

Chapter 26 Telephone Fraud Prevention Act

13-26-1 Short title.

This chapter is known as the "Telephone Fraud Prevention Act."

Enacted by Chapter 154, 1990 General Session

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

13-26-3 Registration and bond required.

(1)

(a) Unless exempt under Section 13-26-4, each seller shall register annually with the division before engaging in telephone solicitations if:

(i) the seller engages in telephone solicitations that:

(A) originate in Utah; or

(B) are received in Utah; or

(ii) the seller, or a solicitor on behalf of the seller, conducts any business operations in Utah.

(b) The registration form shall designate an agent residing in this state who is authorized by the seller to receive service of process in any action brought by this state or a resident of this state.

(c) If a seller fails to designate an agent to receive service or fails to appoint a successor to the agent, the division shall:

(i) deny the seller's application for an initial or renewal registration; and

(ii) if the application is for a renewal registration, suspend the seller's current registration until the seller designates an agent.

- (d) For purposes of this section only, the registered agent of a seller shall provide the division the registered agent's proof of residency in the state in the form of:
 - (i) a valid Utah driver license;
 - (ii) a valid governmental photo identification issued to a resident of this state; or
 - (iii) other verifiable identification indicating residency in this state.
- (2) The division may impose an annual registration fee set in accordance with Section 63J-1-504 that may include the cost of the criminal background check described in Subsection (4).
- (3)
 - (a) Each seller subject to this chapter engaging in telephone solicitation or sales in this state shall obtain and maintain the following security:
 - (i) a performance bond issued by a surety authorized to transact surety business in this state;
 - (ii) an irrevocable letter of credit issued by a financial institution authorized under the laws of this state or the United States doing business in this state; or
 - (iii) a certificate of deposit held in this state in a financial institution authorized under the laws of this state or the United States to accept deposits from the public.
 - (b) A seller's bond, letter of credit, or certificate of deposit shall be payable to the division for the benefit of any consumer who incurs damages as the result of the seller's violation of this chapter.
 - (c) If the consumer has first recovered full damages, the division may recover from the bond, letter of credit, or certificate of deposit administrative fines, civil penalties, investigative costs, attorney fees, and other costs of collecting and distributing funds under this section.
 - (d) A seller shall keep a bond, certificate of deposit, or letter of credit in force for one year after the day on which the seller notifies the division in writing that the seller has ceased all activities regulated by this chapter.
 - (e) The seller shall post a bond, irrevocable letter of credit, or certificate of deposit in the amount of:
 - (i) \$25,000 if:
 - (A) neither the seller nor any affiliated person has violated this chapter in the three-year period immediately before the day on which the seller files the application; and
 - (B) the seller has fewer than 10 employees;
 - (ii) \$50,000 if:
 - (A) neither the seller nor any affiliated person has violated this chapter in the three-year period immediately before the day on which the seller files the application; and
 - (B) the seller has 10 or more employees; or
 - (iii) \$75,000 if the seller or any affiliated person has violated this chapter in the three-year period immediately before the day on which the seller files the application.
- (4) To register or renew a registration as a seller, a participant:
 - (a) may not have been convicted of a felony in the 10-year period immediately before the day on which the participant files the application;
 - (b) may not have been convicted of a misdemeanor involving moral turpitude, including theft, fraud, or dishonesty, in the 10-year period immediately before the day on which the participant files the application; and
 - (c) shall submit to the division:
 - (i) the participant's fingerprints, in a form acceptable to the division, for purposes of a criminal background check; and
 - (ii) consent to a criminal background check by the Bureau of Criminal Identification created in Section 53-10-201.

- (5) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the division may establish by rule the registration requirements for a seller.
- (6) If information in an application for registration or for renewal of registration as a seller materially changes or becomes incorrect or incomplete, the applicant shall, within 30 days after the day on which information changes or becomes incorrect or incomplete, submit the correct information to the division in a manner that the division establishes by rule.
- (7) The division director may deny or revoke a registration under this section for any violation of this chapter.

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13-26-4 Exemptions from registration.

- (1) In an enforcement action initiated by the division, a person claiming an exemption has the burden of proving that the person is entitled to the exemption.
- (2) The following are exempt from this chapter except for the requirements described in Sections 13-26-8 and 13-26-11:
 - (a) a broker, agent, dealer, or sales professional licensed in this state, when soliciting sales within the scope of the broker's, agent's, dealer's, or sales professional's 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 public utility;
 - (ii) a newspaper of general circulation;
 - (iii) a solicitation of sale made by a broadcaster licensed by a state or federal authority;
 - (iv) a nonprofit organization if no part of the net earnings from the sale inures to the benefit of:
 - (A) a member, officer, trustee, or serving board member of the organization; or
 - (B) an individual, or a 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 seller'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 seller's business address;
 - (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) a publicly traded corporation registered with the Securities and Exchange Commission, or a subsidiary of the publicly traded corporation;
 - (d) the solicitation of a 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 the 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 person 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 a 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 similar nature;
- (j) the solicitation of a person by a retail business that has been in operation for at least five years in Utah under the same name as that used in connection with telemarketing if the following occur on a continuing basis:
 - (i) at the retail business's place of business, the retail business:
 - (A) displays and offers products for sale; or
 - (B) offers services for sale and provides the services at the place of business; and
 - (ii) a majority of the retail business's business involves the activities described in Subsection (2)(j)(i);
- (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 person provides the consumer with a form that the consumer may use to instruct the person 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 a person making a sale in commerce; or
 - (ii)
 - (A) the person 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;
- (l) a telephone marketing service company that provides telemarketing sales services under contract to a person making a sale if:
 - (i) the telephone marketing service company has been doing business regularly with customers in Utah for at least five years under the same business name and with the telephone marketing service company's principal office in the same location;
 - (ii) at least 75% of the telephone marketing service company's contracts are performed on behalf of persons exempt from registration under this chapter; and
 - (iii) neither the telephone marketing service company nor the telephone marketing service company's principals have been enjoined from doing business or subjected to criminal actions for the telephone marketing service company's or the telephone marketing company's principal's business activities in this or any other state;
- (m) a credit services organization that holds a current registration with the division under Chapter 21, Credit Services Organizations Act, if the credit services organization's telephone solicitations are limited to the solicitation of services regulated under Chapter 21, Credit Services Organizations Act; and

- (n) a provider that holds a current registration with the division under Chapter 42, Uniform Debt-Management Services Act, if the provider's telephone solicitations are limited to the solicitation of services regulated under Chapter 42, Uniform Debt-Management Services Act.

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13-26-5 Right of rescission -- Cancellation.

- (1) As used in this section, "business day" means a day other than Sunday or a federal or state holiday.
- (2)
 - (a) Except as provided in Subsections (2)(b) and (c), in addition to any right to otherwise revoke an offer, a person who makes a purchase from a seller may cancel the sale before midnight of the third business day after the day on which the person receives the merchandise or premium, whichever is later, provided the seller or the seller's solicitor advises the purchaser of the purchaser's cancellation rights under this chapter at the time the solicitation is made.
 - (b) If the seller or the seller's solicitor fails to orally advise a purchaser of the right to cancel under this section at the time of a solicitation, the purchaser's right to cancel is extended to 90 days.
 - (c) If the seller or the seller's solicitor fails to orally advise a purchaser of the seller's or the seller's solicitor's legal name, telephone number, and complete address at the time of a solicitation, the purchaser may cancel the sale at any time.
 - (d) Except as provided in Subsection (5), a seller shall provide a full refund to a purchaser who cancels a sale in accordance with this section.
- (3) A purchaser may cancel a sale by:
 - (a) mailing a notice of cancellation to the seller or seller's solicitor's correct address, postage prepaid; or
 - (b) if the seller or the seller's solicitor fails to provide the purchaser with the seller's or the seller's solicitor's correct address, sending a notice of cancellation to the division's office, postage prepaid.
- (4)
 - (a) If a purchaser cancels a sale and the seller or the seller's solicitor provides the purchaser with the seller's correct address, the purchaser shall, within seven business days after the day on which the purchaser exercises the right to cancel, make a reasonable attempt to:
 - (i) if the canceled sale involves durable goods, return the goods to the seller; or
 - (ii) if the canceled sale involves expendable goods, return any unused portion of the goods to the seller.
 - (b) If the seller or the seller's solicitor fails to provide to a purchaser the seller's correct address, a purchaser who cancels a sale is not required to return any canceled goods to the seller.
- (5)
 - (a) If the purchaser who cancels a sale has used any portion of the services or goods purchased, the purchaser shall provide the seller a reasonable allowance for the value given.
 - (b) A seller may deduct the reasonable allowance described in Subsection (5)(a) from any refund due the purchaser.

Amended by Chapter 324, 2022 General Session

13-26-8 Penalties.

- (1)
 - (a) A seller or solicitor who violates a provision of this chapter is guilty of:

- (i) a class B misdemeanor for a first violation;
 - (ii) if the seller or solicitor has one prior violation of this chapter, a class A misdemeanor; and
 - (iii) if the seller or solicitor has two prior violations of this chapter, a third-degree felony.
- (b) For the purposes of Subsection (1)(a), a prior violation includes:
- (i) a final prior conviction;
 - (ii) a final determination by a court of competent jurisdiction; or
 - (iii) a final determination in an administrative adjudicative proceeding.
- (2) A person who violates a provision of this chapter is subject to a civil penalty in a court of competent jurisdiction of up to \$2,500 for each violation of this chapter.
- (3)
- (a) The division may:
- (i) in accordance with Title 63G, Chapter 4, Administrative Procedures Act, conduct an administrative proceeding to enforce the provisions of this chapter;
 - (ii) bring a court action to enforce the provisions of this chapter; and
 - (iii) in addition to other penalties described in this chapter, issue a cease and desist order and impose an administrative fine of up to \$2,500 for each violation of this chapter.
- (b) For purposes of this section, each telephone solicitation made in violation of this chapter is a separate violation.
- (4) The division shall deposit all administrative fines and civil penalties collected under this chapter into the Consumer Protection Education and Training Fund created in Section 13-2-8.

Amended by Chapter 324, 2022 General Session

13-26-10 Provisions of chapter not exclusive.

The remedies, duties, prohibitions, and penalties of this chapter are not exclusive and are in addition to all other causes of action, remedies, and penalties provided by law.

Enacted by Chapter 184, 1991 General Session

13-26-11 Prohibited practices.

- (1) It is unlawful for a seller to:
- (a) solicit a prospective purchaser if the seller is not registered with the division or exempt from registration under this chapter;
 - (b) in connection with a telephone solicitation or a filing with the division, make or cause to be made a false material statement or fail to disclose a material fact necessary to make the seller's statement not misleading;
 - (c) make or authorize the making of a misrepresentation to a purchaser or prospective purchaser about the seller's compliance with this chapter;
 - (d) fail to refund within 30 days any amount due a purchaser who exercises the right to cancel under Section 13-26-5;
 - (e) unless the seller is exempt under Section 13-26-4, fail to orally advise a purchaser of the purchaser's right to cancel under Section 13-26-5;
 - (f) employ an inmate in a correctional facility for telephone soliciting operations when the employment would give the inmate access to an individual's personal data, including the individual's name, address, telephone number, Social Security number, credit card information, or physical description; or
 - (g) cause or permit a solicitor to violate a provision of this chapter.
- (2) It is unlawful for a solicitor to:

- (a) use a fictitious personal name in connection with a telephone solicitation;
 - (b) in connection with a telephone solicitation, make or cause to be made a false material statement or fail to disclose a material fact necessary to make the solicitor's statement not misleading;
 - (c) make a misrepresentation to a purchaser or prospective purchaser about the solicitor's compliance with this chapter; or
 - (d) unless the solicitor is exempt under Section 13-26-4, fail to orally advise a purchaser of the purchaser's right to cancel under Section 13-26-5.
- (3) If a person knows or has reason to know that a seller or solicitor is engaged in an act or practice that violates this chapter, it is unlawful for the person to:
- (a) benefit from the seller's or solicitor's services; or
 - (b) provide substantial assistance or support to the seller or solicitor.

Amended by Chapter 324, 2022 General Session