

CONSUMER PROTECTION AMENDMENTS

2002 GENERAL SESSION

STATE OF UTAH

Sponsor: Afton B. Bradshaw

This act amends the Commerce and Trade Code and the Utah Criminal Code. The act amends the definition of "unsolicited telephone call." The act adjusts the bonding requirements for those making telephone solicitations. The act amends the provision for investigations of identity theft violations. The act makes technical changes.

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

AMENDS:

13-25a-102, as last amended by Chapter 77, Laws of Utah 1998

13-26-3, as last amended by Chapter 124, Laws of Utah 1999

76-6-1102, as enacted by Chapter 57, Laws of Utah 2000

76-6-1103, as enacted by Chapter 57, Laws of Utah 2000

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

Section 1. Section **13-25a-102** is amended to read:

13-25a-102. Definitions.

As used in this chapter:

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

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

(i) store or produce telephone numbers;

(ii) call a stored or produced number; and

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

(b) "Automated telephone dialing system" does not include equipment used with a burglar alarm system, voice messaging system, fire alarm system, or other system used in an emergency involving the immediate health or safety of a person.

(3) "Established business relationship" means a relationship that:

(a) is based on inquiry, application, purchase, or transaction regarding products or services

offered;

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

(c) has not been terminated by either party.

(4) "Facsimile machine" means equipment used for:

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

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

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

(6) "Telephone solicitation" means the initiation of a telephone call or message for the purpose of:

(a) encouraging the purchase or rental of, or investment in, property, goods, or services;

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

(c) soliciting information that will be used for:

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

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

(d) soliciting a charitable donation involving the exchange of any premium, prize, gift, ticket,

subscription, or other benefit in connection with any appeal made for a charitable purpose.

(7) "Telephone solicitor" means any natural person, firm, organization, partnership, association, or corporation who makes or causes to be made an unsolicited telephone call, including calls made by use of an automated telephone dialing system.

(8) "Unsolicited telephone call" means a telephone call for a commercial purpose or to seek a financial donation other than a call made:

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

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

(c) to any person with whom the telephone solicitor has an ~~existing~~ established business relationship[-]; or

(d) as required by law for a medical purpose.

Section 2. Section **13-26-3** is amended to read:

13-26-3. Registration and bond required.

(1) (a) Each telephone soliciting business engaging in telephone solicitation or sales in this state shall register annually with the Division of Consumer Protection prior to doing or continuing to do business in this state.

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

(c) If a telephone soliciting business fails to designate an agent to receive service or fails to appoint a successor to the agent, the business' application for an initial or renewal registration shall be denied, and any current registration shall be suspended until an agent is designated.

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

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

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

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

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

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

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

full damages.

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

(e) The amount to be posted in the form of a bond, irrevocable letter of credit, or certificate of deposit shall be ~~[determined as follows]:~~

(i) \$25,000 if neither the telephone soliciting business nor any affiliated person ~~[affiliated with the telephone soliciting business at the time of application has been found in an administrative, civil, or criminal proceeding]~~ has violated this chapter within three years ~~[of]~~ preceding the date of the application ~~[to have violated this chapter, the amount posted shall be \$50,000]~~ and the telephone soliciting business has fewer than ten employees;

(ii) \$50,000 if neither the telephone soliciting business nor any affiliated person has violated this chapter within three years preceding the date of the application and the telephone soliciting business has ten or more employees; or

~~[(ii)]~~ (iii) \$75,000 if the telephone soliciting business or any ~~[currently]~~ affiliated person has violated this chapter within three years preceding the date of the application ~~[, the amount posted shall be \$75,000; and].~~

~~[(iii) for]~~ (f) For purposes of Subsection (3)(e) an "affiliated person" means a contractor, director, employee, officer, owner, or partner of the telephone soliciting business.

(4) The division may establish by rule the registration requirements for telephone soliciting businesses under the terms of Title 63, Chapter 46a, Utah Administrative Rulemaking Act. An administrative proceeding conducted by the division under this chapter shall comply with the requirements of Title 63, Chapter 46b, Administrative Procedures Act.

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

Section 3. Section **76-6-1102** is amended to read:

76-6-1102. Identity fraud crime.

(1) For purposes of this part, "personal identifying information" may include:

- (a) name;
- (b) address;
- (c) telephone number;
- (d) driver's license number;
- (e) Social Security number;
- (f) place of employment;
- (g) employee identification numbers or other personal identification numbers;
- (h) mother's maiden name;
- (i) electronic identification numbers;
- (j) digital signatures or a private key; or
- (k) any other numbers or information that can be used to access a person's financial resources or medical information in the name of another person without the consent of that person except for numbers or information that can be prosecuted as financial transaction card offenses under Sections 76-6-506 through 76-6-506.4.

(2) A person is guilty of identity fraud when that person knowingly or intentionally:

- (a) obtains personal identifying information of another person without the authorization of that person; and

- (b) uses, or attempts to use, that information with fraudulent intent, including to obtain, or attempt to obtain, credit, goods, services, any other thing of value, or medical information in the name of another person without the consent of that person.

(3) Identity fraud is:

- (a) a class B misdemeanor if the value of the credit, goods, services, or any other thing of value is less than \$300;

- (b) a class A misdemeanor if:

- (i) a value cannot be determined and the personal identifying information has been used without the consent of that person to obtain medical information [~~in the name of another person without the consent of that person~~] or to obtain employment; or

- (ii) the value of the credit, goods, services, or any other thing of value is or exceeds \$300 but

is less than \$1,000;

(c) a third degree felony if the value of the credit, goods, services, or any other thing of value is or exceeds \$1,000 but is less than \$5,000; or

(d) a second degree felony if the value of the credit, goods, services, or any other thing of value is or exceeds \$5,000.

(4) Multiple violations within a 90-day period may be aggregated into a single offense, and the degree of the offense is determined by the total value of all credit, goods, services, or any other thing of value used, or attempted to be used, through the multiple violations.

Section 4. Section **76-6-1103** is amended to read:

76-6-1103. Investigation, jurisdiction, and prima facie evidence of violation.

(1) In any criminal proceeding brought pursuant to this section, the crime shall be considered to have been committed in any county in which any part of the identity fraud took place, regardless of whether the defendant was ever actually in that county.

(2) ~~[The]~~ In addition to investigations conducted by law enforcement agencies, the Division of Consumer Protection also has responsibility for investigating violations of this part where identity fraud is the primary violation that is alleged to have been committed.

(3) A criminal conviction under this part is prima facie evidence of a violation of Section 13-11-4, of the Utah Consumer Sales Practices Act.

(4) Any violation of this part constitutes a violation of Section 13-11-4, of the Utah Consumer Sales Practices Act.