

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, good, or service.
- (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 a system used in an emergency involving the immediate health or safety of a person, including a burglar alarm system, voice messaging system, fire alarm system, or other similar system.
- (3) "Division" means the Division of Consumer Protection.
- (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 person; 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 person stating the person does not wish to listen to the sales presentation or participate in the solicitation presented in the telephone call.
- (7) "On-call emergency provider" means an individual who is required by an employer to be on call to respond to a medical emergency.
- (8) "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;
 - (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; or
 - (e) encouraging the person called to sell real or personal property.
- (9) "Telephone solicitor" means any individual, 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.
- (10) "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 a person with whom the telephone solicitor has an established business relationship; or
 - (d) as required by law for a medical purpose.

Amended by Chapter 324, 2022 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 or cellular telephone without prior express consent during any of the following times:
- (a) between the hours of 9 p.m. and 8 a.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) A 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) promptly identify the purpose of the call 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) If a telephone solicitor's service or equipment is capable of displaying the telephone solicitor's telephone number through a caller identification service, the 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.

Amended by Chapter 324, 2022 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) Any person who violates this chapter by soliciting an on-call emergency provider while the on-call emergency provider is on call is subject to:
 - (a) a cease and desist order; and
 - (b) an administrative fine of not less than \$1,000 or more than \$2,500 for each separate violation.
- (3) All administrative fines collected under this chapter shall be deposited in the Consumer Protection Education and Training Fund created in Section 13-2-8.
- (4) Any person who intentionally violates this chapter is guilty of a class A misdemeanor and may be fined up to \$2,500.
- (5) 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 the person is in violation of this chapter.

Amended by Chapter 289, 2021 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) a person may:
 - (i) recover the greater of \$500 or the amount of the pecuniary loss, if any;
 - (ii) recover court costs and reasonable attorneys' fees as determined by the court; and
 - (iii) seek to enjoin any conduct in violation of this chapter; and
 - (b) if the court finds that a violation was knowing and willful:
 - (i) the court may award an individual treble the amount of the individual's pecuniary loss; or
 - (ii) the court may award an individual the greater of \$1,000 or treble the amount of the individual's pecuniary loss if:
 - (A) the individual who received the solicitation is an on-call emergency provider;
 - (B) the individual was on call at the time the violation occurred; and
 - (C) the individual had notified the sender that the individual is an on-call emergency provider.

Amended by Chapter 289, 2021 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 Prohibited telephone solicitations.

- (1) A person may not make or cause to be made an unsolicited telephone call to a person:
 - (a) located in the state; and
 - (b)
 - (i) at a Utah telephone number contained in the national "do-not-call" registry established and maintained by the Federal Trade Commission under 16 C.F.R. 310.4(b)(1)(iii)(B); or
 - (ii) at a non-Utah telephone number contained in the national "do-not-call" registry established and maintained by the Federal Trade Commission under 16 C.F.R. 310.4(b)(1)(iii)(B), if the

person making the call or causing the call to be made knows or reasonably should know that the person receiving the call is in Utah.

(2) Each unsolicited telephone call made in violation of this section is a separate violation.

Amended by Chapter 79, 2020 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