

1 **TELEPHONE SOLICITATION REGULATION**

2 2000 GENERAL SESSION

3 STATE OF UTAH

4 **Sponsor: Evan L. Olsen**

5 AN ACT RELATING TO CONSUMER PROTECTION; RECODIFYING AND AMENDING
6 THE PROVISIONS OF THE TELEPHONE AND FACSIMILE SOLICITATION ACT AND THE
7 TELEPHONE FRAUD PREVENTION ACT; CREATING A STATE-RUN "DO NOT CALL
8 LIST"; PROVIDING FOR ADMINISTRATIVE, CIVIL, AND CRIMINAL PENALTIES; AND
9 PROVIDING A PRIVATE RIGHT OF ACTION.

10 This act affects sections of Utah Code Annotated 1953 as follows:

11 AMENDS:

12 **54-8b-18**, as enacted by Chapter 113, Laws of Utah 1999

13 ENACTS:

14 **13-26a-101**, Utah Code Annotated 1953

15 **13-26a-102**, Utah Code Annotated 1953

16 **13-26a-103**, Utah Code Annotated 1953

17 **13-26a-104**, Utah Code Annotated 1953

18 **13-26a-105**, Utah Code Annotated 1953

19 **13-26a-106**, Utah Code Annotated 1953

20 **13-26a-107**, Utah Code Annotated 1953

21 **13-26a-108**, Utah Code Annotated 1953

22 **13-26a-109**, Utah Code Annotated 1953

23 **13-26a-110**, Utah Code Annotated 1953

24 **13-26a-111**, Utah Code Annotated 1953

25 **13-26a-112**, Utah Code Annotated 1953

26 **13-26a-113**, Utah Code Annotated 1953

27 **13-26a-114**, Utah Code Annotated 1953

28 REPEALS:

- 29 **13-25a-101**, as enacted by Chapter 26, Laws of Utah 1996
- 30 **13-25a-102**, as last amended by Chapter 77, Laws of Utah 1998
- 31 **13-25a-103**, as last amended by Chapter 77, Laws of Utah 1998
- 32 **13-25a-104**, as enacted by Chapter 26, Laws of Utah 1996
- 33 **13-25a-105**, as enacted by Chapter 26, Laws of Utah 1996
- 34 **13-25a-106**, as enacted by Chapter 26, Laws of Utah 1996
- 35 **13-25a-107**, as enacted by Chapter 26, Laws of Utah 1996
- 36 **13-26-1**, as enacted by Chapter 154, Laws of Utah 1990
- 37 **13-26-2**, as last amended by Chapter 92, Laws of Utah 1997
- 38 **13-26-3**, as last amended by Chapter 124, Laws of Utah 1999
- 39 **13-26-4**, as last amended by Chapter 170, Laws of Utah 1996
- 40 **13-26-5**, as last amended by Chapter 189, Laws of Utah 1994
- 41 **13-26-8**, as last amended by Chapter 26, Laws of Utah 1995
- 42 **13-26-10**, as enacted by Chapter 184, Laws of Utah 1991
- 43 **13-26-11**, as last amended by Chapter 77, Laws of Utah 1998

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

45 Section 1. Section **13-26a-101** is enacted to read:

46 **CHAPTER 26a. TELECOMMUNICATIONS SOLICITATION ACT**

47 **13-26a-101. Title.**

48 This chapter is known as the "Telecommunications Solicitation Act."

49 Section 2. Section **13-26a-102** is enacted to read:

50 **13-26a-102. Definitions.**

51 As used in this chapter:

52 (1) "Advertisement" means material offering for sale, or advertising the availability or
53 quality of, any property, goods, or services.

54 (2) (a) "Automated telephone dialing system" means equipment used to:

55 (i) store or produce telephone numbers;

56 (ii) call a stored or produced number; and

57 (iii) connect the number called with a recorded message or artificial voice.

58 (b) "Automated telephone dialing system" does not include equipment used with a burglar

59 alarm system, voice messaging system, fire alarm system, or other system used in an emergency
60 involving the immediate health or safety of a person.

61 (3) "Continuity plan" means a shipment, with the prior express consent of the buyer, at
62 regular intervals of similar special-interest products. A continuity plan is distinguished from a
63 subscription arrangement by the absence of a binding commitment period or purchase amount.

64 (4) "Division" means the Division of Consumer Protection.

65 (5) "Do not call list" means the registry maintained by the division under Section
66 13-26a-105.

67 (6) "Email" means the process or act of:

68 (a) scanning or encoding text or images for conversion into electronic signals for
69 transmission; or

70 (b) receiving electronic signals and reproducing them as a duplicate of the original text or
71 image.

72 (7) "Established business relationship" means a relationship that:

73 (a) is based on inquiry, application, purchase, or transaction regarding products or services
74 offered;

75 (b) is formed by a voluntary two-way communication between a person making a
76 telephone solicitation and a person to whom a telephone solicitation is made; and

77 (c) has not been terminated by either party.

78 (8) "Facsimile machine" means equipment used for:

79 (a) scanning or encoding text or images for conversion into electronic signals for
80 transmission; or

81 (b) receiving electronic signals and reproducing them as a duplicate of the original text or
82 image.

83 (9) "Fictitious personal name" means a name other than an individual's legal name.

84 (10) "Material statement" or "material fact" means information that a person of ordinary
85 intelligence or prudence would consider important in deciding whether or not to accept an offer
86 extended through a telephone solicitation.

87 (11) "Negative response" means a statement from a party stating the party does not wish
88 to listen to the sales presentation or participate in the solicitation presented in the telephone call.

89 (12) "Premium" means a gift, bonus, prize, award, certificate, or other document by which

90 a prospective purchaser is given a right, chance, or privilege to purchase or receive goods or
91 services as an inducement to a prospective purchaser to purchase other goods or services.

92 (13) "Telephone call" means a voice, written, or other message of communication
93 facilitated and accomplished by means of electronic transmission, including calls made by use of
94 an automated telephone dialing system, facsimile or email.

95 (14) (a) "Telephone solicitation", "sale," "selling," or "solicitation of sale", whether
96 directed to a residence or business, means the initiation of a telephone call or message, including
97 calls made by use of an automated telephone dialing system, facsimile, or email:

98 (i) for the purpose of:

99 (A) encouraging the purchase or rental of, or investment in, property, goods, or services,
100 tangible or intangible;

101 (B) soliciting a sale of or extension of credit for property or services to the person called;

102 (C) soliciting information that will be used for:

103 (I) the direct solicitation of a sale of property or services to the person called; or

104 (II) an extension of credit to the person called for a sale of property or services; or

105 (D) soliciting a charitable donation involving the exchange of any premium, prize, gift,
106 ticket, subscription, or other benefit in connection with any appeal made for a charitable purpose;

107 and

108 (ii) in which:

109 (A) (I) the seller solicits the sale over the telephone;

110 (II) the purchaser's agreement to purchase is made over the telephone; and

111 (III) the purchaser, over the telephone, pays for or agrees to commit to payment for goods
112 or services prior to or upon receipt by the purchaser of the goods or services;

113 (B) the solicitor, not exempt under this chapter, induces a prospective purchaser over the
114 telephone, to make and keep an appointment that directly results in the purchase of goods or
115 services by the purchaser that would not have occurred without the telephone solicitation by the
116 solicitor;

117 (C) the seller offers or promises a premium to a prospective purchaser if:

118 (I) the seller induces the prospective purchaser to initiate a telephone contact with the
119 telephone soliciting business; and

120 (II) the resulting solicitation meets the requirements of Subsection (14)(a)(i); or

121 (D) the solicitor solicits a charitable donation involving the exchange of any premium,
122 prize, gift, ticket, subscription, or other benefit in connection with any appeal made for a charitable
123 purpose by an organization that is not otherwise exempt under this chapter.

124 (b) A solicitation of sale or telephone solicitation is considered complete when made,
125 whether or not the person receiving the solicitation agrees to the sale or to make a charitable
126 donation.

127 (15) "Telephone soliciting business" means a sole proprietorship, partnership, limited
128 liability company, corporation, or other association of individuals engaged in a common effort to
129 solicit sales regulated under this chapter.

130 (16) "Telephone solicitor" or "solicitor" means any natural person, firm, organization,
131 partnership, association, limited liability company, corporation, or other entity that makes, places,
132 or receives telephone calls, including calls made by use of an automated telephone dialing system,
133 facsimile, or email, for the purpose of selling or solicitation of sales as defined in Subsection (14),
134 whether the calls originate in Utah or are received in Utah.

135 (17) "Unsolicited telephone call" means a telephone call, including calls made by use of
136 an automated telephone dialing system, facsimile, or email, for a commercial purpose or to seek
137 a financial donation other than a call made:

138 (a) in response to an express request of the person called;

139 (b) primarily in connection with an existing debt or contract, payment or performance of
140 which has not been completed at the time of the call; or

141 (c) to any person with whom the telephone solicitor has an existing business relationship.

142 Section 3. Section **13-26a-103** is enacted to read:

143 **13-26a-103. Registration and bond required -- Subscription to do not call list.**

144 (1) (a) Each telephone soliciting business engaging in telephone solicitation or sales in this
145 state shall register annually with the division prior to doing or continuing to do business in this
146 state.

147 (b) The registration form shall designate an agent residing in this state who is authorized
148 by the telephone soliciting business to receive service of process in any action brought by this state
149 or a resident of this state.

150 (c) If a telephone soliciting business fails to designate an agent to receive service or fails
151 to appoint a successor to the agent, the business' application for an initial or renewal registration

152 shall be denied, and any current registration shall be suspended until an agent is designated.

153 (2) The division may impose an annual registration fee set pursuant to Section 63-38-3.2.

154 (3) (a) Each telephone soliciting business engaging in telephone solicitation or sales in this
155 state shall obtain and maintain the following security:

156 (i) a performance bond issued by a surety authorized to transact surety business in this
157 state;

158 (ii) an irrevocable letter of credit issued by a financial institution authorized to do business
159 in this state; or

160 (iii) a certificate of deposit held in this state in a depository institution regulated by the
161 Department of Financial Institutions.

162 (b) The bond, letter of credit, or certificate of deposit shall be payable to the division for
163 the benefit of any consumer who incurs damages as the result of any telephone solicitation or sales
164 violation of this chapter.

165 (c) The division may recover from the bond, letter of credit, or certificate of deposit
166 investigative costs, attorneys' fees, and other costs of collecting and distributing funds under this
167 section and the costs of promoting consumer education, but only if the consumer has first
168 recovered full damages.

169 (d) A telephone soliciting business shall keep a bond, certificate of deposit, or letter of
170 credit in force for one year after it notifies the division in writing that it has ceased all activities
171 regulated by this chapter.

172 (e) The amount to be posted in the form of a bond, irrevocable letter of credit, or certificate
173 of deposit shall be set at a reasonable level in relation to the individual circumstances of the
174 telephone soliciting business by the director of the division and shall not exceed:

175 (i) \$50,000 if neither the telephone soliciting business nor any affiliated person has been
176 found in an administrative, civil, or criminal proceeding to have violated this chapter within three
177 years of the date of application; or

178 (ii) \$75,000 if the telephone soliciting business or any affiliated person has been found in
179 an administrative, civil, or criminal proceeding to have violated this chapter within three years of
180 the date of application.

181 (f) For purposes of Subsection (3)(e) an "affiliated person" means a current contractor,
182 director, employee, officer, owner, or partner of the telephone soliciting business.

183 (4) The division may establish by rule the registration requirements for telephone soliciting
184 businesses in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act.

185 (5) Each telephone solicitation business registered under this section shall maintain a
186 current subscription to the do not call list created in Section 13-26a-105.

187 (6) The division director may revoke a registration under this section for any violation of
188 this chapter.

189 (7) An administrative proceeding conducted by the division under this chapter shall
190 comply with the requirements of Title 63, Chapter 46b, Administrative Procedures Act.

191 Section 4. Section **13-26a-104** is enacted to read:

192 **13-26a-104. Exemptions from registration.**

193 (1) The following, while subject to all other sections of this chapter, are exempt from the
194 registration and bonding requirements of Section 13-26a-103:

195 (a) a broker, agent, dealer, or sales professional licensed under the licensure laws of this
196 state, when soliciting sales within the scope of his license;

197 (b) the solicitation of sales by:

198 (i) a public utility that is regulated under Title 54, Public Utilities, or by an affiliate of the
199 utility;

200 (ii) a newspaper of general circulation;

201 (iii) a solicitation of sales made by a broadcaster licensed by any state or federal authority;

202 or

203 (iv) a nonprofit organization if no part of the net earnings from the sale inures to the
204 benefit of any member, officer, trustee, or serving board member of the organization, or individual,
205 or family member of an individual, holding a position of authority or trust in the organization;

206 (c) the solicitation of any depository institution as defined in Section 7-1-103, a subsidiary
207 of a depository institution, personal property broker, securities broker, investment adviser,
208 consumer finance lender, or insurer subject to regulation by an official agency of this state or the
209 United States;

210 (d) the solicitation of a contract for the maintenance or repair of goods previously
211 purchased from the person:

212 (i) who is making the solicitation; or

213 (ii) on whose behalf the solicitation is made;

- 214 (e) the solicitation of previous customers of the business on whose behalf the call is made
215 if the person making the call:
- 216 (i) does not offer any premium in conjunction with a sale or offer;
217 (ii) is not selling an investment or an opportunity for an investment that is not registered
218 with any state or federal authority; and
- 219 (iii) is not regularly engaged in telephone sales;
- 220 (f) the solicitation of a sale that is an isolated transaction and not done in the course of a
221 pattern of repeated transactions of a like nature;
- 222 (g) the solicitation of a person by a retail business establishment that has been in operation
223 for at least five years in Utah under the same name as that used in connection with telemarketing
224 if both of the following occur on a continuing basis:
- 225 (i) products are displayed and offered for sale at the place of business, or services are
226 offered for sale and provided at the place of business; and
- 227 (ii) a majority of the seller's business involves the buyer obtaining the products or services
228 at the seller's place of business; and
- 229 (h) a telephone marketing service company that provides telemarketing sales services
230 under contract to sellers if:
- 231 (i) it has been doing business regularly with customers in Utah for at least five years under
232 the same business name and with its principal office in the same location;
- 233 (ii) at least 75% of its contracts are performed on behalf of persons exempted from
234 registration under this chapter; and
- 235 (iii) neither the company nor its principals have been enjoined from doing business or
236 subjected to criminal actions for their business activities in this or any other state.
- 237 (2) The person claiming an exemption under this section has the burden of proving that
238 the person is entitled to the exemption.
- 239 Section 5. Section **13-26a-105** is enacted to read:
- 240 **13-26a-105. Do not call list.**
- 241 (1) The division shall:
- 242 (a) no later than July 1, 2000, establish and thereafter maintain a registry of telephone
243 numbers of persons who do not wish to receive telephone solicitations;
- 244 (b) update the do not call list at least once every three months;

245 (c) make rules pursuant to Title 63, Chapter 46a, Utah Administrative Rulemaking Act,
246 to establish the methods by which telephone numbers can be added to and deleted from the do not
247 call list; and

248 (d) promote and publicize the do not call list as appropriate.

249 (2) No fee shall be charged to add or remove any telephone number on the do not call list.

250 (3) If, pursuant to 47 U.S.C. Section 227(c)(3), the Federal Communications Commission
251 establishes a single national registry of telephone numbers of subscribers who do not wish to
252 receive telephone solicitations, the division shall include in the do not call list that part of the
253 national registry that relates to this state.

254 (4) (a) Upon request, the division shall make updated copies of the do not call list available
255 for a yearly subscription fee of \$500.

256 (b) The yearly subscription fee shall be waived if:

257 (i) the organization requesting the do not call list is exempt from taxation under section
258 501(c)(3) or section 501(c)(6) of the Internal Revenue Code; or

259 (ii) payment of the subscription fee would unduly burden, as defined by rule by the
260 division, the ability of the person requesting the do not call list to conduct business or otherwise
261 operate within this state.

262 Section 6. Section **13-26a-106** is enacted to read:

263 **13-26a-106. Prohibited conduct for telephone solicitations.**

264 (1) It is unlawful for any person:

265 (a) to solicit prospective purchasers on behalf of a telephone soliciting business that is not
266 registered with the division or exempt from registration under this chapter;

267 (b) to use a fictitious personal name in connection with a telephone solicitation;

268 (c) to make or cause to be made any untrue material statement, or fail to disclose a material
269 fact necessary to make any statement made not misleading, whether in connection with a telephone
270 solicitation or a filing with the division;

271 (d) to make or authorize the making of any misrepresentation about its compliance with
272 this chapter to any prospective or actual purchaser;

273 (e) to fail to refund within 30 days any amount due a purchaser who exercises the right to
274 cancel under Section 13-26a-110;

275 (f) to make a telephone solicitation to a residential or business telephone before 9 a.m. or

276 after 8 p.m. local time unless prior express consent is given to call at a different time;

277 (g) to make, or knowingly allow to be made, a telephone solicitation to any telephone
278 number that is included on the most recent version of the do not call list which is available to the
279 public at the time of the solicitation;

280 (h) to fail to advise a purchaser at the time any solicitation is made of the purchaser's right
281 to cancel the sale under Section 13-26a-110; or

282 (i) to use the do not call list for any purpose other than to comply with the provision of this
283 chapter.

284 (2) It is unlawful for any telephone soliciting business whether required to be registered
285 under this chapter or exempt from registration:

286 (a) to cause or permit any solicitor to violate any provision of this chapter; or

287 (b) to use inmates in telephone soliciting operations where inmates have access to personal
288 data about an individual sufficient to physically locate or contact that individual, such as names,
289 addresses, telephone numbers, Social Security numbers, credit card information, or physical
290 descriptions.

291 (3) Any telephone solicitor who makes an unsolicited telephone call to a telephone number
292 shall:

293 (a) identify themselves;

294 (b) identify the business on whose behalf the person is soliciting;

295 (c) identify the purpose of the call promptly upon making contact by telephone with the
296 person who is the object of the telephone solicitation;

297 (d) discontinue the solicitation if the person being solicited gives a negative response at
298 any time during the telephone call; and

299 (e) hang up the phone, or in the case of an automated telephone dialing system operator,
300 disconnect the automated telephone dialing system from the telephone line within 25 seconds of
301 the termination of the call by the person being called.

302 (4) A telephone solicitor may not withhold the display of the telephone solicitor's
303 telephone number from a caller identification service when that number is being used for
304 telemarketing purposes and when the telephone solicitor's service or equipment is capable of
305 allowing the display of the number.

306 (5) A person may not make or authorize a telephone solicitation in violation of Title 47

307 U.S.C. 227 or other applicable state or federal law.

308 Section 7. Section **13-26a-107** is enacted to read:

309 **13-26a-107. Prohibited conduct for automated telephone dialing system solicitations.**

310 (1) Except as provided in Subsection (2), a person may not operate or authorize the
311 operation of an automated telephone dialing system to make a telephone solicitation.

312 (2) A person may operate an automated telephone dialing system if a call is made:

313 (a) with the prior express consent of the person who is called agreeing to receive a
314 telephone solicitation from a specific solicitor; or

315 (b) to a person with whom the solicitor has an established business relationship.

316 Section 8. Section **13-26a-108** is enacted to read:

317 **13-26a-108. Prohibited conduct for facsimile solicitations.**

318 (1) Except as provided in Subsection (2), a person may not operate or authorize the
319 operation of a facsimile machine to send an advertisement or otherwise solicit a sale as defined in
320 this chapter.

321 (2) A person may operate a facsimile machine to send an advertisement or solicitation if
322 the advertisement solicitation is sent:

323 (a) with the prior express consent of the person who receives the facsimile agreeing to
324 receive the facsimile from a specific solicitor; or

325 (b) to a person with whom the solicitor has an established business relationship.

326 (3) A person may not send or authorize the sending of an advertisement or solicitation by
327 facsimile in violation of Title 47 U.S.C. 227 or other applicable state or federal law.

328 Section 9. Section **13-26a-109** is enacted to read:

329 **13-26a-109. Prohibited conduct for email solicitations.**

330 (1) Except as provided in Subsection (2), a person may not send or authorize transmission
331 of unsolicited email to send an advertisement or otherwise solicit a sale as defined in this chapter.

332 (2) A person may send or authorize transmission of unsolicited email if the solicitation is
333 made:

334 (a) with the prior express consent of the person who receives the email agreeing to receive
335 the same from a specific solicitor; or

336 (b) to a person with whom the solicitor has an established business relationship.

337 (3) A person may not send or authorize an email in violation of Title 47 U.S.C. 227 or

338 other applicable state or federal law.

339 Section 10. Section **13-26a-110** is enacted to read:

340 **13-26a-110. Right of rescission -- Cancellation.**

341 (1) (a) In addition to any right to otherwise revoke an offer, a person making a purchase
342 from a telephone soliciting business, may cancel the sale at any time up to midnight of the third
343 business day after the date of the transaction or receipt of the merchandise or premium, whichever
344 is later, provided the solicitor advises the purchaser of his cancellation rights under this chapter
345 at the time any solicitation is made.

346 (b) If the solicitor fails to orally advise a purchaser of the right to cancel under this section
347 at the time of any solicitation, the purchaser's right to cancel shall be extended to 90 days.

348 (c) If the solicitor fails to orally advise a purchaser of his true name, telephone number,
349 and complete street address at the time of any solicitation, the purchaser may cancel the sale at any
350 time.

351 (2) (a) Sales shall be canceled by mailing a notice of cancellation to the telephone
352 solicitor's correct street address, postage prepaid.

353 (b) If the telephone solicitor provided no correct street address, cancellation can be
354 accomplished by sending a notice of cancellation to the division's offices, postage prepaid.

355 (3) (a) If a cancellation involves durable goods, as defined by rule by the division, the
356 purchaser shall return the durable goods to the seller.

357 (b) If a cancellation involves expendable goods, as defined by rule by the division, the
358 purchaser shall return any unused portion of those goods to the seller.

359 (c) A reasonable attempt shall be made to return goods to the solicitor's correct street
360 address within seven days of exercising the right to cancel, providing the solicitor has provided
361 the purchaser with the address. If the solicitor has failed to give a correct address, no return is
362 required to qualify for a full refund of the purchase price.

363 (d) If the purchaser has used any portion of the services or goods purchased, the solicitor
364 or telephone soliciting business shall receive a reasonable allowance for value given. This
365 allowance may be deducted from any refund due the purchaser.

366 (e) A solicitor shall be jointly and severally liable with the telephone soliciting business
367 for any refund amount due following the cancellation of a sale made by the solicitor.

368 (4) For the purposes of this section, "business day" does not include Sunday or a federal

369 or state holiday, whether or not the soliciting business is customarily open for the transaction of
370 business on that day.

371 Section 11. Section **13-26a-111** is enacted to read:

372 **13-26a-111. Enforcement -- Penalties.**

373 (1) The division shall investigate complaints and assess administrative fines for violations
374 of this chapter.

375 (2) Any person who violates this chapter is subject to:

376 (a) an administrative cease and desist order; and

377 (b) an administrative fine of not less than \$100 or more than \$2,000 for each separate
378 violation of this chapter.

379 (3) All administrative fines collected under this chapter shall be deposited in the Consumer
380 Protection Education and Training Fund created in Section 13-2-8.

381 (4) (a) Upon referral from the division, the attorney general or any district or county
382 attorney may:

383 (i) bring an action for temporary or permanent injunctive or other relief in any court of
384 competent jurisdiction for any violation of this chapter; or

385 (ii) bring an action in any court of competent jurisdiction for the collection of penalties
386 authorized under Subsection (5).

387 (b) The court may, upon entry of final judgment in an action brought under Subsection
388 (4)(a), award restitution when appropriate to any person suffering loss because of a violation of
389 this part if proof of loss is submitted to the satisfaction of the court.

390 (5) Any telephone soliciting business or any person associated with a telephone soliciting
391 business, including but not limited to solicitors, salespersons, agents, representatives of a solicitor,
392 or independent contractors, who violates any provision of this chapter shall be subject to a civil
393 penalty in a court of competent jurisdiction not exceeding \$2,000 for each unlawful transaction.

394 (6) (a) Any telephone soliciting business or any person associated with a telephone
395 soliciting business, including but not limited to solicitors, salespersons, agents, representatives of
396 a solicitor, or independent contractor, who violates this chapter as a first offense is guilty of a class
397 B misdemeanor.

398 (b) In the case of a second offense, the person is guilty of a class A misdemeanor.

399 (c) In the case of three or more offenses, the person is guilty of a third degree felony.

400 Section 12. Section **13-26a-112** is enacted to read:

401 **13-26a-112. Private right of action.**

402 (1) In addition to any other remedies, a person may bring an action in any state court of
403 competent jurisdiction if that person has received a telephone solicitation, facsimile advertisement,
404 or email that violates this chapter.

405 (2) In a suit brought under Subsection (1), a person may:

406 (a) recover the greater of \$500 or the amount of the pecuniary loss, if any; and

407 (b) recover court costs and reasonable attorneys' fees as determined by the court.

408 Section 13. Section **13-26a-113** is enacted to read:

409 **13-26a-113. Incorporation by reference.**

410 The requirements of Title 47 U.S.C. 227 are incorporated by reference, except as the same
411 are made more restrictive herein or the context of this chapter makes the same inappropriate or
412 inapplicable.

413 Section 14. Section **13-26a-114** is enacted to read:

414 **13-26a-114. Provisions of chapter not exclusive.**

415 The remedies, duties, prohibitions, and penalties of this chapter are not exclusive and are
416 in addition to all other causes of action, remedies, and penalties provided by law.

417 Section 15. Section **54-8b-18** is amended to read:

418 **54-8b-18. Definitions -- Unauthorized change of telecommunications provider --**
419 **Unauthorized charges -- Procedures for verification -- Penalties -- Authority of commission.**

420 (1) For purposes of this section:

421 (a) "Agents" includes any person, firm, or corporation representing a telecommunications
422 corporation for purposes of requesting a change in a subscriber's telecommunications provider, but
423 does not include a local service provider when executing a request submitted by another service
424 provider or its agents.

425 (b) "Freeze" means a directive from a subscriber to retain the provider of public
426 telecommunications services selected by the subscriber until the subscriber provides authorization
427 for a change to another provider of public telecommunications services through any means by
428 which a freeze is implemented.

429 (c) "Small commercial subscriber" is a person or entity conducting a business, agriculture,
430 or other enterprise in the state having less than five telecommunications lines.

431 (d) "Subscriber" means a corporation, person, or government, or a person acting legally
432 on behalf of a corporation, person, or government who has purchased public telecommunications
433 services from a telecommunications corporation.

434 (2) No telecommunications corporation or its agents shall make any change or authorize
435 a different telecommunications corporation to make any change in the provider of any public
436 telecommunications service to a subscriber unless it complies, at a minimum, with Subsections
437 (2)(a) through (e). This Subsection (2) does not apply to a telecommunications corporation that
438 effectuates a change in service provider pursuant to a change authorization submitted or requested
439 by another telecommunications corporation.

440 (a) The telecommunications corporation or its agents shall, at a minimum, inform the
441 subscriber of the nature, extent, and rates of the service being offered and any charges associated
442 with the change.

443 (b) Notwithstanding Section [~~13-26-4~~] 13-26a-104, changes in provider of
444 telecommunication service accomplished through telephone solicitation shall comply with the
445 [~~Telephone Fraud Prevention Act, Sections 13-26-2, 13-26-8, 13-26-10, and 13-26-11~~]
446 requirements of Title 13, Chapter 26a, Telecommunications Solicitation Act, other than those
447 relating to registration.

448 (c) For sales of residential service or small commercial subscriber service, the
449 telecommunications corporation or its agents shall confirm that the subscriber is aware of any
450 charges that the subscriber must pay associated with the change and that the subscriber authorizes
451 the change of provider. The subscriber's authorization to change the provider shall be confirmed
452 by any one of the following methods:

453 (i) obtaining the subscriber's written authorization;
454 (ii) having the subscriber's oral authorization verified by an independent third party; or
455 (iii) any means provided by rule of the Federal Communications Commission or the
456 commission.

457 (d) If the subscriber is not an individual, an authorization shall be valid only if given by
458 an authorized representative of the subscriber.

459 (e) (i) The written authorization to change the provider shall be signed by the subscriber
460 and shall contain a clear, conspicuous, and unequivocal request by the subscriber for a change of
461 telecommunications provider.

462 (ii) A written authorization is not valid if it is presented to the subscriber for signature in
463 connection with a sweepstakes, game of chance, or any other means prohibited by commission
464 rule.

465 (iii) Nothing in this section shall be construed to prohibit any person from offering a
466 premium, incentive, or a thing of value to another as consideration for authorizing a change of
467 telecommunications service provider, provided that no element of chance or skill is associated with
468 the offer of the premium, incentive, or thing of value or its receipt.

469 (3) The confirmation by a third-party verifier shall, at a minimum:

470 (a) confirm the subscriber's identity with information unique to the customer, unless the
471 customer refuses to provide identifying information, then that fact shall be noted;

472 (b) confirm that the subscriber agrees to the requested change in telecommunications
473 service providers; and

474 (c) confirm that the subscriber has the authority to select the provider as the provider of
475 that service.

476 (4) A third-party verifier shall meet each of the following criteria:

477 (a) any criteria for third-party verifiers set by the Federal Communications Commission;

478 (b) not be directly or indirectly managed, controlled, directed, or owned wholly or in part:

479 (i) by the telecommunications corporation or its agents that seek to provide the
480 telecommunications service or by any corporation, firm, or person who directly or indirectly
481 manages, controls, directs, or owns more than 5% of the telecommunications corporation; or

482 (ii) by the marketing entity that seeks to market the telecommunications service or by any
483 corporation, firm, or person who directly or indirectly manages, controls, directs, or owns more
484 than 5% of the marketing entity;

485 (c) operate from facilities physically separated from:

486 (i) those of the telecommunications corporation or its agents that seek to provide the
487 subscriber's telecommunications service; or

488 (ii) those of the marketing entity that seeks to market a telecommunications service to the
489 subscriber; and

490 (d) not derive commissions or compensation based upon the number of change
491 authorizations verified.

492 (5) A telecommunications corporation or its agents seeking to verify the change

493 authorization shall connect the subscriber to the third-party verifier or arrange for the third-party
494 verifier to call the subscriber to verify the change authorization.

495 (6) A third-party verifier that obtains the subscriber's oral verification regarding the change
496 shall record that verification by obtaining appropriate verification data.

497 (7) (a) The record verifying a subscriber's change of provider shall be available to the
498 subscriber upon request.

499 (b) Information obtained from the subscriber through verification may not be used for any
500 other purpose.

501 (c) Any intentional unauthorized release of the information in Subsection (7)(b) is grounds
502 for penalties or other action by the commission or remedies provided by law to the aggrieved
503 subscriber against the telecommunications corporation, third-party verifier, their agents, or their
504 employees who are responsible for the violation.

505 (8) The third-party verification shall occur in the same language as that in which the
506 change was solicited.

507 (9) The verification requirements described in this section shall apply to all changes in the
508 provider of any public telecommunications service.

509 (10) The commission may promulgate rules:

510 (a) necessary to implement this section;

511 (b) consistent with any rules promulgated by the Federal Communications Commission;
512 and

513 (c) in a nondiscriminatory and competitively neutral manner.

514 (11) (a) Each subscriber may elect to require the telecommunications corporation
515 providing the subscriber's local exchange service to implement a freeze until the subscriber
516 provides authorization for a change to another provider of public telecommunications services.

517 (b) Once a subscriber has elected the freeze option under Subsection (11)(a), the
518 telecommunications corporation providing the subscriber's local exchange service may not process
519 a request to change the subscriber to another provider of telecommunications services without
520 prior authorization directly from the subscriber.

521 (12) (a) Whenever the subscriber's provider of a telecommunications service changes, the
522 new provider shall:

523 (i) retain a record of the verified change authorization consistent with requirements of the

524 Federal Communications Commission or rules issued by the commission; and

525 (ii) be responsible for providing a conspicuous notice of the change within 30 days of the
526 effective date of the change of service.

527 (b) At a minimum, the notice in Subsection (12)(a)(ii) shall identify the new provider,
528 contain a general description of the service and price, and provide information necessary for the
529 subscriber to have questions answered or to rescind the change.

530 (13) Any bill shall identify each telecommunications service provider of
531 telecommunication service for which billing is rendered.

532 (14) (a) Any person or provider of telecommunications service inadvertently or knowingly
533 designating or changing the subscriber's telecommunications service provider in violation of this
534 section shall refund to the subscriber any amounts required by the rules of the Federal
535 Communications Commission and the commission.

536 (b) The unauthorized provider in Subsection (14)(a) additionally shall:

537 (i) bear all costs of restoring the customer to the service of the subscriber's original service
538 provider; and

539 (ii) pay to any other telecommunications provider any fees set by the commission for the
540 designation or change.

541 (15) Proceedings for violations of this section may be commenced by request for agency
542 action filed with the commission by a subscriber, a telecommunications corporation, the Division
543 of Public Utilities, or by the commission on its own motion.

544 (16) Any telecommunications corporation, its agents, or a third-party verifier who violates
545 this section or rules adopted to implement this section shall be subject to the provisions of Sections
546 54-7-23 through 54-7-29.

547 (17) The commission is granted authority to enforce provisions relating to an unauthorized
548 telecommunication service provider change in interstate and intrastate telecommunication service
549 involving telecommunications corporations operating in the state.

550 **Section 16. Repealer.**

551 This act repeals:

552 **Section 13-25a-101, Title.**

553 **Section 13-25a-102, Definitions.**

554 **Section 13-25a-103, Prohibited conduct for telephone solicitations -- Exceptions.**

- 555 Section 13-25a-104, Prohibited conduct for facsimiles -- Exceptions.
- 556 Section 13-25a-105, Penalties -- Administrative and criminal.
- 557 Section 13-25a-106, Enforcement.
- 558 Section 13-25a-107, Private action.
- 559 Section 13-26-1, Short title.
- 560 Section 13-26-2, Definitions.
- 561 Section 13-26-3, Registration and bond required.
- 562 Section 13-26-4, Exemptions from registration.
- 563 Section 13-26-5, Right of rescission -- Cancellation.
- 564 Section 13-26-8, Penalties.
- 565 Section 13-26-10, Provisions of chapter not exclusive.
- 566 Section 13-26-11, Prohibited practices.

Legislative Review Note
as of 1-7-00 2:42 PM

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel