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REFERENCE TITLE: **spamming; no contact list**

State of Arizona  
House of Representatives  
Forty-fifth Legislature  
Second Regular Session  
2002

## **HB 2561**

Introduced by

Representatives Hatch-Miller, Marsh, Avelar, Miranda, Binder, Senator  
Bundgaard: Representatives Anderson, Cannell, Kraft, Lored, Poelstra,  
Soltero, Somers, Senators Blanchard, Daniels, Jarrett, Mitchell, Petersen,  
Rios, Smith, Verkamp, Yrun

**AN ACT**

**CHANGING THE DESIGNATION OF TITLE 44, CHAPTER 9, ARTICLE 6, ARIZONA REVISED STATUTES, TO "DIRECT ELECTRONIC MARKETING"; AMENDING SECTIONS 44-1271 AND 44-1278, ARIZONA REVISED STATUTES; AMENDING TITLE 44, CHAPTER 9, ARTICLE 6, ARIZONA REVISED STATUTES, BY ADDING SECTION 44-1282; RELATING TO ELECTRONIC MAIL SOLICITATIONS.**

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Heading change

3 The article heading of title 44, chapter 9, article 6, Arizona Revised  
4 Statutes, is changed from "TELEPHONE SOLICITATIONS" to "DIRECT ELECTRONIC  
5 MARKETING".

6 Sec. 2. Section 44-1271, Arizona Revised Statutes, is amended to read:  
7 44-1271. Definitions

8 In this article, unless the context otherwise requires:

9 1. "Consumer" means a person who is solicited by a seller or  
10 solicitor.

11 2. "ELECTRONIC MESSAGE" INCLUDES ELECTRONIC MAIL.

12 ~~2-~~ 3. "Licensed associated person of a securities, commodities or  
13 investments broker" means any associated person registered or licensed by the  
14 national association of securities dealers, a self-regulatory organization as  
15 defined in the securities exchange act of 1934 (15 United States Code  
16 ~~sections 78a through 7811~~ SECTION 78c) or an official or agency of this state  
17 or of any other state of the United States.

18 ~~3-~~ 4. "Licensed securities commodities or investments broker, dealer  
19 or investment advisor" means a person licensed or registered as a securities  
20 commodities or investments broker, dealer or investment advisor by the  
21 securities and exchange commission, the national association of securities  
22 dealers, a self-regulatory organization as defined in the securities exchange  
23 act of 1934 (15 United States Code ~~sections 78a through 7811~~ SECTION 78c) or  
24 an official or agency of this state or of any other state of the United  
25 States.

26 ~~4-~~ 5. "Manager" means a person who supervises the work of a  
27 solicitor.

28 ~~5-~~ 6. "Merchandise" means objects, wares, goods, commodities,  
29 intangibles, real estate, securities or services.

30 ~~6-~~ 7. "Person" means:

31 (a) A natural person or ~~his~~ THE PERSON'S legal representative.

32 (b) A partnership, a limited liability company, a limited liability  
33 partnership or a domestic or foreign corporation.

34 (c) A company, trust, business entity or association.

35 (d) An agent, employee, salesman, partner, officer, director, member,  
36 stockholder, associate or trustee.

37 (e) Any other legal entity or any group associated in fact although  
38 not a legal entity.

39 ~~7-~~ 8. "Premium" means any gift, bonus, prize, award or other  
40 incentive or inducement to purchase merchandise.

41 ~~8-~~ 9. "Principal" means an owner or an officer of a corporation or  
42 limited liability company, a general partner of a partnership, a sole  
43 proprietor of a sole proprietorship, a partner of a limited liability  
44 partnership, a trustee of a trust and any other individual who controls,  
45 manages or supervises a telephone sales operation.

- 1           ~~9.~~ 10. "Prize" means anything offered or purportedly offered and  
2 given or purportedly given to a person by chance. Chance exists if a person  
3 is guaranteed to receive an item and at the time of the offer or purported  
4 offer the seller or solicitor does not identify the specific item that the  
5 person will receive.
- 6           ~~10.~~ 11. "Prize promotion" means a sweepstakes or other game of chance  
7 or an oral or written express or implied representation that a person has  
8 won, has been selected to receive or may be eligible to receive a prize or  
9 purported prize.
- 10          ~~11.~~ 12. "Recovery service" means any business or other practice in  
11 which a person represents or implies that the person will recover or assist  
12 in recovering for a fee any amount of money that a consumer has provided to a  
13 seller pursuant to a telephone solicitation.
- 14          ~~12.~~ 13. "Seller" means a person who, directly or through a solicitor,  
15 does any of the following:
- 16           (a) Initiates telephone calls OR OTHER ELECTRONIC MESSAGES to provide  
17 or arrange to provide goods or services to consumers in exchange for payment.
- 18           (b) Solicits by telephone OR OTHER ELECTRONIC MESSAGE in response to  
19 inquiries from a consumer generated by a notification or communication sent  
20 or delivered to the consumer that represents or implies that:
- 21           (i) The consumer has been specially selected in any manner to receive  
22 the notification or communication or the offer contained in the notification  
23 or communication.
- 24           (ii) The consumer will receive a premium if the consumer calls the  
25 person.
- 26           (iii) If the consumer purchases merchandise from the person, the  
27 consumer will also receive additional or other merchandise, the same as or  
28 different from the type of merchandise purchased, without any additional  
29 charge or for a price that the person represents or implies is less than the  
30 regular price of the merchandise.
- 31           (iv) The person is offering for sale the services of a recovery  
32 service.
- 33           (v) The person is offering to make a loan, to arrange or assist in  
34 arranging a loan or to assist in providing information that may lead to  
35 obtaining a loan unless no payment of any kind is made until the loan  
36 proceeds are disbursed to the borrower.
- 37           (vi) The consumer will receive a credit card if the consumer pays a  
38 fee for the card before receiving the card.
- 39           (c) Solicits by telephone OR OTHER ELECTRONIC MESSAGE in response to  
40 inquiries generated by advertisements on behalf of the person that represent  
41 or imply that:
- 42           (i) The person is offering to sell the services of a recovery service.

1 (ii) The person is offering to make a loan, to arrange or assist in  
2 arranging a loan or to assist in providing information that may lead to  
3 obtaining a loan unless no payment of any kind is made until the loan  
4 proceeds are disbursed to the borrower.

5 (iii) The consumer will receive a credit card if the consumer pays a  
6 fee for the card before receiving the card.

7 14. "SOLICITATION" MEANS ANY TELEPHONE OR OTHER ELECTRONIC MESSAGE,  
8 SOLICITATION TO A TELEPHONE NUMBER OR ELECTRONIC MAIL ADDRESS IN THIS STATE  
9 TO OFFER MERCHANDISE FOR SALE OR RENT.

10 ~~13.~~ 15. "Solicitor" means a person, other than a seller or employee of  
11 a seller, who uses a telephone OR OTHER ELECTRONIC MESSAGE to seek sales of  
12 merchandise on behalf of a seller or uses a telephone to verify sales for a  
13 seller.

14 Sec. 3. Section 44-1278, Arizona Revised Statutes, is amended to read:  
15 44-1278. Unlawful practice; powers of attorney general;  
16 cumulative remedies

17 A. It is an unlawful practice pursuant to section 44-1522 for a seller  
18 or solicitor or anyone acting on ~~their~~ behalf OF EITHER A SELLER OR SOLICITOR  
19 to make or authorize to any consumer any reference to the seller's or  
20 solicitor's compliance with this article other than on inquiry by the  
21 consumer.

22 B. It is an unlawful practice pursuant to section 44-1522 for any  
23 seller or solicitor or anyone acting on ~~their~~ behalf OF EITHER A SELLER OR  
24 SOLICITOR who conducts a telephone OR OTHER ELECTRONIC MESSAGE solicitation  
25 in this state to do any of the following:

26 1. Use telephone equipment that blocks the caller identification  
27 function on the telephone or telephone equipment of the telephone number  
28 dialed so that the telephone number of the caller is not displayed on the  
29 telephone or telephone equipment that is capable of displaying the telephone  
30 number of the caller.

31 2. Initiate an outbound telephone call OR OTHER ELECTRONIC MESSAGE to  
32 a person if that person has previously stated a desire not to receive  
33 outbound telephone ~~calls~~ OR OTHER ELECTRONIC MESSAGES made by or on behalf of  
34 the seller whose goods or services are being offered. A seller or solicitor  
35 is not liable under this paragraph or paragraph 3 if all of the following  
36 apply:

37 (a) The seller or solicitor has established and implemented written  
38 procedures to comply with this paragraph.

39 (b) The seller or solicitor has trained the seller's or solicitor's  
40 personnel according to the written procedures prescribed in subdivision (a)  
41 of this paragraph.

42 (c) The seller or the solicitor acting on behalf of the seller  
43 establishes and maintains a no call list comprised of all persons who request  
44 not to be contacted and keeps all do not call requests for at least ten  
45 years.

1 (d) The initial outbound ~~call~~ MESSAGE or any subsequent outbound ~~call~~  
2 MESSAGE made by the seller or solicitor is the result of an error.

3 3. Intentionally make or cause to be made any unsolicited telephone  
4 sales call to any mobile or telephone paging device.

5 4. Make a telephone call to any residential telephone using an  
6 artificial or prerecorded voice to deliver a message unless the call is  
7 initiated for emergency purposes or the call is made with the prior express  
8 consent of the called party.

9 5. Use any automatic terminal equipment that uses a random or  
10 sequential number generator unless the equipment excludes calls to the  
11 following telephone numbers:

12 (a) Emergency telephone numbers, including 911, of any hospital,  
13 medical physician, health care facility, poison control center, fire  
14 protection facility or law enforcement agency.

15 (b) Any guest room or patient room of a hospital, health care  
16 facility, elderly care home or similar establishment.

17 (c) A paging service, a cellular telephone service, a specialized  
18 mobile radio service or any service for which the called party is charged for  
19 the call.

20 (d) The telephone numbers maintained on a no call list established  
21 pursuant to paragraph 2 of this subsection ~~OR THE NO CONTACT LIST ESTABLISHED~~  
22 ~~PURSUANT TO SECTION 44-1282.~~

23 6. Initiate an outbound call except as provided in 47 Code of Federal  
24 Regulations, ~~section 64.1200~~ or 16 Code of Federal Regulations section  
25 310.4.

26 C. Failure to comply with this article is an unlawful practice  
27 pursuant to section 44-1522. The attorney general may investigate and take  
28 appropriate action as prescribed by chapter 10, article 7 of this title.

29 D. The provisions of this article are in addition to all other causes  
30 of action, remedies and penalties available to this state.

31 E. The attorney general may bring an action in federal court in  
32 accordance with 15 United States Code sections 6101 through 6108.

33 Sec. 4. Title 44, chapter 9, article 6, Arizona Revised Statutes, is  
34 amended by adding section 44-1282, to read:

35 44-1282. Electronic mail no contact list; prohibited  
36 solicitations; civil penalties; no contact list fund

37 A. BY JANUARY 1, 2003, THE SECRETARY OF STATE SHALL ESTABLISH AND  
38 PROVIDE FOR THE MAINTENANCE AND OPERATION OF A NO CONTACT LIST OF ELECTRONIC  
39 MAIL ADDRESSES OF RESIDENTS OF THIS STATE WHO OBJECT TO RECEIVING ELECTRONIC  
40 SOLICITATIONS. THE SECRETARY OF STATE MAY CONTRACT WITH A PRIVATE VENDOR TO  
41 OPERATE THE NO CONTACT LIST.

42 B. ANY PERSON WHO DESIRES TO BE INCLUDED ON THE NO CONTACT LIST MUST  
43 NOTIFY THE SECRETARY OF STATE IN A MANNER PRESCRIBED BY THE SECRETARY OF  
44 STATE. AN ENTRY ON THE NO CONTACT LIST EXPIRES FIVE YEARS AFTER IT IS  
45 ORIGINALLY ENTERED UNLESS THE PERSON REMOVES OR RENEWS THE ENTRY BEFORE THE

1 EXPIRATION DATE IN A MANNER PRESCRIBED BY THE SECRETARY OF STATE. THE  
2 SECRETARY OF STATE SHALL NOT DELETE ANY ENTRY FROM THE NO CONTACT LIST EXCEPT  
3 ON THE PERSON'S REQUEST OR EXPIRATION OF THE ENTRY.

4 C. THE SECRETARY OF STATE SHALL PROVIDE A COPY OF THE NO CONTACT LIST  
5 IN A FORMAT PRESCRIBED BY THE SECRETARY OF STATE TO EACH SELLER AT THE TIME  
6 THE SELLER PAYS THE ANNUAL REGISTRATION FEE PRESCRIBED BY SECTION  
7 44-1275. THE SECRETARY OF STATE SHALL POST AND CONTINUALLY UPDATE THE LIST  
8 ON A SECURE INTERNET WEB SITE, AND SELLERS ARE RESPONSIBLE FOR ACCESSING AND  
9 USING THE CURRENT LIST.

10 D. IT IS AN UNLAWFUL PRACTICE PURSUANT TO SECTION 44-1522 FOR ANY  
11 SELLER OR SOLICITOR OR ANYONE ACTING ON BEHALF OF A SELLER OR SOLICITOR TO  
12 INITIATE AN ELECTRONIC MESSAGE TO AN ELECTRONIC MAIL ADDRESS ON THE NO  
13 CONTACT LIST ESTABLISHED PURSUANT TO THIS SECTION, EXCEPT THAT:

14 1. THIS SUBSECTION DOES NOT APPLY TO COMMUNICATIONS OR OTHER CONTACTS  
15 MADE:

16 (a) IN RESPONSE TO AN EXPRESS REQUEST BY THE PERSON BEING CONTACTED.

17 (b) PRIMARILY IN CONNECTION WITH AN EXISTING DEBT PAYMENT OR CONTRACT  
18 PERFORMANCE THAT HAS NOT BEEN PAID OR COMPLETED AT THE TIME OF THE CONTACT.

19 (c) TO ANY PERSON WITH WHOM THE SELLER OR SOLICITOR HAS AN ESTABLISHED  
20 BUSINESS RELATIONSHIP.

21 (d) BY ANY SELLER OR SOLICITOR WHO MAKES FEWER THAN ONE HUNDRED SUCH  
22 CONTACTS DURING THE CALENDAR YEAR.

23 (e) BY OR ON BEHALF OF A CHARITABLE ORGANIZATION THAT IS REGISTERED  
24 WITH THE SECRETARY OF STATE PURSUANT TO SECTION 44-6552 OR THAT IS EXEMPT  
25 FROM REGISTRATION PURSUANT TO SECTION 44-6553.

26 (f) AS A RESULT OF AN ERROR IF BOTH OF THE FOLLOWING APPLY:

27 (i) THE SELLER OR SOLICITOR HAS ESTABLISHED AND IMPLEMENTED WRITTEN  
28 PROCEDURES TO COMPLY WITH THIS SUBSECTION.

29 (ii) THE SELLER OR SOLICITOR HAS TRAINED THE SELLER'S OR SOLICITOR'S  
30 PERSONNEL ACCORDING TO THE WRITTEN PROCEDURES UNDER ITEM (i).

31 E. THE SECRETARY OF STATE MAY IMPOSE A CIVIL PENALTY OF NOT MORE THAN:

32 1. TWO HUNDRED FIFTY DOLLARS ON ANY SELLER THAT WILFULLY VIOLATES  
33 SUBSECTION D OF THIS SECTION.

34 2. FIVE HUNDRED DOLLARS FOR ANY SUBSEQUENT WILFUL VIOLATION OF  
35 SUBSECTION D OF THIS SECTION.

36 F. THE NO CONTACT LIST FUND IS ESTABLISHED CONSISTING OF MONIES  
37 COLLECTED AS CIVIL PENALTIES UNDER SUBSECTION E OF THIS SECTION. THE  
38 SECRETARY OF STATE SHALL ADMINISTER THE FUND. MONIES IN THE FUND ARE  
39 CONTINUOUSLY APPROPRIATED TO THE SECRETARY OF STATE SOLELY FOR PURPOSES OF  
40 ADMINISTERING THE NO CONTACT LIST UNDER THIS SECTION. ON NOTICE FROM THE  
41 SECRETARY OF STATE, THE STATE TREASURER SHALL INVEST AND DIVEST MONIES IN THE  
42 FUND AS PROVIDED BY SECTION 35-313, AND MONIES EARNED FROM INVESTMENT SHALL  
43 BE CREDITED TO THE FUND. MONIES IN THE FUND ARE EXEMPT FROM THE PROVISIONS  
44 OF SECTION 35-190 RELATING TO LAPSING OF APPROPRIATIONS.