

Effective 5/13/2014

13-26-4 Exemptions from registration.

- (1) In any enforcement action initiated by the division, the person claiming an exemption has the burden of proving that the person is entitled to the exemption.
- (2) The following are exempt from the requirements of this chapter except for the requirements of Sections 13-26-8 and 13-26-11:
 - (a) a broker, agent, dealer, or sales professional licensed under the licensure laws of this state, when soliciting sales within the scope of his license;
 - (b) the solicitation of sales by:
 - (i) a public utility that is regulated under Title 54, Public Utilities, or by an affiliate of the utility;
 - (ii) a newspaper of general circulation;
 - (iii) a solicitation of sales made by a broadcaster licensed by any state or federal authority;
 - (iv) a nonprofit organization if no part of the net earnings from the sale inures to the benefit of any member, officer, trustee, or serving board member of the organization, or individual, or family member of an individual, holding a position of authority or trust in the organization; and
 - (v) a person who periodically publishes and delivers a catalog of the solicitor's merchandise to prospective purchasers, if the catalog:
 - (A) contains the price and a written description or illustration of each item offered for sale;
 - (B) includes the business address of the solicitor;
 - (C) includes at least 24 pages of written material and illustrations;
 - (D) is distributed in more than one state; and
 - (E) has an annual circulation by mailing of not less than 250,000;
 - (c) any publicly-traded corporation registered with the Securities and Exchange Commission, or any subsidiary of the corporation;
 - (d) the solicitation of any depository institution as defined in Section 7-1-103, a subsidiary of a depository institution, personal property broker, securities broker, investment adviser, consumer finance lender, or insurer subject to regulation by an official agency of this state or the United States;
 - (e) the solicitation by a person soliciting only the sale of telephone services to be provided by the person or the person's employer;
 - (f) the solicitation of a person relating to a transaction regulated by the Commodities Futures Trading Commission, if:
 - (i) the person is registered with or temporarily licensed by the commission to conduct that activity under the Commodity Exchange Act; and
 - (ii) the registration or license has not expired or been suspended or revoked;
 - (g) the solicitation of a contract for the maintenance or repair of goods previously purchased from the person:
 - (i) who is making the solicitation; or
 - (ii) on whose behalf the solicitation is made;
 - (h) the solicitation of previous customers of the business on whose behalf the call is made if the person making the call:
 - (i) does not offer any premium in conjunction with a sale or offer;
 - (ii) is not selling an investment or an opportunity for an investment that is not registered with any state or federal authority; and
 - (iii) is not regularly engaged in telephone sales;
 - (i) the solicitation of a sale that is an isolated transaction and not done in the course of a pattern of repeated transactions of a like nature;

- (j) the solicitation of a person by a retail business establishment that has been in operation for at least five years in Utah under the same name as that used in connection with telemarketing if both of the following occur on a continuing basis:
 - (i) products are displayed and offered for sale at the place of business, or services are offered for sale and provided at the place of business; and
 - (ii) a majority of the seller's business involves the buyer obtaining the products or services at the seller's place of business;
- (k) a person primarily soliciting the sale of a magazine or periodical sold by the publisher or the publisher's agent through a written agreement, or printed or recorded material through a contractual plan, such as a book or record club, continuity plan, subscription, standing order arrangement, or supplement or series arrangement if:
 - (i) the seller provides the consumer with a form that the consumer may use to instruct the seller not to ship the offered merchandise, and the arrangement is regulated by the Federal Trade Commission trade regulation concerning use of negative option plans by sellers in commerce; or
 - (ii)
 - (A) the seller periodically ships merchandise to a consumer who has consented in advance to receive the merchandise on a periodic basis; and
 - (B) the consumer retains the right to cancel at any time and receive a full refund for the unused portion; or
- (l) a telephone marketing service company that provides telemarketing sales services under contract to sellers if:
 - (i) it has been doing business regularly with customers in Utah for at least five years under the same business name and with its principal office in the same location;
 - (ii) at least 75% of its contracts are performed on behalf of persons exempted from registration under this chapter; and
 - (iii) neither the company nor its principals have been enjoined from doing business or subjected to criminal actions for their business activities in this or any other state.

Amended by Chapter 189, 2014 General Session