

ARKANSAS

Sections 4-88-601 through 4-88-607 of the *Arkansas Statutes Annotated*, the Unsolicited Commercial and Sexually Explicit Electronic Mail Prevention Act, govern the transmission of unsolicited commercial electronic mail. The Act:

- Requires a sender to disclose his or her name, street address, and domain name;
- Forbids a sender to use another person's domain name without permission;
- Requires a sender to establish a mechanism by which the recipient can ask not to receive any more email, and forbid sending email to a person who has asked not to be contacted;
- Makes it illegal to misrepresent an email's routing information;
- Requires a sender to put a label on the subject line of a sexually-oriented email;
- Outlaws the distribution of software designed to falsify subject lines or routing or identifying information;
- Classifies violations as unfair trade practices;
- Entitles a recipient or service provider to sue for damages, costs, and attorney's fees; and
- Imposes criminal penalties on violators.

Section 5-41-205, part of the laws dealing with computer crimes in general, also governs the transmission of unsolicited electronic mail. That code section:

- Forbids the transmission, with the intent to defraud, of email that falsely identifies its sender, routing information, or subject line;
- Makes it unlawful to distribute, with the intent to defraud, software designed to falsify the sender, routing information, or subject line;
- Forbids a sender to use another person's domain name without permission and with the intent to defraud; and
- Imposes criminal penalties on violators.

Ark. Code Ann.

§4-88-601. Short Title

This subchapter [§§4-88-601 - 4-88-607] may be referred to and cited as the "Unsolicited Commercial and Sexually Explicit Electronic Mail Prevention Act".

Created by §1, Act No. 1019 of 2003, effective August 7, 2003.

§4-88-602. Definitions Pertaining to Commercial Electronic Mail

As used in this subchapter:

- (1) "Commercial" means for the purpose of promoting the sale, lease, or exchange of goods, services, or real property;
- (2) "Computer network" means a set of related remotely connected devices and communication facilities, including two or more computers with capability to transmit data through communication facilities;
- (3) "Electronic mail" means an electronic message, file, data, or other information that

is transmitted:

- (3)(A) Between two or more computers, computer networks, or electronic terminals; or
- (3)(B) Within or between computer networks;

(4) "Electronic mail address" means a destination commonly expressed as a string of characters to which electronic mail may be sent or delivered;

(5) "Electronic mail service provider" means a person who:

- (5)(A) Is an intermediary in the transmission of electronic mail from the sender to the recipient; or
- (5)(B) Provides to end users of electronic mail service the ability to send and receive electronic mail;

(6) "Harmful to minors" shall have the same meaning as set forth in §5-68-501(2);

(7) "Interactive computer service" means an information service, system or access software provider that provides or enables computer access by multiple users to a computer server, including specifically a service or system that provides access to the Internet, and also the systems operated or services offered by libraries or educational institutions;

(8) "Internet domain name" means a globally unique, hierarchical reference to an Internet host or service assigned through centralized Internet authorities comprising a series of character strings separated by periods, with the right-most string specifying the top of the hierarchy;

(9) "Person" means any individual, corporation, partnership, association, limited liability company, any other form or business association, or any combination of them;

(10)(A)(i) "Preexisting business relationship" means that there was a business transaction or communication between the sender and the recipient of a commercial electronic mail message during the five-year period preceding the receipt of that message.

(10)(A)(ii) A preexisting business relationship does not exist after a recipient requests to be removed from the distribution list of a sender.

(10)(B) If a sender operates through separate lines of business or divisions and holds itself out to the recipient as that particular line of business or division rather than as the entity of which the line of business or division is a part, then the line of business or the division shall be treated as the sender for purposes of this section.

(11) "Sexually explicit electronic mail" means a commercial electronic mail that contains material that is harmful to minors or promotes an electronic link to material that is harmful to minors; and

(12) "Unsolicited" means without the recipient's express permission, except commercial electronic mail is not unsolicited if the sender has a preexisting business or personal relationship with the recipient.

Created by §1, Act No. 1019 of 2003, effective August 7, 2003.

§4-88-603. Prohibited Acts Involving Commercial Electronic Mail

(a) Each person who sends or causes to be sent an unsolicited commercial electronic mail or an unsolicited sexually explicit electronic mail through the intermediary of an electronic mail service provider or to an electronic mail address held by a resident of the state shall:

- (a)(1) Conspicuously state in the electronic mail the sender's:
 - (a)(1)(A) Legal name;
 - (a)(1)(B) Correct street address; and
 - (a)(1)(C) Valid Internet domain name;
- (a)(2) For a sexually explicit electronic mail, include in the electronic mail a subject line that contains "adv:adult" as the first nine characters;
- (a)(3) Provide the recipient a convenient, no-cost mechanism to notify the sender not to send any future electronic mail to the recipient, including:
 - (a)(3)(A) Return electronic mail to a valid, functioning return electronic address; and
 - (a)(3)(B) For a sexually explicit electronic mail and if the sender has a toll-free telephone number, the sender's toll-free telephone number; and
- (a)(4) Conspicuously provide in the text of the electronic mail a notice:
 - (a)(4)(A) That informs the recipient that the recipient may conveniently and at no cost be excluded from future commercial or sexually explicit electronic mail, as the case may be, from the sender; and
 - (a)(4)(B) For a sexually explicit electronic mail, if the sender has a toll-free telephone number, includes the sender's valid, toll-free telephone number that the recipient may call to be excluded from future electronic mail from the sender.

(b)(1) A commercial electronic mail is not unsolicited if the sender has a preexisting business or personal relationship with the recipient.

- (b)(2) The sender of a commercial electronic mail of this nature must still include in the electronic mail message the required disclosures set forth in subdivisions (a)(3) and (a)(4) of this section and shall remove the recipient from future mailings if requested.

(c) A person who sends or causes to be sent an unsolicited commercial electronic mail or an unsolicited sexually explicit electronic mail through the intermediary of an electronic mail service provider located in the state or to an electronic mail address held by a resident of the state may not:

- (c)(1) Use a third party's Internet domain name in identifying the point of origin or in stating the transmission path of the electronic mail without the third party's consent;
- (c)(2) Misrepresent any information in identifying the point of origin or the transmission path of the electronic mail; or
- (c)(3) Fail to include in the electronic mail the information necessary to identify the point of origin of the electronic mail.

(d)(1) If the recipient of an unsolicited commercial electronic mail or an unsolicited sexually explicit electronic mail notifies the sender that the recipient does not want to receive future commercial electronic mail or future sexually explicit electronic mail from the sender, the sender may not send that recipient a commercial electronic mail or a sexually explicit electronic mail either directly or through a subsidiary or affiliate.

- (d)(2) If a recipient has requested to be removed from future mailings, the sender may recontact the recipient if a preexisting business relationship has been reestablished or if the recipient has expressly requested to receive future mailings from the sender.

Created by §1, Act No. 1019 of 2003, effective August 7, 2003.

§4-88-604. Service Provider's Rights

(a) An interactive computer service or electronic mail service provider may block the receipt or transmission through its service of any bulk electronic mail that it reasonably believes is or will be sent in violation of this subchapter.

(b) An interactive computer service or electronic mail service provider is not:

(b)(1) In violation of this section and the injured party shall not have a cause of action against an interactive computer service or mail service provider due to the fact that the interactive computer service or electronic mail service provider:

(b)(1)(A) Is an intermediary between the sender and recipient in the transmission of an e-mail that violates this section; or

(b)(1)(B) Provides transmission of unsolicited commercial electronic mail messages over the provider's computer network or facilities;

(b)(2) Liable for any action it voluntarily takes in good faith 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 subchapter.

(c) An interactive computer service may disconnect or terminate the service of any person that is in violation of this subchapter.

Created by §1, Act No. 1019 of 2003, effective August 7, 2003.

§4-88-605. Criminal Penalty for Violations

(a) A person who violates any requirement of §4-88-603 with respect to an unsolicited sexually explicit electronic mail is guilty of a class B misdemeanor.

(b) A person who is found guilty of, or pleads guilty or nolo contendere to, violations of §4-88-603 is not relieved from civil liability in an action under §4-88-606.

Created by §1, Act No. 1019 of 2003, effective August 7, 2003.

§4-88-606. Recipient's and Service Provider's Remedies

(a) For any violation of a provision of this subchapter, an action may be brought by:

(a)(1) A person who received the unsolicited commercial electronic mail or unsolicited sexually explicit electronic mail that violates this subchapter; or

(a)(2) An electronic mail service provider through whose facilities the unsolicited commercial electronic mail or unsolicited sexually explicit electronic mail was transmitted.

(b)(1) In each action under subdivision (a)(1) of this section, a recipient or electronic mail service provider may elect, in lieu of actual damages, to recover the lesser of:

(b)(1)(A) Ten dollars per unsolicited commercial electronic mail or unsolicited sexually explicit electronic mail sent to a previously opted out electronic mail address or transmitted through the electronic mail service provider or otherwise sent in violation of this subchapter; or

(b)(1)(B) Twenty-five thousand dollars per day the violation occurs.

(b)(2) Each prevailing recipient or electronic mail service provider shall be awarded costs and reasonable attorneys fees.

(c) It is an affirmative defense to a violation of this subchapter if a person can demonstrate

that the sender at the time of the alleged violation had:

- (c)(1) Maintained a list of consumers who have notified the person not to send any subsequent commercial electronic messages;
- (c)(2) Established and implemented with due care and reasonable practices and procedures to effectively prevent unsolicited commercial electronic mail messages in violation of this subchapter;
- (c)(3) Trained the sender's personnel in the requirements of this subchapter; and
- (c)(4) Maintained records demonstrating compliance with this subchapter.

Created by §1, Act No. 1019 of 2003, effective August 7, 2003.

§4-88-607. Enforcement of Laws Governing Commercial Electronic Mail

(a)(1) Any transmission of unsolicited commercial or sexually explicit electronic mail in violation of this subchapter shall constitute an unfair and deceptive act or practice under §4-88-107 *[which lists unfair trade practices]*.

(a)(2) All remedies, penalties, and authority granted to the Attorney General under the Deceptive Trade Practices Act *[§§4-88-101 through 4-88-113]*, or this subchapter shall be available to the Attorney General for the enforcement of this subchapter.

(b) The prosecuting attorneys of the various districts and counties of this state shall also have full authority to enforce the provisions of this subchapter.

(c) Nothing in the provisions of this subchapter shall prohibit the bringing of a civil action against a violator of this subchapter by an individual harmed by a deceptive trade practice.

Created by §1, Act No. 1019 of 2003, effective August 7, 2003.

§5-41-205. Crimes Involving Electronic Mail

(a) A person commits an unlawful act involving electronic mail if, with the purpose to devise or execute a scheme to defraud or illegally obtain property, the person:

(a)(1) Knowingly and with the purpose to transmit or cause to be transmitted the item of electronic mail to the electronic mail address of one or more recipients without their knowledge of or consent to the transmission falsifies or forges any data, information, image, program, signal, or sound that:

(a)(1)(A) Is contained in the header, subject line, or routing instructions of an item of electronic mail; or

(a)(1)(B) Describes or identifies the sender, source, point of origin, or path of transmission of an item of electronic mail;

(a)(2) Purposely transmits or causes to be transmitted an item of electronic mail to the electronic mail address of one or more recipients without their knowledge of or consent to the transmission, if the person knows or has reason to know that the item of electronic mail contains or has been generated or formatted with:

(a)(2)(A) An Internet domain name that is being used without the consent of the person who holds the Internet domain name; or

(a)(2)(B) Any data, information, image, program, signal, or sound that has been used intentionally in the header, subject line, or routing instructions of the item of electronic mail to falsify or misrepresent:

(a)(2)(B)(i) The identity of the sender; or

(a)(2)(B)(ii) The source, point of origin, or path of transmission of the item of electronic mail; or

(a)(3) Knowingly sells, gives, or otherwise distributes or possesses with the intent to sell, give, or otherwise distribute any data, information, image, program, signal, or sound which is designed or intended to be used to falsify or forge any data, information, image, program, signal, or sound that:

(a)(3)(A) Is contained in the header, subject line, or routing instructions of an item of electronic mail; or

(a)(3)(B) Describes or identifies the sender, source, point of origin, or path of transmission of an item of electronic mail.

(b) Subdivision (a)(2) of this section does not apply to a provider of Internet service who, in the course of providing service, transmits or causes to be transmitted an item of electronic mail on behalf of another person, unless the provider of Internet service is the person who first generates the item of electronic mail.

(c) An unlawful act involving electronic mail is a Class D felony.

Created by §2, Act No. 1496, Acts of 2001, effective August 12, 2001.