

**COMMERCE AND TRADE - TELEPHONE AND
FACSIMILE SOLICITATION ACT**

2003 GENERAL SESSION

STATE OF UTAH

Sponsor: David L. Thomas

This act modifies the Telephone and Facsimile Solicitation Act to provide definitions and modify some of the guidelines and enforcement mechanisms for telephone and facsimile solicitations. The act enacts provisions providing guidelines for the maintenance of a no-call database by the Division of Consumer Protection.

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

AMENDS:

13-25a-102, as last amended by Chapter 122, Laws of Utah 2002

13-25a-103, as last amended by Chapter 77, Laws of Utah 1998

13-25a-104, as enacted by Chapter 26, Laws of Utah 1996

13-25a-106, as enacted by Chapter 26, Laws of Utah 1996

13-25a-107, as enacted by Chapter 26, Laws of Utah 1996

ENACTS:

13-25a-108, Utah Code Annotated 1953

13-25a-109, Utah Code Annotated 1953

13-25a-110, Utah Code Annotated 1953

13-25a-111, Utah Code Annotated 1953

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) "Division" means the Division of Consumer Protection in the Department of Commerce.

~~[(3)]~~ (4) (a) "Established business relationship" means a relationship that:

~~[(a)]~~ (i) is based on inquiry, application, purchase, or transaction regarding products or services offered;

~~[(b)]~~ (ii) 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)]~~ (iii) has not been terminated by ~~[either party]~~:

(A) an act by either party; or

(B) the passage of 18 months since the most recent inquiry, application, purchase, transaction, or voluntary two-way communication.

(b) "Established business relationship" includes a relationship with an affiliate as defined in Section 16-10a-102.

~~[(4)]~~ (5) "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)]~~ (6) "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)]~~ (7) "Telephone solicitation" means the initiation of a telephone call or message for ~~[the purpose of:]~~ a commercial purpose or to seek a financial donation, including calls:

(a) encouraging the purchase or rental of, or investment in, property, goods, or services, regardless of whether the transaction involves a nonprofit organization;

(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)~~] (8) "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)~~] (9) "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;

(c) to any person with whom the telephone solicitor has an established business relationship; or

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

Section 2. Section **13-25a-103** is amended to read:

13-25a-103. Prohibited conduct for telephone solicitations -- Exceptions.

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

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

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

(b) to a person with whom the solicitor has an established business relationship[-]; or

(c) by or on behalf of a charitable organization as defined in Section 13-22-2.

(3) A person may not make a telephone solicitation to a residential telephone [~~before 8:00 a.m. or after 9:00 p.m. local time unless prior express consent is given to call at a different time.~~] without prior express consent during any of the following times:

(a) before 8 a.m. or after 9 p.m. local time;

(b) on a Sunday; or

(c) on a legal holiday.

(4) A person may not make or authorize a telephone solicitation in violation of Title 47 U.S.C. 227.

(5) Any telephone solicitor who makes an unsolicited telephone call to a telephone number shall:

(a) identify themselves;

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

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

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

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

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

Section 3. Section **13-25a-104** is amended to read:

13-25a-104. Prohibited conduct for facsimiles -- Exceptions.

(1) Except as provided in Subsection (2), a person may not operate or authorize the operation of a facsimile machine to send an advertisement.

(2) A person may operate a facsimile machine if the advertisement is sent:

- (a) with the prior express written consent of the person who receives the facsimile agreeing to receive the facsimile from a specific solicitor; or
- (b) to a person with whom the solicitor has an established business relationship.
- (3) A person may not make or authorize the sending of an advertisement by facsimile in violation of Title 47 U.S.C. 227.

Section 4. Section **13-25a-106** is amended to read:

13-25a-106. Enforcement.

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

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

~~[(a)]~~ (i) bring an action for temporary or permanent injunctive or other relief in any court of competent jurisdiction for any violation of this chapter. The court may, upon entry of final judgment, award restitution when appropriate to any person suffering loss because of a violation of this part if proof of loss is submitted to the satisfaction of the court;

~~[(b)]~~ (ii) bring an action in any court of competent jurisdiction for the collection of penalties authorized under Subsection 13-25a-105(1); or

~~[(c)]~~ (iii) bring an action under Subsection 13-25a-105(3).

(b) In an action under Subsection (2)(a), the attorney general or any district or county attorney may recover costs, including investigative costs and attorney fees, from any violator of this chapter.

Section 5. Section **13-25a-107** is amended to read:

13-25a-107. Private action.

(1) In addition to any other remedies, a person may bring an action in any state court of competent jurisdiction if ~~[that person has received a telephone solicitation or facsimile advertisement that]:~~

(a) (i) ~~[violates this chapter;]~~ the person has received two or more telephone solicitations or facsimile advertisements from the same individual or entity that:

~~[(b) causes the person to suffer a pecuniary loss as a result of a violation of this chapter; or]~~

~~(A) violates this chapter; or~~

~~[(c)] (B) violates Title 47 U.S.C. 227[-]; and~~

~~(ii) the person, following the first telephone solicitation or facsimile advertisement, notified the sender of the person's objection to receiving the telephone solicitation or facsimile advertisement; or~~

~~(b) the person has received one telephone solicitation or facsimile advertisement in violation of:~~

~~(i) Subsection 13-25a-103(1);~~

~~(ii) Subsection 13-25a-103(3);~~

~~(iii) Subsection 13-25a-103(5);~~

~~(iv) Subsection 13-25a-103(6); or~~

~~(v) Subsection 13-25a-104(1).~~

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

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

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

(c) seek to enjoin any conduct in violation of this chapter.

Section 6. Section **13-25a-108** is enacted to read:

13-25a-108. Objections to telephone solicitations.

(1) A person may not make or cause to be made a telephone solicitation within Utah to a telephone number contained in the no-call database established under Section 13-25a-109.

(2) It is an affirmative defense to a violation of this section that the person making the telephone call in violation of this section made the telephone call in reliance on a current database:

(a) established by any federal agency; and

(b) that establishes a national database of telephone numbers of persons who object to receiving telephone solicitations.

(3) This section does not apply to a telephone solicitation made by or on behalf of a charitable organization as defined in Section 13-22-2.

Section 7. Section **13-25a-109** is enacted to read:

13-25a-109. No-call database.

(1) The division shall establish and provide for the operation of a no-call database to compile a list of telephone numbers of persons who have provided notice to the division of the person's objection to receiving a telephone solicitation.

(2) A person that requests to have the person's telephone number included in the no-call database shall pay an annual registration fee determined by the division in accordance with Section 63-38-3.2.

(3) A person desiring to make telephone solicitations may obtain a copy of the no-call database maintained by the division under this section if the person pays an annual registration fee determined by the division in accordance with Section 63-38-3.2.

(4) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the division shall adopt rules to:

(a) establish the methods by which a person may give notice to the division, including notice by telephone, Internet, mail, or in-person communication, of:

(i) the person's objection to receiving a telephone solicitation; or

(ii) the person's lifting of the person's objection to receiving a telephone solicitation;

(b) specify the amount of time after a person provides notice to the division, not to exceed 90 calendar days, after which the inclusion of the person's telephone number in the no-call database shall be effective against a person making a telephone solicitation;

(c) establish the effect of a change of telephone number by a person whose telephone number is contained in the no-call database;

(d) establish methods by which a person desiring to make telephone solicitations may obtain a copy of the no-call database;

(e) define the improper use of the no-call database;

(f) define penalties for the improper use of the no-call database, which may not be greater

than those imposed for a violation of the national database described in Subsection (5); and

(g) define penalties against a person that registers another person to the no-call database without that person's consent.

(5) If any federal agency establishes a national database of telephone numbers of persons who object to receiving telephone solicitations, the division shall:

(a) include Utah telephone numbers from the national database in the no-call database maintained under this section; and

(b) at least once every three months, forward to the national database all telephone numbers contained in the no-call database maintained under this section.

(6) Information contained in the no-call database maintained under this section shall be classified as private under Title 63, Chapter 2, Government Records Access and Management Act, and shall be used only for purposes of:

(a) compliance with this chapter; or

(b) a proceeding or action to enforce this chapter.

Section 8. Section **13-25a-110** is enacted to read:

13-25a-110. Advisory group.

(1) The division shall establish an advisory group to help persons understand their options with regard to telephone solicitations and facsimile advertisements composed of representatives from:

(a) government entities;

(b) telecommunications companies;

(c) businesses;

(d) consumer advocacy organizations; or

(e) the general public.

(2) The division may enter into agreements with telecommunications companies to disseminate information concerning the options available to persons under this chapter.

Section 9. Section **13-25a-111** is enacted to read:

13-25a-111. Exemptions.

Notwithstanding any other provision of this chapter, the provisions of Sections 13-25a-103 and 13-25a-108 do not apply to a person that holds a license or registration:

- (a) under Title 31A, Insurance Code;
- (b) issued by the Division of Real Estate established in Section 61-2-5;
- (c) by or on behalf of a charitable organization as defined in Section 13-22-2; or
- (d) issued by the National Association of Securities Dealers.