation of this article or \$25,000, whichever is greater.

*Created by Chapter 229, §2, Session Laws of 2003, effective September 18, 2003.*

#### **§44-1372.03. Court's Authority to Protect Secrecy of Data**

At the request of any party to an action brought pursuant to this section, the court may conduct all legal proceedings in a manner to protect the secrecy and security of the computer, computer network, computer data, computer program and computer software involved in order to prevent possible recurrence of the same or similar act by another person and to protect any trade secrets of any party.

*Created by Chapter 229, §2, Session Laws of 2003, effective September 18, 2003.*

#### **§44-1372.04. Applicability of Laws Governing Commercial Electronic Mail**

- A. This article does not apply to electronic mail messages if any of the following applies:
- A.1. The sender is an organization using electronic mail to communicate exclusively with either of the following:
    - A.1.(a) Members of the organization.
    - A.1.(b) Employees or contractors of the organization, or both.
  - A.2. The sender has the consent of the recipient.
  - A.3. The sender has an established business relationship with the recipient.
  - A.4. The commercial electronic mail message is the result of an error.
  - A.5. An interactive computer service provider has attached an advertisement to the message in exchange for use of an electronic mail account or if the sender has agreed to the arrangement.
- B. This article does not apply to an electronic mail service provider if either of the following apply:
- B.1. The electronic mail service provider is an intermediary between the sender and the recipient in the transmission of electronic mail.
  - B.2. The electronic mail service provider transmits unsolicited commercial electronic mail over the provider's computer network or facilities.
- C. An electronic mail service provider may establish and enforce a policy to block the receipt or transmission through its service of any electronic mail advertisements that it believes is or will be sent in violation of this article.

*Created by Chapter 229, §2, Session Laws of 2003, effective September 18, 2003.*

#### **§44-1372.05. Criminal Penalty for Violation**

A person who violates this article is guilty of a class 2 misdemeanor.  
*Created by Chapter 229, §2, Session Laws of 2003, effective September 18, 2003.*