

Effective 5/4/2022

13-26-2 Definitions.

As used in this chapter, unless the context otherwise requires:

- (1) "Affiliated person" means a seller or a seller's contractor, director, employee, officer, owner, or partner.
- (2) "Continuity plan" means a shipment, with the prior express consent of the buyer, at regular intervals of similar special-interest products, in which there is no binding commitment period or purchase amount.
- (3) "Division" means the Division of Consumer Protection.
- (4) "Fictitious personal name" means a name other than an individual's legal name.
- (5) "Material statement" or "material fact" means information that a person of ordinary intelligence or prudence would consider important in deciding whether to accept an offer extended through a telephone solicitation.
- (6) "Participant" means a person seeking to register or renew a registration as a seller including:
 - (a) a seller;
 - (b) an owner;
 - (c) an officer;
 - (d) a director;
 - (e) a member or manager of a limited liability company;
 - (f) a principal;
 - (g) a trustee;
 - (h) a general or limited partner;
 - (i) a sole proprietor; or
 - (j) an individual with a controlling interest in an entity.
- (7) "Premium" means a gift, bonus, prize, award, certificate, or other document by which a prospective purchaser is given a right, chance, or privilege to purchase or receive goods or services with a stated or represented value of \$25 or more as an inducement to a prospective purchaser to purchase other goods or services.
- (8) "Seller" means a person, or a group of persons engaged in a common effort to conduct a telephone solicitation, that:
 - (a) on behalf of the person, or the group of persons engaged in a common effort to conduct a telephone solicitation:
 - (i) makes a telephone solicitation; or
 - (ii) causes a telephone solicitation to be made; or
 - (b) through a telephone solicitor:
 - (i) makes a telephone solicitation; or
 - (ii) causes a telephone solicitation to be made.
- (9) "Subscription arrangements," "standing order arrangements," "supplements," and "series arrangements" mean products or services provided, with the prior express request or consent of the buyer, for a specified period of time at a price dependent on the duration of service and to complement an initial purchase.
- (10)
 - (a) "Telephone solicitation," "sale," "selling," or "solicitation of sale" means:
 - (i) a sale or solicitation of goods or services in which:
 - (A)
 - (I) the seller solicits the sale over the telephone;
 - (II) the purchaser's agreement to purchase is made over the telephone; and

- (III) the purchaser, over the telephone, pays for or agrees to commit to payment for goods or services prior to or upon receipt by the purchaser of the goods or services;
- (B) the seller, not exempt under Section 13-26-4, induces a prospective purchaser over the telephone, to make and keep an appointment that directly results in the purchase of goods or services by the purchaser that would not have occurred without the telephone solicitation and inducement by the seller;
- (C) the seller offers or promises a premium to a prospective purchaser if:
 - (I) the seller induces the prospective purchaser to initiate a telephone contact with the seller; and
 - (II) the resulting solicitation meets the requirements of Subsection (10)(a); or
- (D) the seller solicits a charitable donation involving the exchange of any premium, prize, gift, ticket, subscription, or other benefit in connection with an appeal made for a charitable purpose by an organization that is not otherwise exempt under Subsection 13-26-4(2)(b)(iv); or
- (ii) a telephone solicitation as defined in Section 13-25a-102.
- (b) "Telephone solicitation," "sale," "selling," or "solicitation of sale" does not include a sale or solicitation that occurs solely through an Internet website without the use of a telephone call.
- (c) A solicitation of sale or telephone solicitation is considered complete when made, whether or not the person receiving the solicitation agrees to the sale or to make a charitable donation.
- (11) "Telephone solicitor" or "solicitor" means an individual who engages in a telephone solicitation on behalf of a seller.

Amended by Chapter 324, 2022 General Session