

Chapter 25a Telephone and Facsimile Solicitation Act

13-25a-101 Title.

This chapter is known as the "Telephone and Facsimile Solicitation Act."

Enacted by Chapter 26, 1996 General Session

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.
- (4)
 - (a) "Established business relationship" means a relationship that:
 - (i) is based on inquiry, application, purchase, or transaction regarding products or services offered;
 - (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
 - (iii) has not been terminated by:
 - (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.
- (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.
- (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.
- (7) "Telephone solicitation" means the initiation of a telephone call or message for 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.
- (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.
- (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.

Amended by Chapter 263, 2003 General Session

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.
- (3) A person may not make a telephone solicitation to a residential telephone 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 the telephone solicitor;
 - (b) identify the business on whose behalf the telephone solicitor 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.

Amended by Chapter 90, 2004 General Session

Amended by Chapter 263, 2004 General Session

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.

Amended by Chapter 263, 2003 General Session

13-25a-105 Penalties -- Administrative and criminal.

- (1) Any person who violates this chapter is subject to:
 - (a) a cease and desist order; and
 - (b) an administrative fine of not less than \$100 or more than \$2,500 for each separate violation.
- (2) All administrative fines collected under this chapter shall be deposited in the Consumer Protection Education and Training Fund created in Section 13-2-8.
- (3) Any person who intentionally violates this chapter is guilty of a class A misdemeanor and may be fined up to \$2,500. A person intentionally violates this chapter if the violation occurs after the division, attorney general, or a district or county attorney notifies the person by certified mail that he is in violation of this chapter.

Amended by Chapter 18, 2005 General Session

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:
 - (i) bring an action for temporary or permanent injunctive or other relief in any court of competent jurisdiction for any violation of this chapter;
 - (ii) 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; or
 - (iii) bring an action in any court of competent jurisdiction for the collection of penalties authorized under Subsection 13-25a-105(1).
 - (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.

Amended by Chapter 18, 2005 General Session

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

- (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.

Amended by Chapter 263, 2003 General Session

13-25a-107.2 Requests to a specific telephone solicitor.

- (1) A telephone solicitor may not make or cause to be made a telephone solicitation to a person who has informed the telephone solicitor, either in writing or orally, that the person does not wish to receive a telephone call from the telephone solicitor.
- (2) A telephone solicitor is not liable for a violation of this section if the telephone solicitor complies with 16 C.F.R. Part 310.4(b)(3) and (4).

Enacted by Chapter 18, 2005 General Session

13-25a-108 Objections to telephone solicitations.

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

Amended by Chapter 263, 2004 General Session

13-25a-109 No-call database.

- (1)
 - (a) In accordance with Subsection (1)(b), 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 of the person's objection to receiving an unsolicited telephone call.
 - (b) The no-call database described in Subsection (1)(a) shall consist of the Utah telephone numbers contained in the national "do-not-call" registry established and maintained by the Federal Trade Commission pursuant to 16 C.F.R. 310.4(b)(1)(iii)(B).
- (2) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the division may adopt rules to:
 - (a) define the improper use of the no-call database;
 - (b) define administrative fines for the improper use of the no-call database, which may not be greater than those imposed for a violation of the national "do-not-call" registry described in Subsection (1)(b); and
 - (c) define administrative fines against a person that registers another person to the no-call database without that person's consent.

- (3) Information contained in the no-call database maintained under this section shall be classified as private under Title 63G, 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.

Amended by Chapter 382, 2008 General Session

13-25a-111 Exemptions.

Notwithstanding any other provision of this chapter, Sections 13-25a-103 and 13-25a-108 do not apply to:

- (1) a telephone call made for a charitable purpose as defined in Section 13-22-2;
- (2) a charitable solicitation as defined in Section 13-22-2; or
- (3) a person who holds a license or registration:
 - (a) under Title 31A, Insurance Code;
 - (b) issued by the Division of Real Estate established in Section 61-2-201; or
 - (c) issued by the National Association of Securities Dealers.

Amended by Chapter 379, 2010 General Session